

FILED/ENDORSED

MAY 28 2021

By: K. Johnson
Deputy Clerk

Timothy B. Del Castillo (SBN: 277296)
tdc@castleemploymentlaw.com
Kent L. Bradbury (SBN: 279402)
kb@castleemploymentlaw.com
Castle Law: California Employment Counsel, PC
3200 Douglas Blvd., Suite 300
Roseville, CA 95661
Telephone: (916) 245-0122

Attorneys for Plaintiff ALMOG COHEN
on behalf of himself and similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

34 - 2021 - 0030171 1

ALMOG COHEN, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

FIRE WINGS INTERNATIONAL, LLC;
FIRE WINGS NATOMAS, LLC; FIRE
WINGS TULLY; LONG TRINH, an
individual; Does 1 through 20, inclusive,

Defendants.

CLASS ACTION

COMPLAINT FOR DAMAGES:

1. Violation of California Unfair Competition Law (Business & Professions Code § 17200 et seq.
2. Failure to Provide Accurate Wage Statements;
3. Failure to Pay Minimum Wage for All Hours Worked;
4. Failure to Provide Meal and Rest Periods;
5. Waiting Time Penalties;
6. Failure to Pay Overtime Wages;
7. Failure to Reimburse Business Expenses
8. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 et seq.

JURY TRIAL DEMANDED

1 Plaintiff ALMOG COHEN (“Plaintiff”), on behalf of himself and all other similarly situated
2 employees hereby files this Complaint against Defendants FIRE WINGS INTERNATIONAL, LLC;
3 FIRE WINGS NATOMAS, LLC; FIRE WINGS TULLY; LONG TRINH, an individual; Does 1
4 through 20 (collectively referred to as “Defendants”). Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a class and representative action brought by Plaintiff seeking damages for
7 failure to provide meal and rest periods, failure to pay overtime and minimum wages, inaccurate
8 wage statements, failure to reimburse for business expenses, and derivative civil and statutory
9 penalties. Plaintiff seeks these damages and penalties, plus interest and attorney’s fees, on behalf of
10 himself and similarly situated employees.

11 2. During all relevant times, Plaintiff and similarly situated employees worked for
12 Defendants as employees. Defendants issued wage statements to Plaintiff and similarly situated
13 employees that did not comply with California law because, among other things, they did not include
14 all hours worked. As a matter of policy and practice, Defendants failed to provide Plaintiff and
15 similarly situated employees meal and rest periods, which is in violation of the California Labor
16 Code.

17 **JURISDICTION AND VENUE**

18 3. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
19 violations of California Labor Code §§ 226, 226.3, 213, 2698 *et seq.*, Business and Professions Code
20 § 17200 *et seq.*

21 4. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some
22 of the wrongful acts and violations of law asserted herein occurred within Sacramento County.

23 **PARTIES**

24 5. Plaintiff ALMOG COHEN is over the age of eighteen (18) and is a resident of the
25 State of California and an employee of Defendants.

26 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant FIRE
27 WINGS INTERNATIONAL, LLC is now and/or at all times mentioned in this Complaint a
28

1 California Limited Liability Company and the owner and operator of an industry, business and/or
2 facility licensed to do business and actually doing business in the State of California.

3 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant FIRE
4 WINGS NATOMAS, LLC is now and/or at all times mentioned in this Complaint a California
5 Limited Liability Company and the owner and operator of an industry, business and/or facility
6 licensed to do business and actually doing business in the State of California.

7 8. Plaintiff is informed and believes, and thereupon alleges, that Defendant FIRE
8 WINGS TULLY is now and/or at all times mentioned in this Complaint a California Corporation
9 and the owner and operator of an industry, business and/or facility licensed to do business and
10 actually doing business in the State of California.

11 9. Plaintiff is further informed and believe, and thereon allege, that Defendant LONG
12 TRINH is the owner and operator of Defendants FIRE WINGS INTERNATIONAL, LLC; FIRE
13 WINGS TULLY, and FIRE WINGS NATOMAS, LLC and can be found personally liable for wage
14 and hour violations pursuant to Labor Code section 558.1.

