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16 Attorneys for Plaintiff BENITO III UY,
17 on behalf of the general public as private attorney general

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF SAN FRANCISCO**

20 BENITO III UY, on behalf of the general
21 public as private attorney general,

22 Plaintiff,

23 v.

24 SFC MARKETS INCORPORATED, a
25 California Corporation, doing business as
26 Seafood City Supermarket and FORTUNE
27 MANAGEMENT COMPANY, INC., a
28 California Corporation; and DOES 1-50,
inclusive,

Defendants.

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

03/29/2022
Clerk of the Court

BY: KAREN VALDES
Deputy Clerk

CASE NO.: **CGC-22-598941**

ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 et seq).**

COMES NOW Plaintiff BENITO III UY (“Plaintiff”), on behalf of the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, and asserts claims against Defendants SFC MARKETS INCORPORATED, a California Corporation, doing business as Seafood City Supermarket and FORTUNE MANAGEMENT COMPANY, INC., a California Corporation; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to Defendant’s: (a) failure to pay wages including overtime; (b) failure to provide meal periods for every work period exceeding more than five (5) or ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant’s employ; (e) failing to provide accurate itemized wage statements. As a result Plaintiff seeks penalties under Labor Code 2698, *et seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

1 4. This Court has jurisdiction over Defendants because, upon information and belief,
2 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
3 avails itself of the California market so as to render the exercise of jurisdiction over it by the
4 California Courts consistent with traditional notions of fair play and substantial justice.

5 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
6 Civil Procedure section 395. Defendants are doing business throughout California, including but
7 not limited to San Francisco County, and each Defendant is within the jurisdiction of this Court
8 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
9 and all other aggrieved employees within the State of California. Defendants employ numerous
10 aggrieved employees in in the State of California.

11 6. On information and belief, Defendants have conducted business within the State of
12 California during the purported liability period and continue to conduct business throughout the
13 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
14 similarly situated non-exempt aggrieved employees within California.

15 7. The California Superior Court also has jurisdiction in this matter because on
16 information and belief there are no federal questions at issue, as the issues herein are based solely
17 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
18 California Code of Civil Procedure, the California Civil Code, and the California Business and
19 Professions Code.

20 8. On information and belief, during the statutory liability period and continuing to
21 the present ("liability period"), Defendant consistently maintained and enforced against
22 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
23 and policies, in violation of California state wage and hour laws: (a) failure to pay wages including
24 overtime; (b) failure to provide meal periods for every work period exceeding more than five (5)
25 or ten (10) hours per day and failure to pay an additional hour's of pay or accurately pay an
26 additional hour's of pay in lieu of providing a meal period; (c) failure to provide rest breaks for
27 every four hours or major fraction thereof worked and failure to pay an additional hour's of pay or
28 accurately pay an additional hour's of pay in lieu of providing a rest period; (d) failing to pay all

1 wages earned and owed upon separation from Defendant's employ; (e) failing to provide accurate
2 itemized wage statements.

3 9. Plaintiff on behalf of the general public as private attorney general and all other
4 aggrieved employees bring this action pursuant to Labor Code 2698, et seq. for violations
5 enumerated under 2699.5 as follows: sections 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174,
6 1174.5, 1175, 1194, 1197, 1197.1, 1198, and seeking penalties, interest, attorneys' fees and costs.

7 **III. PARTIES**

8 **A. Plaintiff**

9 10. Plaintiff, BENITO III UY, was at all times relevant to this action, a resident of
10 California. Plaintiff was employed by Defendants in approximately November 2020 as a Non-
11 Exempt Employee with the title of Griller and worked during the liability period for Defendants
12 until Plaintiff's separation from Defendants' employ in approximately February 2021. Plaintiff's
13 duties included but were not limited to cooking seafood and fish.

14 11. As Defendants' employee, Plaintiff, and all other aggrieved employees were
15 regularly required to and subsequently suffered:

- 16 a) perform work subject to the control of the employer without being compensated all wages
17 including overtime, all in violation of California labor laws, regulations, and the Industrial
18 Welfare Commission Wage Order ("IWC");
- 19 b) work without being permitted or authorized a minimum ten-minute rest period for every
20 four hours or major fraction thereof worked and not compensated one (1) hour of pay at
21 his regular rate of compensation for each workday that a rest period was not provided, all
22 in violation of California labor laws, regulations, and the Industrial Welfare Commission
23 Wage Orders ("IWC");
- 24 c) work in excess of five and ten hours per day without being provided meal periods and not
25 compensated one (1) hour of pay at the regular rate of compensation for each workday
26 that a meal period was not provided, all in violation of California labor laws, regulations,
27 and the Industrial Welfare Commission Wage Orders ("IWC");
- 28 d) not paid timely upon separation; and

1 e) not provided accurate itemized wage statements.

