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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DANGELO RANDLE-TATUM, an
individual, on behalf of himself and others
similarly situated

PLAINTIFF,

v.

HOPDODDY BURGER BAR, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21STCV21015

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7
4. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
5. Violation of Labor Code § 226(a)
6. Penalties Pursuant to Labor Code § 203
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code § 2699, et seq.

1 Plaintiff DANGELO RANDLE-TATUM, an individual, on behalf of himself, all others
2 similarly situated, and on behalf of the people of the State of California and as an “aggrieved
3 employee” under Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter
4 “PAGA”), complains of Defendant HOPDODDY BURGER BAR, INC. (“Defendant”) and each
5 of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382, and Labor Code §2699, et seq., on behalf of Plaintiff and a Proposed Class defined as:

10 All persons who are employed or have been employed as a non-
11 exempt employee by HOPDODDY BURGER BAR, INC., in the
12 State of California since four (4) years prior to the filing of this
action to the present. (“Proposed Class”)

13 2. From at least four (4) years prior to the filing of this action continuing to the present,
14 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class
15 Members. Plaintiff and other Proposed Class Members were not compensated for time spent
16 working off the clock.

17 3. From at least four (4) years prior to the filing of this action and continuing to the
18 present, Defendant failed to apprise Plaintiff and the Proposed Class of their rights associated with
19 meal periods and failed to provide compliant meal periods. Defendant has had a consistent policy
20 of failing to provide Plaintiff and the Proposed Class compliant meal breaks that occurred after the
21 first five hours of each shift and failing to pay such employees one (1) hour of pay at the
22 employees’ regular rate of compensation for each workday that the first meal period was not
23 provided within the first (5) hours of the shift.

24 4. For at least four (4) years prior to the filing of this action and continuing to the
25 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
26 their right to take rest periods by way of a lawful policy and of failing to provide Proposed Class
27 Members within the State of California, including Plaintiff, rest periods of at least ten (10) minutes
28 per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour

1 of pay at the employee's regular rate of compensation for each workday that the rest period was
2 not provided, as required by California state wage and hour laws.

3 5. For at least four (4) years prior to the filing of this action and continuing to the
4 present, Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of
5 purchasing required applications on their phone and personal cellphone usage necessary to perform
6 their job duties.

7 6. For at least one (1) year prior to the filing of this action continuing to the present,
8 Defendant has failed to comply with Labor Code § 226(a) by failing to issue Plaintiff and the
9 Proposed Class accurate itemized wage statements that show all applicable hourly rates in effect
10 during the pay period and the corresponding number of hours worked at each hourly rate by the
11 employee. Further, Plaintiff and the Proposed Class members are issued itemized wage statements
12 that do not accurately include meal and rest period premiums as a result of the claims alleged
13 herein and when they do, they are not at the accurate rate.

14 7. For at least three (3) years prior to the filing of this action continuing to the present,
15 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
16 the Proposed Class.

17 8. Plaintiff, on behalf of himself and all Proposed Class Members brings this action
18 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, and 2802; Wage
19 Order 5-2001; and California Code of Regulations, Title 8, Section 11050, seeking unpaid
20 wages/overtime, meal and rest period penalties, unreimbursed cost of required applications and
21 personal cell phone usage for business related purposes, accurate itemized wage statements, other
22 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

23 9. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to
24 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
25 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

26 10. For at least one (1) year prior to the date of the letters sent to the Labor Workforce
27 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
28 PAGA and continuing to the present, Defendant has violated Labor Code provisions, as detailed

1 below and in his notice letters, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of
2 himself and all aggrieved employees presently or formerly employed by Defendant during the
3 liability period as defined in his PAGA notice letters (*see* Exhibit “1” and “3”), brings this
4 representative action pursuant to Labor Code §2699, *et seq.* seeking penalties for Defendant’s
5 failure to pay all wages and/or overtime, failure to provide lawful meal and rest breaks, failure to
6 reimburse Plaintiff and the Proposed Class for business-related expenses, failure to issue accurate
7 itemized wage statements, and failure to pay all wages due at the time of termination.

8 **II.**

9 **JURISDICTION AND VENUE**

10 11. This Court has subject matter jurisdiction over all causes of action asserted herein
11 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
12 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
13 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
14 State of California or is subject to adjudication in the courts of the State of California.

