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Attorneys for Representative Plaintiff and
the Plaintiff Class

JENNIFER HEARN, individually,
and on behalf of all others similarly
situated,

Plaintiff,

vs.

RITE AID CORPORATION, A
CORPORATION OF THE STATE
OF DELAWARE, RITE AID OF
NEW JERSEY, INC. and DOES 1-25,
inclusive,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

SUSSEX COUNTY

DOCKET NO. SSX-L-000429-06

Civil Action

**CLASS ACTION
SECOND AMENDED COMPLAINT**

Representative Plaintiff alleges as follows:

1. This is a class action, under Rule 4:32-1 et seq. of the Rules Governing Civil Practice, seeking unpaid wages, including unpaid overtime compensation and interest thereon, injunctive and other equitable relief and reasonable attorneys' fees and costs under, inter alia, N.J.S.A. § 34:11-56a4, on behalf of Plaintiff and all other persons who are, or have been employed by Defendant Rite Aid Corporation, Rite Aid of New Jersey, Inc., and Does 1-25, inclusive (collectively "Rite Aid") in any of Rite Aid's retail drugstores in the State of New Jersey at any time after the commencement of the pay period including August 2004 as an allegedly exempt salaried assistant store managers.

2. The Representative Plaintiff, on behalf of herself and the Class members also seeks injunctive relief and restitution of all benefits Rite Aid has enjoyed from its failure to pay overtime compensation. The Class Period is designated as the time from at least the commencement of the pay period including August 2004 through the trial date and each period is based upon the allegation that these respective violations of New Jersey's Wage and Hour Laws, as described more fully below, have been ongoing since at least these dates. During the Class Period, Rite Aid has had a consistent policy of: (a) permitting, encouraging and/or requiring their allegedly overtime-exempt, salaried assistant store managers, including Representative Plaintiff and Class Members, to work in excess of eight hours per day and in excess of forty hours per week without paying them overtime compensation as required by New Jersey Wage and Hour Laws; (b) unlawfully denying the Representative Plaintiff and Class Members statutorily-mandated meal and rest periods; and (c) willfully failing to pay compensation (including unpaid overtime) owing in a prompt and timely manner to the Representative and/or these Class Members whose employment with Rite Aid terminated.

3. The New Jersey legislature enacted its first daily overtime law in 1933, thereby setting New Jersey's first workday standard.

4. Since its inception, Defendant Rite Aid has offered a wide range of merchandise to the public, including food items, housewares, seasonal items, candy, toys, health and beauty care, gifts, party goods, stationary, magazines, personal accessories, and other consumer items. Representative Plaintiff is informed and believes, and based thereon, alleges that, within the Class Period, Rite Aid has employed hundreds, if not thousands, of individuals in recent years along in salaried Assistant Store Manager positions, employment positions that have not and currently do not meet the test for exemption from the payment of overtime wages.

5. Despite actual knowledge of these facts and legal mandates, Rite Aid has enjoyed an advantage over its competition and a resultant disadvantage to its workers by electing not to pay premium (overtime).

6. Representative Plaintiff s informed and believes and, based thereon, alleges that officers of Rite Aid knew of these facts and legal mandates, yet, nonetheless, repeatedly authorized and/or ratified the violation of the laws cited herein.

JURISDICTION AND VENUE

7. This Court has jurisdiction over Representative Plaintiff's and Class Members' claims for unpaid overtime wages under N.J.S.A. § 34:11-56a25.

8. This Court has jurisdiction over representative Plaintiff's and Class Members' claims for injunctive relief, and restitution of ill-gotten benefits arising from Defendant Rite Aid's unlawful business practices under N.J.S.A. § 34:56a25.

9. Venue as to each Defendant is proper in this County. Defendant Rite Aid operates retail drugstores in Sussex County, and transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Representative Plaintiff and those similarly situated within the State of New Jersey and within Sussex County. Defendant Rite Aid operates said retail stores and has employed Class Members, including the Representative Plaintiff, in Sussex County.

PLAINTIFFS

10. During a portion of the herein-relevant time period, the Representative Plaintiff identified herein was and is a natural person, and was, during the relevant time period identified herein, employed by Defendant Rite Aid as an allegedly overtime-exempt salaried Assistant Store Manager, an employment position which was mis-classified as salaried/exempt from overtime pay.

11. As used throughout this Complaint, the terms "Plaintiff" and/or "Class(es)" refer to the named Plaintiff herein as well as each and every person eligible for membership in one or more of the Plaintiff Class, as further described and defined below.

12. The Plaintiff Class consists, generally, of all members who are/were employed as salaried Assistant Store Managers of Rite Aid, and were classified thereby as overtime-exempt employees at any time between the commencement of the pay period including August 2004 and the present.