15 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
16 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
17 employees. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
18 were at all relevant times advised by skilled California employment law attorneys and knew the
19 requirements of the California Labor Code with respect to employee wage statements, payment of
20 wages, reimbursement of business expenses, and provision of meal and rest periods.

21 11. Defendants proximately caused Plaintiff and similarly situated employees to be
22 subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this
23 Complaint.

24 12. Plaintiff is further informed and believes, and thereon alleges, that each of the
25 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
26 joint venturer of the remaining defendants and was acting within the course and scope of that
27 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
28 Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the

1 remaining defendants. The true names and capacities of the defendants named herein Does 1 through
2 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
3 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
4 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
5 through 20, inclusive, when they have been determined.

6 13. On March 15, 2021, Plaintiff filed his Labor Code § 2699.3 Private Attorney General
7 Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”).
8 The LWDA did not respond within 65 days of filing of the PAGA notice.

9 **CLASS ALLEGATIONS**

10 14. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
11 class action pursuant to California Code of Civil Procedure section 382. The classes that Plaintiff
12 seeks to represent are composed of and defined as follows:

13 All non-exempt employees who were employed by Defendants in California at any
14 time four (4) years prior to the filing of this Action up to the date that this matter is
15 certified as a class action.

16 15. This action has been brought and may be properly maintained as a class action,
17 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
18 defined community of interest in the litigation and the proposed classes are easily ascertainable.

19 (a) Numerosity: The Plaintiff Class is so numerous that the individual joinder of all
20 members is impracticable under the circumstances of this case. While the exact
21 number of class members is unknown to Plaintiff at this time, Plaintiff is informed
22 and believes that Defendants may have employed hundreds of individuals falling
23 within the above stated class definitions throughout the State of California during the
24 applicable statute of limitations, who were subjected to the practices outlined in this
25 Complaint. As such, joinder of all members of the Plaintiff Class is not practicable.

26 (b) Common Questions Predominate: Common questions of law and fact exist as to all
27 members of the Plaintiff Class and predominate over questions that affect only
28

individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants accurately stated all required information on paystubs issued to members of the Plaintiff Class;
- (2) Whether Defendants maintained the time and payroll records for their employees as required under the California Labor Code;
- (3) Whether Defendants provided meal and rest periods to their employees as required under the California Labor Code;
- (4) Whether Defendants maintained policies and practices that provided meal and rest periods to their employees as required under the California Labor Code;
- (5) Whether Defendants paid overtime and minimum wages to their employees as required under the California Labor Code;
- (6) Whether Defendants reimbursed their employees for reasonable business expenses.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the Plaintiff Class. Plaintiff also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Defendants failed to provide meal and rest periods to their employees, failed to pay all overtime and minimum wages owed, and issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226. Additionally, Defendants failed to reimburse Plaintiff and Class members for reasonable business expenses. As a result, each putative class member will have the same basis for their legal claims.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. Plaintiff resides in California and is an adequate representative of the putative class as he has no interests that are adverse to those of absent class

members. Additionally, Plaintiff has retained counsel who have substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the classes is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the classes may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

16. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

17. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 16 as though fully set forth herein.

18. Defendants own and manage a chain of restaurants in California.

19. Plaintiff ALMOG COHEN worked for Defendants as a non-exempt employee in California. Plaintiff was at all times classified by Defendants as non-exempt employee, and was entitled to overtime pay, minimum wages, meal and rest periods, and reimbursement for business expenses. However, Defendants failed to provide meal and rest periods to Plaintiff and similarly situated employees, failed to pay all overtime and minimum wages owed, and violated various other provisions of the Labor Code

1 20. Plaintiff brings this Class Action on behalf of himself and similarly situated
2 employees in order to fully compensate himself and Class Members for their losses incurred
3 during the class period caused by Defendants' uniform policies and practices which failed to
4 lawfully compensate these employees.

5 21. Defendants' uniform policies and practices alleged herein were unlawful, unfair
6 and deceptive business practices whereby Defendants retained and continue to retain wages due
7 Plaintiff and the other Class Members. Plaintiff and the other Class Members seek an injunction
8 enjoining such conduct by Defendant in the future, relief for the named Plaintiff and the other
9 Class Members who have been economically injured by Defendant' past and current unlawful
10 conduct, and all other appropriate legal and equitable relief.

