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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JUL 11 2023

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BY: 
Kayla Schuebel, Deputy

Attorneys for Plaintiff,
ALDO MARQUEZ on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNADINO

ALDO MARQUEZ, an individual, on behalf of)
himself, all aggrieved employees, and the State)
of California as a Private Attorneys General,)

Case No.: **CIV SB 2315656**

Plaintiff,)

vs.)

REPRESENTATIVE ACTION

CHANGING LIVES STAFFING, INC., a)
California Corporation, NONGSHIM)
AMERICA, INC. a California corporation, and)
DOES 1-50, inclusive,)

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 et seq.**

Defendant.)

FILED BY FAX

1 Plaintiff ALDO MARQUEZ brings this PAGA representative action complaint on behalf
2 of himself, all aggrieved employees, and the State of California as a Private Attorneys General,
3 and alleges as follows:

4 NATURE OF THE ACTION

5 1. Plaintiff ALDO MARQUEZ worked as an employee for Defendant NONGSHIM
6 AMERICA, INC. and CHANGING LIVES, INC. and Does 1-50 (collectively “Defendant”).
7 Defendant CHANGING LIVES, INC. is a staffing company and Defendant NONGSHIM
8 AMERICA, INC. is a food manufacturing company. Plaintiff ALDO MARQUEZ worked for
9 Defendant as a general laborer as an hourly, non-exempt employee until December 10, 2022.
10 Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal.
11 Labor Code §2698 *et seq.*, on a representative basis. All current and former employees of
12 Defendant within one year of serving notice on the LWDA to the present are aggrieved employees.

13 2. Defendant failed to comply with California Labor Code requirements due to erroneous,
14 willful and intentional employment practices and policies. Plaintiff brings this representative
15 action on behalf of himself, all other similarly situated aggrieved employees, and the State of
16 California, based upon the claims articulated below. Plaintiff provided notice of his claims
17 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as
18 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
19 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
20 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
21 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

22 3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
23 worked, including overtime hours worked; (2) failing to include nondiscretionary bonuses and
24 shift differential pay in regular rate of pay to calculate overtime; (3) failing to pay sick leave wages;
25 (4) failing to pay all wages owed twice per month; (5) failing to pay wages due upon termination;
26 (6) failing to provide rest breaks; (7) failing to provide uninterrupted meal breaks; and (8) failing
27 to provide accurate itemized wage statements. Defendant is therefore liable for civil penalties
28

1 under the Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor Code
2 §2698 *et seq.*, as described more fully herein.

3 **THE PARTIES**

4 4. Plaintiff ALDO MARQUEZ is a resident of the State of California and worked for
5 Defendant until December 10, 2022.

6 5. Defendant CHANGING LIVES, INC. is a California corporation authorized to do
7 business and doing business in California with the capacity to sue and to be sued, and doing
8 business, in the county of San Bernadino, State of California.

9 6. Defendant NONGSHIM AMERICA, INC. is a California corporation authorized to do
10 business and doing business in California with the capacity to sue and to be sued, and doing
11 business, in the county of San Bernadino, State of California.

12 7. Plaintiff is unaware of the true names, capacities, relationships, and extent of
13 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
14 informed and believes and thereon alleges that said Defendant is legally responsible for the
15 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
16 will amend this complaint when their true names and capabilities are ascertained.

17 8. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
18 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
19 of the representative class, and exercised control over their wages, hours, and working conditions.
20 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
21 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
22 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
23 to the other Defendants.

24 **JURISDICTION AND VENUE**

25 9. Venue is proper in this judicial district because Defendant conducts business in this
26 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
27 in this case that arose in this county.
28

1 10. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of
2 the Superior Court and will be established according to proof at trial. Based on information,
3 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
4 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
5 (\$25,000).

6 11. The California Superior Court has jurisdiction in this matter because Plaintiff is a
7 resident of California and Defendant is qualified to do business in California and regularly conduct
8 business in California. Further, there is no federal question at issue as the claims herein are based
9 solely on California law.

10 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

11 12. During the relevant time-period, Defendant committed various violations of the
12 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
13 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

14 13. This representative action represents over one hundred current and former aggrieved
15 employees.

16 14. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
17 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
18 numerous Labor Code sections, as set forth more fully below.

19 15. Plaintiff and all current and former hourly, non-exempt employees within one year of
20 filing this action to the present are aggrieved employees within the meaning of Labor Code 2699,
21 *et seq.* (See Labor code §2699(c).)

