UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

DENITHIA PENDERGRASS AND ALENA KELLEY, Individually and On Behalf of All Others Similarly Situated,	)	
Plaintiffs,	)	
v.	)	**COLLECTIVE ACTION COMPLAINT**
CITY GEAR, LLC, a.k.a. SHELMAR RETAIL PARTNERS, LLC; SHELMAR RETAIL PARTNERS, INC.; SHELMAR, INC.; MARTY'S LLC; MARTY'S INC.; HOLLIDAY'S FASHIONS; AND HOLLIDAY'S GENERAL SERVICE CORP.	)	**JURY TRIAL DEMANDED**
Defendants.	)	

COLLECTIVE ACTION COMPLAINT

Plaintiffs Denithia Pendergrass and Alena Kelley ("Plaintiffs" or "Collective Action Representatives") are current or former Store Managers and/or Assistant Managers of Defendants City Gear, LLC, a.k.a. Shelmar Retail Partners, LLC; Shelmar Retail Partners, Inc.; Shelmar, Inc.; Marty's LLC; Marty's Inc.; Holliday's Fashions; and/or Holliday's General Service Corp. ("Defendants," "City Gear," "City Gear/Shelmar," or the "Company"). Plaintiffs, individually and on behalf of all other similarly situated employees, complain by their attorneys Sanford Heisler, LLP and Barrett Johnston, LLC, as follows:

I. INTRODUCTION – NATURE OF THE ACTION

1. An employer's obligation to pay its employees overtime wages is more than a matter of private concern between the parties. That obligation is founded on a compelling public policy judgment that members of a modern, humane society are not

simply indentured servants but are entitled to work a livable number of hours at a livable wage. Minimum wage and overtime laws mark the boundary between a humane society and its Industrial Era precursor of child labor, company scrip, and eighteen-hour work days. In addition, the statutes and regulations compelling employers to pay overtime were designed not only to benefit individual workers but also to serve a fundamental societal goal: reducing unemployment by giving the employer a disincentive to concentrate work in a few overburdened hands and an incentive to instead hire additional employees. Especially in today's economic climate, the importance of spreading available work to reduce unemployment cannot be overestimated.

2. This case arises out of Defendants' systemic, Company-wide unlawful treatment of Plaintiffs and hundreds of similarly-situated employees whom Defendants wrongfully classify as exempt from overtime compensation under the federal Fair Labor Standards Act ("FLSA").

3. During the relevant period, City Gear has owned and operated more than 100 retail clothing stores throughout the Southern, Southeastern, and Midwestern U.S. – under brand names such as Marty's, City Gear, CGP, Deveroes (as of June 2012), Holliday's Fashions, and The Vault. Plaintiffs and the members of the proposed collective action class are current and former Store Managers and Assistant Managers working in Defendants' stores. Determined to squeeze where it can, City Gear deliberately flouts federal wage and hour protections in order to extract long hours from these employees, without paying time-and-a-half overtime pay as required by law.

4. While City Gear classifies its Store Managers and Assistant Managers as exempt from overtime compensation, it does not pay them as the law requires employers

to pay exempt employees. The FLSA's white collar exemptions require that employees be paid on a **fixed** salary basis. Although City Gear purports to pay Plaintiffs and the class members a fixed weekly salary, it in fact does not. City Gear uniformly subjects its Store Managers and Assistant Managers to *pro rata* pay deductions if they work less than the Company's mandatory 45-hour minimum work week. These deductions are taken even for absences of less than one day or when there is no available work. If Plaintiffs and the class members do not satisfy the 45-hour per week requirement for any reason, they are converted into hourly employees; their weekly wage is divided by 45 to determine their hourly rates and then they are paid for the hours they actually worked. Store Managers and Assistant Managers who work less than 45 hours in any given week are paid on an hourly basis. This uniform policy and practice of making improper deductions conclusively demonstrates the Company's intention not to actually pay Plaintiffs and the class members on a fixed salaried basis.

