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Assigned for all purposes:

Judge Peter Wilson

Dept. CX101

13 **SUPERIOR COURT OF CALIFORNIA**

14 **FOR THE COUNTY OF ORANGE**

15 KIMMY TRAN, individually and on behalf
16 of all similarly aggrieved employees,

17 Plaintiff,

18 v.

19 NELLSON NUTRACEUTICAL, LLC, a
20 Delaware limited liability company; and
21 DOES 1 through 25, inclusive,

22 Defendants.

CASE NO. 30-2023-01330858-CU-OE-CXC

**COMPLAINT FOR ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 *ET*
*SEQ.***

**1. VIOLATION OF LABOR CODE §§
2698, *ET SEQ.* (“PAGA”)**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff KIMMY TRAN (“Plaintiff”), on behalf of herself and all other aggrieved employees, and hereby brings this Representative Action Complaint against Defendants NELLSON NUTRACEUTICAL, LLC and DOES 1 through 25, inclusive (collectively, “Defendants”), and on information and belief alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff, on behalf of herself and all other aggrieved employees, which is defined as individuals who are currently employed, or formerly have been employed, as non-exempt employees of Defendants from on or around April 5, 2022 to the present, hereby brings this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et seq.*

2. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California market so as to render the exercise of jurisdiction over them by the California courts consistent with the traditional notions of fair play and substantial justice.

3. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, because Defendants regularly conduct business in Orange County, and because the aggrieved employees worked and Labor Code violations occurred in Orange County.

THE PARTIES

4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident. During the one year immediately preceding the filing of this Complaint and within the statute of limitations period applicable to each cause of action pled herein, Plaintiff was employed by Defendants in California.

5. Plaintiff is informed and believes, and based thereon alleges, that Defendants were at all times doing business throughout the State of California, have workplaces in Orange County, and serve numerous clients throughout the State. Further, Defendants employed Plaintiff and other aggrieved employees within the State of California.

6. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 25, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend

1 this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
2 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
3 corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately
4 caused Plaintiff and other aggrieved employees to be subject to the unlawful employment practices,
5 wrongs, injuries and damages complained of herein.

6 7. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned
7 herein, Defendants were and are the employers of Plaintiff and the other aggrieved employees.

8 8. At all times herein mentioned, each of said Defendants participated in the doing of the
9 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
10 and each of them, were the agents, servants, and employees of each and every one of the other
11 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
12 within the course and scope of said agency and employment. Defendants, and each of them, approved
13 of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
14 herein.

15 9. At all times mentioned herein, Defendants, and each of them, were members of and
16 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
17 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
18 alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved
19 employees.

20 **REPRESENTATIVE ACTION FACTUAL ALLEGATIONS**

21 10. Plaintiff worked for Defendants from in or around August 2021 to in or around August
22 2022 at 5115 E. La Palma Avenue, Anaheim, CA 92807. As part of their job duties, Ms. Tran and
23 other similarly aggrieved employees worked for Defendants at a factory that produced granola bars
24 and health bars.

25 11. Throughout their employment, Plaintiff and similarly aggrieved employees were
26 required to engage in lengthy “donning” and “doffing” procedures, prior to and at the end of their
27 workday. Time spent donning and doffing safety equipment was not compensated, despite it being a
28 job requirement for Plaintiff and similarly aggrieved employees.

1 12. To date, Plaintiff and similarly aggrieved employees have not been compensated for
2 time spent donning and doffing.

3 13. Defendants failed to compensate Plaintiff and other similarly aggrieved employees for
4 all hours of work performed, including for any off-the-clock hours Plaintiff and similarly aggrieved
5 employees had to work. As such, Plaintiff and other similarly aggrieved employees were not paid at
6 the overtime rate for hours worked in excess of 40 hours per week.

7 14. Throughout their employment, Plaintiff and other similarly aggrieved employees were
8 not allowed to take all of their meal breaks. Whenever Plaintiff and other similarly aggrieved
9 employees requested a meal break, Defendants would instruct Plaintiff and similarly aggrieved
10 employees to take breaks after their work was done and would routinely interrupt breaks by ordering
11 Plaintiff and similarly aggrieved employees to immediately engage in work-related tasks.

12 15. Plaintiff and similarly aggrieved employees were not compensated for work done
13 during lunch periods.

14 16. Plaintiff and similarly aggrieved employees were scheduled to work from 10 p.m. to
15 6:30 a.m. for five or six days a week, depending on how whether Defendants required them to work
16 on Saturdays. However, Plaintiff and other similarly aggrieved employees would often work past 8
17 a.m., and sometimes as late until 10 a.m.

