IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SCOTT LEE BRAUN, *et al.*, on behalf of himself and all others similarly situated,	:	CASE NO. 2:19-cv-05050-GCS-KAJ
	:	JUDGE GEORGE C. SMITH
Plaintiffs,	:	
v.	:	
	:	MAGISTRATE JUDGE
COULTER VENTURES, LLC, *DBA* ROGUE FITNESS, *et al.*,	:	KIMBERLY A. JOLSON
	:	JURY TRIAL DEMANDED
Defendants.	:	

FIRST AMENDED COLLECTIVE AND CLASS ACTION COMPLAINT

1. Plaintiff Scott Lee Braun, on behalf of himself and all similarly situated individuals, bring this collective and class action against Defendants Coulter Ventures, LLC, dba Rouge Fitness, and its owners and head managers, William "Bill" Henniger, its founder, and Caity Matter Henniger, Chief Sales Officer, for monetary, declaratory, and injunctive relief due to their willful failure to compensate employees for all hours worked and the correct amount of overtime pay in violation of the Federal Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. §§201, *et seq.*, The Ohio Minimum Fair Wage Standards Act ["the Ohio Wage Act"], O.R.C. §§4111.01., *4111.03 and 4111.10,* and the Ohio Prompt Pay Act ["the OPPA"] committed by only paying non-exempt employees in the warehouse, customer service, and manufacturing, including assembly or labor, departments for the scheduled time they worked and not for tasks necessary to their primary job duties which they were required to perform before and after their scheduled time and only paying employees in the events department a flat per diem amount while working at off-site events on behalf of Defendants regardless of the number of hours worked each day.

JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiffs' FLSA claim pursuant to 28 U.S.C. §§1331 (federal question) and 1337(a) (statutory regulation of commerce) and 29 U.S.C. §216(b).

3. This Court has supplemental jurisdiction over Plaintiffs' Ohio Wage Act and OPPA claims pursuant to 28 U.S.C. §1367.

4. Venue in this Court is proper pursuant to 28 U.S.C. §1391 and S.D. Ohio Civ. R. 82.1(b) because Plaintiffs employed by Defendants in Ohio performed their job duties for Defendant in the Eastern Division where Defendants regularly conduct business.

PARTIES

5. Plaintiff Scott Lee Braun ("Plaintiff Braun" or "Named Plaintiff") began working for Defendants in their assembly department on September 27, 2019, he later was moved to the warehouse department as a picker on October 15, 2019 and was employed in that department as of the filing of the Complaint. Plaintiff Braun is a resident of Columbus, Ohio (Franklin County). His consent to join as a plaintiff was filed as ECF #1-1.

6. At all times material to this First Amended Complaint, Defendant Coulter Ventures, LLC, *dba* Rouge Fitness ("Rogue Fitness" or collectively "Defendants"), was an Ohio limited liability company that manufactures and supplies fitness equipment locally and around the world, is headquartered in Columbus, Ohio (Franklin County), where it owns 43 acres of land and buildings, employs approximately 600 employees, and is a global leader in manufacturing and distribution, and can be served through its registered agent, Kevin M. Mueller, Esq., 545 E. 5th Avenue, Columbus, OH 43201.

7. Defendant William "Bill" Henniger ("Mr. Henniger" or collectively "Defendants") is the husband of Defendant Caity Matter Henniger and the majority owner and founder of Rouge Fitness, who, at all times material to this First Amended Complaint, acted directly or indirectly in the interest of Rouge Fitness in relation to its current and former non-exempt employees in the warehouse, customer service, and manufacturing, including assembly or labor, departments, and, despite both knowing that they were only being paid for the scheduled time they worked and not for tasks necessary to their primary job duties which were required to be performed before and after their scheduled time and being warned that such a practice violated the law, approved the practice continuing, exercising his power as a chief corporate officer with a significant ownership

interest in Rogue Fitness who controlled significant aspects of its day-to-day functions, including compensation policies and practices, to perpetuate the practice before this lawsuit was filed.

8. Defendant Caity Matter Henniger ("Ms. Henniger" or collectively "Defendants") is the wife of Mr. Henniger and an owner of Rouge Fitness, who, at all times material to this First Amended Complaint, acted directly or indirectly in the interest of Rouge Fitness in relation to its current and former non-exempt employees in the warehouse, customer service, and manufacturing, including assembly or labor, departments, and, despite both knowing that they were only being paid for the scheduled time they worked and not for tasks necessary to their primary job duties which were required to be performed before and after their scheduled time and being warned that such a practice violated the law, approved the practice continuing, exercising her power as a chief corporate officer with a significant ownership interest in Rogue Fitness who controlled significant aspects of its day-to-day functions, including compensation policies and practices, to perpetuate the practice before this lawsuit was filed.

