

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: John Doyle

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10
11 ANDERSON HILL; individually, and on
behalf of other aggrieved employees
12 pursuant to the California Private Attorneys
General Act;

13 Plaintiff,

14 vs.

15 FASHION NOVA LLC.; FASHION
16 NOVA, INC.; NOVA FASHION, INC.;
FASHION NOVA HOLDINGS, LLC.; and
17 DOES 1 through 100, inclusive,

18 Defendant.
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Case No.: **21STCV40012**

PAGA
COMPLAINT

(1) Violation of California Labor Code § 2698,
et seq. (Private Attorneys General Act of
2004)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff ANDERSON HILL (“Plaintiff”), individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, and alleges as follows:

JURISDICTION AND VENUE

1. This PAGA action is brought against Defendant FASHION NOVA, LLC. and/or FASHION NOVA, INC. and/or NOVA FASHION, INC. and/or FASHION NOVA HOLDINGS, LLC. (“Defendant” or “FASHION NOVA”) to recover penalties, and all other available relief on behalf of Plaintiff and all other aggrieved employees who suffered one or more of the Labor Code violations set forth in California Labor Code Private Attorneys General Act of 2004. The damages and penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction” in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant Corporation has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, and/or transacts business in the State of California, including the County of Los Angeles, and the acts and omissions giving rise to this action alleged herein relating to Plaintiff began and took place in the State of California, and the County of Los Angeles.

PARTIES

5. Plaintiff incorporates by reference the allegations set forth above as though fully set forth herein.

1 6. Plaintiff is an individual who at all times relevant herein resided and resides in
2 the State of California, County of Los Angeles.

3 7. Defendant at all relevant times, was and is, upon information and belief, a
4 corporation and at all relevant times, an employer whose employees were engaged
5 throughout the State of California, including the County of Los Angeles.

6 8. At all relevant times, Defendant was the “employer” of Plaintiff within the
7 meaning of all applicable state laws and statutes. On information and belief, Defendant
8 FASHION NOVA and DOES 1 through 10, are joint employers engaged in an integrated
9 enterprise, and they suffer and/or permit Plaintiff to work and/or exercise joint control over
10 the wages, hours, and/or working conditions of FASHION NOVA employees.

11 9. At all times herein relevant, Defendant and DOES 1 through 100, and each of
12 them, were the agents, partners, joint venturers, joint employers, representatives, servants,
13 employees, successors-in-interest, alter egos, co-conspirators and assigns, each of the other,
14 and at all times relevant hereto were acting with the authority and ratification of one another
15 and within the course and scope of their authority as such agents, partners, joint venturers,
16 representatives, servants, employees, successors, co-conspirators and/or assigns, alter egos,
17 and all acts or omissions alleged herein were duly committed with the ratification,
18 knowledge, permission, encouragement, authorization and/or consent of each defendant
19 designated as a DOE herein.

20 10. The true names and capacities, whether corporate, associate, individual or
21 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues
22 said defendants by such fictitious names. Plaintiff is informed and believes, and based on
23 that information and belief alleges, that each of the defendants designated as a DOE is legally
24 responsible for the events and happenings referred to in this Complaint, and unlawfully
25 caused the injuries and damages to Plaintiff and the other aggrieved employees as alleged in
26 this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true
27 names and capacities when the same have been ascertained.

28 11. Defendant and DOES 1 through 100 will hereinafter collectively be referred to

as “Defendant” or “FASHION NOVA”.

12. Plaintiff further alleges that Defendant and DOES 1 through 100 directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other aggrieved employees so as to make each of said Defendant’s employers and employers liable under the statutory provisions set forth herein.

FACTUAL BACKGROUND

13. Plaintiff incorporates by reference the allegations set forth above as though fully set forth herein.

14. Mr. Hill was employed by FASHION NOVA from April 2020 to June 2021. At all material times, Fashion Nova was Plaintiff’s employer and exercised sole and/or joint control over the wages, terms, and working conditions of Plaintiff’s employment.

15. Plaintiff worked in one of FASHION NOVA’s warehouses located at 12588 Florence Avenue in Santa Fe Springs, California 90670, which housed approximately 200 employees.

16. Plaintiff’s job title was “runner” and his job duties included pulling items off of a conveyor belt by hand, sorting those items into five-foot stacks, placing the stacks on a dolly, then distributing the stacks to the appropriate aisles.