18 17. Despite this, Plaintiff and other similarly aggrieved employees would not receive a
19 second meal break after working past their tenth hour.

20 18. Plaintiff and similarly aggrieved employees were not paid for any missed lunch periods.

21 19. Throughout their employment, Plaintiff and other similarly aggrieved employees were
22 not allowed to take all of their rest breaks. Plaintiff and other similarly aggrieved employees would
23 not always be allowed to take their required ten (10) minute rest break for every four (4) hours worked.
24 Even if Plaintiff and other similarly aggrieved employees would request a rest break, Defendants
25 would not permit these breaks until after their work was done.

26 20. Plaintiff and similarly aggrieved employees were not paid for any missed rest periods.

27 21. As a result of Defendants willful failure to record the time worked above, Plaintiff and
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1 other similarly aggrieved employees were denied overtime pay. This is because the uncompensated
2 time discussed above should have been counted as overtime, as it was worked in excess of forty per
3 week or in excess of eight hours per day.

4 22. Additionally, Plaintiff and other similarly aggrieved employees worked in excess of 12
5 hours per day multiple times and would not receive pay at the double-time rate for these hours.

6 23. Defendants have engaged in, and continue to engage in, unfair business practices in
7 California by practicing, employing and utilizing the employment practices and policies outlined
8 above.

9 24. Defendants' utilization of such unfair business practices constitutes unfair competition
10 and provides an unfair advantage over Defendants' competitors. Defendants' utilization of such unfair
11 business practices deprived Plaintiffs of the general minimum working standards and entitlements due
12 to them under California law and the Industrial Welfare Commission Wage Order as described herein.

13 25. At all times relevant hereto, Plaintiff and the other similarly aggrieved employees were
14 not exempt pursuant to Labor Code §515, including because:

15 a. Plaintiff and the other similarly aggrieved employees' duties and
16 responsibilities did not involve the management of the enterprise in which they were employed or of
17 a customarily recognized department or subdivision thereof;

18 b. Plaintiff and the other similarly aggrieved employees were not licensed or
19 certified by the State of California nor were they primarily engaged in the practice of one of the
20 following recognized professions: law, medicine, dentistry, optometry, architecture, engineering,
21 teaching, or accounting, nor were they primarily engaged in an occupation commonly recognized as
22 a learned or artistic profession as such terms are defined by Wage Order 5;

23 c. Plaintiff and the other similarly aggrieved employees' duties and
24 responsibilities did not involve either the performance of office or non-manual work directly related
25 to management policies or general business operations of their employer or their employer's
26 customers, or the performance of functions in the administration of a school system, or educational
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1 establishment or institution, or of a department or subdivision thereof, in work directly related to the
2 academic instruction or training carried on therein;

3 d. Plaintiff and the other similarly aggrieved employees did not have the authority
4 to hire or fire other employees, nor were Plaintiff and the other similarly aggrieved employees'
5 suggestions and recommendations as to the advancement and promotion or any other change of status
6 of other employees given any weight;

7 e. Plaintiff and the other similarly aggrieved employees did not customarily and
8 regularly exercise discretion and independent judgment in performing their work duties;

9 f. Plaintiff and the other similarly aggrieved employees did not perform under
10 only general supervision work along specialized or technical lines requiring special training,
11 experience, or knowledge;

12 g. Plaintiff and the other similarly aggrieved employees did not perform under
13 only general supervision special assignments and tasks; and

14 h. Plaintiff and the other similarly aggrieved employees did not spend more than
15 one-half of their work time engaged in exempt work.

16
17 26. As a direct result of the violations herein alleged, Plaintiff and the other similarly
18 aggrieved employees have suffered, and continue to suffer, substantial losses related to the use and
19 enjoyment of wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel
20 Defendants to fully perform their obligations under state law, all to their respective damage in amounts
21 according to proof at the time of trial.

22 27. As a result of Defendants' failure to pay overtime as well as rest period and meal break
23 premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage
24 statements to Plaintiff and other similarly aggrieved employees.

25 28. As a result of Defendants' failure to pay overtime and all meal and rest period premium
26 wages, Defendants failed to timely pay Plaintiff and other similarly aggrieved employees all wages
27 owed them at the time of separation from their respective employments.

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29. Based on the foregoing, Plaintiff seeks to represent herself and all aggrieved employees, as defined by Labor Code § 2699(c), including all individuals who are currently employed, or formerly have been employed, as non-exempt employees of Defendants from on or around April 5, 2022 to the present.

