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11 Attorneys for Representative Plaintiff(s) *et. al.*

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF MERCED**

14 SHANA WRIGHT individually, and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 WINGANOMICS, INC. d.b.a.
19 WINGSTOP, JASON KHAN, RIGHT
20 SWING, INC. d.b.a. WINGSTOP,
21 WINGMAN AND ASSOCIATES, INC.
22 d.b.a. WINGSTOP, WING OR LOSE,
23 INC. d.b.a. WINGSTOP, ALL I DO IS
24 WING, INC. d.b.a. WINGSTOP,
25 WINGING IS EVERYTHING, INC. d.b.a.
26 WINGSTOP, THE WINGMAN
27 COMPANY d.b.a. WINGSTOP, KING OF
28 THE WING, INC. d.b.a. WINGSTOP,
SPREAD YOUR WINGS, INC. d.b.a.
WINGSTOP, WING LIFE, INC. d.b.a.
WINGSTOP, WINGCRAFT, INC. d.b.a.
WINGSTOP, WINGING IS A HABIT,
INC. d.b.a. WINGSTOP, WINGOLOGY,
INC. d.b.a. WINGSTOP, WING ME
OVER, INC. d.b.a. WINGSTOP, PAUL
CONWAY, AAMIR KHAN, JOHNZEB
KHAN, NAGINA KHAN, NARGIS
KHAN, MICHAEL JAMES RYAN, AND
JAMES TOALand DOES 1 through 100,
inclusive,

Defendants.

Case No. 20CV-00657

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES, PENALTIES, INJUNCTIVE
RELIEF AND
RESTITUTION**

[JURY TRIAL DEMANDED]

Representative Plaintiff alleges as follows:

INTRODUCTION

1. This is a class and representative action seeking unpaid compensation for wages, meal and/or rest period violations, interest thereon, liquidated damages and other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs under, *inter alia*, California Labor Code §§ 200-204, 210, 218, *et seq.*, 226, *et seq.*, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, *et seq.*, 1197, 1197.1, 1198, 2699, *et seq.*, California Business and Professions Code §§ 17200, *et seq.* and California Code of Civil Procedure § 1021.5.

2. Plaintiff Shana Wright ("Representative Plaintiff" or "Plaintiff") brings this action individually and on behalf of all other persons similarly situated ("Class Members" and/or the "Plaintiff Class") who are or have been employed by defendants Winganomics, Inc. d.b.a. Wingstop, Jason Khan, Right Swing, Inc. d.b.a. Wingstop, Winganomics, Inc. d.b.a. Wingstop, Wingman and Associates, Inc. d.b.a. Wingstop, Wing or Lose, Inc. d.b.a. Wingstop, All I Do Is Wing, Inc. d.b.a. Wingstop, Winging is Everything d.b.a. Wingstop, The Wingman Company d.b.a. Wingstop, King of the Wing, Inc. d.b.a. Wingstop, Spread Your Wings, Inc. d.b.a. Wingstop, Wing Life, Inc. d.b.a. Wingstop, Wingcraft, Inc. d.b.a. Wingstop, Winging Is A Habit, Inc. d.b.a. Wingstop, Wingology, Inc. d.b.a. Wingstop, Wing Me Over, Inc. d.b.a. Wingstop, Paul Conway, Aamir Khan, Johnzeb Khan, Nagina Khan, Nargis Khan, Michael James Ryan, and/or James Toal, and/or Does 1 through 100, inclusive (collectively "Defendants") as non-exempt restaurant workers within the State of California within the applicable class period.

3. The class period begins on February 7, 2016 and extends through trial, based upon the allegation that the violations of California's wage and hour laws, as described more fully below, have been and are ongoing throughout that time.

