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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

23CV026118

MICHELLE VARGAS-ROBLES,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

NICHOLAS K CORPORATION, a
California Corporation, THE FORD
STORE SAN LEANDRO, an unknown
California Business Entity; DOES 1 to 20,
inclusive.

Defendants

COMPLAINT FOR DAMAGES:

- 1. Failure to Pay Minimum Wage for All Hours Worked;**
- 2. Failure to Provide Meal and Rest Periods;**
- 3. Failure to Provide Accurate Wage Statements;**
- 4. Waiting Time Penalties;**
- 5. Failure to Pay Overtime Wages;**
- 6. Unfair Competition (Business & Professions Code § 17200 *et seq.*);**
- 7. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 *et seq.*;**

JURY TRIAL DEMANDED

1 Plaintiff MICHELLE VARGAS-ROBLES (“Plaintiff”), on behalf of herself and all other
2 similarly situated employees, hereby files this Complaint against Defendants NICHOLAS K
3 CORPORATION, a California Corporation, and THE FORD STORE SAN LEANDRO, an
4 unknown California Business Entity; DOES 1 to 20, inclusive, (hereinafter collectively referred to as
5 “Defendants”). Plaintiff alleges as follows:

6 **INTRODUCTION**

7 1. This is a representative action brought by Plaintiff on behalf of herself and other
8 similarly situated employees of Defendants. Plaintiff, who worked for Defendant as a human
9 resources and payroll clerk, brings this individual and representative lawsuit against Defendants on
10 behalf of herself and all others similarly situated to recover wages and other damages from
11 Defendants due to her misclassification as an exempt employee. Plaintiff seeks these damages and
12 applicable penalties, plus interest and attorney’s fees, on behalf of herself and similarly situated
13 employees.

14 2. During all relevant times, Plaintiff and similarly situated employees worked for
15 Defendants and were classified as exempt, but Defendants routinely required Plaintiff and similarly
16 situated employees to primarily perform non-exempt duties the majority of the time. In this way,
17 Defendants misclassified Plaintiff, and failed to pay Plaintiff and similarly situated employees for all
18 hours worked and for premium overtime pay and issued wage statements to Plaintiff and similarly
19 situated employees that did not comply with California law. As a matter of policy and practice,
20 Defendants also failed to provide Plaintiff and similarly situated employees, and other non-exempt
21 employees, with all meal and rest periods.

22 3. Defendants also failed and refused to provide Plaintiff and similarly situated
23 employees with all wages due and owing upon their termination or within seventy-two (72) hours of
24 their separation.

25 4. Defendants also failed and refused to reimburse Plaintiff and similarly situated
26 employees for all work-related expenses.
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JURISDICTION AND VENUE

5. The Alameda County Superior Court has jurisdiction in this matter due to alleged violations of California Labor Code §§ 203, 226, 226.7, 510, 512, 1194, Business and Professions Code § 17200 *et seq.*, and the applicable Wage Order.

6. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of the wrongful acts and violations of law asserted herein occurred within Alameda County.

PARTIES

7. Plaintiff was an employee of Defendants, where she worked as a human resources and payroll clerk from approximately November 14, 2019 through December 2020. From January 2021 to August 2022, she worked as an HR/Payroll Manager.

8. At all times relevant in this Complaint, Plaintiff was over the age of eighteen and resided in the State of California.

9. Plaintiff is informed and believes, and thereon alleges, that NICHOLAS K CORPORATION, a California Corporation, has its principal place of business in Alameda County, California.

10. Plaintiff is informed and believes, and thereon alleges, that THE FORD STORE SAN LEANDRO, an unknown business entity, has its principal place of business in Alameda County, California.

11. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or joint venturer of the remaining defendants and was acting within the course and scope of that relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the remaining defendants. The true names and capacities of the defendants named herein Does 1 through 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who therefore sue such defendants by fictitious names pursuant to California Code of Civil Procedure

1 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
2 through 20, inclusive, when they have been determined.

3 12. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
4 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
5 employees. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
6 were at all relevant times advised by skilled California employment law attorneys and knew the
7 requirements of the California Labor Code with respect to proper employee classification, employee
8 wage statements, payment of minimum and overtime wages, and provision of meal and rest periods.

9 13. Defendants proximately caused Plaintiff and similarly situated employees to be
10 subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this
11 Complaint.