11 22. Defendants did not allow Claimant and similarly situated employees to take their
12 statutorily required meal and rest periods. Defendants failed to provide Claimant and other
13 similarly situated employees a 30-minute, duty-free meal period before the end of the fifth hour
14 of work as required under the law.

15 23. Defendants also fail to provide a second meal period to Claimant and similarly
16 situated employees who work ten hours or more in a given shift. Claimant and similarly situated
17 employees regularly missed their meal and rest periods and/ or they were provided late.
18 Defendants also failed to provide rest periods to Claimant and similarly situated employees for
19 every 4 hours worked or major fraction thereof.

20 24. Defendants' management staff were aware this was occurring and did not ensure
21 meal and/ or rest periods were provided to Claimant and similarly situated employees in
22 compliance with California law.

23 25. Defendants require Claimant and similarly situated employees to falsify their own
24 timecards to show meal and/ or rest periods, when in fact they were not taken and Claimant and
25 similarly situated employees were actually working through the falsely documented break times.
26 Defendants also require Claimant and similarly situated employees to falsify the timecards of
27 other employees in a similar fashion.
28

1 26. Claimant and similarly situated employees were also suffered and permitted to
2 work off the clock without compensation for other reasons. For example, Claimant often
3 performed work on his own time at home answering emails and phone calls and working on
4 various projects. Defendants and Claimant's manager were aware of this additional work, but
5 Claimant has not been compensated for it.

6 27. Claimant and similarly situated employees regularly worked over eight (8) hours a
7 day and/or forty (40) hours a week for which all overtime and double time was not paid.
8 Defendants also failed to pay minimum wages for all hours worked by Claimant and similarly
9 situated employees.

10 28. For instance, Claimant's direct manager requires him to travel to distant company
11 locations which require hours of driving each day, and Claimant is not compensated for all hours
12 worked, including his driving time. Claimant also frequently works long shifts for which not all
13 overtime and double time is paid.

14 29. Claimant and similarly situated employees also incurred business expenses
15 without reimbursement. For example, Claimant is frequently required to travel to Defendants'
16 locations in his personal vehicle, and Defendants never reimbursed Claimant and similarly
17 situated employees for mileage. Defendants also failed to reimburse Claimant and similarly
18 situated employees for the use of their cell phones for business purposes.

19 30. Under California Labor Code Section 2802, employers are required to indemnify
20 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code
21 § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
22 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
23 her duties, or of his or her obedience to the directions of the employer, even though unlawful,
24 unless the employee, at the time of obeying the directions, believed them to be unlawful."

25 31. As a result of the practices listed above, Defendants did not provide Plaintiff and
26 similarly situated employees legally compliant wage statements noting, among other things, total
27 hours worked, gross wages earned, the applicable hourly rates in effect during the pay period and
28 the corresponding number of hours worked at each hourly rate.

1 32. Defendants also did not provide aggrieved employees all wages owed upon their
2 termination or within seventy-two (72) hours of their separation from employment.

3 33. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
4 employees with an accurate itemized wage statement in writing showing, among other things,
5 gross wages earned and all applicable hourly rates in effect during the pay period and the
6 corresponding amount of time worked at each hourly rate. Aside from the violations listed above
7 in this paragraph, Defendants failed to issue to Plaintiff and similarly situated employees an
8 itemized wage statement that lists all the requirements under California Labor Code 226 et seq.

9 34. Defendants' uniform policies and practices to not provide Plaintiff and Class
10 Members meal and rest periods, not pay all minimum and overtime wages earned, not pay all
11 wages owed at termination or resignation, and not to provide compliant wage statements are
12 evidenced by Defendants' business records.

13 35. Defendants, as a matter of corporate policy, practice and procedure, intentionally,
14 knowingly and systematically failed to reimburse and indemnify Plaintiff and other Class
15 Members for required business expenses incurred in direct consequence of discharging their
16 duties on behalf of Defendants.

