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on behalf of himself and all others similarly situated

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

HAMMED O. UMORU on behalf of himself
and all others similarly situated

Plaintiff,

vs.

HOMETOWN HEART, INC. 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**
- 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) Knowing and Intentional Failure to
Comply with Itemized Employee
Wage Statement Provisions**
- 5) Violations of the Unfair Competition
Law**

JURY TRIAL DEMANDED

Plaintiff HAMMED O. UMORU on behalf of himself and all others similarly situated
assert claims against Defendant HOMETOWN HEART and DOES 1 through 50, inclusive
(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 Defendant HOMETOWN HEART, INC. and any subsidiaries and affiliated companies (hereinafter “HOMETOWN HEART ” or “Defendants”) on behalf of Plaintiff HAMMED O. UMORU (hereinafter “Plaintiff”) and all individuals employed by HOMETOWN HEART in California as non- exempt employees. (hereinafter referred to as “Non-Exempt Employees” and/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 including proper overtime compensation; not provided compliant meal periods nor paid the correct compensation in lieu thereof; not authorized and permitted lawful rest periods or paid correct compensation in lieu thereof; not provided accurate itemized wage statements; and not paid timely wages at termination.

3. Plaintiff, on behalf of himself and Non-Exempt Employees, brings this action pursuant to Labor Code sections 201-203, 226, 201-203, 226, 226.7, 510, 512, 1194, 1197, and applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid proper meal period premium, unpaid rest break premium, 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 Defendants’ violations of California Labor Code of Regulations, Title 8, section 11050 *et seq.*

II.

VENUE

5. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil Procedure section 395. Defendant conducts substantial and continuous business activities in Alameda County, California and each Defendant is within the jurisdiction of this Court for service of process purposes. Defendants employ numerous Class Members in Alameda County, California

III.

PARTIES

6. Plaintiff is, and at all times mentioned in this complaint was, a resident of Alameda County, California.

7. On information and belief, Defendant HOMETOWN HEART is a California corporation which is headquartered in Oakland, California and operates a non-retail storefront delivery dispensary throughout California.

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

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

IV.

FACTUAL BACKGROUND

1 10. Plaintiff was employed by HOMETOWN HEART in March 2020 as a delivery
2 driver out of Defendant's Oakland, California location. Plaintiff worked 5 days and over 40
3 hours in a week.

4 11. During the liability period, Plaintiff and Class Members were paid a non
5 discretionary bonus which Defendant did not include in the regular rate of pay for purposes of
6 calculating overtime compensation. Therefore, Defendant failed to pay Plaintiff and Class
7 Members accurate overtime compensation when they worked over 8 hours in a day and/or 40
8 hours in a week.

9 12. During the liability period, due to the work load requirements and time constraints
10 implemented by Defendant Plaintiff and Class Members are required to work during their meal
11 periods. Plaintiff and Class Members were required to work in excess of five (5) hours without
12 being provided an uninterrupted thirty (30) minute meal period by the end of the fifth hour
13 Further, Plaintiff and Class Members are not compensated one (1) hour of pay at their regular
14 rate of compensation for each workday that a meal period was not provided, in violation of
15 California labor laws, regulations and IWC Wage Order. Further, to the extent that a meal break
16 premium was paid for meal breaks not provided, Defendant failed to include the non
17 discretionary bonus in the calculation of the regular rate of pay for the meal break premium.

18 13. Due to the work load requirements and shift schedules imposed by Defendant,
19 Plaintiff and Class Members were required to work without being permitted or authorized a
20 minimum ten (10) minute rest period for every four hours or major fraction thereof worked and
21 not compensated one (1) hour of pay at their regular rate of compensation for each workday that
22 a rest period was not provided, in violation of California labor laws, regulations, and IWC Wage
23 Orders.

24 14. Defendants have also failed to maintain accurate itemized records reflecting total
25 hours worked and have failed to provide Non Exempt Employees with accurate, itemized wage
26 statements reflecting total hours worked and appropriate rates of pay for those hours worked.
27
28

15. Plaintiff is informed and believes, and based thereon alleges, that Defendants currently employ and during the relevant period have employed over fifty (50) employees in the State of California in non-exempt hourly positions.

