

STANSBURY BROWN LAW, PC
DANIEL J. BROWN (SBN 307604)
dbrown@stansburybrownlaw.com
ETHAN C. SURLS (SBN 327605)
esurls@stansburybrownlaw.com
2610 ½ Abbot Kinney Blvd.
Venice, California 90291
Tel: (323) 204-3124

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

MARIA VELASCO, as an individual, and on
behalf of all others similarly situated,

Plaintiff,

v.

KRAFT HEINZ FOODS COMPANY, LLC, a
Pennsylvania limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No. C24-02489

Amended as a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 512)**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (5) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (7) UNFAIR COMPETITION (BUS &
PROF CODE § 17200, *et seq.*);**
- (8) FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE §
2802); AND**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Maria Velasco (hereinafter “Plaintiff”), as an individual, and on behalf of all
2 others similarly situated, hereby brings this First Amended Class and Representative Action
3 Complaint against Kraft Heinz Foods Company, LLC, a Pennsylvania limited liability company;
4 and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges
5 as follows:

6 **JURISDICTION**

7 1. Plaintiff hereby brings this First Amended Class and Representative Action
8 Complaint for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 201-203, 204, 226 *et. Seq.*, 226.7, 510, 512, 516, 558,
10 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, and Industrial Welfare Commission Wage
11 Order 1 (“Wage Order 1”), in addition to seeking declaratory relief and restitution. This
12 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
13 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
14 controversy exceeds this Court's jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in the County of Contra Costa. Defendants own, maintain offices, transact business,
19 have an agent or agents within the County of Contra Costa, and/or otherwise are found within the
20 County of Contra Costa, and Defendants are within the jurisdiction of this Court for purposes of
21 service of process.

22 **PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was and currently is a California resident. During the four years immediately preceding
25 the filing of the Complaint in this action and within the statute of limitations periods applicable
26 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
27 employee. Plaintiff was and is a victim of Defendants’ policies and/or practices complained of
28 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code

201-203, 204, 226 *et. Seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, and 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and Wage Order 1, which sets employment standards for manufacturing businesses.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in food manufacturing in California and the United States, employed Plaintiff within Contra Costa County and the state of California and, therefore, were (and are) doing business in Contra Costa 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 100, 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 allege, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) to be subjected to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes. Plaintiff and the members of the Classes engage in interstate commerce activities in the course of their job duties. As such, Plaintiff and the members of the Classes are “Transportation Workers” exempt from arbitration within the definition of the Federal Arbitration Act. *See Southwest Airlines Co. v Saxon*, 596 U.S. 450 (2022); *Carmona v. Domino’s Pizza, LLC*, 73 F.4th 1135 (9th Cir. 2023); *Saige et al. v. U.S. District Court for the Central District of California*, No. 24-4072 (9th Cir. July 18, 2024).

7. 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 Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned

1 were acting within the course and scope of said agency and employment. Defendants, and each
2 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
3 omissions complained of herein.

4 8. At all times mentioned herein, Defendants, and each of them, were members of
5 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
6 and scope of, and in pursuance of said joint venture, partnership, and common enterprise. Further,
7 Plaintiff alleges that all Defendants were joint employers for all purposes towards Plaintiff and
8 all members of the Classes.

9 **GENERAL FACTUAL ALLEGATIONS**

10 9. Plaintiff worked for Defendants between approximately August 2006 through June
11 18, 2024, as a Forklift Driver. Plaintiff's job responsibilities included loading pallets of goods
12 destined for interstate locations onto the forklift, moving pallets to the correct place, and generally
13 driving/operating the forklift. Plaintiff typically worked Monday through Friday from
14 approximately 1:30 p.m. to 9:30 p.m. Plaintiff was paid at a rate of approximately \$26.77 per
15 hour at the time of her separation with Defendants.

16 10. Plaintiff and other aggrieved employees routinely worked overtime/doubletime
17 hours but did not receive overtime/doubletime compensation equal to one and one-half times their
18 regular rate of pay for all overtime hours worked. Specifically, Defendants paid Plaintiff and other
19 aggrieved employees non-discretionary bonuses, commissions, and other forms of non-
20 discretionary pay that are not excludable from the regular rate of pay (hereinafter the
21 aforementioned forms of pay are referred to as "Incentive Pay"). Despite Defendants' payment of
22 Incentive Pay to Plaintiff and other aggrieved employees, Defendants failed to properly calculate
23 the correct regular rate of pay for overtime purposes, thereby causing Plaintiff and other aggrieved
24 employees to be underpaid all required overtime wages.