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1 16. Defendant, and each of them, has committed the following violations of the California
2 Labor Code:

3 **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

4 (Cal. Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194,
5 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order)

6 17. Off the Clock Hours Donning and Doffing. Wage Orders define “hours worked” as
7 “the time during which an employee is subject to the control of an including all the time the
8 employee is suffered or permitted to work, whether or not required to do so.”

9 18. Defendant would require Plaintiff and his coworkers to don and doff required
10 protective gear and apparel while off the clock. Over time, this resulted in numerous off the clock
11 hours worked, many of which were overtime hours worked, given that employees regular work in
12 excess of 40 hours per workweek. Employees also spent time off the clock during unpaid meal
13 periods walking long distances to and from the timeclock, which was located far from their work
14 areas and from the break area.

15 19. Timecard Rounding. Defendant rounded timeclock entries to the nearest 1/10th of an
16 hour. Although Defendant required employees to use a biometric timeclock (fingerprint) and was
17 therefore capable of recording and paying for all hours worked, Defendant instead rounded time
18 from timecards.

19 20. Oftentimes the rounding would cause the Plaintiff and Aggrieved Employees to not be
20 paid for all hours they worked. When it comes to time shaving and rounding, the California
21 Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming
22 that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law
23 will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is
24 used in such a manner that it will not result, over a period of time, in failure to compensate the
25 employees properly for all the time they have actually worked.’” (*Troester v. Starbucks*
Corporation, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.)

26 21. The policy utilized by Defendant is neither fair nor neutral, as it consistently shaved
27 time from Plaintiff and aggrieved employees’ hours worked, resulting in a failure to compensate
28 Plaintiff and aggrieved employees for all hours and overtime hours worked.

1 22. Failure to Pay Wages- Required Minimum Wage. Defendant failed to pay Plaintiff and
2 aggrieved employees for all hours worked as a result of Defendant's practice of rounding time-
3 card entries. Based on Defendant's unlawful conduct described above, and because Plaintiff and
4 the aggrieved employees were paid at or near minimum wage, Defendant's failure to pay for all
5 hours worked, including overtime, resulted in a payment of less than the minimum wage for all
6 hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 5-2001 4(B).
7 Defendant is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

8 **Failure to Include Nondiscretionary Bonuses and Shift Differential Pay in Regular Rate of**
9 **Pay to Calculate Overtime**

10 (Cal. Labor Code §§200, 207, 218, 510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*)

11 23. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
12 incorporates said paragraphs herein by reference.

13 24. Pursuant to Labor Code §200(a) "'Wages' includes all amounts for labor performed by
14 employees of every description, whether the amount is fixed or ascertained by the standard of time,
15 task, piece, commission basis, or other method of calculation."

16 25. Defendant paid shift differential pay and issued nondiscretionary bonuses to Plaintiff
17 and aggrieved employees but failed to include the additional pay when calculating the regular rate
18 of pay for purposes of calculating overtime. It is well established that non-discretionary bonuses
19 retroactively increase the employee's "regular rate" of pay for purposes of calculating overtime.
20 (Labor Code §207) The "regular rate" is calculated by dividing the hours worked in a week by all
21 the compensation earned for that week. When an employee is later paid a bonus or paid a higher
22 rate of pay (such as a shift differential) that is partly due to work performed in that week, this
23 additional pay must be added into the total compensation for the week, increasing the employee's
24 regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

25 26. Defendant did not make any adjustments to overtime rates to incorporate the additional
26 pay, and this failure is reflected in Plaintiff and aggrieved employees' paystubs. Plaintiff and other
27 employees have been denied "the unpaid balance of the full amount of this... overtime
28 compensation" as required by Cal. Labor Code. §1194. Additionally, Defendant has violated Cal.

1 Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at
2 sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the
3 labor code to fail to comply with a wage order. Defendant is liable for civil penalties pursuant to
4 Cal. Labor Code §558 and 2698 *et seq.*

5 **Failure to Properly Calculate and Pay Sick Leave Wages**

6 (Cal. Labor Code §§246)

7 27. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
8 incorporates said paragraphs herein by reference.

9 28. Employers must calculate paid sick leave for non-exempt employees in one of two
10 ways:

11 A. Paid sick time for nonexempt employees shall be calculated in the same manner
12 as the regular rate of pay for the workweek in which the employee uses paid
13 sick time, whether or not the employee actually works overtime in that
14 workweek; [or]

15 B. Paid sick time for nonexempt employees shall be calculated by dividing the
16 employee's total wages, not including overtime premium pay, by the
17 employee's total hours worked in the full pay periods of the prior 90 days of
18 employment.

