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FILED
Superior Court of California
County of Los Angeles

SEP 01 2021

Sherri R. Carter, Executive Officer/Clerk

By *Rita Nazaryan*, Deputy
Rita Nazaryan

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

NICOLE MENDOZA, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

ALLIED SALES AND DISTRIBUTION,
INC., a California corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 20STCV31836

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (2) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (3) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (4) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (5) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (6) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code §§ 2698, *et seq.* (Private Attorneys General Act of 2004);
- (9) Violation of California Business & Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff NICOLE MENDOZA and Plaintiff TONY NUNLEY (collectively, “Plaintiffs”), individually, and on behalf of other members of the general public similarly situated, and allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Los Angeles. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California. Defendants employed Plaintiff within the State of California, County of Los Angeles.

PARTIES

5. Plaintiff NICOLE MENDOZA is an individual residing in the State of California.

6. Plaintiff TONY NUNLEY is an individual residing in the State of California.

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1 7. Defendant ALLIED SALES AND DISTRIBUTION, INC., at all times herein
2 mentioned, was and is, upon information and belief, a California corporation, and at all times
3 herein mentioned, was and is, an employer whose employees are engaged throughout the State
4 of California, including the County of Los Angeles.

5 8. At all relevant times, Defendants ALLIED SALES AND DISTRIBUTION, INC.
6 were the “employer” of Plaintiffs within the meaning of all applicable California laws and
7 statutes.

8 9. At all times herein relevant, Defendants ALLIED SALES AND
9 DISTRIBUTION, INC. and DOES 1 through 100, and each of them, were the agents, partners,
10 joint venturers, joint employers, representatives, servants, employees, successors-in-interest,
11 co-conspirators and assigns, each of the other, and at all times relevant hereto were acting
12 within the course and scope of their authority as such agents, partners, joint venturers, joint
13 employers, representatives, servants, employees, successors, co-conspirators and assigns, and
14 all acts or omissions alleged herein were duly committed with the ratification, knowledge,
15 permission, encouragement, authorization, and consent of each defendant designated herein.

16 10. The true names and capacities, whether corporate, associate, individual or
17 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sue
18 said defendants by such fictitious names. Plaintiffs are informed and believe, and based on
19 that information and belief allege, that each of the Defendants designated as a DOE is legally
20 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
21 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
22 Plaintiffs will seek leave of court to amend this Complaint to show the true names and
23 capacities when the same have been ascertained.

24 11. Defendants ALLIED SALES AND DISTRIBUTION, INC. and DOES 1 through
25 100 will hereinafter collectively be referred to as “Defendants.”

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12. Plaintiffs further allege that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs and the other class members so as to make each of said Defendants employers and employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

13. Plaintiffs bring this action on their own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Code of Civil Procedure section 382.

14. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees of Defendants within the State of California at any time during the period from April 6, 2016¹ to final judgment.

15. Plaintiffs reserve the right to establish subclasses as appropriate.

16. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiffs' claims are typical of all other class members' claims as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other class members with whom they have a well-defined community of interest.

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¹ Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Accordingly, Plaintiff's claims were tolled during that time period.

- 1 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
2 each class member, with whom they have a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiffs have
4 no interest that is antagonistic to the other class members. Plaintiffs'
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiffs have
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.
- 11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.
- 14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 17. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

- 24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;
- 26 b. Whether Defendants failed to pay their hourly-paid or non-exempt
27 employees within the State of California for all hours worked, missed
28 rest and meal periods in violation of California law;

