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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF ORANGE

NARCISO ROJAS, individually and on
behalf of all similarly aggrieved employees,

Plaintiff,

v.

NELLSON NUTRACEUTICAL, LLC, a
California limited liability company; and
DOES 1 through 25,

Defendants.

CASE NO. 30-2021-01181291-CU-OE-CXC

**FIRST AMENDED COMPLAINT FOR
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 *ET*
*SEQ.***

**1. VIOLATION OF LABOR CODE §§
2698, *ET SEQ.* (“PAGA”)**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff NARCISO ROJAS (“Plaintiff”), on behalf of himself and all other
aggrieved employees, and hereby brings this First Amended Representative Action Complaint against
Defendants NELLSON NUTRACEUTICAL, LLC, and DOES 1 through 25, inclusive (collectively,
“Defendants”), and on information and belief alleges as follows:

1 **JURISDICTION AND VENUE**

2 1. Plaintiff, on behalf of himself and all other aggrieved employees, which is defined as
3 individuals who are currently employed, or formerly have been employed, as non-exempt employees
4 of Defendants between July 20, 2021 and the present, hereby brings this representative action for
5 recovery of civil penalties under California Labor Code §§ 2698 *et seq.*

6 2. This Court has jurisdiction over Defendants because, upon information and belief,
7 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
8 themselves to the California market so as to render the exercise of jurisdiction over them by the
9 California courts consistent with the traditional notions of fair play and substantial justice.

10 3. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395(a)
11 and 395.5, because Defendants regularly conduct business in Orange County, maintain offices and
12 facilities in the County of Orange, because Plaintiff lives in Orange County, and because the conduct
13 alleged herein which gives rise to the claims asserted occurred within Orange County.

14
15 **THE PARTIES**

16 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
17 Plaintiff was and currently is, a California resident. During the one year immediately preceding the
18 filing of this Complaint and within the statute of limitations period applicable to each cause of action
19 pled herein, Plaintiff was employed by Defendants in Orange County, California.

20 5. Plaintiff is informed and believes, and based thereon alleges, that Defendants were at
21 all times doing business throughout the State of California, have their offices in Orange County, and
22 serve numerous clients throughout the State. Further, Defendants employed Plaintiff and other
23 aggrieved employees within the State of California and, therefore, were (and are) doing business in
24 Orange County and the State of California.

25 6. Plaintiff does not know the true names or capacities, whether individual, partner, or
26 corporate, of the defendants sued herein as DOES 1 through 25, inclusive, and for that reason, said
27 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend
28 this Complaint when such true names and capacities are discovered. Plaintiff is informed, and

1 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
2 corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately
3 caused Plaintiff and other aggrieved employees to be subject to the unlawful employment practices,
4 wrongs, injuries and damages complained of herein.

5 7. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned
6 herein, Defendants were and are the employers of Plaintiff and the other aggrieved employees.

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

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

19
20 **REPRESENTATIVE ACTION FACTUAL ALLEGATIONS**

21 10. Plaintiff worked for Defendants from on or around August 27, 2018 until on or around
22 February 24, 2020. As part of their job duties, Plaintiff and other similarly aggrieved employees
23 worked for Defendants at a factory that produced granola bars and health bars.

24 11. Throughout their employment, Plaintiff and similarly aggrieved employees were
25 required to engage in lengthy “donning” and “doffing” procedures, prior to and at the end of their
26 work day. Time spent donning and doffing safety equipment was not compensated, despite it being a
27 job requirement for Plaintiff and similarly aggrieved employees.

28 12. To date, Plaintiff and similarly aggrieved employees have not been compensated for

1 time spent donning and doffing.

2 13. Plaintiff and other similarly aggrieved employees were not allowed to take meal and
3 rest breaks. Whenever Plaintiff and other similarly aggrieved employees requested a meal or a rest
4 break, Defendants would instruct Plaintiff and similarly aggrieved employees to take breaks after their
5 work was done, and would routinely interrupt breaks by ordering Plaintiff and similarly aggrieved
6 employees to immediately engage in work-related tasks.

7 14. Plaintiff and similarly aggrieved employees were not compensated for work done
8 during lunch periods.

