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Attorney for Plaintiff
Sheldon Huell

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHELDON HUELL, an individual,

Plaintiff,

vs.

BEVMO!, Inc., a Delaware corporation, and
DOES 1-100, inclusive,

Defendants.

Case No.: 2:22-cv-01394-WBS-AC

*[Originally Sacramento County Superior
Court Case No. 34-2022-00322210]*

FIRST AMENDED COMPLAINT FOR:
1. VIOLATION OF CAL. GOV. CODE §
12940
2. VIOLATION OF 42. U.S.C.A. § 2000e-2 et
seq
3. VIOLATION OF CAL. LAB. CODE §
1197.5
4. PRIVATE ATTORNEY GENERAL ACT
(PAGA) CLAIM FOR CIVIL PENALTIES
(CAL. LAB. CODE § 2698 et seq.)

JURY TRIAL DEMANDED

Action Filed: June 21, 2022
Trial Date: Not Set

Plaintiff Sheldon Huell (hereinafter “Huell”) brings this action against Defendants BevMo!, Inc., a Delaware corporation (hereinafter “BevMo!”); and DOES 1 through 100, inclusive, (collectively “Defendants”) and allege as follows:

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I. INTRODUCTION

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2 1. Plaintiff brings this suit against Defendant for violations of the Fair Employment
3 and Housing Act under Cal. Gov. Code § 12940, Title VII under 42 U.S.C.A. § 2000e-2 *et seq.*, the
4 Equal Pay Act under Cal. Lab. Code § 1197.5, and under the Private Attorney General Act under
5 Cal. Lab. Code § 2698, *et seq.*

6 2. Plaintiff is an African American man, employed at Bevmo! owned and operated by
7 Defendants.

8 3. Plaintiff has worked for BevMo! for over three years at two different locations.
9 Plaintiff has performed all work given to him as a cashier and a manager throughout his
10 employment at BevMo!

11 4. Plaintiff has suffered from wage discrimination based on race and color by being
12 paid \$15.40 while four other managers doing substantially similar work are being paid between
13 \$17.50–\$19.00.

II. JURISDICTION AND VENUE

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15 5. This case is properly before this court, pursuant to 28 U.S.C. § 1331, because it
16 involves a claim for relief arising out of federal law.

17 6. Venue is proper in the United States District Court, Eastern District of California,
18 because it embraces the California Superior Court, County of Sacramento, where this case was
19 originally filed, and because Plaintiff resides here, Defendant conducts business here, and a
20 substantial part of the events giving rise to the claims occurred in this district.

III. PARTIES

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22 7. Plaintiff Huell is an individual domiciled in the State of California.

23 8. Defendant BevMo! is a Delaware corporation registered as a foreign business entity
24 in the State of California.

25 9. Plaintiff is unaware of the true identities of those Defendants sued herein as DOES
26 1 through 100, inclusive, and therefore sue such Defendants by the fictitious names. Plaintiff is
27 informed and believes and thereon alleges that each of the fictitiously named Defendants is
28 responsible in some manner for the injuries and damages suffered by Plaintiff. Plaintiff will seek

1 leave of Court to amend this Complaint to show the true names and capacities of the fictitiously
2 named Defendants if and when they have been ascertained.

3 **I. FACTUAL ALLEGATIONS**

4 1. Plaintiff is an African American man who worked for two BevMo! locations:
5 Midtown Sacramento (1700 J Street) and Natomas (3678 N. Freeway Blvd.).

6 2. Plaintiff worked for the Midtown location from April 2018 to June 2020 as a cashier.

7 3. While working at the Midtown location, Plaintiff asked why he was never
8 considered as a manager. The general manager told Plaintiff that he was not aware that Plaintiff
9 was interested in being a manager.

10 4. Plaintiff expressed concern of the lack of African American managers in the
11 Sacramento BevMo! locations. Plaintiff was told that there was only one African American
12 manager in a San Francisco location.

