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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JOSE GARCIA VALLE, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

PACIFIC SHELLFISH, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: 37-2021-00021898-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT:**

- (1) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (2) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**

**(6) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200 *et seq.*);**

**(7) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT
[LABOR CODE §§ 2698 ET SEQ.**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

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1 Plaintiff Jose Garcia Valle (hereinafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, hereby brings this Class Action Complaint (“Complaint”) against Pacific
3 Shellfish, Inc., a California corporation; and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
9 1197, 1198, and Industrial Welfare Commission Wage Order 7 (“Wage Order 7”), in addition to
10 seeking declaratory relief and restitution. This Complaint is brought pursuant to California Code
11 of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California
12 Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to California Code of Civil
15 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
16 occurred in the County of San Diego. Defendants own, maintain offices, transact business, have
17 an agent or agents within the County of San Diego and/or otherwise are found within the County
18 of San Diego, and Defendants are within the jurisdiction of this Court for purposes of service of
19 process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. Since December 2011 and within the statute
23 of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by
24 Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants’ policies
25 and/or practices complained of herein, lost money and/or property, and has been deprived of the
26 rights guaranteed by Labor Code §§ 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
27 1197, 1198; California Business and Professions Code § 17200 *et seq.*; and Wage Order 7, which
28 sets employment standards for the mercantile industry.

1 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants do
2 business by distributing seafood across Southern California and employed Plaintiff and similarly-
3 situated non-exempt employees within San Diego and the state of California and, therefore, were
4 (and are) doing business in San Diego County and the State of California.

5 5. Plaintiff does not know the true names or capacities, whether individual, partner,
6 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
7 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
8 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
9 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
10 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
11 and proximately caused Plaintiff and the Classes (as defined in Paragraph 13) to be subject to the
12 unlawful employment practices, wrongs, injuries, and damages complained of herein.

13 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
14 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

15 7. At all times mentioned herein, Defendants, and each of them, were members of
16 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
17 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
18 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
19 members of the Classes.

20 **GENERAL FACTUAL ALLEGATIONS**

21 8. Plaintiff began working for Defendants in approximately December 2011 as a
22 Food Prepper. Plaintiff still works for Defendants, but has been out on medical leave since
23 approximately September 2020.

24 9. During Plaintiff's employment he only clocked in for the beginning of his shift
25 and out for the end of his shift, but he did not clock out for meal periods. On information and
26 belief, Defendants automatically deducted 30 minutes from Plaintiff's and other non-exempt
27 employee's timekeeping records, even when they were not provided with all legally required meal
28 periods. Specifically, Defendants' meal period policies/practices have systemically failed to

1 provide Plaintiff and other non-exempt employees with a 30-minute meal period commencing
2 before the conclusion of the fifth hour of work. Plaintiff was also not provided with a second
3 meal period for shifts longer than 10.0 hours. On those occasions when Plaintiff was not provided
4 with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate
5 Plaintiff with the required meal period premium for each workday in which he experienced a meal
6 period violation as mandated by Labor Code § 226.7. Further, upon information and belief during
7 at least a portion of the class period, Defendants maintained no payroll code or other mechanism
8 for the payment of meal period premium payments under Labor Code § 226.7 in the event that a
9 legally compliant meal period was not provided to their non-exempt employees.

10 10. In addition to failing to provide legally compliant meal periods, Defendants' meal
11 period policies/practices that automatically deducted 30 minutes from employees' timekeeping
12 records resulted in Defendants' failure to pay Plaintiff and other non-exempt employees all
13 minimum and overtime wages owed, as this automatic deduction practice resulted in their actual
14 working hours to be understated.

15 11. Defendants also fail to authorize and permit Plaintiff and other non-exempt
16 employees to take all required duty-free rest periods because the nature of the work being
17 performed by Plaintiff and other non-exempt employees does not permit for duty-free rest periods.
18 Despite Defendants' failure to provide Plaintiff and other non-exempt employees with all rest
19 periods to which they are legally entitled, Defendants do not provide Plaintiff and other non-
20 exempt employees with an hour of pay at their regular rate for each rest period violation as
21 required by Labor Code 226.7.

