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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 19 2021

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

COUNSELO JASSO AYALA; on behalf of the
State of California, as private attorney generals,
and on behalf all other similarly situated
aggrieved employees;

Plaintiff,

v.

FABFITFUN, INC., a Delaware Corporation;
and DOES 1 through 50, inclusive;

Defendants.

CASE NO: CIVDS2006687

**THIRD AMENDED REPRESENTATIVE
PAGA ACTION:**

(1) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 et seq.)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiffs Consuelo Jasso Ayala and Nancy Gomez (collectively “Plaintiffs”), on behalf of
2 themselves, and all others similarly situated aggrieved employees, hereby brings this Representative
3 PAGA Action Complaint against defendants FabFitFun, Inc., Manpower Group, Inc., HR Direct
4 Services, Inc., Cortech, LLC, Priority Workforce, Inc., JobSource North America, Inc., CoreStaff
5 Services, United Employment Solutions Inc., THR Staffing, and DOES 1 through 50, inclusive
6 (collectively “Defendants”), and on information and belief allege as follows.

7 **COMMON FACTUAL ALLEGATIONS**

8 1. Plaintiffs bring this representative action against their former employer, Defendant
9 FabFitFun, Inc., and Does 1 through 50, (collectively, the “Defendants”) on behalf of themselves,
10 and all other similarly situated current and former non-exempt employees who worked at any
11 distribution facility owned and/or operated by defendant FabFitFun, Inc., in California, including,
12 but not limited to, the facility located at 14101-14395 Pipeline Avenue in Chino, California 91710,
13 for California Labor Code violations stemming from Defendants’ failure to pay minimum and
14 overtime wages for all hours worked, failure to provide compliant meal and rest periods or
15 compensation in lieu thereof, failure to timely pay all wages and failure to pay all final wages due
16 upon separation from employment and failure to provide accurate and itemized wage statements.

17 2. Plaintiffs allege on information and belief that other similarly situated non-exempt
18 employees were subjected to the same policies, procedures, and practices, working conditions, and
19 corresponding wage and hour violations to which Plaintiffs were subjected during her employment.
20 Defendants operate a 600,000 square foot fulfillment center in Chino, California. Defendants offer
21 a quarterly subscription box of beauty, fashion, fitness and wellness products. Defendants employ
22 hundreds of non-exempt employees every season in distribution facilities in California.

23 3. Plaintiffs and other similarly situated non-exempt aggrieved employees were
24 employed as fulfillment center employees, including but not limited to, packers/pickers, shippers,
25 quality control and other similarly situated positions. Plaintiffs and hundreds of other non-exempt
26 employees regularly worked in excess of 8 hours in a workday and 40 hours in a workweek.

27 4. At all relevant times, Defendants’ security and loss prevention policies/procedures
28 required Plaintiffs and other non-exempt employees to go through a security checkpoint process,

1 which included checking bags/personal belongings when entering Defendants' work facility at the
2 beginning of each shift, and/or when leaving the facility at the end of each shift. In addition,
3 Plaintiffs and other non-exempt employees were also subject to security checkpoints when they
4 attempted to leave and/or re-enter the facility during meal and rest periods. In light of the large
5 volume of non-exempt employees, the Defendants' security checkpoint would often be crowded
6 with long lines forming that results in delays.

7 5. Nonetheless, Defendants required Plaintiffs and other non-exempt employees to go
8 through the security checkpoint before clocking in for payroll purposes at the beginning of their
9 shifts, and/or after clocking out for payroll purposes at the end of their shifts. Plaintiffs and other
10 non-exempt employees were also required to go through the security checkpoint upon returning to
11 the facility, if they left the premises, during their from meal and/or rest periods. Despite being
12 subject to Defendants' control while waiting to go through these security checkpoints, Defendants
13 did not provide any compensation to Plaintiffs and other non-exempt employees for the time it took
14 to complete this process. After non-exempt employees went through security checkpoint as
15 referenced above, they were also required to spend additional time waiting in line to use Defendants'
16 time recording machines in order to clock in and out for the day.