17. On information and belief, the Fashion Nova facility located in Los Angeles County, California did not have A/C or heating at any time during Plaintiff’s employment. Instead, the facility only contained a couple of ceiling fans near the warehouse entrance and in the breakroom, which circulated warm and/or cold air depending on the indoor conditions. The remainder of the warehouse was equipped with just a couple of floor fans per floor, each of which contains over 100 aisles. During the cold winter months, the facility lacked heating and would be uncomfortably cold. However, other areas of the facility were so poorly ventilated because there were no floor fans and the doors in and around Plaintiff’s work areas were kept shut during the workday resulting in inadequate ventilation, that the areas would feel uncomfortably warm.

1 18. On information and belief, the structural layout and ventilation systems in the
2 facility were uniform and the temperature conditions Plaintiff experienced when entering the
3 building, traveling to his workspace, working, and using rest areas within the facility are the
4 same experienced by other employees. Moreover, on information and belief, other areas of
5 the facility where Plaintiff did not access or have access too were uncomfortably cold and/or
6 hot depending on the structural components, ventilation, lack of AC/Heating, and the type of
7 goods that were being stored.

8 19. On information and belief, Plaintiff and the other aggrieved employees felt
9 hotter inside of the facility than outside. According to temperature data published online,
10 Plaintiff worked in a facility situated in a location with recorded temperatures exceeding 100
11 degrees Fahrenheit and dipping to below 40 degrees Fahrenheit. The poor ventilation and
12 lack of air conditioning caused Plaintiff and other aggrieved employees feel uncomfortably
13 hot which caused sweating, fatigue, and other symptoms of heat related discomfort. As a
14 result, Plaintiff and the other aggrieved employees were forced to purchase personal fans
15 which they hang around their necks to keep cool. On information and belief, the facility ran
16 during hours where it was even colder inside than outside, and without proper heating or
17 temperature regulation methods, the aggrieved employees felt uncomfortably cold inside the
18 facility.

19 20. On information and belief, the uncomfortable temperature conditions occurred
20 at all of Fashion Nova's California based facilities and warehouses regardless of size, shape,
21 location, or the type of product being stored. On information and belief, the uncomfortable
22 temperature conditions were uniform across all of Fashion Nova's California depots because
23 such depots were uniformly maintained, managed, and operated under the same set of
24 policies, practices, and procedures, including use of the same consultants, vendors,
25 architects, engineers, and design schematics and specifications.

26 21. On information and belief, Fashion Nova's aggrieved employees throughout
27 California, regardless of location or job title, have suffered heat related and cold related
28 illnesses and injuries due to the indoor temperature practices of Fashion Nova, and Fashion

1 Nova has actual and/or constructive notice of these conditions, illnesses, and injuries for
2 many years. The aggrieved employees are defined in this action as all California employees,
3 and the temperature allegations are informed by the definition of the aggrieved employees
4 without limitation based on specific job title or location. On information and belief,
5 temperature policies, practices, procedure, and conditions applied uniformly to all of Fashion
6 Nova's California depots and to all of its hourly paid nonexempt employees regardless of job
7 description or job location.

8 22. Plaintiff is informed and believes that none of Fashion Nova's depots in
9 California had air conditioning or heating such that the employees therein experienced
10 uncomfortably cold and hot temperature conditions depending on the time of the year.
11 Plaintiff is further informed and believes that to the extent any of Fashion Nova's depots in
12 California had some form of temperature regulation systems within the depots' said systems
13 were inadequate for the size and shape of the depot, the amount of employees working
14 therein, and the type of work being performed, such that the aggrieved employees were
15 forced to endure uncomfortable and dangerous temperature conditions while working.

16 **PAGA ALLEGATIONS**

17 23. Plaintiff incorporates by reference the allegations set forth above as though
18 fully set forth herein.

19 24. At all times herein set forth, PAGA was applicable to Plaintiff's employment
20 by Defendant. At all relevant times set forth herein, DEFENDANT employed PLAINTIFF
21 and the other aggrieved hourly-paid or non-exempt employees who worked for
22 DEFENDANT in the State of California.

23 25. The "aggrieved employees" pursuant to Labor Section 2699(c) include: all
24 current and former hourly paid, non-exempt employees who worked for FASHION NOVA at
25 any of its locations in the State of California at any time during the applicable PAGA period
26 who were not provided suitable temperature conditions in the workplace in violation of IWC
27 Wage Order Section 15.