22 12. As a result of Defendants' failure to pay all minimum and overtime wages, and
23 meal and rest period premium wages, Defendants maintained inaccurate payroll records and
24 issued inaccurate wage statements to Plaintiff and other non-exempt employees.

25 **CLASS ACTION ALLEGATIONS**

26 13. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
27 following Classes pursuant to § 382 of the Code of Civil Procedure:

28 a. The Overtime Class consists of all of Defendants' current and former non-exempt

employees in California who were subject to Defendants' timekeeping policies and/or practices and worked in excess of 8 hours per workday and/or 40 hours per workweek, during the four years immediately preceding the filing of the Complaint through the present.

b. The Minimum Wage Class consists of all Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of the Complaint through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, during the four years immediately preceding the filing of the Complaint through the present.

d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours during the four years immediately preceding the filing of the Complaint through the present.

e. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who received a wage statement from Defendants during the one year immediately preceding the filing of the Complaint.

14. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of each of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

15. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members

including, without limitation to:

- i. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to the overtime laws of the State of California;
- ii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 1182.12, 1194, 1194.2 and 1197 by failing to pay all members of the Minimum Wage Class at least the minimum wage for all hours worked;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and

16. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

17. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned minimum and overtime wages, was not provided all required meal and rest periods, and did not receive meal and rest period premium wages.

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1 18. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
2 to represent fairly and adequately the interests of the members of the Classes. Moreover,
3 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
4 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
5 and-hour class actions in state and federal courts in the past and are committed to vigorously
6 prosecuting this action on behalf of the members of the Classes.

7 19. **Superiority:** The California Labor Code is broadly remedial in nature and serves
8 an important public interest in establishing minimum working conditions and standards in
9 California. These laws and labor standards protect the average working employee from
10 exploitation by employers who have the responsibility to follow the laws and who may seek to
11 take advantage of superior economic and bargaining power in setting onerous terms and
12 conditions of employment. The nature of this action and the format of laws available to Plaintiff
13 and members of the Classes make the class action format a particularly efficient and appropriate
14 procedure to redress the violations alleged herein. If each employee were required to file an
15 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
16 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
17 their vastly superior financial and legal resources. Moreover, requiring each member of the
18 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
19 employees who would be disinclined to file an action against their former and/or current employer
20 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
21 employment. Further, the prosecution of separate actions by the individual class members, even
22 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
23 with respect to the individual class members against Defendants herein; and which would
24 establish potentially incompatible standards of conduct for Defendants; and/or legal
25 determinations with respect to individual class members which would, as a practical matter, be
26 dispositive of the interest of the other class members not parties to adjudications or which would
27 substantially impair or impede the ability of the class members to protect their interests. Further,
28 the claims of the individual members of the Class are not sufficiently large to warrant vigorous

individual prosecution considering all of the concomitant costs and expenses attending thereto.
As such, the Classes are maintainable as classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

20. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to all overtime wages and compensation for hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

22. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked pursuant to Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of eight hours per workday and/or in excess of forty hours of work in the workweek. Wage Order 7, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and members of the Overtime Class to work overtime hours, but did not compensate Plaintiff or members of the Overtime Class at one and one half times (or two times) their regular rate of pay for such hours.

23. Defendants’ policy/practice of requiring overtime work and not paying at the proper overtime rates for said work violates Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Wage Order 7.

24. The foregoing policies/practices alleged herein are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil penalties, attorneys’ fees, and costs of suit according to Labor Code §§ 204, 210, 216, 510, 558, 1194, and

1 1198; and Code of Civil Procedure § 1021.5.

2 **SECOND CAUSE OF ACTION**

3 **MINIMUM WAGE VIOLATIONS**

4 **(AGAINST ALL DEFENDANTS)**

5 25. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

6 26. Wage Order 7, § 4 and Labor Code §§ 1197 and 1182.12 establish the right of
7 employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor
8 Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
9 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
10 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
11 wages and interest thereon. At all relevant times herein, Defendants failed to conform their pay
12 practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum
13 Wage Class for all hours worked, including, but not limited to, all hours they were subject to
14 Defendants' control and/or were suffered or permitted to work under the Labor Code and Wage
15 Order 7.