17 6. Moreover, in light of the COVID-19 pandemic, Defendants began a uniform
18 policy/practice of conducting temperature checks for non-exempt employees prior to entering the
19 premises. These temperature checks occurred at the same time non-exempt employees went through
20 the security checkpoint and further increased the time between when aggrieved employees were
21 under Defendants control and supervisor from when they could clock in for their shift.

22 7. This was an intentional and calculated practice of Defendants to avoid paying
23 Plaintiffs and aggrieved employees all duly owed wages. Thus, aggrieved employees worked longer
24 hours than recorded by Defendants. This off-the-clock work also resulted in overtime hours accruing
25 earlier than when Defendants started paying them in a work shift.

26 8. As a result of Defendants' security checkpoint and COVID-19 temperature checks,
27 Plaintiffs and other similarly situated non-exempt employees were not fully compensated for all
28 minimum and overtime wages and were also frequently unable to take compliant meal and rest

1 periods as required by Labor Code Section 226.7 and applicable Wage Orders. Defendants have no
2 valid defense to this claim given the California Supreme Court's recent unanimous decision in
3 *Frlekin v. Apple, Inc.* (2020) S243805 at *23, which held that employees "must be paid" during
4 security checks since "it is clear that [employees] are subject to [the employer's] control while
5 awaiting, and during, [the] exit searches."

6 9. At all relevant times, Plaintiffs and other non-exempt employees were denied 30-
7 minute off-duty meal periods as mandated by California law. Defendants provided Plaintiffs and
8 other non-exempt employees with exactly 30 minutes for meal periods, but the 30-minute period
9 was inclusive of the time it took to walk to the break area, leave the premises, and also the time it
10 took to wait in line in the security checkpoint to clock-in at the end of the meal periods. Due to
11 Defendants' security check policies/procedures, there were often long lines to clock back in after
12 meal periods. As a result, Plaintiffs and other non-exempt employees would routinely need to get in
13 line prior to taking the full 30-minutes to be clocked in by the end of the 30-minute period. Indeed,
14 if Plaintiffs and other non-exempt employees left the facility for a meal period, they were subjected
15 to the same security checkpoint, which required them to wait in line to exit through the security
16 checkpoint to take the meal period and/or then stand in line to enter the facility to clock-in at the
17 end of the meal period.

18 10. Additionally, the practical effect of Defendants' policy of requiring employees to go
19 through a security checkpoint to leave and/or re-enter the premises for meal periods often resulted
20 in Plaintiffs and other non-exempt employees staying on the premises and otherwise not exercising
21 their right to leave the facility, as doing so would shorten the length of their meal periods. As such,
22 Plaintiffs and other non-exempt employees were regularly not provided with full 30-minute meal
23 periods as required by California law. Plaintiffs and other non-exempt employees also worked in
24 excess of 10 hours in a shift yet were not provided mandated second meal periods on such occasions.

25 11. At all relevant times, Plaintiffs and other non-exempt employees were also not
26 provided with 10 minutes of net rest period time for every 4 hours worked, or major fraction thereof
27 as mandated by California law. As explained above in the context of meal periods, the practical
28 effect of Defendants' policy/procedure of requiring employees to go through a security checkpoint

1 to leave the premises for rest breaks often resulted in Plaintiffs and other non-exempt employees
2 staying on the premises (or in the break room) during their 10 minute rest periods, thereby
3 affirmatively impeding non-exempt employees from taking legally complaint rest periods. On
4 occasions when Plaintiffs and other non-exempt employees worked in excess of 10 hours in a shift,
5 Defendants also failed to authorize and/or permit a third mandated rest break. Moreover, Plaintiffs
6 and other non-exempt employees were not provided rest break premiums for their missed rest
7 breaks. Accordingly, due to Defendants' uniform security checkpoint policies/procedures, Plaintiffs
8 and other non-exempt employees were also regularly denied legally complaint rest breaks in
9 violation of Labor Code 226.7, 512, and applicable IWC Wage Orders.