25 11. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff and
26 other aggrieved employees were not paid for all hours worked. Upon information and belief,
27 Defendants' timekeeping practices served to drastically undercompensate for all time that
28

1 Plaintiff and other aggrieved employees actually worked under the control of Defendants. Indeed,
2 as a consequence of these deficient timekeeping practices, the wages that Plaintiff and other
3 aggrieved employees received from Defendants were in no way reflective of the hours that they
4 actually worked or the monies they were actually entitled to. Rather, upon information and belief,
5 Defendants opted to pay Plaintiff and other aggrieved employees for their prescheduled hours
6 rather than the actual amount of hours that they were performing work, a practices which always
7 served to drastically undercompensate them. Indeed, Plaintiff estimates that she works
8 approximately 30 hours of overtime per pay period, however, her check stubs do not compensate
9 her for those hours, instead paying her at her straight time rate of pay (if at all). As such, Plaintiff
10 and other aggrieved employees were routinely and intentionally denied minimum wages,
11 overtime wages, and double time wages as a consequence of its openly stated policies/practices
12 of only paying employees straight time wages for hours worked, if at all. Consequently, due to
13 Defendants' unlawful timekeeping and payment policies and practices that failed to compensate
14 for all hours worked, Plaintiff and other aggrieved employees have been deprived of all required
15 minimum, overtime, and doubletime wages earned.
16

17 12. Plaintiff and other aggrieved employees were not authorized to take all legally
18 required rest periods. Plaintiff does not recall ever receiving a legally compliant rest period
19 throughout her employment with Defendants. Due to Defendants' chronic and intentional
20 understaffing of the facilities that Plaintiff and other aggrieved employees worked at, Plaintiff
21 and other aggrieved employees were generally not permitted to exercise any compliant duty-free
22 rest periods. As such, Plaintiff and other aggrieved employees would be made to work through
23 their entire shifts except for those rare occasions they were afforded meal periods without any
24 time to exercise rest periods. Furthermore, to the extent that Plaintiff and other aggrieved
25 employees were ever authorized to exercise anything resembling a legally compliant rest period,
26 they were not permitted to leave the facility thus making any rest periods that Defendants purport
27 to have provided her inherently on-duty and non-compliant. Accordingly, Plaintiff and other
28 aggrieved employees endured rest period violations, whether they were missed, short or on-duty

on most, if not all, shifts that they worked for Defendants. Despite Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, Defendants never provided Plaintiff and other aggrieved employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Defendants maintained no payroll code or another mechanism for the payment of rest period premiums in the event Plaintiff and other aggrieved employees were not authorized to take lawful rest periods.

13. Defendants also did not provide Plaintiff and other aggrieved employees with legally complaint meal periods. Specifically, Plaintiff and other aggrieved employees were rarely, if ever, entitled to exercise the use of a thirty-minute uninterrupted meal period despite always working at least 8.0 hours in a day. Rather, Plaintiff and other aggrieved employees' meal periods were frequently i) missed entirely; ii) shortened; iii) not exercised until after the fifth hour worked; and or iv) interrupted by management to discuss work-related matters. Furthermore, to the extent that Plaintiff and other aggrieved employees ever received anything resembling a meal period, they were inherently non-compliant as Defendants did not permit Plaintiff and other aggrieved employees to leave the premises of their job-sites at any point during their shifts. Additionally, upon information and belief, Defendants did not employ any practices or procedures to track the meal periods of Plaintiff and other aggrieved employees even on those occasions where they had an opportunity to exercise one. Defendants also failed to provide second meal periods when Plaintiff and other aggrieved employees worked shifts in excess of 10.00 hours. Plaintiff frequently worked in excess of 10 hours during her employment, but she cannot recall ever receiving a second meal period. Despite Defendants' failure to provide Plaintiff and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, Defendants never provided Plaintiff and other aggrieved employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

14. Defendants failed to adequately reimburse Plaintiff for all reasonable and

1 necessary work expenditures, including but not limited to, requiring Plaintiff and other aggrieved
2 employees to utilize their personal cellular phones in the performance of her job duties. Plaintiff
3 and other aggrieved employees conducted all work-related communications on their personal
4 cellular phones, such as discussions with supervisors regarding assignments, scheduling, and any
5 other matter that arose during their shifts and often after the conclusion of their shifts, but did not
6 ever receive any reimbursements for the necessary use of their personal cellular phones.