28 26. Plaintiff is an "aggrieved employee" as defined in Labor Code section

1 2699(c), because he was employed by FASHION NOVA during the applicable statutory
2 period and suffered the violations of the IWC Wage Order and the Labor Code as set forth
3 herein. Plaintiff intends to seek penalties on behalf of all aggrieved employees as defined
4 herein.

5 27. At all times herein set forth, PAGA provides that any provision of law under
6 the California Labor Code that provides for a civil penalty to be assessed and collected by the
7 LWDA for violations of the California Labor Code may, as an alternative, be recovered
8 through a civil action brought by an aggrieved employee on behalf of himself and other
9 current or former employees pursuant to procedures outlined in California Labor Code
10 section 2699.3.

11 28. PAGA expressly establishes that any provision of the California Labor Code
12 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
13 departments, divisions, commissions, boards, agencies or employees for a violation of the
14 California Labor Code, may be recovered through a civil action brought by an aggrieved
15 employee on behalf of himself or herself, and other current or former employees. Whenever
16 the LWDA, or any of its departments, divisions, commissions, boards, agencies, or
17 employees has discretion to assess a civil penalty a court in a civil action is authorized to
18 exercise the same discretion, subject to the same limitations and conditions, to assess a civil
19 penalty.

20 29. Pursuant to PAGA, a civil action under PAGA may be brought by an
21 “aggrieved employee,” who is any person that was employed by the alleged violator and
22 against whom one or more of the alleged violations was committed.

23 30. PLAINTIFF was employed by DEFENDANTS and the alleged violation was
24 committed against him during the time of his employment and he is, therefore, an aggrieved
25 employee. PLAINTIFF and the other employees are “aggrieved employees” as defined by
26 California Labor Code section 2699(c) in that they are all current or former employees of
27 DEFENDANTS, and one of more of the alleged violations were committed against them.

28 31. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved

1 employee, including Plaintiff, may pursue a civil action arising under PAGA after satisfying
2 the requirements of California Labor Code sections 2699.3 and 2699.5, which at the time that
3 Plaintiff sought to satisfy the statutory requirements, provided as follows:

4 a. The aggrieved employee was required to give written notice by
5 certified mail (hereinafter “Employee's Notice”) to the LWDA and the
6 employer of the specific provisions of the California Labor Code
7 alleged to have been violated, including the facts and theories to
8 support the alleged violations.

9 b. The LWDA was required to provide notice (hereinafter “LWDA
10 Notice”) to the employer and the aggrieved employer by certified mail
11 that it does not intend to investigate the alleged violation within sixty
12 (60) calendar days of the postmark date of the Employee’s Notice.
13 Upon receipt of the LWDA Notice, or if the LWDA Notice is not
14 provided within sixty-five (65) calendar days of the postmark date of
15 the Employee’s Notice, the aggrieved employee may commence a civil
16 action pursuant to California Labor Code section 2699 to recover civil
17 penalties in addition to any other penalties to which the employee may
18 be entitled.

19 32. On August 24, 2021, Plaintiff provided written notice by U.S. Certified Mail
20 to the LWDA and to Defendant of the specific provisions of the California Labor Code
21 alleged to have been violated, including the facts and theories to support the alleged
22 violations.

23 33. As of the date of the filing of this Complaint, the LWDA has not provided
24 notice of its intention to investigate DEFENDANTS’ alleged violations within sixty-five (65)
25 calendar days of the August 24, 2021, postmark date of the PAGA NOTICE sent by
26 PLAINTIFF. (See Cal. Lab. Code section 2699.3(a)(2)(A).)

27 34. Therefore, Plaintiff satisfied the then-applicable administrative prerequisites
28 under California Labor Code section 2699.3(a) to recover civil penalties against Defendants,

1 in addition to other remedies, for violations of California Labor Code sections identified
2 therein.

3 **FIRST CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**

5 **(Against Defendant and DOES)**

6 **(Violation of California Labor Code §§ 2698, *et seq.*)**

7 35. Plaintiff incorporates by reference the allegations set forth above as though
8 fully set forth herein.

