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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR COUNTY OF SACRAMENTO

MAHMUDUR RAHMAN
on behalf of himself and all others similarly
situated

Plaintiff,

vs.

NMSO, INC., a California corporation, ANABI
OIL CORPORATION, a California corporation,
ANABI CONVENIENCE CENTERS, INC., a
California corporation and DOES 1 through 50,
inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages Owed;**
- 2) Failure to Provide Lawful Meal
Periods or Compensation in Lieu
Thereof;**
- 3) Failure to Provide Lawful Rest
Periods or Compensation in Lieu
Thereof;**
- 4) Failure to Timely Pay Wages**
- 5) Knowing and Intentional Failure to
Comply with Itemized Employee
Wage Statement Provisions; and**
- 6) Violations of the Unfair Competition
Law**

JURY TRIAL DEMANDED

Plaintiff MAHMUDUR RAHMAN (hereinafter "Plaintiff") on behalf of himself and all
others similarly situated assert claims against Defendant NMSO, INC., ANABI OIL

CORPORATION, ANABI CONVENIENCE CENTERS, INC., and DOES 1 through 50
(hereinafter collectively referred to as "Defendants") as follows:

I.

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought against Defendants and any subsidiaries and affiliated companies on behalf of Plaintiff and all Non-Exempt Employees employed by Defendants in California as a “cashier,” and similar positions (hereinafter “Non-Exempt Employees” or “Class Members”)

2. During the liability period, defined as the applicable statute of limitations for each and every cause of action contained herein, Defendants enforced shift schedules, employment policies and practices and/or workload requirements wherein Plaintiff and Non-Exempt Employees were, amongst other statutory violations, not paid all lawful wages owed; not provided compliant rest and meal periods; and not paid timely wages at termination.

3. Plaintiff, on behalf of himself and Class Members, brings this action pursuant to Labor Code sections 201-203, 226, 226.7, 510, 512, 558, 1194, 1198, Title 8, section 11050 and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties, other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and all Class Members, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants based on its violation of California Labor Code of Regulations, Title 8, section 11050 *et seq.*

II.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to the California Constitution Article VI §10, which grants the California Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes here do not give jurisdiction to any other court. The monetary damages and restitution sought by Plaintiffs

1 exceed the minimum jurisdiction limits of the California Superior Court and will be established
2 according to proof at trial. Venue is proper to each Defendant pursuant to Code of Civil
3 Procedure section 395 because they conduct substantial and continuous business activities in
4 Sacramento County, California and are within the jurisdiction of this Court for service of
5 process purposes. Defendants employ numerous Class Members in Sacramento County,
6 California.

7
8 **III.**

9 **PARTIES**

10 6. Plaintiff is, and at all times mentioned was, a resident of Rancho Cordova,
11 California.

12 7. Plaintiff is informed and believes, and based thereon alleges, Defendant NMSO,
13 INC. was/is a California Corporation located in Upland, California and qualified to operate gas
14 stations throughout California and continue to do so.

15 8. Plaintiff is informed and believes, and based thereon alleges, Defendant ANABI
16 OIL CORPORATION was/is a California Corporation located in Upland, California and
17 qualified to operate gas stations throughout California and continue to do so.

18 9. Plaintiff is informed and believes, and based thereon alleges, Defendant ANABI
19 CONVENIENCE CENTERS, INC., was/is a California Corporation located in Upland,
20 California and qualified to operate gas stations throughout California and continue to do so.

21 10. Plaintiff is informed and believes, and based thereon alleges, each Defendant
22 was/is the alter ego, joint venture of, or working in concert with the other Defendants and was
23 acting in the course and scope of such agency, employment, joint venture, or concerted activity.

24 11. At all times herein mentioned, each Defendant were members of, and engaged in ,
25 a joint venture, partnership, and common enterprise, and acting within the course and scope of,
26 and in pursuance of, said joint venture, partnership, and common enterprise.

27 12. The true names and capacities of Defendants, whether individual, corporate,
28

1 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
2 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
3 section 474. Plaintiff is informed and believes, and based thereon alleges that each of the
4 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
5 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
6 true names and capacities of the Defendants designated hereinafter as DOES when such identities
7 become known.

8 13. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
10 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
11 Defendant are legally attributable to the other Defendants.