10 12. In light of Defendants' failure to pay Plaintiffs and other non-exempt employees for
11 all hours worked, including minimum and overtime wages, and failure to pay for meal/rest period
12 premiums for noncompliant meal/rest periods, Defendants issued wage statements which failed to
13 accurately identify the gross wages earned, the total hours worked, the net wages earned, and the
14 correct corresponding number of hours worked at each hourly rate by the employee, in violation of
15 Labor Code §226(a) (1, 2, 5, and 9).

16 13. As a further result of Defendants' Labor Code violations as alleged herein,
17 Defendants also failed to pay Plaintiffs and other non-exempt employees all wages that were due
18 and owing (including all minimum and overtime wages owed, and all meal and rest period
19 premiums) within the required time following the end of their employment in accordance with Labor
20 Code §§ 201-203. As a result, Plaintiffs and all aggrieved employees are entitled to 30 days of
21 wages as a "waiting time penalty."

22 14. Plaintiffs allege that Defendants' violations of the wage and hour components of the
23 California Labor Code and applicable IWC Wage Orders enabled it to decrease expenses and to
24 increase its level of productivity and profits, thereby allowing Defendants to gain an unfair
25 advantage over its competitors. Plaintiffs bring this representative PAGA action seeking civil
26 penalties against Defendants and each of them, on behalf of themselves and other similarly situated
27 non-exempt aggrieved employees for violations of California Labor Code §§ 201, 202, 203, 204,
28 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 1194, and 1194.2, among possibly other sections

1 inadvertently omitted. Plaintiffs also reserve the right to name additional representatives.

2
3 15. Throughout the time period involved in this case, Defendants failed to pay Plaintiffs
4 and the aggrieved employees all wages within any time permissible under California law, including,
5 *inter alia*, California Labor Code sections 204 and 210. Defendants knew or should have known
6 that Plaintiffs and the aggrieved employees were entitled to receive all wages owed to them during
7 their employment. Plaintiffs and the aggrieved employees did not receive payment of all wages,
8 including overtime compensation, minimum wages, and meal and rest period premiums, within any
9 time permissible under California Labor Code section 204.

10 16. Throughout the time period involved in this case, Defendants regularly and
11 consistently failed to keep complete or accurate payroll records for Plaintiffs and the aggrieved
12 employees. Defendants knew or should have known that Defendants were required keep complete
13 and accurate payroll records for Plaintiffs and the aggrieved employees in accordance with
14 California law, but, in fact, did not keep complete and accurate payroll records.

15 **JURISDICTION AND VENUE**

16 17. This Court has jurisdiction over the claims for relief of Plaintiffs and other similarly
17 situated non-exempt aggrieved employees pursuant to the Labor Code and the applicable IWC Wage
18 Orders, among other sections.

19 18. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil
20 Procedure § 395(a). Defendants are headquartered transact business in San Bernardino County and
21 the unlawful acts alleged herein have a direct effect on Plaintiffs and other similarly situated non-
22 exempt employees of Defendants in San Bernardino County. Furthermore, Defendants employed or
23 employ Plaintiffs and other non-exempt employees in San Bernardino County.

24 **PARTIES**

25 **Plaintiffs**

26 19. Plaintiff, Consuelo Jasso Ayala, was employed by Defendants during the time period
27 relevant in this action, as non-exempt hourly employee, based out of Defendants' facility in Chino,
28 California.

1 20. Plaintiff, Nancy Gomez is a resident of San Bernardino County in California and,
2 during the time period relevant to this Complaint, was employed by Defendants as a non-exempt,
3 hourly employee, based out of Defendants' facility in San Bernardino, California.

4 **Defendants**

5 21. Plaintiffs is informed and believes and thereon alleges that defendant FabFitFun,
6 Inc., is a Delaware corporation authorized to and doing business in San Bernardino County,
7 California, and is and/or was the legal employer of Plaintiffs and other similarly situated non-exempt
8 employees during the applicable statutory periods. Upon information and believe, defendant
9 FabFitFun, Inc. relied on defendants Manpower Group, Inc., HR Direct Services, Inc., Cortech,
10 LLC, Priority Workforce, Inc., JobSource North America, Inc., CoreStaff Services, United
11 Employment Solutions Inc., THR Staffing to augment its workforce during the relevant liability
12 period.

