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Attorney for Plaintiff,
ANTHONY SIKES, and all others similarly situated
(additional attorneys listed on next page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**COUNTY OF SOLANO
(UNLIMITED JURISDICTION)**

ANTHONY SIKES, on behalf of himself, and
all others similarly situated, and as an
“aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

WING DHABA, INC., a California corporation
doing business as WINGSTOP; 2 SINGHS
HAVE WINGS, INC., a California corporation;
DAD’S SAPNA INC., a California corporation;
PKA CORPORATION, a California
corporation; WINGS FOR 2 SINGHS INC, a
California corporation; BIKRAMJIT SINGH
RANDHAWA, an individual, and DOES 6
through 50, inclusive,

Defendant(s).

Case No.: FCS054490

CLASS ACTION

**[PROPOSED] THIRD AMENDED
COMPLAINT FOR:**

1. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, 558.1, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7, 558.1, 1198);
3. Failure to Compensate For All Hours Worked (Lab. Code §§ 510, 558.1, 1194, 1197, and 1198);
4. Wage Statement Penalties (Lab. Code § 226 and 558.1);
5. Waiting Time Penalties (Lab. Code §§ 201–203 and 558.1);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED



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1 Plaintiff ANTHONY SIKES (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action based on alleged violations of
5 the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”) and the Business and Professions Code against defendants WING DHABA, INC.,
7 a California corporation doing business as WINGSTOP; 2 SINGHS HAVE WINGS, INC., a
8 California corporation; DAD’S SAPNA INC., a California corporation; PKA CORPORATION,
9 a California corporation; WINGS FOR 2 SINGHS INC, a California corporation; BIKRAMJIT
10 SINGH RANDHAWA, an individual; and DOES 6 through 50, inclusive (“Defendants”).

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
12 him and other similarly situated current and former employees in California for unpaid wages and
13 other related relief. These claims are based on Defendants’ alleged failures to (1) provide all meal
14 periods, (2) provide all rest periods, (3) pay all wages for all hours worked, (4) issue accurate and
15 complete itemized wage statements, (5) timely pay final wages upon termination of employment,
16 and (6) fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages and related
17 relief through this class action.

18 **JURISDICTION AND VENUE**

19 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
20 and Class Members, inclusive of all relief, place more than \$25,000 in controversy.

21 4. There is no basis for federal question subject matter jurisdiction in this case.
22 Specifically, Plaintiff asserts claims on behalf of himself and Class Members that solely arise
23 under California law, rather than federal law.

24 5. There is also no basis for federal diversity jurisdiction in this case.

25 6. Venue is proper in Solano pursuant to California Code of Civil Procedure § 395(a)
26 and § 395.5 in that liability arose in Solano because at least some of the transactions that are the
27 subject matter of this Complaint occurred therein and/or because each defendant is found,
28 maintains offices, transacts business, and/or has an agent therein.



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PARTIES

7. Plaintiff is an individual and a resident of Lake County, California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11050 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

8. Defendant WING DHABA, INC., doing business as WINGSTOP, is a corporation organized under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

9. Defendant 2 SINGHS HAVE WINGS, INC. is a corporation organized under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

10. Defendant DAD’S SAPNA INC. is a corporation organized under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

11. Defendant PKA CORPORATION is a corporation organized under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

12. Defendant WINGS FOR 2 SINGHS INC is a corporation organized under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

13. Defendant BIKRAMJIT SINGH RANDHAWA, an individual doing business as WING DHABA, INC. doing business as WINGSTOP, 2 SINGHS HAVE WINGS, INC., DAD’S SAPNA INC., PKA CORPORATION, and WINGS FOR 2 SINGHS INC, is a natural person and also a citizen of California and a resident of El Sobrante (Contra Costa County) based on Plaintiff’s information and belief.

14. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 6-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the complaint to allege the true names and capacities of the DOE defendants when ascertained.

15. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the



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1 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
2 and scope of such agency or employment, and with the approval and ratification of each of the
3 other Defendants.

4 16. At all relevant times, in perpetrating the acts and omissions alleged herein,
5 defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
6 of a practice which resulted in Defendants not paying Plaintiff and other members of the below-
7 described class in accordance with applicable California labor laws as alleged herein.

8 17. Plaintiff is informed and believes and thereon alleges that each and every one of
9 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
10 each acting as agents and/or employees, and/or under the direction and control of each of the other
11 defendants, and that said acts and failures to act were within the course and scope of said agency,
12 employment and/or direction and control.

13 **CLASS ACTION ALLEGATIONS**

14 18. This action has been brought and may be maintained as a class action pursuant to
15 California Code of Civil Procedure § 382 because there is a well-defined community of interest
16 among the persons who comprise the readily ascertainable class defined below and because
17 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class
18 action.

19 19. **Class Definition:** The class is defined as follows: All persons Defendants
20 employed in California as non-exempt, hourly employees including, but not limited to, crew
21 members, cooks, preps, prep cooks, kitchen help, servers, line cooks, restaurant team members,
22 restaurant workers, cashiers, shift leads, and comparable positions at any time during the period
23 beginning four years prior to the filing of this action and ending on the date that final judgment
24 is entered in this action.

25 20. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
26 right to amend or modify the class definition with greater specificity, by further division into
27 subclasses and/or by limitation to particular issues.

28 21. **Numerosity:** The Class Members are so numerous that the individual joinder of



each individual Class Member is impractical.

22. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked?

B. Whether Defendants failed to provide the Class Members with all rest periods as required by section 12 of the Wage Order?

C. Whether Defendants failed to provide the Class Members with all meal periods as required by section 11 of the Wage Order?

D. Whether Defendants willfully failed to provide the class with timely final wages?

E. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*, with respect to the Class Members?

F. Whether Defendants knowingly and intentionally failed to provide the Class Members with accurate wage statements?

23. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or a lack of a policy which resulted in Defendants failing to comply with the California Labor Code and the Business and Professions Code as alleged herein.

24. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

25. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in wage and hour class action litigation and are dedicated to vigorously prosecuting this action on



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1 them to continue working because they had insufficient staff to operate their restaurants if one or
2 more employees took duty free meal or rest periods. Furthermore, if Plaintiff and the Class
3 Members did not clock out for meal periods, the general managers, including Jimmy Moore,
4 edited their time sheets to falsely show periods off-the-clock for at least 30 minutes. Defendants
5 also failed to pay Plaintiff and the Class Members premium wages for those workdays it failed to
6 provide them with one or more meal periods in compliance with California law.

