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12 on behalf of himself and Aggrieved Employees

FILED
Superior Court Of California,
Sacramento
07/14/2020
clergans
By _____, Deputy
Case Number:
34-2020-00281761

9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 MATTHEW HAWKINS, as an individual)
12 and on behalf of other Aggrieved)
13 Employees,)

14 Plaintiff,)

15 vs.)

16 TWITCH INTERACTIVE, INC., a)
17 Delaware Corporation; and DOES 1 to 100,)
18 inclusive,)

19 Defendant.)

Case No.

**COMPLAINT FOR DECLARATORY
RELIEF AND CIVIL PENALTIES**

**Private Attorneys General Act
(Labor Code § 2699, et seq.)**

JURY TRIAL DEMANDED

21 Plaintiff MATTHEW HAWKINS hereby files this Complaint against Defendant TWITCH
22 INTERACTIVE, INC., a Delaware Corporation, and DOES 1 to 100 ("Defendant"). Plaintiff is
23 informed and believes and based thereon alleges as follows:

24 **PARTIES**

25 1. Plaintiff MATTHEW HAWKINS is an individual over the age of eighteen (18) and is
26 now and/or at all relevant times mentioned in this Complaint was a resident of the State of California.

27 2. Plaintiff is informed and believes, and thereupon alleges, that Defendant TWITCH
28 INTERACTIVE, INC., is now and/or at all times mentioned in this Complaint was a Delaware

1 Corporation and the owner and operator of an industry, business and/or facility licensed to do business
2 and actually doing business in the State of California.

3 3. DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of
4 TWITCH INTERACTIVE, INC., corporate or otherwise, who participated in and are liable for the
5 actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and
6 capacities of these DOE Defendants when they are ascertained. At all times mentioned herein, each
7 Defendant was the agent or employee of each of the other Defendants and was acting within the course
8 and scope of such agency or employment. The Defendants are, therefore, jointly and severally liable to
9 Plaintiff.

10 4. Defendants, and each of them, are now and/or at all times mentioned in this Complaint,
11 were members of and/or engaged in a joint employment, joint venture, partnership and common
12 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
13 joint venture, partnership, and common enterprise.

14 5. Defendants, and each of them, are now and/or at all times mentioned in this Complaint,
15 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

16 6. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
17 wrongs, complaints, injuries, and/or damages alleged in this Complaint.

18 JURISDICTION AND VENUE

19 7. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
20 violations of the California Labor Code and Industrial Welfare Commission Wage Order ("Wage
21 Order") No. 4-2001.

22 8. Venue is proper pursuant to Civil Procedure Code sections 395(a) and 395.5, in that some
23 of the wrongful acts and violations of law asserted herein occurred within Sacramento County.
24 Additionally, Defendant's obligation to pay wages, including violations of California Labor Code
25 sections 201, 202, 203, 226, 226.7, 226.8, 246, 247, 247.5, 248.5, 510, 512, 1174, 1194, 2802, 2810.5,
26 and the applicable Industrial Welfare Commission Wage Order ("Wage Order") arose in Sacramento
27 County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).
28 //

9. Plaintiff has sought permission pursuant to Labor Code section 2699, *et seq.* to pursue the claims set forth in this Complaint against Defendant as a private attorney general on behalf of himself and all other Aggrieved Employees. Plaintiff defines “Aggrieved Employees” as follows:

All Defendant's California-based employees designated as "Twitch Affiliates" or "Twitch Partners" (including employees who perform identical functions under similar circumstances under different job descriptions or titles) who, at any time one year prior to April 21, 2020 to the date this Complaint is filed, were classified by Defendant as "independent contractors" under Defendant's Affiliate and Partner Independent Contractor Agreements.