16. Non-Exempt Employees employed by HOMETOWN HEART , at 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

17. Plaintiff seeks to represent a Class comprised of and defined as: All persons who are or were employed by HOMETOWN HEART in the state of California as non exempt employees within four (4) years prior to the date this lawsuit is filed until resolution of this lawsuit (collectively referred to as the “Class” and/or Class Members”).

18. Plaintiff also seeks to represent Subclasses which are composed of persons satisfying the following definitions:

a. All persons who are or were employed by HOMETOWN HEART in the state of California as non exempt employees, within the statutory liability period, and were not accurately and fully paid all lawful wages owed to them including proper overtime compensation for all their hours worked.

b. All persons who are or were employed by HOMETOWN HEART in the state of California as non exempt employees, within the statutory liability period, who have not been provided an uninterrupted 30 minute meal period when they worked over five hours in a work shift by the end of the fifth hour and were not provided the correct compensation in lieu thereof.

c. All persons who are or were employed by HOMETOWN HEART in the state of California as non exempt employees, within the statutory liability period, and have not been provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked per day and were not provided the correct compensation in lieu thereof;

d. All persons who are or were employed by HOMETOWN HEART in the

1 state of California as non exempt employees, within the statutory liability period, and were not
2 timely paid all lawful wages owed at the termination of their employment;

3 e. All persons who are or were employed by HOMETOWN HEART in the
4 state of California as non exempt employees, within the statutory liability period, and were not
5 provided with accurate and complete itemized wage statements.

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

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

12 **A. Numerosity**

13 21. The potential members of the Class as defined are so numerous that joinder of
14 all the members of the Class is impracticable. While the precise number of Class Members has
15 not been determined at this time, Plaintiff is informed and believes that Defendants currently
16 employ, and/or during the relevant time period employed, approximately over 50 Non-Exempt
17 Employees in California who are or have been affected by Defendants' unlawful practices as
18 alleged herein.

19 **B. Commonality**

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

- 23 i. Whether Defendants violated Labor Code sections 510, 1194 and applicable
24 IWC Wage Orders by not including non-discretionary bonus amount in the regular rate
25 of pay and thus failing to pay the correct overtime compensation to Non-Exempt
26 Employees who worked in excess of eight (8) hours in a work day and/or more than
27 forty (40) hours in a workweek
28

- 1 ii. Whether Defendants violated Labor Code §§ 226.7, 512 and applicable IWC
2 Wage Order by failing to provide statutorily compliant 30 minute meal periods to Non-
3 Exempt Employees on days in which they worked in excess of 5 hours and failing to
4 compensate said employees one hour wages in lieu of meal periods;
- 5 iii. Whether Defendants violated Labor Code §§ 226.7, 512 and applicable IWC
6 Wage Order by failing to include non-discretionary bonus amount in the regular rate
7 when paying a meal break premium;
- 8 iv. Whether Defendants violated Labor Code sections 226.7 and applicable IWC
9 Wage Orders by failing to authorize and permit minimum 10 minute rest periods to
10 Non-Exempt Employees for every four hours or major fraction thereof worked and
11 failing to compensate said employees one hours wages in lieu of rest periods;
- 12 v. Whether Defendants violated sections 226 of the Labor Code and applicable
13 IWC Wage Orders by failing to provide accurate itemized wage statements with all the
14 information required by Labor Code Section 226(a)., and maintain accurate records of
15 Non-Exempt Employees' earned wages, pay rate, work periods, meal periods;
- 16 vi. Whether Defendants violated section 17200 *et seq.* of the Business and
17 Professions Code by failing to pay all lawful wages owed to Non-Exempt Employees;
18 failing to provide proper rest and/or meal periods and failing to pay correct
19 compensation in lieu thereof; failing to timely pay wages and provide accurate itemized
20 wage statements all in violation of Labor Code §§ 203, 204, 226, 226.7, 510, 512,
21 1194, 1199 and applicable IWC Wage Orders.
- 22 vii. Whether Defendants violated section 17200 *et seq.* of the Business and
23 Professions Code and Labor Code sections §§ 203, 204, 221, 225, 226, 226.7, 510, 512,
24 1194, 1199, and applicable IWC Wage Orders which violation constitutes a violation
25 of fundamental public policy;

26 **C. Typicality**

27 23. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
28 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

24. 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

25. 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.