7 15. Defendants also maintained inaccurate payroll records, and issued inaccurate and
8 deficient wage statements, in part due to Defendant's failure to pay all minimum, overtime, and
9 doubletime wages, and meal and rest period premium wages.

10 16. Defendants violated Labor Code § 204 by failing to pay Plaintiff and other
11 aggrieved employees all wages earned at least twice during each calendar month.

12 17. Defendants additionally failed to pay all wages owed to Plaintiff and the other
13 aggrieved employees upon their separation of employment from Defendants, in part due to
14 Defendants' failure to pay all minimum/overtime/doubletime wages, and meal and rest period
15 premium wages.

16 18. Defendants failed to meet its obligations to provide paid sick leave to and other
17 aggrieved employees under Labor Code §245.5(b) which requires that employers authorize and
18 permit its employees who worked 30 or more days within a year to accrue paid sick leave, and to
19 allow them to exercise paid sick leave on or after their 90th day of employment. Despite meeting
20 all of the statutory requirements for being able to accrue and utilize paid sick leave, Plaintiff and
21 other aggrieved employees were not provided paid sick leave on those occasions where they
22 needed to take a "sick day" in violation of Labor Code §245.5(b).

23 19. Finally, Defendants failed to conform to the requirements of Labor Code § 2810.5
24 by failing to provide Plaintiff and other aggrieved employees written notices, in the language
25 normally used to communicate employment related information to the employees, containing
26 information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part
27 of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the
28

1 employer; v) the address of the legal entity that is the employer; vi) the telephone number of the
2 employer; vii) identifying information for the employer's workers' compensation insurance
3 carrier; and viii) information informing the employee of their right to accrue and use paid sick
4 leave.

5 **CLASS ACTION ALLEGATIONS**

6 20. **Class Definitions:** Plaintiff brings this action on behalf of herself and the
7 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 8 a. The Minimum Wage Class consists of all current and former non-exempt
9 employees of Defendants in California who were subject to Defendants'
10 timekeeping systems and/or practices, during the four years immediately
11 preceding the filing of this lawsuit through the present.
- 12 b. The Overtime Wage Class consists of all current and former non-exempt
13 employees of Defendants in California who worked overtime hours and were
14 subject to Defendants' timekeeping systems and/or practices, during the four years
15 immediately preceding the filing of this lawsuit through the present.
- 16 c. The Doubletime Wage Class consists of all current and former non-exempt
17 employees of Defendants in California who worked doubletime hours and were
18 subject to Defendants' timekeeping systems and/or practices, during the four years
19 immediately preceding the filing of this lawsuit through the present
- 20 d. The Rest Period Class consists of all current and former non-exempt employees of
21 Defendants in California who worked at least one shift in excess of 3.5 hours
22 during the four years immediately preceding the filing of this lawsuit through the
23 present.
- 24 e. The Meal Period Class consists of all current and former non-exempt employees
25 of Defendants in California who worked at least one shift in excess of 5.0 hours
26 without a meal period of at least 30 minutes in duration commencing prior to the
27 conclusion of the fifth hour of work, and who do not have a corresponding meal
28

period premium payment made for such shifts and/or (ii) worked at least one shift in excess of 10.0 hours while performing work for Defendants in California without a second meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth hour of work, and who do not have a corresponding meal period premium payment made for such shifts during the four years preceding the filing of this lawsuit through the present.

f. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Doubletime Class, Rest Period Class, and/or Meal Period Class who received a wage statement from Defendants during the one year immediately preceding the filing of this lawsuit through the present.

g. The Employee Expense Class consists of all Defendants' current and former non-exempt employees in California who were not reimbursed for cellular phone expenses necessarily incurred in the performance of their duties during the four years immediately preceding the filing of the Complaint through the present.

h. The Waiting Time Class consists of all of Defendants' formerly employed non-exempt employees in California who were subject to Defendants' timekeeping systems and/or practices, during the three years immediately preceding the filing of this lawsuit through the present.