4. During the class period, Defendants have had a consistent policy of (1) unlawfully denying Class Members statutorily-mandated meal and rest periods, (2) willfully failing to provide Class Members with accurate semimonthly itemized wage statements reflecting the total number of hours each worked, the applicable deductions, and the applicable hourly rates in effect

1 during the pay period, and (3) willfully failing to pay compensation in a prompt and timely
2 manner to those Class Members whose employment with Defendants has terminated.

3 5. Defendants operate a chain of restaurants within California for which
4 Representative Plaintiff worked in various positions, including cashier and shift leader. The
5 Representative Plaintiff is informed and believes and, on that basis, alleges that, within the class
6 period, Defendants employed scores, if not hundreds, of individuals in California to perform
7 these services, employment positions which did not, and currently do not, meet any known test
8 for exemption from the payment of overtime wages and/or the entitlement to meal or rest
9 periods.

10 6. Despite actual knowledge of these facts and legal mandates, Defendants have and
11 continue to enjoy an advantage over their competition and a resultant disadvantage to their
12 workers by electing not to pay all wages due (including missed meal and rest period
13 compensation) and/or all penalties due (including “waiting time” penalties) to Class Members.

14 7. Representative Plaintiff is informed and believes and, based thereon, alleges that
15 Defendants’ officers knew of these facts and legal mandates yet, nonetheless, repeatedly
16 authorized and/or ratified the violation of the laws cited herein.

17 8. Despite Defendants’ knowledge of Class Members’ entitlement to wages for all
18 hours worked and meal and/or rest periods for all applicable work periods, Defendants failed to
19 provide the same to Class Members, in violation of California state statutes, the applicable
20 California Industrial Welfare Commission Wage Order, and Title 8 of the California Code of
21 Regulations. This action is brought to redress and end this prolonged pattern of unlawful conduct
22 once and for all.

23 **JURISDICTION AND VENUE**

24 9. This Court has jurisdiction over the Class Members’ claims for unpaid wages
25 and/or penalties under, *inter alia*, the applicable Industrial Welfare Commission Wage Order,
26 Title 8 of the California Code of Regulations, Labor Code §§ 201-204, 226, 226.7, 512, 1174,
27 and/or the California Code of Civil Procedure § 1021.5.

11. Venue as to Defendants is proper in this judicial district pursuant to California Code of Civil Procedure § 395(a). Defendants provided the aforementioned services within this County where Plaintiff and numerous Class Members worked, transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have had a direct effect on Representative Plaintiff and those similarly situated within the State of California and within this County.

12. Representative Plaintiff is a natural person who was employed by Defendants in various capacities, including as a cashier and a shift supervisor during the class period.

13. In these capacities, Representative Plaintiff is and was entitled to full, uninterrupted and statutorily-mandated meal and rest periods, as well as other benefits of employment as set forth herein.

14. Representative Plaintiff is informed and believes and, based thereon, alleges that, at all times herein relevant, Defendants (including the Doe defendants) did business within the State of California providing restaurant services.

15. Those defendants identified as Does 1 through 100, inclusive, are and were, at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or each of the remaining defendants. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, Defendants, and each of them, employed and/or exercised control over the wages, hours, and/or working conditions of the Representative Plaintiff and Class Members within the State of California.

16. The Representative Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by such fictitious names. The Representative Plaintiff will seek leave of court to amend this

1 Complaint when such names are ascertained. The Representative Plaintiff is informed and
2 believes and, on that basis, alleges that each of the fictitiously-named defendants were
3 responsible in some manner for, gave consent to, ratified, and/or authorized the conduct herein
4 alleged and that the damages, as herein alleged, were proximately caused thereby.

5 17. Representative Plaintiff is informed and believes and, on that basis, alleges that, at
6 all relevant times herein mentioned, each of the defendants was the agent and/or employee of
7 each of the remaining defendants and, in doing the acts herein alleged, was acting within the
8 course and scope of such agency and/or employment.

