

DENNIS F. MOSS (SBN 77512)
JEREMY F. BOLLINGER (SBN 240132)
ARI E. MOSS (SBN 238579)
MOSS BOLLINGER LLP
15300 Ventura Blvd., Ste. 207
Sherman Oaks, California 91403
Telephone: (310) 982-2984
Facsimile: (818) 963-5954
dennis@mossbollinger.com
jeremy@mossbollinger.com
ari@mossbollinger.com

Attorneys for Plaintiff JUAN ESTRADA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

JUAN ESTRADA, an individual,

Plaintiff,

vs.

LUSAMERICA FOODS, INC., a California
Corporation; and **DOES 1-10**,

Defendants.

Unlimited Jurisdiction

Case No.: 20CV366851

**COMPLAINT FOR CIVIL PENALTIES
UNDER PAGA**

1 Plaintiff Juan Estrada (“Plaintiff”) on behalf of himself and all others similarly aggrieved
2 employees and the State of California, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff, as a proxy for the State of California, brings a representative law
5 enforcement action under the Private Attorneys General Act (“PAGA”), Labor Code Section 2698
6 et seq., to recover civil penalties against LUSAMERICA FOODS, INC. and DOES 1-10
7 (collectively “Defendants”). On behalf of himself and other aggrieved employees, Plaintiff seeks
8 to recover civil penalties (75% payable to the Labor Workforce Development Agency and 25%
9 payable to aggrieved employees) owed by Defendants under Labor Code Section 2699 for failure
10 to provide meal periods to Plaintiff and other aggrieved employees in compliance with California
11 law.

12 **JURISDICTION AND VENUE**

13 2. Venue is proper in the County of Santa Clara because work was performed by
14 Plaintiff and aggrieved employees for Defendants in the County of Santa Clara and the legal
15 obligations of Defendants to Plaintiff and other aggrieved employees were breached throughout
16 California, including in Santa Clara County.

17 3. The California Superior Court has jurisdiction in this matter because Plaintiff is a
18 resident of California, Defendants are qualified to do business in California and Defendants
19 regularly conduct business in California. Further, there is no federal question at issue as the claims
20 herein are based solely on California law.

21 **THE PARTIES**

22 **A. Plaintiff**

23 4. Plaintiff is over the age of eighteen, and at times mentioned in this complaint, was
24 a resident of California. During the one-year period preceding the notification of his claims under
25 PAGA to Defendants and the LWDA, Plaintiff was employed as a non-exempt packer at
26 Lusamerica Foods, Inc.’s facility in Morgan Hill, California.

27 5. Plaintiff seeks to represent similarly situated persons who are Aggrieved
28

1 Employees. Aggrieved Employees are persons who, at any time since the date one year before the
2 date of Plaintiff's letter notifying Defendants and the LWDA of the alleged violations were also
3 employed as non-exempt employees by Defendants in California.

4 6. As such, Plaintiff appears in this action on behalf of himself and on behalf of all
5 others similarly situated and the State of California.

6 **B. Defendants**

7 7. Plaintiff is informed and believes, and thereon alleges, that Defendant Lusamerica
8 Foods, Inc. is a California corporation that does business in California, including in Santa Clara
9 County, California. At all times relevant to this action, Lusamerica Foods, Inc. has been a
10 wholesale distributor of seafood products to grocery stores in California.

11 8. Plaintiff is ignorant of the true names, capacities, relationships and extent of
12 participation in the conduct herein alleged, of the Defendants sued herein as DOES, but is informed
13 and believes and thereon alleges that said Defendants are legally responsible for the wrongful
14 conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will
15 amend this complaint to allege the true names and capacities of the DOE Defendants when
16 ascertained.

17 9. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
18 all respects pertinent to this action as the agent of one or more of the other Defendants, carried out
19 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
20 Defendant are legally attributable to one or more of the other Defendants.

