

TIMOTHY B. DEL CASTILLO (SBN: 277296)
tdc@castleemploymentlaw.com
KENT L. BRADBURY (SBN: 279402)
kb@castleemploymentlaw.com

CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC
2999 Douglas Blvd., Suite 180
Roseville, CA 95661
Telephone: (916) 245-0122

Attorneys for Plaintiff JULIE NISHIMOTO

ELECTRONICALLY FILED
by Superior Court of CA,
County of Yolo,
on 5/8/2024 9:51 AM
By: B Puebla, Deputy

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

JULIE NISHIMOTO, individually and as
an aggrieved employee pursuant to the
Private Attorneys General Act (PAGA),

Plaintiff,

vs.

CP CAPITAL GROUP, INC.; DOES 1 to
20, inclusive,

Defendants

Case No. CV2024-1152

COMPLAINT FOR DAMAGES

- 1. Failure to Pay Minimum Wage for All Hours Worked;**
- 2. Failure to Provide Compliant Wage Statements;**
- 3. Waiting Time Penalties;**
- 4. Failure to Pay Overtime Wages;**
- 5. Violation of California Unfair Competition Law (Business & Professions Code § 17200 et seq.**
- 6. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 et seq.**

1 Plaintiff JULIE NISHIMOTO (“Plaintiff”) hereby files this Complaint against Defendant
2 CP CAPITAL GROUP, INC., and DOES 1 to 20, inclusive, (hereinafter collectively referred to
3 as “Defendants”). Plaintiff alleges the following:

4 **PARTIES AND JURISDICTION**

5 1. This is an enforcement action under the Labor Code Private Attorneys General Act of
6 2004 (“PAGA”), California Labor Code section 2698, *et seq.* to recover civil penalties and any other
7 available relief on behalf of Plaintiff, the State of California, and other current and former employees
8 who worked for Defendants in California and who suffered at least one violation of the Labor Code
9 as set forth in this complaint, at any time between February 15, 2023, and judgement.

10 2. Plaintiff JULIE NISHIMOTO is an individual over the age of eighteen (18) and is now
11 and/or at all times mentioned in this Complaint was a resident of the State of California.

12 3. Plaintiff was an employee of Defendants, providing services as a non-exempt employee
13 at its hotel location in Dixon, California.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendant CP CAPITAL
15 GROUP, INC. is a California Corporation that is licensed to and actually doing business in
16 California.

17 5. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
18 herein was, at all times relevant to this action, the agent, employee, or joint employer or joint
19 venturer of the remaining defendants and was acting within the course and scope of that relationship.
20 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein
21 gave consent to, ratified and authorized the acts alleged herein to each of the remaining defendants.
22 The true names and capacities of the defendants named herein Does 1 through 20, inclusive, whether
23 individual, corporate, associate, or otherwise are unknown to Plaintiff, who therefore sues such
24 defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff
25 will amend this complaint to show such true names and capacities of Does 1 through 20, inclusive,
26 when they have been determined.

1 6. The Yolo County Superior Court has jurisdiction in this matter under the California
2 Constitution, Article VI, section 10. The statute under which this action is brought does not specify
3 any other basis for jurisdiction.

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

6 8. On February 15, 2024, Plaintiff filed her Labor Code § 2699.3 Private Attorney General
7 Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”).
8 The LWDA did not respond to Plaintiff’s PAGA notice within 65 days.

9 **FACTS COMMON TO ALL CAUSES OF ACTION**

10 9. Plaintiff and similarly situated employees worked for Defendant as non-exempt
11 employees in California. Plaintiff brings her representative PAGA claims on behalf of all non-
12 exempt employees of Defendant in California who suffered one or more of the Labor Code
13 violations identified herein.

14 10. Plaintiff worked for Defendants as a non-exempt employee from approximately
15 December 1, 2023 until her illegal and retaliatory termination on or around December 12, 2023.