15 12. This Court has personal jurisdiction over Defendant because Defendant has caused
16 injuries in the County of Los Angeles and the State of California through their acts, and by their
17 violation of the California Labor Code, California state common law, and California Business &
18 Professions Code § 17200, *et seq.*

19 13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
20 Civil Procedure § 395. Defendant operates within California and does business within Los
21 Angeles County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed
22 Class Members within the State of California and the county of Los Angeles.

23 14. This case should be classified as complex according to Rule 3.400 of the California
24 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
25 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
26 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
27 require substantial post judgment judicial supervision.

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III.
PARTIES

A. PLAINTIFF

15. Plaintiff DANGELO RANDLE-TATUM is a resident of California and performed work for Defendant in California.

16. Plaintiff and all Proposed Class Members, were regularly required to:

a. Work without being paid for all hours at the appropriate rate;
b. Work without being provided compliant meal periods;
c. Work without being provided rest periods;
d. Work without being reimbursed for their out of pocket expenses for the cost of downloading required applications and for personal cell phone usage necessary for business related purposes.

e. Work without being provided accurate itemized wage statements as required by California law.

17. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members for wages at the termination of their employment with Defendant.

18. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

19. Plaintiff and all aggrieved employees as defined in his notice letters to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code §2699(c).)

B. DEFENDANTS

20. Defendant HOPDODDY BURGER BAR, INC. is believed to be a Delaware corporation operating within the State of California. Defendant’s corporate address is believed to be 512 E Riverside Dr, Suite 150, Austin, TX 78704. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

21. The true names and capacities, whether individual, corporate, associate, or

1 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
2 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
3 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
4 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
5 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
6 capacities of the Defendants designated hereinafter as DOES when such identities become known.

7 22. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
8 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
9 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
10 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
11 employer and/or joint employer of Plaintiff and the Proposed Class Members.

12 23. Furthermore, Defendants acted in all respects as the employers or joint employers
13 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
14 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
15 engaged, thereby creating a common law employment relationship, with the Proposed Class.
16 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

17 IV.

18 FACTUAL BACKGROUND

19 24. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
20 classified as non-exempt employees by Defendant. Defendant hires employees who work as
21 hourly employees who are paid on an hourly basis.

22 25. Upon information and belief, Plaintiff and the Proposed Class are covered by
23 California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal.
24 Code of Regs. § 11050).

25 26. On a regular and consistent basis, Plaintiff and the Proposed Class Members were
26 not paid for all hours worked at the proper rate of compensation. Plaintiff and all Proposed Class
27 Members were required to perform work off the clock. Defendant failed to pay Plaintiff and all
28 Proposed Class members for such work at the appropriate rate of pay. Plaintiff and all Proposed

1 Class members were required to download and use a phone application called HOT Schedules.
2 Plaintiff and all Proposed Class members were required to use this application as the main way of
3 communication including seeing their schedules and interacting with managers off the clock. Such
4 off the clock works includes, but is not limited to, the following: Plaintiff and all Proposed Class
5 members were required to regularly use and check the application to view their work schedules,
6 review requests and pick up shifts from coworkers, notify managers of requested schedule changes,
7 and receive and review posted messages from managers.

8 27. Plaintiff and all Proposed Class members have been forced by Defendant to work
9 over five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal break
10 and not being compensated one (1) hour of pay at their regular rate of compensation for each
11 workday that a meal period was not provided or provided after five (5) hours, all in violation of
12 California labor laws, regulations, and Industrial Welfare Commission Wage Orders. Defendant
13 also failed to inform Plaintiff and the members of the Proposed Class of their right to take
14 compliant meal periods by way of a lawful policy.

15 28. Plaintiff and the Proposed Class have been required to work four-hour increments
16 (or major fractions thereof) without being provided with ten (10) minute rest periods as required.
17 Defendant failed to provide rest periods on a regular and consistent basis. If a rest period was
18 provided at all, Defendant only provided a first rest period, not a second rest period.

19 29. On a regular and consistent basis, Plaintiff and the Proposed Class have not been
20 properly reimbursed expenses associated with the cost of required smart phone applications and
21 personal cell phone usage necessary for the completion of their job duties. Plaintiff and all
22 Proposed Class members were required to use a smart phone a smart phone application called HOT
23 Schedules. This phone application was not free. Plaintiff and all Proposed Class members were
24 required to download this application, pay for it, and were not reimbursed for the cost of the
25 application. Plaintiff and all Proposed Class members were required to use a smart phone a smart
26 phone application called PayCom to view their paystubs and other documents. Plaintiff and all
27 Proposed Class members were required to use their personal smart phones for necessary work
28 related purposes as described herein and were not reimbursed for this cost.