21 **FACTS RELEVANT TO PLAINTIFF'S CLAIMS**

22 10. Pursuant to Labor Code section 512, an employer may not employ an employee for
23 a work period of more than five hours per day without providing the employee with a meal period
24 of not less than thirty minutes, except that if the total work period per day of the employee is no
25 more than six hours, the meal period may be waived by mutual consent of both the employer and
26 employee.

27 11. A second meal period of not less than thirty minutes is required if an employee
28

1 works more than ten hours per day, except that if the total hours worked is no more than 12 hours,
2 the second meal period may be waived by mutual consent of the employer and employee only if
3 the first meal period was not waived.

4 12. The California Supreme Court clarified these requirements to mean that “an
5 employer’s obligation is to provide a first meal period after no more than five hours of work and
6 a second meal period after no more than 10 hours of work.” *Brinker Restaurant Corp. v. Superior*
7 *Court* (2012) 53 Cal.4th 1004, 1049.

8 13. During Plaintiff’s employment, and the one year prior to the date Plaintiff notified
9 the LWDA and Defendants of his claims, Defendants regularly failed to provide, authorize, and/or
10 permit Plaintiff and other similarly employed Californians uninterrupted meal periods of 30-
11 minutes in length on shifts over six hours. Plaintiff took his meal breaks with his department at
12 times determined by his employer. His supervisor instructed him and other aggrieved employees
13 to clock in less than 30 minutes after beginning their meal period, depriving Plaintiff and other
14 similarly employed persons 30 uninterrupted minutes of time for their meal periods. For example,
15 on April 8, 2019, Plaintiff clocked out for his meal period at 11:48 a.m. and clocked back in from
16 his meal period after 26 minutes at 12:14 p.m. Likewise, on April 10, 2019, Plaintiff clocked out
17 for his meal period at 11:47 a.m. and clocked back in 27 minutes later at 12:14 p.m. On April 18,
18 2019, his meal period was only 26 minutes and on April 19, 2020, his meal period was only 28
19 minutes.

20 14. Under California law, an employer is also required to provide a second meal period
21 to its employees when they work more than 10 hours in a day. Defendants failed to do so. For
22 example, on March 13, 2019, as shown by the time records on his wage statement, Plaintiff worked
23 a total of 10.25 hours, but was only provided one meal period. Likewise, on April 17, 2019,
24 Plaintiff worked a total of 10.25 hours, but was only provided one meal period.

25 15. When said meal periods were not provided and/or permitted (or made available) in
26 compliance with California law, Plaintiff did not pay meal period premium wages, as required by
27 California Labor Code Sections 512, 226.7 and Section 11 of the applicable IWC Wage Orders.

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES UNDER PAGA**

3 **(By Plaintiff and Aggrieved Employees against Defendants)**

4 16. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
5 though set forth herein.

6 17. At all times relevant to this action, Plaintiff and other Aggrieved Employees were
7 “aggrieved employees” within the meaning of Labor Code Section 2699.

8 18. Defendants’ conduct as described herein, arising from Defendants’ meal period
9 policies and practices, constitute violations of Labor Code Sections 226.7, 512, and the relevant
10 sections of the applicable Wage Orders of the Industrial Welfare Commission, including Section
11 11.

12 19. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf
13 of himself and other current or former employees, to bring a civil action to recover civil penalties
14 pursuant to the procedures specified in Labor Code Section 2699.3.

15 20. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
16 Section 2699.3. By letter dated March 9, 2020, Plaintiff gave written notice to the Labor and
17 Workforce Development Agency (“LWDA”) via its online filing system and by certified mail to
18 Defendant Lusamerica Foods, Inc., of the specific provisions of the Labor Code alleged to have
19 been violated, including the facts and theories to support the alleged violations. A true and correct
20 copy of the March 9, 2020, letter is attached hereto as **Exhibit 1**. To date, more than 65 days after
21 the postmark date of March 9, 2020, the LWDA has not advised Plaintiff that it intends to
22 investigate Plaintiff’s allegations.

