

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KELVIN BLEDSOE,

Plaintiff,

v.

SAAQIN, INC.,

Defendant.

No.

**COMPLAINT FOR VIOLATION OF
FAIR LABOR STANDARDS ACT**

JURY TRIAL DEMANDED

Plaintiff Kelvin Bledsoe (“Plaintiff”), by his undersigned counsel, brings claims individually and as a collective action pursuant to the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, and as a class action pursuant to Fed. R. Civ. P. 23 for violation of the New York Labor Law (“NYLL”), against defendant Saaqin, Inc. (“Defendant” or “Saaqin”) and alleges as follows:

NATURE OF THE ACTION

1. This is a collective action under the FLSA and a class action under the NYLL against Defendant for failure to pay overtime to Plaintiff and all warehouse employees employed by Defendant (the “Employees” or the “Class”).

2. Defendant operates an online company, the Body Butter Store, that sells “Organic Halal Products” through its own website and through Amazon.com, among other online retail outlets. Pursuant to a uniform policy, Defendant does not pay the Employees at overtime rates of 1.5 times their regular hourly rate for hours worked over 40 per week. Instead, Defendant pays the Collective at their regular hourly rate, in violation of the FLSA and the NYLL. Defendant

has repeatedly retaliated against, and discharged, Employees who have questioned Defendant's failure to pay the Employees at overtime rates.

JURISDICTION AND VENUE

3. This Court has jurisdiction over Plaintiff's FLSA claims pursuant to 28 U.S.C. §1331. This Court has jurisdiction over Plaintiff's New York Labor Law claims pursuant to 28 U.S.C. §1367.

4. Venue is proper in this District because a substantial part of the events giving rise to Plaintiff's claims occurred in this District, including but not limited to Plaintiff's employment by Defendant.

THE PARTIES

5. Plaintiff was employed as a warehouse worker by Defendant from January, 2014 through June, 2014. Plaintiff worked over 40 hours per week on a regular basis and was not paid at overtime rates of 1.5 times his hourly rate for hours worked in excess of 40 per week. Instead, Plaintiff was paid at his regular hourly rate for hours worked over 40. In his first month of employment, Plaintiff worked seven days a week and did not have a day off.

6. Defendant Saaqin, Inc. is a New York corporation, located at 110 New South Road, Hicksville, New York. Defendant operates an online store called the Body Butter Store, which is located at www.bodybutterstore.com. Defendant sells "Organic Halal" products directly through this website, as well as on Amazon.com and through multiple other online retail outlets. Pursuant to a uniform policy, Defendant does not pay the Employees at overtime rates of 1.5 times their hourly rate for hours worked over 40 per week. Instead, Defendant pays the Employees at their regular hourly rate, in violation of the FLSA and the NYLL. Defendant has

repeatedly retaliated against, and discharged, Employees who have questioned Defendant's failure to pay the Employees at overtime rates.

COLLECTIVE ALLEGATIONS

7. Plaintiff brings the First Cause of Action as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. §216(b) on behalf of himself and other similarly situated people (the "Collective"), which shall include:

All persons who work or worked for Defendant as warehouse employees from January 13, 2012 through the date the Court orders notice to be sent in accordance with Section 216(b) of the FLSA (the "FLSA Class Period").

8. Defendant is liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiff and the Collective. There are likely dozens of similarly situated current and former employees of Defendant who have been underpaid in violation of the FLSA and who would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join the present lawsuit. Those similarly situated employees are known to Defendant, are readily identifiable, and can be located through Defendant's records that Defendant is required to create and maintain under applicable federal and state law. Notice should be sent to the Collective pursuant to 29 U.S.C. §216(b).

CLASS ACTION ALLEGATIONS

9. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of the following class (the "Class"):

All persons in the State of New York who work or worked for Defendant as warehouse workers from January 13, 2009 through the date a judgment is entered in this action. Excluded from the Class is Defendant, and any corporations, partnerships or other entities affiliated with Defendant.

10. The members of the Class are so numerous that joinder of all members would be impracticable. Plaintiff estimates that there are more than 40 members of the Class.

11. Questions of law and fact are common to all the members of the Class that predominate over any questions affecting only individual members, including:

a. Whether Defendant failed to pay Plaintiff and the Class at overtime rates for hours worked over 40 per workweek;

b. Whether Defendant's conduct violated the NYLL;

c. Whether Defendants' conduct was willful and/or not in good faith;

d. Whether Plaintiff and the Class are entitled to liquidated damages; and

e. The amount by which Plaintiff and the Class were damaged.

12. The claims of Plaintiff are typical of the claims of the members of the Class. Plaintiff has no interests antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiff.

13. Plaintiff will protect the interests of the Class fairly and adequately, and Plaintiff has retained attorneys experienced in class action litigation.

14. A class action is superior to all other available methods for this controversy because:

a. The prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests;

b. The prosecution of separate actions by the members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, which would establish incompatible standards of conduct for Defendants;

c. Defendant acted or refused to act on grounds generally applicable to the Class; and questions of law and fact common to members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

d. Defendant's history of retaliation suggests that Employees who are currently employed by Defendant are likely to fear retaliation and/or the loss of their employment, and thus will likely not commence their own actions or assert FLSA claims as part of the Collective.

SUBSTANTIVE ALLEGATIONS

15. Plaintiff was employed by Defendant from January, 2014, through June, 2014. Throughout his employment, Plaintiff worked more than 40 hours per week.

