

Hon. Robert S. Lasnik

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THOMAS E. PEREZ<sup>1</sup>, SECRETARY OF LABOR, )  
UNITED STATES DEPARTMENT OF LABOR, )

Case No. 2:13-00877-RSL

Plaintiff, )

v. )

**SECOND AMENDED COMPLAINT**

HUANG "JACKIE" JIE, an individual, ZHAO )  
"JENNY" ZENG HONG, an individual, PACIFIC )  
COAST FOODS, INC., a Washington corporation )  
*doing business as J & J MONGOLIAN GRILL,* )  
and J & J COMFORT ZONE, INC. *doing business* )  
*as SPA THERAPY,* )

Defendants. )

I

Plaintiff brings this action, pursuant to §17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C §201, *et seq.*), hereinafter called the Act or the FLSA, to enjoin Defendants from

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<sup>1</sup> Thomas E. Perez was sworn in as Secretary of Labor on July 23, 2013. Pursuant to FRCP 25(d), the caption has been changed to reflect his appointment.

1 violating the provisions of §§15(a)(2), 15(a)(3), and 15(a)(5) of the Act, 29 U.S.C. §§ 215(a)(2),  
2 215(a)(3) and 215(a)(5). Plaintiff also and separately brings this action, (1) pursuant to §16(c) of the  
3 Act, 29 U.S.C. § 216(c), for the recovery of a Judgment against Defendants for unpaid minimum  
4 wage and overtime compensation due Defendants' employees listed on the attached Exhibit A and  
5 liquidated damages in an amount equal thereto, or, (2) in the event liquidated damages are not  
6 awarded, pursuant to §17 of the Act, 29 U.S.C. § 217, for the recovery of a Judgment restraining  
7 Defendants from withholding payment of minimum wage and overtime compensation due  
8 Defendants' employees, plus pre-judgment interest computed thereon.  
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11 II

12 Jurisdiction of this action is conferred upon the Court by §17 of the Act, 29 U.S.C. § 217, and  
13 by 28 U.S.C. §§1331 and 1345.

14 III

15 (1) Defendant Pacific Coast Foods, Inc. is a Washington corporation which does business  
16 as J & J Mongolian Grill. J & J Mongolian Grill presently does business at the mall known as Bellis  
17 Fair Mall, located in Bellingham, Washington, within the jurisdiction of this court.

18 (a) Defendant Pacific Coast Foods, Inc. is wholly owned by husband and wife  
19 Defendant Huang "Jackie" Jie and Defendant Zhao "Jenny" Zeng Hong.  
20

21 (b) Defendant Pacific Coast Foods, Inc., at all times hereinafter mentioned, has  
22 acted directly or indirectly as an employer in relation to the employees of Defendant Pacific Coast  
23 Foods, Inc., within the meaning of the FLSA section 3(d), 29 U.S.C. 203(d), including to those listed  
24 on Exhibit A. As an employer, among other things, Defendant Pacific Coast Foods, Inc. employed  
25 employees to carry out the business of the corporation, and paid employees with checks bearing the  
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1 corporation's name.

2 (2) Defendant J & J Comfort Zone, Inc. is a Washington corporation which does business  
3 as Spa Therapy. Spa Therapy presently does business at a kiosk location and store location, both  
4 separately inside the mall known as Bellis Fair Mall, located in Bellingham, Washington, within the  
5 jurisdiction of this court. At times hereinafter mentioned, J & J Comfort Zone, Inc. has operated a  
6 business under the name Oriental Massage, Inc. in the Alderwood Mall in Lynnwood, Washington,  
7 within the jurisdiction of this court.  
8

9 (a) Defendant J & J Comfort Zone, Inc. is wholly owned by Defendant Huang  
10 "Jackie" Jie. Defendant Zhao "Jenny" Zeng Hong manages and operates the corporation.  
11