23 21. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved
24 Employees are entitled to civil penalties for Defendants’ violations of the Labor Code and the
25 applicable Wage Orders of the Industrial Welfare Commission, including Section 11, in the
26 amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
27 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
28

1 subsequent violation. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties recovered
2 shall be distributed to the LWDA, and 25% shall be distributed to the aggrieved employees.

3 22. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of
4 reasonable attorney's fees and costs in connection with his claims for civil penalties.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff on behalf of himself and all others similarly situated, prays for
7 relief and judgment against Defendants as follows:

- 8 1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
9 25% payable to aggrieved employees);
10 2. Costs;
11 3. Reasonable attorney's fees; and
12 4. Such other and further relief as this Court may deem just and proper.

13 Dated: May 19, 2020

MOSS BOLLINGER, LLP

14
15 By: 

16 Jeremy F. Bollinger
17 Attorney for Plaintiff JUAN ESTRADA
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

Estrada v. Lusamerica Foods, Inc.



Moss Bollinger
LLP

JEREMY F. BOLLINGER
310.982.2984/fax: 310.861.0389
jeremy@mossbollinger.com

March 9, 2020

VIA PAGA ONLINE FILING

Secretary David Lanier
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Fernando Luis Frederico
LUSAMERICA FOODS, INC.
16480 RAILROAD AVE
MORGAN HILL, CA 95037

Re: Notice pursuant to Labor Code Section 2699.3(a)(1)
Labor Code Private Attorney General Act ("PAGA")

Employer: LUSAMERICA FOODS, INC.

Employee: JUAN ESTRADA, on behalf of himself and on behalf of all current and former
hourly employees of Lusamerica Foods, Inc.

Dear Secretary Lanier:

Pursuant to the Private Attorney General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee, Juan Estrada ("Mr. Estrada"), on behalf of himself and all other similarly situated California employees, gives notice that his former employer, Lusamerica Foods, Inc. ("Lusamerica"), violated the California Labor Code throughout his employment and within the one year prior to the mailing of this letter.

General Facts:

Lusamerica, a California corporation, is a wholesale distributor of seafood products. Mr. Estrada was a non-exempt, hourly paid employee of Lusamerica in the packing department of its warehouse in Santa Clara County.

During his employment with Lusamerica, Mr. Estrada and similarly employed individuals were provided less than 30 minutes for their meal periods and were denied second meal periods.

Meal Break Violations

Pursuant to Labor Code section 512, an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived.

The California Supreme Court clarified these requirements to mean that “an employer’s obligation is to provide a first meal period after no more than five hours of work and a second meal period after no more than 10 hours of work.” *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.

During Mr. Estrada’s employment, and the one year prior to the date of this letter, Lusamerica regularly failed to provide, authorize, and/or permit to Mr. Estrada and other similarly employed Californians uninterrupted meal periods of 30-minutes in length on shifts over six hours. Mr. Estrada took his meal breaks with his department at times determined by his employer. His supervisor instructed him and other aggrieved employees when to clock back in to return to work at the end of a meal period. His supervisor instructed him and other aggrieved employees to clock in less than 30 minutes after beginning their meal period, depriving Mr. Estrada and other similarly employed persons a total of 30 uninterrupted minutes of time for his meal periods. For example, on April 8, 2019, as recorded on his wage statement, Mr. Estrada clocked out for his meal period at 11:48 a.m. and clocked back in from his meal period after 26 minutes at 12:14 p.m. Likewise, on April 10, 2019, Mr. Estrada clocked out for his meal period at 11:47 a.m. and clocked back in 27 minutes later at 12:14 p.m. On April 18, 2019, his meal period was only 26 minutes and on April 19, 2020, his meal period was only 28 minutes. See **Exhibit A**.