2 12. On information and belief, Defendants willfully failed to pay all earned wages in
3 the form regular wages and overtime wages, and meal and rest period premium wages, to its Non-
4 Exempt Employees and members of the Representative Group; nor have Defendants returned to
5 Plaintiff or members of the Representative Group, upon or after separation from employment with
6 Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et seq.*
7 on behalf of the general public as private attorney general and all other aggrieved employees.

8 **B. Defendants**

9 13. Defendants SFC MARKETS INCORPORATED, a California Corporation, doing
10 business as Seafood City Supermarket and FORTUNE MANAGEMENT COMPANY, INC., a
11 California Corporation operate as a supermarket. Plaintiff estimates there are in excess of 100
12 Non-Exempt Employees who work or have worked for Defendants over the last year.

13 14. Other than identified herein, Plaintiff is unaware of the true names, capacities,
14 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
15 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
16 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
17 such fictitious names. Plaintiff will amend this complaint when their true names and capacities are
18 ascertained.

19 15. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
20 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
21 Representative Group, and exercised control over their wages, hours, and working conditions.
22 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects
23 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
24 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
25 attributable to the other defendants.

26 **IV. GENERAL ALLEGATIONS**

27 16. At all times set forth herein, Defendants employed Plaintiff and other persons in the
28 capacity of non-exempt positions, however titled, throughout the state of California.

1 17. Plaintiff are informed and believes Aggrieved Employees have at all times
2 pertinent hereto been Non-Exempt within the meaning of the California Labor Code and the
3 implementing rules and regulations of the IWC California Wage Orders.

4 18. Defendants continue to employ Non-Exempt Employees, however titled, in
5 California and implement a uniform set of policies and practices to all non-exempt employees, as
6 they were all engaged in the generic job duties related to Defendants' supermarket business.

7 19. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
8 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
9 of the requirements of California's wage and employment laws.

10 20. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
11 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
12 week.

13 21. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved
14 Employees based upon an hourly rate.

15 22. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
16 Employees typically worked five (5) days a week.

17 23. Plaintiff is informed and believes that the Aggrieved Employees were required to
18 keep similar schedules.

19 24. In addition, the Aggrieved Employees frequently worked in excess of eight (8)
20 hours a day and/or over forty (40) hours in a workweek, but were not properly paid for such time
21 at the employee's correct rate of pay per hour for overtime.

22 25. Defendants also failed to properly calculate Plaintiff's and the Aggrieved
23 Employees' regular rate of pay including but not limited to by failing to include all forms of
24 compensation/remuneration in the regular rate including but not limited to bonuses, incentives,
25 commissions, and other compensation for overtime calculation purposes.

26 26. On information and belief, Defendants also required Plaintiff and Aggrieved
27 Employees to attend training outside of work hours, off-the-clock, without compensation. This
28 resulted in an underpayment of minimum and overtime wages.

1 27. Plaintiff and the Aggrieved Employees were regularly required to work shifts in
2 excess of five hours without being provided a lawful meal period and over ten hours in a day
3 without being provided a second lawful meal period as required by law.

4 28. Indeed, during the relevant time, as a consequence of Defendants' staffing and
5 scheduling practices, work demands, and Defendants' policies and practices, Defendants
6 frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally complaint
7 uninterrupted 30-minute meal periods on shifts over five hours as required by law.

8 29. Similarly, as a consequence of Defendants' staffing and scheduling practices, work
9 demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff
10 and the Aggrieved Employees legally compliant second meal periods on shifts over ten hours as
11 required by law.

12 30. On information and belief, Plaintiff and Aggrieved Employees did not waive their
13 rights to meal periods under the law.

14 31. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty
15 meal periods.

16 32. Despite the above-mentioned meal period violations, Defendants failed to
17 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
18 one additional hour of pay at their regular rate as required by California law when meal periods
19 were not timely or lawfully provided in a compliant manner.