17 36. Claimant is informed and believes that Defendants committed numerous other
18 violations of the California Labor Code, including but not limited to those identified in this
19 Complaint. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018),
20 Claimant intends to seek civil penalties for all violations of the California Labor Code, whether
21 she experienced them personally or not.

22 37. Upon information and belief, all transactions regarding compensation, hiring,
23 terminations, promotions, pay increases, etc. relating to Defendants' California employees were
24 submitted to and processed by Defendant in its California headquarters. Additionally, on
25 information and belief, Defendants' corporate records, in particular HR and pay records
26 pertaining to Defendants' California employees, are also maintained at Defendants' California
27 headquarters.

1 38. Upon information and belief, Defendants maintain a central Payroll department at
2 its California headquarters which processes payroll for all Defendants' employees, including
3 Plaintiff and similarly situated, aggrieved employees.

4 39. At all times herein set forth, PAGA provides that any provision of law under the
5 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
6 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
7 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
8 behalf of themselves and other current or former employees pursuant to procedures outlined in
9 California Labor Code section 2699.3.

10
11 **FIRST CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

13 **(As to Defendants Fire Wings International, LLC; Fire Wings Natomas, LLC;
14 Fire Wings Tully)**

15 40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 as
16 though fully set forth herein.

17 41. Unfair competition shall mean and include any unlawful, unfair or fraudulent
18 business act or practice and unfair, deceptive, untrue or misleading advertising and any act
19 prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
20 Business and Professions Code. *See* Cal. Bus. and Prof. Code §§ 17200 *et seq.*

21 42. Defendants committed numerous violations of the California Labor Code
22 throughout the employment relationship.

23 43. Plaintiff is also informed and believes and thereon alleges that such actions and/or
24 conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and
25 Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products*
26 *Co.*, 23 Cal. 4th 163 (2000).

27 44. As a direct and legal result of Defendant's conduct, as alleged herein, pursuant to
28 the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
restitution as a result of its unfair business practices, including, but not limited to, public

1 injunctive relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§
2 17203, 17208, violations of Labor Code §§ 1194, 226, and 226.7, all in an amount as yet
3 unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

4
5 **SECOND CAUSE OF ACTION**
6 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**
7 **(As to all Defendants)**

8 45. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 44 as
9 though fully set forth herein.

10 46. According to Labor Code section 226(a), an employer must provide an itemized
11 statement to an employee, semi-monthly or at the time of each payment of wages, showing:

12 *(1) gross wages earned, (2) total hours worked by the employee,*
13 *except for any employee whose compensation is solely based on a*
14 *salary and who is exempt from payment of overtime under*
15 *subdivision (a) of Section 515 or any applicable order of the*
16 *Industrial Welfare Commission, (3) the number of piece-rate units*
17 *earned and any applicable piece rate if the employee is paid on a*
18 *piece-rate basis, (4) all deductions, provided that all deductions*
19 *made on written orders of the employee may be aggregated and*
20 *shown as one item, (5) net wages earned, (6) the inclusive dates of*
21 *the period for which the employee is paid, (7) the name of the*
22 *employee and the last four digits of his or her social security number*
23 *or an employee identification number other than a social security*
24 *number, (8) the name and address of the legal entity that is the*
25 *employer and, if the employer is a farm labor contractor, as defined*
26 *in subdivision (b) of Section 1682, the name and address of the legal*
27 *entity that secured the services of the employer, and (9) all*
28 *applicable hourly rates in effect during the pay period and the*
corresponding number of hours worked at each hourly rate by the
employee. The deductions made from payment of wages shall be
recorded in ink or other indelible form, properly dated, showing the
month, day, and year, and a copy of the statement and the record of
the deductions shall be kept on file by the employer for at least three
years at the place of employment or at a central location within the
State of California.

47. Defendants failed to provide an itemized statement or failed to provide an accurate
and complete itemized statement showing the requirements set forth in Labor Code section
226(a). Defendants failed to list on the wage statements provided to Plaintiff and similarly

1 situated employees wage statements listing all hour worked and the applicable rates of pay and
2 overtime rate. Plaintiff alleges that Defendants failed to provide accurate itemized wage
3 statements in accordance with Labor Code section 226(a) to all members of the Labor Code
4 Class.

