

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Robert Broadbelt

CODY PAYNE, SBN 282342
cody@paynellp.com
KIM NGUYEN, SBN 293906
kim@paynellp.com
PAYNE NGUYEN, LLP
4640 Admiralty Way, Suite 500
Marina del Rey, CA 90292
Telephone: (310) 360 – 9882
Facsimile: (310) 928 – 7469

Attorneys for Plaintiff
FRANCISCO GUTIERREZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

FRANCISCO GUTIERREZ, individually and
as a private attorney general;

Plaintiff,

vs.

FRIDA RESTAURANT AMERICANA,
LLC, a Delaware corporation; FRIDA
AMERICANA MANAGEMENT, LLC, a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

20STCV39369
COMPLAINT FOR:

**(1) PRIVATE ATTORNEY
GENERAL ACT, LABOR CODE
§2698 ET SEQ**

DEMAND FOR TRIAL BY JURY

1 Plaintiff FRANCISCO GUTIERREZ (“Plaintiff”), as an individual, and as a private
2 attorney general alleges as follows:

3 **THE PARTIES, JURISDICTION AND VENUE**

4 1. Plaintiff is, and at all relevant times mentioned herein was, a resident of the County of
5 Los Angeles, State of California.

6 2. Defendant FRIDA RESTAURANT AMERICANA, LLC (“Frida Restaurant
7 Americana”) is, and at all times mentioned herein was, a corporation organized and existing under
8 the laws of the State of Delaware, doing business in the County of Los Angeles, California.

9 3. Defendant FRIDA AMERICANA MANAGEMENT, LLC (“Frida Americana
10 Management”) is, and at all times mentioned herein was, a corporation organized and existing
11 under the laws of the State of Delaware, doing business in the County of Los Angeles, California.

12 4. Frida Restaurant Americana and Frida Americana Management at all times herein
13 mentioned were, (a) conducting business in the County of Los Angeles, State of California; (b) the
14 employer of Plaintiff consistent with California Labor Code and Industrial Welfare Commission
15 Wage Orders; and (c) Plaintiff’s employer as defined under Government Code section 12926
16 subsection (c).

17 5. The acts alleged herein arose in Los Angeles County, within the State of California.

18 6. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and
19 therefore sues these defendants by such fictitious names. The Doe defendants may be individuals,
20 partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that at all
21 times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant,
22 employee, co-venturer, and/or co-conspirator of each of the other defendants and was at all times
23 mentioned, acting within the scope, purpose, consent, knowledge, ratification and authorization of
24 such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to
25 allege their true names and capacities when ascertained. Plaintiff is informed and believes and
26 thereon alleges that each of the fictitiously named Doe defendants is responsible in some manner
27 for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged was proximately
28 caused by its conduct. Doe Defendants 1 through 50, Frida Restaurant Americana, and Frida

Americana Management are herein collectively referred to as “Defendants.”

GENERAL ALLEGATIONS

7. Plaintiff was employed by Defendants from approximately January 2009 through approximately January 2020 in Glendale, California as a bus boy and food runner.

8. Plaintiff was scheduled to work at least five days per week and required to work at least eight (8) hours per day and sometimes in excess of twelve (12) hours per day.

9. Plaintiff’s responsibilities included in part, running food and drinks to customers, cleaning, and restocking.

10. Plaintiff and similarly aggrieved current and former non-exempt employees (“Aggrieved Employees”) were required to regularly work more than five (5) hours without being provided a meal period and to work more than ten (10) hours without being provided with a second meal period. In fact, Plaintiff was reprimanded for taking or attempting to take an uninterrupted 30-minute meal period. Further, Defendants forced Plaintiff and Aggrieved Employees to take their lunch after six (6) hours of working.

11. Plaintiff and Aggrieved Employees never waived their rights to a meal period when they worked six (6) or more hours.

12. Plaintiff and Aggrieved Employees never received a second lunch period.

13. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour of pay at their regular rate of pay when a meal period was missed or interrupted.

14. Because of Defendants’ policies and practices, Plaintiff and Aggrieved Employees were never able to take an uninterrupted ten (10) minute rest break and was reprimanded every time he asked for one or attempted to take one.

15. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour of pay at their regular rate of pay when a rest break was missed or interrupted.

16. Defendants employed a time rounding policy that was not neutral and designed to consistently round time in Defendants’ favor, ensuring that Plaintiff and the Aggrieved Employees were not paid for all time worked.

17. Furthermore, Defendants often requested Plaintiff and Aggrieved Employees to work

1 prior to clocking-in or to keep working after they clocked-out for the day to finish their assigned
2 work. Defendants failed to pay Plaintiff and Aggrieved Employees for time worked off the clock
3 prior to and at the end of their respective shifts.

4 18. Plaintiff and Aggrieved Employees regularly worked more than eight (8) hours in a
5 day, and/or forty (40) hours in a week during their employment with Defendants.

6 19. Plaintiff and Aggrieved Employees did not receive payment of all wages, including
7 overtime and minimum wages and meal and rest period premiums, within any time permissible
8 under California Labor Code section 204.

9 20. Plaintiff and Aggrieved Employees were entitled to receive complete and accurate
10 wage statements in accordance with California law, but, in fact, they did not receive complete and
11 accurate wage statements from Defendants. The deficiencies included, inter alia, the failure to
12 include the legal entity on the wage statement, failure to include the total number of hours worked
13 by Plaintiff and Aggrieved Employees and the failure to include premium pay for missed and/or
14 interrupted rest and meal breaks.

15 21. On numerous occasions, Plaintiff requested that his supervisors provide him with a ten
16 (10) minute uninterrupted rest break and/or a thirty (30) minute uninterrupted meal period, and an
17 accurate wage statement due to missing wages, however such requests were denied and met with
18 hostile retaliation.

19 22. Plaintiff never received the missing wages earned upon termination of his employment.

20 23. On or about June 19, 2020, Plaintiff notified Defendants via certified mail and filed an
21 online PAGA claim notice with the California Labor and Workforce Development Agency
22 ("LWDA") identifying Defendants' violations of the California Labor Code identified in this
23 Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code
24 section 2698 et seq.

25 **FIRST CAUSE OF ACTION**

26 **(Violation of Labor Code § 2698, et seq.)**

27 **(Against All Defendants)**

28 24. Plaintiff re-alleges and incorporates herein by reference each and every allegation set

1 forth above.

2 25. Plaintiff brings this claim as an individual employee and in his capacity as a private
3 attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code
4 section 2698, et seq. (“PAGA”).

5 26. On or about June 19, 2020, Plaintiff notified Defendants via certified mail and filed an
6 online PAGA claim notice with the California Labor and Workforce Development Agency
7 (“LWDA”) identifying Defendants’ violations of the California Labor Code identified in this
8 Complaint and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code
9 section 2698 et seq. The LWDA assigned Plaintiff’s case number LWDA-CM-794015-20.
10 Plaintiff also submitted a filing fee of seventy-five (\$75.00) to the LWDA in accordance with
11 Labor Code section 2699.3(a)(1)(B). Sixty-five days have passed from the date of Plaintiff’s
12 notice to the LWDA, and thus Plaintiff has exhausted his administrative remedies, thereby
13 allowing Plaintiff to commence a civil action against Defendants pursuant to Labor Code section
14 2699.

15 27. During all relevant times for this action, Defendants regularly required Plaintiff and
16 Aggrieved Employees to work more than eight (8) hours per day and forty (40) hours per week.
17 However, Plaintiff and Aggrieved Employees were not paid wages, including minimum wages
18 and/or overtime wages, for such time worked. Instead, Plaintiff and Aggrieved Employees were
19 paid for just eight (8) hours in a day or forty (40) hours in a week.

20 28. During all relevant times for this action, Defendants failed to provide uninterrupted
21 meal periods to Plaintiff and Aggrieved Employees when they worked more than five (5) hours
22 per day and ten (10) hours per day because Defendants required Plaintiff and Aggrieved
23 Employees to stay on duty and never provided an uninterrupted first or second meal break.