20 33. Plaintiff are informed and believe, and thereon alleges, that Defendants know,
21 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
22 were entitled to receive premium wages based on their regular rate of pay under Labor Code
23 §226.7 but were not receiving such compensation.

24 34. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
25 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
26 period for every four hours worked or major fraction thereof, which is a violation of the Labor
27 Code and IWC wage order.

28 35. Defendants maintained and enforced scheduling practices, policies, and imposed

1 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
2 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
3 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure to
4 provide relief for Plaintiff and Aggrieved Employees to take their lawfully required breaks. In
5 addition, Defendants did not allow Plaintiff and Aggrieved Employees to leave the premises
6 during their rest breaks.

7 36. Despite the above-mentioned rest period violations, Defendants did not compensate
8 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
9 pay at their regular rate as required by California law, including Labor Code section 226.7 and the
10 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
11 permitted.

12 37. Defendants also failed to provide accurate, lawful itemized wage statements to
13 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
14 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
15 worked, including premiums due and owing for meal and rest period violations, gross pay and net
16 pay figures from Plaintiff and the Aggrieved Employees' wage statements. Plaintiff is informed
17 and believes, and thereon alleges, that at all times herein mentioned, Defendants knew that at the
18 time of termination of employment (or within 72 hours thereof for resignations without prior
19 notice as the case may be) they had a duty to accurately compensate Plaintiff and Aggrieved
20 Employees for all wages owed including minimum wages, meal and rest period premiums, and
21 that Defendants had the financial ability to pay such compensation, but willfully, knowingly,
22 recklessly, and/or intentionally failed to do so in part because of the above-specified violations.

23 38. Upon information and belief, Defendants knew and or should have known that it is
24 improper to implement policies and commit unlawful acts such as:

25 (a) requiring employees to work four (4) hours or a major fraction thereof without
26 being provided a minimum ten (10) minute rest period and without compensating the employees
27 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
28 rest period was not provided;

1 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day
2 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
3 and without compensating employees with one (1) hour of pay at the regular rate of compensation
4 for each workday that such a meal period was not provided;

5 (c) failing to pay overtime and minimum wages;

6 (d) failing to provide accurate itemized wage statements;

7 (e) failing to timely pay Plaintiff and Aggrieved Employees.

8 39. In addition to the violations above, and on information and belief, Defendants knew
9 they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted
10 herein, and that Defendants had the financial ability to pay such compensation, but willfully,
11 knowingly, recklessly, and/or intentionally failed to do so.

12 **V. REPRESENTATIVE CLAIMS**

13 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.**

14 40. Plaintiff incorporates by reference and re-alleges each and every allegation
15 contained above, as though fully set forth herein.

16 41. On or about January 26, 2022, Plaintiff complied with notice requirements pursuant
17 to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit**
18 **A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and
19 that the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not
20 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
21 representative capacity. The substance and violations set forth in this Complaint of which the
22 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
23 Action Complaint to the LWDA.

24 42. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
25 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
26 Employees of Defendants.

27 43. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
28 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,

1 including without limitation Labor Code section 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174,
2 1174.5, 1175, 1194, 1197, 1197.1, 1198, and 2698 *et seq.*, applicable IWC Wage Orders and
3 California Code of Regulations, Title 8, section 11000 *et seq.*

4 44. At all times relevant, Plaintiff and all other aggrieved employees regularly
5 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
6 rest break requirements of the applicable IWC wage order and the Labor Code.

7 45. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
8 accurately pay at least minimum wages due as a result of Defendants' failure to pay Plaintiff and
9 Aggrieved Employees for mandatory training that was conducted off-the-clock.

10 46. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
11 overtime wages owed as discussed above due to Defendants' failure to incorporate bonuses and
12 other forms of remuneration as described above into the regular rate of pay for overtime
13 calculation purposes. Defendants further failed to accurately pay overtime wages due to
14 Defendants' failure to pay Plaintiff and Aggrieved Employees for mandatory training that was
15 conducted off-the-clock. Therefore, Defendants violated section 510, and 1194 by not
16 compensating its Non-Exempt Employees for work performed in excess of eight hours (8) in a day
17 or forty hours in a work week (40). Section 510 of the Labor Code codifies the right to overtime
18 compensation at the rate of one and one-half times the regular rate of pay for all hours worked in
19 excess of eight (8) hours in a day or forty (40) hours in a work week and to overtime
20 compensation twice the regular rate of pay for hours worked in excess of twelve (12) hours in a
21 day or in excess of eight (8) hours in a day on the seventh day of work in a particular work week.