16 27. California Labor Code § 1198 makes unlawful the employment of an employee
17 under conditions that the Industrial Welfare Commission prohibits. California Labor Code §§
18 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal
19 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well
20 as liquidated damages in an amount equal to the wages due and interest thereon.

21 28. As a direct and proximate result of Defendants' unlawful conduct as alleged
22 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
23 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
24 entitled to recover economic and statutory damages and penalties and other appropriate relief as
25 a result of Defendants' violations of the California Labor Code and Wage Order 7.

26 29. Defendants' practice and uniform administration of corporate policy regarding
27 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
28 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,

1 liquidated damages, including interest thereon, statutory penalties, civil penalties, attorneys' fees,
2 and costs of suit according to California Labor Code §§ 204, 210, 216, 1194 *et seq.*, and 1198;
3 and Code of Civil Procedure § 1021.5.

4 30. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and
5 members of the Minimum Wage Class seek penalties pursuant to the Wage Order 7, § 20(A)
6 and California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and
7 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code
8 § 1194.2; attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and
9 damages and/or penalties pursuant to California Labor Code § 558(a).

10 **THIRD CAUSE OF ACTION**

11 **MEAL PERIOD VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

13 31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 failed in their affirmative obligation to provide all of their non-exempt employees in California,
16 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
17 in accordance with the mandates of the Labor Code and Wage Order 7, § 11. As alleged herein,
18 Defendants failed to provide Plaintiff and members of the Meal Period Class with legally
19 compliant first meal periods on shifts of more than 5.0 hours, and legally compliant second meal
20 periods on shifts of more than 10.0 hours.

21 33. As a result, Defendants are responsible for the unpaid amount of meal period
22 premiums owing, including interest thereon, pursuant to Labor Code §§ 226.7, 512, 516, 558, and
23 Civil Code §§ 3287(b) and 3289.

24 **FOURTH CAUSE OF ACTION**

25 **REST PERIOD VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

27 34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 35. Wage Order 7, § 12 and Labor Code §§ 226.7 and 516 establish the right of

1 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
2 period worked, or major fraction thereof.

3 36. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
4 of the Rest Period Class to take all required rest periods.

5 37. The foregoing violations create an entitlement to recovery by Plaintiff and
6 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
7 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
8 to Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

9 **FIFTH CAUSE OF ACTION**

10 **WAGE STATEMENT VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

12 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
15 and the Wage Statement Class with accurate and complete itemized wage statements that
16 included, among other requirements all minimum and overtime wages, and meal and rest period
17 premium wages in violation of Labor Code § 226.

18 40. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
19 with complete and accurate itemized wage statements resulted in actual injury, as said failures led
20 to, among other things, the non-payment of all their meal and rest period premium wages, and
21 deprived them of the information necessary to identify the discrepancies in Defendants' reported
22 data.

23 41. Defendants' failures create an entitlement to recovery by Plaintiff and members of
24 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
25 Code § 226, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of
26 suit according to California Labor Code §§ 226 and 226.

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1 **SIXTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

4 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 43. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of Business and Professions Code § 17200 *et seq.*, by
7 failing to properly pay all overtime wages and minimum wages, failing to provide all required
8 meal periods, failing to authorize and permit all required rest periods, and failing to timely pay
9 all final wages to employees upon separation of employment. The acts complained of herein have
10 occurred during the four years immediately preceding the filing of the Complaint through the
11 present.

12 44. Defendants' utilization of these unfair and/or unlawful business practices deprived
13 Plaintiff and continues to deprive members of the Classes of compensation to which they are
14 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
15 over Defendants' competitors who have been and/or are currently employing workers and
16 attempting to do so in honest compliance with applicable wage and hour laws.

17 45. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
18 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
19 monies, as necessary and according to proof, to restore any and all monies withheld, acquired,
20 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

21 46. Plaintiff was compelled to retain the services of counsel to file this court action to
22 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
23 of Defendants' current non-exempt employees, and to enforce important rights affecting the
24 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
25 which he is entitled to recover under Code of Civil Procedure § 1021.5.

