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Assigned for all Purposes

Judge William Claster

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Attorneys for Plaintiff IRVING CARLOS ZUNIGA,
as an aggrieved employee, and on behalf of all other
aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

IRVING CARLOS ZUNIGA, as an
aggrieved employee, and on behalf of all other
aggrieved employees under the Labor Code
Private Attorneys' General Act of 2004,

Plaintiff,

v.

HOUSE FOODS AMERICA
CORPORATION, a California corporation;
HOUSE FOODS HOLDING USA, INC., a
California corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: 30-2021-01233040-CU-OE-CXC

PAGA ENFORCEMENT ACTION

1. Civil Penalties for Violations of California
Labor Code, pursuant to Labor Code §§ 2698,
et seq. (PAGA)

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$25,000.00]

COMES NOW Plaintiff, as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, and alleges as follows:

JURISDICTION AND VENUE

1. This is a representative action brought pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2698, *et seq.*, against HOUSE FOODS AMERICA CORPORATION, a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("HF AMERICA"), and against HOUSE FOODS HOLDING USA, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("HF HOLDING," and together with HF AMERICA and DOES 1 through 100, as further defined below, "Defendants") to recover civil penalties and any other relief available on behalf of Plaintiff, the State of California, and other current and former employees who worked for Defendants in California, within the Civil Penalty Period, as further defined herein, as employees and against whom one or more violations of any provision in Division 2, Parts 1 and 4, of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth in this complaint ("collectively aggrieved employees"). The monetary damages, penalties, and restitution sought by Plaintiff exceed the minimum jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10 and Code of Civil Procedure section 410.10.

3. This Court has jurisdiction over all Defendants because Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action given that the State of California, as the real party in interest in this action, is not a "citizen" for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013).

4. Venue is proper in this Court because Defendants employ persons in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this

1 county. Code Civ. Proc. § 395. Plaintiff is informed and believes and thereon alleges that Defendants
2 conduct business and employ aggrieved employees in Orange County; the events complained of
3 occurred in this county; this county is where the employment relationship began; this is the county in
4 which performance of the employment contract, or part of it, between Plaintiff and Defendants was
5 due to be performed as well as the county in which the employment contract, or part of it, between
6 Plaintiff and Defendants was actually performed.

7 5. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
8 Defendants during the applicable statutory period and suffered one or more of the Labor Code
9 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties under the Labor Code
10 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
11 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former employees
12 of Defendants during the Civil Penalty Period.

13 6. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
14 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
15 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
16 PAGA allegations described herein is not required.

17 7. During the period beginning one (1) year preceding the provision of notice to the LWDA
18 regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants
19 violated, *inter alia*, Labor Code sections 201, 202, 203, 432.7, and 432.8, among others.

20 8. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such
21 as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within the
22 statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified
23 in Labor Code section 2699.3.

24 9. California Labor Code §§ 2698, *et seq.*, the “Labor Code Private Attorneys Generals
25 Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private Attorneys General their
26 current or former employers for various civil penalties for violating the California Labor Code.

27 10. On or around June 3, 2021, Plaintiff provided written notice pursuant to Labor Code
28 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation of

1 various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by
2 certified mail, with return receipt requested to Defendants, and each of them.

3 **THE PARTIES**

4 11. Plaintiff IRVING CARLOS ZUNIGA ("Plaintiff") is a resident of Orange County,
5 California. Defendants employed Plaintiff full-time as a non-exempt employee from approximately
6 January 2020 through March 2021. At all relevant times herein, Plaintiff is informed and believes, and
7 based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that
8 included, but were not limited to, industrial machine maintenance and repair.

9 12. Defendant HOUSE FOODS AMERICA CORPORATION ("HF AMERICA") is, on
10 information and belief, a California corporation with a principal place of business located at 7351
11 Orangewood Ave., Garden Grove, California 92841, and, at all times hereinafter mentioned, an
12 employer whose employees are engaged throughout this county, the State of California, and/or the
13 various states of the United States of America.

14 13. Defendant HOUSE FOODS HOLDING USA, INC. ("HF HOLDING") is, on
15 information and belief, a California corporation with a principal place of business located at 7351
16 Orangewood Ave., Garden Grove, California 92841, and, at all times hereinafter mentioned, an
17 employer whose employees are engaged throughout this county, the State of California, and/or the
18 various states of the United States of America.