9 **CLASS ACTION ALLEGATIONS**

10 18. The Representative Plaintiff brings this action individually and on behalf of all
11 persons similarly situated and proximately damaged by Defendants' conduct including, but not
12 necessarily limited to, the following Plaintiff Class:

13 "All persons employed by Defendants as non-exempt restaurant
14 workers in California on or after February 7, 2016."

15 19. Defendants' officers and directors are excluded from the Plaintiff Class.

16 20. This action has been brought and may properly be maintained as a class action
17 under California Code of Civil Procedure § 382 because there is a well-defined community of
18 interest in the litigation and the proposed class is easily ascertainable.

19 a. Numerosity: A class action is the only available method for the fair and
20 efficient adjudication of this controversy. The members of the Plaintiff
21 Class are so numerous that joinder of all members is impractical, if not
22 impossible, insofar as Representative Plaintiff is informed and believes
23 and, on that basis, alleges that there are sufficient Class Members to meet
24 the numerosity requirement. Membership in the Class will be determined
25 upon analysis of employee and payroll, among other, records maintained
26 by Defendants.

27 b. Commonality: The Representative Plaintiff(s) and the Class Members
28 share a community of interests in that there are numerous common
questions and issues of fact and law which predominate over any
questions and issues solely affecting individual members, including, but
not necessarily limited to:

- 1) Whether Defendants violated California Business and Professions Code § 17200, *et seq.* by failing to provide meal and/or rest breaks to Class Members working eligible shifts;

- 2) Whether Defendants violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
 - 3) Whether Defendants violated California Labor Code §§ 201-204 by failing to pay wages due and owing at the time that certain Class Members' employment with Defendants terminated;
 - 4) Whether Defendants violated California Labor Code § 226 by failing to provide semimonthly itemized statements to Class Members of total hours worked by each, all wages earned and all applicable hourly rates in effect during the pay period; and
 - 5) Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code § 203.
- c. Typicality: The Representative Plaintiff's claims are typical of the claims of Class Members. The Representative Plaintiff and Class Members sustained damages arising out of and caused by Defendants' common course of conduct in violation of law, as alleged herein.
- d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that the Representative Plaintiff's claims are typical of those of the Plaintiff Class and has the same interest in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and retained competent counsel who are experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to Class Members as a whole and anticipates no management difficulties in this litigation.
- e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

COMMON FACTUAL ALLEGATIONS

21. As described herein, for years, Defendants have knowingly failed to pay and adequately compensate those employees within the class definition identified above for all time worked and wages earned (including but not limited to minimum wages and premium wages,

1 including but not limited to compensation for off the clock work compensation for missed meal
2 and/or rest periods, working through meal and/or rest periods, split shift premiums, and reporting
3 time pay) under the California Labor Code and the applicable IWC Wage Order, thereby
4 enjoying a significant competitive edge over similar companies. To the extent Defendants are
5 committing these violations with regard to minor workers, Defendants are alleged to also be
6 violating other, related Labor Code and/or Education Code statutes.

7 22. Defendants have declined to pay these wages, even upon a Class Member's
8 termination or resignation from employment, in blatant violation of California Labor Code § 201
9 and/or § 202.

10 23. California Labor Code §§ 201 and 202 require Defendants to pay severed
11 employees all wages due and owed to the employee immediately upon discharge or within 72
12 hours of resignation of their positions, in most circumstances. California Labor Code § 203
13 provides that an employer who willfully fails to timely pay such wages must, as a penalty,
14 continue to pay the subject employees' wages until the back wages are paid in full or an action is
15 commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

16 24. Furthermore, despite knowledge of the Class Members' entitlement to
17 compensation for all hours worked, Defendants violated California Labor Code § 1174(d) by
18 failing to provide or require the use, maintenance, or submission of time records by members of
19 the Plaintiff Class. Defendants also failed to provide Class Members with accurate semimonthly
20 itemized statements of the total number of hours worked by each, and all applicable hourly rates
21 in effect, during the pay period, in violation of California Labor Code § 226. In failing to provide
22 the required documents, Defendants have not only failed to pay their workers the full amount of
23 compensation due, but have also, until now, effectively shielded themselves from employee
24 scrutiny by concealing the magnitude and financial impact of their wrongdoing that such
25 documents might otherwise have led workers to discover.