9 36. PAGA expressly establishes that any provision of the California Labor Code
10 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
11 departments, divisions, commissions, boards, agencies or employees for a violation of the
12 California Labor Code, may be recovered through a civil action brought by an aggrieved
13 employee on behalf of herself or himself, and other current or former employees.

14 37. Whenever the LWDA, or any of its departments, divisions, commissions,
15 boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil
16 action is authorized to exercise the same discretion, subject to the same limitations and
17 conditions, to assess a civil penalty.

18 38. Based on the facts and theories set forth herein, Plaintiff alleges that
19 FASHION NOVA has willfully violated and/or continues to willfully violate, among other
20 provisions of the Labor Code and applicable wage law, Labor Code section 1198, and the
21 applicable Industrial Welfare Commission (“IWC”) Wage Order. California Labor Code §
22 1198 provides that “The employment of any employee ... under conditions of labor
23 prohibited by the [Industrial Wage Orders] is unlawful.” Such unlawful conduct gives rise to
24 PAGA violations and are subject to the statutory penalties set forth therein.

25 39. Plaintiff is entitled to any penalties permitted by law, including civil penalties
26 pursuant to Labor Code sections 2699(a) and 2699(f). Plaintiff seeks all such penalties on
27 behalf of the State of California, himself as an aggrieved employee, and all other current and
28 former aggrieved employees of FASHION NOVA. Plaintiff and the other hourly-paid and/or

1 non-exempt employees, are “aggrieved employees” as defined by California Labor Code
2 section 2699(c) in that they are all current or former employees of Defendant, and one or
3 more of the alleged violations was committed against them.

4 40. DEFENDANTS failed to provide PLAINTIFF and the other aggrieved
5 employees with suitable temperatures in their workplace, in violation of California Labor
6 Code section 1198 and IWC Wage Order Section 15 (“TEMPERATURE”). IWC Wage
7 Order Section 15 provides that: “(A) The temperature maintained in each work area shall
8 provide reasonable comfort consistent with industry-wide standards for the nature of the
9 process and the work performed. (B) If excessive heat or humidity is created by the work
10 process, the employer shall take all feasible means to reduce such excessive heat or humidity
11 to a degree providing reasonable comfort. Where the nature of the employment requires a
12 temperature of less than 60° F, a heated room shall be provided to which employees may
13 retire for warmth, and such room shall be maintained at not less than 68° F. (C) A
14 temperature of not less than 68° F shall be maintained in the toilet rooms, resting rooms, and
15 change rooms during hours of use. (D) Federal and State energy guidelines shall prevail over
16 any conflicting provision of this section.”

17 41. Under California law, the workplace should not be a source of injury or illness
18 of threaten the lives of those who work there. (Cal. Code Reg. tit. 8, § 3203.) Per Senate
19 Bill 1167 signed and approved by Governor Jerry Brown and later codified as California
20 Labor Code section 6720, the California Division of Occupational Safety and Health
21 (Cal/OSHA) shall propose an indoor heat illness standard by January 1, 2019. In
22 Cal/OSHA’s most recent January 29, 2019, revised draft standard, the proposed regulation
23 would apply to “all indoor work areas where the temperature equals or exceeds 82 degrees
24 Fahrenheit when employees are present.” The U.S. Department of Labor’s Division of
25 Occupational Safety and Health Administrator (OSHA) also recommends office temperature
26 control in the range of 68° F to 76° F.

27 42. On information and belief, FASHION NOVA violated every aspect of IWC
28 Wage Order Section 15. Plaintiff and other aggrieved employees were subjected to excessive

1 heat or cold in the workplace. Plaintiff worked in a facility situated in a location with
2 recorded temperatures exceeding 100 degrees Fahrenheit in and dipping to below 40 degrees
3 Fahrenheit, though warehouse temperatures often exceeded the temperature outside during
4 the Summer and fell below recorded temperatures during the Winter. FASHION NOVA
5 failed to provide reasonable temperature regulation including adequate air conditioning,
6 heating, insulation, and/or ventilation. FASHION NOVA failed to provide reasonably
7 comfortable indoor temperatures. On information and belief, Fashion Nova failed to provide
8 appropriate heated rooms to retire for warmth. Fashion Nova also failed to maintain a
9 temperature of not less than 68° in their toilet rooms, resting rooms, and/or change rooms
10 during hours of use.