16. Throughout his employment, Plaintiff was paid at his regular hourly rate, rather than at 1.5 times his hourly rate, for hours worked in excess of 40 in a work week.

17. In addition to Plaintiff, Defendant failed to pay all Employees—including non-exempt, hourly-paid managers—at overtime rates for hours worked in excess of 40 per work week at all times relevant to this action. On more than one occasion, when an Employee or group of Employees complained about Defendant's failure to comply with the FLSA and NYLL, Defendant retaliated against those Employees and they were immediately terminated.

COUNT I

Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*: Failure to Pay Overtime (Brought on Behalf of Plaintiff and the FLSA Collective)

18. Plaintiff incorporates and re-alleges all of the preceding paragraphs as if they were fully set forth herein.

19. During the FLSA Class Period, Plaintiff and others similarly situated were “employees” of Defendant within the meaning of the FLSA, 29 U.S.C. §203(e) and (g).

20. At all relevant times, Defendant has been an “employer” engaged in interstate “commerce” within the meaning of the FLSA, 29 U.S.C. §203.

21. At all relevant times, Defendant’s business has had annual gross revenues in excess of \$500,000.

22. Plaintiff consents in writing to be a party to this action pursuant to 29 U.S.C. §216(b). Plaintiff’s written consent is attached hereto as Exhibit A and incorporated by reference.

23. Defendant was required to properly pay Plaintiff and others similarly situated all wages due including applicable overtime wages for all hours worked in excess of 40 hours in a workweek.

24. During the FLSA Class Period, Defendant failed to pay Plaintiff and the Collective all wages due including overtime wages of not less than one and one-half times the regular rate of pay for each hour worked in excess of 40 hours in a workweek to which they were entitled under the FLSA, 29 U.S.C. §207.

25. Defendant’s violation of the overtime requirements of the FLSA was part of its regular business practice and constituted a pattern, practice, and/or policy.

26. As a result of Defendant's violations of the FLSA, Plaintiff and others similarly situated have suffered damages by being denied pay for all of their hours worked, by being denied overtime wages in accordance with the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages in an amount equal to their unpaid wages, prejudgment and post judgment interest, reasonable attorneys' fees, costs, and punitive damages pursuant to 29 U.S.C. §216(b).

27. Defendant's unlawful conduct, as described above, was willful and intentional and/or was not in good faith. Defendant knew or should have known that the practices complained of herein were unlawful. Defendant knew that Plaintiff and others similarly situated routinely worked in excess of forty hours per week and that Plaintiff and others similarly situated were not paid for all hours worked.

28. Defendant has not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff and others similarly situated.

29. Because Defendant's violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to the FLSA, 29 U.S.C. §255(a).

30. Plaintiff and the Collective seek to enjoin Defendant from its continuing violations of 29 U.S.C. §207.

COUNT II

New York Labor Law, Article 19: Failure to Pay Overtime (Brought on Behalf of Plaintiff and the Class)

31. Plaintiff incorporates and re-alleges all of the preceding paragraphs as if they were fully set forth herein.

32. Plaintiff and the Class were employees of Defendant within the meaning of

NYLL, Article 6, §190(2), and supporting New York regulations.

33. Defendant was an “employer” within the meaning of NYLL Article 6, §190(3), and any supporting regulations.

34. Defendant failed to pay Plaintiff and the Class overtime wages of not less than one and one-half times their regular rate of pay for each hour worked in excess of 40 hours in a workweek.

35. Defendant’s failure to pay Plaintiff and the Class overtime wages was willful and/or not in good faith within the meaning of NYLL, Article 19, §663. Defendant was aware of the requirements of the NYLL and continued to deprive Plaintiff and the Class of all wages owed.

36. Due to Defendant’s violations of the NYLL, Plaintiff and the Class are entitled to recover from Defendants their unpaid wages, liquidated damages, reasonable attorneys’ fees, costs, and pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant Plaintiff and the Class the following relief:

A. An order certifying the first Count as a collective action for the violations of the FLSA, as it pertains to the First claim under 29 U.S.C. §216(b) for the class of employees described herein and designating Plaintiff’s counsel as Class counsel;

B. An order certifying the second Count as a class action for violations of the NYLL under Federal Rule of Civil Procedure 23(a) and (b)(3) for the class of employees described herein, appointing Plaintiff as Class Representative, and appointing Plaintiff’s counsel as Class Counsel;

C. Award Plaintiff and the Class all statutory damages, compensatory damages, punitive damages, liquidated damages, pre-judgment interest, and post-judgment interest, statutory damages, and any other damages that may be just and proper;

D. Award Plaintiff and the Class their reasonable attorneys' fees, costs and expenses as authorized by law;

E. Enjoin Defendant from its continued violation of the FLSA and NYLL; and

F. Grant in favor of Plaintiff and the Class such other relief as may be just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

DATED: January 13, 2015

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EXHIBIT A

CONSENT TO BECOME PARTY PLAINTIFF

I hereby consent to be a party plaintiff in a lawsuit against Saaqin, Inc., and related entities and persons in order to seek redress for violation of the Fair Labor Standards Act, pursuant to 29 U.S.C. Section 216(b). I hereby designate Gardy & Notis, LLP to represent me in such a lawsuit.

Signature: Kevin Bledsoe

Full Name (Print): Kelvin Bledsoe