26 25. Representative Plaintiff and all persons similarly situated are entitled to unpaid
27 compensation, yet, to date, have not received such compensation despite many of the same
28

1 having been terminated by and/or resigned from Defendants' employ. More than 30 days have
2 passed since certain Class Members have left Defendants' employ.

3 26. As a consequence of Defendants' willful conduct in not paying former
4 employees' compensation for all hours worked in a prompt and timely manner, certain Class
5 Members are entitled to up to 30 days wages as a penalty under California Labor Code § 203,
6 together with attorneys' fees and costs.

7 27. Also, due to chronic understaffing, inadequate training regarding the right to meal
8 and rest periods, demanding that employees clock out and continue working, and/or interrupting
9 employees in the middle of meal and/or rest periods and requiring them to work during them,
10 among other reasons, Defendants have prevented or deprived employees from taking meal and
11 rest break to which they are entitled. California Labor Code §§ 226.7, 512, and the applicable
12 IWC Wage Orders mandate payment of one hour of pay at the employee's regular rate for each
13 workday for which a violation occurs. Defendants have declined to pay these premiums in
14 violation of §§ 226.7, 512 and IWC Wage Orders.

15 28. Further, due to requiring employees to work when they were not clocked in,
16 requesting employees clock out during slower periods and continue working, or clock out at
17 those times but then clock back in a substantial time later, and alteration of time records, among
18 other reasons, Defendants have not paid employees all wages due, including minimum and
19 overtime wages.

20 29. As a direct and proximate result of Defendants' unlawful conduct, as set forth
21 herein, Class Members have sustained damages, as described above, including compensation for
22 loss of earnings for hours worked on behalf of Defendants, in an amount to be established at
23 trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth
24 herein, certain Class Members are entitled to recover "waiting time" penalties (pursuant to
25 California Labor Code § 203) and penalties for failure to provide semimonthly statements of
26 hours worked and all applicable hourly rates (pursuant to California Labor Code § 226) in an
27 amount to be established at trial. As a further direct and proximate result of Defendants'
28

1 unlawful conduct, as set forth herein, Class Members are also entitled to recover costs and
2 attorneys' fees pursuant to California Code of Civil Procedure § 1021.5, among other authorities.

3 30. Representative Plaintiff seeks injunctive relief prohibiting Defendants from
4 engaging in the complained-of illegal labor acts and practices in the future. Representative
5 Plaintiff also seeks restitution of costs incurred by Class Members under California's Unfair
6 Competition Law. Unless enjoined, Defendants' unlawful conduct will continue unchecked,
7 while Class Members bear the financial brunt of Defendants' unlawful conduct. As a further
8 direct and proximate result of Defendants' unlawful conduct, as set forth herein, Class Members
9 are also entitled to recover costs and attorneys' fees, pursuant to statute.

10 31. Representative Plaintiff has complied with the procedures for bringing suit (as
11 specified in California Labor Code § 2699.3) necessary to maintain a civil action against
12 Defendants for violation of (and/or recovery under) California's Private Attorneys General Act.
13 On February 6, 2020, Representative Plaintiff served and filed a notice upon the Labor and
14 Workforce Development Agency in compliance with Labor Code §§ 2699, *et seq.*

15 **FIRST CAUSE OF ACTION**
16 **UNLAWFUL FAILURE TO PAY WAGES**
17 **(California Labor Code §§ 200-204, 510, 558, 1194, and 1198; IWC Wage Order)**

18 32. Each and every allegation of the preceding paragraphs is incorporated in this
19 cause of action with the same force and effect as though fully set forth herein.