13. At all times herein relevant, the Representative Plaintiff was and now is a person within the Class of persons further described and defined herein.

14. The Representative Plaintiff brings this action on behalf of herself and as a class action, pursuant to Rule 4:32 of the Rules Governing Civil Practice, on behalf of all persons or entities similarly situated and proximately damaged by the unlawful conduct described herein.

DEFENDANTS

15. At all times herein relevant, Defendants Rite Aid Corporation, Rite Aid of New Jersey, Inc. and Does 1 through 25, inclusive (collectively referred at as "Rite Aid" and/or "Defendant") were corporations, duly licensed and located and doing business in the State of New Jersey.

16. Those defendants identified as Does 1 through 25, inclusive, are and were, at all relevant times herein-mentioned, officers, directors and/or managing agents of some/each of the remaining defendants.

17. Representative Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 15, inclusive and, therefore, sued these defendants by such fictitious names. Representative Plaintiff will seek leave of Court to amend this Complaint when

same are ascertained. Representative Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named defendants is responsible in some manner for, gave consent to, ratified and/or authorized the conduct herein alleged and that Representative Plaintiff's and Class Members' damages, as herein alleged, were proximately caused thereby.

18. Representative Plaintiff is informed and believes and, on that basis, alleged that, at all relevant times herein mentioned, each of the defendants was the agent and/or employee of each of the remaining defendants and, in doing the acts herein alleged, was acting within the course and scope of such agency and/or employment.

CLASS ACTION ALLEGATIONS

19. Representative Plaintiff Jennifer Hearn brings this action on behalf of herself and a class action on behalf of all persons or entities similarly situated and proximately damaged by Rite Aid's conduct as set forth herein, including, but no necessarily limited to the following Class:

All persons who are/were employed as an Assistant Store Manager position by Rite Aid Corporation, in one or more of Rite Aid Corporation's New Jersey retail drugstores and who were classified as overtime-exempt employees at any time between August 2004 and the present.

20. Defendants, their officers and directors are excluded from the Class.

21. This action has been brought and may properly be maintained as a class action under R. 4:32 because there is a well-defined community of interest in the litigation and the proposed classes are easily ascertainable.

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the class are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiff is informed and believes and, on that basis, alleges that the total membership in the class is in the

hundreds, if not thousands of individuals. Membership in the Class will be determined upon analysis of employee and payroll, among other, records maintained by Rite Aid.

- b. Commonality: The Representative Plaintiff and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:
- i. whether defendant Rite Aid violated N.J.S.A. 34:11-56a4 by failing to pay overtime compensation to Assistant Store Managers who worked in excess of forty hours per week and/or eight hours per day.
 - ii. whether Defendant Rite Aid violated N.J.S.A. 34:11-56a4 by failing to pay overtime wages due and owing at the time that certain Class Members' employment with Defendant terminated.
 - iii. whether Representative Plaintiff and the Class are entitled to "waiting time" penalties, pursuant to New Jersey Wage and Hour Law.
- c. Typicality: The Representative Plaintiff's claims are typical of the claims of the Class. The Representative Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by Defendant Rite Aid's common course of conduct in violation of law, as alleged herein.
- d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for members of the Class to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual member of the Class, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a

risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

- e. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Class, in that the Representative Plaintiff's claims are typical of those of the Class and the Representative Plaintiff has the same interests in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case, and has retained competent counsel, experienced in litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Class as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

22. As described herein, Rite Aid has, for years, knowingly failed to adequately compensate Assistant Store Managers within the class definition identified above for premium (overtime) wages, due, thereby enjoying a significant competitive edge over other retail drugstore chains. Even upon termination or resignation of the employment of numerous class members, Rite Aid has declined to pay these wages, in blatant violation of N.J.S.A. 34:11-56a4.

23. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class Members' entitlement to premium (overtime) pay for excess hours worked, Rite Aid violated N.J.S.A. 34:11-56a4 by failing to provide or require the use, maintenance or submission of time records by members of the Plaintiff Class. In so doing, Rite Aid has not only failed to pay its workers the full amount of compensation due, it has, until now, effectively shielded itself from its

employees' scrutiny for its unlawful conduct by concealing the magnitude (i.e., the full number of hours worked) and financial impact of its wrongdoing.

24. As a direct and proximate result of Rite Aid's unlawful conduct, as set forth herein, Representative Plaintiff and particular Class Members have sustained damages, as described above, including, but not limited to a loss of earnings for hours of overtime worked on behalf of Defendants, in an amount to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the Class are also entitled to recover costs and attorneys' fees, pursuant to statute.

FIRST CAUSE OF ACTION

UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME

(N.J.S.A. 34:56a4 et seq.)

25. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

26. During the time period beginning as of the commencement of the pay period including August 2004 and continuing through the present, Representative Plaintiff and the Class Members worked in excess of eight hours in a workday and/or forty hours in a workweek. The precise number of hours will be proven at trial.

27. During said time period, Defendant Rite Aid refused to compensate Representative Plaintiff and the Class Members for some and/or all of the overtime wages earned in violation of applicable New Jersey Wage and Hour Law.

28. During said time period, particular Class Members herein were employed by and were thereafter terminated or resigned from their positions with Rite Aid, yet were not paid all premium (overtime) and/or other wages due upon said termination or within twenty-two hours of said

resignation of employment therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by Defendant.

29. At all relevant times, Defendant was aware of and was under a duty to comply with various provisions of the New Jersey Wage and Hour Laws, including the following:

34:11-56a4: Minimum Rate; Overtime Rate; Exceptions:

Every employer shall pay to each of his employees wages at a rate of not less than... \$7.15 per hour for 40 hours of working time in any week and 1 ½ times such employee's regular hourly wage for each hour of working time in excess of 40 hours in any week...

30. By refusing to compensate Representative Plaintiff and the Class Members for overtime wages earned, Defendant violated the New Jersey Wage and Hour provisions cited above.

31. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the Class Members have sustained damages, including loss of hearings for hours of overtime worked on behalf of Defendant, in an amount to be established at trial.

SECOND CAUSE OF ACTION

VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION

32. Plaintiff Jennifer Hearn, exclusively in her capacity as an Individual Plaintiff, repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth at length herein.

33. Plaintiff alleges that during the course of her employment with Rite Aid, she was sexual harassed by her immediate supervisor.

34. The sexual harassment was severe and pervasive. The sexual harassment suffered by Plaintiff as an employee of Rite Aid constituted a violation of the New Jersey Law Against

Discrimination, N.J.S.A. 10:5-1 et seq. As direct and proximate result of Rite Aid's violation of the New Jersey Law Against Discrimination, Plaintiff has suffered damages.

WHEREFORE, Plaintiff Jennifer Hearn as an Individual Plaintiff and not in her capacity as Class Representative, demands judgment against Defendant, Rite Aid Corporation, a Corporation of the State of Delaware, Rite Aid of New Jersey, Inc., and Does 1-25 on this Count for compensatory damages, together with interest, costs of suit, attorneys' fees, and any additional relief permitted by law.

RELIEF SOUGHT ON CLASS ACTION

WHEREFORE, the Representative Plaintiff, on behalf of himself and the proposed Class, prays for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

1. For an Order certifying the proposed Class and/or any other appropriate subclasses under R. 4:32;
2. That Defendant Rite Aid is found to have violated the overtime provisions of the New Jersey Wage and Hour Laws as to the Representative Plaintiff and the Class;
3. That Defendant Rite Aid is found to have violated New Jersey Wage and Hour Laws for willful failure to pay all compensation owed at the time of termination of employment to particular members of the Plaintiff Class;
4. An award to Representative Plaintiff and the Plaintiff Class of damages for the amount of unpaid overtime compensation and related damages, including interest thereon, and penalties in an amount to be proven at trial;
5. That the Rite Aid defendants be ordered to pay restitution to Representative Plaintiff and the Plaintiff Class due to Defendant Rite Aid's unlawful activities;

6. That the Rite Aid defendants further be enjoined to cease and desist from unlawful activities in violation of N.J.S.A. 34:11-56a4 et seq.;

7. For all Orders, findings and determinations identified and sought in this Complaint;

8. For interest on the amount of any and all economic losses, at the prevailing legal rate;

9. For reasonable Attorneys' Fees, pursuant to N.J.S.A. 34:11-56a25; and

10. For costs of suit and any and all such other relief as the Court deems just and proper.

STARK & STARK, PC

By: _____

JOHN E. MACDONALD
Attorneys for the Representative Plaintiff
and the Plaintiff Class

Dated: March 11, 2009

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CERTIFICATION

Pursuant to R. 4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other Court or of a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading and the previous pleadings, if any, at the present time we know of no other parties that should be joined in the within action.

STARK & STARK
A Professional Corporation

By: _____
JOHN E. MACDONALD

Dated: March 11, 2009

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of R. 4:25-4, the Court is advised that John E. MacDonald, Esquire, and Scott Cole, Esquire are hereby designated as trial counsel.

STARK & STARK
A Professional Corporation

By: _____
JOHN E. MACDONALD

Dated: March 11, 2009

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JURY DEMAND

Plaintiff, Jennifer Hearn, hereby demands a trial by jury on all issues.

STARK & STARK
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By: _____
JOHN E. MACDONALD

Dated: March 11, 2009

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