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1 **SEVENTH CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **LABOR CODE §§ 2698 ET SEQ.**

4 **(AGAINST ALL DEFENDANTS)**

5 47. Plaintiff realleges and incorporates by this reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

7 48. PAGA is a mechanism by which the State of California itself can enforce state
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
9 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
10 fundamentally a law enforcement action designed to protect the public and not to benefit private
11 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
12 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
13 PAGA, the California Legislature specified that "it was ... in the public interest to allow
14 aggrieved employees, acting as private attorneys general to recover civil penalties for Labor
15 Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to
16 arbitration.

17 49. Plaintiff brings this Representative Action on behalf of the State of California
18 with respect to himself and all other current and former non-exempt employees employed by
19 Defendants during the time period of April 6, 2021 to July 5, 2022 (the AGGRIEVED
20 EMPLOYEES”).

21 50. At all relevant times, for the reasons described herein, and others, Plaintiff and
22 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the
23 meaning of Labor Code Section 2699(c).

24 51. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
25 like Plaintiff, on behalf of himself and other current or former employees, to bring a civil action
26 to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

27 52. Plaintiff complied with the procedures for bringing suit specified in Labor Code
28 Section 2699.3. By certified letter, return receipt requested, dated August 10, 2022, Plaintiff

gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. (See Exhibit #1.)

53. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA with notice of DEFENDANT’S violations, the LWDA has not provided any notice by certified mail of its intent to investigate the Defendants alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, Plaintiff may commence and is authorized to pursue this cause of action.

54. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiffs and the AGGRIEVED EMPLOYEES are entitled to civil penalties for Defendants violations of Labor Code Section 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198 in the following amounts:

a. For violation of Labor Code Sections 204, one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a

1 civil penalty in the amount of fifty dollars (\$50) for each underpaid
2 AGGRIEVED EMPLOYEE for the initial violation and hundred
3 dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for
4 each subsequent violation [penalty per Labor Code Section 558];

5 e. For violations of Labor Code Section 2269(a), a civil penalty
6 in the amount of two hundred fifty dollars (\$250) per AGGRIEVED
7 EMPLOYEE per violation in an initial citation and one thousand
8 dollars (\$1,000) per AGGRIEVED EMPLOYEE for each
9 subsequent violation [penalty per Labor Code Section 226.3];

10 f. For violations of Labor Code Sections 1194, 1194.2, 1197, a
11 civil penalty in the amount of one hundred dollars (\$100) per
12 AGGRIEVED EMPLOYEE per pay period for the initial violation
13 and two hundred dollars fifty (\$250) per AGGRIEVED
14 EMPLOYEE per pay period for each subsequent violation [penalty
15 per Labor Code Section].

16 55. For all provisions of the Labor Code for which civil penalty is not specifically
17 provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100)
18 for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred
19 dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent
20 violation. Plaintiff and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable
21 attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor
22 Code Section 2699(g)(1).

23 56. To the extent that any of the conduct and violations alleged herein did not affect
24 Plaintiff during the period of April 6, 2021 to July 5, 2022, Plaintiff seeks penalties for those
25 violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.*
26 (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018)
27 23 Cal. App. 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at
28 least one Labor Code violation committed by an employer—to pursue penalties for all the Labor

Code violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, 516 and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226;
9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business & Professions Code § 17200 *et seq.*;
10. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;
11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;
12. On all causes of action, for attorneys’ fees and costs as provided by Labor Code §

1 1194 *et seq.*, and Code of Civil Procedure § 1021.5; and

2 13. For such other and further relief the Court may deem just and proper.

