

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency,
Green Cross Med Net, Inc.
Date: December 14, 2022
Subject: *Gerson Del Cid Bernal v. Laco-Wing, LLC dba Wingstop*

INTRODUCTION

Please take notice that Gerson Del Cid Bernal intends to seek civil penalties against his former employer, Laco-Wing, LLC (“Wingstop”) under the California Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* (“PAGA”), on behalf of himself, the Labor and Workforce Development Agency (“LWDA”), and other aggrieved employees. Wingstop is liable for these civil penalties as a result of its uniform and systematic failure to comply with California wage laws, including California Labor Code provisions relating to the payment of overtime wages and minimum wages, and providing meal and rest breaks (or payment of the statutory additional wages due), expense reimbursements, inaccurate wage statements, and waiting time penalties.

Before pursuing these PAGA penalties in a representative capacity, California Labor Code § 2699.3 requires that aggrieved employees notify their employer and the LWDA of the specific provisions of the California Labor Code allegedly violated, as well as the facts and legal grounds supporting the allegations. To that end, we submit this letter on behalf of our client, Gerson Del Cid Bernal, and on behalf of all aggrieved employees to provide notice of the following facts and violations of the California Labor Code:

GENERAL INFORMATION

Wingstop is a multinational chain of restaurants specializing in chicken wings, corn, fries, chicken sandwiches, etc. Wingstop has its headquarters in Northridge, California, as well as having other locations throughout the states. At all times mentioned herein, Wingstop was licensed to do business in the State of California and conducted and continues to conduct substantial business in the State of California and at all times mentioned herein, Wingstop was and is covered by the California Labor Code and the applicable California Industrial Welfare Commission (“IWC”) Wage Order.

Gerson Del Cid Bernal was employed by Wingstop as a cook from July 2021 to November 7, 2022. At all times, Mr. Del Cid Bernal was employed as an hourly non-exempt employee.

CALIFORNIA LABOR CODE VIOLATIONS

1. Failure to Provide Rest Periods

(California Labor Code §§ 226.7 and 512 and IWC Wage Orders)

High workload demands, strict deadlines, and intense pressure to meet company goals forced Mr. Del Cid Bernal and other employees to delay, shorten, or forgo their rest breaks to complete their assigned tasks. Indeed, Wingstop failed to provide Mr. Del Cid Bernal and other employees with 10-minute rest breaks on a daily basis as required by California law. As a result, Mr. Del Cid Bernal and other employees regularly worked in excess of four hours or major fraction thereof during work days without being provided at least a ten-minute rest period in which they were relieved of all duties, as required by California Labor Code §§ 226.7, 512, and 512.1198 and IWC Wage Orders, and is liable for civil penalties under California Labor Code §§ 2698 *et seq.*

2. Failure to Provide Meal Periods

(California Labor Code §§ 226.7, 512 and IWC Wage Orders)

The same workload demands discussed above forced Mr. Del Cid Bernal and other employees to delay, shorten, or forgo their meal breaks to complete their assigned tasks. For example, Wingstop scheduled Mr. Del Cid Bernal's meal break after his fifth hour of work. In addition to this, Wingstop would often interrupt Mr. Del Cid Bernal while he was on his meal break and only gave him a 15-minute break. On top of this, oftentimes, Wingstop would require Mr. Del Cid Bernal to work two different shifts due to the fact that they were short-staffed and only provide one 30-minute meal break even though he worked more than ten hours that day. As a result, Mr. Del Cid Bernal and other employees worked more than five hours during a shift without being provided a timely half-hour meal period and/or more than ten hours in a shift without receiving a second timely half-hour meal period, as required by California Labor Code §§ 226.7 and 512 and the IWC Wage Orders. As a result, Wingstop has violated California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order, and is liable for civil penalties under California Labor Code §§ 2698 *et seq.*

3. Failure to Pay Overtime Wages

(California Labor Code §§ 510 and 1194, and 1198)

Under most circumstances, Wingstop employed Mr. Del Cid Bernal and other employees for more than eight hours per day or more than 40 hours per workweek. For some weeks, Wingstop required that Mr. Del Cid Bernal and other employees work "off-the-clock" and this resulted in these employees working more than eight hours per day or more than 40 hours per week. For example, as discussed above, Mr. Del Cid Bernal and other employees were often required to continue work-related tasks while they were supposed to be taking a 30-minute meal break. In addition to this, oftentimes, Wingstop would require Mr. Del Cid Bernal to go back and wash dishes that were left as well as put them away after he clocked-out. In these instances, the non-exempt employees are entitled to receive one-and-one half times their regular hourly rate of pay for working more than eight hours but less than 12 hours in a workday or over 40 hours in a

workweek. Notwithstanding this law, Wingstop failed to maintain a policy that compensates Mr. Del Cid Bernal and other employees for all hours worked, including overtime compensation and properly calculating the overtime rate.