12 (b) Defendant J & J Comfort Zone, Inc., at all times hereinafter mentioned, has  
13 acted directly or indirectly as an employer within the meaning of FLSA section 3(d), 29 U.S.C. §  
14 203(d), in relation to the employees of Defendant J & J Comfort Zone, Inc., including to those listed  
15 on Exhibit A. As an employer, among other things, Defendant J & J Comfort Zone, Inc. employed  
16 employees to carry out the business of the corporation, and paid employees with checks bearing the  
17 corporation's name.  
18

19 (3) Defendant Huang "Jackie" Jie resides in or around Bellingham, Washington, with his  
20 wife, Zhao "Jenny" Zeng Hong, within the jurisdiction of this court.  
21

22 (a) At all times hereinafter mentioned, Defendant Huang "Jackie" Jie has had the  
23 authority to hire and fire employees, set pay rates and pay policies, develop and implement  
24 recordkeeping practices and set and implement employment policies with respect to the employees of  
25 both of the corporate defendants.  
26

27 (b) At all times hereinafter mentioned, Defendant Huang "Jackie" Jie has been  
28

1 primarily responsible for the day to day operations at J&J Mongolian Grill including determining  
2 employees' rate of pay, and method, such as cash, check or a combination of both, by which  
3 employees would be paid and determined which employment records would be created and  
4 maintained.  
5

6 (c) At all times hereinafter mentioned, Defendant Huang "Jackie" Jie has  
7 exercised the authority to hire and fire employees, set pay rates and pay policies, develop and  
8 implement recordkeeping practices and set and implement employment policies at J & J Mongolian  
9 Grill including the decision to pay certain employees a lump sum monthly salary, regardless of the  
10 hours worked, and pay other employees only the tips they received from customers, regardless of the  
11 hours worked.  
12

13 (d) At all times hereinafter mentioned, Defendant Huang "Jackie" Jie has  
14 exercised the authority to hire and fire employees, set pay rates and pay policies, develop and  
15 implement recordkeeping practices and set and implement employment policies at J&J Comfort  
16 Zone, Inc. and Spa Therapy.  
17

18 (e) At all times hereinafter mentioned, Defendant Huang "Jackie" Jie has been an  
19 employer of the employees employed by both of the corporate defendants within the meaning of the  
20 FLSA, 29 U.S.C. § 203(d).  
21

22 (4) Defendant Zhao "Jenny" Zeng Hong resides in or around Bellingham, Washington,  
23 with her husband, Defendant Huang "Jackie" Jie, within the jurisdiction of this court.

24 (a) At all times hereinafter mentioned, Defendant Zhao "Jenny" Zeng Hong has  
25 had the authority to hire and fire employees, set pay rates and pay policies, develop and implement  
26 recordkeeping practices and set and implement employment policies with respect to the employees of  
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1 both of the corporate defendants.

2 (b) At all times hereinafter mentioned, Defendant Zhao “Jenny” Zeng Hong has  
3 been primarily responsible for the day to day operations at Spa Therapy including determining  
4 employees’ rate of pay, and method, such as cash, check or a combination of both, by which  
5 employees would be paid.  
6

7 (c) At all times hereinafter mentioned, Defendant Zhao “Jenny” Zeng Hong has  
8 exercised the authority to hire and fire employees, set pay rates and pay policies, develop and  
9 implement recordkeeping practices and set and implement employment policies at Spa Therapy,  
10 including the decision to pay them on a commission-only basis, regardless of the number of hours  
11 worked per workweek.  
12

13 (d) At times hereinafter mentioned, Defendant Zhao “Jenny” Zeng Hong has  
14 exercised the authority to hire and fire employees, set pay rates and pay policies, develop and  
15 implement recordkeeping practices and set and implement employment policies at J & J Mongolian  
16 Grill.  
17

