

LAW OFFICE OF SHAFIEL A. KARIM, P.C.
2698 JUNIPERO AVENUE, SUITE 201A
SIGNAL HILL, CALIFORNIA 90755

1972800749

DEVON M. LYON (SBN 218293)
d.lyon@lyon-legal.com
LYON LEGAL, P.C.
2698 Junipero Avenue, Suite 201A
Signal Hill, California 90755
Telephone: (562) 216-7382
Facsimile: (562) 216-7385

SHAFIEL A. KARIM (SBN 291725)
shafiel@skarimlaw.com
LAW OFFICE OF SHAFIEL A. KARIM, P.C.
2698 Junipero Avenue, Suite 201A
Signal Hill, California 90755
Telephone: (562) 246-5371
Facsimile: (562) 285-9990

Attorneys for Plaintiff Maria Rendon on behalf
of herself and all others similarly situated

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF IMPERIAL**

MARIA RENDON, an individual on behalf of
herself and all others similarly situated,

Plaintiff,

v.

RETAIL MERCHANDISING SOLUTIONS,
LLC, a California limited liability company,
NORTH AMERICA MERCHANDISING
SOLUTIONS, LLC, a California limited
liability company, JIM PATTISON GROUP,
INC., a corporation organized under the laws of
British Columbia, Canada, and DOES 1-50,
inclusive,

Defendants.

//

FILED

02/24/2020

SUPERIOR COURT
COUNTY OF IMPERIAL
CLERK OF THE COURT
BY Michelle Garcia DEPUTY

Assigned for all purposes to
Judge Jeffrey B. Jones
including trial

Case No.: ECU001274

CLASS ACTION COMPLAINT

1. Failure To Authorize Or Permit Duty-Free Rest Periods In Violation Of Cal. Lab. Code §§ 226.7
2. Failure To Furnish Accurate And Itemized Wage Statements In Violation Of Cal. Lab. Code § 226
3. Failure To Furnish Payroll And Personnel Records In Violation Of Cal. Lab. Code §§ 226 And 1198.5
4. Unfair And Unlawful Employment Acts And Practices In Violation Of Cal. Bus. & Prof. Code §§ 17200, et seq.

(Jury Trial Demanded)

CLASS ACTION COMPLAINT

INTRODUCTION

Plaintiff MARIA RENDON, on behalf of herself and all others similarly situated, brings this putative class action against Defendants RETAIL MERCHANDISING SOLUTIONS, LLC, NORTH AMERICA MERCHANDISING SOLUTIONS, LLC, JIM PATTISON GROUP, INC., and DOES 1-50, inclusive (collectively, "Defendants") for failing and refusing to authorize or permit Plaintiff and the Rest Period Subclass from taking timely rest periods and then not paying them rest period wages. In turn, Defendants' also failed or refused to furnish Plaintiff and the Rest Period Subclass with accurate and itemized wage statements. Defendants also failed to furnish Plaintiff and the Records Request Subclass with their payroll and personnel records upon written request. Defendants' numerous violations of the Labor Code and IWC Wage Order 7-2001 constitute "unfair" and "unlawful" employment acts, practices, and policies in violation of Business and Professions Code sections 17200.

Plaintiff, on behalf of herself and all others similarly situated, seeks class-wide declaratory relief, forward-looking injunctive relief, restitution, damages, statutory penalties, accrued interests, reasonable attorney's fees and costs, and all other remedies this Court deems just proper.

PARTIES

1. Plaintiff MARIA RENDON ("Plaintiff") is a resident of the County of Imperial, California. Since in or around April 2019, Plaintiff worked for Defendants as a non-exempt Merchandiser earning \$13.00 per hour.

2. Defendant RETAIL MERCHANDISING SOLUTIONS, LLC ("RMS") is a California limited liability company with a principal place of business located at 1800-1067 West Cordova Street, Vancouver, British Columbia, Canada V6C 1C7. RAMSL's agent for service of process is C T Corporation System located at 818 West Seventh Street, Suite 930, Los Angeles, California 90017. Upon information and belief, RMS conducts business in the County of Imperial, California.

3. Defendant NORTH AMERICA MERCHANDISING SOLUTIONS, LLC ("NAMS") is a California limited liability company with a principal place of business located at 1800-1067 West Cordova Street, Vancouver, British Columbia, Canada V6C 1C7. NAMS' agent

1 for service of process is C T Corporation System located at 818 West Seventh Street, Suite 930,
2 Los Angeles, California 90017. Upon information and belief, NAMS conducts business in the
3 County of Imperial, California.

