### IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

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| )                     |
| )                     |
| ) CIVIL ACTION:       |
| ) NO                  |
| )                     |
| ) JURY TRIAL DEMANDED |
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#### **COMPLAINT**

COMES NOW Plaintiffs, Kyeong Ho Jeon and Jin Rang Jeon ("Plaintiffs"), by and through his counsel, Brian Kim, PC., file this Complaint alleging as follows:

#### NATURE OF THIS ACTION

1.

This action is brought pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 207 and 216(b), to recover overtime wages owed to Plaintiffs and all similarly situated persons who are presently or were formerly employed by a business known as SK Beauty Supply (a/k/a Sassy Beauty Mart) (hereinafter referred to as "SK") and Sun Chon ("Chon") as Cashiers.

This action challenges Defendants' misclassification of Plaintiffs and similarly situated Cashiers as exempt from the overtime provisions of the FLSA. Plaintiffs bring this action on behalf of himself and similarly situated Cashiers in the United States who worked for Defendants but were not paid properly in accordance with the FLSA.

3.

During the three year period preceding the filing of this action and continuing to the present (the "Collective Action Period"), Plaintiffs and similarly situated Defendants' employees who opt in to this action pursuant to the FLSA, 29 U.S.C. § 216(b) allege that they were paid in an unlawful manner and are entitled to recover overtime wages, liquidated damages, interest, and reasonable attorneys' fees and costs.

#### **PARTIES**

4.

Kyeong Ho Jeon and Jin Rang Jeon, the named Plaintiffs in this action, ("Plaintiffs") are individuals who resided in the Northern District of Georgia during all relevant times.

SK owns and operates four retail stores in Northern District of Georgia. The addresses of the three businesses are 3550 Centerville Highway #114, Snellville, GA 30039, 1234 S. Hairston Rd. #25, Stone Mountain, Georgia 30088, 3604 Panola Rd., Lithonia, GA 30038, and 3303 Centerville Highway, Snellville, Georgia.

6.

Defendant Chon, an individual, can be served by delivering a copy of summons and complaint to him at 1125 Swan Mill Ct., Suwanee, GA 30024.

7.

The Defendant Chon is and was at all times relevant to this action, an "employer" within the meaning of FLSA, 29 U.S.C. § 203(d).

8.

Defendant Chon controlled Plaintiffs' work schedules and conditions of employment.

9.

Defendant Chon determines the rate and method of payment for Plaintiffs.

10.

Defendant Chon is subject to the requirements of the FLSA, 29 U.S.C. § 201, et seq.

Defendant SK transacts and has transacted regular, not isolated, acts of business in Gwinnett County and DeKalb, Georgia. It is unknown whether Defendant SK is an incorporated or not.

12.

Upon information and belief, Defendant SK's annual gross volume of sales or business is not less than \$500,000.00.

13.

Defendant SK is and was, at all times relevant to this action, an "employer" within the meaning of FLSA, 29 U.S.C. § 203(d), an "enterprise" within the meaning of FLSA, 29 U.S.C. § 203(r), and "engaged in commerce" within the meaning of FLSA, 29 U.S.C. § 203(s)(1), 206, and 207.

14.

Defendant SK is subject to the requirements of the FLSA, 29 U.S.C. § 201, et seq.

15.

At all times relevant to this action, Defendant SK oversaw and had the responsibility for maintaining employment records of Plaintiffs.

At all times relevant to this action, Defendant Chon oversaw and had the responsibility for maintaining employment records of Plaintiffs.

#### Jurisdiction

17.

Jurisdiction over this action is conferred on this Court by section 216(b) of the FLSA, 29 U.S.C. §216(b) as well as 28 U.S.C. §1331.

#### Venue

18.

Venue is proper in the Northern District of Georgia in that Defendant Chon is a resident Gwinnett County, Georgia, which is within this judicial District.

#### **Facts**

19.

Plaintiffs are former employees of Defendant SK and Defendant Chon ("Defendants").

20.

From December 15, 2017 to February 5, 2018, Plaintiffs were employed by Defendants.

21.

During relevant time hereto, Defendant Chon was Plaintiffs' direct supervisor.

22.

Throughout Plaintiffs' employment with Defendants, Plaintiffs were employed as a cashier, his primary duties included greeting customers, ringing up purchases, handling returns, and answering questions about products.

23.

Plaintiffs' primary duty did not include works requiring exercise of discretion and judgment.

24.

At all times relevant to this action, Plaintiffs were non-exempt from the overtime pay requirements as afforded by the FLSA, 29 U.S.C. §§ 201 et seq.

25.

Throughout Plaintiffs' employment with Defendants, Defendants paid Plaintiffs a weekly wage of \$690.00.

26.

Defendants paid some or all of Plaintiffs' wages in cash.

Plaintiffs' compensation was intended to compensate forty (40) hours of work per a work week.