7 30. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
8 with paid, uninterrupted, duty-free 10-minute rest periods every four hours worked or major
9 portion thereof. Defendants compelled Plaintiff and the Class Members to work during their rest
10 breaks performing tasks such as cooking food, preparing food, and serving food. Defendants also
11 failed to provide Plaintiff and the Class Members with a third rest period when they worked in
12 excess of ten hours in a workday. Defendants failed to pay Plaintiff and the Class Members
13 premium wages for days in which it failed to provide them with one or more rest periods under
14 Labor Code § 226.7 and Wage Order No. 5.

15 31. Defendants failed to pay Plaintiff and the Class Members overtime for all hours
16 over eight in a day and forty in a week. Instead, Defendants paid Plaintiff and the Class Members
17 straight-time for all hours worked. Additionally, Plaintiff and the Class Members incurred
18 uncompensated overtime when Defendants failed to provide them with an uninterrupted 30-
19 minute meal period and required them to engage in work while off the clock. For instance, before
20 Plaintiff and the Class Members clocked in or after they clocked out, Defendants required Plaintiff
21 and the Class Members to paint, power-wash the patio floor, and assist coworkers with tasks such
22 as timely food preparation and orders.

23 32. Moore and other managers instructed Plaintiff and the Class Members to perform
24 work before clocking in. Additionally, Moore instructed Plaintiff and the Class Members to work
25 entire shifts on their days off without clocking in. Defendants failed to pay Plaintiff and the Class
26 Members for time worked off-the-clock.

27 33. Defendants did not credit Plaintiff and the Class Members with the hours worked
28 off-the-clock or edited their time sheets as described above. In connection with this, Defendants



1 failed to provide Plaintiff and the Class Members with accurate wage statements because
2 Defendants did not state on the wage statements all hours Plaintiff and the Class Members worked
3 and all wages they earned, including, but not limited to minimum and overtime wages.

4 34. At all relevant times, upon resignation or termination, Defendants failed to pay
5 unpaid wages in a timely manner. Defendants willfully failed and refused to pay timely
6 compensation and wages, for among other things, off-the-clock work and for the circumstances
7 described above. Defendants willfully failed and refused to pay timely compensation and wages,
8 for among other things, unpaid overtime and unpaid meal periods.

9 35. In relevant part, Labor Code section 558.1 states:

10
11 a. Any employer or other person acting on behalf of an employer,
12 who violates, or causes to be violated, any provision regulating
13 minimum wages or hours and days of work in any order of the
14 Industrial Welfare Commission, or violates, or causes to be
15 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
16 held liable as the employer for such violation.

17 b. For purposes of this section, the term “other person acting on
18 behalf of an employer” is limited to a natural person who is an
19 owner, director, officer, or managing agent of the employer, and
20 the term “managing agent” has the same meaning as in subdivision
21 (b) of Section 3294 of the Civil Code.

22 At all relevant times, Defendant Bikramjit Singh Randhawa was an employer of Plaintiff and all
23 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
24 Defendants and the other employers identified above. Defendant Bikramjit Singh Randhawa
25 directly or indirectly, or through an agent or other person, employed and exercised control over
26 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
27 the Labor Code and the Wage Order described above. Therefore, he is liable to Plaintiff and the
28 Class for his violations of, or causing Defendants to violate the Labor Code and the Wage Order
pursuant to Labor Code section 558.1. On behalf of himself and all of the other Class Members,
Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated



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1 damages, attorneys' fees, costs, and related relief against Defendant Bikramjit Singh Randhawa
2 that is the same as the award of against the other Defendants on the same grounds for which
3 Plaintiff seeks against the Defendants.

4 36. or the reasons stated herein, Plaintiff alleges the following violations of the
5 California Labor Code and the Wage Order 5 on behalf of himself and the Class Members:

6 A. Defendants failed to provide Plaintiff and the Class Members with all rest
7 breaks and meal periods;

8 B. Defendants failed to pay Plaintiff and the Class Members one hour's pay
9 for each workday in which they failed to provide them with one or more rest breaks;

10 C. Defendants failed to pay Plaintiff and the Class Members one hour's pay
11 for each workday in which they failed to provide them with one or more meal periods;

12 D. Defendants failed to pay Plaintiff and the Class for all hours worked at the
13 correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock
14 work;

15 E. Defendants also failed to timely pay Plaintiff and the Class Members all
16 earned wages during employment and at the time of separation from employment; and

17 F. Defendants failed to provide Plaintiff and the Class Members with accurate
18 wage statements.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIODS**

21 **(Lab. Code §§ 226.7, 512, 558.1, and 1198)**

22 **(By Plaintiff and the Class Members against all Defendants)**

23 37. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

24 38. At all relevant times during the applicable limitations period, Plaintiff and the
25 Class Members have been employees of Defendants and entitled to the benefits and protections
26 of California Labor Code §§ 226.7, 512, 558.1 and 1198, and the Wage Order.

27 39. Labor Code § 1198 states:



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The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

40. In relevant part, Labor Code Section 512 states:

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.

41. In relevant part, Section 11 of the Wage Order states:

Meal Period

(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, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

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

42. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were



1 also entitled to a second 30-minute meal period when they worked more than 10 hours in a
2 workday.

3 43. During the relevant time period, Defendants failed to provide Plaintiff with all
4 required meal periods in accordance with California Labor Code § 512 and the Wage Order,
5 including, but not limited to, a 30-minute uninterrupted meal periods on workdays he worked
6 more than five hours in a workday. Plaintiff is informed and believes and thereon alleges that, at
7 relevant times within the applicable limitations period, Defendants maintained a policy, practice,
8 or a lack of a policy which resulted in Defendants not providing the Class Members with all meal
9 periods required by California Labor Code § 512 and the Wage Order, including, but not limited
10 to, a 30-minute uninterrupted meal period on workdays they worked more than five hours in a
11 workday.

12 44. At all relevant times, Defendants failed to consistently provide Plaintiff and the
13 Class Members with a daily 30-minute off-duty meal period within the first five hours of work
14 on shifts over five hours or a second daily meal period within the first ten hours of work on shifts
15 over ten hours. Defendants compelled Plaintiff and the Class Members to work during their meal
16 periods without pay performing tasks such as cooking food, preparing food, and serving food.
17 While Plaintiff and the Class Members were clocked out for meal periods, Defendants required
18 them to continue working because they had insufficient staff to operate their restaurants if one or
19 more employees took duty free meal or rest periods. Furthermore, if Plaintiff and the Class
20 Members did not clock out for meal periods, the general managers, including Jimmy Moore,
21 edited their time sheets to falsely show periods off-the-clock for at least 30 minutes.