4 4. Defendant THE JIM PATTISON GROUP, INC. ("JPG") is a corporation organized
5 under the laws of British Columbia, Canada with a principal place of business located at 1800-1067
6 West Cordova Street, Vancouver, British Columbia, Canada V6C 1C7. Upon information and
7 belief, JPG conducts business in the County of Imperial, California.

8 5. The true names and capacities of DOES 1 through 50, inclusive, whether individual,
9 corporate, associate or otherwise are unknown to Plaintiffs. Plaintiffs sue those unknown
10 defendants under the fictitious names DOES 1 through 50, inclusive. Once Plaintiff ascertains the
11 true identities of those defendants, Plaintiff will amend this Class Action Complaint ("Complaint").

12 6. During the relevant time period, all named and unnamed defendants were
13 employees, agents, servants, partners, managing agents, joint venturers, co-conspirators, or alter
14 egos of Defendants, and were acting with the course and scope of such agency or employment.

15 7. The term "Defendants" means all defendants, both jointly and severally, and
16 references by name to any named Defendant includes all Defendants, both jointly and severally.
17 Upon information and belief, Defendants were acting within the purpose and scope of their agency
18 and employment and with the knowledge and consent of each other.

19 JURISDICTION AND VENUE

20 8. This Court has original jurisdiction over this action under Article VI, section 10 of
21 the California Constitution, exercisable under Code of Civil Procedure section 410.10. This Court
22 has subject matter jurisdiction over this action.

23 9. This Court has personal jurisdiction over Defendants because it is a California
24 limited partnership operating within the County of Imperial, California, and because the
25 Defendants are either citizens and/or residents of the State of California and/or Defendants conduct
26 business in California and have availed themselves of the laws of the State of California. The
27 Court's exercise of personal jurisdiction over Defendants comports with traditional notions of fair
28 play and substantial justice.

1972800749

1 10. Venue is proper under Code of Civil Procedure section 395 because Defendants'
2 conduct business in the County of Imperial, California. Venue is also proper because this Court has
3 personal jurisdiction over Defendants.

4 **STATEMENT OF FACTS**

5 11. Plaintiff is a non-exempt hourly employee for Defendants. Plaintiff was hired in or
6 around April 2019 as a Merchandiser. Since then, Defendants paid Plaintiff \$13.00 per hour.
7 Plaintiff generally worked and continues to work Wednesday and Thursday each workweek during
8 the graveyard shift beginning at 10:00 p.m. and then ending 5:30 a.m. the following morning.

9 12. Since April 2019, Defendants did not authorize or permit Plaintiff to take an
10 uninterrupted 10-minute duty-free rest period after each four hours of work. Defendants' express
11 written rest period policy states, "Do not leave the premises during your rest period...." Exhibit
12 "A" is a true and correct copy of Defendants' rest period policy during the relevant time period.

13 13. Further, consistent with Defendants' express written policy, Plaintiff's supervisor
14 verbally instructed Plaintiff to work through her rest periods. Despite Defendants' express written
15 policy requiring Plaintiff remain on Defendants' premises and Plaintiff's supervisor's verbal
16 instruction to work through rest periods, Defendants did not pay Plaintiff a rest period wage for her
17 missed and/or interrupted rest periods.

18 14. Plaintiff is informed and believes that Defendants failed or refused to authorize or
19 permit the putative Class to take an uninterrupted duty-free rest period after each four hours of
20 work or major fraction thereof during the Class Period. Plaintiff is informed and believes that the
21 putative Class was also required to stay on Defendants' premises for rest periods during the Class
22 Period. Plaintiff is further informed and believes that Defendants did not pay the putative Class a
23 rest period wage for their missed and/or interrupted rest periods.

24 15. During the relevant time period, Defendants furnished Plaintiff with inaccurate and
25 insufficiently itemized wage statements. Namely, Defendants' wage statements for Plaintiff failed
26 to accurately or sufficiently itemize Plaintiff's earned wages, including her earned but unpaid rest
27 period wages.

28 //

1 16. Plaintiff is informed and believes that during the relevant time period, Defendants
2 furnished the putative Rest Period Subclass with inaccurate and insufficiently itemized wage
3 statements. Defendants' wage statements for the putative Rest Period Subclass failed to accurately
4 or sufficiently itemized their earned wages, including their earned but unpaid rest period wages.