3
4 Dated: December 9, 2022

Respectfully submitted,
JCL LAW FIRM, APC

5
6 By:



Jean-Claude Lapuyade
Attorneys for Plaintiff

7
8
9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

11
12 Dated: December 9, 2022

Respectfully submitted,
JCL LAW FIRM, APC

13
14
15 By:



Jean-Claude Lapuyade
Attorneys for Plaintiff

EXHIBIT 1



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August 10, 2022

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

PACIFIC SHELLFISH, INC.

c/o Judd Brown
5040 Cass Street
San Diego, CA 92109

Sent via Certified Mail and Return Receipt 7022 0410 0001 5846 7407

Re: Notice of Violations of California Labor Code Sections 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff JOSE GARCIA VALLE (“Plaintiff”), and other aggrieved employees in a lawsuit against Defendant PACIFIC SHELLFISH, INC. (“Defendant”). Plaintiff has been employed by Defendant in California since 2011 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant in California during the relevant claim period.

A true and correct copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged

violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

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Attorneys for Plaintiff
(additional counsel listed on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JOSE GARCIA VALLE, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

PACIFIC SHELLFISH, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: _____

CLASS ACTION COMPLAINT:

- (1) FAILURE TO PAY ALL OVERTIME WAGES (LABOR CODE §§ 204, 510, 558, 1194, 1198);**
- (2) MINIMUM WAGE VIOLATIONS (LABOR CODE §§ 1182.12, 1194, 1194.2, 1197);**
- (3) MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512, 558);**
- (4) REST PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 516, 558);**
- (5) WAGE STATEMENT VIOLATIONS (LABOR CODE § 226, *et seq.*);**
- (6) UNFAIR COMPETITION (BUS. & PROF. CODE § 17200 *et seq.*);**

**(7) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT
[LABOR CODE §§ 2698 ET SEQ.**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

HAINES LAW GROUP, APC

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Attorneys for Plaintiff

1 Plaintiff Jose Garcia Valle (hereinafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, hereby brings this Class Action Complaint (“Complaint”) against Pacific
3 Shellfish, Inc., a California corporation; and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
9 1197, 1198, and Industrial Welfare Commission Wage Order 7 (“Wage Order 7”), in addition to
10 seeking declaratory relief and restitution. This Complaint is brought pursuant to California Code
11 of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California
12 Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to California Code of Civil
15 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
16 occurred in the County of San Diego. Defendants own, maintain offices, transact business, have
17 an agent or agents within the County of San Diego and/or otherwise are found within the County
18 of San Diego, and Defendants are within the jurisdiction of this Court for purposes of service of
19 process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. Since December 2011 and within the statute
23 of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by
24 Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants’ policies
25 and/or practices complained of herein, lost money and/or property, and has been deprived of the
26 rights guaranteed by Labor Code §§ 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
27 1197, 1198; California Business and Professions Code § 17200 *et seq.*; and Wage Order 7, which
28 sets employment standards for the mercantile industry.

1 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants do
2 business by distributing seafood across Southern California and employed Plaintiff and similarly-
3 situated non-exempt employees within San Diego and the state of California and, therefore, were
4 (and are) doing business in San Diego County and the State of California.

5 5. Plaintiff does not know the true names or capacities, whether individual, partner,
6 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
7 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
8 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
9 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
10 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
11 and proximately caused Plaintiff and the Classes (as defined in Paragraph 13) to be subject to the
12 unlawful employment practices, wrongs, injuries, and damages complained of herein.

13 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
14 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

15 7. At all times mentioned herein, Defendants, and each of them, were members of
16 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
17 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
18 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
19 members of the Classes.

20 **GENERAL FACTUAL ALLEGATIONS**

21 8. Plaintiff began working for Defendants in approximately December 2011 as a
22 Food Prepper. Plaintiff still works for Defendants, but has been out on medical leave since
23 approximately September 2020.