- 1 c. Whether Defendants required Plaintiffs and the other class members to
2 work over eight (8) hours per day and/or over forty (40) hours per week
3 and failed to pay the legally required overtime compensation to Plaintiffs
4 and the other class members;
- 5 d. Whether Defendants properly calculated the regular rate for Plaintiffs
6 and the other class members to worked overtime and earned incentive
7 pay;
- 8 e. Whether Defendants deprived Plaintiffs and the other class members of
9 rest and/or meal periods or required Plaintiffs and the other class
10 members to work during rest and/or meal periods without compensation;
- 11 f. Whether Defendants failed to pay minimum wages to Plaintiffs and the
12 other class members for all hours worked;
- 13 g. Whether Defendants failed to pay all wages due to Plaintiffs and the
14 other class members within the required time upon their discharge or
15 resignation;
- 16 h. Whether Defendants failed to timely pay all wages due to Plaintiffs and
17 the other class members during their employment;
- 18 i. Whether Defendants complied with wage reporting as required by the
19 California Labor Code, including, inter alia, section 226;
- 20 j. Whether Defendants failed to reimburse class members for necessary
21 business-related expenses and costs;
- 22 k. Whether Defendants' conduct was willful or reckless;
- 23 l. Whether Defendants engaged in unfair business practices in violation of
24 California Business & Professions Code section 17200, *et seq.*;
- 25 m. The appropriate amount of damages, restitution, and/or monetary
26 penalties resulting from Defendants' violation of California law; and
- 27 n. Whether Plaintiffs and the other class members are entitled to
28 compensatory damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

18. During the relevant time period set forth herein, Defendants employed Plaintiffs and other persons as hourly-paid or non-exempt employees within the State of California.

19. Defendants, jointly and severally, employed Plaintiff Mendoza as an hourly-paid employee from approximately January of 2017 to May of 2017 in the State of California, County of Los Angeles.

20. Defendants, jointly and severally, employed Plaintiff Nunley as an hourly-paid employee from approximately September of 2019 through March 26, 2020 in the State of California, County of Los Angeles.

21. Defendants had the authority to hire and terminate Plaintiffs and other class members; to set work rules and conditions governing Plaintiffs' and other class members' employment; and to supervise their daily employment activities.

22. Defendants exercised sufficient authority over the terms and conditions of Plaintiffs and other class members' employment for them to be joint employers of Plaintiffs and the other class members.

23. Defendants directly hired and paid wages and benefits to Plaintiffs and other class members.

24. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

25. Plaintiffs and other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

26. Plaintiffs are informed and believe, and based thereon allege, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, inter alia, failing to pay them for all hours worked, missed meal periods, and missed rest breaks in violation of California law.

27. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to provide Plaintiffs and the other class members the required rest and meal periods

1 during the relevant time period as required under the Industrial Welfare Commission Wage
2 Orders and thus they are entitled to any and all applicable penalties.

3 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants
4 knew or should have known that Plaintiffs and other class members were entitled to receive all
5 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff
6 and the other class members' regular rate of pay when a rest period was missed, late or
7 interrupted, and that Plaintiff and other class members did not receive all rest periods or
8 payment of one additional hour of pay at their regular rate of pay when a rest period was
9 missed.

10 29. Plaintiffs are informed and believe, and based thereon allege, that Defendants
11 knew or should have known that Plaintiffs and the other class members were entitled to receive
12 at least minimum wages for compensation and that Plaintiffs and the other class members were
13 not receiving at least minimum wages for all hours worked.

14 30. Plaintiffs are informed and believe, and based thereon allege, that Defendants
15 knew or should have known that Plaintiffs and the other class members were entitled to receive
16 all timely and complete meal periods or payment of one additional hour of pay at Plaintiffs'
17 and the other class members' regular rate of pay when a meal period was missed, late or
18 interrupted, and that Plaintiffs and the other class members did not receive all timely and
19 proper meal periods or payment of one additional hour of pay at their regular rate of pay when
20 a meal period was missed.

21 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
22 knew or should have known that Plaintiffs and other class members were entitled to receive the
23 wages owed to them upon discharge or resignation, including overtime and minimum wages
24 and meal and rest period premiums, and that Plaintiffs and the other class members did not, in
25 fact, receive such wages owed to them at the time of their discharge or resignation.

26 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants
27 knew or should have known that Plaintiffs and the other class members were entitled to receive
28 certain wages for overtime compensation and that Plaintiffs and the other class members were

1 not receiving wages for overtime compensation.

2 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 knew or should have known that Plaintiff and the other class members were entitled to receive
4 complete and accurate wage statements in accordance with California law, but, in fact, Plaintiff
5 and other class members did not receive complete and accurate wage statements from
6 Defendants.