30. On April 5, 2023, Plaintiff sent a notice of filing the Private Attorney General Act (“PAGA”) claim to Labor Workforce and Development Agency (“LWDA”) pursuant to California Labor Code §§ 2698, *et seq.*, and paid \$75 to LWDA as a fee for filing the PAGA notice.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 2698, ET SEQ. (“PAGA”)

(By PLAINTIFF against All DEFENDANTS)

31. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

32. On or around April 5, 2023, Plaintiff filed a notice with the Labor Workforce and Development Agency (“LWDA”) at their website pursuant to the Private Attorney General Act, California Labor Code §§ 2698, *et seq.* (“PAGA”) regarding Defendants. This notice was also sent to the Defendants that same day via certified mail. Now that sixty-five days have passed from the date Plaintiff notified Defendants and the LWDA of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

33. PAGA permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5.

34. PAGA provides as follows: “[n]otwithstanding any other provision of law, a Plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.”

35. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code including, but not limited to, the following:

a. Defendants' Failure to pay all hours in violation of Industrial Welfare

1 Commission Order No. 4 and Labor Code §§ 200, 226, 226.7, 500, 510, 1194, 1197, and 1198;

2 b. Defendants' Failure to pay the minimum wage in violation of Industrial Welfare
3 Commission Order 4 and Labor Code §§ 200, 226, 226.7, 500, 510, 1197, 1194 and 1198;

4 c. Defendants' Failure to pay overtime and double-time compensation in violation
5 of Labor Code §§ 200, 226, 500, 510, and 1198;

6 d. Defendants' failure to provide accurate wage statements in violation of Labor
7 Code § 226;

8 e. Defendants' failure to timely pay all final wages due, including upon their
9 separation of employment, in violation of Labor Code §§ 201-203; and

10 f. Defendants' failure to provide all legally required meal periods in violation of
11 Industrial Welfare Commission Order No. 2 and Labor Code § 226.7 and 512, 516, 558, and 1198.

12 g. Defendants' failure to provide all legally required rest periods in violation of
13 Industrial Welfare Commission Order No. 2 and Labor Code § 226.7 and 512, 516, 558, and 1198.

14 36. California Labor Code section 1174 provides that "[e]very person employing labor in
15 this state shall ... [k]eep a record showing the names and addresses of all employees employed and
16 the ages of all minors" and "[keep, at a central location in the state or at the plants or establishments
17 at which employees are employed, payroll records showing the hours worked daily by and the wages
18 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
19 employed at the respective plants or establishments..."

20 37. California Labor Code section 210 provides: "In addition to, and entirely independent
21 and apart from, any other penalty provided in this article, every person who fails to pay the wages of
22 each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall
23 be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for
24 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
25 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
26 amount unlawfully withheld."
27

28 38. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf

1 of an employer who violates, or causes to be violated, a section of this chapter or any provision
2 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
3 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
4 employee for each pay period for which the employee was underpaid in addition to an amount
5 sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100)
6 for each underpaid employee for each pay period for which the employee was underpaid in addition
7 to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
8 be paid to the affected employee.” Labor Code section 558(c) provides “[t]he civil penalties provided
9 for in this section are in addition to any other civil or criminal penalty provided by law.”

10 39. Defendants, at all times relevant to this complaint, were employers or persons acting
11 on behalf of an employer(s) who violated Plaintiffs’ rights by violating various sections of the
12 California Labor Code as set forth above.

13 40. As set forth above, Defendants have violated numerous provisions of both the Labor
14 Code sections regulating hours and days of work as well as the applicable order of the IWC.
15 Accordingly, Plaintiff seeks the remedies set forth in Labor Code section 558 for herself, the State of
16 California, and all other aggrieved employees.

17 41. Pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3,
18 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and
19 collection of unpaid wages and civil penalties for Plaintiff, all other aggrieved employees, and the
20 State of California against Defendant, in addition to other remedies, for violations of California Labor
21 Code sections 200, 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, and
22 1198.
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24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this
26 suit is brought against Defendants, jointly and severally, as follows:

27 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
28 employees, and the State of California according to proof pursuant to Labor Code § 2699(a) including,

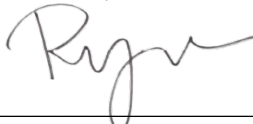
1 but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and
2 \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210
3 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for
4 each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
5 employee per pay period; and/or (3) \$100.00 for each initial violation and \$200.00 for each subsequent
6 violation per employee per pay period for those violations of the Labor Code for which no civil penalty
7 is specifically provided;

8 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 2699,
9 and Code of Civil Procedure § 1021.5; and

10 3. For such other and further relief that the Court may deem just and proper.
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14 DATED: June 9, 2023

LOYR, APC



16 By: _____

17 Young W. Ryu, Esq.

18 Joshua Park, Esq.

19 Kee Seok Mah, Esq.

20 Attorneys for Plaintiff KIMMY TRAN
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