

FILED
Superior Court Of California,
Sacramento
02/18/2022
reanmiguel
By _____, Deputy
Case Number:
34-2022-00313411

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JERMAINE HINES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HUMANO LLC, a California limited
liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 34-2022-00313411

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE §§
510, 558, and 1194;
- (2) VIOLATION OF LABOR CODE § 226(a);
- (3) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, ET SEQ
- (4) VIOLATION OF LABOR CODE § 2698,
ET SEQ

DEMAND OVER \$25,000.00

BY FAX

Plaintiff Jermaine Hines (“Plaintiff”), hereby submits this First Amended Class and Representative Action Complaint against Defendant Humano LLC (“Defendant”) and Does 1-50 (hereinafter collectively referred to as “Defendants”), on behalf of himself and the class of all other similarly situated current and former employees of Defendant for all damages and penalties arising from Defendant’s violations of the California Labor Code as follows:

INTRODUCTION

1. This class action is within the Court’s jurisdiction under California Labor Code sections 201, 202, 203, 226(a), 510, 558, 1194 and 2698 *et seq*, Business and Professions Code section 17200 *et seq*. (the “UCL”) and the California Industrial Welfare Commission’s (“IWC”) Wage Orders.

2. This Complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code against employees of Defendant.

3. Plaintiff is informed and believes and based thereon alleges that Defendants jointly and severally have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees by: a) failing to properly calculate the regular rate of pay for purposes of paying overtime wages; b) failing to provide accurate itemized wage statements; and c) failing to pay all final wages upon separation of employment.

4. Plaintiff is informed and believes and based thereon alleges that Defendants have engaged in, among other things a system of willful violations of the California Labor Code and applicable IWC Wage Orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

5. The policies, practices and customs of Defendants described above and below have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the California Labor Code and the California Business and Professions Code.

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7. Venue is proper in Sacramento County because Defendant maintains operations in Sacramento, California.

8. Plaintiff was employed during the approximate period of September 19, 2021, to October 27, 2021. Throughout his employment with Defendant, Plaintiff was a non-exempt, hourly employee.

10. Plaintiff is informed and believes and based thereon alleges that Defendant Humano LLC was and is a California limited liability company that does business in California, including in Sacramento County.

12. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code sections 201, 202, 203, 226(a), 510, 558, 1194 and 2698 *et seq.*, the UCL and the applicable IWC Wage Orders.

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1 employment practices, wrongs and injuries complained of herein.

2 14. At all times herein mentioned, each of said Defendants participated in the doing
3 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
4 Defendants, and each of them, were the agents, servants and employees of each of the other
5 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
6 acting within the course and scope of said agency and employment.

7 15. Plaintiff is informed and believes and based thereon alleges that at all times
8 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
9 joint venturer of, or working in concert with each of the other co-defendants and was acting
10 within the course and scope of such agency, employment, joint venture, or concerted activity.
11 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
12 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
13 Defendants.

14 16. At all times herein mentioned, Defendants, and each of them, were members of,
15 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
16 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

17 17. At all times herein mentioned, the acts and omissions of various Defendants, and
18 each of them, concurred and contributed to the various acts and omissions of each and all of the
19 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
20 herein mentioned, Defendants, and each of them, ratified each and every act or omission
21 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
22 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
23 the damages as herein alleged.

24 **CLASS ACTION ALLEGATIONS**

25 18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
26 California Code of Civil Procedure section 382, of the following class: All current and former
27 non-exempt employees of Defendant who performed work for Defendant in the State of
28 California, and while working in California earned non-discretionary incentive wages, including

1 but not limited to bonus incentives, performance incentives and/or per diems, and overtime
2 wages during the same workweek at any time between January 3, 2018, through the present (the
3 “Class” or “Class Members”).

