TESTIMONY OF

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WRAPSODY, INC.

BEFORE THE HOUSE SMALL BUSINESS COMMITTEE
SUBCOMMITTEE ON INVESTIGATIONS, OVERSIGHT AND REGULATIONS

HEARING ON

"THE CONSEQUENCES OF DOL'S ONE-SIZE-FITS-ALL OVERTIME RULE FOR SMALL BUSINESSES AND THEIR EMPLOYEES"

OCTOBER 8, 2015

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Chairman Hardy, Ranking Member Adams and members of the Subcommittee, thank you for inviting me to testify before you today to help provide a small business retail perspective on the Department of Labor's (DOL) proposed overtime rule. My name is Terry Shea, and I am the proud co-owner of Wrapsody, Inc., a gift boutique. I am pleased to be testifying on behalf of the National Retail Federation (NRF).

NRF is the world's largest retail trade association, representing discount and department stores; home goods and specialty stores; Main Street merchants; grocers; wholesalers; chain restaurants; and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs and 42 million working Americans. Retail contributes $2.6 trillion to annual GDP and is a daily barometer for the nation's economy. Retailers like myself create opportunities for life-long careers, strengthen communities, and play a critical role in driving innovation.

In August of 2004, my business partner, Sarah Brown, and I opened Wrapsody. Wrapsody is a "hometown" gift and home accessories boutique with storefront locations in Hoover and Auburn, Alabama. We also have a webstore, Wrapsodyonline.com. Wrapsody is a trendy, chic "go to place" to buy a gift. We offer free signature gift wrap, top notch customer service, and a fun shopping experience. In 2014, Wrapsody, Inc. posted sales of $2.5 million, and we are on track to improve by 6% for 2015.

We opened our first store in Hoover, Alabama with 2700 square feet of selling space and three part-time associates. Three and a half years later, in the spring of 2008, we expanded the store to 4100 square feet. In October of 2008, the recession hit. We scrambled as everyone did to keep our doors open, but in December of 2008, we were presented with an opportunity to open a second storefront in Auburn, Alabama. It was a great location, located right on the edge of the Auburn Campus and Toomers Corner. We took the chance, in the heat of the recession, and opened the Auburn store (4100 square feet) in March of 2009. Because of this expansion, we hired our first full-time salaried manager for the Auburn store, followed by a full-time manager for the Hoover location. As business increased, we added salaried assistant managers for both locations. In 2011, we relocated the Hoover store to a 5100 square foot space in the same center, and an increase in sales followed.

Wrapsody is an active member of the Hoover and Auburn communities. We employ four full-time salaried managers and 25 plus part-time associates, depending on the season. We also give generously to our local schools, churches, and charities. For the past two years, we have sponsored a college scholarship through our local Chamber of Commerce. A true spirit of giving is celebrated every day at Wrapsody!

Wrapsody also invests in our staff. Managers and assistant managers have the opportunity to earn quarterly bonuses based on store performance in addition to their annual salary. Management also receives two weeks paid vacation annually, a 40% discount on store products, and other benefits. In 2015, we began a 401k plan for qualifying associates with a 3% company match.

We develop our store managers and assistant managers by taking them to Atlanta to the wholesale gift market where they meet with key vendors and network with other retailers. They give us feedback on product "home runs" and product voids. Their input and creativity are invaluable to us, as they are on the frontlines daily. We also have offsite retreats where we discuss everything from time management and staffing opportunities to development, marketing and advertising, and anything else involving daily store operations. Our employees really value these professional development opportunities to network and learn more about our industry.

I tell you all of this because the Department of Labor's proposed overtime rule will suffocate this type of employee development and company growth. The rule more than doubles the minimum salary threshold to be exempt from $23,660 to $50,440 in 2016. Unlike past updates to the overtime rules, this one-size-fits-all increase does not account for regional differences in costs of living or lower wage industries. The proposed rule also includes an unprecedented automatic, annual increase in the salary threshold that will further limit opportunities for career advancement. For many reasons, Wrapsody simply will not be able to increase our four salaried employees to the new minimum salary of $50,440.