5. At the same time, Store Managers and Assistant Managers who work more than 40 hours per week (or the Company's mandatory 45-hour work week) are not paid any additional compensation for working overtime. In this manner, Defendants seek to have it both ways: paying the class on an hourly basis, under which they will not receive their full "salaries" if they work less than 45 hours per week, but refusing to pay them overtime for working more than 40 hours per week. The upshot of City Gear's policies is that Plaintiffs and the class members are not paid a fixed salary, but, at the same time, an artificial hard cap is set on their pay – no matter how many hours they are required to work.

6. City Gear wrongfully and willfully misclassifies its Store Managers and

Assistant Managers as exempt from overtime under the FLSA and therefore refuses to compensate them for hours worked in excess of 40 in any given week, much less provide the required time-and-a-half overtime pay.

7. During most of the year, Plaintiffs and the class members work a mandatory minimum of 45 hours per week. During holiday periods, from approximately October or November to January, the mandatory minimum is increased to 50 hours per week and the class members typically work in excess of that amount. Plaintiffs and the class members often work up to 60 hours per week or more. Plaintiffs' and the class members' actual working hours are recorded by the Company in time and payroll records; however, they do not receive any additional pay for working overtime.

8. Plaintiffs sue on behalf of themselves and other similarly situated Store Managers and Assistant Managers who elect to opt into this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.*, specifically the collective action provision of the FLSA, 29 U.S.C. § 216(b). This action claims that Defendants have violated the wage-and-hour provisions of the FLSA by depriving Plaintiffs, as well as others similarly situated to Plaintiffs, of their lawful overtime wages.

9. Since at least 2009, Defendants have willfully committed widespread violations of the FLSA by forcing similarly-situated Store Managers and Assistant Managers to work more than 40 hours per week without overtime compensation. Due to Defendants' uniform policy and practice of taking improper deductions from Plaintiffs' and the class members' salaries, the members of the collective action class are *not exempt* from the wage and hour laws. The class is defined as follows:

> All Store Managers and Assistant Managers employed by City Gear, Shelmar, and/or their retail stores from November 2009 through the date of final judgment

– who worked at stores including, but not limited to, City Gear, Marty's, Deveroes, CGP, Holliday's, and The Vault.

10. City Gear is liable for failing to pay these employees for all hours worked in excess of 40 hours per week at a rate of one-and-one-half times their regular rate of pay.

11. Plaintiffs and all similarly situated employees who elect to participate in this action seek unpaid compensation, an equal amount of liquidated damages and/or prejudgment interest, attorneys' fees, and costs pursuant to 29 U.S.C. § 216(b).

II. JURISDICTION AND VENUE

12. This Court has jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331, because the action arises under a federal statute, 29 U.S.C. § 216(b).

13. Defendants are subject to personal jurisdiction because they are headquartered and conduct business in Tennessee. This case arises from Defendants' wrongful conduct in Tennessee, where City Gear maintains its corporate headquarters and employs a substantial portion of the proposed class.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and (2). A substantial part of the events and the omissions giving rise to the class members' claims occurred in this district. Additionally, Defendants are deemed to reside in this district under 1391(c) because they are subject to personal jurisdiction in the district.

15. This Court is empowered to issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201 and 2202.

III. PARTIES

A. The Representative Plaintiffs

16. **Plaintiff Denithia Pendergrass** ("Ms. Pendergrass") resides in Nashville,

Tennessee, in this judicial District. From approximately July 2006 to the present, Ms. Pendergrass has worked for City Gear/Shelmar at Marty's and City Gear stores in Nashville. She has been an Assistant Manager and Store Manager from approximately August 2006 to the present.

17. **Plaintiff Alena Kelley** ("Ms. Kelley") resides in Lewisville, Texas. From approximately November 2010 through March 2012, Ms. Kelley worked for City Gear/Shelmar as an Assistant Manager and Store Manager at The Vault in Memphis, Tennessee.