5 48. Also, California Labor Code section 226 has been violated by, or was caused to be
6 violated by, Defendants and Defendant LONG TRINH. Plaintiff is informed and thereon
7 believes that Defendant LONG TRINH was a person acting on behalf of Defendants, including
8 as an owner and/or managing agent of Defendants, within the meaning of California Labor Code
9 section 558.1. Therefore, Defendant LONG TRINH may be held liable as the employer for the
10 violations California Labor Code section 226.

11 49. Additionally, Plaintiff alleges he suffered injury as a result of Defendants'
12 knowing and intentional failure to provide accurate and complete information as required by any
13 one or more of items (1) to (9), inclusive, of Labor Code section 226, subdivision (a), and
14 Plaintiff cannot promptly and easily determine (*i.e.* a reasonable person in each Plaintiff's
15 position would not be able to readily ascertain the information without reference to other
16 documents or information) from the wage statement alone. Cal. Lab Code § 226(e)(2)(B)(iv).

17 50. As a proximate cause of Defendants' failure to provide accurate statements,
18 Plaintiff and Class Members were damaged and are entitled to statutory and civil penalties under
19 the Labor Code, and attorney's fees and costs, in an amount to be proven at trial.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED**

22 **(As to All Defendants)**

23 51. Plaintiff hereby incorporates by reference Paragraphs 1 through 50 of this
24 Complaint as if fully set forth herein and for a cause of action alleges as follows:

25 52. Defendants were required to compensate Plaintiff with at least the State's
26 minimum wage for all hours worked. See Cal. Labor Code § 1194; MW Order-2014; MW
27 Order-2017.
28

1 53. Defendants were aware of their obligation to pay the minimum wages but failed to
2 do so.

3 54. In addition, California Labor Code section 558.1, subsection (a), provides that
4 “Any employer or other person acting on behalf of an employer, who violates, or cause to be
5 violated, any provision regulating minimum wages or hours and days of work in any order of the
6 Industrial Welfare Commission, or violates or causes to be violated, Sections 203, 226, 226.7,
7 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

8 55. California Labor Code section 558.1, subsection (b), further provides that the term
9 “other person acting on behalf of any employer” means “a natural person who is an owner,
10 director, officer, or managing agent of the employer.”

11 56. Provisions regulating minimum wages or hours and days of work in any order of
12 the Industrial Welfare Commission, such as IWC Wage Order No. 5-2001, and California Labor
13 Code section 1194 have been violated by, or were caused to be violated by, Defendants and
14 Defendant LONG TRINH. Plaintiff is informed and thereon believes that Defendant LONG
15 TRINH was a person acting on behalf of Defendants, including as an owner and/or managing
16 agent of Defendants, within the meaning of California Labor Code section 558.1. Therefore,
17 Defendant LONG TRINH may be held liable as the employer for the violations of provisions
18 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
19 Commission, including IWC Wage Order No. 5-2001, and California Labor Code section 1194.

20 57. Defendants’ conduct described herein violates California Labor Code section
21 1194, and Wage Orders. As a proximate result of Defendants’ conduct, Plaintiff and the Plaintiff
22 Class have been damaged and deprived of minimum wages, in an amount to be established at
23 trial. Plaintiff and the Plaintiff Class now seek these wages, liquidated damages pursuant to
24 California Labor Code section 1194.2, attorney’s fees and costs, and interest pursuant to
25 California Labor Code sections 1194.

26 //

27 //

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(As to All Defendants)

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully set forth herein.

59. An employer must provide an employee a meal period and/or rest period in accordance with the applicable Wage Order and Labor Code sections 226.7 and 512.

60. Labor Code section 512 and Wage Order 5-2001, section 11(A) require an employer to provide a meal period of not less than thirty (30) minutes for each work period of more than five (5) hours. If an employee works longer than ten (10) hours in a workday, the employer must provide a second meal period.

