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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 21 2022



Dulan Court

Attorneys for Plaintiff JOSEFINA VILCHIS
on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JOSEFINA VILCHIS, on behalf of herself and
other aggrieved employees,

Plaintiff,

vs.

FUNGYUN, INC.; FUNGYUN, LLC.; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: **CIV SB 22 24 14**

PAGA ACTION

**PLAINTIFF JOSEFINA VILCHIS'
COMPLAINT FOR:**

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

COMES NOW Plaintiff JOSEFINA VILCHIS ("Plaintiff"), who alleges and complains
against Defendants FUNGYUN, INC.; FUNGYUN, 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, herself
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' violations of the California Labor Code based on Defendant's failure to pay
wages for all hours worked at the employees' minimum wage rate for all hours worked; failure to

1 pay at employees' overtime rate for overtime hours worked; failure to provide all legally required
2 and/or legally compliant meal and rest periods and/or pay meal and rest period premium wages;
3 failure to timely pay earned wages during employment; failure to provide complete and accurate
4 wage statements; and failure to timely pay all due and owing wages following separation of
5 employment. Plaintiff seeks on a representative basis, following notice to the Labor and
6 Workforce Development Agency, civil penalties, reasonable attorney's fees pursuant to Labor
7 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
8 others aggrieved.

9 **II. JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over Plaintiff and the other current and former
11 aggrieved California-based hourly non-exempt employees' claims because Plaintiff's lawsuit seeks
12 damages in excess of \$25,000 and Defendants employed other current and former aggrieved
13 California-based hourly non-exempt employees' and injuries occurred in locations throughout
14 California including but not limited to San Bernardino County at 9687 Transportation Way,
15 Fontana, CA 92335.

16 **III. PARTIES**

17 3. Plaintiff brings this action as a representative of the Labor and Workforce
18 Development Agency on behalf of herself, the State of California, and other current and former
19 aggrieved, hourly non-exempt employees. The named Plaintiff and the persons on whose behalf
20 this action is filed include current, former and/or future employees of Defendants who worked,
21 work, or will work for Defendants as non-exempt hourly employees in California. At all times
22 mentioned herein, the currently named Plaintiff is and was domiciled and a resident and citizen of
23 California and was employed by Defendants in an hourly position at Defendants' location in San
24 Bernardino.

25 4. Plaintiff is informed and believes and thereon alleges that Defendant FUNGYUN,
26 INC. is authorized to do business within the State of California and is doing business in the State
27 of California and/or that Defendants DOES 1-25 are, and at all times relevant hereto were persons
28 acting on behalf of Defendant FUNGYUN, INC. in the establishment of, or ratification of, the

1 aforementioned illegal wage and hour practices or policies. Defendant FUNGYUN, INC. operates
2 in San Bernardino County and employed Plaintiff and other current and former aggrieved
3 employees in San Bernardino County, including but not limited to, at 9687 Transportation Way,
4 Fontana, CA 92335.

5 5. Plaintiff is informed and believes and thereon alleges that Defendant FUNGYUN,
6 LLC is authorized to do business within the State of California and is doing business in the State
7 of California and/or that Defendants DOES 26-50 are, and at all times relevant hereto were
8 persons acting on behalf of Defendant FUNGYUN, LLC in the establishment of, or ratification of,
9 the aforementioned illegal wage and hour practices or policies. Defendant FUNGYUN, LLC
10 operates in San Bernardino County and employed Plaintiff and other current and former aggrieved
11 employees in San Bernardino County, including but not limited to, at 9687 Transportation Way,
12 Fontana, CA 92335.

13 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
14 through 75 are corporations or are other business entities or organizations of a nature unknown to
15 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
16 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
17 working conditions of employment of Plaintiff and aggrieved employees.

18 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 76
19 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
20 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
21 supervisor, independent contractor and/or employee of each defendant who violated or caused to
22 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
23 the Industrial Welfare Commission's wage orders regulating hours and days of work.

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

1 complaint.

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

5 **FIRST CAUSE OF ACTION**

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

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

8 **(Against all Defendants and DOE Defendants)**

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

10 11. During the period beginning one-year period preceding the sending of the initial
11 notice to the LWDA and to Defendants to the present ("the Civil Penalty Period), Defendants
12 violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and the
13 applicable Wage Orders.

14 12. Specifically, Defendants have committed the following violations of California
15 Labor Code:

16 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
17 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
18 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
19 which includes all time that an employee is under control of the employer and all time the
20 employee is suffered and permitted to work. This includes the time an employee spends, either
21 directly or indirectly, performing services which inure to the benefit of the employer.