DEFENDANTS' COMMON BUSINESS PRACTICES

9. Prior to this lawsuit, Defendants adhered throughout their operations to the common business practice of requiring non-exempt employees in their warehouse, customer service, and manufacturing divisions, like Plaintiff Braun and those similarly situated to him ("Named Plaintiff and Putative Plaintiffs"), to clock in before their scheduled shift up to thirty (30) minutes early and requiring them to perform necessary and important tasks which were integral and indispensable to their principal activities during that time.

10. Warehouse, customer service, and/or manufacturing division employees clocked in by holding up their ID badges to the time clocking device located at the front entryway of the building. Specifically, Defendants' common business practice required non-exempt employees in its warehouse, customer service, and/or manufacturing divisions, after clocking in, to engage in tasks that were necessary and indispensable to their primary jobs duties which included, but was not limited to the following:

A. in warehouse positions:

1. meet with their Team Leaders and/or Supervisors for their assignments/job locations, as they may work in a different area each day;
2. obtain their scanners, wrist bands, and handheld batteries for the scanners (often it takes a few additional minutes to find working batteries); and/or
3. obtain additional equipment, such as forklift or pallet jack ("lifts"), which is in a different area than the scanners and batteries;

B. in manufacturing, including assembly or labor positions:

1. meet with their Team Leaders and/or Supervisors for their assignments;
2. clean and prepare the machinery to ensure its safe and efficient operations; and/or
3. count pieces to ensure the requisite number was provided;

C. and in customer service positions:

1. meet with their Team Leaders and/or Supervisors for their assignments; and/or
2. prepare their working area and equipment for efficient and effective processing of telephone and email inquiries.

11. When the bell rings at the start of the shift, Named Plaintiff and Putative Plaintiffs must be at their assigned workstation, fully equipped and ready to work. If they are not at their assigned workstation at the sounding of the bell, Defendants consider them late even though they clocked in prior to their shift and they are subjected to disciplinary action for tardiness up to and including termination

12. Based on Defendants' common business practice before this lawsuit, Named Plaintiff's and Putative Plaintiffs' compensation did not start until the bell rings. Defendants did not compensate Named Plaintiff and Putative Plaintiffs for the work performed prior to the scheduled start of their shift, despite Defendants requiring clock in upon beginning this pre-shift work. Shortly after this lawsuit was filed, Defendants changed their employment practices and policies to reduce or eliminate uncompensated time worked during a scheduled shift, demonstrating that doing so has been feasible throughout the tenure of Named Plaintiff and Putative Plaintiffs.

13. As Pickers in the Warehouse Department, Named Plaintiff and Putative Plaintiffs spend their day completing orders they receive on their scanners which consists of moving throughout the warehouse "picking" merchandise to complete a customer's order.

14. Defendants' common business practice was to require Named Plaintiff and Putative Plaintiffs in warehouse positions to accept and pick all orders received on their scanners through the end of the shift even if picking those orders made them work after their scheduled shift end time.

15. Defendants' common business practice was to require employees in other departments to complete all assembly, manufacturing, and/or customer service communications assigned to them during their shift even if doing so made them work at their schedule shift end time.

16. After Named Plaintiff and Putative Plaintiffs in warehouse positions received and completed their last order, they must: log out of their scanner; return it along with the batteries, to its docking station so it can charge; return any lift used to area where it was received; and then walk to the time clock to clock out.

17. After employees in assembly, manufacturing, and/or customer service positions completed the work assigned during their scheduled shift, typically more than seven minutes after that shift, Defendants further required them to ensure that employees filling their positions in the next shift were informed about any problems or concerns that would carry over to the next shift.

18. Defendants' common business practice before this lawsuit was to only pay Named Plaintiff and Putative Plaintiffs in assembly and manufacturing positions until the end of their scheduled shift time and not to pay for any work performed after the end of their scheduled shift, even though they were still clocked in and not to pay Plaintiffs in customer service positions for any work performed during the first fifteen minutes after the end of their scheduled shift. Shortly after this lawsuit was filed, Defendants changed their employment practices and policies to reduce or eliminate uncompensated time worked after a scheduled shift, demonstrating that doing so has been feasible throughout the tenure of Named Plaintiff and Putative Plaintiffs.

19. Named Plaintiff and Putative Plaintiffs were clocked into Defendants' time clocking system when all their work was being performed; however, Defendants willfully reduced the time logged and only paid them for the hours scheduled each day regardless of how much work was performed pre and post scheduled shift.