B. <u>The Defendants</u>

18. Defendant City Gear, LLC is a corporation with its headquarters and principal place of business in Memphis, Tennessee. Until June 2012, it was known as Shelmar Retail Partners, LLC. City Gear owns and operates a rapidly-expanding chain of retail clothing stores throughout a swath of Midwestern and Southern states from Ohio to Texas under brand names such as City Gear, Marty's, CGP, Deveroes, and The Vault. As of 2011, it had more than 60 stores in at least eight states, including more than 20 in Tennessee, including in this District. In early 2012, it was up to approximately 80 stores in 10 or more states. Most recently, in June 2012, the Company acquired Deveroes and its 40 retail stores in the Midwest. Since approximately October 2006, the Company has been headed by President and CEO Michael E. Longo.

19. The Company had revenue of $64.5 million in 2011 alone, and employed approximately 500 workers nationwide.

20. Upon information and belief Defendants Shelmar Retail Partners, Inc., Shelmar, Inc., Marty's LLC, Marty's, Inc., Holliday's Fashions, and Holliday's General

Service Corp. are subsidiaries and/or affiliates of Defendant City Gear, LLC a.k.a. Shelmar Retail Partners, LLC or were so during the applicable class period. During all or part of the class period, Store Managers and Assistant Managers at retail stores owned or operated by these entities were subject to common employment and compensation policies promulgated by City Gear/Shelmar.

21. Upon taking over the Company in 2006, Mr. Longo instituted a mandatory 45-hour minimum work week for all Store Managers and Assistant Managers in Defendants' retail stores (increased to 50 hours during the holiday season) and further implemented a uniform policy and practice of making *pro rata* wage deductions when such employees failed to meet the 45-hour minimum in any given week.

22. Defendants maintain a condensed, centralized command structure presided over by CEO Longo. Plaintiffs and the class members – the Company's store-level supervisors – report to approximately ten or fewer District Managers, who in turn report to Vice President of Stores Ben Knighten and CEO Longo. All relevant employment policies and practices are centralized and set at the highest level of the Company.

23. Defendants engage in interstate commerce or engage in the delivery of goods and services for commerce.

24. The overtime wage provisions set forth in § 207 of the FLSA apply to Defendants. Plaintiffs' and the class members' jobs are not subject to any exception or exemption set forth in 29 U.S.C. § 213(a)(1).

IV. FACTUAL **ALLEGATIONS**

A. Plaintiff Denithia Pendergrass

25. In or about July 2006, Denithia Pendergrass was hired as a Sales Associate

at a Marty's store located on Gallatin Pike in Nashville, Tennessee. As a Sales Associate, Ms. Pendergrass was paid hourly and was considered eligible for overtime.

26. In August 2006, Ms. Pendergrass was promoted to Assistant Manager and began working at a Marty's store located at 3950 Clarksville Highway in Nashville. She was now classified as exempt from overtime. Ms. Pendergrass remained in this position until April 2009.

27. In 2009, Ms. Pendergrass was promoted again, this time to Store Manager at the Marty's on Gallatin Pike where she worked previously. The store later became a City Gear brand store. As a Store Manager, Ms. Pendergrass was still considered ineligible for overtime. Ms. Pendergrass continues to hold this position at present.

28. As both Assistant Manager and Store Manager, Ms. Pendergrass has at all times been required to work a minimum of 45 hours per week as a matter of Company policy. If she does not work the mandatory 45-hour minimum week, the Company takes *pro rata* deductions from her weekly pay – dividing her total weekly pay by 45 and paying her on an hourly basis for the hours she actually worked.

29. For example, Ms. Pendergrass currently earns a "regular" weekly wage of $785.25 if she works 45 hours or more. Converted to an hourly rate, this works out to $17.45 per hour. Ms. Pendergrass' earnings statement for the period ending November 18, 2012 shows that she worked 39.17 hours that week and earned gross wages of $683.52 instead of her "regular" rate of $785.25. This represents payment of an hourly wage of $17.45: 39.17 hours x $17.45 per hour = $683.52.