18 (e) At all times hereinafter mentioned, Defendant Zhao “Jenny” Zeng Hong has  
19 been an employer of the employees employed by both of the corporate defendants within the meaning  
20 of the FLSA, 29 U.S.C. § 203(d).  
21

22 IV

23 (1) At all times hereinafter mentioned, Defendants have employed and are employing,  
24 employees in and about their aforesaid places of business in receiving, preparing, storing, handling,  
25 and selling goods and materials which have been transported, shipped, or delivered from points  
26 outside the State of Washington.  
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1 (a) Employees of J & J Mongolian Grill receive, store, prepare, handle and sell  
2 food products, condiments, and similar food-related goods that are shipped from out of state and/or  
3 internationally.

4 (b) Employees of Spa Therapy receive, store, prepare, handle and use items which  
5 have been transported, shipped, and delivered from points outside the State of Washington and  
6 internationally.

7 (c) Employees of both facilities transact payments, including credit card payments,  
8 which are processed from points outside the State of Washington, such as Citibank credit cards which  
9 are processed in South Dakota, and Capital One credit cards which are processed in Utah. Said  
10 employees, by reason of their activities as aforesaid, were and are engaged in commerce, and in the  
11 production of goods for commerce, within the meaning of the Act.  
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14 V

15 At all times hereinafter mentioned, the activities of Defendants (referred to in paragraph III,  
16 IV and V above) were and are related and performed through unified operation or common control  
17 for a common business purpose.  
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19 (1) Defendant Huang “Jackie” Jie regularly manages J & J Mongolian Grill on a daily  
20 basis including by directly supervising each employee and the food product being delivered, but also  
21 manages Spa Therapy by directing employees to perform certain employment-related tasks and sets  
22 employment policies for all employees such as hours of work, rate of pay.  
23

24 (2) Defendant Zhao “Jenny” Zeng Hong regularly manages Spa Therapy on a daily basis  
25 but also manages J & J Mongolian Grill including by directing employee’s work, requiring that  
26 specific goods and supplies be ordered, and setting employment policies for employees in  
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1 conjunction with Huang “Jackie” Jie, such as hours of work and rate of pay, and employment records  
2 to be kept.

3 (3) Goods and supplies purchased by Spa Therapy are used by J & J Mongolian Grill.

4 (4) Defendants Huang “Jackie” Jie and Zhao “Jenny” Zeng Hong exercise unified  
5 operation or common control over J & J Mongolian Grill and Spa Therapy by directing, restricting,  
6 governing and administering the activities of both establishments.  
7

8 (5) J & J Mongolian Grill is a service establishment providing food in the form of sit  
9 down meals for customers in the Bellis Fair Mall. Spa Therapy is a service establishment providing  
10 massage services for customers in the Bellis Fair Mall from a non-store kiosk and from a store salon.  
11 The activities performed for the furtherance of the J & J Mongolian Grill and Spa Therapy are related  
12 activities performed for a common business purpose.  
13

14 (6) At all times hereinafter mentioned, Defendants were engaged in the operation of an  
15 enterprise whose annual gross volume of sales made or business done is not less than \$500,000  
16 (exclusive of sales taxes at the retail level stated separately) for all of the time period covered by this  
17 Complaint. As such, Defendants constitute an enterprise engaged in commerce or the production of  
18 goods for commerce within the meaning of §3(s)(A)(ii) of the Act, 29 U.S.C. § 203(s)(A)(ii).  
19

20 VI

21 (1) Defendants have willfully and repeatedly violated and continue to violate the  
22 provisions of §§6 and 15(a)(2) of the Act, 29 U.S.C. §§ 206 and 215(a)(2), by employing many of  
23 their employees engaged in commerce or in the production of goods for commerce, or employed in an  
24 enterprise engaged in commerce or in the production of goods for commerce at wages less than the  
25 applicable minimum hourly wage including:  
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1 (a) Employees were paid a lump sum regardless of the number of hours worked. J  
2 & J Mongolian Grill employees received a monthly salary, which, when divided by the number of  
3 hours worked, is insufficient to satisfy the federal minimum wage rate.