24 9. During Plaintiff's employment he only clocked in for the beginning of his shift
25 and out for the end of his shift, but he did not clock out for meal periods. On information and
26 belief, Defendants automatically deducted 30 minutes from Plaintiff's and other non-exempt
27 employee's timekeeping records, even when they were not provided with all legally required meal
28 periods. Specifically, Defendants' meal period policies/practices have systemically failed to

1 provide Plaintiff and other non-exempt employees with a 30-minute meal period commencing
2 before the conclusion of the fifth hour of work. Plaintiff was also not provided with a second
3 meal period for shifts longer than 10.0 hours. On those occasions when Plaintiff was not provided
4 with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate
5 Plaintiff with the required meal period premium for each workday in which he experienced a meal
6 period violation as mandated by Labor Code § 226.7. Further, upon information and belief during
7 at least a portion of the class period, Defendants maintained no payroll code or other mechanism
8 for the payment of meal period premium payments under Labor Code § 226.7 in the event that a
9 legally compliant meal period was not provided to their non-exempt employees.

10 10. In addition to failing to provide legally compliant meal periods, Defendants' meal
11 period policies/practices that automatically deducted 30 minutes from employees' timekeeping
12 records resulted in Defendants' failure to pay Plaintiff and other non-exempt employees all
13 minimum and overtime wages owed, as this automatic deduction practice resulted in their actual
14 working hours to be understated.

15 11. Defendants also fail to authorize and permit Plaintiff and other non-exempt
16 employees to take all required duty-free rest periods because the nature of the work being
17 performed by Plaintiff and other non-exempt employees does not permit for duty-free rest periods.
18 Despite Defendants' failure to provide Plaintiff and other non-exempt employees with all rest
19 periods to which they are legally entitled, Defendants do not provide Plaintiff and other non-
20 exempt employees with an hour of pay at their regular rate for each rest period violation as
21 required by Labor Code 226.7.

22 12. As a result of Defendants' failure to pay all minimum and overtime wages, and
23 meal and rest period premium wages, Defendants maintained inaccurate payroll records and
24 issued inaccurate wage statements to Plaintiff and other non-exempt employees.

25 **CLASS ACTION ALLEGATIONS**

26 13. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
27 following Classes pursuant to § 382 of the Code of Civil Procedure:

28 a. The Overtime Class consists of all of Defendants' current and former non-exempt

employees in California who were subject to Defendants' timekeeping policies and/or practices and worked in excess of 8 hours per workday and/or 40 hours per workweek, during the four years immediately preceding the filing of the Complaint through the present.

b. The Minimum Wage Class consists of all Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of the Complaint through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, during the four years immediately preceding the filing of the Complaint through the present.

d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours during the four years immediately preceding the filing of the Complaint through the present.

e. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who received a wage statement from Defendants during the one year immediately preceding the filing of the Complaint.

14. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of each of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

15. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members

including, without limitation to:

- i. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to the overtime laws of the State of California;
- ii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 1182.12, 1194, 1194.2 and 1197 by failing to pay all members of the Minimum Wage Class at least the minimum wage for all hours worked;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and

16. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

17. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned minimum and overtime wages, was not provided all required meal and rest periods, and did not receive meal and rest period premium wages.

18. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps

1 to represent fairly and adequately the interests of the members of the Classes. Moreover,
2 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
3 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
4 and-hour class actions in state and federal courts in the past and are committed to vigorously
5 prosecuting this action on behalf of the members of the Classes.

6 19. **Superiority:** The California Labor Code is broadly remedial in nature and serves
7 an important public interest in establishing minimum working conditions and standards in
8 California. These laws and labor standards protect the average working employee from
9 exploitation by employers who have the responsibility to follow the laws and who may seek to
10 take advantage of superior economic and bargaining power in setting onerous terms and
11 conditions of employment. The nature of this action and the format of laws available to Plaintiff
12 and members of the Classes make the class action format a particularly efficient and appropriate
13 procedure to redress the violations alleged herein. If each employee were required to file an
14 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
15 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
16 their vastly superior financial and legal resources. Moreover, requiring each member of the
17 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
18 employees who would be disinclined to file an action against their former and/or current employer
19 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
20 employment. Further, the prosecution of separate actions by the individual class members, even
21 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
22 with respect to the individual class members against Defendants herein; and which would
23 establish potentially incompatible standards of conduct for Defendants; and/or legal
24 determinations with respect to individual class members which would, as a practical matter, be
25 dispositive of the interest of the other class members not parties to adjudications or which would
26 substantially impair or impede the ability of the class members to protect their interests. Further,
27 the claims of the individual members of the Class are not sufficiently large to warrant vigorous
28 individual prosecution considering all of the concomitant costs and expenses attending thereto.

