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Gallardo, individually, and on behalf of all others similarly situated.

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

07/06/2022 at 10:43:00 AM

Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

GUADALUPE ANTONIO SANCHEZ,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

BWW RESOURCES, LLC; INSPIRE
BRANDS, INC.; ARBY'S RESTAURANT
GROUP, INC.; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 37-2021-00024806-CU-OE-CTL

*Assigned for All Purposes to:
Hon. John S. Meyer; Dept. C-64*

SECOND AMENDED COMPLAINT FOR:

1. Enforcement of Labor Code § 2698 *et seq.*

1 Plaintiffs Guadalupe Antonio Sanchez and Ricardo Gallardo, individually, and on
2 behalf of others similarly situated, allege as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Guadalupe Antonio Sanchez and Ricardo Gallardo (“Plaintiffs”) bring
5 this putative and representative action pursuant to the Private Attorneys General Act of 2004,
6 Cal. Lab. Code. § 2698 et seq., action against defendants BWW Resources, LLC; Inspire
7 Brands, Inc.; and DOES 1 through 20, inclusive (collectively, “Defendants”), on behalf of
8 Defendants’ non-exempt employees throughout California.

9 2. Defendants are in the food service industry.

10 3. Through this action, Plaintiffs allege that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
13 unfair competition.

14 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) failing to pay all wages (including reporting time wages);
- 17 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 18 (c) failing to authorize or permit lawful rest breaks or provide compensation
19 in lieu thereof;
- 20 (d) failing to permit Plaintiffs and aggrieved employees to retain all
21 gratuities.
- 22 (e) failing to provide accurate itemized wage statements;
- 23 (f) failing to pay all wages due upon separation of employment.

24 5. Plaintiffs seek monetary relief against Defendants on behalf of themselves and
25 all others similarly situated in California to recover, among other things, civil penalties,
26 attorneys’ fees, costs and expenses, pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226,
27 226.3, 226.7, 351, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
28 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

1 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20
2 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
3 at all relevant times.

4 14. Plaintiffs are informed and believe, and thereon allege, that each defendant acted
5 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
6 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
7 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
8 the employer and/or joint employer of Plaintiffs and the aggrieved employees.

9 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the
10 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
11 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
12 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
13 the official policy of Defendants.

14 16. At all relevant times, Defendants, and each of them, acted within the scope of
15 such agency or employment, or ratified each and every act or omission complained of herein.
16 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
17 each and all the other Defendants in proximately causing the damages herein alleged.

18 17. Plaintiffs are informed and believe, and thereon allege, that each of said
19 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
20 omissions, occurrences, and transactions alleged herein.

21 **GENERAL ALLEGATIONS**

22 18. At all relevant times mentioned herein, Defendants employed Plaintiffs and
23 other California residents as non-exempt employees at Defendants' California business
24 location(s).

25 19. Defendant employed Plaintiffs as non-exempt employees at Defendants'
26 California business location.

27 20. Defendants continue to employ non-exempt employees within California.
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1 21. Plaintiffs are informed and believe, and thereon allege, that at all times herein
2 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
3 who were knowledgeable about California's wage and hour laws, employment and personnel
4 practices, and the requirements of California law.

5 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and Aggrieved employees were entitled to receive wages for
7 all time worked and that they were not receiving all wages earned for work that was required to
8 be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and Aggrieved
9 employees were not paid all wages for all hours worked at the correct rate, such as failing to
10 pay reporting time pay.

11 23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs and Aggrieved employees were entitled to receive all
13 required meal periods or payment of one (1) additional hour of pay at Aggrieved employees'
14 regular rate of pay when they did not receive a timely, uninterrupted meal period. In violation
15 of the Labor Code and IWC Wage Orders, Plaintiffs and Aggrieved employees did not receive
16 all meal periods or payment of one (1) additional hour of pay at Aggrieved employees' regular
17 rate of pay when they did not receive a timely, uninterrupted meal period.

18 24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and Aggrieved employees were entitled to receive all rest
20 breaks or payment of one (1) additional hour of pay at Aggrieved employees' regular rate of
21 pay when a rest break was missed. In violation of the Labor Code and IWC Wage Orders,
22 Plaintiffs and Aggrieved employees did not receive all rest breaks or payment of one (1)
23 additional hour of pay at Aggrieved employees' regular rate of pay when a rest break was
24 missed.

25 25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
26 should have known that Plaintiffs and Aggrieved employees were entitled to all gratuities paid,
27 given to, or left for them by a patron. In violation of the California Labor Code, Defendants
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1 failed to permit Plaintiffs and Aggrieved employees to retain all gratuities paid to them by
2 customers.

3 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and Aggrieved employees were entitled to receive itemized
5 wage statements that accurately showed the following information pursuant to the Labor Code:
6 (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate
7 units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
8 deductions, provided that all deductions made on written orders of the employee may be
9 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period
10 for which the employee is paid; (7) the name of the employee and only the last four digits of his
11 or her social security number or an employee identification number other than a social security
12 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
13 hourly rates in effect during the pay period and the corresponding number of hours worked at
14 each hourly rate by the employee. In violation of the Labor Code, Plaintiffs and Aggrieved
15 employees were not provided with accurate itemized wage statements.