12 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

13 14. On November 7, 2022, Plaintiff filed her Labor Code § 2699.3 Private Attorney
14 General Act (“PAGA”) notice with the California Labor & Workforce Development Agency
15 (“LWDA”). The LWDA did not respond to Plaintiff’s PAGA notice within 65 days of the original
16 Notice, thus deputizing Plaintiff to represent herself, other aggrieved employees, and the California
17 Labor Commissioner for the purpose of collecting civil penalties for violations of the California
18 Labor Code committed by Defendants.

19 15. On January 23, 2023, Plaintiff filed an Amended PAGA notice with the LWDA,
20 adding Nicholas K Corporation as an employer.

21 **GENERAL ALLEGATIONS**

22 16. Plaintiff and similarly situated employees worked for Defendants as both exempt and
23 non-exempt employees in California.

24 17. During her employment, Plaintiff, and other aggrieved employees, have been made to
25 suffer numerous violations of the California Labor Code.

26 18. Throughout the relevant period, Defendants misclassified Plaintiff and similarly
27 situated employees as exempt, although Plaintiff’s position did not qualify for any exemption under
28

1 California law. Nevertheless, Defendants routinely required Plaintiff to work more than eight (8)
2 hours per day, and/or forty (40) hours per week.

3 19. Plaintiff's duties as a human resources and payroll clerk required her to spend the
4 majority of her time performing non-exempt office tasks without the exercise of independent
5 judgment and discretion. Plaintiff and similarly situated employees were not responsible for hiring,
6 firing, or discipline of other employees, and did not participate in investigations of employees that
7 led to possible discipline. For these reasons, Plaintiff and similarly situated employees were not
8 primarily engaged in exempt level duties and were not properly classified as exempt.

9 20. Consequently, Defendants willfully and deliberately misclassified Plaintiff and
10 similarly situated employees as employees who were exempt from the overtime provisions of the
11 California Labor Code and Wage Orders.

12 21. However, Defendants routinely required Plaintiff and similarly situated employees to
13 work more than eight (8) hours per day, and/or forty (40) hours per week without paying minimum
14 wage or overtime for the additional hours worked.

15 22. Defendants also did not allow Plaintiff and similarly situated employees to take their
16 statutorily required meal and rest periods. Defendants failed to provide Plaintiff and other similarly
17 situated employees a 30-minute, duty-free meal period before the end of the fifth hour of work as
18 required under the law.

19 23. Plaintiff and similarly situated employees regularly missed their meal and rest periods
20 and/ or they were provided late. Defendants also failed to provide rest periods to Plaintiff and
21 similarly situated employees for every 4 hours worked or major fraction thereof. Defendants'
22 management staff were aware this was occurring and did not ensure meal and/ or rest periods were
23 provided to Plaintiff and similarly situated employees in compliance with California law.

24 24. As a result, Defendants did not provide Plaintiff and similarly situated employees
25 legally compliant wage statements noting, among other things, total hours worked, gross wages
26 earned, the applicable hourly rates in effect during the pay period and the corresponding number of
27 hours worked at each hourly rate, and the legal name of the employer.

25. Defendants also did not provide Plaintiff and similarly situated aggrieved employees all wages owed upon their termination or within seventy-two (72) hours of their separation from employment.

26. Plaintiff is informed and believes that Defendants committed numerous other violations of the California Labor Code, including but not limited to those identified in this Complaint. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018), Plaintiff intends to seek civil penalties for all violations of the California Labor Code, whether she experienced them personally or not.

27. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

28. PAGA defines an aggrieved employee in Labor Code section 2699(c) as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

29. Plaintiff and other current and former employees of Defendants are aggrieved employees as defined by the Labor Code in that they are all Defendants' current or former employees and one or more of the alleged violations was committed against them.

FIRST CAUSE OF ACTION
(Failure to Pay Minimum Wage for All Hours Worked)

30. Plaintiff hereby incorporates by reference Paragraphs 1 through 29 of this Complaint as if fully set forth herein and for a cause of action alleges as follows:

31. Defendants were required to compensate Plaintiff with at least the State's minimum wage for all hours worked. *See* Cal. Labor Code § 1194; MW Order-2014; MW Order-2017.

32. Defendants were aware of their obligation to pay the minimum wage but failed to do so.

33. Defendants' conduct described herein violates California Labor Code section 1194, and applicable Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has been damaged and deprived of minimum wages, in an amount to be established at trial. Plaintiff now seeks these wages, liquidated damages pursuant to California Labor Code section 1194.2, attorney's fees and costs, and interest pursuant to California Labor Code section 1194.