21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than two hundred (200) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

22. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 1 by requiring members of the Overtime Wage Class and Doubletime Wage Class to perform overtime/doubletime work and not paying for said work in accordance with the overtime laws of the State of California;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants provided all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;
- vi. Whether Defendants provided accurate, itemized wage statements to members of the Classes;
- vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful; and
- viii. Whether Defendants are liable for civil penalties for violations of the Labor Code pursuant to the Private Attorneys General Act.

23. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping policies and practices, meal and rest period policies and practices, wage statement policies and practices, reimbursement policies, and the policies and practices regarding the timely

1 payment of final wages. As such, the common questions predominate over individual questions
2 concerning each individual class member's showing as to his or her eligibility for recovery or as
3 to the amount of his or her damages.

4 24. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
5 Plaintiff was employed by Defendants as a non-exempt employee in California during the
6 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
7 herein, Plaintiff, like the members of the Classes, was subject to Defendants' meal/rest period and
8 timekeeping policies and practices, was provided inaccurate wage statements, and was not paid
9 all wages earned at the time of her separation of employment.

10 25. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
11 to represent fairly and adequately the interests of the members of the Classes. Moreover,
12 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
13 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
14 and-hour class actions in state and federal courts in the past and are committed to vigorously
15 prosecuting this action on behalf of the members of the Classes.
16

17 26. **Superiority:** The California Labor Code is broadly remedial in nature and serves
18 an important public interest in establishing minimum working conditions and standards in
19 California. These laws and labor standards protect the average working employee from
20 exploitation by employers who have the responsibility to follow the laws and who may seek to
21 take advantage of superior economic and bargaining power in setting onerous terms and
22 conditions of employment. The nature of this action and the format of laws available to Plaintiff
23 and members of the Classes make the class action format a particularly efficient and appropriate
24 procedure to redress the violations alleged herein. If each employee were required to file an
25 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
26 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
27 their vastly superior financial and legal resources. Moreover, requiring each member of the
28 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by

1 employees who would be disinclined to file an action against their former and/or current employer
2 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
3 employment. Further, the prosecution of separate actions by the individual class members, even
4 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
5 with respect to the individual class members against Defendants herein; and which would
6 establish potentially incompatible standards of conduct for Defendants; and/or legal
7 determinations with respect to individual class members which would, as a practical matter, be
8 dispositive of the interest of the other class members not parties to adjudications or which would
9 substantially impair or impede the ability of the class members to protect their interests. Further,
10 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
11 individual prosecution considering all of the concomitant costs and expenses attending thereto.
12 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
13 Civil Procedure.

14
15 **FIRST CAUSE OF ACTION**

16 **MINIMUM WAGE VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

18 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 28. Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
20 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
21 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
22 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
23 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
24 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
25 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum
26 Wage Class for all hours actually worked including, but not limited to, all hours she was subject
27 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
28 and Wage Order 1.

29. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

30. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but not limited to, unpaid wages and lost interest in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 1.

31. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

32. Plaintiff re-allege and incorporates by reference all previous paragraphs.

33. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

34. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class/Doubletime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer to pay overtime/doubletime wages when an employee's hours worked cross certain

1 thresholds or meet certain criteria set forth in the Wage Order.

2 35. The foregoing policies and practices are unlawful and create entitlement to
3 recovery by Plaintiff and the Overtime Class/Doubletime Class in a civil action for the unpaid
4 amount of overtime premiums owing, including interest thereon, statutory penalties, and
5 attorneys' fees and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and
6 1198, Wage Order 1, and Code of Civil Procedure § 1021.5.

7 **THIRD CAUSE OF ACTION**

8 **MEAL PERIOD VIOLATIONS**

9 **(AGAINST ALL DEFENDANTS)**

10 36. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

11 37. Plaintiff is informed and believe, and based thereon allege, that Defendants failed
12 in their affirmative obligation to provide all of their non-exempt employees in California,
13 including Plaintiff and members of the Meal Period Class with all legally compliant meal periods
14 in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite
15 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and the Meal
16 Period Class at their respective regular rate of pay, in accordance with California Labor Code §§
17 226.7, and 512.