12 IV.

13 FACTUAL BACKGROUND

14 14. Plaintiff was hired by Defendants as a “cashier” in July 2010 and worked until
15 June 27, 2019. His duties were typical of a gas station store cashier included collecting money
16 for in-store purchases and gas, maintenance, and stocking items in store. He worked 2-3 days
17 and 15-24 hours a week at Defendants’ gas station in Rancho Cordova, California.

18 15. During the liability period, Defendants failed to pay all lawful wages owed to
19 Plaintiff and Class Members by failing to pay for all hours worked. For instance, Plaintiff and
20 Class Members worked during meal periods and Defendants failed to accurately record such
21 times and failed to compensate Plaintiff and Class Members.

22 16. During the liability period, due to the demands of work shifts Plaintiff and Class
23 Members were required to work in excess of five (5) hours without being provided an
24 uninterrupted thirty (30) minute meal period by the end of the fifth hour and were not
25 compensated one (1) hour of pay at their regular rate of compensation for each workday that a
26 compliant meal period was not provided.
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28

17. During the liability period, due to Defendants' policy and practice, Plaintiff and Class Members were unlawfully prohibited from leaving the premises nor did they receive their minimum ten (10) minute rest period for every four hours or major fraction thereof worked. Plaintiff and Class Members were not compensated one (1) hour of pay at his regular rate of compensation for each workday that proper rest periods were not provided, in violation of California labor laws, regulations, and IWC Wage Orders.

18. On information and belief, Defendants failed to pay Non-Exempt Employees all earned wages in a timely manner, nor have Defendants paid to Non-Exempt Employees, upon or after termination, all compensation due, including but not limited to all wages owed and compensation for having failed to properly provide rest and meal periods.

19. Defendants have also failed to maintain accurate itemize records reflecting total hours worked and have failed to provide Non-Exempt Employees with accurate itemized wage statements reflecting total hours worked and appropriate rates of pay for those hours worked.

20. Upon information and belief, Plaintiff alleges that Defendants currently and during the relevant period employ over fifty (50) employees in California in non-exempt hourly positions as cashiers and/or similar positions

21. Non-Exempt Employees employed by Defendants all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

V. CLASS ACTION ALLEGATIONS

22. Plaintiff seeks to represent a Class comprised of and defined as: All persons who are employed or have been employed by Defendants in the state of California as hourly non-exempt employees and occupied the position of “Cashier” and similar position(s) within four (4) years prior to the date this lawsuit is filed (“liability period”) until resolution of this lawsuit (collectively referred to as the “Class” and/or Class Members”).

23. Plaintiff also seeks to represent Subclasses composed of and defined as:

1 a. All Non-Exempt Employees employed by Defendants in California as a
2 “Cashier” and similar positions within the statutory liability period and were not accurately and
3 fully paid all lawful wages owed for all hours worked;

4 b. All Non-Exempt Employees employed by Defendants in California as a
5 “Cashier” and similar positions within the statutory liability period and were not provided a
6 thirty (30) minute uninterrupted meal period when they worked over five hours in a work shift
7 by the end of the fifth hour and/or over 10 hours in a work shift by the end of the tenth hour
8 and were not provided compensation in lieu thereof;

9 c. All Non-Exempt Employees employed by Defendants in California as a
10 “Cashier” and similar positions within the statutory liability period and were not provided
11 proper minimum ten (10) minute rest period for every four (4) hours or major fraction thereof
12 worked per day and were not provided compensation in lieu thereof;

13 d. All Non-Exempt Employees employed by Defendants in California as a
14 “Cashier” and similar positions within the statutory liability period and were not timely paid all
15 wages due and owed to them upon the termination of their employment with Defendants.

16 e. All Non-Exempt Employees employed by Defendants in California as a
17 “Cashier” and similar positions within the statutory liability period and were not provided with
18 accurate and complete itemized wage statements.

19 24. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
20 or modify the class description with greater specificity or further division into subclasses or
21 limitation to particular issues.

22 25. This action has been brought and may properly be maintained as a class action
23 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
24 defined community of interest in the litigation and the proposed Class is easily ascertainable.

25 **A. Numerosity**

26 26. The potential members of the Class as defined are so numerous that joinder of all
27 the members of the Class is impracticable. While the precise number of Class Members has not
28 been determined, Plaintiff is informed and believes Defendants currently employ, and/or during

the relevant time period employed, over 50 Non-Exempt Employees in California who are/or have been affected by Defendants' unlawful practices as alleged herein.