20. The amount of time the Named Plaintiff and Putative Plaintiffs worked prior to their shift and after their shift did not vary significantly but was integral and indispensable to their principal activity and involved more than seven (7) minutes before and seven (7) minutes after their shift.

21. Named Plaintiff and Putative Plaintiffs were not paid for performing the pre-shift and post-shift tasks that were integral and indispensable to their principal activity in violation of federal and state wage laws.

22. Defendants did not calculate, as part of the Named Plaintiff's and Putative Plaintiffs' workweek, the time they spent on the tasks integral and indispensable to their principal activity, pre-shift and post-shift, in violation of federal and state wage laws.

23. Further, when the addition of the unpaid time is added to the Named Plaintiff's and Putative Plaintiffs' hours for the workweek, Defendants willfully failed to pay them for the additional time at one-and-one-half times (1.5) their regular rate in violation of federal and state wage laws.

24. At all times material to this First Amended Complaint, Defendants knew and recorded the amount of time the Named Plaintiff and Putative Plaintiffs spent on tasks that were integral and indispensable to their principal activity pre-shift and post-shift, but willfully failed to pay them in violation of federal and state wage laws.

25. The pre-shift and post-shift work performed by the Named Plaintiff and Putative Plaintiffs directly benefited Defendants by reducing the cost of labor for Defendants who willfully withheld compensation for that work from them.

26. The Named Plaintiff and Putative Plaintiffs are engaged in interstate commerce when they perform their job duties and when they perform tasks that are integral and indispensable to their principal activity pre-shift and post-shift.

27. The Named Plaintiff and Putative Plaintiffs are hourly employees.

28. Defendants employ both "exempt" and "non-exempt" employees and have characterized the Named Plaintiff and Putative Plaintiffs as "non-exempt."

29. The Named Plaintiff and Putative Plaintiffs are not in a job classification and do not perform job duties which are exempt from the mandate under the FLSA and/or the Ohio Wage Act to pay for all hours worked and/or overtime.

30. As a direct and proximate result of Defendants' unlawful conduct, the Named Plaintiff and Putative Plaintiffs have suffered and will continue to suffer a loss of income.

31. For the Named Plaintiff and all others similarly situated, the aggregate number of hours worked and not compensated, and the overtime denied to them represents dollars that could be expended on meals, refreshments, travel expenses and/or consumer purchases or could be saved.

32. For the Named Plaintiff and all others similarly situated, the aggregate amount of overtime denied to them represents time Defendants have required they dedicate to performing tasks integral and indispensable to their principal activity, such as picking merchandise from the warehouse to fulfill customer orders, thereby enriching Defendants by having work performed without paying for it.

COLLECTIVE ACTION AND CLASS ALLEGATIONS

33. Named Plaintiff brings this action on behalf of himself and all others similarly situated as a collective action for unpaid wages and overtime under the FLSA, 29 U.S.C. §216(b).

34. The collective class, or Opt-In Class, which Named Plaintiff seeks to represent is composed of and defined as follows ["FLSA Collective Class"]:

> All current or former non-exempt employees in Defendants' warehouse, customer service, and/or manufacturing divisions employed during the past three years who were paid from the beginning of their shift until the end of their shift despite being clocked in more than seven (7) minutes prior to their shift and/or remained clocked in more than seven (7) minute after their scheduled shift end time and/or who were paid a flat per diem amount while working at off-site events on behalf of Defendants regardless of the number of hours worked each day

35. Named Plaintiff brings the Ohio Wage Act and OPPA claims pursuant to Federal Rule of Civil Procedure 23 as a class action under Ohio law on behalf of the following class ["Ohio Rule 23 Class"]:

> All current or former non-exempt employees in Defendants' warehouse, customer service, and/or manufacturing divisions employed during the three years before the Complaint was filed who were paid from the beginning of their shift until the end of their shift despite being clocked in more than seven (7) minutes prior to their shift and/or remained clocked in more than seven (7) minute after their scheduled shift end time and/or who were paid a flat per diem amount while working at off-site events on behalf of Defendants regardless of the number of hours worked each day.

36. The FLSA Collective Class and the Ohio Rule 23 Class, as defined above, are so numerous that joinder of all members is impracticable.

37. Named Plaintiff is a member of the FLSA Collective Class and the Ohio Rule 23 Class and his claims are typical of the claims of the members of the FLSA Collective Class and the Ohio Rule 23 Class as defined; indeed, apart from the hourly rate and number of days worked and the precise tasks in Defendants' departments, Named Plaintiff and the FLSA Collective Class and the Ohio Rule 23 Class are similarly situated in all material respects, including; the nature of the tasks that are integral and indispensable to their principal activity pre-shift and post-shift and the uniform policies and practices of Defendants in not paying for the time spent working.