19 Labor Code § 246 (l)

20 29. Plaintiff and aggrieved employees were paid sick leave wages at their base hourly rates
21 of pay, which is less than required under either of the two alternative methods of calculation
22 provided by Labor Code section 246(l).

23 **Failure to Pay All Wages Owed Twice Per Month**

24 (Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

25 30. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
26 incorporate said paragraphs herein by reference.

27 31. Defendant was required to pay Plaintiff and aggrieved employees all wages earned
28 twice during each calendar month pursuant to Labor Code §204(a).

1 32. Defendant failed to pay all wages earned to employees as a result of the unlawful
2 employment policies and practices discussed herein. As a result of these practices, employees were
3 underpaid for hours worked, including overtime and penalty wages, and this underpayment
4 resulted in a failure to pay all wages owed twice per month.

5 33. Due to these failures, Defendant is liable under Labor Code §204, 210 and 2698 *et seq.*
6 for failure to pay wages as required by law.

7 **Failure to Pay Wages Due Upon Termination**

8 (Cal. Labor Code §§201, 202, 203, 256 and 2698 *et seq.*)

9 34. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
10 incorporate said paragraphs herein by reference.

11 35. An employee who is discharged must be paid all of his or her wages immediately at
12 the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Defendant
13 knowingly and willfully failed to pay all compensation due and owing to Plaintiff at the time
14 employment terminated. Defendant willfully failed to pay employees who are no longer employed
15 by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201
16 and 202. Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30)
17 days pay as waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties
18 pursuant to Cal. Lab. Code § 2698 *et. seq.*

19 **Failure to Provide Rest Breaks**

20 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

21 36. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 37. Defendant has failed to maintain a compliant rest period policy and practice that
24 provides its employees with off-duty rest periods as required by California law. Plaintiff reports
25 that he and his coworkers frequently missed breaks, especially the third rest break on longer
26 shifts as a result of Defendant's staffing and business practices. Additionally, employees are
27 required to walk long distances from their work locations to the break room for all breaks,
28 substantially cutting into break time.

1 38. Rest periods were either less than ten minutes, not provided, interrupted or late, “on
2 duty”, or not scheduled before and after a meal period for shifts greater than six hours, as
3 prescribed by California law because Defendant: (1) did not account for all hours worked that
4 were unaccounted for on their timecard; (2) did not adequately inform and train employees about
5 their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not
6 adequately inform and train employees about when, where and how to take timely and
7 uninterrupted ten-minute rest breaks; (4) because Defendant did not staff enough people to
8 schedule all timely and uninterrupted ten-minute rest breaks; (5) because management at various
9 levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully
10 compliant rest break policy; and/or (6) because the break area was located unreasonably far from
11 employee work areas.

12 39. Defendant did not authorize or permit all of its hourly employees to take at least a ten
13 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
14 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A).
15 When breaks were missed Defendant failed to pay the 1-hour penalty at the regular rate of pay,
16 as required. Because Defendant violated the Wage Order, Defendant is liable under Labor Code
17 §1198. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal.
18 Labor Code §2698 *et. seq.*

19 **Failure to Provide Uninterrupted Meal Breaks**

20 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

21 40. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 41. During Plaintiff’s employment, Defendant failed to maintain a compliant meal period
24 policy and practice. Defendant failed to provide all of its hourly employees with their right to take
25 an off-duty unpaid 30-minute meal period. Labor Code §512 provides, “[a]n employer may not
26 employ an employee for a work period of more than five hours per day without providing the
27 employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o
28 employer shall require an employee to work during any meal... period mandated by an applicable

1 order of the Industrial Welfare Commission.” Paragraph 11(A) of the Wage Orders provides, in
2 pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the
3 meal period shall be considered an ‘on duty’ meal period and counted as time worked.” Labor
4 Code 1198 states that any violation of a wage order is a violation of the Labor Code.

5 42. Plaintiff and aggrieved employees consistently had short meal periods because of the
6 far distance between the time clock and their work location. The job site was incredibly large and
7 employees had to spend much of their unpaid meal period walking to and from the timeclock.

