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ELECTRONICALLY FILED
Superior Court of California,
County of Placer
09/23/2020
By: Kathleen Pearson, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER

AYEBAINATON EKINE, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

BURBERRY LIMITED, a New York
corporation; and DOES 1 through 100,

Defendants.

CASE NO.S-CV-0045602

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

Plaintiff Ayebainaton Ekine (“Plaintiff”), on behalf of himself and all others aggrieved employees, hereby brings this Representative Action Complaint (“Complaint”) against Burberry Limited, a New York corporation, and Does 1 through 100, inclusive (collectively “Defendants”), and on information and belief allege as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all other aggrieved employees, hereby brings this representative action for recovery of civil penalties under Labor Code § 2698 *et seq.* This Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

VENUE

2. Venue as to each Defendant is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Placer. Defendants own, maintain offices, transact business, have an agent or agents within the County of Placer , and/or otherwise are found within the County of Placer, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is, and at all times relevant herein was, a competent individual over the age of eighteen (18) residing in the state of California. During the statute of limitations period, Plaintiff was employed by Defendants as a non-exempt employee in California, and performed services for Defendants in Placer County.

4. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants did (and do) business by manufacturing cosmetics. Defendants employed Plaintiff and other aggrieved employees within the State of California, specifically the County of Placer, and therefore, were (and are) doing business in the County of Placer and the State of California.

5. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were licensed to do business in the State of California and the

County of Placer.

6. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partner, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and aggrieved employees to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

7. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employer of Plaintiff and all similarly situated employees.

8. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

9. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved employees.

REPRESENTATIVE ACTION ALLEGATIONS

10. Defendants operate a luxury fashion brand with several retail stores throughout California. Plaintiff was employed by Defendants as a non-exempt Sales Associate from approximately March 17, 2017 to August 2019. During Plaintiff's employment, Defendants

required Plaintiff and other non-exempt employees to clock in and other for the start of their work shift using an electronic timeclock system.

11. Defendants' timekeeping policies and/or practices resulted in Plaintiff and other aggrieved employees not being compensated for all hours actually worked. Specifically, Defendants required Plaintiff and other aggrieved employees to respond to customer concerns and communicate with customers throughout the day in order to provide a better customer experience, even when Plaintiff and other aggrieved employees were not scheduled to work or were not on the clock. As a result of Defendants' unlawful policy and/or practice, Plaintiff and other aggrieved employees were not compensated for all hours that they actually worked and were deprived of all minimum and overtime wages owed.

12. Throughout Plaintiff's employment with Defendants, Defendants maintained an unlawful meal period policy and/or practice that failed to provide Plaintiff and other aggrieved employees with timely, uninterrupted, duty-free 30-minute meal periods commencing before the end of the fifth hour of work. Specifically, Plaintiff and other aggrieved employees were frequently unable to take their meal periods prior to the end of the fifth hour of work due to work demands and a lack of employee coverage. Additionally, meal periods were frequently interrupted or cut short due to customer demands. Although Defendants had a policy of paying meal period premiums in the event of missed, short, or late meal periods, Defendants paid all meal period premiums at the employee's base hourly rate of pay, despite the fact that Plaintiff and other aggrieved employees' regular rates of pay were substantially higher than their base rates of pay due to their receipt of commissions and other incentive pay, including forms of pay listed as "INCENTIVE" and "INCENT. KICKER" (these forms of pay are referred to herein collectively as "Incentive Pay"). Additionally, upon information and belief, in the event that a timely meal period was started by an employee, but was interrupted and completed at a later time, Defendants did not pay the employee a meal period premium at all, in violation of Labor Code section 226.7.

