

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

KIRSTEN CARTER, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

THE KROGER CO. d/b/a KROGER,

Defendant.

CIVIL ACTION

Case No.

JURY TRIAL DEMANDED

COLLECTIVE ACTION COMPLAINT

Plaintiff, Kirsten Carter (“Carter” or “Plaintiff”), files this Collective Action Complaint against Defendant, The Kroger Co. (“Defendant” or “Kroger”), seeking all available relief under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”), on behalf of herself and all current and former e-Commerce Managers, however variously titled,¹ who work (or worked) at any “Kroger” branded supermarket in the United States during the relevant time period. The following allegations are based on personal knowledge as to Plaintiff’s own conduct and are made on information and belief as to the acts of others.

NATURE OF THE ACTION

1. Plaintiff brings this action on behalf of herself and all similarly situated current and former e-Commerce Managers to recover unpaid overtime pursuant to the FLSA. Defendant violated the FLSA by failing to pay its e-Commerce Managers, including Plaintiff, overtime

¹ e-Commerce Managers may also be referred to as e-Commerce Supervisors or e-Commerce Leaders. Plaintiff uses those terms interchangeably when referring to e-Commerce Managers in this Collective Action Complaint.

compensation for the hours they worked over forty (40) in one or more workweeks because Defendant classified them as exempt from overtime.

2. Defendant employs e-Commerce Managers in over 1,200 Kroger locations in at least 15 states, including Alabama, Arkansas, Georgia, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, South Carolina, Tennessee, Texas, Virginia, and West Virginia. “Kroger” stores are retail supermarkets which offer groceries and other goods to the public.

3. Although Defendant considers its e-Commerce Managers to be “managers,” they are, in fact, not responsible for, nor do they perform, true management functions. To the contrary, e-Commerce Managers spend the vast majority of their time performing the same duties as non-exempt e-Commerce employees, including picking products off the shelf, packing orders, and delivering orders to customers.

4. E-Commerce Managers report to Store Leaders who, in turn, report to district and other supervisory personnel. Store Leaders are the highest level of management in Kroger’s stores.

5. As alleged herein, Plaintiff and all other similarly situated e-Commerce Managers were required to work more than forty (40) hours in a workweek while employed by Defendant in order to complete their job duties. However, in accordance with Defendant’s policy, pattern, and/or practice, they were misclassified as exempt from overtime compensation and were not paid at the mandated rate of time-and-one-half for all hours worked in excess of forty (40) in a workweek.

6. Pursuant to 29 U.S.C. § 216(b), Plaintiff brings this action on behalf of herself and all persons who are or were formerly employed by Defendant in the United States during the relevant time period as e-Commerce Managers, and individuals holding comparable salaried positions with different titles (the “e-Commerce Manager Collective”).

7. Defendant’s systematic failure and refusal to pay Plaintiff and all other similarly

situated e-Commerce Managers for all hours worked over forty (40) in a workweek violates the FLSA.

THE PARTIES

Plaintiff Kirsten Carter

8. Kirsten Carter resides in Gallatin, Tennessee. Between approximately December 2020 and January 2025, Carter was employed by Defendant as an e-Commerce Manager at several Kroger stores in Tennessee, including in Belle Meade, Bellevue, Hendersonville, and Gallatin.

9. Throughout her employment as an e-Commerce Manager with Defendant, Carter was paid a salary and did not receive overtime compensation for working more than forty (40) hours in a work week.

10. As an e-Commerce Manager, Carter was scheduled to work at least five 10-hour shifts each week (with a 60-minute lunch break each shift), though she worked more and rarely took an uninterrupted lunch break. On average, during each week of her employment as an e-Commerce Manager with Defendant, Carter worked approximately 50-60 hours (and sometimes more), including during the weeks leading up to, during, and after Easter, July 4th, Thanksgiving and Christmas between the years 2021 and 2024.

11. Carter spent the vast majority of her time performing the same duties as non-exempt e-Commerce employees, including picking products off the shelf, packing orders, and delivering orders to waiting customers.

12. The work Carter performed was at the direction, and for the benefit, of Defendant.

13. Pursuant to Defendant's policy, pattern or practice of classifying e-Commerce Managers as exempt from overtime, Carter was not paid premium overtime compensation for all hours worked over forty (40) in a work week.

14. Carter has consented to join this action. *See* Exhibit A.

Defendant The Kroger Co.