7 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
8 knew or should have known that Defendants had to keep complete and accurate payroll records
9 for Plaintiffs and other class members in accordance with California law, but, in fact, did not
10 keep complete and accurate payroll records for Plaintiffs and the other class members.

11 35. Plaintiffs are informed and believe, and based thereon allege, that Defendants
12 knew or should have known that Plaintiffs and the other class members were entitled to receive
13 complete and accurate wage statements in accordance with California law, but, in fact,
14 Plaintiffs and the other class members did not receive complete and accurate wage statements
15 from Defendants. The deficiencies included, inter alia, the failure to include the total number
16 of hours worked by Plaintiffs and the other class members.

17 36. Plaintiffs are informed and believe, and based thereon allege, that Defendants
18 knew or should have known that they had a duty to compensate Plaintiffs and the other class
19 members pursuant to California law, and that Defendants had the financial ability to pay such
20 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
21 represented to Plaintiffs and the other class members that they were properly denied wages, all
22 in order to increase Defendants' profits.

23 37. Plaintiffs are informed and believe, and based thereon allege, that Defendants
24 knew or should have known that Plaintiffs and the other class members were entitled to
25 reimbursement for necessary business-related expenses.

26 38. During the relevant time period set forth herein, Defendants failed to provide the
27 requisite uninterrupted and timely meal and rest periods to Plaintiffs and the other class
28 members.

39. During the relevant time period set forth herein, Defendants failed to pay overtime wages to Plaintiffs and the other class members for all hours worked. Plaintiffs and other class members were required to work more than eight (8) hours per day and/or forty (40) hours per week without overtime compensation.

40. During the relevant time period set forth herein, Defendants failed to pay Plaintiffs and the other class members at least minimum wages for all hours worked.

41. During the relevant time period set forth herein, Defendants failed to pay Plaintiffs and the other class members the wages owed to them upon discharge or resignation.

42. During the relevant time period set forth herein, Defendants failed to provide complete or accurate wage statements to Plaintiffs and the other class members.

43. During the relevant time period set forth herein, Defendants failed to keep complete or accurate payroll records for Plaintiffs and the other class members.

44. During the relevant time period set forth herein, Defendants failed to properly compensate Plaintiffs and the other class members pursuant to California law in order to increase Defendants' profits.

45. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against ALLIED SALES AND DISTRIBUTION, INC. and DOES 1 through 100)

46. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 45, and each and every part thereof with the same force and effect as though fully set forth herein.

47. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiffs' and other class members' employment by Defendants.

48. During the relevant time period set forth herein, California Labor Code section

226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

49. During the relevant time period set forth herein, the applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

50. During the relevant time period set forth herein, Defendants required Plaintiffs and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

51. During the relevant time period set forth herein, Defendants willfully required Plaintiffs and other class members to work during rest periods and failed to pay Plaintiffs and the other class members the full rest period premium for work performed during rest periods.

52. During the relevant time period set forth herein, Defendants failed to pay Plaintiffs and the other class members the full rest period premium due pursuant to California Labor Code section 226.7.

53. Defendants’ conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

54. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiffs and other class members are entitled to recover from Defendants one additional hour of pay at the employees’ regular hourly rate of compensation for each workday that the rest period was not provided.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against ALLIED SALES AND DISTRIBUTION, INC. and DOES 1 through 100)

55. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 54, and each and every part thereof with the same force and effect as though fully set

1 forth herein.

2 56. During the relevant time period set forth herein, California Labor Code sections
3 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid
4 at the time of discharge are due and payable immediately, and if an employee quits his or her
5 employment, his or her wages shall become due and payable not later than seventy-two (72)
6 hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her
7 intention to quit, in which case the employee is entitled to his or her wages at the time of
8 quitting.

9 57. During the relevant time period set forth herein, Defendants intentionally and
10 willfully failed to pay Plaintiffs and the other class members who are no longer employed by
11 Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving
12 Defendants' employ.

13 58. Defendants' failure to pay Plaintiffs and the other class members who are no
14 longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours
15 of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and
16 202.

17 59. California Labor Code section 203 provides that if an employer willfully fails to
18 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee
19 shall continue as a penalty from the due date thereof at the same rate until paid or until an
20 action is commenced; but the wages shall not continue for more than thirty (30) days.