8 43. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
9 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
10 (2) did not adequately inform and train employees about their rights to meal periods and premium
11 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
12 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
13 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal
14 periods; (5) because management at various levels, affecting all hourly, non-exempt employees,
15 refused to offer, permit, or enforce a lawfully compliant meal period policy, and/or (6) because
16 Defendant used invalid meal period waivers; and/or (7) because the break area was located
17 unreasonably far from employee work areas. Plaintiff and aggrieved employees were not paid a
18 premium payment, paid as an hour’s wage at the regular rate of pay when meal periods were not
19 given to them in compliance with California law. Defendant is liable for civil penalties pursuant
20 to Cal. Labor Code §2698 *et. seq.*

21 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**
22 **Requirements**

23 (Labor Code §§226, 246, 248, 1174, 1174.5, 2699 *et seq.*)

24 44. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
25 incorporate said paragraphs herein by reference.

26 45. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
27 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
28 and keep accurate records as required by §1174(d). Wage statements issued to Plaintiff and

1 aggrieved employees include the SHSI (shift differential) in the total hours worked calculation.
2 Additionally, because of the unlawful practices herein, both the wage statements and the records
3 maintained by Defendant fail to reflect the actual hours, including overtime hours, worked by
4 employees. Wage statements also fail to state meal and rest penalty wages, and the name and
5 address of all employers.

6 46. Such failures caused injury to Plaintiff and others, by, among other things, impeding
7 them from knowing the total hours worked and the amount of wages to which they are and were
8 entitled. Defendant knowingly and intentionally failed to list all the items described above.
9 Defendant is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

10 47. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved
11 employees to sign employment related contracts and documents that contained unlawful terms of
12 employment, legally insufficient meal break waivers.

13 **FIRST CAUSE OF ACTION**

14 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)** 15 **(California Labor Code §2698 *et seq.*)**

16 48. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
17 incorporate said paragraphs herein by reference.

18 49. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant
19 during the applicable statutory period and suffered one or more of the Labor Code violations set
20 forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and
21 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
22 attorneys’ fees and costs.

23 50. Plaintiff seeks to recover the PAGA civil penalties through a representative action
24 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
25 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

26 51. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
27 Code provisions:
28

- a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order);
- b. Failure to Include Nondiscretionary Bonuses and Shift Differential Pay in Regular Rate of Pay to Calculate Overtime (Cal. Labor Code §§200, 207, 218, 510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*);
- c. Failure to Properly Calculate and Pay Sick Leave Wages (Cal. Labor Code §§246);
- d. Failure to Pay All Wages Owed Twice Per Month (Cal. Labor Code §§204, 210, and 2698 *et seq.*);
- e. Failure to Pay Wages Due Upon Termination (Cal. Labor Code §§201, 202, 203, 256 and 2698 *et seq.*);
- f. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*);
- g. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*);
- h. Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements (Cal. Labor Code §§ 226, 246, 248, 1174, 1174.5, 2699 *et seq.*).

52. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

53. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.

54. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

55. Plaintiff and the other current and former employees of Defendant are aggrieved employees. They were or are employed by Defendant, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of himself and all other current and former aggrieved employees.

56. At the time of each violation, Defendant employed one or more employees.

57. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

58. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency (“LWDA”) and served by certified mail upon Defendant, Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions that Defendant has violated. The LWDA did not respond to Plaintiff’s Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue his PAGA claims in this action on behalf of aggrieved employees and the State of California.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for judgement against Defendant as follows:

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;

- 1 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
2 law;
3 4. Pre-judgement and post-judgement interest as provided by law; and
4 5. Such other and further relief that the Court may deem just and proper.
5

6 DATED: July 10, 2023

KOUL LAW FIRM

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9 BY: Nazo Koulloukian, Esq.
10 Attorneys for Plaintiff ALDO MARQUEZ, and all
11 aggrieved employees
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“EXHIBIT A”



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3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

April 28, 2023

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

CHANGING LIVES STAFFING, INC.
2515 SOUTH EUCLID AVENUE
ONTARIO, CA 91762

SAMUEL HALE 2, LLC
2365 IRON POINT ROAD #190
FOLSOM, CA 95630

NONGSHIM AMERICA, INC.
12155 6TH STREET
RANCHO CUCAMONGA, CA 91730

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Aldo Marquez
Employer: Changing Lives Staffing, Inc., Samuel Hale 2, LLC, Nongshim
America, Inc.