22 45. Defendants failed to pay Plaintiff the additional wages required by California
23 Labor Code § 226.7 for all meal periods not provided to him. Plaintiff is informed and believes
24 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
25 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
26 providing the Class Members with additional wages for all meal periods not provided to them as
27 required by California Labor Code § 226.7.

28 46. In relevant part, Labor Code section 558.1 states:



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- 1 b. Any employer or other person acting on behalf of an employer,
2 who violates, or causes to be violated, any provision regulating
3 minimum wages or hours and days of work in any order of the
4 Industrial Welfare Commission, or violates, or causes to be
5 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
6 held liable as the employer for such violation.
- 7 c. For purposes of this section, the term “other person acting on
8 behalf of an employer” is limited to a natural person who is an
9 owner, director, officer, or managing agent of the employer, and
10 the term “managing agent” has the same meaning as in subdivision
11 (b) of Section 3294 of the Civil Code.

12 At all relevant times, Defendant Bikramjit Singh Randhawa was an employer of Plaintiff and all
13 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
14 Defendants and the other employers identified above. Defendant Bikramjit Singh Randhawa
15 directly or indirectly, or through an agent or other person, employed and exercised control over
16 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
17 the Labor Code and the Wage Order described above.

18 47. At all relevant times, Plaintiff and the Class Members were employees of
19 Defendant Bikramjit Singh Randhawa. Defendant Bikramjit Singh Randhawa engaged, and
20 suffered and permitted, Plaintiff and the Class Members to work. Bikramjit Singh Randhawa was
21 clearly aware that Plaintiff and the Class Members worked for the company and had the power to
22 prevent them from working. Bikramjit Singh Randhawa also exercised control over Plaintiff and
23 the Class Members’ wages, hours, and working conditions. Further, Bikramjit Singh Randhawa
24 had the right to control and exercised such control over the manner in which Plaintiff and the
25 Class Members performed their work for Bikramjit Singh Randhawa. Bikramjit Singh Randhawa
26 willfully failed to provide Plaintiff and Class Members all their meal periods and failed to pay
27 them for all premium wages. Bikramjit Singh Randhawa engaged in a pattern and/or practice of
28 doing so. Therefore, he is liable to Plaintiff and the Class for his violations of, or causing
29 Defendants to violate the Labor Code and the Wage Order pursuant to Labor Code section 558.1.
30 On behalf of himself and all of the other Class Members, Plaintiff seeks an award of unpaid



1 wages, interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and
2 related relief against Defendant Bikramjit Singh Randhawa that is the same as the award of against
3 the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

4 48. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
5 suffered damages in amounts subject to proof to the extent they were not paid additional wages
6 owed for all meal periods not provided to them.

7 49. By reason of the above, Plaintiff and the Class Members are entitled to premium
8 wages for workdays in which one or more meal periods were not provided to them pursuant to
9 California Labor Code § 226.7.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST BREAKS**

12 **(Lab. Code §§ 226.7, 558.1, and 1198)**

13 **(By Plaintiff and the Class Members against all Defendants)**

14 50. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 51. At all relevant times during the applicable limitations period, Plaintiff and the
16 Class Members have been employees of Defendants and entitled to the benefits and protections
17 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

18 52. Labor Code § 1198 states:

19 The maximum hours of work and the standard conditions of labor fixed by
20 the commission shall be the maximum hours of work and the standard
21 conditions of labor for employees. The employment of any employee for
22 longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful.

23 53. In relevant part, Section 12 of the Wage Order states:

24 **Rest Period**

25 A) Every employer shall authorize and permit all employees to take
26 rest periods, which insofar as practicable shall be in the middle of each
work period. The authorized rest period time shall be based on the total
hours worked daily at the rate often (10) minutes net rest time per four (4)
hours or major fraction thereof. However, a rest period need not be
authorized for employees whose total daily work time is less than three and
one-half (3½) hours. Authorized rest period time shall be counted as hours



worked for which there shall be no deduction from wages.

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

54. "[I]n the context of an eight-hour shift, '[a]s a general matter,' one rest break should fall on either side of the meal break. (*Ibid.*)" *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal 4th 1004, 1032, 273 P.3d 513, 531.

55. In addition, Labor Code Section 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

56. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

57. Defendants failed to provide Plaintiff with all required rest breaks in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class Members with all rest breaks required by California law.

58. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with paid, uninterrupted, duty-free 10-minute rest periods every four hours worked or major



1 portion thereof. Defendants compelled Plaintiff and the Class Members to work during their rest
2 breaks performing tasks such as cooking food, preparing food, and serving food. Defendants also
3 failed to provide Plaintiff and the Class Members with a third rest period when they worked in
4 excess of ten hours in a workday.

5 59. Defendants failed to pay Plaintiff the additional wages required by California
6 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
7 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
8 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
9 Class Members with additional wages for all rest breaks not provided to them as required by
10 California Labor Code § 226.7.

11 60. In relevant part, Labor Code section 558.1 states:

12 c. Any employer or other person acting on behalf of an employer,
13 who violates, or causes to be violated, any provision regulating
14 minimum wages or hours and days of work in any order of the
15 Industrial Welfare Commission, or violates, or causes to be
16 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
17 held liable as the employer for such violation.

18 d. For purposes of this section, the term “other person acting on
19 behalf of an employer” is limited to a natural person who is an
20 owner, director, officer, or managing agent of the employer, and
21 the term “managing agent” has the same meaning as in subdivision
22 (b) of Section 3294 of the Civil Code.

23 At all relevant times, Defendant Bikramjit Singh Randhawa was an employer of Plaintiff and all
24 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
25 Defendants and the other employers identified above. Defendant Bikramjit Singh Randhawa
26 directly or indirectly, or through an agent or other person, employed and exercised control over
27 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
28 the Labor Code and the Wage Order described above.