30. For at least one (1) year prior to the filing of this action continuing to the present, Defendant has failed to comply with Labor Code § 226(a). Defendant failed to issue Plaintiff and the Proposed Class accurate itemized wage statements that show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Further, Defendant failed to issue Plaintiff and the Proposed Class accurate itemized wage statements that include meal and rest premiums as a result of the claims alleged above and/or provide them at the accurate rate.

31. Defendant willfully failed to pay wages and compensation, when Plaintiff and all Proposed Class Members quit or were discharged. This failure was willful, without legal justification, and interfered with Plaintiff's and Class Members' rights.

32. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

V.

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action on behalf of himself, and all others similarly situated, as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a proposed class composed of and defined as follows:

All persons who are employed or have been employed as a non-exempt employee by HOPDODDY BURGER BAR, INC., in the State of California since four (4) years prior to the filing of this action to the present. (“Proposed Class”)

34. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

35. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

A. NUMEROSITY

36. The potential members of the Proposed Class as defined are so numerous that joinder of all the members of the Proposed Class is impracticable. While the precise number of

1 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
2 that Defendant currently employ, and during the relevant time periods employed over 50 members
3 of the Proposed Class.

4 37. Plaintiff alleges that Defendant's employment records would provide information
5 as to the number and location of all Proposed Class Members. Joinder of all members of the
6 Proposed Class is not practicable.

7 **B. COMMONALITY**

8 38. There are questions of law and fact common to the Proposed Class that predominate
9 over any questions affecting only individual Proposed Class Members. These common questions
10 of law and fact include, without limitation:

11 a. Whether Defendant failed to pay wages and/or overtime compensation as
12 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

13 b. Whether Defendant violated Labor Code § 226.7, 512 and IWC Wage Order
14 5-2001 or other applicable IWC Wage Orders by failing to inform Plaintiff and the Proposed Class
15 of their right to take meal periods and by way of a lawful policy and failing to provide required
16 meal periods throughout the term of employment and/or failing to compensate said employees one
17 (1) hour of wages at their regular rate of compensation in lieu of meal periods.

18 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 5 -
19 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
20 of their right to take rest periods and failing to provide required rest periods throughout the term
21 of employment and failing to compensate said employees one (1) hours wages in lieu of rest
22 periods;

23 d. Whether Defendants violated Labor Code § 2802 and/or Wage Order 5-
24 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the
25 cost of required phone applications and personal cell phone usage necessary for the completion of
26 their job duties;

27 e. Whether Defendant violated Labor Code § 226(a) by failing to provide
28 accurate itemized wage statements to Plaintiff and members of the Proposed Class;

1 f. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
2 compensation due and owing at the time that any Proposed Class Member's employment with
3 Defendant terminated;

4 g. Whether Plaintiff and the members of the Proposed Class are entitled to
5 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

6 h. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
7 acts alleged herein.

8 **C. TYPICALITY**

9 39. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
10 all members of the Proposed Class sustained injuries and damages arising out of and caused by
11 Defendant's common course of conduct in violation of laws, regulations that have the force and
12 effect of law, and statutes as alleged herein.

13 **D. ADEQUACY OF REPRESENTATION**

14 40. Plaintiff will fairly and adequately represent and protect the interests of the
15 members of the proposed Class. Counsel who represent Plaintiff and the Proposed Class are
16 competent and experienced in litigating large employment class actions.

17 **E. SUPERIORITY OF CLASS ACTION**

18 41. A class action is superior to other available means for the fair and efficient
19 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
20 practicable, and questions of law and fact common to the Proposed Class predominate over any
21 questions affecting only individual members of the Proposed Class. Each member of the Proposed
22 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
23 practice of failing to pay all wages due, failing to provide meal and rest periods, failing to
24 reimburse expenses, failing to issue accurate itemized wage statements, and failing to pay all wages
25 upon resignation or termination.

26 42. Class action treatment will allow those similarly situated persons to litigate their
27 claims in the manner that is most efficient and economical for the parties and the judicial system.
28 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this

1 action that would preclude its maintenance as a class action.

2 **VI.**

3 **FIRST CAUSE OF ACTION**

4 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

5 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

6 **LABOR CODE §§ 510, 1194, AND 1199**

7 43. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
8 by reference all previous paragraphs.

