

FILED
ALAMEDA COUNTY

OCT -8 2021

CLERK OF THE SUPERIOR COURT

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SUPERIOR COURT OF CALIFORNIA**COUNTY OF ALAMEDA**

17 EMMANUEL SALINAS, on behalf of the
18 State of California and Aggrieved
19 Employees,

20 Plaintiff,

21 vs.

22 NESTLE PURINA PETCARE
23 COMPANY; NESTLE USA, INC.;

24 Defendants,

Case No.

21CV000112

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT**

DEMAND FOR JURY TRIAL

1 Plaintiff Emanuel Salinas (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action against Nestlé Purina PetCare Company
5 (“Nestlé Purina”) and Nestlé USA, Inc. (“Nestlé USA”) (collectively “Defendants”), on behalf of
6 the State of California to collect statutory penalties as a result of Defendants’ systematic violations
7 of California labor law with respect to Defendants’ non-exempt, hourly workers employed in
8 California (the “Aggrieved Employees”).

9 2. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly
10 workers employed by Defendants, including, but not limited to, case pickers, forklift operators,
11 machine operators, material handlers, warehouse clerks, associates, and packers, globally referred
12 to as warehouse workers, and other employees with similar job duties.¹

13 3. This action stems from Defendants’ policies and practices of: (1) failing to
14 compensate Plaintiff and Aggrieved Employees for all hours worked; (2) failing to pay Plaintiff
15 and Aggrieved Employees minimum wage for all hours worked; (3) failing to pay Plaintiff and
16 Aggrieved Employees overtime wages; (4) failing to authorize and permit Plaintiff and Aggrieved
17 Employees to take meal and rest breaks to which they are entitled by law, and failing to pay
18 premium compensation for missed meal and rest breaks; (5) failing to provide Plaintiff and
19 Aggrieved Employees true and accurate itemized wage statements; and (6) failing to timely pay
20 Aggrieved Employees full wages during employment and upon separation from employment.

21 4. Defendants fail to compensate Plaintiff and Aggrieved Employees for all hours
22 worked. Due to understaffing, overwork, and off the clock health checks Plaintiff and Aggrieved
23 Employees regularly work well beyond their scheduled shifts. This additional work is unpaid
24 because Defendants refuse to compensate Plaintiff and Aggrieved Employees for work beyond their
25 scheduled shifts. As a result, Defendants fail to pay for all time Plaintiff and Aggrieved Employees
26

27 ¹ Although Plaintiff is a current employee, Aggrieved Employees include current and former
28 employees. For ease of discussion, the allegations herein are made in the present tense.

1 spend working for Defendants' benefit, even though it should be compensated at minimum wage
2 and/or overtime time under California law.

3 5. Defendants also fail to properly compensate Plaintiff and Aggrieved Employees for
4 non-compliant meal and rest periods. Defendants fail to both compensate Plaintiff and Aggrieved
5 Employees for the time spent working during missed meal periods and also fails to make premium
6 payments for each missed meal or rest period, as required by law. Plaintiff and Aggrieved
7 Employees often work ten or more hours a day yet are constantly required to work through both
8 their first and second meal periods.

9 6. As a result of the above violations, Defendants fail to maintain true and accurate
10 records of the hours Plaintiff and Aggrieved Employees actually work, and also fails to pay all
11 wages due during employment and upon separation within the required time period.

12 7. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable
13 attorneys' fees for these violations pursuant to Sections 2699(a) and (f) of the California Labor
14 Code Private Attorneys General Act ("PAGA").

15 **PARTIES**

16 8. Plaintiff Emmanuel Salinas is an individual over the age of eighteen, and at all times
17 mentioned in this Complaint was a resident of the State of California.

18 9. Plaintiff is currently employed by Defendants for various projects as a forklift
19 operator. Plaintiff began employment with Defendants in February 2015. Plaintiff works for
20 Defendants in Maricopa, California.

21 10. The Aggrieved Employees are all current and former non-exempt, hourly employees
22 of Defendants, including, but not limited to, case pickers, forklift operators, machine operators,
23 material handlers, warehouse clerks, associates, and packers, globally referred to as warehouse
24 workers, and other employees with similar job duties.