16 11. Throughout the relevant period , Defendant did not allow Claimant and similarly situated
17 employees to take their statutorily required meal and rest periods. Defendant failed to provide
18 Claimant and other similarly situated employees a 30-minute, duty-free meal period before the end
19 of the fifth hour of work as required under the law. Defendant also failed to provide a second meal
20 period to Claimant and similarly situated employees who work ten hours or more in a given shift.
21 Claimant and similarly situated employees regularly missed their meal and rest periods and/ or they
22 were provided late. In the event a meal period was provided, it was often interrupted or cut short in
23 order to deal with customer issues or other work-related tasks.

24 12. Defendant also failed to provide rest periods to Claimant and similarly situated
25 employees for every 4 hours worked or major fraction thereof. Defendant’s management staff were
26 aware this was occurring and did not ensure meal and/ or rest periods were provided to Claimant and
27 similarly situated employees in compliance with California law. Defendant also failed to pay
28

1 Claimant and similarly situated employees the statutorily-required missed meal period or missed rest
2 period premium when these breaks were not provided.

3 13. These practices of Defendant have also resulted in unpaid minimum and overtime wages,
4 as Defendant failed to pay wages for the occasions in which Claimants' and similarly situated
5 employees' timecards falsely showed a meal period when it was not provided or taken

6 14. Additionally, Defendant did not provide Claimant and similarly situated employees
7 legally compliant wage statements noting, among other things, total hours worked, gross wages
8 earned, the applicable hourly rates in effect during the pay period and the corresponding number of
9 hours worked at each hourly rate. Claimant was not provided a wage statement and was only given
10 a handwritten check following her termination.

11 15. Defendant also did not provide Claimant and similarly situated aggrieved employees all
12 wages owed upon their termination or within seventy-two (72) hours of their separation from
13 employment.

14 16. Plaintiff is informed and believes that Defendant committed other violations of the
15 California Labor Code, including but not limited to those identified in this complaint. Pursuant to
16 *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018), Plaintiff intends to seek civil
17 penalties for all violations of the California Labor Code committed by Defendant against Plaintiff
18 and other similarly situated employees, both exempt and non-exempt, whether he experienced them
19 personally or not.

20 17. Upon information and belief, all transactions regarding hiring, terminations, promotions,
21 pay increases, etc. relating to Defendant's California employees were submitted to and processed by
22 Defendant's HR department in its corporate headquarters. Additionally, on information and belief,
23 Defendants' corporate records, in particular HR and pay records pertaining to Defendants' California
24 employees, are also maintained at Defendant's corporate headquarters.

25 18. Upon information and belief, Defendant maintains a central Payroll department at its
26 corporate headquarters, which processes payroll for all Defendant's employees, including Plaintiff
27 and similarly situated, aggrieved employees.
28

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

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

10 21. Plaintiff and other current and former employees of Defendant are aggrieved employees
11 as defined by the Labor Code in that they are all Defendants’ current or former employees and one
12 or more of the alleged violations was committed against them.
13

14
15 **FIRST CAUSE OF ACTION**
FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED

16 22. Plaintiff hereby incorporates by reference Paragraphs 1 through 21 of this Complaint as if
17 fully set forth herein and for a cause of action alleges as follows:

18 23. Defendant was required to compensate Plaintiff with at least the State’s minimum wage
19 for all hours worked. See Cal. Labor Code § 1194; MW Order-2014; MW Order-2017.
20

21 24. Defendant was aware of their obligation to pay the minimum wages but failed to do so.

22 25. Defendant’s conduct described herein violates California Labor Code section 1194, and
23 Wage Orders. As a proximate result of Defendant’s conduct, Plaintiff has been damaged and
24 deprived of minimum wages, in an amount to be established at trial. Plaintiff now seeks these
25 wages, liquidated damages pursuant to California Labor Code section 1194.2, attorney’s fees and
26 costs, and interest pursuant to California Labor Code section 1194.
27
28

26. Plaintiff incorporates by reference and re-allege paragraphs 1 through 25 as though fully set forth herein.

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.

28. Plaintiff alleges that Defendant intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in Labor Code section 226(a). Defendant also failed to list on the wage statements provided to Plaintiff all hours worked and the correct regular rate for overtime purposes.