9 15. As a result of Defendants' willful failure to record the time worked above, Plaintiff and
10 other similarly aggrieved employees' were denied overtime pay. This is because the uncompensated
11 time discussed above should have been counted as overtime, as it was worked in excess of forty per
12 week or in excess of eight hours per day. Additionally, Plaintiff and other similarly aggrieved
13 employees regularly worked in excess of 12 hours per day and would not receive pay at the double-
14 time rate for these hours.

15 16. As a result of Defendants' failure to pay Plaintiff and other similarly aggrieved
16 employees for their owed hourly wages, overtime wages, double-time wages, and failing to note
17 deductions on wage statements, Defendants maintained inaccurate payroll records, issued inaccurate
18 wage statements to Plaintiff and other similarly aggrieved employees, and failed to pay all final wages
19 owed to Plaintiff and other similarly aggrieved employees upon their separation of employment from
20 Defendants.

21 17. Defendants have engaged in, and continue to engage in, unfair business practices in
22 California by practicing, employing and utilizing the employment practices and policies outlined
23 above.

24 18. Defendants' utilization of such unfair business practices constitutes unfair competition
25 and provides an unfair advantage over Defendants' competitors. Defendants' utilization of such unfair
26 business practices deprived Plaintiffs of the general minimum working standards and entitlements due
27 to them under California law and the Industrial Welfare Commission Wage Order as described herein.

28 19. At all times relevant hereto, Plaintiffs were not exempt pursuant to Labor Code §515,

1 including because:

2 a. Plaintiffs' duties and responsibilities did not involve the management of the
3 enterprise in which they were employed or of a customarily recognized department or subdivision
4 thereof;

5 b. Plaintiffs were not licensed or certified by the State of California nor were they
6 primarily engaged in the practice of one of the following recognized professions: law, medicine,
7 dentistry, optometry, architecture, engineering, teaching, or accounting, nor were they primarily
8 engaged in an occupation commonly recognized as a learned or artistic profession as such terms are
9 defined by Wage Order 5;

10 c. Plaintiffs' duties and responsibilities did not involve either the performance of
11 office or non-manual work directly related to management policies or general business operations of
12 their employer or their employer's customers, or the performance of functions in the administration
13 of a school system, or educational establishment or institution, or of a department or subdivision
14 thereof, in work directly related to the academic instruction or training carried on therein;

15 d. Plaintiffs did not have the authority to hire or fire other employees, nor were
16 Plaintiffs' suggestions and recommendations as to the advancement and promotion or any other
17 change of status of other employees given any weight;

18 e. Plaintiffs did not customarily and regularly exercise discretion and independent
19 judgment in performing their work duties;

20 f. Plaintiffs did not perform under only general supervision work along
21 specialized or technical lines requiring special training, experience, or knowledge;

22 g. Plaintiffs did not perform under only general supervision special assignments
23 and tasks; and

24 h. Plaintiffs did not spend more than one-half of their work time engaged in
25 exempt work.

26 20. Defendants have engaged in, and continue to engage in, unfair business practices in
27 California by practicing, employing and utilizing the employment practices and policies outlined
28 above.

1 21. Defendants' utilization of such unfair business practices constitutes unfair competition
2 and provides an unfair advantage over Defendants' competitors. Defendants' utilization of such unfair
3 business practices deprives Plaintiffs of the general minimum working standards and entitlements due
4 them under California law and the Industrial Welfare Commission Wage Order as described herein.

5 22. As a direct result of the violations herein alleged, Plaintiffs have suffered, and continue
6 to suffer, substantial losses related to the use and enjoyment of wages, lost interest on such wages, and
7 expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations under
8 state law, all to their respective damage in amounts according to proof at the time of trial.

9 23. As a result of Defendants' failure to pay all rest period and meal break premium wages,
10 Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff
11 and other similarly aggrieved employees.

12 24. As a result of Defendants' failure to pay all meal and rest period premium wages,
13 Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff
14 and aggrieved employees, and failed to timely pay Plaintiff and other similarly aggrieved employees
15 all wages owed them at the time of separation from their respective employments.

16 25. Based on the foregoing, Plaintiff seeks to represent himself and all aggrieved
17 employees, as defined by Labor Code § 2699(c), including all individuals who are currently employed,
18 or formerly have been employed, as non-exempt employees of Defendants between November 18,
19 2019 and the present.