5 17. On December 23, 2019, through counsel and in writing, Plaintiff requested
6 Defendants permit inspection and copying of Plaintiff's payroll and personnel records. Plaintiff's
7 written request for her payroll and personnel records was served by Certified Mail, Return Receipt
8 Requested. The United States Postal Service delivered the letters to Defendants on December 25,
9 2019. Accordingly, Defendants' last day to produce Plaintiff's payroll and personnel records was
10 January 13, 2020 and January 25, 2020, respectively. To-date, Defendants have failed or refused to
11 furnish Plaintiff with any of her payroll or personnel records.

12 18. Plaintiff is informed and believes that the putative Records Request Subclass has
13 also requested to inspect and/or copy their respective payroll and personnel records. Plaintiff is
14 informed and believes that Defendants have failed or refused to furnish the putative Records
15 Request Subclass' request timely as required by law.

16 **CLASS ALLEGATIONS**

17 19. Plaintiff brings this action on behalf of herself and all others similarly situated as a
18 class action under Code of Civil Procedure section 382. Plaintiff seeks to represent several classes
19 from February 2015 up to and through the present ("Class Period"), which are composed of the
20 following persons and defined as follows:

21 **Rest Period Subclass**

22 20. All current and former workers who were classified as non-exempt hourly
23 employees by Defendants within the State of California who worked shifts of four (4) hours or
24 more in a workday.

25 **Records Request Subclass**

26 21. All current and former workers within the State of California who requested, in
27 writing, their payroll records and/or personnel records from Defendants but were not authorized or
28 //

1 permitted to inspect and/or copy their respective payroll records within 21-days of the written
2 request or their respective personnel records within 30-days of receipt of the written request.

3 22. The Rest Period Subclass and the Records Request Subclass are collectively
4 referred to as the "Class."

5 **Numerosity**

6 23. Plaintiff is informed and believes that the number of members of the Rest Period
7 Subclass and the Records Request Subclass is so numerous that their joinder would be
8 impracticable. Although Plaintiff does not know the precise number of Class members, Plaintiff is
9 informed and believes that Defendants employ approximately 27,000 employees in the State of
10 California.

11 **Commonality**

12 24. Questions of law and fact are common to the putative Class members, which include
13 but are not limited to:

- 14 a. Whether Defendants violated Labor Code section 226.7 by not authorizing or
15 permitting Plaintiff and the Rest Period Subclass from taking an uninterrupted 10-
16 minute duty-free rest period after each four hours of work during the Class Period;
- 17 b. Whether Defendants violated Labor Code section 226.7 by disseminating its written
18 policy requiring Plaintiff and the Rest Period Subclass from "leav[ing Defendants']
19 premises during [their] rest period...." during the Class Period;
- 20 c. Whether Defendants violated IWC Wage Order 7-2001 by not authorizing or
21 permitting Plaintiff and the Rest Period Subclass from taking an uninterrupted 10-
22 minute duty-free rest period after each four hours of work during the Class Period;
- 23 d. Whether Defendants violated IWC Wage Order 7-2001 by disseminating its written
24 policy requiring Plaintiff and the Rest Period Subclass from "leav[ing Defendants']
25 premises during [their] rest period...." During the Class Period;
- 26 e. Whether Defendants violated Labor Code section 226 by furnishing Plaintiff and the
27 Rest Period Subclass with inaccurate and insufficiently itemized wage statements
28 during the Class Period;

- 1 f. Whether Defendants violated IWC Wage Order 7-2001 by furnishing Plaintiff and
- 2 the Rest Period Subclass with inaccurate and insufficiently itemized wage
- 3 statements during the Class Period;
- 4 g. Whether Defendants violated Labor Code section 226 by not authorizing or
- 5 permitting Plaintiff and the Records Request Subclass from copying and/or
- 6 inspecting their respective payroll records within 21-days of their request during the
- 7 Class Period;
- 8 h. Whether Defendants violated Labor Code section 1198.5 by not authorizing or
- 9 permitting Plaintiff and the Records Request Subclass from copying and/or
- 10 inspecting their respective personnel records within 30-days of Defendants' receipt
- 11 of Plaintiff's and the Record Request Subclass' written request during the Class
- 12 Period;
- 13 i. Whether Defendants violated the "unfair" prong of Business and Professions Code
- 14 section 17200 by violating Labor Code section 226.7;
- 15 j. Whether Defendants violated the "unfair" prong of Business and Professions Code
- 16 section 17200 by violating Labor Code section 226;
- 17 k. Whether Defendants violated the "unfair" prong of Business and Professions Code
- 18 section 17200 by violating Labor Code section 1198.5;
- 19 l. Whether Defendants violated the "unfair" prong of Business and Professions Code
- 20 section 17200 by violating IWC Wage Order 7-2001;
- 21 m. Whether Defendants violated the "unlawful" prong of Business and Professions
- 22 Code section 17200 by violating Labor Code section 226.7;
- 23 n. Whether Defendants violated the "unlawful" prong of Business and Professions
- 24 Code section 17200 by violating Labor Code section 226;
- 25 o. Whether Defendants violated the "unlawful" prong of Business and Professions
- 26 Code section 17200 by violating Labor Code section 1198.5;
- 27 p. Whether Defendants violated the "unlawful" prong of Business and Professions
- 28 Code section 17200 by violating IWC Wage Order 7-2001;

