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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ADRIANA ESCOBAR, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

CORTECH WEST STAFFING LLC, a
California Limited Liability Company;
FABITFITFUN, INC., a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 21NWCV00556

REPRESENTATIVE ACTION
COMPLAINT FOR:

1.Civil Penalties Pursuant to Labor Code §
2699, *et seq.* for violations of Labor Code
§§ 201, 202, 203, 204 *et seq.*, 210, 221,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 1198.5, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

1 Plaintiff Adriana Escobar (“PLAINTIFF”) on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendants Cortech West Staffing LLC and
8 Fabfitfun, Inc. (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties
9 for herself, and on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 **THE PARTIES**

24 4. Defendant Cortech West Staffing LLC is a California limited liability corporation
25 that at all relevant times mentioned herein conducted and continues to conduct substantial
26 business in the state of California.

27 5. Defendant Fabfitfun, Inc. is a corporation that at all relevant times mentioned
28

1 herein conducted and continues to conduct substantial business in the state of California.

2 6. Defendants Cortech West Staffing LLC and Fabfitfun, Inc. were the joint
3 employers of PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF
4 performed work for respectively, and are therefore jointly responsible as employers for the
5 conduct alleged herein, and are therefore collectively referred to herein as "DEFENDANT."

6 7. PLAINTIFF was employed by DEFENDANT from June of 2020 to March of
7 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
8 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
9 and overtime wages due for all time worked.

10 8. PLAINTIFF, and such persons that may be added from time to time who satisfy
11 the requirements and exhaust the administrative procedures under the Private Attorney General
12 Act, brings this Representative Action on behalf of the State of California with respect to herself
13 and all individuals who are or previously were employed by Cortech West Staffing LLC and/or
14 Fabfitfun, Inc. in California and who were classified as non-exempt employees
15 ("AGGRIEVED EMPLOYEES") during the time period of May 7, 2020 until a date as
16 determined by the Court (the "PAGA PERIOD").

17 9. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
18 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
19 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
20 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351,
21 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802, California Code of
22 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
23 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
24 employees within the meaning of Labor Code § 2699, *et seq.*

25 10. The true names and capacities, whether individual, corporate, subsidiary,
26 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
27 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
28 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege

1 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
2 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
3 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
4 responsible in some manner for one or more of the events and happenings that proximately
5 caused the injuries and damages hereinafter alleged.

6 11. The agents, servants and/or employees of the Defendants and each of them acting
7 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
8 agent, servant and/or employee of the Defendants, and personally participated in the conduct
9 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
10 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
11 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
12 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
13 agents, servants and/or employees.

14 **THE CONDUCT**

15 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
16 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
17 meaning the time during which an employee is subject to the control of an employer, including
18 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
19 and the AGGRIEVED EMPLOYEES to work from time to time while they were clocked out
20 for what was supposed to be their off duty meal break. DEFENDANT required PLAINTIFF
21 and the AGGRIEVED EMPLOYEES to work off the clock without paying them for all the time
22 they performed duties while on their meal break, specifically by failing to provide enough labor
23 hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and the
24 AGGRIEVED EMPLOYEES to complete on a daily and/or weekly basis. PLAINTIFF and the
25 AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent undergoing
26 mandatory drug testing or any other testing and/or examination required as a condition of
27 employment. Additionally, DEFENDANT engaged in the practice of requiring PLAINTIFF
28 and the AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as

1 a condition of employment, required these employees to wait in line and submit to mandatory
2 temperature checks for COVID-19 screening prior to clocking into DEFENDANT's
3 timekeeping system for the workday. Further, PLAINTIFF and other AGGRIEVED
4 EMPLOYEES from time to time were not paid wages for all time worked, including overtime
5 wages, such that in the aggregate employees were underpaid wages as a result of
6 DEFENDANT's pattern and practice of unevenly rounding time worked by its employees. As
7 a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and
8 overtime compensation by from time to time working without their time being accurately
9 recorded and without compensation at the applicable minimum wage and overtime rates.
10 DEFENDANT's policy and practice not to pay PLAINTIFF and other AGGRIEVED
11 EMPLOYEES for all time worked is evidenced by DEFENDANT's business records.

12 13. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
13 EMPLOYEES were also from time to time unable to take off duty meal breaks and were not
14 fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
15 were from time to time required to perform work as ordered by DEFENDANT for more than
16 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
17 failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with a second off-duty
18 meal period from time to time in which these employees were required by DEFENDANT to
19 work ten (10) hours of work from time to time. PLAINTIFF and the other AGGRIEVED
20 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
21 accordance with DEFENDANT's corporate policy and practice.

22 14. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
23 were also required from time to time to work in excess of four (4) hours without being provided
24 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
25 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
26 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
27 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
28 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.

1 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
2 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
3 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
4 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
5 Order requires employers to provide employees with off-duty rest periods, which the California
6 Supreme Court defined as time during which an employee is relieved from all work related
7 duties and free from employer control. In so doing, the Court held that the requirement under
8 California law that employers authorize and permit all employees to take rest period means that
9 employers must relieve employees of all duties and relinquish control over how employees
10 spend their time which includes control over the locations where employees may take their rest
11 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
12 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
13 other AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
14 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
15 leave the work premises during their rest period.

16 15. State law provides that employees must be paid overtime and meal and rest break
17 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
18 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
19 tied to specific elements of an employee's performance.

