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Attorneys for Plaintiff ARTURO RETAMA SAN AGUSTIN,
on behalf of himself and current and former aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ARTURO RETAMA SAN AGUSTIN, on
behalf of himself and other aggrieved
employees,

Plaintiff,

vs.

FRESH & READY FOODS LLC; and DOES 1
to 100, inclusive,

Defendants.

Case No.: 22STCV06679

PAGA ACTION

**PLAINTIFF ARTURO RETAMA SAN
AGUSTIN’S COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTION 2698, et seq.**

COMES NOW Plaintiff ARTURO RETAMA SAN AGUSTIN ("Plaintiff"), who alleges
and complains against Defendants FRESH & READY FOODS LLC and DOES 1 to 100,
inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys’ General Act of 2004, Lab. Code § 2698, et seq.
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly, non-
exempt employees, in California during the relevant time period seeking civil penalties associated
with Defendants’ violation of the Labor Code based on Defendant’s failure to pay wages for all
hours worked at the employees’ minimum wage rate or overtime rate; failure to provide all legally
required and legally compliant meal and rest periods; failure to timely pay earned wages during

1 employment; failure to provide complete and accurate wage statements; and failure to timely pay
2 all unpaid wages following separation of employment. Plaintiff seeks on a representative basis,
3 following notice to the Labor and Workforce Development Agency, civil penalties, reasonable
4 attorney's fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff,
5 the State of California, and others aggrieved.

6 **II. JURISDICTION AND VENUE**

7 2. This Court has jurisdiction over Plaintiff and the other current and former hourly
8 aggrieved California-based employees claims because Plaintiff's lawsuit seeks damages in excess
9 of \$25,000 and Defendants employed aggrieved employees and injuries occurred in locations in
10 California including but not limited to Los Angeles County at 1145 Arroyo Street, San Fernando,
11 California 91340.

12 **III. PARTIES**

13 3. Plaintiff brings this action as a representative of the Labor and Workforce
14 Development Agency on behalf of himself and other current and former employees subject to
15 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
16 filed include current, former and/or future employees of Defendants who worked, work, or will
17 work for Defendants as non-exempt hourly employees in California. At all times mentioned
18 herein, the currently named Plaintiff is and was domiciled and a resident and citizen of California
19 and was employed by Defendants in an hourly position at Defendants' location in Los Angeles
20 from approximately 2019 until his termination on or about June 2, 2021.

21 4. Plaintiff is informed and believes and thereon alleges that Defendant FRESH &
22 READY FOODS LLC is authorized to do business within the State of California and is doing
23 business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant
24 hereto were persons acting on behalf of Defendant FRESH & READY FOODS LLC in the
25 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
26 Defendant FRESH & READY FOODS LLC operates in Los Angeles County and employed
27 Plaintiff and putative class members in Los Angeles County, including but not limited to, at 1145
28 Arroyo Street, San Fernando, California 91340.

1 5. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
2 through 50 are corporations, or are other business entities or organizations of a nature unknown to
3 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
4 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
5 working conditions of employment of Plaintiff and aggrieved employees.

6 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
7 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
8 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
9 supervisor, independent contractor and/or employee of each defendant who violated or caused to
10 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
11 the Industrial Welfare Commission's wage orders regulating hours and days of work.

12 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
13 sues said defendants by said fictitious names, and will amend this complaint when the true names
14 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
15 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
16 named defendants is in some manner responsible for the events and allegations set forth in this
17 complaint.

18 8. Plaintiff makes the allegations in this complaint without any admission that, as to
19 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
20 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

21 **FIRST CAUSE OF ACTION**

22 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

23 **GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.**

24 **(Against all Defendants)**

25 9. Plaintiff incorporates all paragraphs above as though fully set forth herein.

26 10. During the period beginning one-year period preceding the sending of the initial
27 notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204,
28 226, 226.7, 510, 512, 1194, 1197, and the applicable Wage Orders.

1 11. Specifically, Defendants have committed the following violations of California
2 Labor Code:

3 12. **Failure to pay wages for all hours worked at the legal minimum wage:**
4 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
5 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
6 which includes all time that an employee is under control of the employer and all time the
7 employee is suffered and permitted to work. This includes the time an employee spends, either
8 directly or indirectly, performing services which inure to the benefit of the employer.

9 13. Labor Code sections 1194 and 1197 require an employer to compensate employees
10 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
11 Wage Orders.

12 14. In this case, Plaintiff and other current and former aggrieved California-based
13 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
14 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
15 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
16 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
17 not limited to:

18 (a) Requiring Plaintiff and other current and former aggrieved California-based
19 hourly non-exempt employees to arrive prior to the start of their shift to line up and wait to clock
20 in for the start of their shift.

21 15. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
22 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants’
23 control without paying wages for that time. This resulted in Plaintiff and other current and former
24 aggrieved California-based hourly non-exempt employees working time for which they were not
25 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
26 Wage Order.

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1 16. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
2 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
3 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
4 which includes all time that an employee is under control of the employer and all time the
5 employee is suffered and permitted to work. This includes the time an employee spends, either
6 directly or indirectly, performing services that inure to the benefit of the employer.’

7 17. Labor Code sections 510 and 1194 require an employer to compensate employees a
8 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
9 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

10 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
11 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
12 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
13 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
14 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
15 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
16 seventh day of a workweek shall be compensated at the rate of no less than twice the
17 regular rate of pay of an employee.

18 Labor Code section 510.

19 18. In this case, Defendants failed to pay Plaintiff and other current and former
20 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
21 worked due to Defendants’ policies, practices, and/or procedures including, but not limited to:

22 (a) Requiring Plaintiff and other current and former aggrieved California-based
23 hourly non-exempt employees to arrive prior to the start of their shift to line up and wait to clock
24 in for the start of their shift.