11 43. During their employment and at their workplace with DEFENDANTS,
12 PLAINTIFF and other aggrieved employees were subjected to excessive heat or humidity.
13 Nevertheless, in violation of Labor Code 1198 and IWC Wage Order 15, DEFENDANTS
14 failed and continue to fail to provide PLAINTIFF and the other aggrieved employees with
15 reasonable comfort, such as, inter alia, by providing adequate air conditioning, fans (if any),
16 ventilation system, or cooling areas to cool the excessive high temperatures. Furthermore,
17 DEFENDANTS also failed and continued to fail to maintain temperature that provided
18 reasonable comfort (warmth) for PLAINTIFF and the other aggrieved employees.
19 Additionally, in further violation of IWC Wage Order Section 15, specifically subdivision
20 (C) and thereby Labor Code section 1198, DEFENDANTS failed to maintain temperature of
21 not less than 68° F in their toilet rooms, resting rooms, and/or change rooms during hours of
22 use.

23 44. Plaintiff is informed and believes that the violations described above occurred
24 at all of Fashion Nova's California based facilities and warehouses regardless of size, shape,
25 location, or the type of product being stored.

26 45. PLAINTIFF is also informed and believes, and based thereon alleges, that
27 DEFENDANTS knew or should have known that PLAINTIFF and the other aggrieved
28 employees were entitled to suitable temperatures in the workplace per California Labor Code

1 section 1198 and IWC Wage Order Section 15.

2 **46. Failure to Provide Suitable Temperature in the Workplace:**
3 DEFENDANTS' failure to provide suitable temperature for PLAINTIFF and the other
4 aggrieved employees in their workplace violates the IWC Wage Order Section 15 and
5 constitutes unlawful activity prohibited by California Labor Code section 1198.

6 47. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
7 behalf of all aggrieved employees, requests and is entitled to recover from Defendant and
8 each of them, attorneys' fees and costs pursuant to California Labor Code section 218.5, as
9 well as all statutory penalties against Defendant, and each of them, including but not limited
10 to:

- 11 a. Penalties under California Labor Code section 2699 in the amount of a
12 hundred dollars (\$100) for each aggrieved employee per pay period for
13 the initial violation, and two hundred dollars (\$200) for each aggrieved
14 employee per pay period for each subsequent violation;
- 15 b. Penalties under California Code of Regulations Title 8 section 11070 in
16 the amount of fifty dollars (\$50) for each aggrieved employee per pay
17 period for the initial violation, and one hundred dollars (\$100) for each
18 aggrieved employee per pay period for each subsequent violation;
- 19 c. Penalties under California Labor Code section 210 in addition to, and
20 entirely independent and apart from, any other penalty provided in the
21 California Labor Code in the amount of a hundred dollars (\$100) for
22 each aggrieved employee per pay period for the initial violation, and two
23 hundred dollars (\$200) for each aggrieved employee per pay period for
24 each subsequent violation; and
- 25 d. Any and all additional penalties and sums as provided by the California
26 Labor Code and/or other statutes.

27 48. Pursuant to California Labor Code section 2699(i), civil penalties recovered
28 by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the

1 Labor and Workforce Development Agency for the enforcement of labor laws and education
2 of employers and employees about their rights and responsibilities and twenty-five percent
3 (25%) to the aggrieved employees.

4 49. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and
5 costs pursuant to California Labor Code sections 2699 and any other applicable statute.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, individually, and on behalf of other members of the general
8 public similarly situated and on behalf of other aggrieved employees pursuant to the Private
9 Attorneys General Act, prays for relief and judgment against Defendant and those fictitiously
10 named defendants, jointly and severally, as follows:

11 **AS TO THE FIRST CAUSE OF ACTION**

12 50. For civil penalties pursuant to California Labor Code sections 2699(a), (f) and
13 (g), in addition to costs/expenses and attorneys' fees for violation of California Labor Code
14 section 1198 and the applicable IWC Wage Order; and

15 51. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 Dated: October 29, 2021

SCHIMMEL & PARKS
A Professional Law Corporation

19  . 

20 Alan I. Schimmel
21 Michael W. Parks
22 Arya Rhodes
23 Inga Orbeli
24 *Attorneys for Plaintiff*

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DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, requests a trial by jury.

Dated: October 29, 2021

SCHIMMEL & PARKS
A Professional Law Corporation



Alan I. Schimmel
Michael W. Parks
Arya Rhodes
Inga Orbeli
Attorneys for Plaintiff