38. Named Plaintiff will fairly and adequately represent the FLSA Collective Class and the Ohio Rule 23 Class and the interests of all members of the FLSA Collective Class and the Ohio Rule 23 Class.

39. Named Plaintiff has no interest that is antagonistic to or in conflict with those interests that he has undertaken to represent on behalf of the FLSA Collective Class and the Ohio Rule 23 Class as Class Representatives; instead, their interests perfectly coincide with those of individuals similarly situated in all material respects.

40. Named Plaintiff retained competent and experienced class action counsel who can effectively represent the interests of the entire FLSA Collective Class and the Ohio Rule 23 Class.

41. Questions of law and fact that are common to the FLSA Collective Class and the Ohio Rule 23 Class predominate over any individual questions, specifically whether Defendants

violated the FLSA and/or the Ohio Wage Act by omitting the pre-shift and post-shift time it takes to perform tasks that are integral and indispensable to the class members' principal activity from its calculation of the hours Named Plaintiff and Putative Plaintiffs have worked.

42. In both the FLSA Collective Class and the Ohio Rule 23 Class there is a community of interest among the class members in obtaining appropriate relief, damages, and compensation for costs and fees incurred herein.

43. A collective action for the federal overtime claim and a Rule 23 class action for the Ohio overtime claim and OPPA claim are superior to other litigation methods (including individual litigation) for the fair and efficient adjudication of Named Plaintiff's and Putative Plaintiffs' claims as presented by this Complaint and will prevent undue financial, administrative, and procedural burdens on the parties and the Court.

44. Named Plaintiff and his counsel are not aware of any pending Ohio litigation on behalf of the FLSA Collective Class and the Ohio Rule 23 Class, as defined herein, or individual Class members related to these claims.

45. Because the damages sustained by individual members of the Class are modest compared to the substantial resources of Defendants and due to the costs of individual litigation, it will be impracticable for Class members to pursue individual litigation against Defendants in order to vindicate their rights, and individual actions would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants with respect to its employees.

46. Named Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a FLSA Collective Class or a Rule 23 Class.

COUNT I:
FLSA Collective Action

47. All previous paragraphs are incorporated as though fully set forth herein.

48. By not paying for all hours worked and for not paying one-and-one-half times the regular hourly rate to Named Plaintiff and the putative FLSA Collection Class for hours worked

in excess of forty hours each week when the time spent performing tasks that are integral and indispensable to their principal activity pre-shift and post-shift is included and for paying employees working at off-site events on behalf of the Defendant a flat per diem rate and not for the actual number of hours worked, Defendants violated the FLSA.

49. In violating the FLSA, Defendants acted willfully and with reckless disregard of clearly applicable FLSA provisions.

COUNT II:
Ohio Rule 23 Class Action

50. All previous paragraphs are incorporated as though fully set forth herein.

51. By not paying for all hours worked and for not paying one-and-one-half times the regular hourly rate to Named Plaintiff and the Ohio Rule 23 Class for hours worked in excess of forty hours each week when the time spent performing tasks that are integral and indispensable to their principal activity pre-shift and post-shift in included and for paying employees working at events on behalf of the Defendant a flat per diem rate and not for the actual number of hours worked, Defendants violated the Ohio Wage Act.

52. In violating the Ohio Wage Act and the OPPA, Defendants acted willfully and with reckless disregard of clearly applicable Ohio Wage Act and OPPA provisions.

PRAYER FOR RELIEF

WHEREFORE, Named Plaintiff and the Putative Plaintiffs are entitled to and pray for the following relief:

A. An order permitting this litigation to proceed as a representative action and a Rule 23 class action;

B. Prompt notice, pursuant to 29 U.S.C. §216(b), to all FLSA Collective Class members that this litigation is pending and that they have the right to "opt in" to this litigation;

C. With respect to Named Plaintiff and each Putative Plaintiff, compensatory damages in an amount equal to the difference between the time-and-a-half payments required under the FLSA and the Ohio Wage Act and the amount of compensation actually paid by Defendants;

D. Liquidated damages to the fullest extent permitted under federal and state law;

E. Costs and attorneys' fees to the fullest extent permitted under federal and state law;

F. Pre-judgment and post-judgment interest to the fullest extent permitted under federal and state law; and,

G. Such other relief as the Court deems fair and equitable.

Named Plaintiff Demands a Trial by Jury

Dated: December 10, 2019

Respectfully Submitted,

BARKAN MEIZLISH DEROSE WENTZ MCINERNEY PEIFER, LLP

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