21 60. Plaintiffs and the other class members are entitled to recover from Defendants
22 the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum
23 as provided by Labor Code section 203.

24 **THIRD CAUSE OF ACTION**

25 **(Violation of California Labor Code § 226(a))**

26 **(Against ALLIED SALES AND DISTRIBUTION, INC. and DOES 1 through 100)**

27 61. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
28 through 60, and each and every part thereof with the same force and effect as though fully set

1 forth herein.

2 62. During the relevant time period set forth herein, California Labor Code section
3 226(a) provides that every employer shall furnish each of his or her employees an accurate
4 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
5 employee, (3) the number of piece-rate units earned and any applicable piece rate if the
6 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
7 written orders of the employee may be aggregated and shown as one item, (5) net wages
8 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
9 employee and his or her social security number, (8) the name and address of the legal entity
10 that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate by the employee. The deductions
12 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
13 showing the month, day, and year, and a copy of the statement or a record of the deductions
14 shall be kept on file by the employer for at least three years at the place of employment or at a
15 central location within the State of California.

16 63. Defendants have intentionally and willfully failed to provide Plaintiffs and the
17 other class members with complete and accurate wage statements.

18 64. As a result of Defendants' violation of California Labor Code section 226(a),
19 Plaintiffs and the other class members have suffered injury and damage to their statutorily
20 protected rights.

21 65. More specifically, Plaintiffs and the other class members have been injured by
22 Defendants' intentional and willful violation of California Labor Code section 226(a) because
23 they were denied both their legal right to receive, and their protected interest in receiving,
24 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

25 66. Plaintiffs and the other class members are entitled to recover from Defendants
26 the greater of their actual damages caused by Defendants' failure to comply with California
27 Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per
28 employee.

1 67. Plaintiffs and the other class members are also entitled to injunctive relief to
2 ensure compliance with this section, pursuant to California Labor Code section 226(g).

3 **FOURTH CAUSE OF ACTION**

4 **(Violation of California Labor Code §§ 510 and 1198)**

5 **(Against ALLIED SALES AND DISTRIBUTION, INC. and DOES 1 through 100)**

6 68. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1
7 through 67, and each and every part thereof with the same force and effect as though fully set
8 forth herein.

9 69. California Labor Code section 1198 and the applicable Industrial Welfare
10 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
11 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
12 rate of pay, depending on the number of hours worked by the person on a daily or weekly
13 basis.

14 70. Specifically, the applicable IWC Wage Order provides that Defendants are and
15 were required to pay Plaintiffs and the other class members employed by Defendants, who
16 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
17 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
18 than forty (40) hours in a workweek.

19 71. The applicable IWC Wage Order further provides that Defendants are and were
20 required to pay Plaintiff and the other class members overtime compensation at a rate of two
21 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

22 72. California Labor Code section 510 codifies the right to overtime compensation
23 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
24 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
25 of work, and overtime compensation at twice the regular hourly rate for hours worked in
26 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
27 of work.

28 73. During the relevant time period set forth herein, Plaintiffs and the other class

1 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
2 week.

3 74. During the relevant time period set forth herein, Defendants intentionally and
4 willfully failed to pay overtime wages owed to Plaintiff and the other class members.

5 75. Defendants' failure to pay Plaintiffs and the other class members the unpaid
6 balance of overtime compensation, as required by California laws, violates the provisions of
7 California Labor Code sections 510 and 1198, and is therefore unlawful.

8 76. Pursuant to California Labor Code section 1194, Plaintiff and the other class
9 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
10 attorneys' fees.

11 **FIFTH CAUSE OF ACTION**

12 **(Violation of California Labor Code §§ 226.7 and 512(a))**

13 **(Against ALLIED SALES AND DISTRIBUTION, INC. and DOES 1 through 100)**

14 77. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
15 through 76, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 78. During the relevant time period set forth herein, the IWC Order and California
18 Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and the other class
19 members' employment by Defendants.

20 79. During the relevant time period set forth herein, California Labor Code section
21 226.7 provides that no employer shall require an employee to work during any meal or rest
22 period mandated by an applicable order of the California IWC.