SECOND CAUSE OF ACTION

Failure to Provide Meal and Rest Periods

34. Plaintiff incorporates by reference and re-allege paragraphs 1 through 33 as though fully set forth herein.

35. An employer must provide an employee a meal period and/or rest period in accordance with the applicable Wage Order and Labor Code sections 226.7 and 512.

36. Labor Code section 510 and Wage Order 5-2001, section 11(A) require an employer to provide a meal period of not less than thirty (30) minutes for each work period of more than five (5) hours. If an employee works longer than ten (10) hours in a workday, the employer must provide a second meal period.

37. Labor Code section 510 and Wage Order 5-2001 section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

38. Plaintiff alleges that Defendants failed to provide Plaintiff with meal breaks of at least thirty (30) minutes for several work periods that Plaintiff worked more than five (5) hours in a day, or to take a second meal break of at least thirty (30) minutes for several work periods that Plaintiff worked more than ten (10) hours in a day.

39. Plaintiff further allege that Defendants failed to provide rest breaks of at least ten (10) minutes for each work period that they worked more than four (4) hours. On the occasions on which Defendants did pay a missed meal or rest period premium, they failed to pay the premium at the regular rate of compensation, as required under the Labor Code, by failing to incorporate into the premium payment all forms of nondiscretionary compensation.

40. As a proximate cause of Defendants' failure to provide meal and rest periods, Plaintiff is entitled to one (1) hour of pay at the regular rate of compensation for each meal period or rest period not provided, as a wage, from three (3) years of the filing of this action, in an amount to be established at trial. *See* Labor Code § 226.7 and Wage Order 5-2001 §§ 11(B), 12(B).

THIRD CAUSE OF ACTION

Failure to Provide Accurate Wage Statements

41. Plaintiff incorporates by reference and re-allege paragraphs 1 through 40 as though fully set forth herein.

42. According to Labor Code section 226(a), an employer must provide an itemized statement to an employee, semi-monthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

43. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the

1 requirements set forth in Labor Code section 226(a). Defendants also failed to list on the wage
2 statements provided to Plaintiff and similarly situated employees all hours worked.

3 44. Additionally, Plaintiff alleges she suffered injury as a result of Defendants' failure to
4 provide accurate and complete information as required by any one or more of items (1) to (9),
5 inclusive, of Labor Code section 226, subdivision (a), and Plaintiff cannot promptly and easily
6 determine (i.e. a reasonable person in each Plaintiff's position would not be able to readily ascertain
7 the information without reference to other documents or information) from the wage statement
8 alone.

9 45. Plaintiff is entitled to, and does hereby seek, injunctive relief requiring Defendants to
10 comply with Labor Code §§ 226(a) and 1174(d), and all applicable damages and civil penalties.

11 **FOURTH CAUSE OF ACTION**
12 **Waiting Time Penalties**

13 46. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 45 as though
14 fully set forth herein.

15 47. An employer must pay an employee who is terminated all unpaid wages immediately
16 upon termination. Labor Code § 201.

17 48. An employer must pay an employee who resigns all unpaid wages within seventy-two
18 (72) hours of resignation. Labor Code § 202.

19 49. An employer who willfully fails to pay an employee wages in accordance with Labor
20 Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
21 days. Labor Code § 203.

22 50. Plaintiff did not receive all wages, including minimum and overtime wages and meal
23 and rest period premiums, at her termination or separation from employment. Specifically,
24 Defendants failed to pay Plaintiff all wages owed at the time of termination.

25 51. Defendants knew of their obligation to pay Plaintiff for all hours worked because they
26 had knowledge Plaintiff was, at all times, a non-exempt employee, worked over eight (8) hours a day
27 and/or forty (40) hours a week, and did not receive overtime or minimum wages for all hours
28

1 worked. Such conduct shows Defendants' knowledge of their obligation to pay all wages owed
2 upon termination and willful refusal.

3 52. As a proximate result of the Defendants' conduct, Plaintiff has been damaged and
4 deprived of her wages and thereby seeks his daily rate of pay multiplied by thirty (30) days for
5 Defendants' failure to pay all wages due in an amount to be established at trial.

6 **FIFTH CAUSE OF ACTION**
7 **Failure to Pay Overtime Wages**

8 53. Plaintiff incorporates by reference and re-allege paragraphs 1 through 52 as though
9 fully set forth herein.

