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Superior Court of California
County of Riverside

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C. Ortiz

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HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

JESSICA BURROLA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TRADEMARK COSMETICS, INC., a
California corporation; and DOES 1 through
100,

Defendants.

CASE NO. **RIC2002311**

**REPRESENTATIVE ACTION
COMPLAINT:**

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

1 Plaintiff Jessica Burrola (“Plaintiff”), on behalf of herself and all others aggrieved
2 employees, hereby brings this Representative Action Complaint (“Complaint”) against
3 Trademark Cosmetics, Inc., a California corporation, and Does 1 through 100, inclusive
4 (collectively “Defendants”), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all other aggrieved employees, hereby brings this
7 representative action for recovery of civil penalties under Labor Code § 2698 *et seq.* This Court
8 has jurisdiction over Defendants’ violations of the California Labor Code because the amount in
9 controversy exceeds this Court’s jurisdictional minimum.

10 **VENUE**

11 2. Venue as to each Defendant is proper in this judicial district pursuant to California
12 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
13 complained of herein occurred in the County of Riverside. Defendants own, maintain offices,
14 transact business, have an agent or agents within the County of Riverside, and/or otherwise are
15 found within the County of Riverside, and Defendants are within the jurisdiction of this Court
16 for purposes of service of process.

17 **PARTIES**

18 3. Plaintiff is, and at all times relevant herein was, a competent individual over the
19 age of eighteen (18) residing in the state of California. During the statute of limitations period,
20 Plaintiff was employed by Defendants as a non-exempt employee in California, and performed
21 services for Defendants throughout California.

22 4. Plaintiff is informed and believes, and based thereon alleges, that at all times
23 mentioned herein, Defendants did (and do) business by manufacturing cosmetics. Defendants
24 employed Plaintiff and other similarly situated non-exempt employees within the State of
25 California, specifically the County of Riverside, and therefore, were (and are) doing business in
26 the County of Riverside and the State of California.

27 5. Plaintiff is informed and believes, and based thereon alleges, that at all times
28 mentioned herein, Defendants were licensed to do business in the State of California and the

County of Riverside.

6. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partner, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and aggrieved employees to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

7. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employer of Plaintiff and all similarly situated employees.

8. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

9. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved employees.

REPRESENTATIVE ACTION ALLEGATIONS

10. Plaintiff was employed by Defendants as a non-exempt employee from approximately July 2016 until approximately November 15, 2019.

11. Plaintiff is informed and believes, and based thereon alleges, that Defendants

maintained an unlawful policy/practice of requiring Plaintiff and other non-exempt employees to perform work pursuant to an invalid alternative workweek schedule agreement for purposes of overtime computation, in violation of Wage Order 1 § 3(B) and (C), and Labor Code § 511. Upon information and belief, Defendants failed to comply with the proper election procedures for implementing a lawful alternative workweek schedule because the alternative workweek schedule that Plaintiff worked under was not approved by at least two-thirds of the affected employees in the affected work unit. Defendants' purported AWS is also invalid because the required disclosures were not provided in Spanish and Tagalog, despite the fact that upon information and belief, over 5% of the affected employees primary language is Spanish and/or Tagalog. As a result, the purported alternative workweek schedule agreement is invalid, and Plaintiff and other non-exempt employees did not receive all overtime wages earned.

12. Assuming *arguendo* that the AWS was valid, Plaintiff and other non-exempt employees did not receive all overtime wages earned because on occasions, Defendants required Plaintiff and other non-exempt employees to work fewer hours than those work hours designated in the purported AWS without paying these employees overtime compensation for work performed over 8.0 hours per each workday where Defendants required them to work less than 10.0 hours, as required by Wage Order 1 § 3(B)(3).

13. Moreover, Plaintiff and other non-exempt employees did not receive all overtime wages earned because Defendants had a policy and practices of failing to compensate non-exempt employees for daily overtime worked. During Plaintiff's employment, Plaintiff regularly worked shifts in excess of 10.0 hours but was not compensated overtime. Instead, Defendants had a policy and practices of compensating Plaintiff and other non-exempt employees overtime wages only if their hours exceeded 40.0 hours in a workweek. In other words, even assuming *arguendo* that Defendants AWS was lawful, Defendants were still not properly compensating all overtime wages owed, because Defendants were not compensating for daily overtime for work performed in excess of 10.0 hours, but rather, were only compensating for weekly overtime when the employee worked more than 40.0 hours.