As such, the Classes are maintainable as classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

20. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to all overtime wages and compensation for hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

22. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked pursuant to Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of eight hours per workday and/or in excess of forty hours of work in the workweek. Wage Order 7, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and members of the Overtime Class to work overtime hours, but did not compensate Plaintiff or members of the Overtime Class at one and one half times (or two times) their regular rate of pay for such hours.

23. Defendants’ policy/practice of requiring overtime work and not paying at the proper overtime rates for said work violates Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Wage Order 7.

24. The foregoing policies/practices alleged herein are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil penalties, attorneys’ fees, and costs of suit according to Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

25. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26. Wage Order 7, § 4 and Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked, including, but not limited to, all hours they were subject to Defendants' control and/or were suffered or permitted to work under the Labor Code and Wage Order 7.

27. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the Industrial Welfare Commission prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

28. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 7.

29. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorneys' fees,

and costs of suit according to California Labor Code §§ 204, 210, 216, 1194 *et seq.*, and 1198; and Code of Civil Procedure § 1021.5.

30. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and members of the Minimum Wage Class seek penalties pursuant to the Wage Order 7, § 20(A) and California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages and/or penalties pursuant to California Labor Code § 558(a).

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

32. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the Labor Code and Wage Order 7, § 11. As alleged herein, Defendants failed to provide Plaintiff and members of the Meal Period Class with legally compliant first meal periods on shifts of more than 5.0 hours, and legally compliant second meal periods on shifts of more than 10.0 hours.

33. As a result, Defendants are responsible for the unpaid amount of meal period premiums owing, including interest thereon, pursuant to Labor Code §§ 226.7, 512, 516, 558, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

35. Wage Order 7, § 12 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour

1 period worked, or major fraction thereof.

2 36. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
3 of the Rest Period Class to take all required rest periods.

4 37. The foregoing violations create an entitlement to recovery by Plaintiff and
5 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
6 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
7 to Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

8 **FIFTH CAUSE OF ACTION**

9 **WAGE STATEMENT VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

11 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
14 and the Wage Statement Class with accurate and complete itemized wage statements that
15 included, among other requirements all minimum and overtime wages, and meal and rest period
16 premium wages in violation of Labor Code § 226.

17 40. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
18 with complete and accurate itemized wage statements resulted in actual injury, as said failures led
19 to, among other things, the non-payment of all their meal and rest period premium wages, and
20 deprived them of the information necessary to identify the discrepancies in Defendants' reported
21 data.

22 41. Defendants' failures create an entitlement to recovery by Plaintiff and members of
23 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
24 Code § 226, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of
25 suit according to California Labor Code §§ 226 and 226.

26 **SIXTH CAUSE OF ACTION**

27 **UNFAIR COMPETITION**

28 **(AGAINST ALL DEFENDANTS)**

1 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

2 43. Defendants have engaged and continue to engage in unfair and/or unlawful
3 business practices in California in violation of Business and Professions Code § 17200 *et seq.*, by
4 failing to properly pay all overtime wages and minimum wages, failing to provide all required
5 meal periods, failing to authorize and permit all required rest periods, and failing to timely pay
6 all final wages to employees upon separation of employment. The acts complained of herein have
7 occurred during the four years immediately preceding the filing of the Complaint through the
8 present.

9 44. Defendants' utilization of these unfair and/or unlawful business practices deprived
10 Plaintiff and continues to deprive members of the Classes of compensation to which they are
11 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
12 over Defendants' competitors who have been and/or are currently employing workers and
13 attempting to do so in honest compliance with applicable wage and hour laws.

14 45. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
15 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
16 monies, as necessary and according to proof, to restore any and all monies withheld, acquired,
17 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

18 46. Plaintiff was compelled to retain the services of counsel to file this court action to
19 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
20 of Defendants' current non-exempt employees, and to enforce important rights affecting the
21 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
22 which he is entitled to recover under Code of Civil Procedure § 1021.5.