As a result, Wingstop has violated California Labor Code §§ 204, 210, 211, 510, 1194, 1197.1, and 1198 and the applicable IWC Wage Order for failure to pay overtime, and is liable for civil penalties under California Labor Code §§ 558 and 2698 *et seq.*

4. Failure to Pay Minimum Wage

(California Labor Code §§ 204, 1118.12, 1197.1, IWC Wage Order)

Wingstop failed to pay Mr. Del Cid Bernal and other employees California's prevailing minimum wage for all "hours worked" by requiring Mr. Del Cid Bernal and other employees to work "off-the-clock." In such an instance, Wingstop was obligated to pay wages for all hours worked, but failed to do so. As a result, Wingstop has violated California Labor Code §§ 204, 558, 1118.12, 1193.6, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage Order for failure to pay minimum wage for all hours worked, and is liable for civil penalties under California Labor Code §§ 558 and 2698 *et seq.*

5. Failure to Provide Accurate Itemized Wage Statements

(California Labor Code § 226)

Mr. Del Cid Bernal and other employees' wage statements were deficient, because of the violations detailed in this notice, including not paying regular and overtime wages for all hours worked and failing to provide meal and rest break premiums. As a result, the wage statements provided to Mr. Del Cid Bernal and other employees were not accurate and do not include all of the statutorily-required information. Specifically, Wingstop has violated California Labor Code § 226 by willfully failing to furnish Mr. Del Cid Bernal and other employees with accurate, itemized wage statements. These California Labor Code violations, in turn, constitute PAGA violations.

6. Failure to Pay Waiting Time Penalties

(California Labor Code § 203)

Sections 201 and 202 of the California Labor Code requires that employers pay employees all wages due immediately if an employer discharges an employee, and within 72 hours if an employee quits his or her employment. Section 203 of the California Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a sanction and amount owed, continue to pay that employee's wages until the back wages are paid in full or an action is commenced. The sanction and amount owed cannot exceed 30 days of wages.

Wingstop owed wages to discharged employees, such as premiums for missed meal and rest periods, minimum wage, and overtime pay for hours worked over eight hours in a workday or 40 in a workweek. Wingstop's failure to pay these wages at termination was willful and constitutes a PAGA violation based on a violation of California Labor Codes §§ 201-203 and 558.

7. Failure to Reimburse for Business Expenditures and Losses
(California Labor Code § 2802)

As a pattern and practice, Wingstop regularly failed to reimburse and indemnify Mr. Del Cid Bernal and other employees for business expenses. These expenses were necessary expenditures incurred by Mr. Del Cid Bernal and other employees in performing their job duties. For example, even though Wingstop would partially provide Mr. Del Cid Bernal and other employees with their uniform, they were still required to spend over \$1,000 in order to complete job tasks correctly. In addition to this, Mr. Del Cid Bernal and other employees were often required to use their own cell phone in order to communicate with management and owners to ask why staff had not arrived to work yet. On top of this, some of the employees were even required to use their own vehicle in order to pick up materials that were needed and were never reimbursed for gas. Despite being aware of these business expenses, Wingstop failed to reimburse Mr. Del Cid Bernal and other employees for such business expenses in violation of California Labor Code § 2802, which requires employers to “indemnify his or her employee for all necessary expenditures and losses incurred by employees.” In turn, this constitutes a PAGA violation based on a violation of California Labor Code §§ 2800 and 2802.

CONCLUSION

In sum, Wingstop has committed PAGA violations based on non-compliance with California Labor Code §§ 204, 1118.12, 1197.1 (minimum wage), 226 (inaccurate itemized wage statements), 226 (wage statements), 226.7 (meal and rest break violations), 510-511, 119, 512 (meal breaks), 226 (wage statements), 2802 (expense reimbursements), and 202-203 and 558 (waiting time penalties), as well as the applicable IWC Wage Order.

Mr. Del Cid Bernal seeks to remedy these violations by securing unpaid wages and civil penalties. Please let me know whether the LWDA intends to investigate or whether we may proceed with a civil action as representatives for the LWDA and those employees that are aggrieved. If you have any questions, please do not hesitate to contact me.

Sincerely,



Vache Thomassian, Esq.
KJT Law Group, LLP

VIA ONLINE FILING

Labor and Workforce Development Agency

Attn: PAGA Administrator

Filed at "New PAGA Claim Notice" (<https://dir.tfaforms.net/308>)

VIA CERTIFIED MAIL, RRR

Laco-Wing, LLC dba Wingstop

Agent of Service for Process: Robin Kirksey

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CC: Wingstop

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