

workweek. 29 U.S.C. 207(a). And third, the FLSA establishes minimum recordkeeping requirements for covered employers. 29 U.S.C. § 211(a); 29 U.S.C § 516.2(a)(7).

2. This is, in part, a collective action brought pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* (“FLSA”), for monetary damages, liquidated damages, prejudgment interest, and a reasonable attorney’s fee and costs, as a result of Employer Defendants’ failure to pay Plaintiff and all others similarly situated overtime wages as required by law.

3. Plaintiff and all others similarly situated are and were employed by Employer Defendants to serve as real estate agents.

4. At all times relevant hereto, Employer Defendants maintained a policy and practice of misclassifying Plaintiff and all other similarly situated employees as independent contractors.

5. At all times relevant hereto, Employer Defendants maintained a policy and practice of requiring Plaintiff and all other similarly situated employees to routinely work in excess of 40 hours per week pay period without paying them overtime compensation “at a rate not less than one and one-half times the regular rate,” as required by the FLSA.

6. Pursuant to the FLSA, Plaintiff, each on behalf of himself and all others similarly situated, seek overtime compensation, liquidated damages, pre-judgment and post-judgment interest, and attorneys’ fees and costs from Employer Defendants.

7. Subsequent to the filing of this action, Plaintiff will request this Court to authorize concurrent notice to all former and current employees similarly situated to the Plaintiff who are or were employed by Employer Defendants as real estate brokers, informing them of the pendency of this action and their right to opt into this collective action lawsuit pursuant to 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

8. This Court has jurisdiction over this claim pursuant to 29 U.S.C. § 216 and 28 U.S.C. § 1331 because this suit raises federal questions under the FLSA.

9. Employer Defendants conduct business within the State of South Carolina, providing real estate services within the State of South Carolina.

10. Venue lies properly within this Court under 28 U.S.C. § 1391(b)(1) and (c)(2), because the State of South Carolina has personal jurisdiction over Employer Defendants, and Employer Defendants therefore “reside” in South Carolina.

11. A substantial part of the acts complained of herein were committed and had their principal effect against Plaintiff within the Charleston Division of the District of South Carolina; venue is proper in this Court pursuant to 28 U.S.C. § 1391.

12. This Court has supplemental jurisdiction pursuant to 28 U.S.C. Sec. 1367 over pendent state claims described herein, which claims are so related to claims in the action within the Court’s original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

PARTIES

13. At all times relevant, Plaintiff Matthew W. Alderman is and was an employee of the Employer Defendants.

14. For purposes of this Complaint, Plaintiff and all others similarly situated who are or were employed by Employer Defendants to serve as real estate agents shall be called the “Employee Realtors.”

15. Employer Defendant The Caleb Pearson Team, LLC is a domestic limited-liability company, duly organized and existing under the laws of the State of South Carolina, and is subject

to the requirements of the FLSA. Its registered agent is Caleb Pearson, 1200 Two Island Ct. Suite A, Mt. Pleasant, SC 29466, which address is its principal place of business.

16. Employer Defendant Re/Max, LLC upon information and belief d/b/a Re/Max Alliance, and/or with a local branch office located in Mount Pleasant, is a foreign limited-liability company, duly organized and existing under the laws of the State of Delaware, and is subject to the requirements of the FLSA. Its registered agent is CT Corporation System, 2 Office Park Court Suite 103, Columbia, South Carolina 29223. Its local branch or office is located at 1200 Two Island Ct. Suite A, Mt. Pleasant, SC 29466.

17. Employer Defendant Caleb Pearson is, upon information and belief, an owner, partner and/or manager of both The Caleb Pearson Team, LLC and Re/Max, LLC d/b/a Re/Max Alliance, and he resides in this judicial district.

18. Employer Defendant Hank Johnson, upon information and belief, is an owner, partner and/or manager of Re/Max, LLC d/b/a Re/Max Alliance. He resides, on information and belief, in this judicial district.