29. Additionally, Plaintiff alleges she suffered injury as a result of Defendant's failure to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of Labor Code section 226, subdivision (a), and Plaintiff cannot promptly and easily determine (i.e. a reasonable person in each Plaintiff's position would not be able to readily ascertain

1 the information without reference to other documents or information) from the wage statement
2 alone.

3 30. Plaintiff is entitled to, and does hereby seek, injunctive relief requiring Defendant to
4 comply with Labor Code §§ 226(a) and 1174(d), and all applicable damages and civil penalties.

5 **THIRD CAUSE OF ACTION**
6 **WAITING TIME PENALTIES**

7 31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully
8 set forth herein.

9 32. An employer must pay an employee who is terminated all unpaid wages immediately
10 upon termination. Labor Code § 201.

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

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

16 35. Plaintiff did not receive all wages, including minimum and overtime wages and meal and
17 rest period premiums, at his termination or separation from employment.

18 36. Defendant knew of its obligation to pay Plaintiff for all hours worked because they had
19 knowledge Plaintiff was, at all times, a non-exempt employee, worked over eight (8) hours a day
20 and/or forty (40) hours a week. Such conduct shows Defendant's knowledge of their obligation to
21 pay all wages owed upon termination and willful refusal.

22 37. As a proximate result of the Defendant's conduct, Plaintiff has been damaged and
23 deprived of her wages and thereby seeks his daily rate of pay multiplied by thirty (30) days for
24 Defendant's failure to pay all wages due in an amount to be established at trial.
25
26
27
28

FOURTH CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES

38. Plaintiff incorporates by reference and re-allege paragraphs 1 through 37 as though fully set forth herein.

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

40. Plaintiff was a non-exempt employee under the administrative, executive, or professional exemptions of the applicable Wage Order and California Labor Code section 510.

41. On information and belief, Defendant failed to record and pay Plaintiff for all hours worked, thus Plaintiff and other employees in California were underpaid overtime wages.

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

FIFTH CAUSE OF ACTION
(Unfair Competition)

43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully set forth herein.

44. 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 prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See Cal. Bus. and Prof. Code §§ 17200 *et seq.*

45. Defendant committed numerous violations of the California Labor Code throughout the employment relationship.

1 46. Plaintiff is also informed and believes and thereon alleges that such actions and/or
2 conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and
3 Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*,
4 23 Cal. 4th 163 (2000).

5 47. As a direct and legal result of Defendant’s conduct, as alleged herein, pursuant to the
6 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
7 restitution as a result of its unfair business practices, including, but not limited to, public injunctive
8 relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§ 17203, 17208,
9 violations of Labor Code §§ 1194, 226, and 226.7, all in an amount as yet unascertained but subject
10 to proof at trial, for four (4) years from the filing of this Action.
11

12 **SIXTH CAUSE OF ACTION**
13 **CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.**

14 48. Plaintiff incorporates by reference and re-alleges paragraphs 1-47 above as though fully
15 set forth herein.

16 49. Plaintiff brings this cause of action as a proxy for the State of California and in this
17 capacity, seeks penalties on behalf of all Aggrieved Employees for Defendant’s violations of the
18 California Labor Code, including but not necessarily limited to, those Labor Code and Wage Order
19 violations identified above.
20

21 50. On February 15, 2024, Plaintiff, through counsel, sent written notice to the LWDA
22 regarding Defendant’s violations of the California Labor Code, pursuant to Labor Code section
23 2698, *et seq.*, PAGA. As of the date of the filing of this Complaint, the LWDA has not informed
24 Plaintiff whether the LWDA intends to investigate Plaintiff’s PAGA claims. As such, Plaintiff has
25 exhausted her administrative remedies under PAGA and may proceed in this Court.

26 51. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and
27 all aggrieved employees for all violations of the Labor Code from February 15, 2023, through trial
28 on this matter.

