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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PLAINTIFF, QIHAI CHEN on
behalf of himself and a class of all
others similarly situated,

Plaintiffs,

vs.

ALLIED WASTE SYSTEMS, INC.;
REPUBLIC SERVICES, INC.;
DOES 1-50, inclusive

Defendants.

CASE NO. '22CV0099 JO WVG

PLAINTIFF'S CLASS ACTION
COMPLAINT FOR:

1. BREACH OF CONTRACT
2. VIOLATION OF THE
UNFAIR COMPETITION
LAW, CALIFORNIA
BUSINESS & PROFESSIONS
CODE §§ 17200, ET SEQ.
3. UNJUST ENRICHMENT
4. CONVERSION

DEMAND FOR JURY TRIAL

1
2 **INTRODUCTION**

3 Plaintiff QIHAI CHEN (hereinafter, “Plaintiff”) brings this action on behalf
4 of himself and all others similarly situated against Defendants ALLIED WASTE
5 SYSTEMS, INC. (hereinafter, “ALLIED”) and REPUBLIC SERVICES, INC.
6 (“REPUBLIC”). Plaintiff makes the following allegations pursuant to the
7 investigation of his counsel and based upon information and belief, except as to the
8 allegations specifically pertaining to himself, which are based on personal
9 knowledge.

10 **FACTS COMMON TO ALL CAUSES OF ACTION**

11 1. Defendant ALLIED provides waste and recycling services in various
12 areas throughout San Diego County through a subsidiary, Defendant REPUBLIC.
13 Defendants have contracted with, among other entities or municipalities in the
14 County, the City of San Diego and the City of Chula Vista.

15 2. Defendants ALLIED and REPUBLIC are contractually obligated to
16 provide waste and recycling services for the City of San Diego and the City of
17 Chula Vista, specifically, the weekly removal of waste and recycling.

18 3. As is typical with residential and commercial waste and recycling
19 services, Plaintiff has no choice of which company will perform said services. If
20 Plaintiff wishes to have weekly services at his home for waste and recycling
21 removal, he must use the services of Defendants ALLIED and REPUBLIC.

22 4. Upon moving into residence in the Carmel Mountain Ranch area of
23 San Diego, Plaintiff entered into an agreement with Defendants ALLIED and
24 REPUBLIC for weekly waste and recycling removal. Plaintiff agreed to pay a
25 recurring fee to Defendants for the removal of waste and recycling from Plaintiff’s
26 residential dwelling.

27 5. On or about December 17, 2021, employees of Defendants ALLIED
28 and REPUBLIC announced that they would be going on strike. On or about this
time, as part of the strike, unionized employees stopped reporting to work.

1 6. Once the strike commenced, Defendants ALLIED and REPUBLIC
2 were unable or unwilling to continue to perform waste and recycling removal
3 services for Plaintiff and others similarly-situated. Plaintiff’s weekly waste and
4 recycling removal that was scheduled for December 20, 2021, the first date after
5 the labor strike began, did not occur.

6 7. After nearly two weeks of the strike and the cessation of services, the
7 City of San Diego sent correspondence to Defendants ALLIED and REPUBLIC
8 inquiring about when services would resume. The correspondence noted that, as
9 per the agreement between the City of San Diego and Defendants ALLIED and
10 REPUBLIC, “Labor unrest, as defined in the Agreement, is not an excuse for non-
11 performance” and that the City expected Defendants to adhere to the terms of the
12 agreement between the parties, namely, continued weekly service from
13 Defendants.

14 8. The labor dispute between Defendants ALLIED and REPUBLIC and
15 their employees continued through the 2021 holidays, and the employees remained
16 on strike. Defendants did not perform the schedule waste and recycling removal at
17 Plaintiff’s residential dwelling on December 28, 2021, January 4, 2022, or January
18 11, 2022, yet continued to bill Plaintiff and others similarly situated for the service.