9 44. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its
10 employees at the minimum wage rate for all hours worked and at a rate of no less than one and
11 one-half times the regular rate of pay for any work in excess of (8) eight hours in one workday and
12 any work in excess of forty (40) hours in any one workweek.

13 45. Plaintiff and the Proposed Class were forced to work on a regular and consistent
14 basis without receiving compensation for all hours worked at the proper rate thereby depriving
15 them of all of the wages owed to them.

16 46. Plaintiff and the Proposed Class are routinely required to work off the clock.
17 Plaintiff and the Proposed Class are required to use their personal cell phones for work, but this
18 time spent using their cell phones was “clocked out” and as such, Plaintiff and the Proposed Class
19 were not compensated at the applicable rate of pay for all hours worked.

20 47. Such off the clock works includes, but is not limited to, the following: Plaintiff and
21 all Proposed Class members were required to regularly use and check the HOT schedules
22 application to view their work schedules, review requests and pick up shifts from coworkers, notify
23 managers of requested schedule changes, and receive and review posted messages from managers

24 48. By their policy of requiring Plaintiff and members of the Proposed Class to work
25 without being paid all wages at the appropriate rate of pay, Defendant willfully violated the
26 provisions of Labor Code §§ 510, 1194 and 1199.

27 49. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have
28 been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to

1 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

2 **VII.**

3 **SECOND CAUSE OF ACTION**

4 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

5 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

6 **LABOR CODE § 226.7 AND LABOR CODE § 512**

7 50. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
8 by reference all previous paragraphs.

9 51. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
10 compensation for each meal period the employer fails to provide. Employees are entitled to a first
11 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
12 first five (5) hours of the shift.

13 52. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
14 these rights.

15 53. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.

16 54. Defendant failed to provide Plaintiff and the Proposed Class with proper meal
17 periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time
18 period.

19 55. Defendant has had a consistent policy of failing to pay Plaintiff and the Proposed
20 Class one (1) hour of pay at the employees' regular rate of compensation for each workday that
21 the first meal period was not provided within the first (5) hours of the shift. Very recently, on July
22 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the
23 formula for calculating the one extra hour of bonus pay that employees are owed if an employer
24 fails to provide a compliant meal period or rest break. Specifically, the Court held that those bonus
25 payments must include the hourly value of any nondiscretionary earnings (such as a
26 nondiscretionary bonuses, commissions, etc.), and cannot simply be paid at an employee's base
27 hourly rate. Here, when meal periods are provided, Defendant has had a consistent policy of
28 paying meal period premiums at the base rate and not the appropriate blended rate in violation of

1 Labor Code §§ 226.7 and 512.

2 56. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
3 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per
4 missed meal break, per day in a sum to be proven at trial.

5 **VIII.**

6 **THIRD CAUSE OF ACTION**

7 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

8 **FAILURE TO ALLOW REST PERIODS PURSUANT TO**

9 **LABOR CODE § 226.7**

10 57. Plaintiff, on behalf of himself and the proposed Class, realleges and incorporates
11 by reference all previous paragraphs.

12 58. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
13 compensation for each rest period the employer fails to provide. Employees are entitled to a paid
14 ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant
15 failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

16 59. Defendant failed to inform Plaintiff and the members of the Proposed Class of their
17 right to take compliant rest periods by way of a lawful policy.

18 60. Defendant failed to provide Plaintiff and the Class with rest breaks of not less than
19 ten (10) minutes as required by the Labor Code during the relevant time period. If a rest period
20 was provided at all, Defendant only provided a first rest period, not a second rest period. Defendant
21 routinely failed to provide a second rest break despite regularly requiring Plaintiff and the
22 Proposed Class to work over six (6) hours.

23 61. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
24 damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven
25 at trial.

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1 **IX.**

2 **FOURTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

5 **LABOR CODE § 2802**

6 62. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
7 by reference all previous paragraphs.

8 63. Labor Code § 2802 requires employers to indemnify employees for all necessary
9 expenditures or losses incurred by employees in direct consequence of the discharge of his or her
10 duties.

11 64. Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of
12 downloading phone applications that were not free and for regular and consistent cellular phone
13 usage for work despite the fact that these expenditures were necessary for the performance of their
14 job duties.

15 65. As a result of the unlawful acts of Defendants, Plaintiff and the Proposed Class
16 have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
17 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

18 **X.**

19 **FIFTH CAUSE OF ACTION**

20 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

21 **VIOLATION OF LABOR CODE § 226(A)**

22 66. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
23 by reference all previous paragraphs.