15. The Kroger Co. is an Ohio corporation with its principal place of business located at 1014 Vine Street, Cincinnati, Ohio 45202. Its registered agent of service of

16. Kroger owns and operates, directly and/or through its wholly owned subsidiaries, over 1,200 “Kroger” branded stores in at least 15 states, including Ohio and Tennessee.

17. At all relevant times, Kroger employed or acted in the interest of an employer towards Plaintiff and other similarly situated current and former e-Commerce Managers and, among other things, maintained control, oversight and direction over Plaintiff and other e-Commerce Managers, including with respect to timekeeping, payroll, and other employment practices that applied to them.

18. Upon information and belief, Kroger applies the same employment policies, practices, and procedures to all e-Commerce Managers, regardless of the location of the store in which they work.

19. Kroger is a covered employer within the meaning of the FLSA because, among other things, it employs individuals, including Plaintiff, who are engaged in interstate commerce or in the production of goods for interstate commerce or engaged in handling, receiving, selling, or otherwise working on goods or material that have been moved in or produced for interstate commerce.

20. At all relevant times, Kroger has had gross revenues exceeding \$500,000.00.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. §§ 1331, 1332, 1337, and 29 U.S.C. § 216(b).

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

23. Defendant is subject to personal jurisdiction in Ohio.

24. Defendant purposely availed itself of jurisdiction by operating its business, including more than 200 “Kroger” supermarkets, in Ohio.

25. Venue is proper in the Southern District of Ohio pursuant to 28 U.S.C. § 1391(b) since a substantial part of the events or omissions giving rise to the claims in this Collective Action Complaint occurred within this District and because Defendant resides in this District.

26. Upon information and belief, the amount in controversy exceeds \$75,000.00.

GENERAL FACTUAL ALLEGATIONS

27. Kroger is a publicly traded corporation, with its corporate headquarters located in Cincinnati, Ohio.

28. Upon information and belief, Kroger’s store operations are directed and controlled by individuals based out of Kroger’s corporate headquarters.

29. According to its 2025 annual report, Kroger is one of the world’s largest retailers, operating 2,731 supermarkets under a variety of local banner names in 35 states and the District of Columbia.²

30. As of February 1, 2025, Kroger “employed approximately 409,000 full- and part-time employees,” of which several thousand are believed to be e-Commerce Managers who work, or worked, at Defendant’s “Kroger” branded stores.³

² See https://s202.q4cdn.com/463742399/files/doc_financials/2024/ar/2025-Proxy-2024-Annual-Report.pdf, at 3 (last accessed February 27, 2026).

³ *Id.*, at 5.

31. Defendant maintains strict control, oversight, and discretion over the operation of its stores, including its employment practices with respect to Plaintiff and the members of the putative e-Commerce Manager Collective.

32. Plaintiff's and the members of the putative e-Commerce Manager Collective's work was performed in the normal course of Defendant's business and was integrated into it.

33. Consistent with Defendant's policy, pattern and/or practice, Plaintiff and the members of the putative e-Commerce Manager Collective worked in excess of forty (40) hours per workweek without being paid overtime compensation. For example, and upon information and belief, e-Commerce Managers are scheduled to work at least five 10-hour shifts each week, totaling fifty (50) hours (with a 60-minute lunch break each shift). However, e-Commerce Managers routinely work more hours and are rarely able to take an uninterrupted 60-minute lunch break.

34. Upon information and belief, Defendant established labor budgets to cover labor costs for the stores in which Plaintiff and the members of the putative e-Commerce Manager Collective worked. However, Defendant did not provide sufficient money in the labor budgets to cover all hours needed to complete the necessary non-exempt tasks in each store.

35. Defendant knew or recklessly disregarded the fact that their underfunding of store labor budgets resulted in Plaintiff and the members of the putative e-Commerce Manager Collective (who were not paid overtime) working more than forty (40) hours in a workweek without receiving any overtime compensation. This allowed Defendant to avoid paying additional wages (including overtime) to the non-exempt, store-level employees.

36. Because Defendant underfunded store labor budgets, which in turn limited the amount of money available to pay non-exempt employees to perform manual and customer service tasks, e-Commerce Managers were required to—and did—perform these non-exempt tasks.

37. The performance of non-management work was the primary duty of Plaintiff and the members of the e-Commerce Manager Collective. These primary duties included picking products off the shelf, packing orders, and delivering orders to waiting customers.