20 16. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
21 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
22 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
23 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
24 hourly basis with incentive compensation when the employees met the various performance
25 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
26 overtime and meal and rest break premiums to PLAINTIFF and other AGGRIEVED
27 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
28 employees' "regular rate of pay" for purposes of calculating overtime pay and the correct meal

1 and rest break premium pay. Management and supervisors described the incentive program to
2 potential and new employees as part of the compensation package. As a matter of law, the
3 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
4 be included in the “regular rate of pay.” The failure to do so has resulted in an underpayment
5 of overtime compensation and meal and rest break premium pay to PLAINTIFF and other
6 AGGRIEVED EMPLOYEES by DEFENDANT.

7 17. DEFENDANT also failed to provide PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES with complete and accurate wage statements which failed to show, among other
9 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
10 employer shall furnish each of his or her employees with an accurate itemized wage statement
11 in writing showing, among other things, gross wages earned and all applicable hourly rates in
12 effect during the pay period and the corresponding amount of time worked at each hourly rate.
13 Aside, from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an
14 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
15 As a result, DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
16 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

17 18. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
18 employment are due and payable twice during each calendar month, on days designated in
19 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
20 requires employers to pay employees all wages owed within seven (7) days of the close of the
21 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
22 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
23 payroll period, including but not limited to for the “Gross Up Pay” wage payments.

24 19. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
25 to collect or receive from an employee any part of wages theretofore paid by said employer to
26 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
27 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
28 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the

1 deductions from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES,
2 and thereby failed to pay these employees all wages due at each applicable pay period and upon
3 termination. PLAINTIFF and the AGGRIEVED EMPLOYEES seek recovery of all illegal
4 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

5 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
6 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
7 and other non-exempt employees earn non-discretionary remuneration. Rather than pay sick
8 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other
9 AGGRIEVED EMPLOYEES at their base rates of pay.

10 21. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
11 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
12 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
13 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
14 2802, employers are required to indemnify employees for all expenses incurred in the course
15 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
16 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
17 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
18 directions of the employer, even though unlawful, unless the employee, at the time of obeying
19 the directions, believed them to be unlawful."

20 22. In the course of their employment PLAINTIFF and other AGGRIEVED
21 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
22 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
23 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
24 cost associated with the use of their personal cellular phones and personal vehicles for
25 DEFENDANT's benefit. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES
26 were required by DEFENDANT to use their personal cellular phones to respond to managers
27 while off the clock (which also results in minimum wage and overtime violations). As a result,
28 in the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED

1 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
2 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
3 of DEFENDANT.

4 23. In violation of the applicable sections of the California Labor Code and the
5 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
6 a matter of company policy, practice and procedure, intentionally and knowingly failed to
7 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest
8 periods. This policy and practice of DEFENDANT is intended to purposefully avoid the
9 payment for all time worked as required by California law which allows DEFENDANT to
10 illegally profit and gain an unfair advantage over competitors who complied with the law. To
11 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
12 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

13 24. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
14 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails
15 to accurately calculate and record all missed meal and rest periods and failed to pay all
16 minimum and overtime wages due to PLAINTIFF and the other AGGRIEVED EMPLOYEES.
17 The proper recording of these employees' missed meal and rest breaks is the DEFENDANT's
18 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
19 burden, DEFENDANT fails to properly calculate and/or pay all required compensation for work
20 performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and
21 regulations promulgated thereunder as herein alleged.

22 25. All of the conduct and violations alleged herein occurred during the PAGA
23 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
24 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
25 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
26 AJDAR 12157 (Certified for Publication 12/19/18).

1 **JURISDICTION AND VENUE**

2 26. This Court has jurisdiction over this Action pursuant to California Code of Civil
3 Procedure, Section 410.10.

4 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,
5 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
6 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
7 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
8 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
9 AGGRIEVED EMPLOYEES.

10 **FIRST CAUSE OF ACTION**

11 **For Violation of the Private Attorneys General Act**

12 **[Cal. Lab. Code §§ 2698, *et seq.*]**

13 **(By PLAINTIFF and Against All Defendants)**

14 28. PLAINTIFF realleges and incorporates by this reference, as though fully set
15 forth herein, the prior paragraphs of this Complaint.

16 29. PAGA is a mechanism by which the State of California itself can enforce state
17 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
18 the state's labor law enforcement agencies. An action to recover civil penalties under
19 PAGA is fundamentally a law enforcement action designed to protect the public and not to
20 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
21 but to create a means of "deputizing" citizens as private attorneys general to enforce the
22 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
23 public interest to allow aggrieved employees, acting as private attorneys general to recover
24 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
25 claims cannot be subject to arbitration.

26 30. PLAINTIFF, and such persons that may be added from time to time who
27 satisfy the requirements and exhaust the administrative procedures under the Private
28 Attorney General Act, brings this Representative Action on behalf of the State of California

1 with respect to herself and all individuals who are or previously were employed by Cortech
2 West Staffing LLC and/or Fabfitfun, Inc. in California and who were classified as non-
3 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of May 7, 2020
4 until a date as determined by the Court (the "PAGA PERIOD").

5 31. On May 7, 2021, PLAINTIFF gave written notice by electronic mail to the
6 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
7 employer of the specific provisions of this code alleged to have been violated as required by
8 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
9 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
10 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
11 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

12 32. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
14 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
15 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
16 (d) failed to pay overtime and sick pay wages, (e) failed to reimburse employees for required
17 expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor
18 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7,
19 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802, California Code of
20 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
21 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
22 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private
23 Attorney General Act of 2004 as the representative of the State of California for the illegal
24 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:

6 A) Recovery of civil penalties as prescribed by the Labor Code Private
7 Attorneys General Act of 2004; and,

8 B) An award of attorneys' fees and cost of suit, as allowable under the
9 law, including, but not limited to, pursuant to Labor Code §2699.

10 Dated: August 27, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
11 LLP

12
13 By: /s/ Norman Blumenthal
14 Norman B. Blumenthal
15 Attorneys for Plaintiff
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