19 9. The cessation of services during the holiday season was particularly
20 gregarious due to the higher-than-normal amount of waste and recyclables. Waste
21 continued to pile up over the weeks with no end in sight. Many customers did not
22 know what to do with their waste and recycling that continued to pile up. Small
23 apartments, condos, homes, businesses had no other choice but to lay their garbage
24 against the sides and front walls of their homes and businesses, or next to
25 dumpsters all which has been documented in local news reports and social media.
26 Waste included biodegradable components of food and other materials, which
27 attracted rats and cockroaches. The buildup of waste also caused horrible smells to
28 develop which affected the quiet and enjoyment of communities. Many

1 communities via their homeowners associations decided to retain the services of
2 third parties to collect the trash build up and minimize the hazards of the
3 developing trash pile up.

4 10. Despite the lack of services in December 2021-January 2022, Plaintiff
5 was billed at the regular rate for the time that Defendant ALLIED failed to pick up
6 trash.

7 11. The fees charged to Plaintiff during December 2021 and January 2022
8 were not prorated in any way by Defendants ALLIED and REPUBLIC, despite the
9 fact that no services were provided for weeks.

10 12. As of the time of this filing, Plaintiff has not been refunded or credited
11 any amount by Defendants ALLIED and REPUBLIC, despite the fact that no
12 services were provided for weeks.

13 **PARTIES**

14 13. Defendant ALLIED is now, and at all times mentioned in this
15 Complaint, a corporation domiciled in the State of Delaware, with its principal
16 place of business located at 18500 North Allied Way, Phoenix AZ 85054.

17 14. Defendant REPUBLIC is now, and at all times mentioned in this
18 Complaint, a corporation domiciled in the State of Delaware, with its principal
19 place of business located at 18500 North Allied Way, Phoenix AZ 85054.

20 15. Plaintiff is currently unaware of the true names and capacities of the
21 other defendants sued in this action and therefore have named them by the
22 fictitious names DOES 1 through 50, inclusive. Plaintiff will amend this complaint
23 to allege the true names and capacities of such fictitiously named defendants when
24 they are ascertained.

25 16. Plaintiff is informed and believe and, on that basis, alleges that each
26 defendant sued in this action, including each defendant sued by the fictitious names
27 DOES 1 through 50, inclusive, is responsible in some manner for the occurrences,
28 controversies and damages alleged below. (Defendants ALLIED, REPUBLIC, and

1 DOES 1 through 50, inclusive, are hereinafter collectively referred to as
2 “Defendants”.)

3 **JURISDICTION AND VENUE**

4 17. This Court has diversity jurisdiction under 28 U.S.C. § 1332 because
5 Plaintiffs are residents and citizens of the State of California and the County of San
6 Diego, and Defendants ALLIED and REPUBLIC are both corporations organized
7 and existing under the laws of the State of Delaware, and the amount in
8 controversy exceeds \$75,000.

9 18. This Court has personal jurisdiction over Defendants ALLIED and
10 REPUBLIC because they conduct substantial business within California such that
11 Defendants have significant, continuous, and pervasive contacts with the State of
12 California. Defendants have sufficient minimum contacts with this state, and
13 otherwise purposely avail themselves of the markets in this state through the
14 promotion, sale, and marketing of their services in this state, to render the exercise
15 of jurisdiction by this Court permissible under traditional notions of fair play and
16 substantial justice.

17 19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
18 the challenged fee practices have been committed in this District and because
19 Plaintiff resides and suffered the alleged harm in this District.

20 **CLASS REPRESENTATION ALLEGATIONS**

21 20. Plaintiff brings this action as a class action under Federal Rule of
22 Civil Procedure 23 on behalf of a Class consisting of all persons in the County of
23 San Diego who were charged fees for services during the period in which
24 Defendants ALLIED and REPUBLIC provided no services to Plaintiff or other
25 residential customers in the County between December 2021 and January 2022.

26 21. Plaintiff reserves the right to amend or modify the Class definition
27 with greater specificity or further division into subclasses or limitation to particular
28 issues as discovery and the orders of this Court warrant.