29 61. At all relevant times, Plaintiff and the Class Members were employees of
30 Defendant Bikramjit Singh Randhawa. Defendant Bikramjit Singh Randhawa engaged, and



1 suffered and permitted, Plaintiff and the Class Members to work. Bikramjit Singh Randhawa was
2 clearly aware that Plaintiff and the Class Members worked for the company and had the power to
3 prevent them from working. Bikramjit Singh Randhawa also exercised control over Plaintiff and
4 the Class Members' wages, hours, and working conditions. Further, Bikramjit Singh Randhawa
5 had the right to control and exercised such control over the manner in which Plaintiff and the
6 Class Members performed their work for Bikramjit Singh Randhawa. Bikramjit Singh Randhawa
7 willfully failed to permit or authorize Plaintiff and Class Members all their rest breaks and failed
8 to pay them for all premium wages. Bikramjit Singh Randhawa engaged in a pattern and/or
9 practice of doing so. Therefore, he is liable to Plaintiff and the Class for his violations of, or
10 causing Defendants to violate the Labor Code and the Wage Order pursuant to Labor Code section
11 558.1. On behalf of himself and all of the other Class Members, Plaintiff seeks an award of unpaid
12 wages, interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and
13 related relief against Defendant Bikramjit Singh Randhawa that is the same as the award of against
14 the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

15 62. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
16 suffered damages in amounts subject to proof to the extent they were not paid additional wages
17 owed for all rest breaks not provided to them.

18 63. By reason of the above, Plaintiff and the Class Members are entitled to premium
19 wages for workdays in which one or more rest breaks were not provided to them pursuant to
20 California Labor Code § 226.7.

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED**

23 **(Lab. Code §§ 510, 558.1, 1194, 1194.2, 1197, and 1198)**

24 **(By Plaintiff and the Class Members against all Defendants)**

25 64. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 65. At all relevant times during the applicable limitations period, Plaintiff and the
27 Class have been employees of Defendants and entitled to the benefits and protections of California
28 Labor Code §§ 1194, 1197, and 1198, and the Wage Order.



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1 66. Section 2 of the applicable Wage Order defines “hours worked” as “the time
2 during which an employee is subject to the control of an employer, and includes all the time the
3 employee is suffered or permitted to work, whether or not required to do so.”

4 67. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
5 employees at least the minimum wage set forth therein for all hours worked, which consist of all
6 hours that an employer has actual or constructive knowledge that employees are working.

7 68. Labor Code section 510 states:

8 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
9 in one workday and any work in excess of 40 hours in any one workweek and the
10 first eight hours worked on the seventh day of work in any one workweek shall be
11 compensated at the rate of no less than one and one-half times the regular rate of
12 pay for an employee. Any work in excess of 12 hours in one day shall be
13 compensated at the rate of no less than twice the regular rate of pay for an
14 employee. In addition, any work in excess of eight hours on any seventh day of a
15 workweek shall be compensated at the rate of no less than twice the regular rate of
16 pay of an employee. Nothing in this section requires an employer to combine more
17 than one rate of overtime compensation in order to calculate the amount to be paid
18 to an employee for any hour of overtime work.

19 69. Labor Code section 1194 invalidates any agreement between an employer and an
20 employee to work for less than the minimum wage required under the applicable Wage Order.

21 70. Labor Code § 1197 makes it unlawful for an employer to pay an employee less
22 than the minimum wage required under the applicable Wage Order for all hours worked during a
23 payroll period.

24 71. Labor Code § 1198 makes it unlawful for an employer to employ an employee
25 under conditions that violate the Wage Order.

26 72. In relevant part, Section 4 of the Wage Order states:

27 **Minimum Wage**

28 (A) Every employer shall pay to each employee wages not less than the
following:

(1) Any employer who employs 26 or more employees shall pay to
each employee wages not less than the following:

(a) Ten dollars and fifty cents (\$10.50) per hour for all hours worked,
effective January 1, 2017; and



(b) Eleven dollars (\$11.00) per hour for all hours worked, effective January 1, 2018.

(2) Any employer who employs 25 or fewer employees shall pay to each employee wages not less than the following:

(a) Ten dollars (\$10.00) per hour for all hours worked, effective January 1, 2016 through December 31, 2017; and

(b) Ten dollars and fifty cents (\$10.50) per hour for all hours worked, effective January 1, 2018.

...

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

73. Employers must compensate non-exempt employees for "off-the-clock" work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

74. At all relevant times, Defendants compensated Plaintiff and the other Class Members with an hourly rate of pay on a biweekly basis.

75. Plaintiff is informed and believes that, at all relevant times, Defendants have applied centrally devised policies and practices to him and the other Class Members with respect to working conditions and compensation arrangements.

76. At all relevant times, Defendants failed to compensate Plaintiff and the other Class Members at premium overtime rates of one and one-half times (1½ x) their regular rates of pay for hours they worked in excess of eight in a day, 40 hours in a week, and on the 7th day of the workweek.

77. Defendants failed to pay Plaintiff and the Class Members overtime for all hours over eight in a day and forty in a week. Instead, Defendants paid Plaintiff and the Class Members straight-time for all hours worked. Additionally, Plaintiff and the Class Members incurred uncompensated overtime when Defendants failed to provide them with an uninterrupted 30-minute meal period and required them to engage in work while off the clock. For instance, before Plaintiff and the Class Members clocked in or after they clocked out, Defendants required Plaintiff



1 and the Class Members to paint, power-wash the patio floor, and help on the floor with tasks such
2 as food preparation and getting orders out on-time. Moore and other managers instructed Plaintiff
3 and the Class Members to perform work before clocking in. Additionally, Moore instructed
4 Plaintiff and the Class Members to work entire shifts on their days off without clocking in.
5 Defendants failed to pay Plaintiff and the Class Members for time worked off-the-clock.
6 Defendants did not credit Plaintiff and the Class Members with the hours worked off-the-clock
7 or edited their time sheets as described above.

8 78. Defendants did not pay Plaintiff and the other Class Members minimum, regular
9 or overtime wages for the work they required or permitted them to perform during off-the-clock
10 meal periods, before clocking in, and after clocking out. At all relevant times, Defendants failed
11 to pay all overtime compensation to Plaintiff and the other Class Members for hours worked in
12 excess of eight hours per day. Defendants also failed to pay all overtime compensation to Plaintiff
13 and the other Class Members for hours worked in excess of 40 hours per week.

14 79. Plaintiff is informed and believes and thereon alleges that, at relevant times,
15 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
16 failure to compensate the Plaintiff and the other Class Members for all hours worked.

17 80. In relevant part, Labor Code section 558.1 states:

18 d. Any employer or other person acting on behalf of an employer,
19 who violates, or causes to be violated, any provision regulating
20 minimum wages or hours and days of work in any order of the
21 Industrial Welfare Commission, or violates, or causes to be
22 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
23 held liable as the employer for such violation.

