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FILED

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BRANDON E. RILEY, CLERK

BY ~~LISA VEGA~~
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

BY FAX FOR THE COUNTY OF SAN JOAQUIN

REGINA MARTINELLI, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

APOLLO RETAIL SPECIALISTS, LLC,
a North Carolina limited liability
company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

STK-CV-~~WE~~-2022-3870

REPRESENTATIVE ACTION COMPLAINT

(1) Violations of Lab. Code §§ 2698 et seq.

DEMAND OVER \$25,000.00

1 Plaintiff Regina Martinelli (“Plaintiff”) hereby submits this Representative Action
2 Complaint (“Complaint”) against Apollo Retail Specialists, LLC (“Defendant”) and Does 1
3 through 50 (collectively, “Defendants”), as an individual and on behalf of herself and other
4 Aggrieved Employees of Defendant for penalties for violations of the California Labor Code, as
5 follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court’s jurisdiction under California
8 Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 510, 558, 1194, 2802 and 2698 *et seq.*,
9 the Private Attorney General Act (“PAGA”) and the California Industrial Welfare Commission’s
10 (“IWC”) Wage Orders.

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code and Business and Professions Code against individuals
13 who worked for Defendants.

14 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
15 jointly and severally, have acted intentionally and with deliberate indifference and conscious
16 disregard to the rights of all employees by: (a) failing to pay overtime wages based on the correct
17 regular rate of pay, in violation of Labor Code sections 510, 558, and 1194; (b) failing to pay
18 sick pay at the regular rate of pay, in violation of Labor Code sections 201, 202, 203, 204 and
19 246; (c) failing to provide accurate itemized wage statements, in violation of Labor Code section
20 226(a); (d) failing to provide duty-free rest breaks, in violation of Labor Code section 226.7; (e)
21 failing to pay wages upon separation of employment due the underpaid wages and rest break
22 premium alleged herein, in violation of Labor Code sections 201, 202 and 203; and (f) failing to
23 pay all business expenses, in violation of Labor Code section 2802.

24 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 have engaged in, among other things a system of willful violations of the California Labor Code
26 and the applicable IWC Wage Orders by creating and maintaining policies, practices, and
27 customs that knowingly deny employees the above stated rights and benefits.

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6. Venue is proper in San Joaquin County because Defendant did not identify a Place of Business within California in its Statement of Information filed with the California Secretary of State. Therefore, Plaintiff may file her case in any county within the State.

7. Plaintiff was employed by Defendant as a Merchandiser Installer from May 2017 to on or about July 5, 2021. Throughout her employment, Plaintiff was an hourly, non-exempt employee.

9. Plaintiff is informed and believes, and based thereon alleges, that Apollo Retail Specialists, LLC was and is a North Carolina limited liability company that maintains operations in the State of California.

11. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants was responsible in some way for the

1 matters alleged herein and proximately caused Plaintiff and aggrieved employees to be subject to
2 the illegal employment practices, wrongs and injuries complained of herein.

3 12. At all times herein mentioned, each defendant participated in the doing of the acts
4 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,
5 and each of them, were the agents, servants and employees of each of the other defendants, as
6 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
7 course and scope of said agency and employment.

8 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
9 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
10 joint venturer of, or working in concert with each of the other co-Defendants and was acting
11 within the course and scope of such agency, employment, joint venture, or concerted activity. To
12 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
13 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
14 Defendants.

15 14. At all times herein mentioned, Defendants, and each of them, were members of,
16 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
17 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

18 15. At all times herein mentioned, the acts and omissions of various Defendants, and
19 each of them, concurred and contributed to the various acts and omissions of each and all of the
20 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
21 herein mentioned, Defendants, and each of them, ratified each and every act or omission
22 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
23 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
24 damages as herein alleged.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of Labor Code §§ 2698 Et Seq.**

3 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

4 16. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
5 though fully set forth herein.

6 17. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code
7 section 2698 et seq. Plaintiff brings this cause of action for violation of PAGA as a proxy for the
8 State of California and in this capacity, will seek penalties on behalf of all Aggrieved Employees
9 from March 9, 2021, through the present, for Defendant's violations of Labor Code sections
10 201, 202, 203, 204, 226, 226.7, 246, 510, 558, 1194 and 2802, arising from Defendant's policy
11 and practice of: (a) failing to pay overtime wages based on the correct regular rate of pay, in
12 violation of Labor Code sections 510, 558, and 1194; (b) failing to pay sick pay at the regular
13 rate of pay, in violation of Labor Code sections 201, 202, 203, 204 and 246; (c) failing to
14 provide accurate itemized wage statements, in violation of Labor Code section 226(a); (d) failing
15 to provide duty-free rest breaks, in violation of Labor Code section 226.7; (e) failing to pay
16 wages upon separation of employment due the underpaid wages and rest break premium alleged
17 herein, in violation of Labor Code sections 201, 202 and 203; and (f) failing to pay all business
18 expenses, in violation of Labor Code section 2802.