61. Labor Code section 226.7 and Wage Order 5-2001 section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

62. Plaintiff alleges that Defendants failed to provide Plaintiff and similarly situated employees with meal breaks of at least thirty (30) minutes for several work periods that Plaintiff and similarly situated employees worked more than five (5) hours in a day, or to take a second meal break of at least thirty (30) minutes for several work periods that Plaintiff and similarly situated employees worked more than ten (10) hours in a day.

63. Plaintiff further alleges that Defendants failed to provide rest breaks of at least ten (10) minutes for each work period that he and similarly situated employees worked for four (4) hours or major fraction thereof.

64. Also, provisions regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, such as IWC Wage Order No. 5-2001, and California Labor Code section 226.7 have been violated by, or were caused to be violated by, Defendants and Defendant LONG TRINH. Plaintiff is informed and thereon believes that Defendant LONG TRINH was a person acting on behalf of Defendants, including as an owner and/or managing agent of Defendants, within the meaning of California Labor Code section 558.1. Therefore, Defendant LONG TRINH may be held liable as the employer for the

1 violations of provisions regulating minimum wages or hours and days of work in any order of the
2 Industrial Welfare

3 65. As a proximate cause of Defendants' failure to provide meal and rest periods,
4 Plaintiffs and members of the Class are entitled to one (1) hour of pay at the regular rate of
5 compensation for each meal period or rest period not provided, as a wage, from three (3) years of
6 the filing of this action, in an amount to be established at trial. See Labor Code § 226.7 and
7 Wage Order 5-2001 §§ 11(B), 12(B).

8 **FIFTH CAUSE OF ACTION**
9 **WAITING TIME PENALTIES**
10 **(As to All Defendants)**

11 66. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 65 as
12 though fully set forth herein.

13 67. An employer must pay an employee who is terminated all unpaid wages
14 immediately upon termination. California Labor Code § 201.

15 68. An employer who willfully fails to pay an employee wages in accordance with
16 California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of
17 up to thirty (30) days. California Labor Code § 203.

18 69. Plaintiff and similarly situated employees did not receive all wages at their
19 termination or separation from employment, including, but not limited to, unpaid overtime and
20 minimum wages, and unpaid meal and rest period penalties.

21 70. Also, California Labor Code section 203 has been violated by, or was caused to be
22 violated by, Defendants and Defendant LONG TRINH. Plaintiff is informed and thereon
23 believes that Defendant LONG TRINH was a person acting on behalf of Defendants, including
24 as an owner and/or managing agent of Defendants, within the meaning of California Labor Code
25 section 558.1. Therefore, Defendant LONG TRINH may be held liable as the employer for the
26 violations California Labor Code section 203.

27 71. Defendants knew of their obligation to pay Plaintiff and Class Members and
28 Defendants' failure to pay all wages was in complete disregard of their obligations. Such

1 conduct shows Defendants' knowledge of their obligation to pay all wages owed upon
2 termination and willful refusal.

3 72. As a proximate result of the Defendants' conduct, Plaintiff and Class members
4 have been damaged and deprived of their wages and thereby seek their daily rate of pay
5 multiplied by thirty (30) days for Defendants' failure to pay all wages due.

6 **SIXTH CAUSE OF ACTION**
7 **FAILURE TO PAY OVERTIME WAGES**
8 **(As to All Defendants)**

9 73. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 72 as
10 though fully set forth herein.

11 74. During the period Plaintiff and similarly situated employees were employed by
12 Defendants, Defendants were required to compensate them one and one-half (1½) times the
13 regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours
14 per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
15 hours per day. See California Labor Code §§ 510, 1194. Although Plaintiff and similarly
16 situated employees regularly worked in excess of eight (8) hours a day and/or forty (40) hours
17 per week, Defendants failed to pay all overtime wages owed to them.

18 75. Plaintiff and Class members were non-exempt employees under the
19 administrative, executive, or professional exemptions of the applicable Wage Order and
20 California Labor Code section 510.

21 76. Defendants purposefully failed to pay all overtime wages owed to Plaintiff and
22 Class Members in order to avoid overtime and other wage and hour requirements under the
23 Labor Code.