28.

Plaintiffs' regular hourly wage is \$17.50 (\$690.00 divided by 40).

29.

During the relevant time hereto, Plaintiffs worked fifty seven and half (57.5) hours per week for Defendants.

30.

Defendants failed to provide Plaintiffs with one and one-half times his regular rate of pay for his work in excess of forty hours in a workweek.

#### **CLAIM FOR RELIEF**

#### **Count I: Violation of FAIR LABOR STANDARD ACT (FLSA)**

31.

Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs of its complaint as if set forth fully herein.

32.

Plaintiffs were regularly compelled and scheduled to work more than forty hours per week.

The Defendants were required in accordance with the FLSA to pay Plaintiffs one and one-half times their regular hourly rate of pay for their overtime work.

34.

The Defendants failed to pay Plaintiffs one and one-half times his regular rate of pay for each hour worked over forty (40) hours in a week. Instead, Defendants only paid Plaintiffs a fixed wage regardless of the hours worked.

35.

The Defendants' unlawful acts, omissions, and practices concerning the terms, conditions, and provisions of Plaintiffs' employment violate the FLSA.

36.

As a result of Defendants' unlawful acts, omissions, and practices, Plaintiffs suffered a loss of wages of an amount to be determined at trial.

37.

Defendants, jointly and severally, owe the Plaintiffs overtime pay for his work performed but not compensated in an amount to be determined, plus liquidated damages in an equal amount pursuant to 29 U.S.C. §216(b).

Pursuant to Section 216(b) of the FLSA, Defendants owe Plaintiffs jointly and severally, for reasonable attorney's fees.

# Count II: Civil Damages for Fraudulent Filing of Information Returns (26 USC § 7434)

39.

Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs of its complaint as if set forth fully herein.

40.

At all time material hereto, Plaintiffs have been employee of Defendants.

41.

Pursuant to 26 U.S.C § 3111, Defendants were required to pay 6.2 percent of the Plaintiffs' wages to the United States for Old-Age, Survivors, and Disability Insurance (also known as Social Security Taxes) and 1.45 percent of the Plaintiffs' wages for Hospital Insurance (also known as Medicare Taxes).

42.

Defendant violated 26 U.S.C. § 3111 because they failed to pay such Social Security and Medicare Taxes.

43.

When Defendants filed their Internal Revenue Service Form 941, Employer's Quarterly Federal Tax Return, for the quarter ending December 31, 2017, they omitted or understated the amount of wages paid to Plaintiffs.

44.

Defendants' omission or understatement of Plaintiffs' wages in their Form 941 was false and fraudulent.

45.

Defendants' omission or understatement of Plaintiffs' wages was for their own wrongful enrichment.

46

As a consequence of Defendants' willful filing of fraudulent tax information return, Plaintiffs are entitled to recover damages from Defendants up to and including any actual damages sustained, or in any event not less than \$5,000.00 per fraudulent filing, as well as costs of litigation and reasonable attorney's fees, pursuant to 26 U.S.C. § 7434.

#### **Collective Action**

47.

This action is collectively brought pursuant to the FLSA, 29 U.S.C. §201 *et seq.* and specifically the collection action provision of the Act found at §216(b), for

appropriate legal relief and to remedy violations of the wage provisions of the FLSA by Defendants which has deprived the Plaintiffs, as well as other similarly situated Defendants' employees, of their lawful wages.

48.

This case is brought on behalf of only those current and former employees who received fixed weekly wages and were requested to work over forty (40) hours in a work week. The similarly situated employees are uniformly classified by Defendant as "Exempt" employees not entitled to overtime pay for hours worked over forty (40) in a work week. Plaintiffs, and other similarly situated employees, typically worked greater than forty hours each week.

WHEREFORE, Plaintiffs demands relief as follows:

- 1. Instruct the Clerk of Court to issue the Summons that are attached herein;
- 2. An order finding that Defendant violated sections 215(a)(2) and 216(b) of the FLSA;
- 3. Judgment in favor of Plaintiffs against Defendants, jointly and severally, for unpaid overtime compensation together with liquidated damages;
- 4. Pursuant to Section 216(b) of the FLSA, judgment in favor of Plaintiffs against Defendants, jointly and severally, for reasonable attorney fees;
- 5. An order finding that Defendants violated 26 U.S.C. §3111;

- 6. Judgment in favor of Plaintiffs against Defendants, jointly and severally, pursuant to 26 U.S.C. § 7434;
- 7. Judgment in favor of Plaintiffs against Defendant, jointly and severally, for all taxable and non-taxable costs;
- 8. Pursuant to the Seventh Amendment to the United States Constitution and Rule 38, F.R. Civ. P., TRIAL BY JURY on all claims on which a jury is available; AND
- 9. Such other, further and different relief as this Court deems appropriate.