1 22. Excluded from the Class are the Defendants, the officers and directors
2 of the Defendants at all relevant times, members of its immediate families and their
3 legal representatives, heirs, successors or assigns and any entity in which
4 Defendants has or had a controlling interest.

5 23. Plaintiff is a member of the Class he seeks to represent.

6 24. **Ascertainability:** the members of the Class are readily ascertainable
7 from Defendants' records and/or Defendants' agents' records of retail and online
8 sales, billing information, account information as well as through public notice.

9 25. **Numerosity:** Defendants have thousands of customers that have paid
10 or were charged fees for services that were never provided. Accordingly, members
11 of the Class are so numerous that their individual joinder herein is impracticable.
12 The precise number of Class members and their identities are unknown to Plaintiff
13 at this time but may be determined through discovery. Class members may be
14 notified of the pendency of this action by mail and/or publication through the
15 distribution records of Defendants.

16 26. **Existence and Predominance of Common Questions of Law and**
17 **Fact:** common questions of law and fact exist as to all Class members and
18 predominate over questions affecting only individual Class members. Common
19 legal and factual questions include, but are not limited to, whether Defendants have
20 breached its contract with its customers and whether their actions are fraudulent
21 and unlawful.

22 27. **Typicality:** the claims of the named Plaintiff are typical of the claims
23 of the Class in that the named Plaintiff was charged fees despite no services being
24 provided by Defendants, and suffered losses as a result. Defendants have no
25 defenses unique to the Plaintiff.

26 28. **Adequacy of Representation:** Plaintiff is an adequate representative
27 of the Class because Plaintiff's interests do not conflict with the interests of the
28 Class members Plaintiff seek to represent, Plaintiff has retained competent counsel

1 the Class did not consent to Defendants’ charging of their debit and credit cards for
2 services that Defendants did not perform.

3 34. Defendants breached the agreements with Plaintiff and the Class by
4 accepting payment for services that were not provided, and that Defendants knew
5 they could not perform due to a labor strike and continued to charge for services
6 not being provided for months.

7 35. Defendants were not excused from performing their obligations under
8 the agreement with Plaintiff and the Class.

9 36. Plaintiff and the Class have suffered damages as a direct and
10 proximate result of Defendants breach of its agreement with Plaintiff to provide
11 services. Plaintiff and the class have suffered damages through the payment of
12 fees. In addition to any consequential damages suffered, Plaintiffs are entitled to
13 full reimbursement of fees for the period in question when no services were
14 provided by Defendants.

15 **SECOND CAUSE OF ACTION**

16 **Violation of California’s Unfair Competition Law**

17 **California Business & Professions Code §§ 17200, et seq.**

18 **(By Plaintiff Against All Defendants)**

19 37. Plaintiff hereby incorporates by reference the allegations contained in
20 all preceding paragraphs of this complaint.

21 38. Plaintiff brings this claim individually and on behalf of the members
22 of the proposed Class against Defendants.

23 39. Defendants are subject to California’s Unfair Competition Law
24 (“UCL”), Cal. Bus. & Prof. Code §§ 17200, et seq. The UCL provides, in
25 pertinent part: “Unfair competition shall mean and include unlawful, unfair or
26 fraudulent business practices and unfair, deceptive, untrue or misleading
27 advertising”

28 40. Defendants’ failure to resolve its labor issues in order to avoid an

1 interruption in services, or provided an alternative service provider, coupled with
2 its failure to stop charging its customers during a period when no services were
3 provided constitutes an unfair business practice.

4 41. Defendants accepted payment and continued to bill Plaintiff and the
5 Class for services it knew it could not provide or decided simply not to provide.

6 42. Defendants' business practices, described herein, violated the
7 "unlawful" prong of the UCL by violating the CLRA, the FAL, and California's
8 Health Studio Services Contract Law and other applicable law as described herein.

9 43. Defendants' business practices, described herein, violated the "unfair"
10 prong of the UCL in that their conduct is substantially injurious to consumers,
11 offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as
12 the gravity of the conduct outweighs any alleged benefits.