24 67. Labor Code §226(a) requires that every employer shall semimonthly or at the time
25 of each payment of wages, furnish each of his or her employees, an accurate itemized statement in
26 writing showing total hours worked and all applicable hourly rates in effect during the pay period
27 and the corresponding number of hours worked at each hourly rate by the employee. Sections
28 226(a)(9).

68. Plaintiff and the Proposed Class are issued wage statements that do not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of the Labor Code.

69. Further, Plaintiff and the Proposed Class are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and when they do, they are not at the accurate rate.

70. Defendant's failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

71. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

XI.

SIXTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

WAITING TIME PENALTIES UNDER LABOR CODE § 203

72. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

73. Numerous members of the Proposed Class including the Plaintiff are no longer employed by Defendant. They were either fired or quit Defendant's employ.

74. Plaintiff received his final paycheck more than two weeks after his last day of work for Defendant.

75. As described above Plaintiff and all members of the Proposed Class were not paid all wages due and as such were not paid all wages due upon their separation from Defendant's employ. Defendant's failure to pay wages, as alleged above, was willful in that Defendant knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to penalties

1 under Labor Code § 203, which provides that an employee’s wages shall continue as a penalty
2 until paid for a period of up to thirty (30) days from the time they were due.

3 76. Defendant has failed to pay Plaintiff and others a sum certain at the time of
4 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
5 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
6 the Proposed Class are entitled to a penalty in the amount of Plaintiff’s and the Proposed Class
7 Members’ daily wage multiplied by thirty (30) days.

8 **XII.**

9 **SEVENTH CAUSE OF ACTION**

10 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

11 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

12 77. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
13 by reference all previous paragraphs.

14 78. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
15 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
16 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
17 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
18 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
19 interest within the meaning of Code of Civil Procedure § 1021.5.

20 79. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
21 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
22 appropriate equitable relief.

23 80. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
24 practices.

25 81. California’s wage and hour laws express fundamental public policies. Providing
26 employees with proper wages and compensation are fundamental public policies of this State and
27 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
28 vigorously minimum labor standards, to ensure that employees are not required or permitted to

1 work under substandard and unlawful conditions, and to protect law-abiding employers and their
2 employees from competitors who lower their costs by failing to comply with minimum labor
3 standards.

4 82. Defendant has violated statutes and public policies as alleged herein. Through the
5 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
6 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
7 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
8 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
9 guaranteed to all employees under law.

10 83. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
11 violation of § 17200, *et seq.* of the Business & Professions Code.

12 84. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
13 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
14 § 17200, *et seq.* of the Business & Professions Code.

15 85. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
16 others similarly situated have been damaged in a sum as may be proven.

17 86. Unless restrained, Defendant will continue to engage in the unlawful conduct as
18 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
19 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
20 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
21 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
22 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
23 proposed Class the money Defendant has unlawfully failed to pay.

24 **XIII.**

25 **EIGHTH CAUSE OF ACTION**

26 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

27 87. Plaintiff, on behalf of himself and all aggrieved employees, realleges and
28 incorporates by reference all previous paragraphs.

1 88. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
2 seeks penalties under Labor Code § 2699, et seq. for Defendant's violation of Labor Code §§ 201,
3 202, 203, 226.7, 510, 1194, 1199, 2802, Wage Order 5-2001; and California Code of Regulations,
4 Title 8, Section 11050, which call for civil penalties.

5 89. Additionally, for at least one (1) year prior to the date of the letter sent to the LWDA
6 and Defendant giving notice of these PAGA claims and continuing to the present, Defendant has
7 violated Labor Code §§ 226.7 and 512. These statutes require an employer to pay an additional
8 hour of compensation for each meal period the employer fails to provide. Employees are entitled
9 to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided
10 within the first five (5) hours of the shift. Here, Defendant failed to maintain a policy informing
11 Plaintiff and the aggrieved employees of these rights. Plaintiff and the aggrieved employees
12 consistently worked shifts over five (5) hours. Defendant failed to provide Plaintiff and the
13 aggrieved employees with proper meal periods of not less than thirty (30) minutes as required by
14 the Labor Code during the relevant time period.