38. Defendant knew, by virtue of the fact that its upper-level management employees (as its authorized agents) actually saw Plaintiff and the members of the putative e-Commerce Manager Collective primarily perform manual labor and non-exempt duties, that Plaintiff and other similarly situated e-Commerce Managers were not performing activities that complied with any FLSA exemption. Inasmuch as Defendant is a substantial corporate entity aware of its obligations under the FLSA, it acted willfully or recklessly in failing to classify Plaintiff and other similarly situated e-Commerce Managers as non-exempt employees.

39. All of the work that Plaintiff and the members of the putative e-Commerce Manager Collective performed has been assigned by Defendant, who is aware of the work they performed. This work required little skill and no capital investment. Nor did it include managerial responsibilities, or the exercise of meaningful independent judgment and discretion.

40. Pursuant to a centralized, company-wide policy, pattern and/or practice, Defendant classified all e-Commerce Managers as exempt from the overtime provisions of the FLSA.

41. The primary job duties of Plaintiff and the members of the putative e-Commerce Manager Collective did not include hiring, firing, disciplining, or directing the work of other employees.

42. The primary job duties of Plaintiff and the members of the putative e-Commerce Manager Collective did not materially differ from the job duties of non-exempt hourly paid employees.

43. The primary job duties of Plaintiff and the members of the putative e-Commerce Manager Collective did not include the exercise of meaningful independent discretion with respect to their duties.

44. The primary job duties of Plaintiff and the members of the putative e-Commerce Manager Collective were manual and/or clerical in nature. The performance of manual and/or clerical labor occupied the majority of the working hours of Plaintiff and the members of the putative collective.

45. Plaintiff and the members of the putative e-Commerce Manager Collective are similarly situated in that they have substantially similar job duties and are subject to Kroger's common compensation policies, patterns, and/or practices.

46. Upon information and belief, Defendant did not perform a person-by-person analysis of Plaintiff's and the members of the putative e-Commerce Manager Collective's job duties when making the decision to classify them as exempt from overtime under the FLSA.

47. Due to the foregoing, Defendant's failure to pay overtime wages for work performed by Plaintiff and the members of the putative e-Commerce Manager Collective in excess of forty (40) hours per week was willful.

48. The work performed by Plaintiff and the members of the putative e-Commerce Manager Collective constitutes compensable work time under the FLSA and was not preliminary, postliminary or *de minimis*.

49. Defendant's unlawful conduct has been widespread, repeated, and consistent.

FLSA COLLECTIVE ACTION ALLEGATIONS

50. Plaintiff brings the First Cause of Action, 29 U.S.C. § 216(b), on behalf of herself and the members of the putative e-Commerce Manager Collective.

51. At all relevant times, Plaintiff and the members of the putative e-Commerce Manager Collective were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

52. Defendant employed Plaintiff and the members of the putative e-Commerce Manager Collective and are engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

53. At all relevant times, Plaintiff and the members of the putative e-Commerce Manager Collective were employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

54. Defendant has failed to pay Plaintiff and the members of the putative e-Commerce Manager Collective overtime compensation to which they are entitled under the FLSA.

55. Defendant has failed to keep accurate records of time worked by Plaintiff and the members of the putative e-Commerce Manager Collective.

56. Defendant is liable under the FLSA for, among other things, failing to properly compensate Plaintiff and the members of the putative e-Commerce Manager Collective.

57. Consistent with Defendant's policy and pattern or practice, Plaintiff and the members of the putative e-Commerce Manager Collective were not paid overtime compensation when they worked beyond forty (40) hours in a workweek.

58. All of the work that Plaintiff and the members of the putative e-Commerce Manager Collective performed has been assigned by Defendant, and/or Defendant has been aware of such work.

59. As part of its regular business practice, Defendant has intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to

Plaintiff and the members of the putative e-Commerce Manager Collective. This policy and pattern or practice includes, but is not limited to:

- (a) willfully failing to pay Plaintiff and the members of the putative e-Commerce Manager Collective premium overtime wages for hours that they worked in excess of forty (40) hours per workweek;
- (b) willfully misclassifying Plaintiff and the members of the putative e-Commerce Manager Collective as exempt from the overtime protections of the FLSA; and
- (c) willfully failing to record all of the time that its employees, including Plaintiff and the members of the putative e-Commerce Manager Collective, worked for the benefit of Defendant.

60. Defendant is aware or should have been aware that federal law required it to pay Plaintiff and the members of the putative e-Commerce Manager Collective overtime compensation for all hours worked in excess of forty (40) in a workweek.