24 e. For purposes of this section, the term "other person acting on
25 behalf of an employer" is limited to a natural person who is an
26 owner, director, officer, or managing agent of the employer, and
27 the term "managing agent" has the same meaning as in subdivision
28 (b) of Section 3294 of the Civil Code.

26 At all relevant times, Defendant Bikramjit Singh Randhawa was an employer of Plaintiff and all
27 of the other Class Members, and/or "owner," "managing agent," and/or "officer" of the



1 Defendants and the other employers identified above. Defendant Bikramjit Singh Randhawa
2 directly or indirectly, or through an agent or other person, employed and exercised control over
3 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
4 the Labor Code and the Wage Order described above.

5 81. At all relevant times, Plaintiff and the Class Members were employees of
6 Defendant Bikramjit Singh Randhawa. Defendant Bikramjit Singh Randhawa engaged, and
7 suffered and permitted, Plaintiff and the Class Members to work. Bikramjit Singh Randhawa was
8 clearly aware that Plaintiff and the Class Members worked for the company and had the power to
9 prevent them from working. Bikramjit Singh Randhawa also exercised control over Plaintiff and
10 the Class Members' wages, hours, and working conditions. Further, Bikramjit Singh Randhawa
11 had the right to control and exercised such control over the manner in which Plaintiff and the
12 Class Members performed their work for Bikramjit Singh Randhawa. Bikramjit Singh Randhawa
13 willfully failed to pay Plaintiff and Class Members for all hours worked at the correct rates of
14 pay. Bikramjit Singh Randhawa engaged in a pattern and/or practice of doing so. Therefore, he is
15 liable to Plaintiff and the Class for his violations of, or causing Defendants to violate the Labor
16 Code and the Wage Order pursuant to Labor Code section 558.1. On behalf of himself and all of
17 the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory
18 penalties, liquidated damages, attorneys' fees, costs, and related relief against Defendant
19 Bikramjit Singh Randhawa that is the same as the award of against the other Defendants on the
20 same grounds for which Plaintiff seeks against the Defendants.

21 82. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
22 Members have suffered damages in an amount, subject to proof, to the extent they were not paid
23 the full amount of wages earned during each pay period during the applicable limitations period.

24 83. As a result of Defendants' conduct, Plaintiff, on behalf of himself and the Class,
25 seeks damages and/or restitution for all earned wages which Defendants failed to pay them at the
26 correct rates of pay, interest thereon, costs of suit and reasonable attorney's fees pursuant to
27 California Labor Code § 1194.

28 84. In addition, pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and the



1 Class, seeks to recover unpaid hourly and minimum wages, liquidated damages in amounts equal
2 to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys'
3 fees, all in amounts subject to proof.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

6 **(Lab. Code §§ 226 and 558.1)**

7 **(By Plaintiff and the Class Members against all Defendants)**

8 85. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

9 86. At all relevant times during the applicable limitations period, Plaintiff and the
10 Class Members have been employees of Defendants and entitled to the benefits and protections
11 of California Labor Code § 226.

12 87. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
13 entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized
14 statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in
15 effect during the pay period; and d) the corresponding number of hours worked at each hourly
16 rate by the employee.

17 88. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
18 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
19 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
20 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
21 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
22 is entitled to an award of costs and reasonable attorney's fees.

23 89. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
24 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
25 injury if the employer fails to provide accurate and complete information as required by California
26 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
27 statement alone one or more of the following:

28 A. The amount of the gross wages or net wages paid to the employee during



1 the pay period or any of the other information required to be provided on the itemized wage
2 statement pursuant to California Labor Code § 226(a);

3 B. Which deductions the employer made from gross wages to determine the
4 net wages paid to the employee during the pay period;

5 C. The name and address of the employer and, if the employer is a farm labor
6 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
7 and address of the legal entity that secured the services of the employer during the pay period;
8 and

9 D. The name of the employee and only the last four digits of his or her social
10 security number or an employee identification number other than a social security number.

11 90. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
12 means a reasonable person would be able to readily ascertain the information without reference
13 to other documents or information.

14 91. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
15 all wages owed, including but not limited to, minimum and overtime wages. As a result,
16 Defendants have failed to properly and accurately itemize each employee’s gross wages earned,
17 net wages earned, the total hours worked, the corresponding number of hours worked by
18 employees and other requirements of California Labor Code § 226. As a result, Defendants have
19 violated California Labor Code § 226.

20 92. Defendants’ failure to provide Plaintiff and the Class Members with accurate
21 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
22 the Class Members with accurate wage statements but intentionally provided wage statements
23 that Defendants knew were not accurate.

24 93. As a result of being provided with inaccurate wage statements by Defendants,
25 Plaintiff and the Class Members have suffered injury. Their legal rights to receive accurate wage
26 statements were violated and they were misled about the amount of wages they had actually
27 earned and were owed. In addition, the absence of accurate information on their wage statements
28 prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery



1 and mathematical computations to determine the amounts of wages owed, has caused difficulty
2 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
3 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
4 and the Class Members were not able to ascertain from the wage statements whether Defendants
5 complied with their obligations under California Labor Code § 226(a).

6 94. In relevant part, Labor Code section 558.1 states:

7
8 e. Any employer or other person acting on behalf of an employer,
9 who violates, or causes to be violated, any provision regulating
10 minimum wages or hours and days of work in any order of the
11 Industrial Welfare Commission, or violates, or causes to be
12 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
13 held liable as the employer for such violation.

14 f. For purposes of this section, the term “other person acting on
15 behalf of an employer” is limited to a natural person who is an
16 owner, director, officer, or managing agent of the employer, and
17 the term “managing agent” has the same meaning as in subdivision
18 (b) of Section 3294 of the Civil Code.

19 At all relevant times, Defendant Bikramjit Singh Randhawa was an employer of Plaintiff and all
20 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
21 Defendants and the other employers identified above. Defendant Bikramjit Singh Randhawa
22 directly or indirectly, or through an agent or other person, employed and exercised control over
23 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
24 the Labor Code and the Wage Order described above.