13 5. Plaintiff earned \$12 an hour without any pay raises as a cashier.

14 6. In June 2020, Plaintiff transferred to the Natomas location and was made manager.
15 Plaintiff earned \$14.90.

16 7. By March 2021, Plaintiff earned \$15.40 after receiving 40 cents raise.

17 8. Plaintiff expressed concerns that he should be receiving \$1 more as a manager.

18 9. Plaintiff learned that four other managers received between \$17.50–\$19.00 while
19 performing substantially similar work and within the same hours. The managers also had similar
20 experiences to Plaintiff as two of the managers were hired after and trained by Plaintiff.

21 10. These four managers had lighter skin tone and were “white-passing.”

22 11. Plaintiff asked Human Resources about the pay discrepancy and was told that
23 discussing wages was “unprofessional.”

24 12. Human Resources began an investigation shortly after.

25 13. Plaintiff informed Human Resources that one of his managers was racist, but was
26 told that they could do nothing about it.

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1 14. After Plaintiff brought concerns to Human Resources, he noticed he received more
2 write-ups or other disciplinary actions and was given additional tasks other managers were not
3 asked to do.

4 15. Plaintiff no longer works for Bevmol!

5 16. Within the time provided by law, Plaintiff filed a complaint with the Department of
6 Employment and Fair Housing to satisfy administrative requirements and received a right-to-sue
7 letter.

8 **FIRST CAUSE OF ACTION**

9 Violations of the Fair Employment and Housing Act under Cal. Gov. Code § 12940

10 17. Plaintiff incorporates by reference the allegations in the foregoing paragraphs of this
11 Complaint as if fully set forth herein.

12 18. Plaintiff is an “employee” as defined under Cal. Gov. Code § 12926.

13 19. Defendant is an “employer” as defined under Cal. Gov. Code § 12926.

14 20. Plaintiff is a member of a protected class as an African American man covered by
15 Cal. Gov. Code § 12940.

16 21. Plaintiff has experienced adverse employment action under wage discrimination
17 because he was paid at a lower rate compared to similarly situated manager who have a lighter skin
18 tone or are “white-passing.”

19 22. Plaintiff worked the same hours doing substantially similar work with the same
20 experience compared to the other manager without any other causal link for the pay discrepancy,
21 thereby demonstrating Defendants’ discriminatory animus towards Plaintiff.

22 23. As a proximate result of Defendants’ knowing, willful, and intentional
23 discrimination against Plaintiff, Plaintiff is experiencing substantial losses in earnings and other
24 employment benefits given.

25 WHEREFORE, Plaintiff requests the court grant relief against Defendants as follows:

- 26 i. Award compensatory damages to Plaintiff in an amount to be determined at trial;
27 ii. Award punitive damages to Plaintiff in an amount to be determined at trial;
28 iii. Award pre-judgment and post-judgment interest, as provided by law;

- iv. Award reasonable attorney's fees;
- v. For the costs of suit incurred herein; and
- vi. For other and further legal and equitable relief as this Court deems just and proper.

SECOND CAUSE OF ACTION

Violation of Title VII under 42 U.S.C.A. § 2000e-2 *et seq.*

24. Plaintiff incorporates by reference the allegations in the foregoing paragraphs of this Complaint as if fully set forth herein.

25. Defendant is an "employer" under 42 U.S.C.A. § 2000e(b).

26. Plaintiff is an African American "employee" under 42 U.S.C.A. § 2000e(f) experiencing discrimination on the basis of race or color.

27. Plaintiff is being paid \$15.40 as a manager for Bevmo! while the other four managers are being paid \$17.50–\$19.00 for performing substantially similar work with the similar work experience.

28. Defendant has not provided Plaintiff with any legitimate, non-discriminatory reason for the pay discrepancy, thereby demonstrating disparate treatment between Plaintiff and the other four managers.

29. As a result of Defendant's adverse employment action, Plaintiff is suffering from substantial loss of earnings and other employment benefits.

