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on behalf of himself and all others similarly situated

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

AARON SMITH on behalf of himself and all
others similarly situated

Plaintiff,

vs.

BIG 5 SPORTING GOODS, INC., a Delaware
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;**
- 6) Failure to Indemnify Employee for expenditures; and**
- 7) Violations of the Unfair Competition Law**

JURY TRIAL DEMANDED

I.

INTRODUCTION

1. Pursuant to Code of Civil Procedure section 382, AARON SMITH (hereinafter “Plaintiff”) assert the following Class Action claim against BIG 5 SPORTING GOODS, INC., and DOES 1 through 50 (hereinafter collectively “Defendants”) on behalf of himself and all Non-Exempt Employees employed by Defendants as a store Manager.

2. During the liability period, defined as the applicable statute of limitations for each 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; not provided compliant rest and meal periods; not provided accurate itemized wage statements; not paid timely wages at termination; and not reimbursed for expenses incurred.

3. Plaintiff, on behalf of himself and Non-Exempt Employees, brings this action pursuant to Labor Code sections 201-203, 226, 226.7, 1194, 1197, 2802, Title 8, section 11090 and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid wages, unpaid compensation for rest and meal break violations, penalties, attorneys’ fees and costs and other equitable relief.

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.

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 Plaintiff exceed the minimum

1 jurisdiction limits of the California Superior Court and will be established according to proof at
2 trial.

3 6. Venue is proper to each Defendant pursuant to Code of Civil Procedure section
4 395 because they conduct substantial and continuous business activities in Fresno County and
5 are within the jurisdiction of this Court for service of process purposes. Defendants employ
6 numerous Non-Exempt Employees in Fresno and other Counties throughout California.

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8 **III.**
9 **PARTIES**

10 7. Plaintiff is, and at all times mentioned, a resident of Fresno, California.

11 8. Upon information and belief, Defendants are a sporting goods company
12 headquartered in El Segundo, CA. Plaintiff believes Defendants are qualified to do business in
13 the Western United States, including California, and continue to do so.

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

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

1 IV.

2 **FACTUAL BACKGROUND**

3 11. Plaintiff was employed by Defendants from on or about May 1, 2018 until about
4 August 16, 2020 as an Assistant Manager. While employed by Defendants he was engaged in
5 general operation of the store including sales, maintenance, and scheduling. Plaintiff typically
6 worked 5 days per week and 43 hours a week at the Shaw, CA and Selma, CA locations.

7 12. During the liability period, Plaintiff and Non-Exempt Employees were not paid all
8 lawful wages earned including minimum wages. For example, while “off the clock” Plaintiff and
9 Non-Exempt Employees engaged in daily phone calls with managers and/or employees regarding
10 work schedules and other daily activities. Plaintiff and Non-Exempt Employees were not
11 compensated for the time spent on such calls. Accordingly, they were not accurately paid lawful
12 wages for all hours worked.

13 13. During the liability period, due to the demands of work shifts, at least two to three
14 times a week Plaintiff and Non-Exempt Employees’ first 30-minute lawful meal break was
15 interrupted where they had to return to work. Plaintiff and Non-Exempt Employees further claim
16 that at least once a week they did not receive a 30-minute lunch break when working over 5 hours.
17 Accordingly, Plaintiff and Non-Exempt Employees missed meal periods or had meal periods
18 interrupted without proper compensation.

19 14. During the liability period, due to the demands of work shifts, at least twice a month
20 Plaintiff and Non-Exempt Employees did not receive a second 30-minute lawful meal break when
21 they worked over 10 hours in a shift nor were they properly compensated.

22 15. During the liability period, due to the demands of work shifts, Plaintiff and Non-
23 Exempt Employees did not receive a lawful minimum ten (10) minute rest period for every four
24 hours worked or major fraction thereof. Nor were they compensated one (1) hour of pay at their
25 regular rate of compensation for each workday that rest periods were not provided, in violation of
26 California labor laws, regulations, and IWC Wage Orders.

27 16. Defendants failed to pay Plaintiff and Non-Exempt Employees all earned wages in
28

1 a timely manner; nor have they paid, upon or after termination, all compensation due, including
2 but not limited to all wages owed and compensation for having failed to properly provide rest
3 periods and meal periods.

4 17. Defendants also failed to maintain accurate itemized records reflecting total hours
5 worked and have failed to provide Plaintiff and Non-Exempt Employees with accurate itemized
6 wage statements reflecting total hours worked and appropriate rates of pay.

7 18. During the liability period, Plaintiff and Non-Exempt Employees were required to
8 drive their personal vehicle to other store locations without reimbursement for mileage or fuel.

9 19. Upon information and belief, during the relevant period, Defendants employed over
10 one hundred (100) such employees in California as managers.