24 29. In addition, Defendants failed to permit Plaintiff and Aggrieved Employees to take
25 uninterrupted rest breaks for any shift exceeding four (4) hours of work or a major fraction thereof.

26 30. Although Defendants failed to provide uninterrupted meal and rest breaks as required
27 by California law, Defendants failed to pay Plaintiff and Aggrieved Employees premium pay for
28 those days in which they were not permitted to take a meal and/or rest break which was duty free.

1 31. Further, Defendants failed to provide Plaintiff and other similarly Aggrieved
2 Employees with the amount of sick leave available, or paid time off leave provided in lieu of sick
3 leave and further failed to accurately include such information on itemized wage statements.

4 32. In addition, Defendants failed to pay Plaintiff and similarly Aggrieved Employees for
5 all earned and unused and accrued vacation time at their final rate of pay at the time of termination
6 of their employment.

7 33. In addition, Defendants failed to provide Plaintiff and Aggrieved Employees with
8 properly itemized wage statements including because Defendants failed to include the actual hours
9 worked, the correct rate of pay and the meal and rest period premiums owed.

10 34. Further, during Plaintiff and Aggrieved Employees' employment, Defendants were
11 required to pay all wages earned for labor in excess of the normal work period not later than the
12 payday for the next regular payroll period. However, Defendants failed to pay Plaintiff and
13 Aggrieved Employees all wages due to them within the time period specified by California Labor
14 Code section 204, including premiums owed.

15 35. Additionally, Defendants failed to timely pay Plaintiff and other similarly Aggrieved
16 Employees all wages at the end of employment.

17 36. Plaintiff, as an "Aggrieved Employee" within the meaning of Labor Code § 2698 *et*
18 *seq.*, acting on behalf of himself and other similarly Aggrieved Employees, brings this
19 representative action against Defendants to recover the civil penalties due to Plaintiff, other
20 similarly Aggrieved Employees, and the State of California according to proof pursuant to Labor
21 Code § 2699 (a) and (f) including, but not limited to \$100.00 for each initial violation and \$200.00
22 for each subsequent violation per employee per pay period for the following Labor Code
23 violations:

- 24 a. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
25 minimum wage compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*;
- 26 b. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
27 overtime compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et*
28 *seq.*;

- c. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour of premium pay for meal period violations in violation of Labor Code §§ 226.7 and 512;
- d. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour of premium pay for rest period violations in violation of Labor Code §§ 226.7 and 512;
- e. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages at end of employment in violation of Labor Code § 203;
- f. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages owed during employment;
- g. Failing to furnish Plaintiff and other similarly Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- h. Failing to maintain accurate records relating to Plaintiff and other similarly Aggrieved Employees work periods, meal periods, total daily hours, hours per pay period, and applicable pay rates;
- i. Failing to provide Plaintiff and other similarly Aggrieved Employees with the amount of sick leave available, or paid time off leave provided in lieu of sick leave and further failed to accurately include such information on itemized wage statements in violation of Labor Code §§ 245.5, 246, and 226;
- j. Failing to pay Plaintiff and similarly Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of pay at the time of termination of their employment in violation of Labor Code § 227.3;
- k. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages at the end of employment in violation of Labor Code § 203;

37. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which they are entitled to recover under California Labor Code § 2699.

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1. For punitive and exemplary damages according to proof;
2. For statutory civil penalties pursuant to Labor Code section 2668, *et seq.*, and as
owed by law and according to proof;
3. For costs of suit incurred herein;
4. For pre- and post-judgment interest at the maximum legal rate on all amounts claimed;
5. For such other and further relief as the Court may deem just and proper.

PAYNE NGUYEN, LLP

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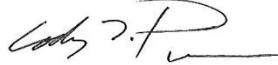
Cody Payne
Kim Nguyen
Attorneys for Plaintiff
FRANCISCO GUTIERREZ

PLAINTIFF'S DEMAND FOR A JURY TRIAL

Plaintiff FRANCISCO GUTIERREZ hereby demands a trial by jury.

DATED: October 14, 2020

PAYNE NGUYEN, LLP

By: 

Cody Payne
Kim Nguyen
Attorneys for Plaintiff
FRANCISCO GUTIERREZ