19 14. The true names and capacities, whether individual, corporate, associate, or otherwise,
20 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who
21 therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff
22 is informed and believes and based thereon alleges that each of the defendants designated herein as
23 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek
24 leave of court to amend this Complaint to reflect the true names and capacities of the defendants
25 designated hereinafter as DOES when such identities become known. Plaintiff is informed and
26 believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as
27 the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects
28 pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.

1 Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall include HF
2 AMERICA, HF HOLDING, and any of their parent, subsidiary, or affiliated companies within the
3 State of California, as well as DOES 1 through 100 identified herein.

4 15. At all relevant times, Defendants, and each of them, ratified each and every act or
5 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
6 the acts and omissions of each and all the other Defendants in proximately causing the violations herein
7 alleged.

8 16. Plaintiff is informed and believes, and thereon alleges, that each Defendant is in some
9 manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and
10 transactions alleged herein.

11 **JOINT LIABILITY ALLEGATIONS**

12 17. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned
13 herein, each of the defendants was the agent, principal, employee, employer, representative, joint
14 venture or co-conspirator of each of the other defendants, either actually or ostensibly, and in doing the
15 things alleged herein acted within the course and scope of such agency, employment, joint venture, and
16 conspiracy.

17 18. All of the acts and conduct described herein of each and every corporate defendant was
18 duly authorized, ordered, and directed by the respective and collective defendant corporate employers,
19 and the officers and management-level employees of said corporate employers. In addition thereto,
20 said corporate employers participated in the aforementioned acts and conduct of their said employees,
21 agents, and representatives, and each of them; and upon completion of the aforesaid acts and conduct
22 of said corporate employees, agents, and representatives, the defendant corporation respectively and
23 collectively ratified, accepted the benefits of, condoned, lauded, acquiesced, authorized, and otherwise
24 approved of each and all of the said acts and conduct of the aforementioned corporate employees,
25 agents and representatives.

26 19. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
27 thereon alleges that Defendants, and each of them, are joint employers.

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1 23. On information and belief, and at all relevant times, Defendants consistently maintained
2 and enforced against their non-exempt employees policies, practices, and procedures that denied
3 Plaintiff and aggrieved employees timely, complete, duty-free meal periods and rest periods as required
4 by statute and the applicable Wage Order(s).

5 24. On information and belief, and at all relevant times, Defendants had and have a policy
6 or practice of failing to provide Plaintiff and other aggrieved employees paid, uninterrupted, timely,
7 and complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
8 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest periods
9 all together; requiring that they be bundled together and/or with meal periods; interrupting them;
10 requiring that employees carry cellular telephones or walkie-talkies during rest periods not providing
11 them in a timely fashion; and not permitting employees to leave the premises; and/or otherwise
12 requiring on-duty/on-call rest periods as required by California wage and hour laws.

13 25. On information and belief, and at all relevant times, Defendants had and have a policy
14 or practice of failing to provide Plaintiff and other aggrieved employees a thirty (30) minute
15 uninterrupted, timely, and complete meal period for days on which the employee worked in excess of
16 five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-
17 minute meal periods or compensation in lieu thereof including, without limitation, by interrupting meal
18 periods; not providing timely meal periods; failing to provide first and second meal periods; providing
19 short meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
20 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
21 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
22 employees worked, as required by California wage and hour laws.

23 26. Though Plaintiff and aggrieved employees were and are not provided timely meal and
24 rest periods during which they are relieved of all duties, Defendants' policy and practice is not to pay
25 Plaintiff and aggrieved employees the correct rate of pay for premium wages for all non-compliant or
26 missed meal and rest periods.

27 27. As a result of Defendants' actions, Plaintiff and aggrieved employees either started their
28 meal periods late, worked during their meal and/or rest periods, or did not take them at all.

1 28. On information and belief, and at all relevant times, Defendants consistently maintained
2 and enforced against their non-exempt employees systemic policies and practices that resulted in
3 Defendants' not paying non-exempt employees, including Plaintiff and other aggrieved employees, all
4 wages owed and due, including all minimum, regular, overtime, hourly and/or piece-rate wages, and
5 all meal and rest period premium wages.

