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2023 JAN -9 PM 3:17

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN COUNTY**

LATOYA HOLLAND, 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-

40E-2023-151

**REPRESENTATIVE ACTION COMPLAINT
FOR VIOLATION OF LABOR CODE § 2698,
ET. SEQ.**

DEMAND OVER \$25,000.00

BY FAX

1 Plaintiff Latoya Holland ("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, 226, 226.7, 510, 512, 551, 558, 1194, 2698 *et seq.* and 2802,
9 and the California Industrial Welfare Commission's ("IWC") Wage Orders.

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

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by: (a) failing to pay for all hours worked, including
15 overtime, in violation of Labor Code sections 510, 551, 558, and 1194; (b) failing to pay
16 overtime wages based on the correct regular rate of pay, in violation of Labor Code sections 510
17 and 558; (c) failing to provide proper meal and rest breaks, in violation of Labor Code sections
18 226.7 and 512; (d) failing to provide accurate itemized wage statements, in violation of Labor
19 Code section 226(a); and (e) failing to reimburse work-related expenses, in violation of Labor
20 Code section 2802.

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

25 JURISDICTION AND VENUE

26 5. The Court has jurisdiction over the violations of the California Labor Code
27 sections 201, 202, 203, 226, 226.7, 510, 512, 551, 558, 1194, 2698 *et seq.* and 2802, and the
28 applicable IWC Wage Orders.

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.

PARTIES

7. Plaintiff began employment with Defendant as a Merchandiser/Installer on or about April 2015. Plaintiff is employed as an hourly, non-exempt employee.

8. Plaintiff was and is the victims of the policies, practices, and customs of Defendant complained of in this action in ways that have deprived her of the rights guaranteed by California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 551, 558, 1194, 2698 *et seq.* and 2802, and the applicable IWC Wage Orders.

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 and does business in the State of California.

10. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to the California Labor Code.

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

12. At all times herein mentioned, each defendant participated in the doing of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants, and each of them, were the agents, servants, and employees of each of the other defendants, as

1 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
2 course and scope of said agency and employment.

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

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

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

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

22 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
23 **AGAINST ALL DEFENDANTS)**

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

26 17. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code
27 section 2698, *et seq.* Plaintiff brings this cause of action for violation of PAGA as a proxy for
28 the State of California and in this capacity, will seek penalties on behalf of all Aggrieved

1 Employees from November 4, 2021, through the present, for Defendant's violations of Labor
2 Code sections 201, 202, 203, 226, 226.7, 510, 512, 551, 558, 1194, 2698 *et seq.* and 2802,
3 arising from Defendant's policy and practice of: (a) failing to pay for all hours worked,
4 including overtime, in violation of Labor Code sections 510, 551, 558, and 1194; (b) failing to
5 pay overtime wages based on the correct regular rate of pay, in violation of Labor Code sections
6 510 and 558; (c) failing to provide proper meal and rest breaks, in violation of Labor Code
7 sections 226.7 and 512; (d) failing to provide accurate itemized wage statements, in violation of
8 Labor Code section 226(a); and (e) failing to reimburse work-related expenses, in violation of
9 Labor Code section 2802

10 18. As a pattern and practice, Defendant suffered and permitted employees to work in
11 excess of eight hours in a workday and/or over forty hours in a workweek without proper
12 overtime pay. During workweeks when Plaintiff and Aggrieved Employees worked overtime
13 and earned non-discretionary incentive pay, such as Per Diems and Door Fees, Defendant failed
14 to properly calculate the regular rate of pay for the purposes of paying overtime. Specifically,
15 Defendant failed to factor the additional non-discretionary remuneration earned into the
16 calculation of the regular rate of pay for the purposes of paying overtime wages. As a result of
17 such policy and practice, Defendant underpaid overtime wages to Plaintiff and Aggrieved
18 Employees, and thus owes additional overtime wages.

19 19. In addition, and as a wholly separate violation of California's overtime laws,
20 Defendant failed to pay Plaintiff and Aggrieved Employees overtime wages for worked
21 performed off-the-clock, such as uploading photographs that the employees were required as
22 part of their job duties. As a further separate violation, when Plaintiff and Aggrieved Employees
23 worked seven consecutive days, Defendant failed to failed to pay overtime wages for work
24 performed in excess of eight hours on the seventh consecutive day.

25 20. At all relevant times, Defendant failed in its affirmative obligation to ensure that
26 Plaintiff and Aggrieved Employees had the opportunity to take and were provided with timely,
27 off-duty rest periods of at least 10 minutes and timely, off-duty meal periods of at least 30
28 minutes in accordance with the mandates of the California Labor Code and the applicable IWC

1 Wage Order. Specifically, Defendant routinely provided meal breaks to Plaintiff and Aggrieved
2 Employees after the fifth hour of work. In addition, whenever Plaintiff and Aggrieved
3 Employees worked more than 12 hours in a day, they were not provided with a second meal
4 break or third rest break. Defendant failed to pay Plaintiff and Aggrieved Employees premium
5 compensation for the missed and/or late meal/rest periods, as mandated by Labor Code section
6 226.7.

7 21. As a result of Defendant's failure to pay proper overtime wages and meal/rest
8 period compensation, as identified above, the wage statements issued to Plaintiff and Aggrieved
9 Employees failed to identify the correct gross wages earned, net wages earned, and hourly rates
10 of pay, in violation of Labor Code section 226(a).

11 22. As a further result of Defendant's failure to pay proper overtime wages and
12 meal/rest period compensation, Defendant violated Labor Code sections 201, 202 and 203 by
13 not paying separated Aggrieved Employees all wages upon separation of employment.

14 23. Defendant regularly failed to reimburse and indemnify Plaintiff and Aggrieved
15 Employees for expenses incurred in the performance of their duties, including, but not limited
16 to, expenses associated with using their personal vehicles for work-related purposes. Defendant
17 required Plaintiff and Aggrieved Employees to use their personal vehicles to travel in the course
18 of performing their duties. Defendant, however, failed to properly reimburse Plaintiff and
19 Aggrieved Employees for their vehicle expenses such as mileage, gas, and wear and tear to their
20 vehicles. More specifically, Defendant did not reimburse employees for using their personal
21 vehicle for work-related purposes, unless the employee drove more than a certain number of
22 miles per day.

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

27 25. On or about November 4, 2022, Plaintiff sent written notice to the California
28 Labor & Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code

1 sections 201, 202, 203, 226, 226.7, 510, 512, 551, 558, 1194, and 2802, pursuant to Labor Code
2 section 2698, *et seq.* As of the date of the filing of this Complaint, the LWDA has yet to provide
3 notice to Plaintiff as to whether it intends to investigate the violations provided for in the written
4 notice. In addition to the LWDA, Plaintiff also sent written notice to Defendant via certified
5 mail according to Labor Code section 2699.3.

6 26. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
7 and all applicable civil penalties for Defendant's violation of Labor Code sections 201, 202, 203,
8 226, 226.7, 510, 512, 551, 558, 1194, and 2802, for the time period described above, on behalf
9 of herself and other Aggrieved Employees.

10 **PRAYER FOR RELIEF**

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

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

15 2. On all causes of action for attorneys' fees and costs as provided by California
16 Labor Code section 2699 and Code of Civil Procedure section 1021.5; and

17 3. For such other and further relief the Court may deem just and proper.
18

19 DATED: January 9, 2023

DIVERSITY LAW GROUP, P.C.

20
21 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Aggrieved
24 Employees
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