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Attorneys for Plaintiff LUCIO DE JESUS VENTURA
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**

LUCIO DE JESUS VENTURA, on behalf of
himself and other aggrieved employees,

Plaintiff,

vs.

FUJI FOOD PRODUCTS, INC.; and DOES 1 to
100, inclusive,

Defendants.

Case No.: 23STCV12086

PAGA ACTION

**PLAINTIFF LUCIO DE JESUS
VENTURA'S COMPLAINT FOR:**

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

COMES NOW Plaintiff LUCIO DE JESUS VENTURA ("Plaintiff"), who alleges and
complains against Defendants FUJI FOOD PRODUCTS, INC.; and DOES 1 to 100, inclusive
(collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor 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 pay wages for all
hours worked at the employees' minimum wage rate or overtime rate, failure to provide all legally

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

7 **II. JURISDICTION AND VENUE**

8 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
9 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
10 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
11 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
12 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
13 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
14 aggrieved California-based hourly non-exempt employees occurred in locations throughout
15 California, including but not limited to Los Angeles County, at 14420 Bloomfield Ave, Santa Fe
16 Springs, CA 90670.

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

21 **III. PARTIES**

22 4. Plaintiff brings this action as a representative of the Labor and Workforce
23 Development Agency on behalf of himself and other current and former employees subject to
24 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
25 filed include current, former and/or future employees of Defendants who work, worked, or will
26 work for Defendants as direct employees as well as temporary employees employed through temp
27 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
28 currently named Plaintiff is and was domiciled and a resident and citizen of California and was

1 employed by Defendants in an hourly position at Defendants' location in Los Angeles from
2 approximately August 2021 on or about August 2022.

3 5. Plaintiff is informed and believes and thereon alleges that Defendant FUJI FOOD
4 PRODUCTS, INC. is authorized to do business within the State of California and is doing
5 business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant
6 hereto were persons acting on behalf of Defendant FUJI FOOD PRODUCTS, INC. in the
7 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
8 Defendant FUJI FOOD PRODUCTS, INC. operates in Los Angeles County and employed
9 Plaintiff and aggrieved employees in Los Angeles County, including but not limited to, at 14420
10 Bloomfield Ave, Santa Fe Springs, CA 90670.

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

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

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

28 9. Plaintiff makes the allegations in this complaint without any admission that, as to

any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS

GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.

(Against all Defendants by Plaintiff)

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

11. During the period beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and the applicable Wage Orders.

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

13. **Failure to pay wages for all hours worked at the legal minimum wage:** 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 which inure to the benefit of the employer.

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

15. In this case, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more minutes per shift than Defendants credited them with having worked. Specifically, Defendants failed to pay Plaintiff and other current and former 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) During the COVID-19 pandemic, Defendant required Plaintiff and other current

1 and former aggrieved California-based hourly non-exempt employees to line up to wait to undergo
2 and undergo off-the-clock COVID-19 temperature checks prior to clocking- in for their start shifts.

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

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

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

18 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
19 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
20 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
21 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
22 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
23 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
24 seventh day of a workweek shall be compensated at the rate of no less than twice the
25 regular rate of pay of an employee.

26 Labor Code section 510.

27 19. In this case, Defendants failed to pay Plaintiff and other current and former
28 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) During the COVID-19 pandemic, Defendant required Plaintiff and other current
and former aggrieved California-based hourly non-exempt employees to line up to wait to

1 undergo and undergo off-the-clock COVID-19 temperature checks prior to clocking- in for their
2 start shifts.

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

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

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

26 23. If an employer fails to provide an employee a meal period in accordance with the
27 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
28 for each workday that a legally required and compliant meal period was not provided. Labor Code

1 section 226.7; Wage Order 1 at §11.

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

6 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
7 hourly non-exempt employees a second uninterrupted duty-free meal period of no less than thirty
8 (30) minutes for each workday that Plaintiff and similarly situated employees work shifts over ten
9 (10) hours.

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

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

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

24 28. California law requires every employer to authorize and permit an employee a rest
25 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
26 Code section 226.7; Wage Order 1 at §12. Under California law, "[e]mployees are entitled to 10
27 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
28 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.*

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

30. In this case, Defendants failed to authorize or permit all legally required and compliant rest 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) Failing to provide net 10-minute rest breaks by requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to travel to a designated area away from their workstations during their rest periods. Defendants did not elongate or otherwise extend Plaintiff and other current and former aggrieved California-based hourly non-exempt employees’ rest period times to account for travel time between their workstations and the designated break area resulting in rest periods less than a net 10-minutes;

(b) Failing to provide duty-free rest breaks by requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to remain on the premises during their rest breaks. Defendant’s exercise of control over how Plaintiff and other current and former aggrieved California-based hourly non-exempt employees spent their rest breaks resulted in meal periods that were not duty-free; and

(c) From the beginning of the class period until 2021, Defendant failed to provide Plaintiff and other current and former aggrieved California-based hourly non-exempt employees a third uninterrupted duty-free rest period of no less than ten (10) net minutes on each workday that

1 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
2 work shifts over ten (10) hours.

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

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

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

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

28 35. **Failure to provide complete and accurate wage statements:** Labor Code section

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

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

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

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

39. Defendants’ violations of Wage Order 1 constituted violations of Labor Code

1 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

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

6 41. Plaintiff has complied with the procedures for bringing suit specified in Labor
7 Code section 2699.3. On March 23, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA
8 and provided notice to Defendants by certified mail which provided notice of the specific
9 provisions of the Labor Code alleged to have been violated, including the facts and theories to
10 support the violations alleged.

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

16 43. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
17 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
18 512, 1194, 1197, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim
19 Notice to the LWDA to the present, in the following amounts:

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

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

28 c. For violations of Labor Code section 510, fifty dollars (\$50) for each

1 employee for each pay period for the initial violation, and for each subsequent violation, one
2 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
3 established by Labor Code section 558] and any unpaid wages.

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

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

10 **PRAYER FOR RELIEF**

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

13 **ON THE FIRST CAUSE OF ACTION:**

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

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

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

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

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1 Dated: May 30, 2023

Respectfully submitted,

LAVI & EBRAHIMIAN, LLP

Vincent C. Granberry

By:

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Danielle E. Montero, Esq.

Attorneys for Plaintiff

LUCIO DE JESUS VENTURA,

on behalf of himself and current and former
aggrieved employees

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