6 29. Defendants' policy, practice, and procedure is to deny earned wages, including overtime
7 pay, to its non-exempt employees in California. Specifically, Defendants require employees to be
8 present and perform work in excess of eight (8) hours per workday and/or forty (40) hours per
9 workweek but fail to pay them all overtime premium wages earned and owed. Defendants thus not only
10 fail to pay Plaintiff and aggrieved employees for all straight time hours worked but also fail to calculate
11 each employee's regular rate of pay accurately for purposes of overtime.

12 30. On information and belief, and at all relevant times, Defendants consistently maintained
13 and enforced against their non-exempt employees policies, practices, and procedures that required
14 Plaintiff and aggrieved employees to work through breaks, including while clocked out for meal
15 periods, and for which time they were not paid even minimum wages.

16 31. Defendants thus did not pay Plaintiff and aggrieved employees all wages owed, either
17 during their employment or at the time of termination.

18 32. Because Defendants failed to pay Plaintiff and aggrieved employees' wages due and
19 owed for missed or non-compliant meal and rest periods, and thus failed to report those wages
20 accurately, Defendants failed to pay all earned wages at the time Plaintiff and aggrieved employees'
21 employment relationship with Defendants was terminated.

22 33. In addition, Defendants failed to reimburse Plaintiff and other aggrieved employees for
23 all business expenses necessarily incurred, as set forth below. Defendants' unlawful conduct has been
24 widespread, systemic, and willful throughout its facilities in California. Defendants knew or should
25 have known that their policies, practices, and procedures are and have been unlawful and unfair.

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1 **FIRST CAUSE OF ACTION**

2 **(VIOLATION OF PAGA – Against all Defendants)**

3 34. Plaintiff incorporates by reference and re-alleges as if fully stated herein every
4 allegation set forth above.

5 35. Pursuant to Labor Code §§ 201 and 202, Defendants must pay their employees all wages
6 due within twenty-four (24) hours after a discharge or seventy-two (72) hours after a resignation from
7 employment, if the employee has given less than seventy-two (72) hours' notice. Pursuant to Labor
8 Code § 203, if an employer willfully fails to pay such wages timely, the employer must, as a penalty,
9 continue to pay the employee's daily wage until the back wages are paid in full or an action is
10 commenced. The penalty cannot exceed thirty (30) days of wages.

11 36. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other person
12 acting either individually or as an officer, agent, or employee of another person, who pays or causes to
13 be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by
14 an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages
15 payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

16 (1) For any initial violation that is intentionally committed, one hundred dollars
17 (\$100) for each underpaid employee for each pay period for which the employee
18 is underpaid. This amount shall be in addition to an amount sufficient to recover
19 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
20 applicable penalties imposed pursuant to Section 203.

21 (2) For each subsequent violation for the same specific offense, two hundred fifty
22 dollars (\$250) for each underpaid employee for each pay period for which the
23 employee is underpaid regardless of whether the initial violation is intentionally
24 committed. This amount shall be in addition to an amount sufficient to recover
25 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
26 applicable penalties imposed pursuant to Section 203.

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1 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
2 Section 203, recovered pursuant to this section shall be paid to the affected
3 employee.”

4 37. Plaintiff and aggrieved employees are entitled to compensation for all wages earned,
5 including the minimum, overtime, double time hours and missed meal periods and rest periods for
6 which they have not been properly compensated.

7 38. More than thirty (30) days have passed since Plaintiff and other aggrieved employees’
8 employment with Defendants was terminated. Defendants have not paid Plaintiff and each terminated
9 aggrieved employee all wages owed. As a result of Defendants’ willful failure to pay all earned wages
10 at the time their employment with Defendant ended, Plaintiff and terminated aggrieved employees are
11 entitled to thirty (30) days’ wages as a penalty under Labor Code § 203.

12 39. At all times herein set forth, California Labor Code sections 432.7 and 432.8 collectively
13 restrict prospective employers from making inquiries into prospective employees’ criminal records
14 prior to making a conditional offer of employment. Even after making an offer of employment, the
15 employer cannot deny the application because of a conviction without making an individual assessment
16 which, among other things, must justify denying the applicant the position by linking relevant
17 conviction history with specific job duties of the position sought.

18 40. At all times mentioned herein, California Labor Code sections 432.7, subdivision (a)(1)
19 has stated prospective employers “shall not ask an applicant for employment to disclose...information
20 concerning an arrest or detention that did not result in conviction, or information concerning a referral
21 to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has
22 been judicially dismissed or ordered sealed pursuant to law...”