23 80. During the relevant time period set forth herein, the applicable IWC Wage
24 Order and California Labor Code section 512(a) provide that an employer may not require,
25 cause or permit an employee to work for a work period of more than five (5) hours per day
26 without providing the employee with a meal period of not less than thirty (30) minutes, except
27 that if the total work period per day of the employee is no more than six (6) hours, the meal
28 period may be waived by mutual consent of both the employer and employee.

1 81. During the relevant time period set forth herein, the applicable IWC Wage
2 Order and California Labor Code section 512(a) further provide that an employer may not
3 require, cause, or permit an employee to work for a work period of more than ten (10) hours
4 per day without providing the employee with a second uninterrupted meal period of not less
5 than thirty (30) minutes, except that if the total hours worked is no more than twelve (12)
6 hours, the second meal period may be waived by mutual consent of the employer and the
7 employee only if the first meal period was not waived.

8 82. During the relevant time period set forth herein, Plaintiffs and the other class
9 members who were scheduled to work for a period of time no longer than six (6) hours, and
10 who did not waive their legally-mandated meal periods by mutual consent, were required to
11 work for periods longer than five (5) hours without an uninterrupted meal period of not less
12 than thirty (30) minutes and/or without a rest period.

13 83. During the relevant time period set forth herein, Plaintiffs and the other class
14 members who were scheduled to work for a period of time no longer than twelve (12) hours,
15 and who did not waive their legally-mandated meal periods by mutual consent, were required
16 to work for periods longer than ten (10) hours without an uninterrupted meal period of not less
17 than thirty (30) minutes and/or without a rest period.

18 84. During the relevant time period set forth herein, Plaintiffs and the other class
19 members who were scheduled to work for a period of time in excess of six (6) hours were
20 required to work for periods longer than five (5) hours without an uninterrupted meal period of
21 not less than thirty (30) minutes and/or without a rest period.

22 85. During the relevant time period set forth herein, Plaintiffs and the other class
23 members who were scheduled to work for a period of time in excess of twelve (12) hours were
24 required to work for periods longer than ten (10) hours without an uninterrupted meal period of
25 not less than thirty (30) minutes and/or without a rest period.

26 86. During the relevant time period set forth herein, Defendants intentionally and
27 willfully required Plaintiffs and the other class members to work during meal periods and
28 failed to compensate Plaintiffs and the other class members the full meal period premium for

work performed during meal periods.

87. During the relevant time period set forth herein, Defendants failed to pay Plaintiffs and the other class members the full meal period premium due pursuant to California Labor Code section 226.7.

88. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

89. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194 and 1197)

(Against ALLIED SALES AND DISTRIBUTION, INC. and DOES 1 through 100)

90. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 89 and each and every part thereof with the same force and effect as though fully set forth herein.

91. During the relevant time period set forth herein, California Labor Code sections 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed, is unlawful.

92. During the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiffs and the other class members as required, pursuant to California Labor Code sections 1194 and 1197.

93. Defendants' failure to pay Plaintiffs and the other class members the minimum wage as required violates California Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiffs and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

94. Pursuant to California Labor Code section 1194.2, Plaintiffs and the other class

1 members are entitled to recover liquidated damages in an amount equal to the wages
2 unlawfully unpaid and interest thereon.

3 **SEVENTH CAUSE OF ACTION**

4 **(Violation of California Labor Code §§ 2800 and 2802)**

5 **(Against ALLIED SALES AND DISTRIBUTION, INC. and DOES 1 through 100)**

6 95. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
7 through 94, and each and every part thereof with the same force and effect as though fully set
8 forth herein.

9 96. Pursuant to California Labor Code sections 2800 and 2802, an employer must
10 reimburse its employee for all necessary expenditures incurred by the employee in direct
11 consequence of the discharge of his or her job duties or in direct consequence of his or her
12 obedience to the directions of the employer.

13 97. Defendants have intentionally and willfully failed to reimburse Plaintiffs and
14 other class members for all necessary business-related expenses and costs. The other class
15 members are entitled to recover from Defendants their business-related expenses and costs
16 incurred during the course and scope of their employment, plus interest accrued from the date on
17 which the employee incurred the necessary expenditures at the same rate as judgments in civil
18 actions in the State of California.