4 **19. Numerosity and Ascertainability:** The members of the Class are so numerous
5 that joinder of all members would be impractical, if not impossible. The identity of the members
6 of the Class is readily ascertainable by review of Defendant’s records, including payroll records.
7 Plaintiff alleges that Defendant: (a) failed to pay employees overtime wages at the correct regular
8 rate of pay that included all non-discretionary remuneration, in violation of Labor Code sections
9 510, 558 and 1194; (b) failed to provide accurate, itemized wage statements, in violation of
10 Labor Code section 226(a); and (c) failed to pay final wages in a timely manner to separated
11 employees as a result of the underpayment of overtime wages, in violation of Labor Code
12 sections 201, 202 and 203.

13 **20. Adequacy of Representation:** The named Plaintiff is fully prepared to take all
14 necessary steps to represent fairly and adequately the interests of the Class defined above.
15 Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the Class and
16 individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class
17 actions in the past and currently have a number of wage-and-hour class actions pending in
18 California courts.

19 **21. Common Question of Law and Fact:** There are predominant common questions
20 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
21 concerning Defendant’s policy and practice of: (a) failing to pay employees overtime wages at
22 the correct regular rate of pay that included all non-discretionary remuneration, in violation of
23 Labor Code sections 510, 558 and 1194; (b) failing to provide accurate, itemized wage
24 statements, in violation of Labor Code section 226(a); and (c) failing to pay final wages in a
25 timely manner to separated employees as a result of the underpayment of overtime wages, in
26 violation of Labor Code sections 201, 202 and 203.

27 **22. Typicality:** The claims of Plaintiff are typical of the claims of all members of the
28 Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical

1 manner as the Class Members. As with other non-exempt employees, Plaintiff earned non-
2 discretionary incentive pay, including but not limited to bonus incentives, performance
3 incentives and per diems. However, the non-discretionary wages were not factored into the
4 regular rate of pay for the purposes of paying overtime wages. As such, Plaintiff is owed
5 additional overtime pay based on the correct, higher regular rate of pay. Plaintiff did not receive
6 payment of all earned wages upon separation of employment due to the underpayment of
7 overtime wages.

8 23. Furthermore, as a result of the underpayment of overtime wages, whenever
9 overtime and non-discretionary incentive pay was earned during the same workweek, the
10 corresponding wage statement failed to identify the accurate rates of pay for such overtime
11 wages and the accurate gross and net wages earned. Accordingly, Plaintiff is a member of the
12 Class and has suffered the alleged violations of California Labor Code sections 201, 202, 203,
13 226(a), 510, 558 and 1194, and the UCL.

14 24. The California Labor Code and upon which Plaintiff bases these claims is broadly
15 remedial in nature. These laws and labor standards serve an important public interest in
16 establishing minimum working conditions and standards in California. These laws and labor
17 standards protect the average working employee from exploitation by employers who may seek
18 to take advantage of superior economic and bargaining power in setting onerous terms and
19 conditions of employment.

20 25. The nature of this action and the format of laws available to Plaintiff and
21 members of the Class identified herein make the class action format a particularly efficient and
22 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
23 file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable
24 advantage since it would be able to exploit and overwhelm the limited resources of each
25 individual Plaintiff with Defendant's vastly superior financial and legal resources. Requiring
26 each Class member to pursue an individual remedy would also discourage the assertion of lawful
27 claims by employees who would be disinclined to file an action against their former and/or
28 current employer for real and justifiable fear of retaliation and permanent damage to their careers

1 at subsequent employment.

2 26. The prosecution of separate actions by the individual class members, even if
3 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
4 to individual Class members against Defendant and which would establish potentially
5 incompatible standards of conduct for Defendant, and/or (b) adjudications with respect to
6 individual Class members which would, as a practical matter, be dispositive of the interest of the
7 other Class members not parties to the adjudications or which would substantially impair or
8 impede the ability of the Class members to protect their interests. Further, the claims of the
9 individual members of the Class are not sufficiently large to warrant vigorous individual
10 prosecution considering all of the concomitant costs and expenses.

11 27. Such a pattern, practice and uniform administration of corporate policy regarding
12 illegal employee compensation described herein is unlawful and creates an entitlement to
13 recovery by the Plaintiff and the Class identified herein, in a civil action, for unpaid wages,
14 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
15 according to the mandate of California Labor Code sections 201, 202, 203, 226(a), 510, 558 and
16 1194, the applicable IWC Wage Orders and Code of Civil Procedure section 1021.5.