20 26. On November 18, 2020, Plaintiff sent a notice of filing the Private Attorney General
21 Act ("PAGA") claim to Labor Workforce and Development Agency ("LWDA") pursuant to California
22 Labor Code §§ 2698, *et seq.*, and paid \$75 to LWDA as a fee for filing the PAGA notice.

23
24 **FIRST CAUSE OF ACTION**

25 **PRIVATE ATTORNEYS GENERAL ACT**

26 **(AGAINST ALL DEFENDANTS)**

27 27. Plaintiff incorporates by reference and re-alleges as if fully stated herein all previous
28 paragraphs.

1 28. Defendants have committed several Labor Code violations against Plaintiff and
2 aggrieved employees.

3 29. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code
4 sections enumerated in Labor Code section 2699.5.

5 30. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*,
6 and acting on behalf of himself and other aggrieved employees, brings this representative action
7 against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the
8 State of California according to proof pursuant to Labor Code § 2699(a) including, but not limited to:
9 \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each
10 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure
11 to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial
12 violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee
13 per pay period; and/or (3) \$100.00 for each initial violation and \$200.00 for each subsequent violation
14 per employee per pay period for those violations of the Labor Code for which no civil penalty is
15 specifically provided, based on the following Labor Code violations:

16 (a) Failure to pay premium for missed meal and rest period breaks in violation of Labor
17 Code §§ 200, 226.7, 512, 516, and 12 California Code of Regulations § 11040;

18 (b) Failure to compensate all hours worked in violation of Wage Order 1 and Labor Code
19 §§ 200, 226, 500, 510, 1194, 1197, and 1198;

20 (c) Failure to pay the minimum wage for all hours worked in violation of Labor Code §§
21 200, 226, 226.7, 500, 510, 1197, 1194 and 1198.

22 (d) Failure to pay overtime and double-time compensation to Plaintiffs and other similarly
23 aggrieved employees in violation of Labor Code §§ 200, 226, 500, 510, and 1194;

24 (e) Failure to pay Plaintiff and other similarly aggrieved employees full compensation
25 upon separation of employment in violation of Labor Code §§ 201 – 203; and

26 (f) Failure to furnish Plaintiff and other aggrieved employees with complete, accurate,
27 itemized wage statements in violation of Labor Code § 226.

28 31. On November 18, 2020, Plaintiff sent a notice of his intent to file a PAGA claim for

1 civil penalties to the LWDA pursuant to the California Labor Code § 2698, *et seq.*, with respect to the
2 violations of the California Labor Code identified in Paragraph 21 (a)-(g). Now that sixty-five days
3 have passed from the date Plaintiff notified Defendants and the LWDA of these violations, Plaintiff
4 has exhausted his administrative requirements for bringing a claim under the Private Attorneys
5 General Act with respect to these violations.

6 32. Plaintiff was compelled to retain the services of counsel to file this court action to
7 protect his interests and the interests of other aggrieved employees, and to assess and collect the civil
8 penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is
9 entitled to receive under California Labor Code § 2699.

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1 **PRAYER FOR RELIEF**

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

4 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
5 employees, and the State of California according to proof pursuant to Labor Code § 2699(a) including,
6 but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and
7 \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210
8 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for
9 each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
10 employee per pay period; and/or (3) \$100.00 for each initial violation and \$200.00 for each subsequent
11 violation per employee per pay period for those violations of the Labor Code for which no civil penalty
12 is specifically provided;

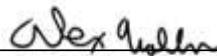
13 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 2699,
14 and Code of Civil Procedure § 1021.5; and

15 3. For such other and further relief that the Court may deem just and proper.
16

17 DATED: January 20, 2022

LOYR, APC

18
19 By:



20 Young W. Ryu, Esq.

Alexander D. Wallin, Esq.

21 Sarah H. Cohen, Esq.

22 Attorneys for Plaintiff NARCISO ROJAS
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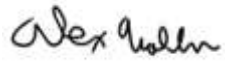
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JURY DEMAND

Plaintiff, on behalf of himself and others aggrieved employees, demands a trial by jury for himself and other aggrieved employees on all claims so triable.

DATED: January 20, 2022

LOYR, APC

By: 
Young W. Ryu, Esq.
Alexander D. Wallin, Esq.
Sarah H. Cohen, Esq.
Attorneys for Plaintiff NARCISO ROJAS