Typicality

25. Plaintiff's claims are typical of those claims that could and would be alleged by any Class member. The relief sought by Plaintiff is typical of the relief that could and would be sought by Class member in separate actions. Plaintiff and the Class members sustained injuries and damages arising out of and directly and proximately caused by Defendants' common course of employment patterns, employment acts, and employment practices that were and still are in violation of law and regulation.

Adequacy of Representation

26. Plaintiff will fairly and adequately represent and protect the interests of the Class members. Plaintiff's counsel is competent and experienced in litigating class action lawsuits.

Ascertainability

27. The identities of the Class members are ascertainable by reviewing Defendants' payroll and personnel records during the Class Period.

Superiority of Class Action

28. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class members is not practicable and questions of law and fact common to the Class predominate over any individual questions. Each Class member has been damaged and is entitled to recovery by reason of Defendants' unfair and unlawful employment acts, practices, and policies.

29. The class action mechanism will allow the parties and the judiciary to litigate and adjudicate Plaintiff's and the Class' claims in the most efficient and economical manner. Plaintiff is unaware of any difficulty that is likely to be encountered in the management and administration of this putative Class action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

Failure To Authorize Or Permit Duty-Free Rest Periods

In Violation Of Cal. Lab. Code §§ 226.7

30. Plaintiff, on behalf of herself and all others similarly situated, repeats all previous allegations, which are incorporated by reference here, and further alleges the following:

1 31. During the Class Period, Plaintiff and the Rest Period Subclass each worked four or
2 more consecutive hours in a workday.

3 32. During the Class Period, Defendants failed or refused to authorize or permit
4 Plaintiff and the Rest Period Subclass from taking a 10-minute duty-free rest period after each four
5 hours of work.

6 33. During the Class Period, Defendants had a written policy that stated in relevant part,
7 “Do not leave the premises during your rest period....” Defendants did not authorize or permit
8 Plaintiff or the Rest Period Subclass to leave Defendants’ premises during their respective rest
9 periods during the Class Period.

10 34. During the Class Period, Defendants did not pay Plaintiff or the Rest Period
11 Subclass rest period wages in the form of one additional hour of pay for each workday despite the
12 fact that Plaintiff and the Rest Period Subclass was not authorized or permitted to take a timely
13 duty-free rest period beyond Defendants’ control.

14 35. Plaintiff and the Rest Period Subclass are entitled to recover their earned but unpaid
15 rest period wages, statutory penalties, accrued interest, attorney’s fees and costs, and all other
16 remedies this Court deems just and proper.

17 **SECOND CAUSE OF ACTION**

18 **Failure To Furnish Accurate And Itemized Wage Statements**

19 **In Violation Of Cal. Lab. Code § 226**

20 36. Plaintiff, on behalf of herself and all others similarly situated, repeats all previous
21 allegations, which are incorporated by reference here, and further alleges the following:

22 37. During the Class Period, Defendants furnished Plaintiff and the Rest Period
23 Subclass with inaccurate and insufficiently itemized wage statements. Specifically, Defendants
24 failed to accurately or sufficiently itemize Plaintiff’s and the Rest Period Subclass’ respective earned
25 rest period wages.

26 38. During the Class Period, Plaintiff and the Rest Period Subclass were confused by
27 Defendants’ computation of their respective wages, which excluded rest period wages.

28 //

1972800749

In Violation Of Cal. Lab. Code §§ 226 And 1198.5

1 46. During the Class Period, Defendants failed or refused to pay Plaintiff and the Rest
2 Period Subclass with rest period wages in violation of Labor Code section 226.7 and IWC Wage
3 Order 7-2001.

4 47. During the Class Period, Defendants failed or refused to furnish Plaintiff and the
5 Rest Period Subclass with accurate and sufficiently itemized wages statements, because rest period
6 wages were not included, in violation of Labor Code section 226 and Wage Order 7-2001.