23 41. At all times mentioned herein, California Labor Code sections 432.7, subdivision (a)(2)
24 has stated prospective employers “ shall not ask an applicant for employment to disclose, through any
25 written form or verbally, information concerning or related to an arrest, detention, processing,
26 diversion, supervision, adjudication, or court disposition that occurred while the person was subject to
27 the process and jurisdiction of the juvenile court. An employer also shall not seek from any source
28 whatsoever, or utilize, as a factor in determining any condition of employment including hiring,

1 promotion, termination, or any apprenticeship training program or any other training program leading
2 to employment, any record concerning or related to an arrest, detention, processing, diversion,
3 supervision, adjudication, or court disposition that occurred while a person was subject to the process
4 and jurisdiction of the juvenile court.”

5 42. Pursuant to Labor Code section 432.7, subdivision (c), any person who violates this
6 section may be subject to “actual damages or two hundred dollars (\$200), whichever is greater, plus
7 costs, and reasonable attorney’s fees. An intentional of violation of this section shall entitle the
8 applicant to treble actual damages, or five hundred dollars (\$500), whichever is greater, plus costs, and
9 reasonable attorney’s fees...”

10 43. During the relevant time period, Plaintiff is informed and believes and thereon alleges
11 that Defendants had and has a practice or policy of conducting unlawful background checks on
12 prospective and current employees prior to making a conditional offer. Plaintiff is informed and
13 believes, and based thereon alleges, that Defendant violated applicable laws by, without limitation:
14 requiring job applicants and employees to disclose their conviction history before Defendant made a
15 conditional offer of employment; inquiring into or considering the conviction history of applicants
16 before Defendant made any conditional offers of employment; considering, distributing, or
17 disseminating information about arrests not followed by conviction, referrals to or participation in a
18 pretrial or posttrial diversion program, convictions that have been sealed, dismissed, expunged, or
19 statutorily eradicated pursuant to law, or any conviction for which the convicted person has received a
20 full pardon or has been issued a certificate of rehabilitation, while conducting conviction history
21 background checks in connection with any applications for employment; intending to deny an applicant
22 a position of employment solely or in part because of the applicant’s conviction history; and asking
23 applicants for employment to disclose, through any written form or verbally, information concerning
24 or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition
25 that occurred while the person was subject to the process and jurisdiction of the juvenile court, to the
26 detriment of Employee and other aggrieved employees.

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1 44. As a direct and proximate result of the herein-described Labor Code violations, Plaintiff
2 and other aggrieved employees are entitled to recover damages, costs, attorney's fees, and civil
3 penalties from Defendants pursuant to Labor Code sections 432.7 and 432.8.

4 **ATTORNEY'S FEES AND COSTS**

5 45. Plaintiff is entitled to fees and costs, pursuant to California law, including Labor Code
6 §§ 432.7 subdivision (c), among other things. Further, enforcement of statutory provisions enacted to
7 protect workers and to ensure prompt payment of wages due employees is a fundamental public interest
8 in California. Consequently, Plaintiff's success in this action will result in the enforcement of important
9 rights affecting the public interest and will confer a significant benefit upon the public.

10 **DEMAND FOR JURY TRIAL**

11 46. Plaintiff, on behalf of himself and all other aggrieved employees, demands a trial by
12 jury.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff and aggrieved employees pray for judgment as follows:

- 15 1. For nominal damages;
 - 16 2. For compensatory damages;
 - 17 3. For payment of unpaid wages in accordance with California labor law;
 - 18 4. For payment of penalties in accordance with California law;
 - 19 5. For penalties pursuant to Labor Code sections 432.7 and 432.8;
 - 20 6. For waiting time penalties pursuant to Labor Code § 203;
 - 21 7. For all penalties permitted by Labor Code section 2698, *et seq.*;
 - 22 8. For interest accrued to date;
 - 23 9. For costs of suit incurred herein;
 - 24 10. For reasonable attorneys' fees and costs pursuant to Labor Code sections 432.7,
 - 25 1197.1, and 2699; and,
 - 26 11. For all such other and further relief that the Court may deem just and proper.
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1 Date: November 18, 2021

Respectfully submitted,
BIBIYAN LAW GROUP, P.C.

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4 By: 
5 Malalai Anbari
6 Attorneys for Plaintiff
7 IRVING CARLOS ZUNIGA
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