10 54. During the period Plaintiff was employed by Defendants, Defendants were required
11 to compensate her one and one-half (1½) times the regular rate of pay for hours worked in excess of
12 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
13 hours worked in excess of twelve (12) hours per day. *See* California Labor Code §§ 510, 1194.
14 Although Plaintiff regularly worked in excess of eight (8) hours a day and/or forty (40) hours per
15 week, Defendants failed to pay all overtime wages owed.

16 55. Although Defendants classified Plaintiff as an exempt employee, Plaintiff's position
17 and duties failed to meet the requirements of either the administrative, executive, or professional
18 exemptions of the applicable Wage Order and California Labor Code section 510.

19 56. Defendants' conduct described herein violates California Labor Code sections 510
20 and 1194, and applicable Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has
21 been damaged and deprived of overtime wages, in an amount to be established at trial. Plaintiff now
22 seeks these wages, attorney's fees and costs, and interest pursuant to California Labor Code sections
23 1194.

24 **SIXTH CAUSE OF ACTION**
25 **(Unfair Competition)**

26 57. Plaintiff incorporates by reference and re-allege paragraphs 1 through 56 as though
27 fully set forth herein.

28 58. Unfair competition shall mean and include any unlawful, unfair or fraudulent
business act or practice and unfair, deceptive, untrue or misleading advertising and any act

1 prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the California
2 Business and Professions Code. *See* California Business and Professions (“B&P”) Code § 17200.

3 59. Plaintiff was not paid all wages owed during their employment, and was not provided
4 legally compliant meal and rest breaks. Defendants also failed to provide legally compliant paystubs
5 to Plaintiff throughout the employment relationship that failed to show, among other things, all hours
6 worked.

7 60. Plaintiff is also informed and believe and thereon alleges that such actions and/or
8 conduct constitute a violation of the California Unfair Competition Law (“UCL”) (California
9 Business and Professions Code 17200 et seq.), pursuant to *Cortez v. Purolator Air Filtration Prods.*
10 *Co.*, 23 Cal. 4th 163 (2000).

11 61. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to
12 the UCL (including B&P Code §17203), Plaintiff is entitled to restitution as a result of Defendants’
13 unfair business practices, including, but not limited to, public injunctive relief, pursuant to B&P
14 Code § 17203, and interest and penalties pursuant to B&P §§ 17203, 17208, violations of Labor
15 Code §§ 1194, 226, and 226.7, all in an amount as yet unascertained but subject to proof at trial, for
16 up to four (4) years from the filing of this Action.

17 **SEVENTH CAUSE OF ACTION**
18 **Civil Penalties Pursuant to PAGA § 2698 et seq.**

19 62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though
20 fully set forth herein.

21 63. Plaintiff brings this cause of action as a proxy for the State of California and in this
22 capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants’ violations of the
23 California Labor Code, including but not necessarily limited to, those Labor Code and Wage Order
24 violations identified above.

25 64. On or about November 7, 2022, Plaintiff, through counsel, sent written notice to the
26 LWDA regarding Defendant’s violations of the California Labor Code, pursuant to Labor Code
27 section 2698, *et seq.*, PAGA. On January 23, 2023, Plaintiff, through counsel, filed an amended
28 PAGA notice with the LWDA. As of the date of the filing of this Complaint, the LWDA has not

1 informed Plaintiff whether the LWDA intends to investigate Plaintiff's PAGA claims. As such,
2 Plaintiff has exhausted her administrative remedies under PAGA and may proceed in this Court.

3 65. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California
4 and all aggrieved employees for all violations of the Labor Code from November 7, 2021, through
5 trial on this matter.

6 **DAMAGES**

7 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 8 1. A jury trial;
- 9 2. For penalties and liquidated damages under the California Labor Code according to
10 proof allowed by law;
- 11 3. For compensatory damages, including, but not limited to, unpaid wages, plus interest,
12 according to proof allowed by law;
- 13 4. For civil penalties pursuant to PAGA;
- 14 5. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
15 fees;
- 16 6. For injunctive relief;
- 17 7. For an award of prejudgment and post-judgment interest; and
- 18 8. For an award to Plaintiff of such other and further relief as the Court deems just and
19 proper.

20
21 Dated: January 23, 2023

22 **Castle Law: California Employment Counsel, PC**

23 By: _____



24 Timothy B. Del Castillo

25 Lisa L. Bradner

26 Spencer S. Turpen

27 Attorneys for Plaintiff MICHELLE VARGAS-
28 ROBLES

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: January 23, 2023

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del Castillo
Lisa L. Bradner
Spencer S. Turpen
Attorneys for Plaintiff MICHELLE VARGAS-
ROBLES