First, not all salaried positions are the same. Our store managers currently are salaried in the low $40,000's, and our assistant managers are salaried between the mid $20,000's to low $30,000's. This range for assistant managers is due to experience level, time on the job, store volume, and store level responsibility. Like most retailers, our labor costs are a fixed percentage of our sales, which means we can't just increase everyone's salaries by such a large amount, nor can we pass the more than 100% increase along to our customers in the form of higher prices. If this new salary threshold takes effect, we will be forced to convert all salaried management to an hourly wage and require them to clock in and out as non-exempt employees.

Second, in our area of the country, we pay a very competitive salary and offer a generous benefits package for our type of retail business, which is why we have such an awesome team. However, the overtime rule ignores the fact that the cost of living in Hoover, Alabama is very different than in New York City. According to a report prepared for NRF by Oxford Economics, approximately 49% of full-time salaried workers in Alabama make less than $970 per week, which demonstrates just how out of sync the $50,440 minimum salary level is with our labor market.[1] Such a dramatic, one-size-fits-all increase will have real consequences for my business and my employees.

Third, converting salaried positions to an hourly wage adds pressure to get the "job" done in a 40 hour work week. We avoid incurring overtime as much as possible and will continue to do so. An increase in overtime eligibility will not necessarily mean an increase in overtime pay for our workforce; but having to watch the clock for my managers and limit them to a 40 hour week will take away their flexibility, both personally and operationally.

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[1] Oxford Economics, State Differences in Overtime Thresholds, Addendum to "Rethinking Overtime: How Increasing Overtime Exemption Thresholds Will Affect the Retail and Restaurant Industries," August 18, 2015, https://nrf.com/sites/default/files/Documents/retail%20library/OE%20Addendum%202%20-%20State%20level%20overtime%20threshold%20analysis.pdf.

My managers' salaried, exempt status affords them a great deal of flexibility. Currently, if one of our managers needs to leave early or run a personal errand, we accommodate them without requiring those hours to be made up. If they aren't feeling well, we encourage them to go see the doctor; if there is something special going on that they need to leave early for, we let them go early so they won't feel so rushed. Again, we do not require those hours to be made up.

Flexibility benefits our salaried staff. This August, for example, the manager at our Auburn store requested to leave a few hours early on a Friday because her four year old daughter was starting dance that day. She needed to register her and get her comfortable with this new Friday schedule. Of course we said yes. She had just worked one of our largest volume weeks at the store. We had already compensated her with a day off for the extra hours and the over the top performance she had turned in. Giving her this extra time off to spend with her daughter was an automatic decision.

Another example of the typical flexibility we offer our salaried staff took place this past September. The manager at our Hoover store had a long weekend planned at the beach over Labor Day. She and her husband were going to leave Birmingham on Friday, after she got off work. All I could think of was how horrible traffic would be heading south to the beach on Labor Day weekend. I let her go at 1pm. This gave her time to run last minute errands and have things ready to go when her husband got off work. Surprise… her husband's boss let him go early as well. They got out of town early and beat the traffic jam to the beach. She is an awesome manager and gives us well over 100% every day.

These types of incidents happen all the time. Honestly, I don't even keep track of the extra we give to our managers because I don't think of it as a gift. Our managers are constantly going above and beyond. They operate their stores as owners, and we give them the freedom to schedule themselves. They know what the job requires, and they get it done. We value them, and they are just as much a part of our success as Sarah and I are.