25 95. At all relevant times, Plaintiff and the Class Members were employees of
26 Defendant Bikramjit Singh Randhawa. Defendant Bikramjit Singh Randhawa engaged, and
27 suffered and permitted, Plaintiff and the Class Members to work. Bikramjit Singh Randhawa was
28 clearly aware that Plaintiff and the Class Members worked for the company and had the power to
prevent them from working. Bikramjit Singh Randhawa also exercised control over Plaintiff and
the Class Members’ wages, hours, and working conditions. Further, Bikramjit Singh Randhawa



1 had the right to control and exercised such control over the manner in which Plaintiff and the
2 Class Members performed their work for Bikramjit Singh Randhawa. Bikramjit Singh Randhawa
3 willfully failed to provide Plaintiff and Class Members all their meal periods, failed to pay them
4 for all premium wages, and failed to pay them for all hours worked at the correct rates of pay.
5 Bikramjit Singh Randhawa engaged in a pattern and/or practice of doing so. Therefore, he is liable
6 to Plaintiff and the Class for his violations of, or causing Defendants to violate the Labor Code
7 and the Wage Order pursuant to Labor Code section 558.1. On behalf of himself and all of the
8 other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory
9 penalties, liquidated damages, attorneys' fees, costs, and related relief against Defendant
10 Bikramjit Singh Randhawa that is the same as the award of against the other Defendants on the
11 same grounds for which Plaintiff seeks against the Defendants.

12 96. Pursuant to California Labor Code § 226(e), Plaintiff and the Class Members
13 are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the
14 initial pay period in which a violation of California Labor Code § 226(a) occurred and one
15 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
16 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per class member, and are
17 also entitled to an award of costs and reasonable attorneys' fees.

18 **FIFTH CAUSE OF ACTION**

19 **WAITING TIME PENALTIES**

20 **(Lab. Code §§ 201-203 and 558.1)**

21 **(By Plaintiff and the Class against all Defendants)**

22 97. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

23 98. At all relevant times during the applicable limitations period, Plaintiff and the
24 class have been non-exempt employees of Defendants and entitled to the benefits and
25 protections of California Labor Code sections 201-203, and the Wage Order.

26 99. Labor Code section 201 provides that all earned and unpaid wages of an
27 employee who is discharged are due and payable immediately at the time of discharge.

28 100. Labor Code section 202 provides that all earned and unpaid wages of an



1 employee who quits after providing at least 72-hours notice before quitting are due and payable
2 at the time of quitting and that all earned and unpaid wages of an employee who quits without
3 providing at least 72-hours notice before quitting are due and payable within 72 hours.

4 101. By failing to pay all earned minimum, regular, and overtime wages to Plaintiff
5 and the Class as described above, Defendants failed to timely pay them all earned and unpaid
6 wages in violation of Labor Code section 201 or 202.

7 102. Labor Code section 203 provides that the wages of an employee continue on a
8 daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned
9 and unpaid wages to the employee in accordance with Labor Code section 201 or 202.
10 Defendants willfully failed and refused to pay timely compensation and wages, for among other
11 things, off-the-clock work and for the circumstances described above. Defendants willfully failed
12 and refused to pay timely compensation and wages, for among other things, unpaid overtime and
13 unpaid meal periods.

14 103. In relevant part, Labor Code section 558.1 states:

15
16 f. Any employer or other person acting on behalf of an employer,
17 who violates, or causes to be violated, any provision regulating
18 minimum wages or hours and days of work in any order of the
19 Industrial Welfare Commission, or violates, or causes to be
20 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
21 held liable as the employer for such violation.

22 g. For purposes of this section, the term “other person acting on
23 behalf of an employer” is limited to a natural person who is an
24 owner, director, officer, or managing agent of the employer, and
25 the term “managing agent” has the same meaning as in subdivision
26 (b) of Section 3294 of the Civil Code.

27 At all relevant times, Defendant Bikramjit Singh Randhawa was an employer of Plaintiff and all
28 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
Defendants and the other employers identified above. Defendant Bikramjit Singh Randhawa
directly or indirectly, or through an agent or other person, employed and exercised control over



1 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
2 the Labor Code and the Wage Order described above.

3 104. At all relevant times, Plaintiff and the Class Members were employees of
4 Defendant Bikramjit Singh Randhawa. Defendant Bikramjit Singh Randhawa engaged, and
5 suffered and permitted, Plaintiff and the Class Members to work. Bikramjit Singh Randhawa was
6 clearly aware that Plaintiff and the Class Members worked for the company and had the power to
7 prevent them from working. Bikramjit Singh Randhawa also exercised control over Plaintiff and
8 the Class Members' wages, hours, and working conditions. Further, Bikramjit Singh Randhawa
9 had the right to control and exercised such control over the manner in which Plaintiff and the
10 Class Members performed their work for Bikramjit Singh Randhawa. Bikramjit Singh Randhawa
11 willfully failed to provide Plaintiff and Class Members all their meal periods, failed to pay them
12 for all premium wages, and failed to pay them for all hours worked at the correct rates of pay.
13 Bikramjit Singh Randhawa engaged in a pattern and/or practice of doing so. Therefore, he is liable
14 to Plaintiff and the Class for his violations of, or causing Defendants to violate the Labor Code
15 and the Wage Order pursuant to Labor Code section 558.1. On behalf of himself and all of the
16 other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory
17 penalties, liquidated damages, attorneys' fees, costs, and related relief against Defendant
18 Bikramjit Singh Randhawa that is the same as the award of against the other Defendants on the
19 same grounds for which Plaintiff seeks against the Defendants.

20 105. Plaintiff is informed and believes that Defendants' failures to timely pay
21 Plaintiff and the class all of their earned and unpaid wages have been willful in that, at all
22 relevant times, Defendants have deliberately maintained policies and practices that violate the
23 requirements of the Labor Code and the Wage Order even though, at all relevant times, they
24 have had the ability to comply with those legal requirements.

25 106. Pursuant to Labor Code section 203, Plaintiff seeks waiting time penalties on
26 behalf of himself and the Class Members, in amounts subject to proof not to exceed 30 days of
27 waiting time penalties for each class member.

28 ///



1 **SIXTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

4 **(By Plaintiff and the Class Members against all Defendants)**

5 107. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 108. At all relevant times during the applicable limitations period, Plaintiff and the
7 Class Members have been employees of Defendants and entitled to the benefits and protections
8 of the Business and Professions Code §§ 17200, *et seq.*

9 109. The unlawful conduct of Defendants alleged herein amount to and constitutes
10 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
11 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
12 gained a competitive advantage over other comparable companies doing business in California
13 that comply with their legal obligations to compensate employees for all earned wages.

14 110. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
15 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
16 Members were deprived of wages for all hours worked and for all rest and meal periods not
17 provided to them and unpaid wages.