13 22. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of
14 participation in the conduct herein alleged, of Defendants sued herein as Does 1 through 50,
15 inclusive, but on information and belief allege that those Defendants are legally responsible for the
16 payment of penalties and damages to Plaintiffs and other similarly situated non-exempt employees
17 by virtue of Defendants' unlawful actions and practices and therefore sues these Defendants by such
18 fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of the
19 Doe Defendants when ascertained.

20 23. Plaintiffs also allege that they and other similarly situated non-exempt aggrieved
21 employees worked under the joint direction and control of Defendants and that Defendants, and
22 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
23 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each
24 Defendant are legally attributable to the other Defendants. On information and belief, a unity of
25 interest and ownership between each Defendant exists such that all Defendants acted as a single
26 employer of Plaintiffs and other similarly situated non-exempt employees.

27 24. Furthermore, on information and belief, Defendants are an integrated enterprise and
28 should be treated as a single employer because Defendants share an interrelation of operations, with

1 common human resources and personnel policies and shared common offices and facilities. Upon
2 information and belief, Defendants share common management, a centralized control of labor
3 operations, and common ownership or financial control.

4
5 25. Plaintiffs are informed and believes and thereon alleges that the Defendants sued
6 herein as Does are now and at all material times herein mentioned were the owner/owners of certain
7 Defendants and the actual employer of Plaintiffs and other similarly situated non-exempt employees
8 or, in the alternative, were individuals employed by Defendants as a managerial and/or supervisory
9 employee and/or agent. In addition, Plaintiffs allege that at all relevant times herein the Defendants
10 sued herein as Does had the authority, in the interest of certain Defendants, to exercise independent
11 judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions
12 against Plaintiffs, and were in Plaintiffs' chain of command at the time of and direct participants in
13 the wrongful conduct which constitutes the basis of Plaintiff's complaint herein.

14 26. Plaintiffs also allege that the Defendants sued herein as Does and certain Defendants
15 are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and
16 were, at all times herein mentioned, acting within the course, scope, and purpose of such
17 relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in
18 conducting themselves in the manner described herein, the Defendants sued herein as Does 11-50
19 and certain Defendants were acting in active concert with on another such that the acts of each were
20 fully attributable to the other in all material respects. Plaintiffs also alleges that certain Defendants
21 were merely the alter ego of the Defendants sued herein as Does in that there existed a unity of
22 interest and ownership such that any separateness between them ceased to exist and the Defendants
23 sued herein as Does 11-50 exercised undue dominance, control, influence, and management over
24 certain Defendants.

25 27. Plaintiffs further alleges that, at all relevant times, certain Defendants have been
26 inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities,
27 and have simply been a shell and instrumentality through which the Defendants sued herein as Does
28 11-50 have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and

1 any liability attached to certain Defendants should be imposed jointly and severally against the
2 Defendants sued herein as Does 11-50. Adherence to the fiction of the separate existence of these
3 corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and
4 promoting injustice.

5 **FIRST CAUSE OF ACTION**

6 **CIVIL PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT**

7 (Labor Code § 2698 *et seq.*)

8 **(Plaintiffs sand Similarly Aggrieved Employees Against All Defendants)**

9 28. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
10 in the preceding paragraphs.