15 90. For at least one (1) year prior to the date of the letter sent to the LWDA and
16 Defendant giving notice of these PAGA claims and continuing to the present, Defendant has
17 violated Labor Code §226(a), which requires that every employer shall semimonthly or at the time
18 of each payment of wages, furnish each of his or her employees, an accurate itemized statement in
19 writing showing total hours worked and all applicable hourly rates in effect during the pay period
20 and the corresponding number of hours worked at each hourly rate by the employee. Sections
21 226(a)(9). Plaintiff and the aggrieved employees are issued wage statements that do not include
22 all applicable hourly rates in effect during the pay period and the corresponding number of hours
23 worked at each hourly rate by the employee in violation of the Labor Code. Plaintiff and the
24 aggrieved employees are also issued wage statements that do not include meal and rest premiums
25 as a result of the claims alleged above and when they do, they are not at the accurate rate.

26 91. Defendant violated Labor Code §§226(a), 226.7, and 512 with respect to Plaintiff
27 and all aggrieved employees as defined his notice letters.

28 92. Defendant's failure to provide compliant meal periods and issue accurate itemized

1 wage statements according to Labor Code §§ 226(a), 226.7, and 512 were all done on a regular
2 and consistent basis.

3 93. As such, Plaintiff seeks penalties under Labor Code § 2699, et seq. for Defendant's
4 violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, 2802, Wage Order
5 5-2001; and California Code of Regulations, Title 8, Section 11050, which call for civil penalties

6 94. For each such penalty, Plaintiff and the aggrieved employees are entitled to
7 penalties in an amount to be shown at trial, subject to the following formula:

8 a. \$100 for the initial violation per employee per pay period.

9 b. \$200 for each subsequent violation per employee per pay period.

10 95. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
11 twenty-five percent (25%) to the affected employees.

12 96. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
13 LWDA¹ and mailed a letter by certified mail to Defendant HOPDODDY BURGER BAR, INC.'s
14 entity address, which is 512 E Riverside Dr, Suite 150, Austin, TX 78704, as proscribed by the
15 Code on June 4, 2021, describing Defendant's conduct in violation of Labor Code §§ 201, 202,
16 203, 226.7, 510, 1194, 1199, and 2802. (see Exhibit "1.") Plaintiff also obtained an e-filing
17 confirmation from the LWDA confirming receipt of the notice (see Exhibit "2").

18 97. Plaintiff uploaded an amended notice letter to the LWDA and mailed a letter by
19 certified mail to Defendant, as proscribed by the Code on March 24, 2022, adding two additional
20 violations under Labor Code §§ 226(a), 226.7, and 512. (see Exhibit "3.") Plaintiff also obtained
21 an e-filing confirmation from the LWDA confirming receipt of the amended notice (see Exhibit
22 "4").

23 98. As no letter evidencing the LWDA's intention to investigate was received by
24 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
25 action as though the LWDA had not chosen to investigate pursuant to Labor Code
26 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the Second

27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

Amended Class and Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid wages and/or overtime not paid to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For compensatory damages in the amount of Plaintiff's and each Proposed Class members' hourly wage for each meal period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' hourly wage for each rest period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

4. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' unreimbursed cost of applications and personal cell phone usage for business related purposes as a requirement of employment;

5. For penalties pursuant to Labor Code § 203 for all employees who were terminated or resigned equal to their daily wage times thirty (30) days;

6. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000);

7. An award of prejudgment and post judgment interest;

8. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or overtime, meal periods, rest periods, reimbursement for the cost of required applications and personal cell phone usage for business related purposes, accurate wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, 2802, and IWC 5-2001;

1 9. For restitution for unfair competition pursuant to Business & Professions Code
2 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

3 10. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
4 Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, 2802, and Wage Order 5-2001;

5 11. An award providing for payment of costs of suit;

6 12. An award of attorneys' fees; and

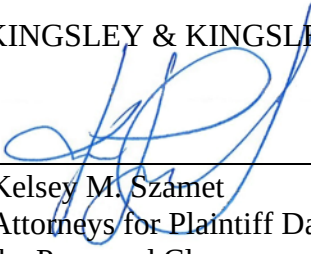
7 13. Such other and further relief as this Court may deem proper and just.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

10
11 DATED: May 31, 2022

KINGSLEY & KINGSLEY, APC

12
13 By: 

Kelsey M. Szamet

Attorneys for Plaintiff Dangelo Randle-Tatum and
the Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

June 4, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

HOPDODDY BURGER BAR, INC.
512 E Riverside Dr, Suite 150
Austin, TX 78704

Re: DANGELO RANDLE-TATUM v. HOPDODDY BURGER BAR, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents DANGELO RANDLE-TATUM (“Plaintiff”) and a proposed group of current and former employees working for HOPDODDY BURGER BAR, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as a non-exempt employee by HOPDODDY BURGER BAR, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”)

Defendant has violated Labor Code §§ 510, 1194, and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of (8) eight hours in one workday and any work in excess of forty (40) hours in any one workweek.

Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees at the appropriate rate of pay. Plaintiff and all aggrieved employees were required to use their personal cell phones for work. This time spent on their cell phones was “clocked out” and as such, Plaintiff and all aggrieved employees were not compensated at the appropriate rate of pay for this time worked. Plaintiff and all aggrieved employees were required to download and use a phone application called HOT Schedules. Plaintiff and all aggrieved employees were required to use this application as the main way of communication including seeing their schedules and interacting with managers off the clock. Such off the clock works

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

June 4, 2021

Page 2 of 3

includes, but is not limited to, the following: Plaintiff and all aggrieved employees were required to regularly use and check the application to view their work schedules, review requests and pick up shifts from coworkers, notify managers of requested schedule changes, and receive and review posted messages from managers.

Pursuant to Labor Code § 226.7 and Wage Order 5-2001, Defendant failed to provide Plaintiff and all aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to provide Plaintiff and the aggrieved employees with a second rest period despite regularly requiring Plaintiff and the aggrieved employees to work over six (6) hours. As Such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

In addition, Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required Plaintiff and the aggrieved employees to download and pay for phone applications on their personal phones and consistently use these personal cell phones for necessary work-related purposes such as communication with their managers as described above.

Labor Code § 203 provides that if “an employer willfully fails to pay...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.”

Plaintiff received his final paycheck more than two weeks after his last day of work for Defendant. In addition, as described above Plaintiff and all aggrieved employees were not paid all wages due and as such were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

(continued on next page)

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

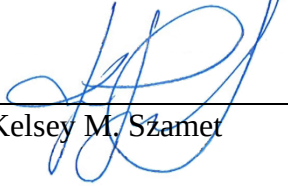
June 4, 2021

Page 3 of 3

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226.7, 510, 1194, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/jl

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. HOPDODDY BURGER BAR, INC. via USPS Certified Mail # 7018 1130 0001 5815 3523
 3. Davtyan Law Firm, Inc., 880 E. Broadway, Glendale, CA 91205

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Dangelo Randle-Tatum

Plaintiff/Aggrieved Employee Occupation *

Hourly Employee

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Corporation

Employer Name *

Hopdoddy Burger Bar, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

Employer City

Employer State



Employer Zip/Postal Code

Employer Industry *

**Add additional defendants**

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☐ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.

Billing Phone

Billing Street Name, Number and Suite/Apt *

16133 Ventura Boulevard Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

Visa

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

 PAGA Letter- H... Bar, Inc..pdf

Other Attachment - (if any) (must be a .pdf)

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; &

financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Friday, June 4, 2021 12:43 PM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

6/4/2021

LWDA Case No. LWDA-CM-834070-21
Law Firm : Kingsley & Kingsley
Plaintiff Name : Dangelo Randle-Tatum
Employer: Hopdoddy Burger Bar, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Friday, June 4, 2021 12:43 PM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

Thank you for your payment.

Order Information
Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-834070-21
Order Number: ORD-000111075
Total:\$75.00
Card Type: Visa
Date: 6/4/2021

Billing Information
Name: Eric Kingsley
Email: service@kingsleykingsley.com
Billing Address:
16133 Ventura Boulevard Suite 1200
Encino, California
91436

EXHIBIT "3"



March 24, 2022

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

HOPDODDY BURGER BAR, INC.
865 South Figueroa Street, 24th Floor
Los Angeles, CA 90017-2566

Re: DANGELO RANDLE-TATUM v. HOPDODDY BURGER BAR, INC.
Amended Letter - California Labor Code § 2699 Penalties

Gentlepersons:

This office represents DANGELO RANDLE-TATUM (“Plaintiff”) and a proposed group of current and former employees working for HOPDODDY BURGER BAR, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees. This letter is in follow-up to our letter of June 4, 2021. The purpose of this amended letter is to include additional claims for meal breaks under Labor Code §§ 226.7 and 512 and inaccurate itemized wage statements under Labor Code §226(a).