25 11. Plaintiff is informed, believes, and thereon alleges that Nestlé Purina is a Missouri
26 corporation headquartered in St. Louis, Missouri. Nestlé Purina is registered to do business in
27 California, does business in California and employs and/or employed hourly, non-exempt
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employees, including Plaintiff and Aggrieved Employees in California.

12. Plaintiff is informed, believes, and thereon alleges that Nestlé USA is a Delaware corporation headquartered on Arlington, Virginia. Nestlé USA is registered to do business in California, does business in California and employs and employed hourly, non-exempt employees, including Plaintiff and Aggrieved Employees in California.

13. Plaintiff is informed, believes, and thereon alleges that Defendants jointly employ and/or employed Aggrieved Employees, among other hourly employees, in this County and throughout the state of California.

14. Defendants employ and/or employed Plaintiff and Aggrieved Employees because Defendants, directly or indirectly, control the employment terms, pay practices, timekeeping practices, and daily work of Plaintiff and Aggrieved Employees.

15. Plaintiff is informed, believes, and thereon alleges that Defendants jointly exercise control over Plaintiff and Aggrieved Employees with respect to their employment.

16. Plaintiff is informed, believes, and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

17. At all material times, Defendants have done business under the laws of California, have had places of business in California, including in this County, and have employed Aggrieved Employees in this County and elsewhere throughout California. Defendants are “persons” as defined in Labor Code § 18 and “employers” as that term is used in the Labor Code, the IWC Wage Orders regulating wages, hours, and working conditions.

JURISDICTION AND VENUE

18. Venue is proper in this County pursuant to Code of Civil Procedure §§ 393(a) and/or 395.5. Defendants conduct business and employ Aggrieved Employees in this County, and therefore the liability and the cause or some part of the cause arose in this County.

19. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA. The Court also has jurisdiction over Defendants because they are companies authorized to do business in the State of California, and because Defendants do in fact do business and employ workers in the State of California.

FACTUAL ALLEGATIONS

20. Plaintiff works for Defendants as a forklift operator in Maricopa, California. Plaintiff began employment with Defendants in February 2015. Plaintiff's primary duties include but are not limited to: ensuring that Defendants product is moved within Defendants' warehouse in a safe and efficient manner by forklift operation and physically loading/unloading Defendants' trucks. Plaintiff is also responsible for maintaining proper inventory, good housekeeping, and upholding warehouse standards. Plaintiff is classified as an hourly, non-exempt employee and is paid an hourly rate of \$25.46.

21. Defendants employ and have employed hundreds of hourly, non-exempt workers similarly situated to Plaintiff in California, including but not limited to case pickers, forklift operators, machine operators, material handlers, warehouse clerks, associates, and packers, globally referred to as warehouse workers, and other employees with similar job duties.

22. Although Plaintiff's shifts may vary in length, Plaintiff usually worked eight (8) hours or more per shift, six shifts per week. Plaintiff works approximately forty (48) hours per week, or more.

23. Plaintiff is informed, believes, and thereon alleges that Defendants employ Aggrieved Employees in a similar manner throughout California, including in Alameda County, and Aggrieved Employees perform work materially similar to Plaintiff. Defendants pay Aggrieved Employees, including Plaintiff, on an hourly rate basis.

24. Plaintiff is informed, believes, and thereon alleges that the policies and practices of Defendants have at all relevant times been similar for Plaintiff and Aggrieved Employees, regardless of facility or location in California.

25. Aggrieved Employees are required to follow and abide by common work, time, and

1 pay policies and procedures in the performance of their jobs and duties.

2 26. At the end of each pay period, Aggrieved Employees receive wages from Defendants
3 that are determined by common systems and methods that Defendants select and control.

4 27. Defendants routinely require Plaintiff and Aggrieved Employees to perform
5 substantial work off-the-clock and without compensation. This includes but is not limited to
6 Defendants requiring Plaintiff and Aggrieved Employees to wait in line, to go through temperature
7 checks and to answer COVID-19 screening questionnaires prior clocking in for the start of their
8 shift. It takes Plaintiff and Aggrieved Employees several minutes to go through the line, to undergo
9 such temperature checks, and to answer the COVID-19 screening questionnaires *before* the
10 beginning of each shift. This time spent in temperature check lines, undergoing temperature checks
11 and answering COVID-19 screening questionnaires goes unrecorded and therefore uncompensated.