23 **SEVENTH CAUSE OF ACTION**

24 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

25 **LABOR CODE §§ 2698 ET SEQ.**

26 **(AGAINST ALL DEFENDANTS)**

27 47. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
28 herein, the prior paragraphs of this Complaint.

1 48. PAGA is a mechanism by which the State of California itself can enforce state
2 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
3 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
4 fundamentally a law enforcement action designed to protect the public and not to benefit private
5 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
6 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
7 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
8 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
9 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

10 49. PLAINTIFF, and such persons that may be added from time to time who satisfy
11 the requirements and exhaust the administrative procedures under the Private Attorney General
12 Act, bring this Representative Action on behalf of the State of California with respect to herself
13 and all non-exempt employees who worked for Defendant in California during the time period of
14 April 6, 2021 until the present (the "AGGRIEVED EMPLOYEES").

15 50. On August 10, 2022, PLAINTIFF gave written notice by certified mail to the
16 Labor and Workforce Development Agency (the "Agency") and the employer of the specific
17 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
18 Exhibit #1, attached hereto and incorporated by this reference herein. Pursuant to Section 2699.3,
19 Plaintiff may now commence a representative civil action under PAGA pursuant to Section 2699
20 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
21 defined.

22 51. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because DEFENDANTS (a) failed to pay PLAINTIFF and other
24 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide
25 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)
26 failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES at the correct regular rate of
27 pay, (d) failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked,
28 and (e) failed to timely pay wages, all in violation of the applicable Labor Code sections listed in

1 Labor Code §2699.5, including but not limited to Labor Code §§ 204, 226, 226.7, 510, 512, 516,
2 558, 1182.12, 1194, 1194.2, 1197, 1198, Cal. Bus. & Prof. Code §§17200, 17203 and 17208, and
3 the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result
4 of such conduct. PLAINTIFF hereby seek recovery of civil penalties as prescribed by the Labor
5 Code Private Attorney General Act of 2004 as the representative of the State of California for the
6 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

7 **PRAYER**

8 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
9 this suit is brought against Defendants, as follows:

- 10 1. For an order certifying the proposed Classes;
- 11 2. For an order appointing Plaintiff as representative of the Classes;
- 12 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 13 4. Upon the First Cause of Action, for compensatory, consequential, general and
14 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 15 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
16 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and
17 1197;
- 18 6. Upon the Third Cause of Action, for compensatory, consequential, general and
19 special damages according to proof pursuant to Labor Code §§ 226.7, 512, 516 and 558;
- 20 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
21 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 22 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
23 226;
- 24 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
25 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
26 practices declared by this Court to be in violation of Business & Professions Code § 17200 *et*
27 *seq.*;
- 28 10. On behalf of the State of California and with respect to all AGGRIEVED

1 EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys
2 General Act of 2004;

3 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor
4 Code § 218.6 and Civil Code §§ 3287 and 3289;

5 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
6 1194 *et seq.*, and Code of Civil Procedure § 1021.5; and

7 13. For such other and further relief the Court may deem just and proper.

8
9 Dated: August 10, 2022

Respectfully submitted,
JCL LAW FIRM, APC

10
11 By:



Jean-Claude Lapuyade
Attorneys for Plaintiff

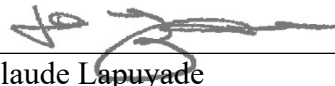
12
13
14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

16
17 Dated: August 10, 2022

Respectfully submitted,
JCL LAW FIRM, APC

18
19
20 By:



Jean-Claude Lapuyade
Attorneys for Plaintiff

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Pacific Shellfish, Inc.
c/o Judd Brown
5040 Cass Street
San Diego, CA 92109



9590 9402 7420 2055 3640 66

2. Article Number (Transfer from service label)

7022 0410 0001 5846 7407

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent☐ Addressee

B. Received by (Printed Name)

N. Lorenz

C. Date of Delivery

8-13-22

D. Is delivery address different from item 1?
If YES, enter delivery address below:☐ Yes☒ No

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