Furthermore, our store managers and assistant managers averaged a 40 hour work week last year. Management closes the stores two days a week, and on those days they come in at 10am and leave between 6:15pm and 6:30pm. They also work one Saturday a month, for which they are given a day off during the week. During "crunch time" weeks, a manager will work more than 40 hours. However, when any salaried associate works in excess of 46 hours in a week, they are compensated with a day off of their choosing. This day off may be used the following week or "banked" and taken later in the year. Our salaried employees love this type of flexibility. They view a day off during the week as "me" time, since they are working moms. Their evenings and weekends are full of family time and responsibilities, so "me" time is highly valued. This is how we maintain the "overall" 40 hour work week on an annual basis. If they are converted to hourly workers, this kind of flexibility will be eliminated.

Diminished flexibility will also negatively impact customer service. Right now, if a customer walks in the store a few minutes before 6pm, my managers assist those customers in finding the unique gift they require, even if it means having a customer in the store after closing. They would never shoo a customer out right at 6pm! My business depends as much on excellent customer service as it does on our unique products, but as non-exempt employees, my managers will no longer have the flexibility to accommodate those customers. In addition, any changes to the primary duties test would further restrict the latitude afforded to exempt managers and are strongly opposed by myself and the rest of the retail community.

Beyond this loss of flexibility, converting a salaried manager back to hourly status will have a demoralizing impact; this person has worked hard to climb up the ladder into a coveted salaried position. Salaried, exempt status is seen as a badge of success and in my company, like many others, it is accompanied by a broader benefits package – benefits my employees and their families have come to count on. A recent GfK study shows that 45% of retail managers believe a change to hourly status would leave them feeling as though they are performing a job instead of pursuing a career, and 33% believe that change would undermine career stability.[2] Another recent study by Oxford Economics found that the proposed changes in the overtime rules would result in the loss of exempt, salaried status – and the income stability and flexibility that accompany that status – for an estimated 694,500 employees in the retail and restaurant sectors alone.[3]

This new overtime rule is bad for employees, and it is bad for small business owners. I am still trying to wrap my mind around the rule and what it means for the future of my business. But I can tell you right now that the Department of Labor's estimates of the regulatory burden are way too low. I'm also not the only one who thinks this. The U.S. Small Business Administration noted in its comments on the rule that the proposed changes "will add significant compliance costs and paperwork burdens on small entities, particularly businesses in low wage regions and in industries that operate with low profit margins."[4] The agency also expressed concern that the rule "does not properly analyze the numbers of small businesses affected by this regulation and underestimates their compliance costs."[5] Every dollar spent on compliance burdens is one less dollar that we could have used to grow our business and invest further in our employees and community.

In closing, I take great care of my employees and like other retailers, I want to help them move up. But we believe careers are the answer not time cards. DOL's one-size-fits-all salary threshold, the accompanying proposed annual increases, and any potential changes to the duties test will both burden my small business with more costly mandates and limit career advancement for my team. Unfortunately the impact of this rule, as frightening as it is, does not exist in a vacuum. We are trying to do what we do best – sell good products, create jobs, and give back to

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[2] GfK, "The Proposed Overtime Regulations' Impact on Retail and Restaurant Managers," https://nrf.com/sites/default/files/Documents/retail%20library/NRF-GfK-Overtime-Study-Report.pdf.

[3] Oxford Economics, Updated Impacts of Raising the Overtime Exemption Threshold, Addendum to "Rethinking Overtime: How Increasing Overtime Exemption Thresholds Will Affect the Retail and Restaurant Industries," July 17, 2015, https://nrf.com/sites/default/files/Documents/retail%20library/Rethinking-Overtime-threshold-update_MEMO.pdf.

[4] Small Business Administration, Submitted Comments on the Proposed Overtime Rule, https://www.sba.gov/advocacy/942015-defining-and-delimiting-exemptions-executive-administrative-professional-outside.

[5] Ibid.

our communities – and the uncertainty and costs associated with government overreach like the new overtime rule are making it much harder to do business.

Mr. Chairman, thank you again for the opportunity to share my views on this important issue. I would be happy to answer any questions.