7 48. During the Class Period, Defendant failed or refused to permit Plaintiff and the
8 Records Request Subclass to inspect and/or copy their payroll records within 21-days of their
9 respective request in violation of Labor Code section 226.

10 49. During the Class Period, Defendants failed or refused to permit Plaintiff and the
11 Records Request Subclass to inspect and/or copy their personnel records within 30-days of
12 Defendants' receipt of Plaintiff's and the Records Request Subclass' written respective request
13 within 30-days of delivery in violation of Labor Code section 1198.5.

14 50. Defendants' violations of Labor Code sections 226, 226.7 and 1198.5, and IWC
15 Wage Order 7-2001 constitute "unfair" acts in violation of Business and Professions Code sections
16 17200, et seq.

17 51. Defendants' violation of Labor Code section 226, 226.7 and 1198.5, and IWC Wage
18 Order 7-2001 as well as Defendants' violation of the "unfair" prong of Business and Professions
19 Code sections 17200, et seq. constitute "unlawful" acts in violation of Business and Professions
20 Code sections 17200, et seq.

21 52. Plaintiff and the Class have been injured by Defendants' unfair and unlawful
22 employment acts, practices, and policies.

23 53. Defendants' unfair and unlawful employment acts, practices, and policies directly
24 and proximately caused and continue to cause Plaintiff and the Class their respective injuries.
25 Defendants' unfair and unlawful employment acts, practices, and policies were and still are the
26 substantial factor in causing Plaintiff and the Class their respective injuries.

27 54. Plaintiff and the Class are entitled to declaratory relief, forward-looking injunctive
28 relief, restitution, accrued interest, and all other remedies this Court deems just and proper.

PRAYER

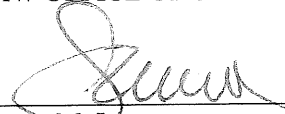
Plaintiff, on behalf of herself and all others similarly situated, requests the following relief:

- A. An order certifying this Action as a class action;
- B. An order certifying Plaintiff as class representative;
- C. An order certifying Plaintiff's counsel as class counsel;
- D. Declaratory and forward-looking injunctive relief;
- E. An award for compensatory, liquidated, consequential, incidental, and punitive damages;
- F. An award for statutory penalties;
- G. An award of interest accrued at the maximum legal rate;
- H. An award of reasonable attorney's fees and costs;
- I. All other remedies this Court deems just and proper.

JURY TRIAL

On behalf of herself and all others similarly situated, Plaintiff requests trial by jury for all claims so triable.

LYON LEGAL, P.C.
LAW OFFICE OF SHAFIEL A. KARIM, P.C.



Devon M. Lyon
Shafiel A. Karim

Dated: February 18, 2020

Attorneys for Plaintiff Maria Rendon on behalf of
herself and all others similarly situated

EXHIBIT "A"

Meal and Rest Periods

Employees are provided with a 30 minute meal period, to be taken approximately in the middle of the workday. Employees are allowed a 10-minute rest period for every four hours of work or major portion thereof. Your supervisor will schedule your meal and rest periods.

You are expected to observe your assigned working hours and the time allowed for meal and rest periods. Do not leave the premises during your rest period and do not take more than 10 minutes for each rest period. You may leave the premises during your meal period.

Overtime for Non-Exempt Employees

Employees may be required to work overtime as necessary. Only actual hours worked in a given workday or workweek can apply in calculating overtime. Retail Merchandising Solutions, Inc. will attempt to distribute overtime evenly and accommodate individual schedules. All overtime work must be previously authorized by a supervisor. Retail Merchandising Solutions, Inc. provides compensation for all overtime hours worked by non-exempt employees in accordance with state and federal. A workday begins at 12:01 a.m. and ends at midnight 24 hours later. Workweeks begin each Sunday at 12:01 am.

Payment of Wages

All employees of Retail Merchandising Solutions, Inc. are paid every other Friday for work performed during the previous two-week pay period. If a regular payday falls on a holiday, employees will be paid on the last day worked before the holiday.

Retail Merchandising Solutions, Inc. offers automatic payroll deposit for employees at all locations. You may begin and stop automatic payroll deposit at any time. To begin automatic payroll deposit, you must complete a form (available from the payroll department) and return it to payroll at least 10 days before the pay period for which you would like the service to begin. You should carefully monitor your payroll deposit statements for the first two pay periods after the service begins.

To stop automatic payroll deposit, complete the form available from the payroll department and return it to payroll at least 10 days before the pay period for which you would like the service to end. You will receive a regular payroll check on the first pay period after the receipt of the form, provided it is received no later than 10 days before the end of the pay period.