22 47. Defendants failed to provide Plaintiff and all other aggrieved employees
23 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented
24 and enforced policies of on duty meal period practices which required employees to work during
25 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior
26 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,
27 Plaintiff and all other aggrieved employees have been damaged in an amount according to proof at
28 time of trial.

1 48. Plaintiff, and on information and belief, all aggrieved employees, were
2 systematically not permitted or authorized to take ten minute rest periods for every four hours
3 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
4 Plaintiff and on information and belief, aggrieved employees, were not compensated with one
5 hour of wages for every day in which a rest period was missed or untimely as a result of
6 Defendants' policies, practices, or work demands. By failing to authorize and permit a ten-minute
7 rest period for every four hours or major fraction thereof worked per day by its Non-Exempt
8 Employees, and by failing to provide compensation for such non-provided or shortened rest
9 periods, as alleged above, Defendants willfully violated the provisions of Labor Code sections
10 226.7, 512 and the applicable IWC Wage Order.

11 49. Defendants also willfully violated Labor Code sections 201-203 by failing to
12 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
13 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
14 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an
15 employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay
16 the subject employee's wages until the back wages are paid in full or an action is commenced. The
17 penalty cannot exceed 30 days of wages.

18 50. Plaintiff and all other aggrieved employees who were separated from employment
19 are entitled to compensation for all forms of wages earned, including but not limited to
20 compensation regular and overtime wages, and for non-provided meal and rest periods, but to date
21 have not received such compensation, therefore entitling them to penalties under PAGA for
22 violations of Labor Code sections 201-203.

23 51. On information and belief, Defendants willfully failed to pay all wages due and
24 owing upon separation from employment. These wages include regular and overtime wages, and
25 meal and rest period premiums.

26 52. On information and belief, Defendants failed to provide accurate itemized wage
27 statements which failed to include the rate of pay and total hours worked per pay period, failed to
28 account for all hours worked, including overtime, and lastly the accurate accounting of, the lawful

1 meal and rest period premiums due and owing to Plaintiff and the aggrieved employees, pursuant
2 to Labor Code section 226(a).

3 53. Defendants have failed to provide Plaintiff and Aggrieved Employees rates of pay
4 and the hours for which they worked for any given pay period.

5 54. Defendants have failed to accurately record all time worked.

6 55. Defendants have also failed to accurately record the meal and rest period premiums
7 owed and all wages owed per pay period.

8 56. Plaintiff and Aggrieved Employees have been injured as they were unable to
9 determine whether they had been paid correctly for all hours worked per pay period among other
10 things

11 57. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
12 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
13 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
14 for each violation in a subsequent citation, for which the employer fails to provide the employee a
15 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

16 58. Additionally, Defendants have no accurate records relating to aggrieved
17 employees' work periods, meal periods, total daily hours worked, total hours worked per payroll
18 period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to
19 maintain accurate records relating to hours worked daily in violation of Labor Code sections
20 1174(d), 1174.5.

21 59. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees
22 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
23 worked.

24 60. Plaintiff and the Representative Aggrieved Employees are entitled to recover
25 Penalties and attorneys' fees and costs under Labor Code section 2698, et seq.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

28 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;

1 2. For reasonable attorneys' fees and costs; and

2 3. For such other and further relief as the Court deems proper.

3 Dated: March 25, 2022

JAMES HAWKINS APLC

4
5 By: 

JAMES R. HAWKINS, ESQ.

GREGORY MAURO, ESQ.

MICHAEL CALVO, ESQ.

LAUREN FALK, ESQ.

AVA ISSARY, ESQ.

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9 Attorneys for Plaintiff BENITO III UY, on
behalf of the general public as private attorney
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EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618

TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

January 26, 2022

Via LWDA Website

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

SFC MARKETS INCORPORATED, a California Corporation, doing business as

Seafood City Supermarket

Agent for Service of Process: Victor Lee

8450 Garvey Avenue, Suite 200

Rosemead, CA 91770

Receipt No. 7018 1130 0001 8270 3244

FORTUNE MANAGEMENT COMPANY, INC., a California Corporation

Agent for Service of Process: Victor Lee

8450 Garvey Avenue, Suite 200

Rosemead, CA 91770

Receipt No. 7018 1130 0001 8270 3251

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff Benito III Uy individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, and SFC MARKETS INCORPORATED, a California Corporation, doing business as Seafood City Supermarket and FORTUNE MANAGEMENT COMPANY, INC., a California Corporation, through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the San Francisco County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gregory Mauro', with a stylized, cursive script.

Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint

1 JAMES HAWKINS APLC
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3 Gregory Mauro, Esq. (#222239)
4 Michael Calvo, Esq. (#314986)
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12 Attorneys for Plaintiff BENITO III UY,
13 on behalf of the general public as private attorney general

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SAN FRANCISCO**

17 BENITO III UY, on behalf of the general
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21 SFC MARKETS INCORPORATED, a
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26 inclusive,

27 Defendants.
28

CASE NO.:

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

**[PROPOSED] PAGA REPRESENTATIVE
ACTION COMPLAINT PURSUANT TO
THE PRIVATE ATTORNEYS GENERAL
ACT (Labor Code §§ 2698 *et seq.*)**

COMES NOW Plaintiff BENITO III UY (“Plaintiff”), on behalf of the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, and asserts claims against Defendants SFC MARKETS INCORPORATED, a California Corporation, doing business as Seafood City Supermarket and FORTUNE MANAGEMENT COMPANY, INC., a California Corporation; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to Defendant’s: (a) failure to pay wages including overtime; (b) failure to provide meal periods for every work period exceeding more than five (5) or ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant’s employ; (e) failing to provide accurate itemized wage statements. As a result Plaintiff seeks penalties under Labor Code 2698, *et seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

1 4. This Court has jurisdiction over Defendants because, upon information and belief,
2 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
3 avails itself of the California market so as to render the exercise of jurisdiction over it by the
4 California Courts consistent with traditional notions of fair play and substantial justice.

5 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
6 Civil Procedure section 395. Defendants are doing business throughout California, including but
7 not limited to San Francisco County, and each Defendant is within the jurisdiction of this Court
8 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
9 and all other aggrieved employees within the State of California. Defendants employ numerous
10 aggrieved employees in in the State of California.

11 6. On information and belief, Defendants have conducted business within the State of
12 California during the purported liability period and continue to conduct business throughout the
13 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
14 similarly situated non-exempt aggrieved employees within California.

15 7. The California Superior Court also has jurisdiction in this matter because on
16 information and belief there are no federal questions at issue, as the issues herein are based solely
17 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
18 California Code of Civil Procedure, the California Civil Code, and the California Business and
19 Professions Code.

20 8. On information and belief, during the statutory liability period and continuing to
21 the present ("liability period"), Defendant consistently maintained and enforced against
22 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
23 and policies, in violation of California state wage and hour laws: (a) failure to pay wages including
24 overtime; (b) failure to provide meal periods for every work period exceeding more than five (5)
25 or ten (10) hours per day and failure to pay an additional hour's of pay or accurately pay an
26 additional hour's of pay in lieu of providing a meal period; (c) failure to provide rest breaks for
27 every four hours or major fraction thereof worked and failure to pay an additional hour's of pay or
28 accurately pay an additional hour's of pay in lieu of providing a rest period; (d) failing to pay all

1 wages earned and owed upon separation from Defendant's employ; (e) failing to provide accurate
2 itemized wage statements.

3 9. Plaintiff on behalf of the general public as private attorney general and all other
4 aggrieved employees bring this action pursuant to Labor Code 2698, et seq. for violations
5 enumerated under 2699.5 as follows: sections 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174,
6 1174.5, 1175, 1194, 1197, 1197.1, 1198, and seeking penalties, interest, attorneys' fees and costs.

7 **III. PARTIES**

8 **A. Plaintiff**

9 10. Plaintiff, BENITO III UY, was at all times relevant to this action, a resident of
10 California. Plaintiff was employed by Defendants in approximately November 2020 as a Non-
11 Exempt Employee with the title of Griller and worked during the liability period for Defendants
12 until Plaintiff's separation from Defendants' employ in approximately February 2021. Plaintiff's
13 duties included but were not limited to cooking seafood and fish.