Under California law, an employer is also required to provide a second meal period to its employees when they work more than 10 hours in a day. Lusamerica failed to do so. For example, on March 13, 2019, as shown by the time records on his wage statement, Mr. Estrada worked a total of 10.25 hours, but was only provided one meal period. See **Exhibit B**. Likewise, on April 17, 2019, Mr. Estrada worked a total of 10.25 hours, but was only provided one meal period. See **Exhibit A**.

When said meal periods were not provided and/or permitted (or made available) in compliance with California law, Lusamerica did not pay meal period premium wages, as required by California Labor Code Sections 512, 226.7 and Section 11 of the applicable IWC Wage Orders, including Wage Order 9-2001.

Civil Penalties

As a result of the foregoing, Lusamerica is liable for civil penalties as provided for by California law. Consequently, Mr. Estrada and all other Lusamerica employees are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Conclusion

Lusamerica violated and continues to violate the obligation to provide all required meal periods in a compliant manner. Mr. Estrada requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, Mr. Estrada requests that the agency inform him if it does not intend to investigate these violations so that he may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,
MOSS BOLLINGER, LLP



Jeremy F. Bollinger

Encl. (Exhibit A and Exhibit B)

EXHIBIT A

CO. FILE DEPT. CLOCK VCHR. NO.
AMO 008080 140004 0000130114 1

329-0001

LUSAMERICA FOODS, INC.
 16480 RAILROAD AVE
 MORGAN HILL, CA 95038
 (408) 778-7200

Taxable Marital Status: Single
 Exemptions/Allowances:
 Federal: 1
 CA: 1

Social Security Number: XXX-XX-0071

Earnings Statement



Period Beginning: 03/10/2019
 Period Ending: 03/23/2019
 Pay Date: 03/29/2019

JUAN J ESTRADA
743 WOODBURY COURT
LOS BANOS CA 93635

Earnings	rate	hours	this period	year to date
Regular	15.5000	71.98	1,115.69	6,758.32
Overtime	23.2500	5.12	119.04	1,118.79
Retro Pay	15.5000	.18	2.79	2.79
Retro Overtime	23.2500	9.52	221.34	
Retro Sick	15.5000	8.00	124.00	124.00
Retro Vacation	15.5000	16.00	248.00	248.00
Holiday				248.00
Vacation				1,364.00
				10,085.24
Gross Pay			\$1,830.86	

Your federal taxable wages this period are
 \$1,759.15

Other Benefits and Information	this period	total to date
Sick Balance		318.25

Important Notes

YOUR COMPANY'S PHONE NUMBER IS 408-778-7200

Time Card Detail

DATE	IN	OUT	IN	OUT	TOTAL
MON 03/11	7:10AM	11:53AM	12:16PM	4:52PM	9.32
WED 03/13	6:59AM	11:50AM	12:18PM	5:42PM	10.25
THU 03/14	6:09AM	10:49AM	11:17AM	2:44PM	8.12
FRI 03/15	7:01AM	11:50AM	12:18PM	3:56PM	8.45
SUN 03/17	7:00AM	11:47AM	12:20PM	3:32PM	7.98
MON 03/18	7:01AM	11:48AM	12:18PM	3:40PM	8.15
WED 03/20	7:00AM	12:00PM	12:30PM	4:07PM	8.62
THU 03/21	6:59AM	11:49AM	12:17PM	3:35PM	8.13
FRI 03/22	6:59AM	11:49AM	12:11PM	3:26PM	8.08

Deductions	Statutory	
Federal Income Tax	-166.71	839.26
Social Security Tax	-109.06	594.16
Medicare Tax	-25.51	138.96
CA State Income Tax	-52.12	202.80
CA SUI/SDI Tax	-17.59	95.83
Other		
EE + FAMILY DN	-11.19*	78.33
I O U	-26.52	516.99
Medical Employ	-52.96*	370.72
Vis Employee	-7.56*	52.92
Net Pay	\$1,361.64	
Checking Dep	-1,361.64	
Net Check	\$0.00	