17 28. Proof of a common business practice or factual pattern, which the named Plaintiff
18 experienced and is representative of, will establish the right of each of the members of the Class
19 to recovery on the causes of action alleged herein.

20 29. The Class is commonly entitled to a specific fund with respect to the
21 compensation illegally and unfairly retained by Defendant. The Class is commonly entitled to
22 restitution of those funds being improperly withheld by Defendant. This action is brought for the
23 benefit of the entire class and will result in the creation of a common fund.

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE §§ 510, 558 and 1194**

26 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

27 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
28 though fully set forth herein.

1 31. This cause of action is brought pursuant to Labor Code sections 510, 558 and
2 1194, which require employers to pay employees overtime at a rate of one and one-half the
3 employee's regular rate of pay for any work in excess of eight hours in a workday or forty hours
4 in a workweek.

5 32. Defendant, as a matter of policy and practice, failed to pay Plaintiff and the Class
6 overtime pay at the correct, higher regular rate of pay, in violation of Labor Code sections 510,
7 558 and 1194. Specifically, Defendant did not factor non-discretionary incentive compensation,
8 including but not limited to bonus incentives, performance incentives and per diems, into the
9 "regular rate" when calculating overtime pay. As a result of such policy and practice, Defendant
10 regularly failed to pay Plaintiff and the Class proper overtime pay.

11 33. Plaintiff is informed and believes and based thereon alleges that Defendant
12 willfully failed to pay Plaintiff and the Class overtime wages due and owing to them. Plaintiff is
13 informed and believes and based thereon alleges that Defendant's willful and intentional failure
14 to provide overtime wages due and owing to Class Members resulted in continued payment of
15 wages up to thirty (30) days from the time the wages are due. Therefore, all members of the
16 Class who have separated from employment are entitled to compensation as per Labor Code
17 section 203.

18 34. Such a pattern, practice, and uniform administration of corporate policy regarding
19 illegal employee compensation as described herein is unlawful and creates an entitlement to
20 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
21 damages owed, including interest thereon, penalties, attorney's fees, and costs of suit according
22 to the mandate of California Labor Code sections 510, 558 and 1194.

23 **SECOND CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 226(a)**

25 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

26 35. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
27 though fully set forth herein.

28 36. Defendant failed in its affirmative obligation to provide accurate itemized wage

1 statements, in violation of Labor Code section 226(a).

2 37. Plaintiff and the Class were paid hourly. As such, the wage statements should
3 have reflected all applicable hourly rates in effect during the pay period and the accurate gross
4 and net wages earned. However, the wage statements provided to Plaintiff and the Class failed to
5 identify such information.

6 38. Defendant, as a matter of policy and practice, failed to pay Plaintiff and the Class
7 overtime pay at the correct, higher regular rate of pay. Specifically, Defendant did not factor
8 non-discretionary incentive compensation, including but not limited to bonus incentives,
9 performance incentives and per diems, into the “regular rate” when calculating overtime pay.
10 Consequently, during pay periods where an employee earned overtime and non-discretionary
11 incentive pay, the corresponding wage statement failed to identify the accurate rates of pay for
12 the overtime and the accurate gross/net wages earned during the pay period.

13 39. Such a pattern, practice and uniform administration of corporate policy as
14 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class, in
15 a civil action, for all damages or penalties pursuant to Labor Code section 226, including interest
16 thereon, attorneys’ fees, and costs of suit according to the mandate of California Labor Code
17 section 226.

18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

20 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

21 40. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
22 though fully set forth herein.

23 41. Defendant has engaged and continues to engage in unfair and unlawful business
24 practices in California by practicing, employing, and utilizing the employment practices outlined
25 above, including by failing to pay employees overtime wages at the correct regular rate of pay
26 that included all non-discretionary remuneration, in violation of Labor Code sections 510, 558
27 and 1194.

28 42. Defendant’s utilization of such unfair and unlawful business practices constitutes

1 unfair and unlawful competition and provides an unfair advantage over Defendant's competitors.