12 28. In addition, Defendants require Plaintiff and Aggrieved Employees to don and doff
13 their Personal Protective Equipment (“PPE”) *before* the beginning and *after* the end of their shift,
14 *i.e.*, before clocking in and after clocking out. It takes Plaintiff and Aggrieved Employees an
15 additional several minutes to don and doff their PPE before and after each shift. Although, in some
16 instance, Plaintiff and Aggrieved Employees are allowed to clock in prior to the start of their shift,
17 during which time they don their PPE, Defendants still do not compensate them until the actual
18 starting time of their scheduled shift. Therefore, this entire time spent donning and doffing also
19 goes unrecorded and therefore uncompensated.

20 29. As a result of these policies and/or practices, Plaintiff and Aggrieved Employees are
21 denied compensation for all hours worked, including minimum wages and overtime, which they
22 are lawfully owed resulting from the additional off-the-clock work in excess of eight (8) hours per
23 day and forty (40) hours per week.

24 30. Plaintiff is informed, believes, and thereon alleges that Defendants utilize and apply
25 these “temperature check” and “COVID-19 screening” protocols, and “donning and doffing”
26 policies and practices across all Defendants’ facilities throughout California.

27 31. Plaintiff is informed, believes, and thereon alleges that Defendants utilize the same
28

1 or substantially similar timekeeping mechanisms throughout all its facilities in California.

2 32. In addition to the above, Defendants regularly fail to provide Plaintiff and Aggrieved
3 Employees compliant meal breaks. Defendants' policies, practices, and procedures require Plaintiff
4 and Aggrieved Employees to routinely skip their meal breaks, yet do not provide them with
5 requisite premium payments for missed meal breaks. In the rare occasions when premium payments
6 are made, such are not paid at Plaintiff's and Aggrieved Employees' regular rate of pay.

7 33. Plaintiff and Aggrieved Employees are routinely denied meal breaks for at least two
8 reasons: (i) Defendants do not authorize, permit, and/or make available timely meal breaks to
9 Plaintiff and Aggrieved Employees; and (ii) Plaintiff and Aggrieved Employees are often too busy
10 with work during the day to have time to take bona fide meal breaks.

11 34. When Plaintiff and Aggrieved Employees do attempt a meal break, such are untimely
12 and/or shortened, *i.e.*, after the end of the fifth hour of work and/or less than thirty minutes. As a
13 result, Plaintiff and Aggrieved Employees are not provided duty-free, uninterrupted, and timely
14 thirty-minute meal periods during which they should be completely relieved of any duty, by the end
15 of the fifth hour of work.

16 35. Further, for each day Plaintiff and Aggrieved Employees work shifts of more than
17 ten hours, Defendants systematically deny Plaintiff and Aggrieved Employees a second meal break.
18 Similarly, Plaintiff and Aggrieved Employees do not receive requisite premium payments for these
19 missed second meal breaks.

20 36. Plaintiff is informed, believes, and thereon alleges that Defendants utilize and apply
21 these meal breaks policies and practices across all Defendants' facilities throughout California.

22 37. Defendants' common course of wage-and-hour abuse also includes routinely failing
23 to maintain true and accurate records of the hours worked by Plaintiff and Aggrieved Employees.
24 Defendants fail to record hours that Plaintiff and Aggrieved Employees work off-the-clock.

25 38. Defendants' failure to record all hours worked results in Defendants' failure to
26 provide Plaintiff and Aggrieved Employees with itemized and accurate wage statement as required
27 by California law. Plaintiff and Aggrieved Employees receive wage statement that do not reflect all
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1 hours worked, including overtime and premiums for non-compliant meal periods.

2 39. Further, Defendants do not provide Aggrieved Employees who are former employees
3 of Defendants with full and timely payment of all wages owed upon separation from employment.
4 At the time their employment ends, Aggrieved Employees are owed wages for all time worked,
5 including overtime, whether their termination was voluntary or involuntary; yet Defendants have
6 failed to provide Aggrieved Employees with such payments within the required time period. As a
7 result, and pursuant to the California Labor Code, Defendants are subject to waiting time penalties.