* Excluded from federal taxable wages

© 2000 ADP, LLC

LUSAMERICA FOODS, INC.
 16480 RAILROAD AVE
 MORGAN HILL, CA 95038
 (408) 778-7200

Advice number: 00000130114
 Pay date: 03/29/2019

Deposited to the account of	account number	transit ABA	amount
JUAN J ESTRADA	xxxxxxx7562	xxxx xxxx	\$1,361.64

THIS IS NOT A CHECK

NON-NEGOTIABLE

LF-JE-0098

EXHIBIT B

CO. FILE DEPT. CLOCK VCHR. NO.
AMO 008080 140004 0000170110 1

320-0001

LUSAMERICA FOODS, INC.
 16480 RAILROAD AVE
 MORGAN HILL, CA 95038
 (408) 778-7200

Taxable Marital Status: Single
 Exemptions/Allowances:
 Federal: 1
 CA: 1

Social Security Number: XXX-XX-0071

Earnings Statement



Period Beginning: 04/07/2019
 Period Ending: 04/20/2019
 Pay Date: 04/26/2019

JUAN J ESTRADA
743 WOODBURY COURT
LOS BANOS CA 93635

Earnings	rate	hours	this period	year to date
Regular	15.5000	79.85	1,237.68	9,112.00
Overtime	23.2500	8.82	205.07	1,629.13
Holiday				248.00
Retro Pay				126.79
Retro Sick				124.00
Retro Vacation				248.00
Sick				124.00
Vacation				1,364.00
Gross Pay			\$1,442.75	13,208.89

Your federal taxable wages this period are
 \$1,371.04

Other Benefits and Information	this period	total to date
Sick		8.00
Sick Balance		313.95

Important Notes

YOUR COMPANY'S PHONE NUMBER IS 408-778-7200

Deductions	Statutory	
Federal Income Tax	-120.13	1,108.10
Social Security Tax	-85.01	778.94
Medicare Tax	-19.88	182.17
CA State Income Tax	-27.12	272.14
CA SUI/SDI Tax	-13.72	125.64
Other		
EE + FAMILY DN	-11.19*	100.71
I O U	-46.01	608.90
Medical Employ	-52.96*	476.64
Vis Employee	-7.56*	68.04
Net Pay	\$1,059.17	
Checking Dep	-1,059.17	
Net Check	\$0.00	

Time Card Detail

DATE	IN	OUT	IN	OUT	TOTAL
SUN 04/07	6:59AM	11:48AM	12:17PM	4:00PM	8.54
MON 04/08	6:59AM	11:48AM	12:14PM	3:53PM	8.47
WED 04/10	7:00AM	11:47AM	12:14PM	5:00PM	9.55
THU 04/11	6:59AM	11:46AM	12:17PM	3:36PM	8.10
FRI 04/12	7:01AM	11:48AM	12:15PM	3:19PM	7.85
SUN 04/14	7:01AM	11:46AM	12:18PM	3:52PM	8.32
MON 04/15	7:00AM	11:46AM	12:16PM	4:36PM	9.10
WED 04/17	7:01AM	11:47AM	12:16PM	5:47PM	10.29
THU 04/18	6:58AM	11:51AM	12:17PM	4:36PM	9.20
FRI 04/19	7:02AM	11:47AM	12:15PM	4:46PM	9.27

* Excluded from federal taxable wages

© 2000 ADP, LLC

LUSAMERICA FOODS, INC.
 16480 RAILROAD AVE
 MORGAN HILL, CA 95038
 (408) 778-7200

Advice number: 00000170110
 Pay date: 04/26/2019

Deposited to the account of	account number	transit ABA	amount
JUAN J ESTRADA	xxxxxxx7562	xxxx xxxx	\$1,059.17

THIS IS NOT A CHECK

NON-NEGOTIABLE

LF-JE-0088