This 9th day of March, 2018.

Brian Plaintiffs, PC

By: /s/ Brian G. Kim Brian G Kim Georgia. Bar No. 479330

1815 Satellite Blvd. #303 Duluth, GA 30097

Telephone: 678.878.4200 Facsimile: 404.878.4208

E-Mail: brian@leonandkim.com

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JS44 (Rev. 6/2017 NDGA)

#### **CIVIL COVER SHEET**

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

| I. (a) PLAINTIFF(S)  Kyeong Ho Jeon and Jin Rang Jeon, on behalf th and other similarly situated,   | Selves DEFENDANT(S) SK Beauty Supply and Son Chon   |   |
|---|---|---|
| (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Gwinnett  (EXCEPT IN U.S. PLAINTIFF CASES)  (c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER AND ADDRESS)  Brian Kim, PC  1815 Satellite Blvd. Suite 303  Duluth, GA 30097                             | COUNTY OF RESIDENCE OF FIRST LIST DEFENDANT Gwinnett  (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE INVOLVED  R, AND ATTORNEYS (IF KNOWN)   | )   |
| II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)  | II. CITIZENSHIP OF PRINCIPAL PA (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR (FOR DIVERSITY CASES ONLY)   |   |
| 1 U.S. GOVERNMENT PLAINTIFF (U.S. GOVERNMENT NOT A PARTY)  2 U.S. GOVERNMENT (U.S. GOVERNMENT NOT A PARTY)  4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)   | PLACE  PLACE  PLACE  PLACE  | PORATED OR PRINCIPAL OF BUSINESS IN THIS STATE PORATED AND PRINCIPAL OF BUSINESS IN ANOTHER STATE GN NATION |
| IV. ORIGIN (PLACE AN "X "IN ONE BOX ONLY)  1 ORIGINAL PROCEEDING 2 REMOVED FROM APPELLATE COURT   | REINSTATED OR SANOTHER DISTRICT 6 LITIGATION (Specify District) TRANSFER  | ICT APPEAL TO DISTRICT JUDGE - 7 FROM MAGISTRATE JUDGE JUDGMENT   |
| MULTIDISTRICT 8 LITIGATION - DIRECT FILE  |   |   |
| V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE JURISDICTIONAL STATUTES UNI 29 USC 207, Fair Labor Standards Act, Defend against their former/current employer for violation  | ts former employees and other simialrly situat  | AUSE - DO NOT CITE  :ed bring this action   |
| (IF COMPLEX, CHECK REASON BELOW)  1. Unusually large number of parties.  2. Unusually large number of claims or defenses.  3. Factual issues are exceptionally complex  4. Greater than normal volume of evidence.  5. Extended discovery period is needed. | <ul> <li>☐ 6. Problems locating or preserving evidence</li> <li>☐ 7. Pending parallel investigations or actions by goods.</li> <li>☐ 8. Multiple use of experts.</li> <li>☐ 9. Need for discovery outside United States bound.</li> <li>☐ 0. Existence of highly technical issues and proof.</li> </ul> |   |
| CONTINUED ON REVERSE FOR OFFICE USE ONLY  |   |   |
| RECEIPT # AMOUNT \$   | APPLYING IFP MAG. JUDGE (IFP)  NATURE OF SUIT CAUSE OF ACTION   |   |

#### VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY) SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK 440 OTHER CIVIL RIGHTS CONTRACT - "0" MONTHS DISCOVERY TRACK I 50 RECOVERY OF OVERPAYMENT A ENFORCEMENT OF JUDGMENT 861 HIA (1395ff) 441 VOTING ☐ 152 RECOVERY OF DEFAULTED STUDENT 442 EMPLOYMENT 862 BLACK LUNG (923) LOANS (Excl. Veterans) 153 RECOVERY OF OVERPAYMENT OF 443 HOUSING/ ACCOMMODATIONS 863 DIWC (405(g)) 445 AMERICANS with DISABILITIES - Employment 863 DIWW (405(g)) VETERAN'S BENEFITS 446 AMERICANS with DISABILITIES - Other 864 SSID TITLE XVI 448 EDUCATION 865 RSI (405(g)) CONTRACT - "4" MONTHS DISCOVERY TRACK FEDERAL TAX SUITS - "4" MONTHS DISCOVERY 120 MARINE 130 MILLER ACT 140 NEGOTIABLE 151 MEDICARE A IMMIGRATION - "0" MONTHS DISCOVERY TRACK 462 NATURALIZATION APPLICATION 870 TAXES (U.S. Plaintiff or Defendant) 140 NEGOTIABLE INSTRUMENT 151 MEDICARE ACT 465 OTHER IMMIGRATION ACTIONS 871 IRS - THIRD PARTY 26 USC 7609 OTHER STATUTES - "4" MONTHS DISCOVERY 160 STOCKHOLDERS' SUITS PRISONER PETITIONS - "0" MONTHS DISCOVERY 190 OTHER CONTRACT 463 HABEAS CORPUS- Alien Detainee 510 MOTIONS TO VACATE SENTENCE 195 CONTRACT PRODUCT LIABILITY 375 FALSE CLAIMS ACT 196 FRANCHISE 376 Qui Tam 31 USC 3729(a) 400 STATE REAPPORTIONMENT 430 BANKS AND BANKING REAL PROPERTY - "4" MONTHS DISCOVERY TRACK 530 HABEAS CORPUS 535 HABEAS CORPUS DEATH PENALTY 540 MANDAMUS & OTHER 550 CIVIL RIGHTS - Filed Pro se 450 COMMERCE/ICC RATES/ETC. 210 LAND CONDEMNATION 460 DEPORTATION 220 FORECLOSURE 555 PRISON CONDITION(S) - Filed Pro se 470 RACKETEER INFLUENCED AND CORRUPT 230 RENT LEASE & EJECTMENT 560 CIVIL DETAINEE: CONDITIONS OF ORGANIZATIONS 240 TORTS TO LAND CONFINEMENT 480 CONSUMER CREDIT 245 TORT PRODUCT LIABILITY 490 CABLE/SATELLITE TV 290 ALL OTHER REAL PROPERTY PRISONER PETITIONS - "4" MONTHS DISCOVERY 890 OTHER STATUTORY ACTIONS 891 AGRICULTURAL ACTS 893 ENVIRONMENTAL MATTERS TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK 310 AIRPLANE 550 CIVIL RIGHTS - Filed by Counsel 555 PRISON CONDITION(S) - Filed by Counsel 895 FREEDOM OF INFORMATION ACT 899 ADMINISTRATIVE PROCEDURES ACT / 315 AIRPLANE PRODUCT LIABILITY 320 ASSAULT, LIBEL & SLANDER FORFEITURE/PENALTY - "4" MONTHS DISCOVERY REVIEW OR APPEAL OF AGENCY DECISION 950 CONSTITUTIONALITY OF STATE STATUTES 330 FEDERAL EMPLOYERS' LIABILITY 625 DRUG RELATED SEIZURE OF PROPERTY OTHER STATUTES - "8" MONTHS DISCOVERY 340 MARINE 21 USC 881 345 MARINE PRODUCT LIABILITY 690 OTHER 410 ANTITRUST 350 MOTOR VEHICLE 355 MOTOR VEHICLE PRODUCT LIABILITY "4" MONTHS DISCOVERY TRACK 850 SECURITIES / COMMODITIES / EXCHANGE 710 FAIR LABOR STANDARDS ACT 360 OTHER PERSONAL INJURY 362 PERSONAL INJURY - MEDICAL 720 LABOR/MGMT. RELATIONS OTHER STATUTES - "0" MONTHS DISCOVERY MALPRACTICE 740 RAILWAY LABOR ACT 896 ARBITRATION 365 PERSONAL INJURY - PRODUCT LIABILITY 751 FAMILY and MEDICAL LEAVE ACT (Confirm / Vacate / Order / Modify) 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY 790 OTHER LABOR LITIGATION 791 EMPL. RET. INC. SECURITY ACT 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY PROPERTY RIGHTS - "4" MONTHS DISCOVERY \* PLEASE NOTE DISCOVERY TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK 370 OTHER FRAUD 820 COPYRIGHTS TRACK FOR EACH CASE TYPE. 840 TRADEMARK SEE LOCAL RULE 26.3 371 TRUTH IN LENDING 380 OTHER PERSONAL PROPERTY DAMAGE PROPERTY RIGHTS - "8" MONTHS DISCOVERY 385 PROPERTY DAMAGE PRODUCT LIABILITY 830 PATENT 835 PATENT-ABBREVIATED NEW DRUG BANKRUPTCY - "0" MONTHS DISCOVERY TRACK APPLICATIONS (ANDA) - a/k/a 422 APPEAL 28 USC 15 Hatch-Waxman cases 423 WITHDRAWAL 28 USC 157 VII. REQUESTED IN COMPLAINT: ☐ CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ JURY DEMAND $oxedsymbol{arPi}$ YES $oxedsymbol{\square}$ NO (CHECK YES $\underline{\mathsf{only}}$ if demanded in complaint) VIII. RELATED/REFILED CASE(S) IF ANY **JUDGE** DOCKET NO. CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX) ☐ 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT. □ 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT. ☐ 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT. 🗖 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE. ☐ 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS. 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)): ☐ 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. , WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

SIGNATURE OF ATTORNEY OF RECORD

DATE

## **ClassAction.org**

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>Collective Action Claims SK Beauty Supply Underpaid Employees</u>, <u>Deceived IRS</u>