Pursuant to California Labor Code section 2699.3, Plaintiff has submitted written notice to the Labor and Workforce Development Agency (“LWDA”) of the Private Attorney General Act (“PAGA”) claims outlined in this Complaint via online submission on April 21, 2020. Plaintiff also submitted the \$75.00 filing fee. The notice was also sent to Defendant via certified mail on the same day it was submitted to the LWDA. More than the statutorily required time has passed without the LWDA notifying Plaintiff that it intends to investigate the violations. As such, Plaintiff has exhausted all administrative remedies under the PAGA and may bring this action on behalf of all Aggrieved Employees, as outlined in the notice to the LWDA. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005).

GENERAL ALLEGATIONS

10. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 9 as though fully set forth herein.

11. Plaintiff (sometimes referred to as “Affiliate”) worked for Defendant, as a misclassified, independent contractor from approximately September 21, 2019 to the present.

12. Defendant operates an online, live audio-video streaming service that broadcasts to viewers worldwide. Providing online, live audio-video streaming content to viewers is Defendant's primary business objective.

13. Plaintiff and Aggrieved Employees, including Twitch Affiliates and Partners, are employed solely to live stream audio-video content through Defendant's online streaming service. Defendant paid Plaintiff exclusively based on "Program Fees" (described below), regardless of the actual number of hours worked per day or per week. Aggrieved Employees were also misclassified as

1 independent contractors and paid "Program Fees", or some other similar method of payment that was
2 not based on the number of hours worked.

3 14. Based on Defendant's independent contractor agreement, payment from "Programs Fees"
4 is entirely within Defendant's discretion and *may* include the following: 1) payment to Plaintiff and
5 other Aggrieved Employees for "bits and cheering" (e.g. icons) provided by Defendant to online viewers
6 to be displayed on an Affiliates' or Partners' streaming channel; 2) payment to Plaintiff and other
7 Aggrieved Employees for qualifying customers' on-line purchases; 3) payment to Plaintiff and other
8 Aggrieved Employees for channel subscription services entered into with third parties; 4) payment to
9 Plaintiff and other Aggrieved Employees for advertisements broadcast in connection with their user
10 content and, finally; 5) payment for special programs, which *may* be offered to Plaintiff and other
11 Aggrieved Employees as a way to earn additional fees.

12 15. Defendant paid Plaintiff and Aggrieved Employees (a.k.a. Affiliates and Partners) on a
13 monthly basis. Under the terms of the contract, however, Defendant is not obligated to make any
14 payments to Plaintiff and other Aggrieved Employees until they exceed the \$100.00 payment threshold
15 for that payment cycle. As described above, this threshold is calculated based on Program Fees earned
16 in that payment cycle, which, while difficult to fully understand, is driven by channel viewership. In
17 other words, the more viewers an Affiliate or Partner has, the more money he or she can potentially
18 make. However, if the \$100.00 threshold is not met, then Plaintiff and other Aggrieved Employees will
19 not receive any payment for that payment cycle. Additionally, in a case where Defendant decides to
20 terminate an Affiliates' or Partners' contract due to inactivity, it is contractually entitled to collect a
21 maintenance fee of up to \$25.00 dollars from any earned Program Fees.

22 16. Defendant unilaterally classified Plaintiff and Aggrieved Employees by providing them
23 with independent contractor agreements to sign as a condition of their employment. Plaintiff and
24 Aggrieved Employees were not independently established business owners before being hired by
25 Defendant, and Plaintiff and Aggrieved Employees did not provide similar services to other businesses
26 during their employment. Indeed, as a condition of their employment, Plaintiff and other Aggrieved
27 Employees are not permitted to broadcast new, live audio-visual content on both Twitch and non-Twitch
28 affiliated platforms (a.k.a. YouTube) for a 24-hour period, starting at the beginning of the initial

1 broadcast and continuing for a 24-hour period thereafter. In addition to claiming exclusivity rights to
2 Plaintiff and Aggrieved Employees' initial, live broadcast, Defendant also monitored user content and
3 can suspend or terminate a streaming channel if the content violates company policy.