30. Ms. Pendergrass learned that her pay would be docked for the pay period ending November 18, 2012 when she received a phone call from Laura Presley, an

employee in the Company's Payroll department. Ms. Presley informed Ms. Pendergrass that she was short on her hours for the week and that, as a matter of standard Company policy, her pay would be subject to a pro-rated deduction unless she could prove that there had been some mistake or opted to put some of her allotted vacation or sick time towards the missing hours. Ms. Pendergrass chose not to use vacation or sick time to make up the shortfall of 5.83 hours, and therefore her pay was docked.

31. Ms. Pendergrass typically works a minimum of 45 hours per week, and usually works about 11 hours a day. During the holiday season, the Company increases the mandatory work week to a minimum of 50 hours, and Ms. Pendergrass sometimes puts in as many as 65 hours in a single week. Ms. Pendergrass works through her lunch breaks approximately three times a week in order to get her work done, and also works from home about one day each week. She schedules shifts for employees in her store, which must conform to the Company's mandatory minimum work weeks; the schedules are checked and approved by her District Manager, Carol Jacobs. Ms. Pendergrass, like all Store Managers and Assistant Managers, is required to clock in on a computer and the Company has time and payroll records showing the actual hours she works.

32. Ms. Pendergrass is not paid any compensation for working more than 40 hours in a week. As a Store Manager, she receives her "regular" weekly pay of $785.25 as long as she works 45 hours or more. She does not receive any additional pay for working more than 45 hours in a week. For example, Ms. Pendergrass' earnings statement for the pay period ending November 11, 2012 shows that she worked 59.62 hours but still made $785.25.

33. Ms. Pendergrass has personal knowledge that it is uniform Company-wide

policy to treat Store Managers and Assistant Managers as exempt from overtime and not to pay them for the hours they work in excess of 40 per week; to require them to work a mandatory 45-hour work week, which is increased to 50 hours during the holiday season; and to dock their pay on a prorated basis if they work fewer than 45 hours. These policies are conveyed to Store Managers and Assistant Managers when they are hired and are constantly being reinforced by Company leadership. For example, the Company's District Managers routinely send emails to the Store Managers and Assistant Managers to remind them that their pay will be prorated whenever they work less than 45 hours.

34. In Ms. Pendergrass' understanding, other Store Managers and Assistant Managers, including the Assistant Manager in her store, work similar hours to her. Store Managers and Assistant Managers almost always work at least 45 hours a week because they are scheduled to do so and every time they do not their wages are docked accordingly. Store Managers and Assistant Managers almost always work at least 50 hours per week during the holiday season.

B. <u>Plaintiff Alena Kelley</u>

35. In or about November 2010, Plaintiff Kelley began working for City Gear, LLC as an Assistant Manager at The Vault in Memphis, Tennessee. She became Store Manager at The Vault in or about January 2011, a position which she held until March 2012. In these positions, Ms. Kelley was classified as "exempt" by the Company and was not compensated for working more than 40 hours in a work week. The primary difference between the positions was that Ms. Kelley received a small raise upon being promoted to Store Manager.

36. As both Assistant Manager and Store Manager, Ms. Kelley was required

to work a minimum of 45 hours per week as a matter of Company policy. If she did not work the mandatory 45-hour minimum week, the Company took *pro rata* deductions from her weekly pay – dividing by 45 and paying her on an hourly basis for the hours she actually worked.

37. For example, in 2011 and 2012, Ms. Kelley earned a "regular" weekly wage of $655.65 if she worked 45 hours or more. Converted to an hourly rate, this works out to approximately $14.57 per hour. Ms. Kelly's earnings statement for the period ending May 29, 2011 shows that she worked 34.63 hours that week and earned gross wages of $504.56 instead of her "regular" rate of $655.65. This represents payment of an hourly wage of $14.57: 34.63 hours x $14.57 per hour = $504.56. Similarly, Ms. Kelley's earnings statement for the period ending February 12, 2012 shows that she worked 39.26 hours and earned gross wages of $572.02 (39.26 x $14.57 = $572.02).