B. Commonality

27. There are questions of law and fact common to the Class predominating over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

i. Whether Defendants violated Labor Codes sections 200, 1194, and 1197 and applicable IWC Wage Orders for failing to pay minimum wages to Non-Exempt Employees for, amongst other violations, time spent working during meal periods.

ii. Whether Defendants violated Labor Code §§510, 1194 and applicable IWC Wage Orders by failing to pay all earned wages including overtime compensation to Non-Exempt Employees who worked in excess of eight (8) hours in a work day and/or more than forty (40) hours in a workweek for the time spent time spent working during meal periods

iii. Whether Defendants violated sections 226.7, 512 of the Labor Code and applicable IWC Wage Order by failing to provide statutorily compliant thirty (30) minute meal periods to Non-Exempt Employees on days in which they worked in excess of five (5) hours and failing to compensate said employees one hour wages in lieu of meal periods;

iv. Whether Defendants violated Labor Code section 226.7 and applicable IWC Wage Orders by failing to authorize and permit minimum ten (10) minute rest periods to Non-Exempt Employees for every four hours or major infraction thereof worked and failing to compensate said employees one (1) hours wage in lieu of rest periods;

v. Whether Defendants violated sections 201-203 of the Labor Code and applicable IWC Wage Orders by failing to pay all earned wages and/or premium wages due and owing at the time that any Non-Exempt Employees' employment with Defendants terminated;

vi. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code through their violation of the above-referenced Labor Code and Civil Code sections and applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy.

C. Typicality

28. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

D. Adequacy of Representation

29. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represents Plaintiff is competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

30. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

31. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI.
CAUSES OF ACTION

First Cause of Action

Failure to Pay Lawful Wages Owed
(Lab. Code §§ 510, 1194, 1197 IWC Wage Orders)

1 32. Plaintiff repeats and incorporates herein by reference every allegation set forth
2 above, as though fully set forth herein.

3 33. During the liability period, Defendants implemented a timekeeping practice that
4 drove Non-Exempt Employees to clock-in and clock-out in a manner that resulted in loss of time
5 worked. As a result, Non-Exempt Employees were consistently underpaid and were required to
6 work off the clock and without pay.

7 34. Defendants' policies, practices and work shift requirements resulted in Non-
8 Exempt Employees working "off the clock" and not receiving compensation for all earned wages
9 including overtime in violation of California state wage and hour laws.

10 35. During the liability period, Defendants' policies and/or practices resulted in Non-
11 Exempt Employees working off the clock and in excess of eight (8) hours in a workday and/or
12 forty (40) hours in a workweek without receiving the proper compensation at the rate of time and
13 one-half (1 1/2) of such employee's regular rate of pay.

14 36. During the liability period, Defendants' policies and/or practices resulted in
15 Plaintiff and Non-Exempt Employees not receiving minimum wages for time spent working off
16 the clock while subject to the control of Defendant all without pay.

17 37. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
18 represent have been deprived of compensation for all earned wages in amounts to be determined
19 at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon,
20 attorneys' fees, and costs, pursuant to Labor Code section 1194.

21 38. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as
22 described herein and below.

23
24 **Second Cause of Action**
25 Failure to Provide Lawful Meal Periods
26 Or Compensation in Lieu Thereof
 (Lab. Code §§226.7, 512, IWC Wage Orders)

27 39. Plaintiff repeats and incorporates herein by reference every allegation set forth
28 above, as though fully set forth herein.

1 40. By their failure to provide thirty (30) minute uninterrupted meal periods by the
2 end of the fifth hour for days which Non-Exempt Employees worked in excess of five (5) hours
3 and failing to provide compensation for such statutorily non-compliant meal periods, Defendants
4 violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

5 41. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
6 represent have been deprived of premium wages in amounts to be determined at trial, and are
7 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
8 §226.7.

9 42. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as
10 described herein and below.

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12 **Third Cause of Action**
13 Failure to Provide Rest Periods
14 Or Compensation in Lieu Thereof
 (Lab. Code §§226.7, IWC Wage Orders)

15 43. Plaintiff repeats and incorporates herein by reference every allegation set forth
16 above, as though fully set forth herein.

17 44. By their failure to authorize and permit a proper minimum ten (10) minute rest
18 period for every four (4) hours or major fraction thereof worked per day by Non-Exempt
19 Employees, and failing to provide compensation for such non-provided rest periods, as alleged
20 above, Defendants willfully violated the provisions of Labor Code section 226.7 and IWC
21 applicable Wage Orders.