19 **EIGHTH CAUSE OF ACTION**

20 **(Violation of California Labor Code §§ 2698, *et seq.*)**

21 **(Against ALLIED SALES AND DISTRIBUTION, INC. and DOES 1 through 100)**

22 98. Plaintiff Nunley incorporates by reference the allegations contained in
23 paragraphs 1 through 97, and each and every part thereof with the same force and effect as
24 though fully set forth herein.

25 99. PAGA expressly establishes that any provision of the California Labor Code
26 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
27 departments, divisions, commissions, boards, agencies or employees for a violation of the
28 California Labor Code, may be recovered through a civil action brought by an aggrieved

1 employee on behalf of himself or herself, and other current or former employees.

2 100. On January 29, 2021,² Plaintiff Nunley provided written notice to the LWDA
3 and Defendants of the specific provisions of the Labor Code he contends were violated, and the
4 theories supporting his contentions. Plaintiff believes that on or about April 5, 2021, the sixty-
5 five (65) day notice period expired as to all Defendants, and the LWDA did not take any action
6 to investigate or prosecute this matter. Therefore, Plaintiff exhausted the statutory time period
7 to bring this action.

8 96. Plaintiff Nunley and the other hourly-paid or non-exempt employees are
9 “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all
10 current and former hourly-paid or non-exempt employees of Defendants within the State of
11 California who worked for Defendants at any time during the period from April 6, 2019 to the
12 present, and one or more of the alleged violations was committed against them.

13 **Failure to Pay Minimum and Overtime Wages**

14 97. At all times relevant herein, Defendants were required to compensate their non-
15 exempt employees minimum wages for all hours worked and overtime wages for all hours
16 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
17 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

18 98. As a policy and practice, Defendants failed to compensate Plaintiff Nunley and
19 the other aggrieved current and former employees for all hours worked, resulting in a failure to
20 pay all minimum wages and overtime wages, where applicable.

21 **Failure to Provide Meal Periods and Rest Breaks**

22 99. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants
23 were required to authorize and permit their non-exempt employees to take a 10-minute rest
24 break for every four (4) hours worked or major fraction thereof, and were further required to
25

26 ² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council’s
27 Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are
28 tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Mr. Nunley’s
PAGA cause of action is tolled.

1 provide their non-exempt employees with a 30-minute meal period for every five (5) hours
2 worked.

3 100. As a policy and practice, Defendants failed to provide Plaintiff Nunley and the
4 other aggrieved current and former employees with legally-mandated meal periods and rest
5 breaks and failed to pay proper compensation for this failure.

6 **Failure to Timely Pay Wages During Employment**

7 101. At all times relevant herein, Defendants were required to pay their employees
8 within a specified time period pursuant to the mandate of Labor Code § 204.

9 102. As a policy and practice, Defendants failed to pay Plaintiff Nunley and the other
10 aggrieved current and former employees all wages due and owing them within the required
11 time period.

12 **Failure to Timely Pay Wages Upon Termination**

13 103. At all times relevant herein, Defendants were required to pay their employees
14 all wages owed in a timely fashion at the end of employment pursuant to California Labor
15 Code §§ 201 to 204.

16 104. As a result of Defendants' Labor Code violations alleged above, Defendants
17 failed to pay Plaintiff and the other aggrieved former employees their final wages pursuant to
18 Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor Code
19 § 203.

20 **Failure to Provide Complete and Accurate Wage Statements**

21 105. At all times relevant herein, Defendants were required to keep *accurate* records
22 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174.

23 106. As a result of Defendants' various Labor Code violations, Defendants failed to
24 keep accurate records regarding Plaintiff and the other aggrieved current and former
25 employees. For example, Defendants failed in their affirmative obligation to keep accurate
26 records regarding Plaintiff and the other aggrieved current and former employees' gross wages
27 earned, total hours worked, all deductions, net wages earned, and all applicable hourly rates
28 and the number of hours worked at each hourly rate.

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- 1 d. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars
2 (\$100) for each aggrieved employee per pay period for the initial violation,
3 and two hundred fifty dollars (\$250) for each aggrieved employee per pay
4 period for each subsequent violation;
- 5 e. Any and all additional penalties as provided by the Labor Code and/or
6 other statutes; and
- 7 f. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699,
8 and any other applicable statute.