19 18. As a pattern and practice, Defendant suffered and permitted employees to work in
20 excess of eight hours in a workday and/or over forty hours in a workweek without proper
21 overtime pay. During workweeks when Plaintiff and Aggrieved Employees worked overtime
22 and earned non-discretionary incentive pay, such as Per Diems, Defendant failed to properly
23 calculate the regular rate of pay for purposes of paying overtime. Specifically, Defendant failed
24 to factor the additional non-discretionary remuneration earned into the calculation of the regular
25 rate of pay for purposes of paying overtime wages. As a result of such policy and practice,
26 Defendant underpaid overtime wages to Plaintiff and Aggrieved Employees, and thus owes
27 additional overtime wages.
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1 19. Whenever Defendant paid Plaintiff and Aggrieved Employees sick time pursuant
2 to California Labor Code section 246, Defendant did so at the incorrect rate of pay. Defendant
3 paid sick pay wages at the base hourly rate of pay, as opposed to the regular rate of pay, which
4 would take into account all non-discretionary remuneration, or by dividing the employees' total
5 wages, not including overtime premium pay, by the employees' total hours worked in the full
6 pay periods of the prior 90 days of employment, as required by Labor Code section 246. This
7 resulted in the employees being underpaid for sick time, and resulted in derivative violations of
8 California Labor Code sections 201, 202 and 203, because Defendant did not pay, or timely pay,
9 Plaintiff and Aggrieved Employees all owing and unpaid wages for work performed by them
10 during their employment and at the end of their employment.

11 20. At all relevant times, Defendant failed in its affirmative obligation to ensure that
12 Plaintiff and Aggrieved Employees had the opportunity to take and were provided with off-duty
13 10-minute rest periods in accordance with the mandates of the California Labor Code and the
14 applicable IWC Wage Order. Specifically, Defendant required Plaintiff and Aggrieved
15 Employees to remain on work premises during their rest breaks. As a result of said policy and
16 practice, Plaintiff and Aggrieved Employees remained on-duty, and under Defendant's control.
17 In addition, as a pattern and practice, the employees' rest periods were frequently interrupted and
18 shortened by managers and/or supervisors. Defendant failed to pay Plaintiff and Aggrieved
19 Employees premium compensation, as mandated by Labor Code section 226.7.

20 21. As a result of Defendant's failure to pay proper overtime wages, sick pay and rest
21 period periods, as identified above, the wage statements issued to Plaintiff and Aggrieved
22 Employees failed to identify the correct gross wages earned, net wages earned, and hourly rates
23 of pay, in violation of Labor Code section 226(a).

24 22. At all relevant times, Defendant regularly failed to reimburse and indemnify
25 Plaintiff and Aggrieved Employees for expenses incurred in the performance of their duties,
26 including, but not limited to, expenses associated with travel mileage. Defendant required
27 Plaintiff and Aggrieved Employees to use their personal vehicles to travel in the course of
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1 performing their duties. Defendant, however, failed to properly reimburse Plaintiff and
2 Aggrieved Employees for their vehicle expenses such as mileage, gas, and wear and tear to their
3 vehicles. More specifically, Defendant did not reimburse employees for using their personal
4 vehicle for work-related purposes, unless the employee drove more than thirty miles.

5 23. Based on the above-stated Labor Code violations, Plaintiff is an “aggrieved
6 employee” as defined in Labor Code section 2699(a). As such, Plaintiff brings this cause of
7 action on behalf of the State of California for violations committed against all similarly situated
8 Aggrieved Employees of Defendant.

9 24. On or about March 9, 2022, Plaintiff sent written notice to the California Labor &
10 Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code sections
11 201, 202, 203, 204, 226, 226.7, 246, 510, 558, 1194 and 2802, pursuant to Labor Code section
12 2698 *et seq.* As of the date of the filing of this Complaint, the LWDA has yet to provide notice
13 to Plaintiff as to whether it intends to investigate the violations provided for in the written
14 notice. In addition to the LWDA, Plaintiff also sent his written notice to Defendant via certified
15 mail according to Labor Code section 2699.3.

16 25. As such, pursuant to Labor Code section 2699(a), Plaintiff will seek recovery of
17 any and all applicable civil penalties for Defendant’s violation of Labor Code sections 201, 202,
18 203, 204, 226, 226.7, 246, 510, 558, 1194 and 2802, for the time period described above, on
19 behalf of himself and other Aggrieved Employees.
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21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
23 this suit is brought against Defendants, jointly and severally, as follows:

24 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to
25 Labor Code section 2698, *et seq.*, and for costs and attorneys’ fees;

26 2. On all causes of action for attorneys’ fees and costs as provided by California
27 Labor Code section 2699, and Code of Civil Procedure section 1021.5; and

28 3. For such other and further relief the Court may deem just and proper.

DATED: May 16, 2022

DIVERSITY LAW GROUP, P.C.

By: _____

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Nicholas Rosenthal

Attorneys for Plaintiff and the Aggrieved
Employees