13. Defendants also failed to authorize and permit Plaintiff to take all duty-free 10-minute rest periods for every four hours worked, or major fraction thereof, due to Defendants'

1 unlawful rest period policies/practices. Since Defendants expected Plaintiff to assist customers
2 at all times, Plaintiff's rest periods were often interrupted if a customer needed assistance.
3 Furthermore, Defendants' work demand frequently prevented Plaintiff and other aggrieved
4 employees from taking all their rest periods, due to a lack of employee coverage. Despite
5 Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take all
6 legally-required rest periods to which they were entitled, and despite the fact that Defendants
7 required employees to record their rest periods which placed Defendants on notice of rest period
8 violations, Defendants failed to compensate Plaintiff and other aggrieved employees with an
9 additional hour of premium pay at their respective regular rates of pay for each workday in which
10 a rest period violation occurred, as required by Labor Code section 226.7.

11 14. Upon information and belief, during at least a portion of the relevant time period,
12 Defendants failed to maintain pay codes for the payment of rest period premium payments as
13 required by Labor Code section 226.7.

14 15. Defendants encouraged Plaintiff and other non-exempt employees to utilize their
15 personal cellular phones to communicate with customers through telephone calls, emails, and text
16 messages. In approximately 2018, Defendants introduced company-provided cellular phones, but
17 even after this time, customers who were accustomed to contacting employees on their personal
18 cellular phones and continued to do so frequently. Despite requiring Plaintiff and other aggrieved
19 employees to utilize their personal cell phones to communicate with customers, Defendants failed
20 to reimburse these aggrieved employees for any portion of their cellular phone bill, in violation
21 of Labor Code section 2802.

22 16. As a result of Defendants' failure to pay all minimum wages owed, overtime wages
23 owed, and meal and rest period premium wages owed, Defendants failed to timely pay Plaintiff
24 and other aggrieved employees all wages owed at the time of their respective separations from
25 employment, maintained inaccurate payroll records, and issued inaccurate wage statements to
26 Plaintiff and other aggrieved employees. Defendants also maintained facially deficient wage
27 statements that failed to list the total hours and rates of pay associated with commission overtime
28 payments, denoted on wage statements as "OT ON COMM."

1 17. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations
2 of more than 180 days are suspended from April 6, 2020 through October 1, 2020. Accordingly,
3 the relevant time period for each cause of action pled herein have been calculated based on a
4 filing date of April 6, 2020.

5 **FIRST CAUSE OF ACTION**

6 **PRIVATE ATTORNEYS GENERAL ACT**

7 **(AGAINST ALL DEFENDANTS)**

8 18. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
9 fully set forth herein.

10 19. Defendants have committed several Labor Code violations against Plaintiff and
11 other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor
12 Code § 2698 *et seq.* (“PAGA”), acting on behalf of himself and other aggrieved employees,
13 brings this representative action against Defendants to recover the civil penalties due to Plaintiff,
14 other aggrieved employees, and the State of California according to proof, pursuant to Labor
15 Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial
16 violation for each failure to pay each employee and \$200 for each subsequent violation or willful
17 or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
18 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each
19 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00
20 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code §
21 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
22 subsequent violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay
23 period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per
24 employee per pay period for those violations of the Labor Code for which no civil penalty is
25 specifically provided, based on the following Labor Code violations:

- 26 a. Failing to pay Plaintiff and other aggrieved employees the statutory
27 minimum wage for all hours worked in violation of Labor Code §§
28 1182.12, 1194, 1194.2, 1197;

- b. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, and 558;
- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all necessary business expenditures incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff and other aggrieved employees with accurate and itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201, 202, and 203;
- h. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

20. On July 20, 2020, Plaintiff notified Defendant Burberry Limited via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via e-mail of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 19 (a)-(i). Now that sixty-five days have passed

from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

21. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: 1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections cited in Paragraph 19 (a)-(i) above;

2. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 2699., and Code of Civil Procedure § 1021.5; and

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1 3. For such other and further relief the Court may deem just and proper.

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3 Dated: September 23, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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5 By:



Fletcher W. Schmidt
Attorney for Plaintiff