9 **NINTH CAUSE OF ACTION**

10 **(Violation of California Business & Professions Code §§ 17200, *et seq.*)**

11 **(Against ALLIED SALES AND DISTRIBUTION, INC. and DOES 1 through 100)**

12 101. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
13 through 100, and each and every part thereof with the same force and effect as though fully set
14 forth herein.

15 102. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
16 unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants'
17 competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public
18 interest within the meaning of Code of Civil Procedure section 1021.5.

19 103. Defendants' activities as alleged herein are violations of California law, and
20 constitute unlawful business acts and practices in violation of California Business &
21 Professions Code section 17200, *et seq.*

22 104. A violation of California Business & Professions Code section 17200, *et seq.*
23 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
24 policy and practice of requiring Plaintiffs and the other class members, to work through their
25 meal and rest periods without paying them proper compensation violate California Labor Code
26 sections 226.7. Moreover, Defendants' policy and practice of failing to timely pay wages to
27 Plaintiffs and the other class members violate California Labor Code sections 201 and 202.
28 Defendants also violated California Labor Code sections 226(a).

105. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

106. Plaintiffs and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

107. Pursuant to California Business & Professions Code section 17200, *et seq.*, Plaintiffs and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

DEMAND FOR JURY TRIAL

Plaintiffs, individually, and on behalf of other members of the general public similarly situated, request a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other members of the general public similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as representatives of the Class;
3. That counsel for Plaintiffs be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

6. That the Court make an award to Plaintiffs and the other class members of one

(1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

7. For all actual, consequential, and incidental losses and damages, according to proof;

8. For premium wages pursuant to California Labor Code section 226.7(b);

9. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

10. For such other and further relief as the court may deem just and proper.

As to the Second Cause of Action

11. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiffs and the other class members no longer employed by Defendants;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For statutory wage penalties pursuant to California Labor Code section 203 for the other class members who have left Defendants' employ;

14. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

15. For such other and further relief as the court may deem just and proper.

As to the Third Cause of Action

16. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiffs and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

17. For actual, consequential and incidental losses and damages, according to proof;

18. For statutory penalties pursuant to California Labor Code section 226(e);

19. For injunctive relief to ensure compliance with this section, pursuant to

California Labor Code section 226(g); and

20. For such other and further relief as the court may deem just and proper.

As to the Fourth Cause of Action

21. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;

22. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

23. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

24. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

25. For such other and further relief as the court may deem just and proper.

As to the Fifth Cause of Action

26. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiffs and the other class members;

27. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

28. For all actual, consequential, and incidental losses and damages, according to proof;

29. For premium wages pursuant to California Labor Code section 226.7(b);

30. For pre-judgment interest on any unpaid wages from the date such amounts were due;

31. For reasonable attorneys' fees and costs of suit incurred herein; and

32. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

33. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiffs and the other class members;

34. For general unpaid wages and such general and special damages as may be appropriate;

35. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

36. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

37. For liquidated damages pursuant to California Labor Code section 1194.2; and

38. For such other and further relief as the court may deem just and proper.

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For the imposition of civil penalties and/or statutory penalties;

42. For punitive damages and/or exemplary damages according to proof at trial;

43. For reasonable attorneys' fees and costs of suit incurred herein; and

44. For such other and further relief as the court may deem just and proper.

As to the Eighth Cause of Action

45. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2698, *et seq.*, the PAGA, for civil penalties pursuant to Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802;

46. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code

Sections 210, 1194, and 2699, and any other applicable statute; and

47. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiffs and the other class members all rest periods they were entitled and paying Plaintiffs' and the other class members' wages timely as required by California Labor Code section 201, 202.

49. For restitution of unpaid wages to Plaintiffs and the other class members and all pre-judgment interest from the day such amounts were due and payable;

50. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

51. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

52. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

53. For such other and further relief as the court may deem just and proper.

Dated: September 1, 2021

JUSTICE LAW CORPORATION

By: _____



Douglas Han
Shunt Tatavos-Gharajeh
Arsiné Grigoryan
Attorneys for Plaintiff

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