14 11. As Defendants' employee, Plaintiff, and all other aggrieved employees were
15 regularly required to and subsequently suffered:

- 16 a) perform work subject to the control of the employer without being compensated all wages
17 including overtime, all in violation of California labor laws, regulations, and the Industrial
18 Welfare Commission Wage Order ("IWC");
- 19 b) work without being permitted or authorized a minimum ten-minute rest period for every
20 four hours or major fraction thereof worked and not compensated one (1) hour of pay at
21 his regular rate of compensation for each workday that a rest period was not provided, all
22 in violation of California labor laws, regulations, and the Industrial Welfare Commission
23 Wage Orders ("IWC");
- 24 c) work in excess of five and ten hours per day without being provided meal periods and not
25 compensated one (1) hour of pay at the regular rate of compensation for each workday
26 that a meal period was not provided, all in violation of California labor laws, regulations,
27 and the Industrial Welfare Commission Wage Orders ("IWC");
- 28 d) not paid timely upon separation; and

1 e) not provided accurate itemized wage statements.

2 12. On information and belief, Defendants willfully failed to pay all earned wages in
3 the form regular wages and overtime wages, and meal and rest period premium wages, to its Non-
4 Exempt Employees and members of the Representative Group; nor have Defendants returned to
5 Plaintiff or members of the Representative Group, upon or after separation from employment with
6 Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et seq.*
7 on behalf of the general public as private attorney general and all other aggrieved employees.

8 **B. Defendants**

9 13. Defendants SFC MARKETS INCORPORATED, a California Corporation, doing
10 business as Seafood City Supermarket and FORTUNE MANAGEMENT COMPANY, INC., a
11 California Corporation operate as a supermarket. Plaintiff estimates there are in excess of 100
12 Non-Exempt Employees who work or have worked for Defendants over the last year.

13 14. Other than identified herein, Plaintiff is unaware of the true names, capacities,
14 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
15 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
16 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
17 such fictitious names. Plaintiff will amend this complaint when their true names and capacities are
18 ascertained.

19 15. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
20 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
21 Representative Group, and exercised control over their wages, hours, and working conditions.
22 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects
23 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
24 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
25 attributable to the other defendants.

26 **IV. GENERAL ALLEGATIONS**

27 16. At all times set forth herein, Defendants employed Plaintiff and other persons in the
28 capacity of non-exempt positions, however titled, throughout the state of California.

1 17. Plaintiff are informed and believes Aggrieved Employees have at all times
2 pertinent hereto been Non-Exempt within the meaning of the California Labor Code and the
3 implementing rules and regulations of the IWC California Wage Orders.

4 18. Defendants continue to employ Non-Exempt Employees, however titled, in
5 California and implement a uniform set of policies and practices to all non-exempt employees, as
6 they were all engaged in the generic job duties related to Defendants' supermarket business.

7 19. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
8 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
9 of the requirements of California's wage and employment laws.

10 20. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
11 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
12 week.

13 21. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved
14 Employees based upon an hourly rate.

15 22. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
16 Employees typically worked five (5) days a week.

17 23. Plaintiff is informed and believes that the Aggrieved Employees were required to
18 keep similar schedules.

19 24. In addition, the Aggrieved Employees frequently worked in excess of eight (8)
20 hours a day and/or over forty (40) hours in a workweek, but were not properly paid for such time
21 at the employee's correct rate of pay per hour for overtime.

22 25. Defendants also failed to properly calculate Plaintiff's and the Aggrieved
23 Employees' regular rate of pay including but not limited to by failing to include all forms of
24 compensation/remuneration in the regular rate including but not limited to bonuses, incentives,
25 commissions, and other compensation for overtime calculation purposes.

26 26. On information and belief, Defendants also required Plaintiff and Aggrieved
27 Employees to attend training outside of work hours, off-the-clock, without compensation. This
28 resulted in an underpayment of minimum and overtime wages.

1 27. Plaintiff and the Aggrieved Employees were regularly required to work shifts in
2 excess of five hours without being provided a lawful meal period and over ten hours in a day
3 without being provided a second lawful meal period as required by law.

4 28. Indeed, during the relevant time, as a consequence of Defendants' staffing and
5 scheduling practices, work demands, and Defendants' policies and practices, Defendants
6 frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally complaint
7 uninterrupted 30-minute meal periods on shifts over five hours as required by law.

8 29. Similarly, as a consequence of Defendants' staffing and scheduling practices, work
9 demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff
10 and the Aggrieved Employees legally compliant second meal periods on shifts over ten hours as
11 required by law.