38. Ms. Kelley typically worked a minimum of 45 hours per week. During holiday season, the Company increased the mandatory work week to a minimum of 50 hours, and Ms. Kelley typically worked 50 hours each week. Ms. Kelley also was often required to work through her lunch breaks. Her work shifts were set by her District Manager, Donald Chavis. Ms. Kelley, like all Store Managers and Assistant Managers, was required to clock in on a computer and the Company has time and payroll records showing the actual hours she worked.

39. Ms. Kelley was not paid any compensation for working more than 40 hours in a week. As a Store Manager, she received her "regular" weekly pay of $655.65 as long as she worked 45 hours or more. She did not receive any additional pay for working more than 45 hours in a week. For example, Ms. Kelley's earnings statement for

the pay period ending December 11, 2011 shows that she worked 48.52 hours but still made $655.65; her statement for the period ending December 25, 2011 shows that she worked 52.67 hours and still made the same amount.

40. Ms. Kelley complained to District Manager Donald Chavis and Vice President of Stores Ben Knighten that her store was understaffed, requiring her and other employees to work excessive hours and undermining their work-life balance. In response, the Company cut the store's staff even more. This necessitated additional unpaid work hours for Ms. Kelley.

41. Ms. Kelley has personal knowledge that the practices she was subjected to are a matter of uniform Company policy and apply to all Store Managers and Assistant Managers in each of City Gear/Shelmar's stores. Store Managers participate in a conference call each Monday with their District Managers and the other Store Managers under that District Manager (Assistant Managers also sometimes participate); a single District Manager might oversee stores in different states and cities. Payroll and scheduling were topics of discussion during these weekly calls. Store Managers also participate in Company-wide National Sales Meetings each year. From these conference calls and meetings, as well as from verbal and written statements made by her superiors, Ms. Kelley is aware that: (i) City Gear/Shelmar operates as a single unified entity with common employment practices and policies; (ii) all Store Managers and Assistant Managers at all Company-owned stores are required to work a mandatory 45-hour minimum work week, and are subjected to *pro rata* salary deductions if they do not; (iii) all Store Managers and Assistant Managers at all Company stores are required to work a mandatory 50-hour minimum work week during holiday season; (iv) Store Managers and

Assistant Managers typically work from 45 to 60 hours per week; and (v) Store Managers and Assistant Managers are treated as exempt by the Company and are not compensated for working more than 40 hours in a work week.

42. Ms. Kelley was told on numerous occasions and by multiple City Gear/Shelmar employees, including upper-level management, that *pro rata* wage deductions for working less than its mandatory minimum workweek are a standard practice of the Company. This message was repeatedly reinforced by Ms. Kelley's District Manager Mr. Chavis. For example, all Store Managers and Assistant Managers reporting to Mr. Chavis received emails when any one of them worked less than 45 hours and had his or her salary docked. District Manager Chavis was in charge of overseeing stores in multiple Company Districts, including stores located in Alabama, Arkansas, Mississippi, Missouri, and Tennessee.

43. Ms. Kelley also has had regular contact with other Store Managers and has spoken to many of her peers regarding City Gear/Shelmar's labor practices. In Ms. Kelley's understanding, the members of the class feel overworked and underpaid due to the Company's wage and hour policies. They are all working similar hours for no additional compensation. They are all subject to wage deductions if they work fewer than the Company's mandatory minimum hours.

V. COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA

44. Pursuant to Company-wide policy, since at least 2009, Plaintiffs and the class members were all classified as exempt employees pursuant to one or more of the FLSA's white collar exemptions. Plaintiffs and the class members all worked more than 40 hours per week without receiving overtime compensation.