4 17. Plaintiff and Aggrieved Employees worked over eight (8) hours in a day and forty (40)
5 hours in a week, but Defendant did not pay them for their actual hours worked or even for their
6 documented time streaming live content for Defendant. As detailed above, Defendant paid Plaintiff and
7 other Aggrieved Employees based solely on Program Fees, but only after they met the minimum
8 \$100.00 threshold. For Plaintiff and other Aggrieved Employees, this translated into a "wage" less than
9 the minimum wage authorized under California and federal law. Defendant also did not pay Plaintiff for
10 overtime hours. In fact, Defendant did not track Plaintiff's actual hours worked.

11 18. For instance, from September 21, 2019 through October 20, 2019, Plaintiff streamed 271
12 hours and 58 minutes and was only paid a total of \$177.59 for that payment cycle. Similarly, from
13 October 21, 2019 through November 19, 2019, Plaintiff streamed 204 hours and 41 minutes but was
14 only paid a total of \$44.84.

15 19. In addition to not being paid wages for all time spent streaming audio-video content,
16 Defendant did not pay Plaintiff and other Aggrieved Employees for device set up time, or for any time
17 spent on designing layovers (icons, pictures, or text) for their the streaming content. Again, the more
18 appealing and interesting the streaming content, the more viewers Plaintiff and Aggrieved Employees
19 attract to their streaming channel. The more viewers, the more money they can potentially receive at the
20 end of the payment cycle.

21 20. Because Defendant misclassified Plaintiff and Aggrieved Employees, Defendant did not
22 authorize and permit Plaintiff and Aggrieved Employees to receive meal and rest periods owed to them,
23 including a first meal period before the completion of their fifth hour of work and a second meal period
24 and third rest period on occasions when they worked more than ten (10) hours in a day. Additionally,
25 Defendant failed to pay Plaintiff and Aggrieved Employees all meal and rest period premiums owed.

26 21. Defendant also required Plaintiff and Aggrieved Employees to use their own personal
27 devices, including computers, consoles, and cell phones for streaming audio-video content without
28 paying any reimbursements for the equipment. Further, Defendant failed to provide Plaintiff and

1 Aggrieved Employees with accurate, itemized wage statements. In fact, the payment statements
2 Plaintiff received from Defendant contained no information regarding hours worked, streaming time, or
3 even how the payment was calculated.

4 22. Due to Defendant's misclassification of Plaintiff and Aggrieved Employees, they were
5 not paid all wages owed to them within twenty-four (24) hours of their termination or seventy-two (72)
6 hours of their resignation.

7 23. Despite the enactment of AB 5 (2020) (Labor Code § 2750.3) and the holding by the
8 California Supreme Court in *Dynamex Operations West, Inc. v. Sup. Ct.*, 4 Cal. 5th 903 (2018),
9 Defendant has continued to willfully misclassify its employees as independent contractors even to the
10 date of this filing.

11 **CAUSE OF ACTION**

12 **FIRST CAUSE OF ACTION**
13 **PRIVATE ATTORNEYS GENERAL ACT**
(As to Defendant and Does 1-100)

14 24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully
15 set forth herein.

16 25. Plaintiff has alleged to the Labor Commissioner that Defendant has violated the
17 following provisions of the Labor Code in its dealings with Plaintiff and other current and former
18 Aggrieved Employees:

- 19 • Violation of Labor Code section 226.8 (Willful Misclassification of an Individual as an
20 Independent Contractor);
- 21 • Violation of Labor Code sections 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay
22 Overtime Wages);
- 23 • Violation of Labor Code sections 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to
24 Pay Minimum Wages);
- 25 • Violation of Labor Code sections 226, 226.3 (Failure to Provide Accurate Wage
26 Statements);
- 27 • Violation of Labor Code sections 226.3, 1174 (Failure to Maintain Accurate
28 Records);

