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on behalf of himself and current and former aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

BRIAN DEAN DUNCAN, on behalf of himself
and other aggrieved employees,

Plaintiff,

vs.

PACIFICA FOODS LLC; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: **CVRI 2302154**

PAGA ACTION

**PLAINTIFF BRIAN DEAN
DUNCAN'S COMPLAINT FOR:**

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

COMES NOW Plaintiff BRIAN DEAN DUNCAN ("Plaintiff"), who alleges and
complains against Defendants PACIFICA FOODS LLC; 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 minimum wage and all overtime hours worked at the overtime rate of pay; failure

1 to pay overtime wages at the proper overtime rate of pay; failure to authorize or permit all legally
2 required and compliant meal periods or pay meal period premium wages; failure to pay meal
3 break premium wages at the proper rate of pay; failure to authorize or permit all legally required
4 and compliant rest periods or pay rest period premium wages; failure to pay rest break premium
5 wages at the proper rate of pay; statutory penalties for failure to provide accurate wage statements.
6 Plaintiff seeks on a representative basis, following notice to the Labor and Workforce
7 Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor Code section
8 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

9 **II. JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
11 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
12 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
13 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
14 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
15 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
16 aggrieved California-based hourly non-exempt employees occurred in locations throughout
17 California, including but not limited to Riverside County, at 1851 N. Delilah St., Corona, CA
18 92879.

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

23 **III. PARTIES**

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

1 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
2 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
3 employed by Defendants in an hourly position at Defendants' location in Riverside from in or
4 around July 11, 2022, to present.

5 5. Plaintiff is informed and believes and thereon alleges that Defendant PACIFICA
6 FOODS, LLC is authorized to do business within the State of California and is doing business in
7 the State of California and/or that Defendants DOES 1-50 are, and at all times relevant hereto
8 were persons acting on behalf of Defendant PACIFICA FOODS, LLC in the establishment of, or
9 ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
10 PACIFICA FOODS, LLC operates in Riverside County and employed Plaintiff and aggrieved
11 employees in Riverside County, including but not limited to, at 1851 N. Delilah St., Corona, CA
12 92879.

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 204,
12 226, 226.7, 510, 512, 1194, 1197, 1198, and the applicable Wage Orders.

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

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

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

24 15. In this case, Plaintiff and other current and former aggrieved California-based
25 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
26 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
27 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
28 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but

not limited to:

(a) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to remain on-duty while off-the-clock during meal breaks; and/or

(b) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to work off-the-clock.

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

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

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

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

Labor Code section 510.

19. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours

1 worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

2 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
3 non-exempt employees to remain on-duty while off-the-clock during meal breaks; and/or

4 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
5 non-exempt employees to work off-the-clock.

6 20. In addition, even though California law requires employers to include all
7 remuneration as part of the regular rate of pay for determining overtime premium pay, Defendants
8 failed to include all remuneration including, but not limited to, for example, "night premium"
9 wages in the regular rate of pay for purposes of calculating and paying overtime wages.

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

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

22 23. California law requires an employer to authorize or permit an employee an
23 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
24 all duties and the employer relinquishes control over the employee's activities prior to the
25 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 1 at §11; *Brinker*
26 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
27 employee for a work period of more than ten (10) hours per day without providing the employee
28 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh

1 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
2 shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal
3 period is only permitted when: (1) the nature of the work prevents an employee from being
4 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

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

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

13 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
14 hourly non-exempt employees with timely, uninterrupted, duty-free 30-minute meal breaks.

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

21 27. Finally, on occasions when Defendants paid Plaintiff and other current and former
22 aggrieved California-based hourly non-exempt employees a “premium” wage for late, missed,
23 short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1)
24 additional hour of pay at Plaintiff and other current and former aggrieved California-based hourly
25 non-exempt employees regular rate of compensation. Specifically, Defendants maintained a
26 policy, practice, and/or procedure of failing to include all remuneration including, but limited to,
27 for example, “night premium” wages in the regular rate of compensation for purposes calculating
28 and paying meal break premium wages.

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

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

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

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

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

28 (a) Failing to provide Plaintiff and other current and former aggrieved California-based

1 hourly non-exempt employees with timely, uninterrupted, duty-free 10-minute rest breaks.

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

7 34. Finally, on occasions when Defendants did pay Plaintiff and other current and
8 former aggrieved California-based hourly non-exempt employees a “premium” wage for late,
9 missed, short, on-premise, on-duty, and/or interrupted rest periods, Defendants failed to pay the
10 one (1) additional hour of pay at Plaintiff and other current and former aggrieved California-based
11 hourly non-exempt employees regular rate of compensation. Specifically, Defendants maintained a
12 policy, practice, and/or procedure of failing to include all remuneration including, but limited to,
13 for example, “night premium” wages in the regular rate of compensation for purposes calculating
14 and paying rest break premium wages.

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

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

28 37. As a derivative of Plaintiff’s claims above, Plaintiff alleges that Defendants failed

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

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

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

26 **40.** Defendants' violations of Wage Order 1 constituted violations of Labor Code
27 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

28 **41.** Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved

1 employee, on behalf of himself or herself and other current or former employees, to bring a civil
2 action to recover civil penalties against all Defendants pursuant to the procedures specified in
3 Labor Code section 2699.3.

4 42. Plaintiff has complied with the procedures for bringing suit specified in Labor
5 Code section 2699.3. On February 21, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA
6 and provided notice to Defendants by certified mail which provided notice of the specific
7 provisions of the Labor Code alleged to have been violated, including the facts and theories to
8 support the violations alleged.

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

14 44. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
15 penalties for Defendants' violations of Labor Code sections 204, 226, 226.7, 510, 512, 1194,
16 1197, 1198, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to
17 the LWDA to the present, in the following amounts:

18 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, 1198,
19 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
20 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
21 violation [penalty amounts established by Labor Code section 2699(f)(2)].

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

26 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
27 employee for each pay period for the initial violation, and for each subsequent violation, one
28 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts

1 established by Labor Code section 558] and any unpaid wages.

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

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

8 **PRAYER FOR RELIEF**

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

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

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

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

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

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

21
22
23 Dated: April 28, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

24
25 By: 

26 Joseph Lavi, Esq.
27 Vincent C. Granberry, Esq.
28 Danielle E. Montero, Esq.
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