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JUL 30 2010

Kristine Kussman
SUPERIOR COURT
IMPERIAL COUNTY CA.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF IMPERIAL

<p>KIMBERLY ALEKSICK, individually and on behalf of other members of the general public similarly situated, Plaintiff,</p> <p>vs.</p> <p>7-ELEVEN, INC., a Texas Corporation; MICHAEL TUCKER; an individual; and DOES 1-50, Inclusive., Defendants.</p>	<p>) Case No.: ECU03615)) ORDER GRANTING DEFENDANT 7-ELEVEN,) INC.'S MOTION FOR SUMMARY JUDGMENT) OR, IN THE ALTERNATIVE SUMMARY) ADJUDICATION OF ISSUES)))))</p>
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TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

The motion for summary judgment or, in the alternative for summary adjudication of Defendant 7-Eleven, Inc. came on regularly for hearing on May 12, 2010. After full consideration of the evidence, the separate statements, declaration of each party, as well as counsels' oral argument that there is no triable issue of material fact in this action as to Defendant 7-Eleven, Inc., and that the motion for summary judgment, or, in the alternative, for

1 Summary adjudication is GRANTED, for the following reasons:

2 1. Plaintiff's Third Cause of Action in the Fourth Amended
3 Complaint, arising under section 17200 of the California Business
4 and Professions Code (Unfair Competition law or "UCL" claim) - a
5 claim of an "unlawful" business practice under the UCL-fails
6 against 7-Eleven as a matter of law. The court finds that judgment
7 is properly granted as there is no triable issue of material fact
8 regarding the methods that 7-Eleven uses to capture the time worked
9 by franchise employees. The following facts are undisputed: The
10 franchise employees clock in and out of work on an in-store
11 computer, which records time, worked in "whole minutes." The daily
12 minutes are transmitted to 7-Eleven. At the 7-Eleven host computer
13 the total minutes are added up for the week, then divided by 60 to
14 determine hours and fractional hours worked per week. The
15 resulting fraction is "truncated" after the second decimal place.
16 (See 7-Eleven's UMF's in Support of Its Motion ¶ 20,35,37,38,40,41,
17 Plaintiff's UMF's in Opposition to 7-Eleven's Motion ¶ 25,26,27,29,
18 and the underlying evidence cited therein). Plaintiff's counsel
19 acknowledged at the hearing that the above facts are not in
20 dispute. The court holds that the practice of calculating employee
21 pay based upon the decimal system, rather than using a fractional
22 system, is inherently reasonable, and does not constitute a
23 violation of Section 17200 of the California Business and
24 professions Code.

25 2. The Court also finds that 7-Eleven's business practice of

1 truncating the decimal point after the second digit once a week is
2 inherently reasonable, and does not violate Section 17200 of the
3 California Business and Professions Code. The Court takes judicial
4 notice that the input data -- here, the total number of minutes -- is
5 recorded only in whole numbers. Once the whole minutes (the input
6 data) are summed and divided by 60 to determine hours and fractional
7 hours worked, the resultant decimal points have no basis in
8 mathematical reality, because they extend the number of significant
9 digits in the input data. Any decimal point remainder is simply an
10 artifact created by the division of hours into minutes. The truncation
11 of that number beyond the second decimal point is likewise
12 insignificant from a mathematical perspective. Any time not captured
13 by the system is impossible to calculate as damages, because the number
14 lacks mathematical accuracy. This Court holds that where an employer's
15 payroll system includes mathematical computations that have
16 significantly less potential error than the input data into the system,
17 that is not an unfair business practice under Section 17200 as the
18 maximum potential (if not real) error of approximately 30 seconds per
19 period¹ is significantly less than the potential 59 second error
20 inherent in reporting time in whole minutes.

21 3. 7-Eleven's Motion for Summary Adjudication as to Plaintiff's
22 First Cause of Action in the Fourth Amended Complaint -- for breach
23 of contract against 7-Eleven -- is also GRANTED. The Court holds
24 that Plaintiffs are, at best, incidental beneficiaries of the

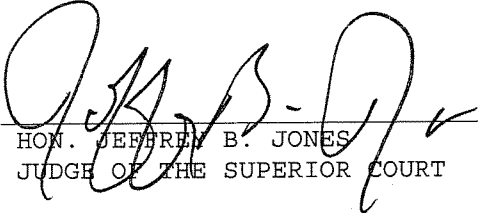
25 ¹ $0.009 \times 60 = .54$ minutes, or approximately 30 seconds per pay period.

1 Franchise Agreement, and do not have standing as third-party
2 beneficiaries to enforce the terms of the Franchise Agreement. In
3 addition, for the reasons stated above, the Court finds that 7-
4 Eleven's truncation practice is not inherently unfair, and further
5 finds that as such, it could not constitute a breach of any
6 contractual duty.

7 IT IS ORDERED:

- 8 1. The motion for summary judgment, or in the alternative for
9 summary adjudication, is granted.
- 10 2. Judgment be granted in favor of Defendant 7-Eleven.
- 11 3. Plaintiff's First Cause of Action in the Fourth Amended
12 Complaint against Defendant 7-Eleven is dismissed with
13 prejudice.
- 14 4. Plaintiff's Third Cause of Action in the Fourth Amended
15 Complaint against Defendant 7-Eleven is dismissed with
16 prejudice.
- 17 5. Defendant 7-Eleven is awarded costs pursuant to statute.

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20 DATED: 7-30-10


HON. JEFFREY B. JONES
JUDGE OF THE SUPERIOR COURT