11 20. Plaintiff and Class Members all times pertinent hereto, have been non-exempt
12 employees within the meaning of the California Labor Code, and the implementing rules and
13 regulations of the IWC California Wage Orders.

14 15 V.

16 CLASS ACTION ALLEGATIONS

17 21. Plaintiff seeks to represent a Class comprised of and defined as: All persons who
18 are or were employed by Defendants in the state of California as non-exempt employees and who
19 occupied positions of Manager/assistant manager and similar position within four (4) years prior
20 to the date this lawsuit is filed (“liability period”) until resolution of this lawsuit (collectively
21 referred to as the “Class” or “Class Members”).

22 22. Plaintiff also seeks to represent Subclasses comprised of and defined as:

23 a. All Non-Exempt Employees employed by Defendants in California as
24 Manager/assistant manager within the liability period who were not accurately paid all lawful
25 wages, including minimum wages, for all hours worked;

26 b. All Non-Exempt Employees employed by Defendants in California as
27 Manager/assistant manager within the statutory liability period who were not provided a
28 compliant thirty (30) minute uninterrupted meal period by the end of the fifth hour when they

1 worked over five hours in a shift and who were not provided a similar second uninterrupted meal
2 period by the end of the tenth when they worked over ten hours in a shift;

3 c. All Non-Exempt Employees employed by Defendants in California as
4 Manager/assistant manager within the liability period who were not provided a minimum ten
5 (10) minute rest period for every four (4) hours, or major fraction thereof, worked per day and
6 not provided compensation in lieu thereof;

7 d. All Non-Exempt Employees employed by Defendants in California as
8 Manager/assistant manager within the liability period who were not timely paid all wages owed
9 upon the termination of their employment;

10 e. All Non-Exempt Employees employed by Defendants in California as
11 Manager/assistant manager within the liability period who were not provided with accurate and
12 complete itemized wage statements; and

13 f. All Non-Exempt Employees employed by Defendants in California as
14 Manager/assistant manager within the liability period and were not indemnified for expenses
15 incurred in direct consequence of the discharge of their duty.

16 23. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
17 or modify the class description with greater specificity or further division into subclasses or
18 limitation to particular issues.

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

22 **A. Numerosity**

23 25. The potential members of the Class as defined are so numerous that joinder of all
24 the members of the Class is impracticable. While the precise number of Non-Exempt Employees
25 has not been determined at this time, Plaintiff is informed and believes that Defendants currently
26 employ, and/or during the relevant time period employed, approximately over 100 Non-Exempt
27 Employees in California who are or have been affected by Defendants' unlawful practices as
28 alleged herein.

1 **B. Commonality**

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

- 5 i. Whether Defendants violated Labor Codes sections 200, 1194, and 1197
6 applicable IWC Wage Orders by failing to pay all earned wages, including minimum
7 wages to for time spent in non-driving duties during each work shift;
- 8 ii. Whether Defendants violated sections 226.7, 512 of the Labor Code and
9 applicable IWC Wage Order by failing to provide the statutory thirty (30) minute meal
10 periods to Non-Exempt Employees on days in which they worked in excess of five (5)
11 hours and failing to compensate said employees one-hour wages in lieu of meal periods
12 and failing to provide similar statutory meal period and compensation when they worked
13 in excess of ten (10) hours in a shift;
- 14 iii. Whether Defendants violated Labor Code section 226.7 and applicable IWC
15 Wage Orders by failing to authorize and permit minimum ten (10) minute rest periods to
16 Non-Exempt Employees for every four hours or major fraction thereof worked and
17 failing to compensate said employees one (1) hours wages in lieu of rest periods;
- 18 iv. Whether Defendants violated sections 201-203 of the Labor Code and applicable
19 IWC Wage Orders by failing to pay all earned wages and/or premium wages due and
20 owed at the time that any Non-Exempt Employees' employment with Defendants
21 terminated;
- 22 v. Whether Defendants violated section 226 of the Labor Code and applicable IWC
23 Wage Orders by failing to, among other violations, maintain accurate records of, among
24 others, Non-Exempt Employees' earned wages, work periods, meal periods and
25 deductions; and
- 26 vi. Whether Defendants violated section 2802 of the Labor Code and applicable IWC
27 Wage Orders by failing to indemnify Non-Exempt Employees for expenses incurred in
28 direct consequence of the discharge of their duty.

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33. As alleged herein, Defendants failed to pay Plaintiff and Class Members for the 15-60 minute “off the clock” daily phone calls they engaged in with managers and employees.

34. As a result of Defendants unlawful acts, Plaintiff and Class Members were deprived of compensation for all earned 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.

35. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

Second Cause of Action

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

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

37. As alleged herein, Defendants' failure to provide thirty (30) minute uninterrupted meal periods by the end of the fifth hour for days which Plaintiff and Class Members worked in excess of five (5) hours and similar meal periods for days Plaintiff and Class Members worked in excess of ten (10) hours and failing to provide compensation for such statutorily non-compliance, they violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

38. As a result of Defendants unlawful acts, Plaintiff and Class Members were deprived of premium wages and are entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

39. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

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

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

41. As alleged herein, Defendants' failure to authorize and permit a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked per day by Plaintiff and Class Members, and failing to provide compensation for such non-provided rest periods, as alleged above, they willfully violated the provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

42. As a result of Defendants unlawful acts, Plaintiff and Class Members were deprived of premium wages, and are entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

43. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

Fourth Cause of Action
Failure to Timely Pay Wages Due at Termination
Lab. Code §§ 201-203, IWC Wage Orders)
(Against All Defendants)

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

45. 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.

1 46. Plaintiff and Class Members are entitled to compensation for all forms of wages
2 earned, including compensation for all hours worked and for non-provided rest and meal periods,
3 but to date have not received such compensation therefore entitling them Labor Code section 203
4 penalties.

5 47. More than 30 days have passed since Plaintiff and Class Members have left
6 Defendants' employ, and on information and belief, have not received payment pursuant to Labor
7 Code §203. As a consequence of Defendants' willful conduct in not paying all earned wages,
8 Plaintiff and Class Members are entitled to 30 days' wages as a penalty under Labor Code section
9 203 for failure to pay legal wages.

10 48. WHEREFORE, Plaintiff and Class Members request relief as described herein and
11 below.

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13 **Fifth Cause of Action**
14 Knowing and Intentional Failure to Comply with Itemized Employee
15 Wage Statement Provisions
16 (Lab. Code § 226, IWC Wage Orders)
17 (Against All Defendants)

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

20 50. Section 226(a) of the California Labor Code requires Defendants to furnish Plaintiff
21 and Class Members an accurate itemized statement showing, amongst other information, gross
22 wages, net wages and total hours worked. IWC Wage Orders require Defendants to furnish similar
23 itemized statement indicating deductions, reimbursements, and to accurately report total hours
24 worked by Plaintiff and Class Members.

25 51. Defendants violated Section 226 and IWC Orders by failing to provide Plaintiff and
26 Class Members with accurate itemized statement showing the net wages earned for regular and
27 overtime hours worked.
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1 52. Defendant's violations prevented Plaintiff and Class Members from the full
2 compensation to which they were entitled under applicable provisions of the California Labor
3 Code and applicable IWC Wage Orders.

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

6 54. WHEREFORE, Plaintiff and Class Members request relief as described herein and
7 below.

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9 **Sixth Cause of Action**
10 Failure to Indemnify Employees for Expenditures
11 (Lab. Code § 2802)
12 (Against All Defendants)

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

15 56. As set forth above, Section 2802 of the California Labor Code requires
16 Defendants to indemnify employees for all necessary expenditures incurred in direct consequence
17 of the discharge of his duties.

18 57. Defendants violated Section 2802 by, among other things, failing to indemnify
19 Plaintiff and Class Members for expenditures incurred when driving their personal vehicle to
20 and from Defendants store locations without compensation for mileage or fuel.

21 58. As a result, Plaintiff and Class Members have incurred expenditures in amounts to
22 be determined at trial.

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

25 **Seventh Cause of Action**
26 Violation of Unfair Competition Law
27 (Bus. & Prof. Code, §§ 17200-17208)
28 (Against All Defendants)

60. Business & Professions Code Section 17200 provides:

1 As used in this chapter, unfair competition shall mean and include any ***unlawful, unfair***
2 or fraudulent business act or practice and unfair, deceptive, untrue or misleading
3 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.)

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

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

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

11 63. As a direct and proximate result of the unfair business practices of Defendants, and
12 each of them, Plaintiff and Class Members are entitled to restitution of all wages which have been
13 unlawfully withheld as a result of the business acts and practices described herein.

14 64. WHEREFORE, Plaintiff and Class Members request relief as described herein and
15 below.

16 VII.

17 PRAYER

18 WHEREFORE, Plaintiff prays for judgment as follows:

- 19 1. That the Court determine that this action may be maintained as a class action;
- 20 2. For compensatory damages in an amount according to proof with interest thereon;
- 21 3. For economic and/or special damages in an amount according to proof with interest
22 thereon;
- 23 4. For premium wages pursuant to Labor Code §§226.7 and 512;
- 24 5. For premium pay and penalties pursuant to Labor Code §§203, 226;
- 25 6. For pay, penalties, and the like for violating Labor Code §2802;
- 26 7. For attorneys' fees, interests, and costs of suit under Labor Code §§226, 1194; and
- 27 8. For further justifiable relief the Court deems proper.
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Dated: December 21, 2020

F. B. Jewell

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