14. Additionally, Plaintiff and other non-exempt employees were not paid all wages

1 earned, including minimum and overtime wages, as a result of Defendants unlawful rounding
2 policy. During the relevant time period, Defendants regularly, systematically, and impermissibly
3 rounded and/or truncated the hours worked by non-exempt employees in Defendants' favor,
4 which resulted, over a period of time, in the failure to properly compensate Plaintiff and other
5 non-exempt employees for all hours worked. Specifically, Defendants' timekeeping mechanism
6 failed to pay Plaintiff and other non-exempt employees for all hours that they worked "on-the-
7 clock," whether by rounding and/or truncating of hours. Further, Defendants' rounding
8 mechanism on its time-clock rounded Plaintiff and other non-exempt employees timekeeping in
9 a manner that was not even-handed over time, as is required to be lawful.

10 15. Defendants also failed to provide Plaintiff and other non-exempt employees with
11 all legally compliant meal periods due to Defendants' policy and practice of failing to provide
12 employees with a meal period before the completion of the fifth hour of work and by failing to
13 provide employees with a second 30-minute meal periods for shifts worked in excess of 10.0
14 hours per day. Moreover, on those occasions when Plaintiff was not provided with all legally-
15 required meal periods to which she was entitled, Defendants failed to compensate Plaintiff with
16 the required meal period premium for each workday in which he experienced a meal period
17 violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a
18 portion of the relevant period, Defendants maintained no payroll code for paying meal period
19 premiums under Labor Code § 226.7.

20 16. Defendants also implemented policies and practices which failed to authorize and
21 permit Plaintiff and other non-exempt employees to take a rest period for every 4 hours worked
22 (or major fraction thereof). Specifically, when Plaintiff worked shifts in excess of 10.0 hours,
23 Defendants did not authorize and permit Plaintiff to take a third rest period. In the event that a
24 required rest period was not authorized and permitted, Defendants also did not pay Plaintiff the
25 rest period premium wages required by Labor Code § 226.7. Upon information and belief, during
26 at least a portion of the relevant period, Defendants maintained no payroll code for paying rest
27 period premiums under Labor Code § 226.7.

28 17. As a result of Defendants' failure to pay all minimum and overtime wages, and

1 failure to pay all meal and rest period premium wages, Defendants issued unlawful wage
2 statements to Plaintiff and similarly situated employees, and failed to timely pay Plaintiff and
3 similarly situated employees all wages owed at the time of their respective separations from
4 employment.

5 **FIRST CAUSE OF ACTION**

6 **PRIVATE ATTORNEYS GENERAL ACT**

7 **(AGAINST ALL DEFENDANTS)**

8 18. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
9 fully set forth herein.

10 19. Defendants have committed several Labor Code violations against Plaintiff,
11 members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee”
12 within the meaning of Labor Code § 2698 *et seq.* (“PAGA”), acting on behalf of herself and
13 other aggrieved employees, brings this representative action against Defendants to recover the
14 civil penalties due to Plaintiff, other aggrieved employees, and the State of California according
15 to proof, pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1)
16 \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
17 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
18 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
19 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
20 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
21 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
22 initial violation and \$1,000.00 for each subsequent violation of Lab. Code § 226 pursuant to
23 Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation
24 and \$200 for each subsequent violation per employee per pay period for those violations of the
25 Labor Code for which no civil penalty is specifically provided, based on the following Labor
26 Code violations:
27
28

- a. Failing to compensate Plaintiff and other aggrieved employees all overtime wages earned in violation of Labor Code §§ 204, 510, 1194, and 1198;
- b. Failing to compensate Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197 and 1198;
- c. Failing to provide Plaintiff and other aggrieved employees with their statutorily mandated meal periods and failing to pay meal period premiums in violation of Labor Code §§ 226.7, 512, and 1198;
- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take their statutorily mandated rest periods and failing to pay rest period premiums in violation of Labor Code §§ 226.7, 516, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with complete and accurate itemized wage statements in violation of Labor Code § 226;
- f. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice each calendar month in violation of Labor Code § 204; and
- g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

20. On April 24, 2020, Plaintiff notified Defendant Trademark Cosmetics, Inc. via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 18 (a)-(g). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

21. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess

and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER

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

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: 1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections cited in Paragraph 18 (a)-(g) above;

2. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 2699., and Code of Civil Procedure § 1021.5; and

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

Dated: June 30, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorney for Plaintiff