

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HAROLD C. ROBINSON, et al.,
Plaintiffs,
v.
OPEN TOP SIGHTSEEING SAN
FRANCISCO, LLC,
Defendants.

Case No. 14-cv-00852-PJH

JUDGMENT

This action came before the court for a bifurcated trial. A trial by jury was held on October 2, 2017, with the undersigned judge presiding. On October 5, 2017, the jury rendered a verdict against defendant Open Top Sightseeing San Francisco, LLC (“Open Top”) and in favor of plaintiffs that Open Top’s violation of the Fair Labor Standards Act (“FLSA”) was willful, and that Open Top knowingly and intentionally failed to provide plaintiffs with accurate wage statements because the operators’ wage statements failed to set forth the applicable overtime worked and Open Top’s full legal name. The jury also rendered a verdict in favor of defendant and against plaintiffs that Open Top did not fail to provide plaintiffs with rest breaks.

A bench trial addressing damages and penalties was held before the undersigned judge on October 10, 2017. The court found the following:

Plaintiffs take nothing under California Labor Code § 226.7 because Open Top did not fail to provide rest breaks to class members.

The parties having stipulated that the UCL overtime restitution amount for plaintiffs claim brought under California Business and Professions Code § 17200 is \$410,000, the

1 court awards plaintiffs \$410,000.

2 The court awards prejudgment interest totaling \$130,217.26 on plaintiffs UCL
3 overtime restitution.

4 The court granted plaintiffs' motion for summary judgment on Open Top's liability
5 on the overtime claim under the FLSA and for liquidated damages under the same.
6 However, plaintiffs' FLSA overtime award is subsumed by the UCL overtime restitution
7 and plaintiffs did not present sufficient evidence during the bench trial to support a
8 liquidated damages award. Plaintiffs therefore take nothing for their FLSA cause of
9 action.

10 The jury verdict found that Open Top failed to provide plaintiffs with accurate wage
11 statements as required by California Labor Code § 226 because the wage statements did
12 not include applicable overtime worked or Open Top's full legal name. Plaintiffs take
13 nothing under the latter theory because no argument was presented. The court,
14 however, finds that Open Top violated § 226 one hundred twenty-eight times by failing to
15 include applicable overtime in plaintiffs' wage statements, for total statutory penalties of
16 \$6,400. The court also awards plaintiffs \$12,800 in civil penalties under California Labor
17 Code § 2699(f)(2) based on the § 226 violations. Penalties recovered under § 2699(f)(2)
18 should be distributed in accordance with § 2699(j).

19 The court granted plaintiffs' motion for summary judgment on Open Top's liability
20 under California Labor Code § 203. The court awards plaintiffs \$311,417 under § 203, as
21 supported by plaintiffs' expert's testimony. Plaintiffs take nothing under § 2699 based on
22 Open Top's violations of § 203 because § 2699 is not the applicable civil penalty statute.

23 The court finds there is no basis to issue injunctive relief.

24 Consequently,

25 it is Ordered, Adjudged and Decreed

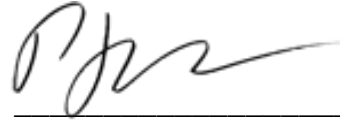
26 that judgment be entered in favor of plaintiffs in accordance with the above in the
27 amount of \$870,834.26 and against defendant Open Top. Any party may file their/its
28 application for fees and costs associated with only those claims for which they/it were the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

prevailing party, pursuant to and as provided by applicable statutes and rules.

IT IS SO ORDERED.

Dated: February 14, 2018



PHYLLIS J. HAMILTON
United States District Judge