4 (b) Spa Therapy employees received a lump sum per day worked which was  
5 comprised by dividing the tips received by all employees for each day. When the amount provided  
6 to each employee is divided by the number of hours each employee worked, the resulting wage rate is  
7 insufficient to satisfy the federal minimum wage rate. Some Spa Therapy employees received a day  
8 rate. This day rate, when divided by the number of hours worked, is insufficient to satisfy the federal  
9 minimum wage rate.  
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12 VII

13 (1) Defendants have willfully and repeatedly violated and continue to violate the  
14 provisions of §§7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207, 215(a)(2), by employing their employees  
15 engaged in commerce or in the production of goods for commerce, or in an enterprise engaged in  
16 commerce or in the production of goods for commerce, for workweeks longer than forty (40) hours  
17 without compensating said employees for all their employment in excess of 40 hours in such work  
18 weeks at rates not less than one and one-half the regular rates at which they were employed including:  
19

20 (a) J & J Mongolian Grill employees were paid a lump sum regardless of the  
21 number of hours worked and without payment of the overtime premium.  
22

23 (b) Spa Therapy employees were paid a lump sum regardless of the number of  
24 hours worked and without payment of the overtime premium.  
25

26 VIII

27 Defendants, employers subject to the Act, have willfully and repeatedly violated and continue  
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1 to violate the provisions of §§11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), by  
2 failing to maintain, keep, make available (to authorized agents of Plaintiff for inspection,  
3 transcription, and/or copying), and preserve accurate records of all employees and of the wages,  
4 hours, and other conditions and practices of employment maintained, as prescribed by the regulations  
5 promulgated by Plaintiff pursuant to the authority granted in the Act and published in the Federal  
6 Register and known as Title 29, Code of Federal Regulations, Part 516 including:  
7

8 (a) Defendants failed to keep and maintain, *inter alia*, records of the times of day  
9 worked by employees, the hours worked each day, the hours worked each week, the hours over forty  
10 worked in a workweek, and employees' contact information. Records maintained by Defendants do  
11 not accurately show the actual hours of day and hours per week any employee worked, nor are there  
12 sufficient records to identify the names of all employees who performed work for Defendants during  
13 the time period covered by this Complaint, thereby depriving, interfering with and impeding the  
14 ability of the employees, and derivatively, the Plaintiff, to detect, identify and have notice of the  
15 underpayment of wages due under the Act.  
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18 IX

19 (1) Defendants have willfully and repeatedly violated §15(a)(3) of the Act, 29 U.S.C. §  
20 215(a)(3), by discriminating and/or retaliating against employees based on Defendants' belief that  
21 employees cooperated or communicated with or were planning on cooperating or communicating  
22 with the Plaintiff's investigators, and by retaliating against employees based on Defendants' belief  
23 that employees filed an FLSA complaint, and/or provided statements to the Plaintiff or are ready to  
24 provide statements to, including testimony for, the Plaintiff.  
25

26 (a) Such discrimination includes acts of intimidation, threats to the employees'  
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1 economic livelihood, and threats of physical harm. Defendants have threatened employees with harm,  
2 including threats to call immigration authorities if employees spoke truthfully about their wages and  
3 methods of pay.

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5 X

6 During the relevant time period, from at least January 3, 2010 to the present, Defendants  
7 willfully and repeatedly violated the Act as aforesaid in that Defendants Huang “Jackie” Jie and  
8 Zhao “Jenny” Zeng Hong knew the requirements of the Act and deliberately failed to comply with it.  
9 Defendants knowingly and repeatedly submitted falsified time and/or payroll records to the Plaintiff.  
10 Although Defendants have installed a time clock for some or all of their employees, the time clock  
11 records maintained by Defendants are falsified to show fewer hours worked than employees actually  
12 worked. For work done prior to the installation of the time clock, Defendants maintained handwritten  
13 time records that reflected fewer hours than employees actually worked.