24 77. In addition, California Labor Code section 558.1, subsection (a), provides that
25 "Any employer or other person acting on behalf of an employer, who violates, or cause to be
26 violated, any provision regulating minimum wages or hours and days of work in any order of the
27 Industrial Welfare Commission, or violates or causes to be violated, Sections 203, 226, 226.7,
28 1193.6, 1194, or 2802, may be held liable as the employer for such violation."

1 78. California Labor Code section 558.1, subsection (b), further provides that the term
2 “other person acting on behalf of any employer” means “a natural person who is an owner,
3 director, officer, or managing agent of the employer.”

4 79. Provisions regulating minimum wages or hours and days of work in any order of
5 the Industrial Welfare Commission, such as IWC Wage Order No. 5-2001, and California Labor
6 Code section 1194 have been violated by, or were caused to be violated by, Defendants and
7 Defendant LONG TRINH. Plaintiff is informed and thereon believes that Defendant LONG
8 TRINH was a person acting on behalf of Defendants, including as an owner and/or managing
9 agent of Defendants, within the meaning of California Labor Code section 558.1. Therefore,
10 Defendant LONG TRINH may be held liable as the employer for the violations of provisions
11 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
12 Commission, including IWC Wage Order No. 5-2001, and California Labor Code section 1194.

13 80. Defendants’ conduct described herein violates California Labor Code sections 510
14 and 1194, and Wage Orders. As a proximate result of Defendants’ conduct, Plaintiff and Class
15 members have been damaged and deprived of overtime wages, in an amount to be established at
16 trial. Plaintiff now seeks these wages, attorney’s fees and costs, and interest pursuant to
17 California Labor Code sections 1194.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 **(As to Defendants Fire Wings International, LLC; Fire Wings Natomas, LLC;**
21 **Fire Wings Tully)**

22 81. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 68 as
23 though fully set forth herein.

24 82. Labor Code section 2802(a) states that “An employer shall indemnify his or her
25 employee for all necessary expenditures or losses incurred by the employee in direct
26 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
27 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
28 believed them to be unlawful.”

83. Defendants knew that Plaintiff and members of the Class incurred expenses for work purposes, including but not necessarily limited to business use of employee cell phones. However, Defendants did not reimburse Plaintiff or members of the Class for these expenses.

84. Defendants' conduct described herein violated California Labor Code section 2802. As a proximate result of Defendants' conduct, Plaintiff and members of the Class have been damaged in an amount to be established at trial, and are entitled to recover these damages, as well as interest and reasonable attorney's fees and costs, pursuant to statute.

EIGHTH CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO PAGA § 2698 *ET SEQ.*
(As to All Defendants)

85. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 84 as though fully set forth herein.

86. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants' violations of the California Labor Code, including but not necessarily limited to, those Labor Code violations identified above.

87. On or about March 15, 2021, Plaintiff sent written notice to the LWDA regarding Defendants' violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*, PAGA. As of the date of the filing of this Complaint, the LWDA has not informed Plaintiff whether the LWDA intends to investigate Plaintiff's PAGA claims. As such, Plaintiff has exhausted his administrative remedies under PAGA and may proceed in this Court.

88. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and all Aggrieved Employees for all violations of the Labor Code from March 15, 2020, through trial on this matter.

//

//

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. For an order certifying the class;
3. For an order certifying Plaintiff's counsel as class counsel;
4. For an order appointing Plaintiff as class representative;
5. For penalties and liquidated damages under the California Labor Code according to proof allowed by law;
6. For compensatory damages, including, but not limited to, unpaid wages, plus interest, according to proof allowed by law;
7. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's fees;
8. For injunctive relief;
9. For an award of prejudgment and post-judgment interest; and
10. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

Dated: May 28, 2021

Castle Law: California Employment Counsel, PC

By: 
Timothy B. Del Castillo
Kent L. Bradbury
Attorneys for Plaintiff ALMOG COHEN and the Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: May 28, 2021

Castle Law: California Employment Counsel, PC

By: _____

Timothy B. Del Castillo

Kent L. Bradbury

Attorneys for Plaintiff ALMOG COHEN and the Class