12 30. On information and belief, Plaintiff and Aggrieved Employees did not waive their
13 rights to meal periods under the law.

14 31. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty
15 meal periods.

16 32. Despite the above-mentioned meal period violations, Defendants failed to
17 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
18 one additional hour of pay at their regular rate as required by California law when meal periods
19 were not timely or lawfully provided in a compliant manner.

20 33. Plaintiff are informed and believe, and thereon alleges, that Defendants know,
21 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
22 were entitled to receive premium wages based on their regular rate of pay under Labor Code
23 §226.7 but were not receiving such compensation.

24 34. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
25 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
26 period for every four hours worked or major fraction thereof, which is a violation of the Labor
27 Code and IWC wage order.

28 35. Defendants maintained and enforced scheduling practices, policies, and imposed

1 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
2 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
3 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure to
4 provide relief for Plaintiff and Aggrieved Employees to take their lawfully required breaks. In
5 addition, Defendants did not allow Plaintiff and Aggrieved Employees to leave the premises
6 during their rest breaks.

7 36. Despite the above-mentioned rest period violations, Defendants did not compensate
8 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
9 pay at their regular rate as required by California law, including Labor Code section 226.7 and the
10 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
11 permitted.

12 37. Defendants also failed to provide accurate, lawful itemized wage statements to
13 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
14 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
15 worked, including premiums due and owing for meal and rest period violations, gross pay and net
16 pay figures from Plaintiff and the Aggrieved Employees' wage statements. Plaintiff is informed
17 and believes, and thereon alleges, that at all times herein mentioned, Defendants knew that at the
18 time of termination of employment (or within 72 hours thereof for resignations without prior
19 notice as the case may be) they had a duty to accurately compensate Plaintiff and Aggrieved
20 Employees for all wages owed including minimum wages, meal and rest period premiums, and
21 that Defendants had the financial ability to pay such compensation, but willfully, knowingly,
22 recklessly, and/or intentionally failed to do so in part because of the above-specified violations.

23 38. Upon information and belief, Defendants knew and or should have known that it is
24 improper to implement policies and commit unlawful acts such as:

25 (a) requiring employees to work four (4) hours or a major fraction thereof without
26 being provided a minimum ten (10) minute rest period and without compensating the employees
27 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
28 rest period was not provided;

1 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day
2 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
3 and without compensating employees with one (1) hour of pay at the regular rate of compensation
4 for each workday that such a meal period was not provided;

5 (c) failing to pay overtime and minimum wages;

6 (d) failing to provide accurate itemized wage statements;

7 (e) failing to timely pay Plaintiff and Aggrieved Employees.

8 39. In addition to the violations above, and on information and belief, Defendants knew
9 they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted
10 herein, and that Defendants had the financial ability to pay such compensation, but willfully,
11 knowingly, recklessly, and/or intentionally failed to do so.

12 **V. REPRESENTATIVE CLAIMS**

13 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.**

14 40. Plaintiff incorporates by reference and re-alleges each and every allegation
15 contained above, as though fully set forth herein.

16 41. On or about January 26, 2022, Plaintiff complied with notice requirements pursuant
17 to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit**
18 **A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and
19 that the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not
20 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
21 representative capacity. The substance and violations set forth in this Complaint of which the
22 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
23 Action Complaint to the LWDA.

24 42. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
25 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
26 Employees of Defendants.

27 43. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
28 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,

1 including without limitation Labor Code section 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174,
2 1174.5, 1175, 1194, 1197, 1197.1, 1198, and 2698 *et seq.*, applicable IWC Wage Orders and
3 California Code of Regulations, Title 8, section 11000 *et seq.*

4 44. At all times relevant, Plaintiff and all other aggrieved employees regularly
5 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
6 rest break requirements of the applicable IWC wage order and the Labor Code.

7 45. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
8 accurately pay at least minimum wages due as a result of Defendants' failure to pay Plaintiff and
9 Aggrieved Employees for mandatory training that was conducted off-the-clock.