1 52. Defendants’ conduct, as alleged herein, violated various sections of the California labor
2 Code, including but not limited to, the following:

3 53. Labor Code section 226 requires employers to furnish to employees with “an accurate
4 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
5 employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the
6 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
7 written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6)
8 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
9 only the last four digits of his or her social security number or an employee identification number
10 other than a social security number, (8) the name and address of the legal entity that is the employer .
11 . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number
12 of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendant
13 failed to comply with these requirements with respect to Plaintiff and similarly situated employees in
14 violation of the Labor Code.

15 54. Labor Code sections 510 and 1194 require employers to pay employees overtime for any
16 work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any
17 one workweek. Employers must also pay overtime for the first eight (8) hours worked on the
18 seventh day of work in any one workweek. Finally, employers must pay double time for all hours
19 worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8)
20 hours on the seventh day of work in any one workweek. As stated above, Plaintiff and similarly
21 situated employees worked over eight (8) hours per day and forty (40) hours per week and were not
22 paid correct overtime wages. Plaintiff and all similarly situated employees are entitled to recover all
23 unpaid overtime wages. Failure to pay such wages is against the law.

24 55. Labor Code sections 201–203 require that all wages be paid to employees upon
25 separation and/or termination of employment. Here, for the reasons stated above, Defendant’s
26 employees did not receive all final wages due and owing to them at the time of termination or
27
28

1 seventy-two (72) hours thereafter as required by Labor Code sections 201–203. This is in violation
2 of the Labor Code.

3 56. Labor Code section 226.7 and IWC Wage Order No. 4-2001, section 11(A) require
4 employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked. For
5 the reasons stated above, Plaintiff and similarly situated employees were not authorized and
6 permitted to take legally compliant meal periods pursuant to California law.

7 57. Labor Code section 226.7 and IWC Wage Order No. 5-2001, section 12(A) require
8 employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or
9 major fraction thereof worked. For the reasons stated above, Plaintiff and similarly situated
10 employees were not authorized and permitted to take legally compliant rest periods pursuant to
11 California law in violation of the Labor Code. Defendants also failed to pay rest period premiums
12 for their failure to provide rest periods.

13 58. Labor Code section 226 requires employers to furnish to employees with “an accurate
14 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
15 employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the
16 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
17 written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6)
18 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
19 only the last four digits of his or her social security number or an employee identification number
20 other than a social security number, (8) the name and address of the legal entity that is the employer .
21 . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number
22 of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendants
23 failed to comply with these requirements with respect to Plaintiff and similarly situated employees in
24 violation of the Labor Code.

25 59. During the period Plaintiff and similarly situated employees were employed by
26 Defendant they were entitled to be paid at least the State’s minimum wage rate for each hour that
27 they worked. *See, e.g.,* IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 5-2001,
28

1 section (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendant did not pay
2 Plaintiff and similarly situated employees at least minimum wage for all hours worked. Thus,
3 Plaintiff and similarly situated employees were not paid at least the applicable state minimum wage
4 for all hours worked in violation of the Labor Code.

5 60. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal.
6 Rptr. 3d 502, 513 (2018), Plaintiff seeks civil penalties on behalf of the State of California and all
7 aggrieved employees for all violations of the California Labor Code, whether she experienced them
8 personally or not.

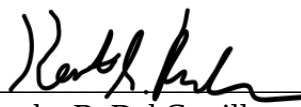
9
10 **DAMAGES**

11 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 12 1. A jury trial;
- 13 2. For penalties and liquidated damages under the California Labor Code according to
- 14 proof allowed by law;
- 15 3. For compensatory damages, including, but not limited to, unpaid wages, plus
- 16 interest, according to proof allowed by law;
- 17 4. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
- 18 fees;
- 19 5. For injunctive relief;
- 20 6. For an award of prejudgment and post-judgment interest; and
- 21 7. For an award to Plaintiff of such other and further relief as the Court deems just and
- 22 proper.
- 23

24 Dated: May 7, 2024

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

26 By: 
27 Timothy B. Del Castillo
28 Kent L. Bradbury
Attorneys for Plaintiff JULIE NISHIMOTO