13 44. Defendants violated the fraudulent prong of the UCL by misleading
14 Plaintiff and the Class to believe that they would only be charged fees when they
15 received waste and recycling removal services from Defendants.

16 45. Plaintiff and the Class acted reasonably when they entered into
17 agreements with Defendants based on the belief that they would only be charged
18 fees when Defendants were providing services.

19 46. Plaintiff and the Class lost money or property as a result of
20 Defendants' UCL violations because (a) they would not have paid for Defendants'
21 services absent Defendants' representations and omission of a warning that it
22 would continue charging customers' credit cards, debit cards and bank accounts
23 while services were indefinitely interrupted; (b) they would not have paid for
24 Defendants' services on the same terms absent Defendants' representations and
25 omissions; (c) they paid a price premium for Defendants' services based on
26 Defendants' misrepresentations and omissions; and (d) Defendants' services did
27 not have the characteristics, benefits, or quantities as promised.

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THIRD CAUSE OF ACTION

Unjust Enrichment

(By Plaintiff Against All Defendants)

47. Plaintiff hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

48. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendants.

49. Plaintiff and members of the Class conferred benefits on Defendants by paying, and being charged, fees while no waste and recycling removal services were provided by Defendants for weeks.

50. Defendants have knowledge of such benefits.

51. Defendants have been unjustly enriched in retaining the revenues derived from fees paid by Plaintiff and the Class. Retention of those moneys under these circumstances is unjust and inequitable because Defendants charged for services it did not provide. These misrepresentations and charges caused injuries to Plaintiff the Class because they would not have paid Defendants' fees had the true facts been known. At the minimum Defendants could have used the funds received to hire others to remove the trash while the strike was active.

52. Because Defendants' retention of the non-gratuitous benefits conferred on it by Plaintiff and the Class is unjust and inequitable, Defendants must pay restitution to Plaintiff and the Class for their unjust enrichment, as ordered by the Court.

FOURTH CAUSE OF ACTION

Conversion

(By Plaintiff Against All Defendants)

53. Plaintiff hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

54. Plaintiff brings this claim individually and on behalf of the members

1 of the proposed Class against Defendants.

2 55. Plaintiff and other members of the Class were in possession of
3 monies for fees, which they bargained for and paid to Defendants for certain
4 services for which Defendants failed to provide.

5 56. Without Plaintiff's or the Class's consent, Defendants intentionally
6 interfered with the property of Plaintiff and the Class when it retained the monies
7 for fees despite discontinuing services for which Plaintiff and the Class bargained
8 for and paid.

9 57. Defendants' unjust retention and refusal to return the monies for fees
10 without providing the services covered by the fees was a substantial factor in
11 causing Plaintiffs and the Class harm and loss of the monies and benefits of their
12 agreement with Defendants.

13 58. Plaintiff and the Class are entitled to the return of the prorated
14 amounts of the monies paid to Defendants during the relevant time period.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
17 situated, seeks judgment against Defendants, as follows:

18 For an order certifying the Class under Rule 23 of the Federal Rules of Civil
19 Procedure and naming Plaintiff as representative of the Class and Plaintiff's
20 attorneys as Class Counsel to represent the Class members;

21 For an order declaring that Defendants' conduct violates the statutes and
22 laws referenced herein;

23 For an order finding in favor of Plaintiff, and the Class, on all counts
24 asserted herein;

25 For compensatory damages in amounts to be determined by the Court and/or
26 jury;

27 For prejudgment interest on all amounts awarded;

28 For an order of restitution and all other forms of equitable monetary relief;

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For such other and further relief as the Court may deems just and equitable;
and
For an order awarding Plaintiff and the Class their reasonable attorneys’ fees
and expenses and costs of suit.

Respectfully submitted,

Dated: January 25, 2022

HARIRI LAW GROUP
KHASHAYAR LAW GROUP

By: /s/ Daryoosh Khashayar
Ramin R. Hariri
Daryoosh Khashayar
Attorney for Plaintiffs

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Allied Waste Systems, Republic Services Charged Full Rates During Holiday Season Worker Strike, Class Action Says](#)