8 40. Plaintiff is informed, believes, and thereon alleges that Defendants' unlawful conduct
9 has been widespread, repeated, and consistent as to Aggrieved Employees throughout California.

10 **FIRST CAUSE OF ACTION**
11 **Penalties Pursuant to Labor Code § 2699(a)**
(On Behalf of the State of California and Aggrieved Employees)

12 41. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
13 herein.

14 42. Labor Code § 2699(a) provides:

15 Notwithstanding any other provision of law, any provision of this code
16 that provides for a civil penalty to be assessed and collected by the
17 Labor and Workforce Development Agency or any of its departments,
18 divisions, commissions, boards, agencies, or employees, for a violation
of this code, may, as an alternative, be recovered through a civil action
brought by an aggrieved employee on behalf of herself or herself and
other current or former employees.

19 43. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and
20 unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after
21 he or she quits, at the latest.

22 44. Labor Code § 203 provides, in relevant part:

23 If an employer willfully fails to pay, without abatement or reduction,
24 in accordance with Sections 201, 201.5, 202, and 205.5, any wages of
25 an employee who is discharged or who quits, the wages of the
26 employees shall continue as a penalty from the due date thereof at the
same rate paid or until an action therefor is commenced; but the wages
shall not continue for more than 30 days.

1 45. Labor Code § 256 provides: “The Labor Commissioner shall impose a civil penalty in
2 an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

3 46. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
4 Defendants, as alleged above, to timely pay all wages owed to Plaintiff and the Aggrieved
5 Employees in compliance with Labor Code §§ 201-202 and in the amounts established by Labor
6 Code § 203.

7 47. Labor Code § 226(a) provides:

8 Every employer shall, semimonthly or at the time of each payment of
9 wages, furnish each of his or her employees, either as a detachable part
10 of the check, draft, or voucher paying the employee’s wages, or
11 separately when wages are paid by personal check or cash, an accurate
12 itemized statement in writing showing (1) gross wages earned, (2) total
13 hours worked by the employee, except for any employee whose
14 compensation is solely based on a salary and who is exempt from
15 payment of overtime under subdivision (a) of Section 515 or any
16 applicable order of the Industrial Welfare Commission, (3) the number
17 of piece-rate units earned and any applicable piece rate if the employee
18 is paid on a piece-rate basis, (4) all deductions, provided that all
19 deductions made on written orders of the employee may be aggregated
20 and shown as one item, (5) net wages earned, (6) the inclusive dates of
21 the period for which the employee is paid, (7) the name of the employee
22 and his or her social security number, (8) the name and address of the
23 legal entity that is the employer, and (9) all applicable hourly rates in
24 effect during the pay period and the corresponding number of hours
25 worked at each hourly rate by the employee.

26 48. Labor Code § 226(e)(1) provides, in relevant part:

27 An employee suffering injury as a result of a knowing and intentional
28 failure by an employer to comply with subdivision (a) is entitled to
recover the greater of all actual damages or fifty dollars (\$50) for the
initial pay period in which a violation occurs and one hundred dollars
(\$100) per employee for each violation in a subsequent pay period, not
to exceed an aggregate penalty of four thousand dollars (\$4,000), and
is entitled to an award of costs and reasonable attorney’s fees.

 49. Labor Code § 226.3 provides:

 Any employer who violates subdivision (a) of Section 226 shall be
subject to a civil penalty in the amount of two hundred fifty dollars
(\$250) per employee per violation in an initial citation and one
thousand dollars (\$1,000) per employee for each violation in a
subsequent citation, for which the employer fails to provide the
employee a wage deduction statement or fails to keep the records
required in subdivision (a) of Section 226. The civil penalties provided
for in this section are in addition to any other penalty provided by law.

50. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226.3. In addition, Plaintiff seeks penalties in the amount established by Labor Code § 226(e)(1), as prayed for herein.

51. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of his intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

52. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Labor Code § 2699.

53. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

54. Wherefore, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)
(On Behalf of the State of California and Aggrieved Employees)

55. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

56. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

57. Labor Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation.”

1 58. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any
2 employment are due and payable twice during each calendar month....”

3 59. IWC Wage Order 1-2001 and 7-2001(2)(K) defines hours worked as “the time during
4 which an employee is subject to the control of an employer and includes all the time the employee
5 is suffered or permitted to work, whether or not required to do so.”

6 60. Labor Code § 1198 makes it unlawful for employers to employ employees under
7 conditions that violate the Wage Orders.

8 61. Labor Code § 510 provides, in relevant part:

9 Eight hours of labor constitutes a day’s work. Any work in excess of
10 eight hours in one workday and any work in excess of 40 hours in any
11 one workweek and the first eight hours worked on the seventh day of
12 work in any one workweek shall be compensated at the rate of no less
13 than one and one-half times the regular rate of pay for an employee.
14 Any work in excess of 12 hours in one day shall be compensated at the
15 rate of no less than twice the regular rate of pay for an employee. In
16 addition, any work in excess of eight hours on any seventh day of a
17 workweek shall be compensated at the rate of no less than twice the
18 regular rate of pay of an employee. Nothing in this section requires an
19 employer to combine more than one rate of overtime compensation in
20 order to calculate the amount to be paid to an employee for any hour of
21 overtime work.

22 62. Labor Code § 1197 provides:

23 The minimum wage for employees fixed by the commission or by any
24 applicable state or local law, is the minimum wage to be paid to
25 employees, and the payment of a lower wage than the minimum so
26 fixed is unlawful. This section does not change the applicability of local
27 minimum wage laws to any entity.

28 63. Labor Code § 1194 provides, in relevant part:

 Notwithstanding any agreement to work for a lesser wage, any
employee receiving less than the legal minimum wage or the legal
overtime compensation applicable to the employee is entitled to
recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, including interest thereon,
reasonable attorney’s fees, and costs of suit.

 64. Labor Code §§ 226.7 and 512 and IWC Wage Order 1-2001 and 7-2001 require
Defendants to authorize, permit, and/or make available timely and compliant meal and rest periods
to its employees. Labor Code §§ 226.7 and 512 and IWC Wage 1-2001 and Order 4-2001 prohibit

1 employers from employing an employee for more than five hours without a meal period of not less
2 than thirty minutes, and from employing an employee more than ten hours per day without
3 providing the employee with a second meal period of not less than thirty minutes. Unless the
4 employee is relieved of all duty during the thirty-minute meal period and ten-minute rest period,
5 the employee is considered “on duty” and the meal period is counted as time worked under the
6 applicable wage orders.

7 65. To the extent than any violation alleged herein does not carry penalties under Labor
8 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for each pay period
9 in which Plaintiff and an Aggrieved Employee was aggrieved, in the amounts established by Labor
10 Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f) for Plaintiff and
11 Aggrieved Employees for violations of Labor Code provisions including, but not limited to, Labor
12 Code 204, 226.7, 510, 512, 1194, 1197, 1198, IWC Wage Order 1-2001 and 7-2001, and any other
13 violation alleged herein does not carry penalties under Labor Code § 2699(a).

14 66. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
15 notice of his intention to file this claim. Sixty-five calendar days have passed without notice from
16 the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in
17 compliance with § 2699.3(a).

18 67. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
19 Employees, and himself as set forth in Labor Code § 2699(g)(1).

20 68. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California
21 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to
22 an award of attorneys’ fees and costs as set forth below.

23 69. Wherefore, Plaintiff requests relief as hereinafter provided.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for relief as follows:

- 26 1. For the Court to declare, adjudge, and decree that Defendants have violated the
27 California Labor Code as alleged herein;

2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees civil penalties provided under the PAGA;
3. For interest as provided by applicable law;
4. For an award of reasonable attorneys' fees as provided by the California Labor Code § 2699(g)(1); California Code of Civil Procedure § 1021.5; and/or any other applicable law;
5. For all costs of suit; and
6. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: October 8, 2021



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*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Respectfully submitted,

Date: October 8, 2021



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California and Aggrieved Employees*