20 33. During the limitations period, Class Members performed work for Defendants,
21 oftentimes in excess of eight hours in a workday and/or forty hours in a workweek. The number
22 of hours will be proven at trial.

23 34. During the limitations period, Defendants refused to compensate Class Members
24 for all of the wages they earned, in violation of the applicable IWC Wage Order and provisions
25 of the California Labor Code.

26 35. At all relevant times, Defendants were aware of, and were under a duty to comply
27 with, the overtime provisions of the California Labor Code including, but not limited to,
28 California Labor Code §§ 510, 1194, and 1198.

36. California Labor Code § 510(a) provides, in pertinent part:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

37. California Labor Code § 1194(a) provides, in pertinent part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

38. California Labor Code § 1198 provides, in pertinent part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

39. By refusing to compensate Class Members for minimum wages and/or overtime wages earned, Defendants violated those California Labor Code provisions cited herein as well as the applicable IWC Wage Order.

40. Defendants' conduct, as heretofore detailed, represents underpayment of wages pursuant to California Labor Code §§ 218, *et seq.*, 558, 1194, *et seq.*, and 1197, *et seq.*, for which damages and/or penalties are now sought in an amount according to proof.

41. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Class Members have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendants, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Class Members are entitled to recover penalties in amounts to be established at trial, as well as attorneys' fees and costs, and restitution, pursuant to statute.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)

42. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

43. At all relevant times, Defendants were aware of and were under a duty to comply with California Labor Code § 226.7 and § 512.

44. California Labor Code § 226.7 provides, in pertinent part:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

43. Moreover, California Labor Code § 512(a) provides, in pertinent part:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

46. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that employers provide all applicable meal and/or rest periods to non-exempt (including exempt-misclassified) employees.

47. Section 11 of the applicable IWC Wage Order provides:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes...

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes...

(C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer

1 shall pay the employee one (1) hour of pay at the employee's regular
2 rate of compensation for each workday that the meal period is not
provided.

3 48. Moreover, Section 12 of the applicable IWC Wage Order provides:

4 (A) Every employer shall authorize and permit all employees to take rest
5 periods, which insofar as practicable shall be in the middle of each
6 work period. The authorized rest period time shall be based on the
total hours worked daily at the rate of ten (10) minutes net rest time
per four (4) hours or major fraction thereof

7 (B) If an employer fails to provide an employee a rest period in accordance
8 with the applicable provisions of this order, the employer shall pay the
9 employee one (1) hour of pay at the employee's regular rate of
compensation for each workday that the rest period is not provided.

10 49. By failing to consistently provide uninterrupted thirty-minute meal periods within
11 the first five hours of work each day, a second uninterrupted thirty-minute meal period within the
12 first ten hours of work each day and/or uninterrupted net ten-minute rest periods to Class
13 Members, Defendants violated the California Labor Code and applicable IWC Wage Order
14 provisions.

15 50. Representative Plaintiff is informed and believes and, on that basis, alleges that
16 Defendants have never paid the one hour of compensation to any Class Member due to their
17 violations of the California Labor Code and applicable IWC Wage Order provisions.

18 51. As a direct and proximate result of Defendants' unlawful conduct, as set forth
19 herein, Class Members have sustained damages, including lost compensation resulting from
20 missed meal and/or rest periods, in an amount to be established at trial.

21 52. As a further direct and proximate result of Defendants' unlawful conduct, as set
22 forth herein, certain Class Members are entitled to recover "waiting time" penalties in amounts
23 to be established at trial, as well as recovery of attorneys' fees and costs, pursuant to statute.

24 **THIRD CAUSE OF ACTION**
25 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
26 **(California Labor Code §§ 226 and 1174)**

27 53. Each and every allegation of the preceding paragraphs is incorporated in this
cause of action with the same force and effect as though fully set forth herein.