19. At all times material, the Employee Realtors were employees of Employer Defendants pursuant to 29 U.S.C. § 203(e)(1); Employer Defendants were employers of the Employee Realtors within the meaning of 29 U.S.C. § 203(d); and Employer Defendants employed the Employee Realtors within the meaning of 29 U.S.C. § 203(g).

20. Defendant Brandon Bott (“Bott”) is a real estate agent employed by Employer Defendants. He resides, on information and belief, in this judicial district.

FLSA COVERAGE

21. At all material times, each Employer Defendant has been an employer within the meaning of section 203(d) of the FLSA, which is defined to include any person acting directly or indirectly in the interest of an employer in relation to an employee. 29 U.S.C. Sec. 203(d).

22. At all material times, each Employer Defendant has been an enterprise in commerce or in the production of goods for commerce within the meaning of section 203 (s)(1) of the FLSA because the Employer Defendant has had and continue to has employees engaged in commerce. 29 U.S.C. Sec. 203(s)(1).

23. At all material times, Plaintiff and the putative Collective Members are (or were) employees who engaged in commerce as required by sections 206 and 207 of the FLSA. 29 U.S.C. Sec. 206-07.

24. Each Employer Defendant's annual gross volume of sales made or business done, on information and belief, was not less than \$500,000.00 during each of the three calendar years preceding the filing of this Complaint.

25. Each Employer Defendant has at least two employees that handle, sell, or otherwise work on goods or materials that have been moved in or produced interstate commerce.

26. Therefore, at all material times relevant to this action, each Employer Defendant was an enterprise covered by the FLSA, and as defined by 29 U.S.C. Sec. 203(r)-(s).

27. Upon information and belief, Employer Defendants jointly determine, share, or allocate responsibility for achieving the aims and goals of their business, including without limitation payroll tax matters; for human resources matters, including but not limited to the hiring and firing of employees; and for marketing/advertising matters.

28. Employer Defendants have the common business purpose of providing real estate services.

29. As such, Plaintiff and putative Collective Members in this action were jointly employed by Employer Defendants under the FLSA and have standing to bring their claims against Employer Defendants on a collective basis.

FACTUAL ALLEGATIONS

30. To carry out Employer Defendants' real estate brokerage services, Employer Defendants contracted with individuals (referred to herein as "Employee Realtors") during the relevant time.

31. Plaintiff performed the basic duties of a real estate agent during the relevant time.

32. The basic duties of a real estate agent include developing relationships with prospective buyers and sellers of real estate, showing properties, and guiding buyers and sellers through completion of real estate transactions.

33. Employer Defendants treated Plaintiff as an "independent contractor" for purposes of the FLSA.

34. Employer Defendants required Employee Realtors to enter into a standard agreement, which Employer Defendants called an "Independent Contractor Broker Agreement."

35. No Plaintiff was involved in drafting the terms of Employer Defendants' standard agreement.

36. Employer Defendants required each Employee Realtor to put the credit and attribution for all Employee Realtor Sale in Multiple Listing Service ("MLS"), Zillow, and the like in the name of one or more of the Employer Defendants, rather than Employees' own names.

37. Employer Defendants required each Employee Realtor to to be at the office at designated hours every day, where they frequently made phone calls from office phone lines paid for by Employer Defendants when not showing property; to train regularly in the mornings; to report on all transactions on a weekly basis; and to refrain from personal advertising since Employer Defendants controlled all advertising and advertised in their names rather than in the names of Employee Realtors.

38. All Employee Realtors were hired to work for Employer Defendants for an indefinite period of time.

39. Plaintiffs were expected to follow Employer Defendants' guidelines, rules and restrictions.

40. Employer Defendants paid Employee Realtors wages via commissions on sales and bonuses, with many such Employer Realtors, especially in the period soon after hire, working long hours for low pay.