18 111. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
19 Class Members are entitled to restitution of all monies rightfully belonging to them that
20 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
21 practices.

22 112. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
23 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
24 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

25 **SEVENTH CAUSE OF ACTION**

26 **CIVIL PENALTIES**

27 **(By Plaintiff and the Aggrieved Employees against all Defendants)**

28 113. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.



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114. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning February 5, 2019 and ending on the date that final judgment is entered in this action.

115. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

116. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

117. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, and 1198.



118. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

119. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by California Labor Code § 1174.5).

C. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

D. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).

E. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, and



1 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
2 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
3 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

4 120. Plaintiff has complied with the procedures for bringing suit specified in California
5 Labor Code § 2699.3. By letter dated February 5, 2020, Plaintiff filed written notice online with
6 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
7 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
8 violated, including the facts and theories to support the alleged violations. A true and correct copy
9 of the notice to the LWDA dated February 5, 2020 is attached as Exhibit A. Plaintiff accompanied
10 his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
11 response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the
12 LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate
13 these allegations.

14 121. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
15 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
16 connection with their claims for civil penalties.

17 **PRAYER FOR RELIEF**

18 122. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
19 relief and judgment against Defendants as follows:

20 A. An order that the action be certified as a class action with respect to
21 Plaintiff’s claims for violations of California law;

22 B. An order that Plaintiff be appointed class representative;

23 C. An order that counsel for Plaintiff be appointed class counsel;

24 D. Unpaid wages, including overtime and double-time wages;

25 E. Premium wages;

26 F. Statutory penalties;

27 G. Civil penalties;

28 H. Declaratory relief;



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- I. Actual damages;
- J. Restitution;
- K. Pre-judgment interest;
- L. Costs of suit;
- M. Reasonable attorneys' fees; and
- N. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

123. Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 24, 2022

By 

DAVID SPIVAK
CAROLINE TAHMASSIAN
Attorneys for Plaintiff, ANTHONY SIKES, and
all others similarly situated



SPIVAK LAW
Employee Rights Attorneys

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8605 Santa Monica Bl
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Sherman Oaks, CA 91403

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

February 5, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Anthony Sikes / Wing Dhaba, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Anthony Sikes (hereafter “Sikes”) provides notice on behalf of himself and of all individuals currently and formerly employed in California as hourly employees, including but not limited to crew members, cooks, preps, prep cooks, kitchen help, servers, line cooks, restaurant team members, restaurant workers, cashiers, shift leads, and similar positions (hereafter referred to as “Aggrieved Employees”) by Wing Dhaba, Inc. doing business as Wingstop (hereafter, “Wingstop”) of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, and 1198.

At all relevant times, Wingstop has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Sikes and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order” or “Wage Order 5”), paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

TEL (818) 582-3086
FAX (818) 582-2561

SPIVAKLAW.COM

Statement of Facts

Wingstop began to employ Sikes on February 27, 2017 as a non-exempt hourly cook at its restaurant in Vacaville, California. Sikes worked at Wingstop on and off (on one occasion resigning and later returning to work at Wingstop) from the time of his hire until August 28, 2019 when Sikes ended his employment. Additionally, within the 365-day period preceding this letter, Wingstop employed Sikes at the Wingstop in Fairfield (Solano County).

At the end of his most recent term of employment, Wingstop paid Sikes at an hourly rate of \$13.00. Wingstop issued wages to Sikes and the Aggrieved Employees on a biweekly basis. Wingstop ordinarily scheduled Sikes to work shifts of five to eight hours, five to six days per week.

At all relevant times, Wingstop failed to consistently provide Sikes and the Aggrieved Employees with a daily 30-minute off-duty meal period within the first five hours of work on shifts over five hours or a second daily meal period within the first ten hours of work on shifts over ten hours. Wingstop compelled Sikes and the Aggrieved Employees to work during their meal periods without pay performing tasks such as cooking food, prepping food, and serving food. While Sikes and the Aggrieved Employees were clocked out for meal periods, Wingstop required them to continue working because it had insufficient staff to operate its restaurants if one or more employees took duty free meal or rest periods. Furthermore, if Sikes and the Aggrieved Employees did not clock out for meal periods, the general managers, including Jimmy Moore, edited their time sheets to falsely show periods off the clock for at least 30 minutes. Wingstop also failed to pay Sikes and the Aggrieved Employees premium wages for those workdays it failed to provide them with one or more meal periods in compliance with California law.

At all relevant times, Wingstop failed to provide Sikes and the Aggrieved Employees with paid, uninterrupted, duty-free 10-minute rest periods every four hours worked or major portion thereof. Wingstop compelled Sikes and the Aggrieved Employees to work during their rest breaks performing tasks such as cooking food, prepping food, and serving food. Wingstop also failed to

provide Sikes and the other Aggrieved Employees with a third rest period when they worked in excess of ten hours in a workday. Wingstop failed to pay Sikes and the Aggrieved Employees premium wages for days in which it failed to provide them with one or more rest periods under Labor Code § 226.7 and Wage Order No. 5.

Wingstop failed to pay Sikes and the Aggrieved Employees overtime for all hours over eight in a day and forty in a week. Instead, Wingstop paid Sikes and the Aggrieved Employees straight-time for all hours worked. Additionally, Sikes and the Aggrieved Employees incurred uncompensated overtime when Wingstop failed to provide them with an uninterrupted 30-minute meal period and required them to engage in work while off the clock. For instance, before Sikes and the Aggrieved Employees clocked in or after they clocked out, Wingstop required Sikes and the Aggrieved Employees to paint, power-wash the patio floor, and help on the floor with tasks such as food prep and getting orders out on-time. Moore and other managers instructed Sikes and the Aggrieved Employees to perform work before clocking in. Additionally, Moore instructed Sikes and other Aggrieved Employees to work entire shifts on their days off without clocking in. Wingstop failed to pay Sikes and the Aggrieved Employees for time worked off-the-clock.

Wingstop did not credit Sikes and the Aggrieved Employees with the hours worked off-the-clock or edited from their time sheets as described above. In connection with this, Wingstop failed to provide Sikes and the Aggrieved Employees with accurate wage statements because Wingstop did not state on the wage statements all hours Sikes and the Aggrieved Employees worked and all wages they earned, including, but not limited to minimum and overtime wages.

At all relevant times, upon resignation or termination, Wingstop failed to pay the wages earned and hours worked off-the-clock or edited from time sheets as described above.