45. The white collar exemptions of the FLSA contain a salary component and a duties component. Regardless of what duties an employee performs, if the employee is not paid on a fixed salary basis, he or she is not exempt and must be paid overtime.

46. The FLSA mandates a standard 40-hour work week for non-exempt employees. Such employees must be paid time-and-a-half overtime compensation for all hours worked above 40 hours in a particular week.

47. Defendants instituted a mandatory 45-hour minimum work week for all Store Managers and Assistant Managers – Plaintiffs and the class members. Defendants implemented a uniform policy and practice of taking *pro rata* wage deductions if class members worked less than 45 hours in a particular week. Defendants took these deductions if an employee worked less than 45 hours in a week for any reason – including for absences of less than one day or those occasioned by a lack of work.

48. This practice of taking impermissible deductions conclusively demonstrates Defendants' intent to pay Plaintiffs and the class members hourly, not on a true salary basis. These deductions defeat the salary component of the exemptions and convert Plaintiffs and the class members into hourly, non-exempt workers.

49. An employer is not entitled to pay its employees hourly up to a certain number of hours and then not pay them at all once that limit is reached. The FLSA is specifically designed to protect workers from such unscrupulous labor practices. Defendants are required to pay Plaintiffs and the class members' time-and-a-half overtime compensation for all hours they worked above 40 hours in any given week.

50. Plaintiffs and the class members typically worked from 45 to 60 hours per week or more, and are entitled to be compensated for their lengthy work hours. The

actual hours worked by each member of the class can be easily discerned from Defendants' time and payroll records. In Plaintiffs' understanding, the relevant records are computerized and maintained by Human Resources in Defendants' home office.

51. Since at least 2009, Defendants have misclassified non-exempt Store Managers and Assistant Managers as salaried exempt employees and refused to pay them compensation for hours worked above 40 hours in a particular week. Class members who complained about the Company's wage and hour practices were ignored or threatened with the loss of their jobs.

52. Plaintiffs and the class members do not receive commissions but do receive substantial periodic bonuses. These bonuses are set by objective criteria and are part of the compensation package expected by Plaintiffs and the class members. They therefore qualify as non-discretionary bonuses under the FLSA and should be included in the class members' regular rates of pay for the purpose of calculating the unpaid overtime wages to which they are entitled. *See* 29 U.S.C. § 207(e); 29 C.F.R. §§ 778.208, 778.211.

53. Plaintiffs bring their overtime claim on behalf of the following category of similarly-situated individuals who worked for Defendants at any time from three years prior to the filing of this Complaint to entry of judgment in this case:

> All Store Managers and Assistant Managers employed by City Gear, Shelmar, and/or their retail stores from November 2009 through the date of final judgment – who worked at stores including, but not limited to, City Gear, Marty's, Deveroes, CGP, Holliday's Fashions, and The Vault.

54. Defendants are liable under the FLSA for failing to properly compensate Plaintiffs and the class, and as such, notice should be sent to past and present Store Managers and Assistant Managers. Given the number of stores involved in this case,

Plaintiffs believe that there at least 200 current and former employees in this class, each of whom has been unlawfully forced to work long hours without compensation. Each of these employees would benefit from the issuance of a Court-supervised Notice of the present lawsuit and the opportunity to join this action. Those similarly-situated employees are known to Defendants, are readily identifiable, and can be located through Defendants' records.

FIRST CLAIM FOR RELIEF (FLSA)
FAILURE TO PAY REQUIRED OVERTIME
(29 U.S.C. § 207)

55. Plaintiffs allege and incorporate by reference the preceding paragraphs of this Complaint as if fully alleged herein.

56. At all relevant times, City Gear/Shelmar has been and continues to be an "employer" engaged in interstate "commerce" within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, City Gear/Shelmar has employed and continues to employ Store Managers and Assistant Managers as "employee[s]" within the meaning of the FLSA. At all relevant times, City Gear/ Shelmar has had gross operating revenues far in excess of $500,000.