41. Defendant Employers required that Employee Realtors obtain a transaction fee of \$499 for each closing.

42. Defendant Employers set commission rates and costs paid by customers, and Employee Realtors were not allowed to alter the same, or did so with Employer's express approval. Defendant employers set goals and "contests" amongst Employee Realtors, for example who could get the highest commission.

43. Defendant Employers set office sales goals for the Employee Realtors, monthly rewards and contests, and annual sales targets for the team, with bonus compensation, trips, and other perks as rewards.

44. Plaintiff, and all members of the class of similarly situated individuals, did not, and were expected and required not to, advertise themselves as independent businesses, market themselves to other realty agencies, or otherwise hold themselves out as independent agents in business for themselves as true “independent contractors”—but rather were employees of Employer Defendants “Team” and under the control of Employer Defendants.

45. All Employee Realtors were provided a team email addresss, e.g., MatthewCPTeam@gmail.com, containing the “CPTeam”, for usage with all work emails.

46. Employer Defendants typically provided Employee Realtors with “leads” they were to pursue in their daily jobs.

47. Similarly, Employer Defendants made executive decisions on sales, marketing and advertising, without substantial if any, Employee Realtor input.

48. Employee Realtors used form agreements provided by Employer Defendants.

49. Employer Defendants expected Employee Realtors to follow Employer Defendants’ policies regarding method, manner and results of realty business.

50. Employer Defendants provided Employee Realtors closing gifts (to give to the parties to the real estate transactions), funds for realtor dues, and provided property key lockboxes.

51. Employer Defendants at their own expense provided Employee Realtors with all or most of the “tools of the trade”, including without limitation critically important brands, logos, and mailers, contract and documents forms, and industry software for facets of the job such as dialers, lead databases, bookkeeping, and sales trackers, including Zip Forms, MLS, MOJO dialer, Quadtrack, and Commissions, Inc. (“CINC”). Employee Realtors were not allowed to develop their own “brand” identity.

52. In practice Employer Defendants did not allow Employee Realtors to work elsewhere or in business for themselves as independent business people, or to develop their own “brand” identity; rather they were expected to be part of the “Caleb Pearson/Re/Max Team.”

53. In practice Employer Defendants also compensated Employee Realtors, including Plaintiff specifically, for certain expenses such as personal assistants and business coaches.

54. Plaintiff and putative Collective Members regularly worked (or work) over forty hours in a workweek as realtors, part of their job expectation and requirement.

55. Employer Defendants did not pay any Employee Realtors any overtime premium for hours that they worked over forty hours per week.

56. If any Employee Realtor worked more than forty hours per week, Employer Defendants’ policy was not to pay that Employee Realtor an overtime premium of one and one half times the Employee Realtor’s regular rate for the hours over forty.

57. Employer Defendants had a general practice keeping no contemporaneous records of time that drivers performed Employee Realtor services on Employer Defendants’ behalf.

58. Employer Defendants knew or should have known that the job duties of Plaintiff required Plaintiff to work hours in excess of forty per week, yet Employer Defendants failed and refused to compensate Plaintiff for his work as required by the FLSA.

59. At all times relevant hereto, Employer Defendants was aware of the minimum wage and overtime requirements of the FLSA.

60. Employer Defendants purposefully and knowingly classified Employee Realtors as “independent contractors.”

61. Stifled by his inability to develop his own name and brand, Plaintiff left the employ of Employer Defendants and began working for another realtor in Charleston County.

62. While employed by the Employer Defendants, at their behest, while acting within the course and scope of his employment, and/or while working as the agent of Employer Defendants, Bott published defamatory, injurious statements to third parties, by text message with at least one other realtor, Kyle Blankenship, and by email with at least one of Plaintiff's customers.

