

JUSTICE FOR WORKERS, P.C.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JORGE SANTOS, an individual and on behalf
of all others similarly situated;

Plaintiff,

vs.

NISSIN FOODS (U.S.A.) COMPANY, INC.,
a California corporation; and DOES 1 through
50,

Defendants.

Case No.: **24TRCV01225**

**REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §§ 2698,
et seq.)**

Plaintiff JORGE SANTOS ("Plaintiff"), on behalf of himself as an aggrieved employee, the State of California, and other aggrieved employees, hereby brings this Representative Action Complaint ("Complaint") against Defendants NISSIN FOODS (U.S.A.) COMPANY, INC., a California corporation, and DOES 1 to 50 (collectively "Defendants"), and on information and belief alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this Complaint for recovery of civil penalties under the California Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* ("PAGA"), for Defendants' violations of the Labor Code and Industrial Welfare Commission ("IWC") Wage Order 7-2001 ("Wage Order 7"), including Labor Code §§ 1198 and 6720. This Court has jurisdiction over

Defendants' violations of the Labor Code because the amount in controversy exceeds \$25,000.

2. Venue is proper in this judicial district because Defendants maintain offices, have agents, and/or transact business in the State of California, including Los Angeles County, and some of the acts and omissions complained of herein occurred in Los Angeles County. Furthermore, Plaintiff was employed by Defendants within Los Angeles County.

PARTIES

3. Plaintiff is, and at all times relevant herein was, an individual over the age of eighteen (18) and is a California resident. Within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies, practices, and/or customs complained of herein and has been deprived of the rights guaranteed by Labor Code §§ 1198 and 6720, and Wage Order 7.

4. Plaintiff is informed and believes, and based thereon alleges, that during the applicable statute of limitations for each cause of action pled herein and continuing to the present, Defendants engaged in and continue to engage in business, and employed Plaintiff and other, similarly-situated non-exempt employees within Los Angeles County, and the State of California and, therefore, were (and are) doing business in Los Angeles County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, was responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and aggrieved employees to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants, and each of them, were the agents, servants, and employees of each of the other

1 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
2 within the course and scope of said agency and employment.

3 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
4 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
5 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
6 the course and scope of such agency, employment, joint venture, or concerted activity. To the extent
7 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
8 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

9 8. At all times herein mentioned, Defendants, and each of them, were members of, and
10 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and
11 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

12 9. At all times herein mentioned, the acts and omissions of various Defendants, and
13 each of them, concurred and contributed to the various acts and omissions of each and all of the
14 other Defendants in proximately causing the injuries and damages as herein alleged.

15 **FACTUAL ALLEGATIONS**

16 10. Defendants own and operate a distribution warehouse in Gardena, California.
17 Defendants employed Plaintiff as a shipping receiver via a staffing agency as an hourly-paid, non-
18 exempt employee for approximately two years and terminated his employment on December 13,
19 2023.

20 11. Section 15 of the applicable Wage Orders provide: “(A) The temperature maintained
21 in each work area shall provide reasonable comfort consistent with industry-wide standards for the
22 nature of the process and the work performed. (B) If excessive heat or humidity is created by the
23 work process, the employer shall take all feasible means to reduce such excessive heat or humidity
24 to a degree providing reasonable comfort. Where the nature of the employment requires a
25 temperature of less than 60° F, a heated room shall be provided to which employees may retire for
26 warmth, and such room shall be maintained at not less than 68° F. (C) A temperature of not less
27 than 68° F shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of
28 use. (D) Federal and State energy guidelines shall prevail over any conflicting provision of this

1 section.” California law requires an employer to endeavor to provide a safe and healthy workplace.
2 (Cal. Code Regs., tit. 8, §3203.) Labor Code section 6720 required the California Division of
3 Occupational Safety and Health (“Cal/OSHA”) to propose an indoor heat illness standard by
4 January 1, 2019. (Lab. Code, § 6720.) Cal/OSHA’s draft standard applies its proposed regulations
5 to “all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when
6 employees are present.” During the relevant time period, Defendants failed to provide Plaintiff and
7 other aggrieved employees with reasonable comfort by maintaining the indoor temperature within
8 the range of industry standards by, inter alia, providing adequate heating, air conditioning, and/or
9 ventilation and failed to maintain a temperature of not less than 68° F in toilet rooms and/or
10 breakrooms for Plaintiffs and other aggrieved employees.

11 12. On or about January 29, 2024, Plaintiff notified Defendants via certified mail, and
12 notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of
13 Defendants’ violations of the Labor Code and Plaintiff’s intent to bring a claim for civil penalties
14 under Labor Code § 2698, *et seq.* with respect to the violations of the Labor Code identified in the
15 preceding paragraph. Now that 33 days and 65 days have passed from Plaintiff notifying
16 Defendants and the LWDA of these violations, Defendants have not cured any curable violations,
17 and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has
18 exhausted administrative requirements for bringing a claim under the Private Attorneys General Act
19 with respect to these violations.

20 **FIRST CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT**

22 **(Against All Defendants)**

23 13. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
24 fully set forth herein.

25 14. Plaintiff, an “aggrieved employee” within the meaning of Labor Code §§ 2698, *et*
26 *seq.*, acting on behalf of himself and other aggrieved employees (collectively, “Aggrieved
27 Employees”), brings this representative action against Defendants to recover the civil penalties due
28 to Plaintiff and other Aggrieved Employees, and the State of California according to proof pursuant

1 to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
2 violation for each failure to pay each employee and \$200 for each subsequent violation or willful or
3 intentional violation pursuant to Labor Code §§ 210 and/or 225.5 for each failure to pay each
4 employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and
5 \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3)
6 \$100 for each initial violation and \$250 for each subsequent violation pursuant to Labor Code §
7 1197.1 per employee per pay period; (4) \$250 for each initial violation and \$1,000 for each
8 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to
9 Labor Code § 256, a civil penalty in an amount not exceeding 30 days per former employee as
10 waiting time under the terms of Labor Code § 203; and/or (6) \$100 for each initial violation and
11 \$200 for each subsequent violation per employee per pay period for those violations of the Labor
12 Code for which no civil penalty is specifically provided, based on the following Labor Code
13 violation:

14 a. Failing to comply with Wage Order regulations on temperature in indoor workplaces
15 in violation of Labor Code § 1198.

16 15. Plaintiff has incurred attorneys' fees and costs, which Plaintiff is entitled to receive
17 under California Labor Code § 2699(g).

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
20 this suit is brought against Defendants, as follows:

21 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other Aggrieved
22 Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
23 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to
24 pay each employee and \$200 for each subsequent violation or willful or intentional violation
25 pursuant to Labor Code §§ 210 and/or 225.5 for each failure to pay each employee, plus 25% of the
26 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
27 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
28 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee

1 per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
2 pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code § 256, a
3 civil penalty in an amount not exceeding 30 days per former employee as waiting time under the
4 terms of Labor Code § 203; and/or (6) \$100.00 for each initial violation and \$200 for each
5 subsequent violation per employee per pay period for those violations of the Labor Code for which
6 no civil penalty is specifically provided;

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

9 3. For such other and further relief, the Court may deem just and proper.

10
11 DATED: April 9, 2024

JUSTICE FOR WORKERS, P.C.

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13 By: 

14 William C. Sung

15 Tiffany L. Luu

16 Attorneys for Plaintiff JORGE SANTOS
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