25 19. The foregoing policies, practices, and/or procedures resulted in time during each
26 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
27 employees were under the control of Defendants but were not compensated. To the extent that the
28 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
sections 510 and 1194 and the applicable Wage Order.

20. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

21. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 1 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

22. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Wage Order 1 at §11.

23. In this case, Defendants failed to authorize or permit legally required and compliant meal periods to Plaintiff and other current and former aggrieved California-based hourly non-exempt employees due to Defendants' policies, practices, and/or procedures, including but not limited to:

(a) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to remain on the Defendants' premises during their meal breaks. Defendants continued to exercise control over where and how employees spend their meal breaks resulting in meal periods that were not duty-free, and

(b) Failing to authorize or permit Plaintiff and other current and former

aggrieved California-based hourly non-exempt employees a second uninterrupted duty-free meal period of no less than thirty (30) minutes for shifts longer than ten (10) hours as required by law.

24. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or procedure of failing to compensate Plaintiff and other current and former aggrieved California-based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees did not receive legally required and compliant meal periods, in violation of Labor Code section 226.7.

25. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff and other current and former aggrieved California-based hourly non-exempt employees not receiving wages to compensate them for workdays during which Defendants did not provide them with meal periods in compliance with California law.

26. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than three-and-a-half (3.5) hours.

27. California law requires every employer to authorize and permit an employee a rest period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code section 226.7; Wage Order 1 at §12. Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7; Wage Order 1 at §12. Rest periods, insofar as practicable, shall be in the middle of each work period. Wage Order 1 at §12. Additionally, the rest period requirement "obligates employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

28. If the employer fails to authorize or permit a required rest period, the employer

1 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
2 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
3 Wage Order 1 at § 12.

4 29. In this case, Defendants failed to authorize or permit all legally required and
5 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
6 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
7 limited to:

8 (a) Requiring Plaintiff and other current and former aggrieved California-based
9 hourly non-exempt employees to remain on the Defendants' premises during their rest breaks.
10 Defendants continued to exercise control over where and how employees spend their rest breaks
11 resulting in rest periods that were not duty-free.

12 30. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
13 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
14 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
15 workday they did not receive legally required and compliant rest periods, , in violation of Labor
16 Code section 226.7.

17 31. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
18 and other current and former aggrieved California-based hourly non-exempt employees not
19 receiving wages to compensate them for workdays in which Defendants did not provide them with
20 rest periods in compliance with California law.

21 32. **Failure to timely pay earned wages during employment:** In California, wages
22 must be paid at least twice during each calendar month on days designated in advance by the
23 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
24 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
25 16th and the 26th day of that month and wages earned between the 16th and the last day,
26 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
27 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
28 paid within seven (7) calendar days following the close of the payroll period in which wages were

1 earned. Labor Code section 204(d).

2 33. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
3 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
4 exempt employees' earned wages (including minimum wages, overtime wages, meal period
5 premium wages and/or rest period premium wages), in violation of Labor Code section 204.
6 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
7 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
8 their earned wages within the applicable time frames outlined in Labor Code section 204.

9 34. **Failure to provide complete and accurate wage statements:** Labor Code section
10 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
11 employee his or her wages, the employer must "furnish each of his or her employees ... an
12 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
13 employee, except for any employee whose compensation is solely based on a salary and who is
14 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
15 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
16 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
17 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
18 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
19 name of the employee and his or her social security number, (8) the name and address of the legal
20 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
21 the corresponding number of hours worked at each hourly rate by the employee."

22 35. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
23 and other current and former aggrieved California-based hourly non-exempt employees all wages
24 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
25 period premium wages) rendered Plaintiff's and other current and former aggrieved California-
26 based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code
27 section 226.

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1 36. **Failure to pay employees all wages due at time of termination/resignation:** An
2 employer is required to pay all unpaid wages timely after an employee's employment ends. The
3 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
4 hours of resignation (Labor Code section 202).

5 37. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
6 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
7 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
8 and/or rest period premium wages), Defendants failed to pay those employees timely after each
9 employee's termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

10 38. Defendants' violations of Wage Order 9 constituted violations of Labor Code
11 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

12 39. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
13 employee, on behalf of himself or herself and other current or former employees, to bring a civil
14 action to recover civil penalties against all Defendants pursuant to the procedures specified in
15 Labor Code section 2699.3.

16 40. Plaintiff has complied with the procedures for bringing suit specified in Labor
17 Code section 2699.3. On September 17, 2021, Plaintiff filed notice with LWDA and provided
18 notice to Defendants by certified mail which provided notice of the specific provisions of the
19 Labor Code alleged to have been violated, including the facts and theories to support the
20 violations alleged.

21 41. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
22 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
23 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
24 parties notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate
25 Plaintiff's claims.

26 42. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
27 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,
28 512, 1194, and 1197 during the Civil Penalty Period in the following amounts:

1 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, and 512;
2 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
3 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
4 violation [penalty amounts established by Labor Code section 2699(f)(2)].

5 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
6 for each employee for each pay period for the initial violation, and for each subsequent violation,
7 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
8 established by Labor Code section 226.3].

9 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
10 employee for each pay period for the initial violation, and for each subsequent violation, one
11 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
12 established by Labor Code section 558] and any unpaid wages.

13 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
14 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
15 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
16 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

17 43. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
18 reasonable attorney's fees and costs in connection with his claims for civil penalties.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON HIS BEHALF, ON BEHALF OF THE STATE OF CALIFORNIA, AND ON OTHER CURRENT AND FORMER AGGRIEVED EMPLOYEES PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

44. That the Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

45. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to that recoverable under California Labor Code, including but not limited to sections 2699(f);

46. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code section 2699(g); and

47. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

Dated: February 23, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP



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