61. Plaintiff and the members of the putative e-Commerce Manager Collective perform or performed the same primary duties.

62. Defendant's unlawful conduct has been widespread, repeated, and consistent.

FIRST CAUSE OF ACTION
Fair Labor Standards Act: Unpaid Overtime Wages
(Brought on Behalf of Plaintiff and the e-Commerce Manager Collective)

63. Plaintiff realleges and incorporates by reference the above allegations.

64. Defendant has engaged in a widespread policy, pattern or practice of violating 29 U.S.C. § 207 by failing to pay overtime compensation to Plaintiff and the members of the putative e-Commerce Manager Collective for hours worked above forty (40) in a work week, as detailed in this Collective Action Complaint.

65. Upon information and belief, and as part of their regular business practices, Defendant has intentionally, willfully and repeatedly engaged in a pattern, practice and/or policy

of violating the FLSA with respect to Plaintiff and the members of the putative e-Commerce Manager Collective.

66. Defendant's unlawful conduct, as described above, was willful and/or in reckless disregard of the applicable wage and hour laws pursuant to Defendant's centralized, company-wide policy, pattern, and/or practice of attempting to minimize labor costs by violating the FLSA.

67. As further evidence of its willful or reckless failure to classify Plaintiff and the members of the e-Commerce Manager Collective as non-exempt employees, Defendant has uniformly failed to: (a) accurately track or record actual hours worked by Plaintiff and the members of the putative e-Commerce Manager Collective; and (b) provide Plaintiff and the members of the putative e-Commerce Manager Collective with a method to accurately record the hours they actually worked.

68. Defendant did not make a good-faith effort to comply with the FLSA with respect to their timekeeping and compensation of Plaintiff and the members of the putative e-Commerce Manager Collective.

69. Defendant was or should have been aware that the FLSA required it to pay employees performing non-exempt duties an overtime premium for hours worked in excess of forty (40) per week.

70. Defendant is liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiff and the members of the putative e-Commerce Manager Collective for all hours worked in excess of forty (40) in a workweek.

71. Upon information and belief, there are potentially hundreds of similarly situated current and former e-Commerce Manager who have been underpaid in violation of the FLSA and who would benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join it. Thus, notice should be sent to the members of the putative e-Commerce Manager Collective, pursuant to 29 U.S.C. § 216(b).

72. The members of the putative e-Commerce Manager Collective are known to Defendant, are readily identifiable, and can be located through Defendant's records.

73. Because Defendant's violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255, as it may be further extended or tolled by agreement, equity or operation of law.

74. As a result of Defendant's willful violations of the FLSA, Plaintiff and the members of the putative e-Commerce Manager Collective have suffered damages by being denied overtime compensation in accordance with the FLSA, in amounts to be determined at trial, and are entitled to recovery of such amounts, as well as liquidated damages and attorneys' fees, pursuant to 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the members of the putative e-Commerce Manager Collective, prays for the following relief:

1. Designation of this action as an FLSA collective action on behalf of Plaintiff and the members of the putative e-Commerce Manager Collective, and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the e-Commerce Manager Collective, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual

Consents to Join forms pursuant to 29 U.S.C. § 216(b), and tolling of the statute of limitations;

2. An award of unpaid overtime compensation for all hours worked in excess of forty (40) in a workweek at a rate of time and one-half of the regular rate of pay due under the FLSA using the following common methodology for calculating damages: $((\text{Annual Salary} \div 52) \div 40) \times \text{Total Number of Overtime Hours Worked} \times 1.5$;
3. An award of liquidated damages under the FLSA as a result of Defendant's willful failure to pay for all hours worked in excess of forty (40) in a workweek at a rate of time and one-half of the regular rate of pay;
4. An award of damages representing Defendant's share of FICA, FUTA, state unemployment insurance, and any other required employment taxes;
5. An award of service payments to Plaintiff;
6. An award of pre-judgment and post-judgment interest;
7. An award of costs and expenses of this action, together with reasonable attorneys' and expert fees to Plaintiff's counsel pursuant to the FLSA;
8. An injunction requiring Defendant to cease its practice of violating the FLSA in the future;
9. Issuance of a declaratory judgment that the practices complained of in this Collective Action Complaint are unlawful and/or willful under the FLSA; and
10. Such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by this Collective Action Complaint.

Dated: February 27, 2026

/s/ Bruce Meizlish
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** To be admitted pro hac vice*