18 38. As a result, Defendants are responsible for paying premium compensation for meal
19 period violations including interest thereon, as well as statutory penalties, civil penalties, and
20 costs of suit, pursuant to Labor Code §§ 204, 226.7, 512, Wage Order 1, and Civil Code §§
21 3287(b) and 3289.

22 **FOURTH CAUSE OF ACTION**

23 **REST PERIOD VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

25 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 40. Wage Order 1, § 12 and California Labor Code §§ 226.2, 226.7 and 516 establish
27 the right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
28

minutes net rest time for each four (4) hour period worked, or major fraction thereof.

41. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all legally compliant rest periods.

42. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid rest period wages and the amount of rest period premiums owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

45. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation including, among other things, unpaid and/or underpaid overtime and minimum wages owed, and rest period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

46. Defendants' willful failure to timely pay Plaintiff and the Waiting Time Class their

1 earned wages upon separation from employment results in a continued payment of wages up to
2 thirty (30) days from the time the wages were due. Therefore, Plaintiff and the Waiting Time
3 Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees
4 and costs of suit.

5 **SIXTH CAUSE OF ACTION**

6 **WAGE STATEMENT VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
11 and the Wage Statement Class wage statements in violation of Labor Code § 226 et seq.

12 49. Defendants' failures in furnishing Plaintiff and the Wage Statement Class with
13 complete and accurate itemized wage statements resulted in actual injury, as said failures led to,
14 among other things, the non-payment of all minimum and overtime/doubletime wages, meal and
15 rest period premium wages, and deprived them of the information necessary to identify the
16 discrepancies in Defendants' reported data.

17 50. Defendants' failures create an entitlement to recovery by Plaintiff and the Wage
18 Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226
19 et seq., including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit
20 according to California Labor Code § 226 et seq.

21 **SEVENTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

24 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 52. Defendants have engaged and continue to engage in unfair and/or unlawful
26 business practices in California in violation of California Business and Professions Code § 17200
27 et seq., by failing to pay Plaintiff and the Classes all minimum and overtime wages, failing to
28

1 provide all required meal and rest periods, or pay premium payments in lieu thereof, failing to
2 furnish accurate, itemized wage statements, and willfully failing to timely pay Plaintiff and
3 members of the Waiting Time class all final wages due upon separation of employment.

4 53. Defendants' utilization of these unfair and/or unlawful business practices deprived
5 Plaintiff and continues to deprive members of the Classes of compensation to which they are
6 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
7 over Defendants' competitors who have been and/or are currently employing workers and
8 attempting to do so in honest compliance with applicable wage and hour laws.

9 54. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
10 herein, Plaintiff for herself and on behalf of the members of the Classes, seek full restitution of
11 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
12 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

13 55. The acts complained of herein occurred within the last four years immediately
14 preceding the filing of the Complaint in this action.

15 56. Plaintiff is compelled to retain the services of counsel to file this court action to
16 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
17 of Defendants' current non-exempt employees, and to enforce important rights affecting the
18 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
19 which she is entitled to recover under Code of Civil Procedure § 1021.5.

20
21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

23 **(AGAINST ALL DEFENDANTS)**

24 57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 58. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
26 states that "an employer shall indemnify his or her employees for all necessary expenditures or
27 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
28 his or her obedience to the directions of the employer..."

1 59. Due to Defendants' unlawful policy and practice of requiring employees to utilize
2 their personal cellular phones for work purposes, Defendants have violated Labor Code § 2802.

3 60. Plaintiff and members of the Employee Expense Class are entitled to attorneys'
4 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

5 61. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
6 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
7 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
8 from the date on which they incurred the initial necessary expenditure.

9 **NINTH CAUSE OF ACTION**

10 **PRIVATE ATTORNEYS GENERAL ACT**

11 **(AGAINST ALL DEFENDANTS)**

12 62. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
13 fully set forth herein.

14 63. Defendants have committed several Labor Code violations against Plaintiff,
15 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
16 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved
17 employees, brings this representative action against Defendants to recover the civil penalties due
18 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
19 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
20 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
21 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
22 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
23 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
24 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
25 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
26 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
27 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
28

subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516 and 558;
- d. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, and 1198;
- e. Failing to reimburse Plaintiff, the Employee Expense Class and other aggrieved employees for necessary business expenditures incurred by Plaintiff, and other aggrieved employees in violation of Labor Code §§ 2800, 2802 and 2804;
- f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- i. Failing to permit and authorize Plaintiff and other non-exempt to exercise the

- 1 use of their accrued paid sick leave days in violation of Labor Code § 245.5;
- 2 j. Failing to provide legally mandated disclosures and/or written notices
- 3 regarding the terms of employment of Plaintiff and other aggrieved employees
- 4 in violation of Labor Code § 2810.5; and
- 5 k. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
- 6 employees in violation of Labor Code §§ 1174 and 1198.