26. 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 Including Overtime Wages
(Lab. Code §§ 510, 1194)
(Against All Defendants)

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

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

29. During the liability period, Defendants' policies and practices of not including non-discretionary bonus amounts in the regular rate of pay for purposes of calculating overtime compensation resulted in the underpayment of overtime pay to Plaintiff and Non Exempt Employees who worked in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek.

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

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

Second Cause of Action

Failure to Provide Lawful Meal Periods
Or Compensation in Lieu Thereof
(Lab. Code §§226.7, 512, IWC Wage Orders)
(Against All Defendants)

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

33. By their failure to provide 30 minute uninterrupted meal periods by the end of the fifth hour for days on which Non-Exempt employees work(ed) work periods in excess of 5 hours and/ or failing to provide a second 30 minute meal period by the end of the tenth hour in shifts over 10 hours and failing to provide compensation for such statutorily non-compliant meal periods, Defendants violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

34. To the extent that Defendants paid Plaintiff and Class Members any meal break premium, said premiums were not based on the correct regular rate of pay.

35. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of premium wages in amounts to be determined at trial, and are

1 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
2 §226.7.

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

5
6 **Third Cause of Action**
7 Failure to Provide Rest Periods
8 Or Compensation in Lieu Thereof
(Lab. Code §§226.7, IWC Wage Orders)
(Against All Defendants)

9 37. Plaintiff repeats and incorporates herein by reference each and every allegation set
10 forth above, as though fully set forth herein.

11 38. By their failure to provide a minimum ten (10) minute rest period for every four
12 hours or major fraction thereof worked per day by Non Exempt Employees, and failing to
13 provide compensation for such non-provided rest periods, as alleged above, Defendants willfully
14 violated the provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

15 39. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
16 represent have been deprived of premium wages in amounts to be determined at trial, and are
17 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
18 §226.7.

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

21
22 **Fourth Cause of Action**
23 Knowing and Intentional Failure to Comply With Itemized Employee
24 Wage Statement Provisions
(Lab. Code § 226(b))
(Against All Defendants)

25 41. Plaintiff repeats and incorporates herein by reference each and every allegation set
26 forth above, as though fully set forth herein.

42. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the members of the proposed class. IWC Wage Orders require Defendants to maintain time records showing, among others, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statement, and must show all deductions and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and the members of the proposed class. Defendants have failed to record the items delineated in Industrial Wage Orders and Labor Code §226 including but not limited to hours worked, correct rate of pay.

43. During the liability period, Defendants knowingly and intentionally failed to furnish to Plaintiff and Class Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and/or (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

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

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

Fifth Cause of Action

Violation of Unfair Competition Law

(Bus. & Prof. Code, §§ 17200-17208)
(Against All Defendants)

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

48. Business & Professions Code Section 17200 provides:

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.)

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

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

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

52. 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.

53. 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;

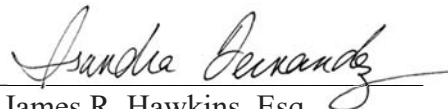
- 1 3. For economic and/or special damages in an amount according to proof with interest
2 thereon;
3 4. For premium wages pursuant to Labor Code §§ 226.7 and 512;
4 5. For premium pay and penalties pursuant to Labor Code § 226;
5 6. For attorneys' fees, interests and costs of suit under Labor Code §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

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.
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12 **Dated: August 7, 2020**

JAMES HAWKINS, APLC

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14 

15 James R. Hawkins, Esq.

16 Isandra Y. Fernandez, Esq.

17 Attorneys for Plaintiff

18 HAMMED O. UMORU
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