63. In the text messages Bott wrote: "Bro he [Alderman] stole thousands and thousands of dollars from Caleb and was doing deals under the table;" "Caleb and Hank are trying to get his license taken;" "I'm pretty sure that [Caleb and Hank] are pressing charges;" and "[Alderman]'s a f *****g [expletive deleted] snake and a thief." See attached **Exhibit A**.

64. In a separate email to a third party Bott stated to Plaintiff's client that Plaintiff had taken "a different career path and was no longer selling real estate" and that "I'm not at liberty to get into details as to why he's [Plaintiff's] not selling real estate anymore but he's no longer with our team due to some disciplinary actions." See attached **Exhibit B**.

COUNT I--Violation of 29 U.S.C. § 207 - Plaintiff

65. Plaintiff hereby incorporate by reference the preceding allegations.

66. Under the FLSA, Employer Defendants are required to pay Plaintiff for overtime compensation "at a rate not less than one and one-half times the regular rate" at which the Plaintiff is employed. *See* 29 U.S.C. § 207(a).

67. At all times relevant hereto, Employer Defendants failed to compensate Plaintiff for overtime hours at a rate not less than one and one-half times their regular rate, in violation of 29 U.S.C. § 207.

68. Employer Defendants failed to pay overtime wages to Plaintiff for all compensable hours including those hours spent in training courses necessary to keep their jobs.

69. Employer Defendants' failure to provide Plaintiff overtime compensation at a rate not less than one and one-half times the regular rate for all compensable overtime hours constitutes a violation of the FLSA, 29 U.S.C. § 207.

70. Defendants' violations of the FLSA were knowing and willful.

71. As a result of Defendants' FLSA violations, Plaintiff requests that this Court award damages for unpaid overtime compensation, liquidated damages in an amount equal to the unpaid overtime compensation, reasonable attorneys' fees, costs, and interest, and all other relief as the Court deems just and appropriate.

COUNT II--Violation of 29 U.S.C. § 207 - Collective Action on Behalf of Those Similarly Situated as Plaintiff

72. Plaintiff and all others similarly situated (the "Employee Realtors") hereby incorporate by reference the preceding allegations.

73. Under the FLSA, Each Employer Defendants is required to pay the Employee Realtors for overtime compensation "at a rate not less than one and one-half times the regular rate" at which the Plaintiff are employed. *See* 29 U.S.C. § 207(a).

74. At all times relevant hereto, Each Employer Defendants failed to compensate the Employee Realtors for overtime hours at a rate not less than one and one-half times their regular rate, in violation of 29 U.S.C. § 207.

75. Each Employer Defendant failed to pay the Employee Realtors overtime wages for all compensable hours including those hours spent in training courses necessary to keep their jobs.

76. Each Employer Defendant's failure to provide Employee Realtors overtime compensation at a rate not less than one and one-half times the regular rate for all compensable overtime hours constitutes a violation of the FLSA, 29 U.S.C. § 207.

77. Each Employer Defendant's violations of the FLSA were knowing and willful.

78. As a result of Each Employer Defendant's FLSA violations, the Employee Realtors request that this Court award damages for unpaid overtime compensation, liquidated damages in an amount equal to the unpaid overtime compensation, reasonable attorneys' fees, costs, and interest, and all other relief as the Court deems just and appropriate.

COUNT III—Violation of S.C. Code Ann. Sec. 41-10-10, et seq., South Carolina Payment of Wages Act

79. Plaintiff hereby incorporates by reference the preceding allegations.

80. At all relevant times, Employer Defendants have employed, and/or continue to employ, Plaintiff within the meaning of the South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to 110. Plaintiff is an "employee" within the meaning of the South Carolina Act and is not free from the control and direction of Employer Defendants.

81. Each Employer Defendant is an "employer" as defined by the South Carolina Act, S.C. Code Ann. § 41-10-10(1), because each employs individuals in the State of South Carolina.