28 54. California Labor Code § 226(a) provides:

Each employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive date of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

55. Moreover, California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

56. Finally, California Labor Code § 1174(d) provides:

Every person employing labor in this state shall. . . (d) [k]eep, at a central location in the state...payroll records showing the hours worked daily by and the wages paid to...employees.... These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

57. Defendants have failed to provide timely, accurate itemized wage statements to the Class Members in accordance with California Labor Code § 226. Representative Plaintiff is informed and believes and, on that basis, alleges that none of the statements provided by Defendants accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions for Class Members.

58. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, the Class Members are entitled to penalties in an amount to be established at trial and are entitled to recover attorneys' fees and costs of suit.

FOURTH CAUSE OF ACTION
FAILURE TO PAY WAGES ON TERMINATION
(California Labor Code § 203)

59. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

1 60. California Labor Code § 203 provides that:

2 If an employer willfully fails to pay, without abatement or reduction, in
3 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
4 employee who is discharged or who quits, the wages of the employee shall
5 continue as a penalty from the due date thereof at the same rate until paid
6 or until an action therefor is commenced; but the wages shall not continue
7 for more than 30 days.

8 61. Numerous Class Members were employed by Defendants during the class period
9 and were thereafter involuntarily terminated or resigned from their positions yet were not paid all
10 wages due upon said termination or within 72 hours of said resignation of employment
11 therefrom. This non-payment was the direct and proximate result of a willful refusal to do so by
12 Defendants.

13 62. More than 30 days have elapsed since certain Class Members were involuntarily
14 terminated or voluntarily resigned from Defendants' employ.

15 63. As a direct and proximate result of Defendants' willful conduct in failing to pay
16 said Class Members for all hours worked, affected Class Members are entitled to recover
17 "waiting time" penalties of up to thirty days' wages pursuant to California Labor Code § 203 in
18 an amount to be established at trial, and attorneys' fees and costs.

19 **FIFTH CAUSE OF ACTION**
UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT
(California Business & Professions Code §§ 17200-17208)

20
21 64. Each and every allegation of the preceding paragraphs is incorporated in this
22 cause of action with the same force and effect as though fully set forth herein.

23 65. Representative Plaintiff further brings this cause of action seeking equitable and
24 statutory relief to stop Defendants' misconduct, as complained of herein, and to seek restitution
25 of the amounts Defendants acquired through the unfair, unlawful, and fraudulent business
26 practices described herein.
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28

1 66. Defendants’ knowing conduct, as alleged herein, constitutes an unlawful and/or
2 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
3 17208. Specifically, Defendants conducted business activities while failing to comply with the
4 legal mandates cited herein.

5 67. Defendants have clearly established a policy of accepting a certain amount of
6 collateral damage, as represented by the damages and penalties to Class Members herein alleged,
7 as incidental to their business operations, rather than accept the alternative costs of full
8 compliance with fair, lawful, and honest business practices, ordinarily borne by its responsible
9 competitors and as set forth in legislation and the judicial record.

10
11 **SIXTH CAUSE OF ACTION**
12 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
 (California Labor Code §§ 2699)

13 66. Each and every allegation of the preceding paragraphs is incorporated in this
14 cause of action with the same force and effect as though fully set forth herein.

15 67. California Labor Code § 2699(a) provides, in pertinent part:

16 Notwithstanding any other provision of the law, any provision of this code
17 that provides for a civil penalty to be assessed and collected by the Labor
18 and Workforce Development Agency or any of its departments, divisions,
19 commissions, boards, agencies, or employees, for a violation of this code,
20 may, as an alternative, be recovered through a civil action brought by an
aggrieved employee on behalf of himself or herself and other current or
former employees. . .