2 43. Plaintiffs seek, individually and on behalf of other members of the Class, full
3 restitution of monies, as necessary and according to proof, to restore any and all monies
4 withheld, acquired and/or converted by the Defendant by means of the unfair practices
5 complained of herein.

6 **FOURTH CAUSE OF ACTION**

7 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

8 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

9 44. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
10 though fully set forth herein.

11 45. Plaintiff brings this cause of action for violation of the Private Attorneys General
12 Act, as a proxy for the State of California and in this capacity, seeks penalties on behalf of all
13 Aggrieved Employees from December 10, 2020, through the present for Defendant's violations
14 of Labor Code sections 201, 202, 203, 226(a), 510, 558 and 1194, arising from Defendant's
15 policy and practice of: (a) failing to pay employees overtime wages at the correct regular rate of
16 pay that included all non-discretionary remuneration, in violation of Labor Code sections 510,
17 558 and 1194; (b) failing to provide accurate, itemized wage statements, in violation of Labor
18 Code section 226(a); and (c) failing to pay final wages in a timely manner to separated
19 employees as a result of the underpayment of overtime wages, in violation of Labor Code
20 sections 201, 202 and 203.

21 46. Defendant, as a matter of policy and practice, failed to pay Plaintiff and
22 Aggrieved Employees overtime pay at the correct, higher regular rate of pay, in violation of
23 Labor Code sections 510, 558 and 1194. Specifically, Defendant did not factor non-discretionary
24 incentive compensation, including but not limited to bonus incentives, performance incentives
25 and per diems, into the "regular rate" when calculating overtime pay. As a result of such policy
26 and practice, Defendant regularly failed to pay Plaintiff and Aggrieved Employees proper
27 overtime pay. Furthermore, Defendant failed to pay Plaintiff and Aggrieved Employees overtime
28 wages due and owing to them, including at the time of the separation of employment.

47. As a result of the underpayment of overtime wages, during pay periods where Plaintiff and Aggrieved Employees earned overtime and non-discretionary incentive pay, the corresponding wage statement failed to identify the accurate rates of pay for the overtime and the accurate gross/net wages earned during the pay period. Thus, Defendant failed to provide Plaintiff and Aggrieved Employees with accurate itemized wage statements, in violation of Labor Code section 226(a).

48. On or about December 10, 2021, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code sections 201, 202, 203, 226(a), 510, 558 and 1194, pursuant to Labor Code section 2698, *et seq.* To date, the LWDA has not responded to Plaintiff’s written notice.

49. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendant's violation of Labor Code section 201, 202, 203, 226(a), 510, 558 and 1194, for the time period described above, on behalf of himself and other Aggrieved Employees

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others that this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code sections 201, 202, 203, 510, 558 and 1194, and for costs and attorneys' fees pursuant to Labor Code section 218.5;
5. Upon the Second Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code section 226(a), and for costs and attorneys' fees;
6. Upon the Third Cause of Action, for restitution to Plaintiff and other similarly affected members of the general public of all funds unlawfully acquired by Defendant by means

1 of any acts or practices declared by this Court to be in violation of Business & Professions Code
2 section 17200 *et seq.*, and for costs and attorneys' fees;

3 7. Upon the Fourth Cause of Action, for civil penalties according to proof pursuant
4 to Labor Code section 2698 *et seq.*, and for costs and attorneys' fees;

5 8. On all causes of action, for attorneys' fees and costs as provided by California
6 Labor Code sections 201, 202, 203, 218.5, 226, 510, 558, 1194 and 2699, and Code of Civil
7 Procedure section 1021.5; and

8 9. For such other and further relief as the Court may deem just and proper.
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10 DATED: February 18, 2022

DIVERSITY LAW GROUP, P.C.

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12 By: _____

Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff and the Class
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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On February 18, 2022, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES** on the interested parties in this action as follows:

 X BY MAIL: by placing _____ the original or X a true and correct copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the attached mailing list. I am readily familiar with the firm's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address above following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.

Olga R.

Olympia Tril