82. Pursuant to S.C. Code Ann. § 41-10-40(C), "[e]very employer shall notify each employee in writing at the time of hiring of the normal hours and wages agreed upon, the time and place of payment" and the "employer shall furnish each employee with an itemized statement showing his gross pay and the deductions made from his wages for each pay period."

83. Employer Defendants willfully failed to provide Plaintiff with proper notice at the time of his hiring as required by the law, and Employer Defendants did not provide him with compliant wage statements for each of his pay periods as required by the law.

84. Pursuant to S.C. Code Ann. § 41-10-40(C), "[a]n employer shall not withhold or divert any portion of the employee's wages unless the employer is required or permitted to do so by state or federal law"

85. Further, “any changes [to] the terms [of wages] must be made in writing at least seven calendar days before they become effective.” S.C. Code Ann. § 41-10-30(A).

86. Employer Defendants, however, have refused to pay Plaintiff all wages due to him, nor did Employer Defendants provide Plaintiff with at least seven days advance written notice of the deductions or the amounts of the deductions Employer Defendants made to his paychecks.

87. Accordingly, Plaintiff is entitled to receive all compensation of “wages” due and owing to him.

88. Employer Defendants willfully failed to pay Plaintiff “wages” as defined in section 41-10-10(2) of the South Carolina Act for all work performed, according to the law.

89. Employer Defendants have withheld wages of the Plaintiff without providing advance notice of such amounts and absent any lawfully sufficient reason for such conduct.

90. As a direct and proximate result of Employer Defendants’ willful conduct, Plaintiff has suffered substantial losses and has been deprived of compensation to which he is entitled, including monetary damages in the amount of three (3) times the amount of their unpaid wages as well as costs and reasonable attorneys’ fees pursuant to S.C. Code Ann. § 41-10-80 of the South Carolina Act.

COUNT IV—DEFAMATION (Libel) (as to all Defendants)

91. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

92. During the relevant period, Defendants have been telling prospective customers and realtor-colleagues untrue, defamatory and injurious allegations about Plaintiff’s fitness for work, honesty and integrity in his profession as a realtor.

93. Such untrue communications, and allegations of crimes of moral turpitude, are actionable *per se* because they tend to degrade Plaintiff's person, reducing his character or reputation in the estimation of his friends, acquaintances and business contacts; to disgrace him; and to render him odious, contemptible, or ridiculous.

94. Plaintiff is a private-figure plaintiff.

95. These untrue communications were untrue because Plaintiff is not a thief, did not steal thousands of dollars from Defendants, and did not do "deals under the table."

96. These statements were unprivileged.

97. Employer Defendants are liable for these statements including via *respondeat superior*.

98. Defendants made these statements with actual common law malice and negligence.

WHEREFORE, Plaintiff and all others similarly situated to Plaintiff pray that this Court

- A. Award damages for the amount of unpaid overtime compensation;
- B. Award liquidated damages in an amount equal to unpaid overtime compensation;
- C. Award reasonable attorneys' fees, costs, and interest;
- D. Issue a Declaratory Judgment that Plaintiff is not an independent contractor, but is rather an Employee of Employer Defendants;
- E. Issue a Declaratory Judgment that similarly situated Collective Action members are not independent contractors, but are rather Employees of Employer Defendants;
- F. Enter judgment in favor of Plaintiff and all others similarly situated and against Employer Defendants; and in favor of Plaintiff against all Defendants on the defamation claim, and
- G. Award all other relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demand a Jury Trial on all issues and claims so triable.

Respectfully submitted, this 11th day of March, 2019.

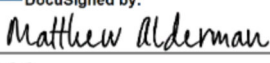
Le Clercq Law Firm, P.C.

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VERIFICATION

I, Matthew Alderman, do hereby declare under penalty of perjury, that I have reviewed all of the allegations contained in the foregoing complaint, and that these allegations are true and correct to the best of my knowledge, understanding and belief.

Date: March 11, 2019:

DocuSigned by:

Matthew Alderman