21 68. Representative Plaintiff and each and every other Class Member working for
22 Defendants within one year of Representative Plaintiff’s exhaustion of administrative
23 prerequisites under the California Private Attorneys General Act are “aggrieved employees,” as
24 defined by California Labor Code § 2699(c), because they were employed by Defendants and
25 were among the employees against whom violations of law were committed.
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69. Representative Plaintiff has met all of the requirements set forth in California Labor Code § 2699.3 necessary to maintain a civil action against Defendants for violations of (and/or recovery under) California's Private Attorneys General Act.

70. Representative Plaintiff brings this action individually and on behalf of all Aggrieved Employees alleging violations of the California Labor Code provisions cited in the preceding paragraphs.

71. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiff and Aggrieved Employees are entitled to recover penalties as provided by California Labor Code § 2699, in an amount to be established at trial, as well as costs and attorneys' fees, pursuant to statute.

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiff, individually and on behalf of the proposed Plaintiff Class, prays for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

1. That the Court declare, adjudge, and decree that this action is a proper class action and certify the proposed class and/or any other appropriate subclasses under California Code of Civil Procedure § 382;

2. That the Court declare, adjudge, and decree that Defendants willfully violated their legal duties to pay all wages due under the California Labor Code and the applicable California Industrial Welfare Commission Wage Order;

3. That the Court make an award to Class Members of one hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

4. That the Court make an award to Class Members of one hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

5. That the Court order Defendants to pay restitution to Class Members due to Defendants' unlawful activities, pursuant to California Business and Professions Code §§ 17200-17208;

6. That the Court further enjoin Defendants, ordering them to cease and desist from unlawful activities in violation of California Business and Professions Code § 17200, *et seq.*;

7. For interest on the amount of any and all economic losses, at the prevailing legal rate;

8. That the Court make an award to Class Members of penalties, pursuant to California Labor Code §§ 203, 226, 558, 1174.5 and/or liquidated damages pursuant to § 1194.2, in an amount to be proven at trial;

9. That the Court declare, adjudge, and decree that this action is a proper representative action pursuant to California Labor Code § 2699;

10. That the Court make an award of civil penalties for violations of the California Labor Code, pursuant to California Labor Code § 2699;

11. For reasonable attorneys' fees, pursuant to California Code of Civil Procedure § 1021.5 and Labor Code § 218.5;

12. For costs of suit and any and all such other relief as the Court deems just and proper;

13. For all other Orders, findings and determinations identified and sought in this Complaint.

JURY DEMAND

Representative Plaintiff, individually and on behalf of the Plaintiff Class and Aggrieved Employees, hereby demands a trial by Jury.

Dated: August 20, 2021

SCOTT COLE & ASSOCIATES, APC

By:



Laura Van Note, Esq.
Attorneys for Representative Plaintiff(s) *et. al.*

PROOF OF SERVICE

I am over 18 years of age, not a party to the above-captioned action, and am employed by the law firm of Cole & Van Note, 555 12th St., Suite 1725, Oakland, California 94607.

On this date, I served a copy of:

SECOND AMENDED COMPLAINT FOR DAMAGES, PENALTIES, INJUNCTIVE RELIEF AND RESTITUTION

	By depositing the document(s) with the U.S. Postal Service, with postage fully prepaid, addressed as indicated below, in the ordinary course of business.
	By facsimile transmission to the fax number(s) below, before 5:00 p.m. PST.
	By placing the document(s) in a sealed Federal Express envelope, affixing a pre-paid air bill and delivering it to a Federal Express agent.
	By personal delivery.
X	By e-mail transmission to the e-mail address(es) below.
	By electronic filing using the CM/ECF System which will send a Notice of Electronic Filing to the email address(es) listed in the Electronic Mail Notice List.
	By uploading the document(s) to the third-party document management/service company, court-approved for purposes of this litigation.
	By electronic submission to the Labor and Workforce Development Agency.

on the following person(s):

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I declare under penalty of perjury under the laws of the United States and the State of California the foregoing is true and correct. Executed in Oakland, California on September 1, 2021.



Nicole Randle