22 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
23 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
24 Wage Orders.

25 15. In this case, Plaintiff and other current and former aggrieved California-based
26 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
27 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
28 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum

wage for all hours worked 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 arrive prior to the start of their shift in order to line up to wait to undergo and then undergo off-the clock security screenings prior to being permitted to clock in for the start of their shift.

(b) Further, beginning on or about February 1, 2020, Defendants also required Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to line up to wait to under and undergo medical screenings, including but not limited to COVID-19 temperature checks, prior to being permitted to clock in for the start of their shift without being paid for this time.

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

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

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

Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve

(12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

19. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked 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 arrive prior to the start of their shift in order to line up to wait to undergo and then undergo off-the clock security screenings prior to being permitted to clock in for the start of their shift.

(b) Further, beginning on or about February 1, 2020, Defendants also required Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to line up to wait to under and undergo medical screenings, including but not limited to COVID-19 temperature checks, prior to being permitted to clock in for the start of their shift without being paid for this time.

20. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the 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.

21. **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.

22. California law requires an employer to authorize or permit an employee an

1 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
2 all duties and the employer relinquishes control over the employee's activities prior to the
3 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 9 at §11; *Brinker*
4 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
5 employee for a work period of more than ten (10) hours per day without providing the employee
6 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
7 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
8 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
9 period is only permitted when: (1) the nature of the work prevents an employee from being
10 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

11 23. If an employer fails to provide an employee a meal period in accordance with the
12 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
13 for each workday that a legally required and compliant meal period was not provided. Labor Code
14 section 226.7; Wage Order 9 at §11.

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

19 (a) Requiring Plaintiff and other current and former aggrieved California-based
20 hourly non-exempt employees to remain on Defendants' premises during their meal periods.
21 Defendants' continued exercise over how Plaintiff and other current and former aggrieved
22 California-based hourly non-exempt employees spent their meal periods resulted in meal periods
23 that were not duty free; and

24 (b) Failing to authorize or permit Plaintiff and other current and former
25 aggrieved California-based hourly non-exempt employees a second uninterrupted duty-free meal
26 period of no less than thirty (30) minutes when they worked shifts over 10 hours.

27 25. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
28 procedure of failing to compensate Plaintiff and other current and former aggrieved California-

1 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
2 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
3 employees did not receive legally required and compliant meal periods, in violation of Labor Code
4 section 226.7.

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

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

13 28. California law requires every employer to authorize and permit an employee a rest
14 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
15 Code section 226.7; Wage Order 9 at §12. Under California law, "[e]mployees are entitled to 10
16 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
17 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
18 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
19 section 226.7; Wage Order 9 at §12. Rest periods, insofar as practicable, shall be in the middle of
20 each work period. Wage Order 9 at §12. Additionally, the rest period requirement "obligates
21 employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM*
22 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
23 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

24 29. If the employer fails to authorize or permit a required rest period, the employer
25 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
26 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
27 Wage Order 9 at § 12.

28 30. In this case, Defendants failed to authorize or permit all legally required and

1 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
2 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
3 limited to:

4 (a) Requiring Plaintiff and other current and former aggrieved California-based
5 hourly non-exempt employees to remain on Defendants' premises during rest periods. Defendants'
6 continued exercise over how Plaintiff and other current and former aggrieved California-based
7 hourly non-exempt employees spent their rest periods resulted in rest periods that were not duty
8 free.

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

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

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

27 34. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
28 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-

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

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

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

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

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

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

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

12 41. Plaintiff has complied with the procedures for bringing suit specified in Labor
13 Code section 2699.3. On September 9, 2021, Plaintiff filed notice with LWDA and provided
14 notice to Defendants by certified mail which provided notice of the specific provisions of the
15 Labor Code alleged to have been violated, including the facts and theories to support the
16 violations alleged.

17 42. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
18 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
19 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
20 parties notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate
21 Plaintiff's claims.

22 43. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
23 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
24 512, 1194, and 1197 during the Civil Penalty Period in the following amounts:

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

1 Dated: October 21, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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3 By: 

4 Joseph Lavi, Esq.

Vincent C. Granberry, Esq.

Pooja V. Patel, Esq.

5 Attorneys for Plaintiff

6 JOSEFINA VILCHIS

7 on behalf of herself and current and former
8 aggrieved employees
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