10 46. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
11 overtime wages owed as discussed above due to Defendants' failure to incorporate bonuses and
12 other forms of remuneration as described above into the regular rate of pay for overtime
13 calculation purposes. Defendants further failed to accurately pay overtime wages due to
14 Defendants' failure to pay Plaintiff and Aggrieved Employees for mandatory training that was
15 conducted off-the-clock. Therefore, Defendants violated section 510, and 1194 by not
16 compensating its Non-Exempt Employees for work performed in excess of eight hours (8) in a day
17 or forty hours in a work week (40). Section 510 of the Labor Code codifies the right to overtime
18 compensation at the rate of one and one-half times the regular rate of pay for all hours worked in
19 excess of eight (8) hours in a day or forty (40) hours in a work week and to overtime
20 compensation twice the regular rate of pay for hours worked in excess of twelve (12) hours in a
21 day or in excess of eight (8) hours in a day on the seventh day of work in a particular work week.

22 47. Defendants failed to provide Plaintiff and all other aggrieved employees
23 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented
24 and enforced policies of on duty meal period practices which required employees to work during
25 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior
26 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,
27 Plaintiff and all other aggrieved employees have been damaged in an amount according to proof at
28 time of trial.

1 48. Plaintiff, and on information and belief, all aggrieved employees, were
2 systematically not permitted or authorized to take ten minute rest periods for every four hours
3 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
4 Plaintiff and on information and belief, aggrieved employees, were not compensated with one
5 hour of wages for every day in which a rest period was missed or untimely as a result of
6 Defendants' policies, practices, or work demands. By failing to authorize and permit a ten-minute
7 rest period for every four hours or major fraction thereof worked per day by its Non-Exempt
8 Employees, and by failing to provide compensation for such non-provided or shortened rest
9 periods, as alleged above, Defendants willfully violated the provisions of Labor Code sections
10 226.7, 512 and the applicable IWC Wage Order.

11 49. Defendants also willfully violated Labor Code sections 201-203 by failing to
12 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
13 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
14 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an
15 employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay
16 the subject employee's wages until the back wages are paid in full or an action is commenced. The
17 penalty cannot exceed 30 days of wages.

18 50. Plaintiff and all other aggrieved employees who were separated from employment
19 are entitled to compensation for all forms of wages earned, including but not limited to
20 compensation regular and overtime wages, and for non-provided meal and rest periods, but to date
21 have not received such compensation, therefore entitling them to penalties under PAGA for
22 violations of Labor Code sections 201-203.

23 51. On information and belief, Defendants willfully failed to pay all wages due and
24 owing upon separation from employment. These wages include regular and overtime wages, and
25 meal and rest period premiums.

26 52. On information and belief, Defendants failed to provide accurate itemized wage
27 statements which failed to include the rate of pay and total hours worked per pay period, failed to
28 account for all hours worked, including overtime, and lastly the accurate accounting of, the lawful

1 meal and rest period premiums due and owing to Plaintiff and the aggrieved employees, pursuant
2 to Labor Code section 226(a).

3 53. Defendants have failed to provide Plaintiff and Aggrieved Employees rates of pay
4 and the hours for which they worked for any given pay period.

5 54. Defendants have failed to accurately record all time worked.

6 55. Defendants have also failed to accurately record the meal and rest period premiums
7 owed and all wages owed per pay period.

8 56. Plaintiff and Aggrieved Employees have been injured as they were unable to
9 determine whether they had been paid correctly for all hours worked per pay period among other
10 things

11 57. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
12 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
13 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
14 for each violation in a subsequent citation, for which the employer fails to provide the employee a
15 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

16 58. Additionally, Defendants have no accurate records relating to aggrieved
17 employees' work periods, meal periods, total daily hours worked, total hours worked per payroll
18 period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to
19 maintain accurate records relating to hours worked daily in violation of Labor Code sections
20 1174(d), 1174.5.

21 59. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees
22 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
23 worked.

24 60. Plaintiff and the Representative Aggrieved Employees are entitled to recover
25 Penalties and attorneys' fees and costs under Labor Code section 2698, et seq.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

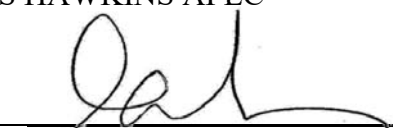
28 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;

1 2. For reasonable attorneys' fees and costs; and

2 3. For such other and further relief as the Court deems proper.

3 Dated: January 26, 2022

JAMES HAWKINS APLC

4
5 By: 

JAMES R. HAWKINS, ESQ.

GREGORY MAURO, ESQ.

MICHAEL CALVO, ESQ.

Attorneys for Plaintiff BENITO III UY, on
behalf of the general public as private attorney
general