16 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that the aggrieved employees were entitled to timely payment of wages due
18 upon separation of employment. In violation of the Labor Code, the aggrieved employees did
19 not receive payment of all wages within permissible time periods.

20 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known they had a duty to compensate Plaintiffs and Aggrieved employees, and
22 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
23 intentionally failed to do so in order to increase Defendants' profits.

24 29. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief
25 against Defendants on behalf of themselves and all Aggrieved employees to recover, among
26 other things, unpaid wages, unpaid meal period premium payments, unpaid rest period
27 premium payments, interest, attorneys' fees, penalties, costs, and expenses.
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1 **FIRST CAUSE OF ACTION**

2 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

3 30. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
4 though fully set forth herein.

5 31. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
6 provides for a civil penalty to be assessed and collected by the Labor and Workforce
7 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
8 agencies, or employees for violation of the Labor Code may, as an alternative, be recovered
9 through a civil action brought by an aggrieved employee on behalf of himself or herself and
10 other current or former employees pursuant to the procedures specified in Labor Code §
11 2699.3.

12 32. For all provisions of the Labor Code except those for which a civil penalty is
13 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one
14 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
15 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
16 subsequent pay period in which Defendants violated these provisions of the Labor Code.

17 33. Defendants' conduct violates numerous Wage Order and Labor Code sections,
18 including, but not limited to, the following:

19 (a) violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 558, 1182.12, 1194,
20 1197, 1197.1, and 1198 for failure to timely pay all earned wages (including
21 reporting time wages) owed to Plaintiffs and other aggrieved employees during
22 employment and upon separation of employment as herein alleged;

23 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
24 Plaintiffs and other aggrieved employees and failure to pay premium wages for
25 missed meal periods as herein alleged;

26 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs and
27 other aggrieved employees and failure to pay premium wages for missed rest
28 periods as herein alleged;

- 1 (d) violation of Labor Code § 226 for failure to provide accurate itemized wage
2 statements to Plaintiffs and other aggrieved employees as herein alleged;
3 (e) violation of Labor Code § 351 for unlawful retention of gratuities as herein
4 alleged; and
5 (f) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and
6 complete records showing, among other things, the hours worked daily by and the
7 wages paid to aggrieved employees.

8 34. Plaintiffs are “aggrieved employees” because they were employed by the alleged
9 violator and had one or more of the violations committed against them, and therefore are
10 properly suited to represent the interests of all other aggrieved employees.

11 35. Plaintiffs have exhausted the procedural requirements under Labor Code §
12 2699.3 as to Defendants and are therefore able to pursue a claim for penalties on behalf of
13 themselves and all other aggrieved employees under PAGA.

14 36. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to
15 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
16 cited above.

17 37. For bringing this action, Plaintiffs are entitled to attorney’s fees and costs
18 incurred herein.

19 **PRAYER FOR RELIEF**

20 Plaintiffs, on their own behalf and on behalf of all others similarly situated, pray for
21 relief and judgment against Defendants, jointly and severally, as follows:

- 22 1. For civil penalties;
23 2. For reasonable attorneys’ fees, costs of suit, and interest to the extent permitted
24 by law, including, but not limited to, Labor Code §§ 2698 *et seq*; and

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3. For such other relief as the Court deems just and proper.

Dated: July 6, 2022

AEGIS LAW FIRM, PC

By: 

Jessica L. Campbell
Attorneys for Plaintiffs Guadalupe Antonio Sanchez
and Ricardo Gallardo

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
4 my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On July 6, 2022, I served the foregoing document entitled

5 • **SECOND AMENDED COMPLAINT**

6 on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true
copy thereof enclosed in sealed envelope(s) addressed as follows:

7 **LITTLER MENDELSON, P.C.**

Stacey E. James

8 Heidi E. Hegewald

501 W. Broadway, Suite 900

9 San Diego, California 92101.3577

Telephone: 619.232.0441

10 Fax No.: 619.232.4302

11 sjames@littler.com

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12 APosthill@littler.com

13 MRuvalcaba@littler.com

14 *Attorneys for Defendants:*

BWW RESOURCES, LLC; INSPIRE BRANDS, INC.; ARBY'S RESTAURANT GROUP,
15 INC.

16 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice it would be deposited with the U.S.
Postal Service on that same day with postage thereon fully prepaid at Irvine, California
18 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
19 day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
R. Civ. Proc. 5(a); *Fed. R. Civ. Proc.* 5(c).)

20 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
21 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
22 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

23 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
24 electronic transmission to the addressee(s) listed above on the date below. (*Cal. Code*
Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

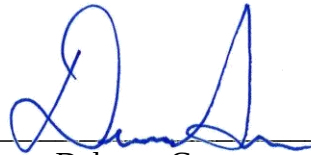
25 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
26 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on July 6, 2022, at Irvine, California.

4 
5
6 Delaney Graves