7 64. On September 17, 2024, Plaintiff notified Defendants via certified mail, and

8 notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of

9 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for

10 civil penalties under California Labor Code § 2698 et seq. with respect to violations of the

11 California Labor Code identified in Paragraph 63 (a)-(k). Now that sixty-five days have passed

12 from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not

13 provided notice that it intends to investigate the violations, Plaintiff has exhausted her

14 administrative requirements for bringing a claim under the Private Attorneys General Act with

15 respect to these violations.

16 65. Plaintiff was compelled to retain the services of counsel to file this court action to

17 protect her interests and the interests of other similarly aggrieved employees, and to assess and

18 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and

19 costs, which she is entitled to receive under California Labor Code § 2699(g).

20 **PRAYER**

21 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf

22 this suit brought against Defendants, as follows:

- 23 1. For an order certifying the proposed Classes;
- 24 2. For an order appointing Plaintiff as representative of the Classes;
- 25 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 26 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
- 27 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2,
- 28 1198 and Wage Order 1 § 4(A);

1 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
2 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 1198 and
3 Wage Order 1 § 3(A);

4 6. Upon the Third Cause of Action, for compensatory, consequential, general and
5 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;

6 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
7 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

8 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
9 Labor Code §§ 201-203;

10 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
11 226;

12 10. Upon the Seventh Cause of Action, for restitution to Plaintiff of all money and/or
13 property unlawfully acquired by Defendants by means of any acts or practices declared by this
14 Court to be in violation of Business and Professions Code § 17200 *et seq.*;

15 11. Upon the Eighth Cause of Action, for compensatory, consequential, general and
16 special damages according to proof pursuant to Labor Code § 2802;

17 12. Upon the Ninth Cause of Action, for (1) \$100.00 for each initial violation for each
18 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
19 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
20 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
21 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
22 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
23 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
24 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
25 each initial violation and \$200 for each subsequent violation per employee per pay period for the
26 violations of the Labor Code Sections cited in Labor Code § 2699.5;

27 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
28 Code § 218.6 and Civil Code §§ 3287 and 3289;

1 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
2 §226, and Code of Civil Procedure § 1021.5; and

3 15. For such other and further relief the Court may deem just and proper.
4

5
6 Dated: November 8, 2024

Respectfully submitted,
STANSBURY BROWN LAW, PC

7
8 By: _____

9 Daniel J. Brown
10 Ethan Surls
Attorneys for Plaintiff

11
12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

14
15 Dated: November 8, 2024

Respectfully submitted,
STANSBURY BROWN LAW, PC

16
17 By: _____

18 Daniel J. Brown
19 Ethan Surls
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90291

On November 8, 2024, I served the document listed below on the parties in this action as follows:

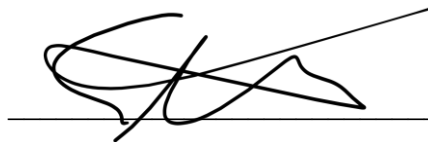
- **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.

X (BY EMAIL or ELECTRONIC TRANSMISSION) By electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth on the attached service list from the email address esurls@stansburybrownlaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. Service by e-mail was made pursuant to agreement of the parties, confirmed in writing, or as an additional method of service as a courtesy to the parties or pursuant to Court Order. See Cal. R. Ct. R. 2.260.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 8, 2024, at Redondo Beach, CA.



Ethan C. Surls

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

I. Ogletree Deakins
Stacey M. Shim, Esq.
Aaron Cole, Esq.
Vi Applen, Esq.
Michele Morelli
400 South Hope Street, Suite 1200
Los Angeles, CA. 90071
stacey.shim@ogletree.com
Aaron.Cole@ogletreedeakins.com
Vi.Applen@ogletreedeakins.com
michele.morelli@ogletreedeakins.com

Attorneys for Kraft Heinz Foods Company, LLC.