57. Because Defendants willfully violated the FLSA by requiring Plaintiffs and the class members to work excessive hours without compensation, a three-year statute of limitations applies to such violations, pursuant to 29 U.S.C. § 255.

58. City Gear/Shelmar has willfully and intentionally engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed herein, by requiring Plaintiffs and similarly-situated Store Managers and Assistant Managers to work substantially more than 40 hours per week without overtime pay, thereby refusing

and failing to pay them the proper hourly wage compensation under § 207 of the FLSA.

59. City Gear/Shelmar has willfully and intentionally engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed herein, by classifying Plaintiffs and similarly-situated Store Managers and Assistant Managers as exempt salaried employees even though it does not pay them on a fixed salary basis. Defendants' conduct is designed to evade the wage and hour laws by pretending to pay these employees a regular, fixed salary but instead paying them hourly up to a 45-hour threshold and not paying them at all for any additional hours.

60. Defendants have essentially invented their own labor policy in direct contravention of the FLSA. Defendants have knowingly and intentionally violated the law and/or acted in reckless disregard of its requirements. Even when employees complain, the Company thumbs its nose at the law and threatens them with the loss of their jobs.

61. As a general matter, an employee is not paid on a fixed salaried basis if he or she is subject to deductions to his or her predetermined weekly compensation. No exceptions to this rule are applicable here. Plaintiffs and the class members are subject to *pro rata* deductions if their hours in any particular week drop below 45 – such as absences for less than a full day or those occasioned by a lack of work. *See* 29 C.F.R. § 541.602. Defendants' uniform, Company-wide practice of making such improper deductions conclusively demonstrates that they do not intend to pay the class members on a salary basis, thus defeating the salary test and eliminating any otherwise potentially applicable overtime exemption. *See* 29 C.F.R. § 541.603.

62. As a result of Defendants' violations of the FLSA, Plaintiffs, as well as all

others similarly situated, have suffered damages by being denied overtime wages in accordance with § 207 of the FLSA.

63. Defendants have not made a good faith effort to comply with the FLSA with respect to their compensation of Plaintiffs and other similarly situated present and former Store Managers and Assistant Managers.

64. As a result of Defendants' unlawful acts, Plaintiffs and all similarly situated current and former Store Managers and Assistant Managers have been deprived of overtime compensation in amounts to be determined at trial, and are accordingly entitled to recovery of such amounts, liquidated (double) damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216(b) as well as any other legal and equitable relief the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly-situated persons, pray for the following relief:

A. That the Court determine that this action may be maintained as a collective action under 29 U.S.C. § 216(b);

B. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to all persons who are presently, or have been at any time during the three years immediately preceding the filing of this suit, up through and including the date of the Court's issuance of Court-supervised Notice, been employed by City Gear/Shelmar and/or its retail stores as a Store Manager and/or Assistant Manager. Such persons shall be informed that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit.

C. That the Court find that City Gear/Shelmar has violated the overtime provisions of the FLSA, 29 U.S.C. § 207 as to Plaintiffs and the Class;

D. That the Court find that City Gear/Shelmar's wage and hour violations as described have been willful;

E. That the Court award to Plaintiffs and the Plaintiff Class compensatory and liquidated damages in excess of $25 million for unpaid overtime compensation, statutory penalties, and interest subject to proof at trial pursuant to 29 U.S.C. § 201 *et seq*. and the supporting United States Department of Labor regulations;

F. That Plaintiffs and the Class be awarded reasonable attorneys' fees and costs pursuant to FLSA 29 U.S.C. § 216(b) and/or other applicable law; and

G. That the Court award such other and further relief as this Court may deem appropriate.

DEMAND FOR TRIAL BY JURY

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 the complaint.

Dated: December 11, 2012

Respectfully submitted,

/s/David W. Garrison

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Pending Pro Hac Vice Admission

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