22 45. As a result of the unlawful acts of Defendants, Plaintiff, and the Class he seeks to
23 represent have been deprived of premium wages in amounts to be determined at trial, and are
24 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
25 §226.7.

26 46. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as
27 described herein and below.
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Fourth Cause of Action

Failure to Timely Pay Wages Due at Termination
Lab. Code §§ 201-203, 227.3, IWC Wage Orders)

47. Plaintiff incorporates by reference and realleges every allegation contained above, as though fully set forth herein.

48. Sections 201 and 202 of the California Labor Code require Defendants to pay its employees all wages due within 72 hours of termination of employment. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

49. Plaintiff and class members are entitled to compensation for all forms of wages earned, including compensation for non-provided rest and meal periods, but to date have not received such compensation therefore entitling them Labor Code section 203 penalties.

50. More than 30 days have passed since Plaintiff and Class Members have left Defendants' employ, and on information and belief, have not received payment pursuant to Labor Code §203. As a consequence of Defendants' willful conduct in not paying all earned wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code section 203 for failure to pay legal wages.

51. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as described herein and below.

Fifth Cause of Action

Knowing and Intentional Failure to Comply With Itemized Employee
Wage Statement Provisions
(Lab. Code § 226, IWC Wage Orders)

52. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

53. Section 226(a) of the California Labor Code requires Defendants to itemize in

1 wage statements all deductions from payment of wages and to accurately report total hours
2 worked by Plaintiff and the members of the proposed class. IWC Wage Orders require
3 Defendants to maintain time records showing, among others, when the employee begins and ends
4 each work period, meal periods, split shift intervals and total daily hours worked in an itemized
5 wage statement, and must show all deductions and reimbursements from payment of wages, and
6 accurately report total hours worked by Plaintiff and the members of the proposed class. On
7 information and belief, Defendants have failed to record all or some of the items delineated in
8 Industrial Wage Orders and Labor Code §226.

9 54. Defendants violated Section 226(a)(2) by failing to provide Plaintiff and class
10 members with statements of wages that accurately showed the total hours worked by Plaintiff and
11 the other class members. Defendants violated Section 226(a)(5) by failing to provide Plaintiff
12 and the class members with statements of wages that accurately showed the net wages earned for
13 regular hours worked, overtime hours worked. Defendants violated Section 226(a)(9) by failing
14 to provide Plaintiff and the other class members with statements of wages that accurately showed
15 the applicable hourly rates in effect during the pay period and the corresponding number of hours
16 worked at each hourly rate.

17 55. Plaintiff and Class Members have been injured by Defendants' actions by rendering
18 them unaware of the full compensation to which they were entitled under applicable provisions
19 of the California Labor Code and applicable IWC Wage Orders.

20 56. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a
21 maximum of \$4,000.00 each for record-keeping violations.

22 57. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as
23 described herein and below.

24
25 **Sixth Cause of Action**
26 Violation of Unfair Competition Law
(Bus. & Prof. Code, §§ 17200-17208)

27 58. Business & Professions Code Section 17200 provides:

28 As used in this chapter, unfair competition shall mean and include any **unlawful**,
unfair or fraudulent business act or practice and unfair, deceptive, untrue or

misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

Defendants' violations of the Labor Code and Wage Order provisions set forth above constitute unlawful and/or unfair business acts or practices.

59. The actions of Defendants, as alleged within this Complaint, constitute false, fraudulent, unlawful, unfair, or deceptive business practices, within the meaning of Business and Professions Code section 17200, *et seq.*

60. Plaintiff and Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein.

61. As a direct and proximate result of the unfair business practices of Defendants, and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is entitled to restitution of all wages which have been unlawfully withheld from Plaintiff and members of the Plaintiff Class as a result of the business acts and practices described herein.

62. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

VII.

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For premium wages pursuant to Labor Code §§226.7 and 512;
5. For premium pay and penalties pursuant to Labor Code §§203, 226;
6. For attorneys' fees, interests, and costs of suit under Labor Code §§226, 1194; and
7. For such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

Dated: June 22, 2020

JAMES HAWKINS, APLC



James R. Hawkins, Esq.

Isandra Y. Fernandez, Esq.

Richard Barnwell, Esq.

Attorneys for Plaintiff

MAHMUDUR RAHMAN