Dear Sir or Madam:

Claimant Aldo Marquez has retained Nazo Koulloukian, Esq. of the Koul Law Firm and Garen Majarian of the Majarian Law Group, APC, to represent him, and all other aggrieved employees, for wage and hour claims against his former employers, Changing Lives Staffing, Inc., Samuel Hale 2, LLC, and Nongshim America, Inc. (hereafter collectively referred to as “Employer”). Claimant worked for Employer as a machine operator and general laborer until December 10, 2022.

Claimant brings this action against the above employers, including the staffing agency, pursuant to Labor Code Section 2810.3. This PAGA Notice letter shall also serve as notice, pursuant to subdivision 6 (d) of Section 2810.3, that Claimant, on behalf of himself and similarly

situated employees, will file a civil action against all employers named above in accordance with Labor Code Section 2810.3, subdivision 6 (b-f), which provide:

(b) A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for both of the following:

(1) The payment of wages.

(2) Failure to secure valid workers' compensation coverage as required by Section 3700.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency ("LWDA") and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order)

Off the Clock Hours Donning and Doffing. Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so."

Employer would require Claimant and his coworkers to don and doff required protective gear and apparel while off the clock. Over time, this resulted in numerous off the clock hours worked, many of which were overtime hours worked, given that employees regular work in excess of 40 hours per workweek. Employees also spent time off the clock during unpaid meal periods walking long distances to and from the timeclock, which was located far from their work areas and from the break area.

Timecard Rounding. Employer rounded timeclock entries to the nearest 1/10th of an hour. Although Employer required employees to use a biometric timeclock (fingerprint) and was therefore capable of recording and paying for all hours worked, Employer instead rounded time from timecards.

Oftentimes the rounding would cause the Claimant and Aggrieved Employees to not be paid for all hours they worked. When it comes to time shaving and rounding, the California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a "rounding policy only 'if the rounding policy is fair and neutral on its face and 'it is

used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.)

The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours and overtime hours worked.

Failure to Pay Wages- Required Minimum Wage. Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer’s practice of rounding time-card entries. Based on Employer’s unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer’s failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 5-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

**Failure to Include Nondiscretionary Bonuses and Shift Differential Pay
in Regular Rate of Pay to Calculate Overtime**

(Cal. Labor Code §§200, 207, 218, 510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*)

Pursuant to Labor Code §200(a) “‘Wages’ includes 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 other method of calculation.”

Employer paid shift differential pay and issued nondiscretionary bonuses to Claimant and aggrieved employees but failed to include the additional pay when calculating the regular rate of pay for purposes of calculating overtime. It is well established that non-discretionary bonuses retroactively increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus or paid a higher rate of pay (such as a shift differential) that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer did not make any adjustments to overtime rates to incorporate the additional pay, and this failure is reflected in Claimant and aggrieved employees’ paystubs. Claimant and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order. Employer is liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698 *et seq.*

Failure to Properly Calculate and Pay Sick Leave Wages

(Cal. Labor Code §246)

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Labor Code § 246 (l)

Claimant and aggrieved employees were paid sick leave wages at their base hourly rates of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l).

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30)

days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that he and his coworkers frequently missed breaks, especially the third rest break on longer shifts as a result of Employer's staffing and business practices. Additionally, employees are required to walk long distances from their work locations to the break room for all breaks, substantially cutting into break time.

Rest periods were either less than ten minutes, not provided, interrupted or late, "on duty", or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy; and/or (6) because the break area was located unreasonably far from employee work areas.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A). When breaks were missed Employer failed to pay the 1-hour penalty at the regular rate of pay, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees consistently had short meal periods because of the far distance between the time clock and their work location. The job site was incredibly large and employees had to spend much of their unpaid meal period walking to and from the timeclock.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy, and/or (6) because Employer used invalid meal period waivers; and/or (7) because the break area was located unreasonably far from employee work areas. Employees were not paid a premium payment, paid as an hour's wage at the regular rate of pay when meal periods were not given to them in compliance with California law. Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 246, 248, 1174, 1174.5, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). Wage statements issued to Claimant and aggrieved employees include the SHSI (shift differential) in the total hours worked calculation. Additionally, because of the unlawful practices herein, both the wage statements and the records maintained by Employer fail to reflect the actual hours, including overtime hours, worked by employees. Wage statements also fail to state meal and rest penalty wages, and the name and address of all employers.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to list all the items described above. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment related contracts and documents that contained unlawful terms of employment, legally insufficient meal break waivers.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

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