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16 XI

17 During the relevant time period, including from at least January 3, 2010 to the present,  
18 Defendants willfully and repeated violated and continue to violate the aforesaid provisions of the Act.  
19 A judgment which enjoins and restrains such violations and includes the restraint of any withholding  
20 of payment of unpaid minimum wage and overtime compensation found by the court to be due to  
21 present and former employees, including employees whose identities are not presently known, is  
22 expressly authorized by section 17 of the Act, 29 U.S.C. § 217.

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24 XII

25 (1) Pursuant to section 16(c) of the Act, 29 U.S.C. § 216(c), the attached Exhibit A sets  
26 forth the names of each employee presently known to the Plaintiff to whom backwages are owed.  
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1 Plaintiff's investigation disclosed that more persons worked for Defendants during the relevant  
2 statutory period than appear on Defendants' incomplete and inaccurate records. In addition to the  
3 names of present and former employees known to the Plaintiff, the attached Exhibit A includes an  
4 estimate of the additional employees known to have worked for Defendants during the relevant  
5 period whose names are not known, and a designation indicating which employer employed each  
6 employee.  
7

8 WHEREFORE, cause having been shown, Plaintiff prays for a Judgment against Defendants  
9 as follows:

10 (1) For an Order pursuant to §17 of the Act, 29 U.S.C. § 217, permanently enjoining and  
11 restraining Defendants, their officers, agents, servants, employees, and all persons acting in their  
12 behalf and interest from prospectively violating the provisions of §§15(a)(2) and 15(a)(5) of the Act,  
13 29 U.S.C. § 215(a)(2) and 215(a)(5); and  
14

15 (2) For an Order:

16 (a) pursuant to section 16(c) of the Act, 29 U.S.C. § 216(c), finding Defendants  
17 liable for minimum wage and overtime compensation due Defendants' employees for the relevant  
18 time period including from at least January 3, 2010, and liquidated damages in an amount equal to the  
19 unpaid wages, to all of Defendants' employees, including those listed in the attached Exhibit A. The  
20 attached Exhibit A sets forth the names of each employee presently known to the Plaintiff to whom  
21 backwages are owed as well as persons known to have been employed by the Defendants but whose  
22 names are not presently known. Additional unpaid minimum wage and overtime compensation and  
23 liquidated damages may be owed to certain employees presently unknown to Plaintiff for the period  
24 covered by this Complaint.  
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1 (b) In the event liquidated damages are not awarded, pursuant to section 17 of the  
2 Act, 29 U.S.C. § 217, enjoining and restraining the Defendants, their officers, agents, servants,  
3 employees and those persons in active concert of participation to them, from withholding payment of  
4 unpaid minimum wage and overtime found to be due Defendants' employees, and pre-judgment  
5 interest at an appropriate interest rate; and  
6

7 (3) For an Order awarding Plaintiff the fees and costs of this action; and  
8

9 (4) For such other and further relief as may be necessary or appropriate, including  
10 equitable tolling of the applicable three-year statute of limitations to redress interference with, or  
11 delayed detection of, the violations of the Act by the Plaintiff due to defendants' failure to maintain  
12 complete, accurate or full records as required by 29 U.S.C. §§211(c) and 215(a)(5) of the Act, and/or  
13 due to Defendants' acts of intimidation towards employees.  
14

15 DATED this 11th day of September, 2013.  
16

17 M. Patricia Smith  
18 Solicitor of Labor

19 Janet M. Herold  
20 Regional Solicitor

21 Bruce L. Brown  
22 Associate Regional Solicitor

23 Jeannie Gorman  
24 Senior Trial Attorney

25 By:

  
26 **U.S. DEPARTMENT OF LABOR**  
27 **Attorneys for Plaintiff**  
28