

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Theresa Traber

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Melissa A. Huether, Esq. (SBN 316604)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Emails: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
mhuether@lelawfirm.com
wht3@lelawfirm.com

Attorneys for Plaintiff ALVIN GOMEZ,
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**

ALVIN GOMEZ, on behalf of himself and
other aggrieved employees,

Plaintiff,

vs.

FREEDOM FOREVER LLC; and DOES 1 to
100, inclusive,

Defendants.

Case No.: **22STCV34849**

PAGA ACTION

**PLAINTIFF ALVIN GOMEZ'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff ALVIN GOMEZ ("Plaintiff"), who alleges and complains against
Defendants FREEDOM FOREVER 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 Defendants' failure to authorize or permit

1 all legally required and/or compliant meal periods and/or pay meal period premium wages; failure
2 to authorize or permit all legally required and/or compliant rest periods and/or pay rest period
3 premium wages; statutory penalties for failure to timely pay earned wages during employment;
4 statutory penalties for failure to provide accurate wage statements; statutory waiting time penalties
5 in the form of continuation wages for failure to timely pay employees all wages due upon
6 separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor
7 and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor
8 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
9 others aggrieved.

10 **II. JURISDICTION AND VENUE**

11 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
12 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
13 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
14 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
15 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
16 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
17 aggrieved California-based hourly non-exempt employees occurred in locations throughout
18 California, including but not limited to Los Angeles County, at 3322 Garfield Ave., Commerce,
19 California 90040.

20 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
21 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
22 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
23 tolled from April 6, 2020, until October 1, 2020.

24 **III. PARTIES**

25 4. Plaintiff brings this action as a representative of the Labor and Workforce
26 Development Agency on behalf of himself and other current and former employees subject to
27 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
28 filed include current, former and/or future employees of Defendants who work, worked, or will

1 work for Defendants as direct employees as well as temporary employees employed through temp
2 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
3 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
4 employed by Defendants in an hourly position at Defendants' location in Los Angeles from in or
5 around October 2020, until on or about February 15, 2021.

6 5. Plaintiff is informed and believes and thereon alleges that Defendant FREEDOM
7 FOREVER LLC is authorized to do business within the State of California and is doing business
8 in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant hereto
9 were persons acting on behalf of Defendant FREEDOM FOREVER LLC in the establishment of,
10 or ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
11 FREEDOM FOREVER LLC operates throughout California and employed Plaintiff and putative
12 class members in Los Angeles County, at 3322 Garfield Ave., Commerce, California 90040.

13 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
14 through 50 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 51
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 SECTIONS 2698, ET SEQ.**

8 **(Against all Defendants by Plaintiff)**

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

10 11. During the period beginning one (1) year preceding Plaintiff sending the initial
11 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
12 202, 203, 204, 226, 226.7, 512 and Sections 14 and 15 of the applicable Wage Orders.

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

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

19 14. California law requires an employer to authorize or permit an employee an
20 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
21 all duties and the employer relinquishes control over the employee's activities prior to the
22 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 9 at §11; *Brinker*
23 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
24 employee for a work period of more than ten (10) hours per day without providing the employee
25 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
26 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
27 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
28 period is only permitted when: (1) the nature of the work prevents an employee from being

1 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

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

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

10 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
11 hourly non-exempt employees timely, uninterrupted meal periods of no less than thirty (30) for
12 shifts over five (5) hours; and

13 (b) Failing to provide Plaintiff and other current and former aggrieved California-based
14 hourly non-exempt employees a second uninterrupted duty-free meal period of no less than thirty
15 (30) minutes for shifts over ten (10) hours.

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

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

26 19. **Failure to pay wages to hourly non-exempt employees for workdays that**
27 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
28 current and former aggrieved California-based hourly non-exempt employees regularly worked

1 shifts of more than three-and-a-half (3.5) hours.

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

13 21. If the employer fails to authorize or permit a required rest period, the employer
14 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
15 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
16 Wage Order 9 at § 12.

17 22. In this case, Defendants failed to authorize or permit all legally required and
18 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
19 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
20 limited to:

21 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
22 hourly non-exempt employees uninterrupted, duty-free rest periods of no less than ten (10)
23 minutes for every four (4) hours worked; and

24 (b) Failing to authorize or permit Plaintiff and other current and former aggrieved
25 California-based hourly non-exempt employees a third uninterrupted duty-free rest period of a net
26 ten (10) minutes for shifts exceeding ten (10) hours.

27 23. 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 with one (1) hour of pay at their regular rate of pay for each
2 workday they did not receive legally required and compliant rest periods, in violation of Labor
3 Code section 226.7.

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

8 25. **Failure to timely pay earned wages during employment:** In California, wages
9 must be paid at least twice during each calendar month on days designated in advance by the
10 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
11 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
12 16th and the 26th day of that month and wages earned between the 16th and the last day,
13 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
14 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
15 paid within seven (7) calendar days following the close of the payroll period in which wages were
16 earned. Labor Code section 204(d).

17 26. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
18 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
19 exempt employees' earned wages (including meal period premium wages and/or rest period
20 premium wages), in violation of Labor Code section 204. Defendants' aforementioned policies,
21 practices, and/or procedures resulted in their failure to pay Plaintiff's and other current and former
22 aggrieved California-based hourly non-exempt employees' their earned wages within the
23 applicable time frames outlined in Labor Code section 204.

24 27. **Failure to provide complete and accurate wage statements:** Labor Code section
25 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
26 employee his or her wages, the employer must "furnish each of his or her employees ... an
27 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
28 employee, except for any employee whose compensation is solely based on a salary and who is

1 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
2 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
3 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
4 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
5 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
6 name of the employee and his or her social security number, (8) the name and address of the legal
7 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
8 the corresponding number of hours worked at each hourly rate by the employee.”

9 28. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
10 and other current and former aggrieved California-based hourly non-exempt employees all wages
11 earned (including meal period premium wages, and/or rest period premium wages) rendered
12 Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’
13 wage statements inaccurate, in violation of Labor Code section 226.

14 29. **Failure to pay employees all wages due at time of termination/resignation:** An
15 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
16 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
17 hours of resignation (Labor Code section 202).

18 30. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
19 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
20 all their earned wages (including meal period premium wages, and/or rest period premium wages),
21 Defendants failed to pay those employees timely after each employee’s termination and/or
22 resignation, in violation of Labor Code sections 201, 202, and 203.

23 31. Defendants’ violations of Wage Order 9 constituted violations of Labor Code
24 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

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

33. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3. On February 15, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA and provided notice to Defendants by certified mail which provided notice of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the violations alleged.

34. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations of the Labor Code within 60 days of the date of the complainant's written notice. The LWDA failed to provide the parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends to investigate Plaintiff's claims.

35. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, and 512 beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

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

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

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

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

3 2. For any and all legally applicable penalties during the relevant statute of limitations
4 subject to any permissible tolling, including but not limited to those recoverable under the
5 California Labor Code, including but not limited to section 2699(f);

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

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

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11 Dated: November 1, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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13 By: 
14 _____
15 Joseph Lavi, Esq.
16 Vincent C. Granberry, Esq.
17 Pooja V. Patel, Esq.
18 Melissa A. Huether, Esq.
19 Attorneys for Plaintiff
20 ALVIN GOMEZ,
21 on behalf of himself and current and former
22 aggrieved employees
23
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