WHEREFORE, Plaintiff requests the court grant relief against Defendants as follows:

- i. Award compensatory damages to Plaintiff in an amount to be determined at trial;
- ii. Award pre-judgment and post-judgment interest, as provided by law;
- iii. Award reasonable attorney's fees;
- iv. For the costs of suit incurred herein; and
- v. For other and further legal and equitable relief as this Court deems just and proper.

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THIRD CAUSE OF ACTION

Violation of Equal Pay Act under Cal. Lab. Code § 1197.5

30. Plaintiff incorporates by reference the allegations in the foregoing paragraphs of this Complaint as if fully set forth herein.

31. Plaintiff, an African American manager for Bevmo!, is being paid substantially less compared to other similarly-situated managers.

32. Plaintiff is being paid substantially less compared to other similarly situated managers as an African American manager.

33. Plaintiff earns \$15.40 while the other managers, who have a lighter skin tone and white passing, receive \$17.50–\$19.00 without any other bona fide reason.

34. Plaintiff performs substantially similar work as the other managers who had the same or less experience with similar duties.

35. Defendant cannot provide a more bona fide reason for the pay discrepancy because Plaintiff and the four other managers have similar experiences, seniority, and do substantially the same work.

WHEREFORE, Plaintiff requests the court grant relief against Defendants as follows:

- i. Award wages owed with interest in an amount equal to wages unlawfully paid.
- ii. Award liquidated damages in an amount equal to wages unlawfully paid.
- iii. Award compensatory damages to Plaintiff in an amount to be determined at trial;
- iv. Award punitive damages to Plaintiff in an amount to be determined at trial;
- v. Award pre-judgment and post-judgment interest, as provided by law;
- vi. Award reasonable attorney's fees;
- vii. For the costs of suit incurred herein;
- viii. For other and further legal and equitable relief as this Court deems just and proper.

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FOURTH CAUSE OF ACTION

Private Attorney General Act under Cal. Lab. Code § 2698, *et seq.*

36. Plaintiff incorporates by reference the allegations in the foregoing paragraphs of this Complaint as if fully set forth herein.

37. Plaintiff alleges that BevMo! Violated the California Labor Code, California Government Code, and Title VII under 42 U.S.C.A. § 2000e-2 *et seq.* by discriminatorily paying Plaintiff less money for performing substantially similar work as other managers employed by Defendant.

38. On August 30, 2022, Plaintiff gave written notice of BevMo!’s violations of law as alleged in this complaint to the Labor and Workforce Development Agency (“LWDA”) via online filing, and to Defendant by way of Stipulation to amend his complaint on September 8, 2022. Although Plaintiff did not strictly adhere to the notice requirements of PAGA, the Court has subsequently granted Plaintiff’s Motion for Leave to File an Amended Complaint, finding no undue prejudice resulting from the procedural error.

39. Plaintiff is an aggrieved employee as defined by Cal. Lab. Code § 2699(c) as he was employed by BevMo! During the applicable statutory period and suffered injury as a result of BevMo!’s violations of state and federal law. Accordingly, Plaintiff seeks to recover on behalf of the State of California, as well as himself and all other current and former aggrieved employees of BevMo! Who have worked in California, the civil penalties provided by PAGA, plus reasonable attorney’s fees and costs.

WHEREFORE, Plaintiff requests the court grant relief against Defendants as follows:

- i. Award civil penalties;
- ii. Award other penalties and fines permitted by law;
- iii. Award reasonable attorney’s fees;
- iv. For the costs of suit incurred herein; and
- v. For other and further legal and equitable relief as this Court deems just and proper.

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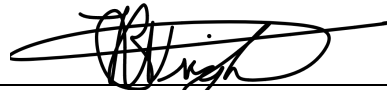
JURY DEMAND

Plaintiff requests a jury on all causes of action triable by jury.

DATED: November 25, 2022

Wright Law Corporation

By: _____



Ryan C. Wright
Attorney for Plaintiff
Sheldon Huell