11 29. Defendants have committed several Labor Code violations against Plaintiffs and
12 other similarly aggrieved employees. Plaintiffs are “aggrieved employee” within the meaning of
13 Labor Code § 2698 *et seq.*, acting on behalf of themselves and other similarly aggrieved employees,
14 brings this representative action against Defendants to recover the civil penalties due to Plaintiffs,
15 other similarly aggrieved employees, and the State of California according to proof pursuant to
16 Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and
17 (2) \$200 for each subsequent violation per employee per pay period for those violations of the Labor
18 Code for which no civil penalty is specifically provided based on the following Labor Code
19 violations:

20 a. Failing to pay Plaintiffs and other similarly aggrieved employees for all hours worked,
21 including all minimum and overtime wages in violation of Labor Code §§ 204, 510, 1194, 1197,
22 1198, and 1182.12;

23 b. Failing to provide Plaintiffs and other similarly aggrieved employees with all of their
24 statutorily mandated meal periods or compensation in lieu thereof in violation of Labor Code §§ 204,
25 210, 510, 1194 and 1198;

26 c. Failing to authorize and permit Plaintiffs and other similarly aggrieved employees with
27 all of their statutorily mandated rest periods or compensation in lieu thereof in violation of Labor
28 Code §§ 226.7, and 516;

1 d. Failing to furnish Plaintiffs and other similarly situated employees with complete,
2 accurate, itemized wage statements in violations of Labor Code § 226;

3 e. Failing to timely compensate Plaintiffs and similarly aggrieved employees with all
4 earnings at their separation of employment in violation of Labor Code §§ 201-203; and

5 f. Failing to maintain accurate records on behalf of Plaintiffs and similarly aggrieved
6 employees in violation of Labor Code § 1174.

7 30. On or about March 2, 2020, Plaintiff Consuelo Ayala (“Plaintiff”) filed her PAGA
8 Notice online with the California Labor and Workforce Development Agency (“LWDA”) and set a
9 letter by certified mail to Defendant FabFitFun, Inc. setting forth the facts and theories of the
10 violations alleged against Defendants as prescribed by Labor Code § 2698 *et seq.* As required by
11 PAGA, Plaintiff submitted the \$75 filing fee with the LWDA by regular mail. Pursuant to Labor
12 Code § 2699.3(a)(2)(A), no notice was and/or will have been received by Plaintiff from the LWDA
13 evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of
14 the PAGA notice. Plaintiffs is therefore entitled to commence and proceed with a civil action
15 pursuant to Labor Code § 2699.

16 31. Plaintiffs were compelled to retain the services of counsel to file this court action to
17 protect his interests and the interests of similarly aggrieved employees, and to assess and collect the
18 civil penalties owed by Defendants. Plaintiffs have hereby incurred attorneys’ fees and costs, which
19 she is entitled to receive under California Labor Code § 2699.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiffs, on behalf of themselves, and all others similarly situated, prays
22 for judgment and relief against Defendants, jointly and severally, as follows:

23 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly
24 Aggrieved Employees, and the State of California according to proof pursuant to Labor Code § 2699
25 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
26 subsequent violation per employee per pay period for those violations of the Labor Code for which
27 no civil penalty is specifically provided under the Labor Code;

1 2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq.* and Code of
2 Civil Procedure §1021.5; and

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

4 Dated: June 11, 2021

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

5
6
7 By: _____

Joshua S. Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiffs and Aggrieved Employees

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 1901 Avenue of the
Stars, Suite 450, Los Angeles, California 90067.

5 On July 20, 2021, I served the following document(s) described as **THIRD AMENDED**
6 **REPRESENTATIVE PAGA ACTION** on the interested parties in this action by placing true
copies thereof enclosed in sealed envelopes addressed as follows:

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**Co-counsel for Plaintiff Counselo Jasso
Ayala on behalf of herself and all others
similarly situated**

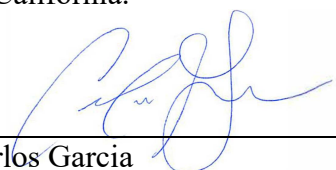
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15 **Counsel for Plaintiff Nancy Gomez on
16 behalf of herself and all others similarly
17 situated**

18 **BY ELECTRONIC MAIL:** Based on a Court order or an agreement by the parties to
19 accept service by e-mail or electronic transmission, I caused such the document(s) described above
20 to be sent from my email address to the persons listed above. I did not receive, within a reasonable
time after the transmission, any electronic message or indication that the transmission was
unsuccessful.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed on July 20, 2021, at Los Angeles, California.

24
25 
26
27
28 Carlos Garcia