For the reasons herein, Sikes alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Wingstop failed to provide Sikes and other Aggrieved Employees with all rest breaks and meal periods;
- b) Wingstop failed to compensate Sikes and other Aggrieved Employees at one hour's pay for each day in which it failed to provide them with one or more meal periods required by law;
- c) Wingstop failed to compensate Sikes and other Aggrieved Employees at one hour's pay for each day in which it failed to provide them with one or more rest breaks required by law;
- d) Wingstop failed to compensate Sikes and the other Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum wages and overtime wages;
- e) Wingstop failed to provide Sikes and the Aggrieved Employees with accurate wage statements;
- f) Wingstop failed to timely pay Sikes and the Aggrieved Employees all earned and unpaid wages during their employment at Wingstop and at the time such employment ended; and
- g) Wingstop failed to properly maintain payroll records showing the actual hours worked by Sikes and Aggrieved Employees.

Accordingly, Sikes now seeks civil penalties on behalf of himself and the Aggrieved Employees based on Wingstop's violations of the California Labor Code and the Wage Order.

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The Wage Order

“Wage Order 5” or “The Wage Order” applies to “all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis.” Wage Order 5, § 1. The term “Public Housekeeping Industry” means “any industry, business, or establishment which provides meals, housing, or maintenance services” and includes, but is not limited to, the following occupations:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;

Wage Order 5, § 2(P) (emphasis added). At all relevant times during the applicable limitations period, Wingstop employed Sikes and the other Aggrieved Employees as crew members, cooks, preps, prep cooks, kitchen help, servers, line cooks, restaurant team members, restaurant workers, cashiers, shift leads, and comparable positions. Accordingly, Sikes and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure To Provide Rest Breaks And Meal Periods **(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

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.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(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, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

...

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

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (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.

Wingstop has intentionally and improperly failed to provide all duty-free rest breaks and/or meal periods to Sikes and the other Aggrieved Employees as required by law, including but not limited to, second meal periods on days they worked more than ten hours in a workday. Wingstop did not pay premium wages to Sikes and Aggrieved Employees on days it did not provide them with one or more timely meal and rest periods as required by law. Wingstop required Sikes and the Aggrieved Employees to work through their meal or rest periods due to insufficient staffing. In failing to do so, Wingstop violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Sikes seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation; and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Failure To Pay All Wages Earned For All Hours Worked
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so

fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Section 4 of Wage Order states:

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2(K) of the Wage Order states:

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

(a) 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 attorney’s fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states:

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. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

At all relevant times during the applicable limitations period, Wingstop

knowingly failed to compensate Sikes and the other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all hours in excess of 40 in a week, all in excess of eight in a day, and all for the 7th day worked in a workweek. Sikes and the Aggrieved Employees incurred uncompensated time at minimum wage or overtime when Wingstop permitted them to work without pay during periods clocked out for meals. Furthermore, if Sikes and the Aggrieved Employees did not clock out for meal periods because they were required to work through them, the general manager, Jimmy Moore, would edit their time sheets at the end of the pay period to show that Sikes and the Aggrieved Employees received their meal periods. Wingstop required Sikes and the Aggrieved Employees to work entire shifts off-the-clock as well as perform tasks such as paint, power-wash the patio floor, and help on the floor with tasks such as food prep and getting orders out on-time before clocking in and after clocking out. Wingstop failed to compensate Sikes and the Aggrieved Employees at one and one-half times their regular rate of pay for all hours over 8 in a day and 40 in a week.

Accordingly, Sikes seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation;
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and

4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203, including “waiting time” penalties of up to thirty (30) days’ wages (penalties set by California Labor Code § 1197.1).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the employee identification number or last four digits of his or her social security,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As alleged herein, Wingstop failed to provide Sikes and the Aggrieved Employees all wages owed, including, but not limited to, all minimum and overtime wages at the legal rates of pay for all regular and overtime hours worked. As a result, Wingstop failed to properly itemize each employee's gross wages earned, net wages earned, and other requirements of California Labor Code § 226. As a result, Wingstop has violated California Labor Code § 226.

Accordingly, Sikes seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code §204 states that all wages (other than those mentioned in Labor Code sections 201-202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As alleged herein, Wingstop failed to provide Sikes and the Aggrieved Employees all wages owed, including, but not limited to, all minimum and overtime wages at the legal rates of pay for all regular and overtime hours worked. As a result, Wingstop failed to pay Sikes and the Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, Wingstop has violated California Labor Code § 204. Because of Wingstop's failures to fully pay Sikes and the Aggrieved Employees within the

time periods set by California Labor Code § 204, Wingstop failed to timely pay all wages due during employment.

Accordingly, Sikes seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204 and \$200 for each Aggrieved Employee.

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By willfully failing to pay wages to Sikes and other Aggrieved Employees as set forth above, at the time of termination of employment, Wingstop is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of

himself and other Aggrieved Employees, Sikes seeks civil penalties from Wingstop as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5, 1198)

Labor Code § 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid

to, employees employed at the respective plants or establishments. 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. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

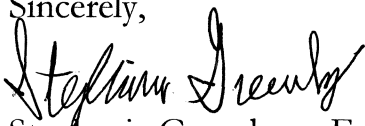
Wingstop has willfully failed to maintain the records required by § 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, all overtime hours worked, and all regular hours worked described above. Accordingly, Sikes seeks civil penalties from Wingstop on behalf of himself and other Aggrieved Employee as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



Stephanie Greenberg, Esq.
stephanie@spivaklaw.com

LWDA / Wing Dhaba, Inc.

2/5/2020

Page 18 of 18

cc: Anthony Sikes
David Spivak, Esq.
Walter Haines, Esq.

Wing Dhaba, Inc.
c/o Bikram Singh Randhawa
5287 Coach Drive
El Sobrante, CA 94803

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 15303 Ventura Blvd., Ste 900, Sherman Oaks, CA 91403.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

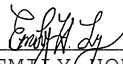
On Thursday, February 24, 2022, I served the foregoing document described as **[PROPOSED] THIRD AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Steven H. Bovarnick
Leland, Parachini, Steinberg, Matzger & Melnick LLP
199 Fremont Street, 21st Floor
San Francisco, CA 94105
SBovarnick@lpslaw.com
Rsahae@lpslaw.com

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address emily@spivaklaw.com.

EXECUTED on Thursday, February 24, 2022, at Los Angeles, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



EMILY HOUNG LY