- Violation of Labor Code section 2802 (Failure to Pay Reimbursement for Expenses);
- Violation of Labor Code section 558 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order);
- Violation of Labor Code sections 201-203, 256 (Failure to Pay Final Wages);
- Violation of Labor Code sections 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code section 226.7 and Wage Order No. 4, § 12(A) and 12(B) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code sections 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave);
- Violation of Labor Code sections 221, 223, 225 (Failure to Pay Contract Wages and Unlawful Deductions);
- Violation of Labor Code sections 204, 210 (Untimely Payment of Wages); and
- Violation of Labor Code section 226(c).
- Plaintiff seeks civil penalties against Defendant as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

26. Plaintiff has received authorization, based on the LWDA's failure to send notice of its intent to pursue Plaintiff's claims, to act on behalf of the Labor Commissioner to assess civil penalties against Defendant.

DECLARATORY RELIEF
MISCLASSIFICATION AS AN INDEPENDENT CONTRACTOR

27. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 26 as though fully set forth herein.

28. Regarding whether an employee and/or independent contractor relationship exists within the meaning of California's wage orders, the California Supreme Court has indicated the applicable standard is two-fold: (1) placing the burden on the hiring entity to establish that the worker is an independent contractor who was not intended to be included within the wage order's coverage; and (2) requiring the hiring entity, in order to meet this burden, to establish *each* of the three (3) factors embodied in the ABC test—namely (A) that the worker is free from the control and

1 direction of the hiring entity in connection with the performance of the work, both under the contract
2 for the performance of the work and in fact; *and* (B) that the worker performs work that is outside
3 the usual course of the hiring entity's business; *and* (C) that the worker is customarily engaged in an
4 independently established trade, occupation, or business of the same nature as the work performed.
5 See AB 5 (2020) (Labor Code § 2750.3); *Dynamex Operations West, Inc. v. Sup. Ct.*, 4 Cal. 5th 903
6 (2018).

7 29. Given the facts surrounding Plaintiff and Aggrieved Employees' employ with
8 Defendant, it is clear that Plaintiff and Aggrieved Employees did not perform work that is outside the
9 usual course of Defendant's business, and did not customarily engage in an independently
10 established trade, occupation, or business of the same nature as the work performed for Defendant.
11 Defendant also had the authority to hire and fire Plaintiff and Aggrieved Employees, as they were the
12 ones who hired Plaintiff and Aggrieved Employees. Further, Defendant's independent contractor
13 agreements with Plaintiff and Aggrieved Employees made it clear that Defendant had exclusive
14 rights to all new, live streaming audio-visual content within the first twenty-four (24) hours of the
15 broadcast. Because Plaintiff's work consisted of live streaming audio-visual content, Plaintiff's and
16 Aggrieved Employees' work was a regular and integrated part of Defendant's business.

17 30. As a result, Plaintiff seeks declaratory relief from the Court indicating that during
18 Plaintiff's and Aggrieved Employees' employment with Defendant, Defendant misclassified Plaintiff
19 and Aggrieved Employees as independent contractors.

20 31. If the Court finds that Plaintiff and Aggrieved Employees were employees
21 during all relevant times mentioned in this Complaint, then Plaintiff seeks a declaration of rights
22 related to all monies owed to Plaintiff and Aggrieved Employees based on their status as employees
23 when working for Defendant.

24 DAMAGES

25 WHEREFORE Plaintiff requests relief as follows:

26 1. As to the First Cause of Action (PAGA):

- 27 a. Penalties according to the following schedule: For any initial violation, one
28 hundred dollars (\$100) for each Aggrieved Employee per pay period; For any

1 subsequent violation, two hundred dollars (\$200) for each Aggrieved
2 Employee per pay period; or otherwise enumerated for specific Labor Code
3 sections;

4 b. Reasonable attorney's fees and costs pursuant to the Labor Code section 2699;

5 2. For such other and further relief as this Court may deem just and proper,
6 including, but not limited to:

7 a. Wages as proved at trial;

8 b. Injunctive and Declaratory relief;

9 c. Attorney's fees and costs; and

10 d. Interest.

11
12 Dated: July 13, 2020

Shimoda Law Corp.

13
14
15 By: 

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