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as a non-exempt employee by HOPDODDY BURGER BAR, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”)

Defendant has violated Labor Code §§ 510, 1194, 1194.2, and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of (8) eight hours in one workday and any work in excess of forty (40) hours in any one workweek.

Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees at the appropriate rate of pay. Plaintiff and all aggrieved employees were required to use their personal cell phones for work. This time spent on their cell phones was “clocked out” and as such, Plaintiff and all aggrieved employees were not compensated at the appropriate rate of pay for this time worked. Plaintiff and all aggrieved employees were required to download and use a phone application called HOT Schedules. Plaintiff and all aggrieved employees were required to use this application as the main way of communication including

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

March 24, 2022

Page 2 of 4

seeing their schedules and interacting with managers off the clock. Such off the clock works includes, but is not limited to, the following: Plaintiff and all aggrieved employees were required to regularly use and check the application to view their work schedules, review requests and pick up shifts from coworkers, notify managers of requested schedule changes, and receive and review posted messages from managers.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiff and the aggrieved employees compliant meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the complaint meal period was not provided.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Pursuant to Labor Code § 226.7 and Wage Order 5-2001, Defendant failed to provide Plaintiff and all aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to provide Plaintiff and the aggrieved employees with a second rest period despite regularly requiring Plaintiff and the aggrieved employees to work over six (6) hours. As Such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate when rest premiums are provided, in violation of Labor Code § 226.7.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

March 24, 2022

Page 3 of 4

In addition, Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required Plaintiff and the aggrieved employees to download and pay for phone applications on their personal phones and consistently use these personal cell phones for necessary work-related purposes such as communication with their managers as described above.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) by failing to issue Plaintiff and all aggrieved employees wage statements that show total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Further, Plaintiff and all aggrieved employees are issued itemized wage statements that do not accurately include meal and rest premiums as a result of the claims alleged herein and when they are provided, they are not provided at the proper rate. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code § 203 provides that if “an employer willfully fails to pay...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.”

Plaintiff received his final paycheck more than two weeks after his last day of work for Defendant. In addition, as described above Plaintiff and all aggrieved employees were not paid all wages due and as such were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

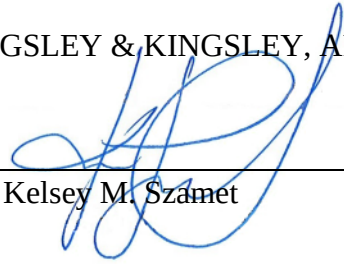
We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

///

(Signature on next page)

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 
Kelsey M. Szamet

KMS/jl/km

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/310>
 2. HOPDODDY BURGER BAR, INC. c/o Davis Wright Tremaine LLP via USPS Certified Mail # 7019 2970 0001 4016 5790 and Electronic Mail Transmission: janetgrumer@dwt.com; evelynwang@dwt.com; paulrodriguez@dwt.com; tiffaniedelariva@dwt.com
 3. Davtyan Law Firm, Inc., 880 E. Broadway, Glendale, CA 91205 via Electronic Mail Transmission: emil@davtyanlaw.com; caseupdates@davtyanlaw.com

EXHIBIT "4"



State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

Amended PAGA Claim Notice

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".
[Search for PAGA Case number](#)

Your Information (Attorney or Employee – Whoever is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *

Your Zip/Postal Code *

Amended Notice Detail

Please provide the details of the amendments to the original notice. *

- ☒ Adding additional claims
- ☐ Adding additional corporate defendants
- ☐ Adding additional Individual/Sole proprietor defendants
- ☐ Adding additional plaintiffs
- ☐ Other (please specify)

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☐ Not paid for all hours worked
- ☐ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Amended Notice

Amended Notice *

Amended LWDA ...ar, Inc..pdf

Other Attachment (if any) (must be a .pdf)

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Thursday, March 24, 2022 2:03 PM
To: Service Email
Subject: Thank you for your Amended PAGA Claim Notice Submission.

External Email!

03/24/2022 02:02:04 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7CKimberly%40kingsleykingsley.com%7Cc512dea4eafb4ca00fdd08da0dd993dc%7C121a7875db4c0fb25c5baf6c6ac7a5%7C0%7C0%7C637837525400649747%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiaLCJQIjoV2luMzliLCJBTiI6Ikh1haWwiLCJXVCi6Mn0%3D%7C3000&sdata=gmsq8EQ6xWnUtlrmaEicpVW4hdCCHaXw3RIZOO8d%2Fao%3D&reserved=0