BRADLEY/GROMBACHER LLP
CLASS ACTIONS, MASS TORTS & CATASTROPHIC INJURIES

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April 1, 2025

Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Filed Online

Re: **Amended Written Notice – Private Attorney General Act ("PAGA") – Labor Code section 2698 *et seq.***
Jonathan Machuca v. Buffalo Wild Wings, Inc., et al.

PAGA Administrator:

This correspondence shall serve to amend the initial notice submitted to the LWDA on behalf of Mr. Jonathan Machuca ("Employee") and other aggrieved employees on January 19, 2024. The initial notice is hereby incorporated herein by reference, in its entirety.

Employee hereby provides amended notice of certain Labor Code violations by Buffalo Wild Wings, Inc., BWW Resources, LLC, and Inspire Brands, Inc., ("Employer") that have been discovered as a result of ongoing investigation and assessment.

Amended notice is hereby provided that, pursuant to *Labor Code* § 2699.3, Jonathan Machuca ("Employee") contends that Buffalo Wild Wings, Inc., BWW Resources, LLC, and Inspire Brands, Inc. ("Employers") have violated, and continue to violate, provisions of the *Labor Code* and wage orders promulgated by the Industrial Welfare Commission ("IWC wage order"), including, but not limited to, *Labor Code* §§ 119, 200, 201, 202, 203, 204, 210, 213, 221, 223, 226, 226.7, 227.3, 232, 245, 246, 256, 351, 432, 432.5, 432.7, 432.8, 510, 511, 512, 516, 558, 558.1, 1174, 1174.4, 1175, 1182, 1194, 1197, 1197.5, 1198, 1527, 2800, 2802, 2803, 2804, 2810, 2810.5, 8397.4 and the applicable wage order.

In accordance with the required notice under *Labor Code* § 2699.3 of the Private Attorney General Act ("PAGA"), this amended letter shall serve as formal written notice to the Labor and Workforce Development Agency ("LWDA").

Employee was and is a non-exempt, hourly employee of Employers from approximately 2016 through the present. Employee works as a Server at Employers' Buffalo Wild Wings restaurant in Cerritos, California.

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Employee is an "aggrieved employee" as defined in *Labor Code* § 2699(a) and, on behalf of himself and all other aggrieved employees, seeks penalties under PAGA for Employers' violations of the *Labor Code*.

Buffalo Wild Wings, Inc., is a Minnesota Corporation authorized to do business in California; BWW Resources, LLC, is a Delaware Limited Liability Company authorized to do business in California; Inspire Brands, Inc., is a Georgia Corporation authorized to do business in California.

At all relevant times, Employers have operated in California as proprietors and/or operators of restaurant(s) known as Buffalo Wild Wings.

At all relevant times, Employers issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all aggrieved, hourly paid employees in California, including Employee and others similarly situated, regardless of their location or position.

Employee and other aggrieved employees seek penalties and other compensation from Employer for the relevant time period because Employers:

1. Failed to pay Employee and aggrieved employees for all overtime (*Lab. Code*, §§ 510, 1198, and the applicable Wage Order);

2. Failed to pay Employee and aggrieved employees for all hours worked (*Lab. Code*, §§ 221, 223, 1182, 1194, 1197, 1198, and the applicable Wage Order);

3. Failed to provide Employee and aggrieved employees with compliant meal periods (*Lab. Code*, §§ 226.7, 512, and the applicable Wage Order);

4. Failed to provide Employee and aggrieved employees with compliant rest periods (*Lab. Code*, §§ 226.7, 512, 516, 1198, and the applicable Wage Order);

5. Failed to Provide Employees with Sick Pay at the Regular Rate (*Lab. Code* § 246 and the applicable Wage Order);

6. Failed to provide Employee and aggrieved employees with accurate, itemized wage statements and failed to maintain accurate records (*Lab. Code*, §§ 226(a), 1174, and the applicable Wage Order);

7. Failed to timely pay Employee and aggrieved employees' wages during employment (*Lab. Code*, § 204, and the applicable Wage Order);

8. Failed to reimburse business expenses (*Lab. Code* § 2802, and the applicable Wage Order).

9. Failed to retain gratuities

10. Any claim for violations under the Wage Theft Protection Act of 2011;

11. Any claim for Health and Safety violations (including, but not limited to cooldown periods, access to sanitation facilities, clean drinking water, under *Lab. Code* § 8397.4);

12. Any claim for preventing employees engaging in lawful conduct during non-work hours;

13. Any claim for conducting unlawful background checks, relying on salary history information, regarding prospective and current employees; and

14. Any claim alleging requirement to agree in writing to confidentiality policies that unlawfully restrain trade.

Below please find the relevant facts and legal theories to support the aforementioned violations. In addition, a copy of the Complaint which further details the facts and theories of liability is attached hereto and incorporated by reference.

<u>Time Spent "Off-the-Clock"</u>

Employers did not compensate their hourly non-exempt employees for all minutes that they worked as described above, including but not limited to the time that the employees were subject to the control and direction of Employer; and/or the time that the employees were suffered or permitted to work. For example, Employers frequently required Employee and other aggrieved employees to engage in discussions with managerial employees off-the-clock.

This resulted in, *inter alia*, Employer's underpayment of minimum and overtime wages, and failure to provide complaint meal breaks, rest breaks, and/or recovery periods and/or premiums in lieu thereof.

<u>Failure to Pay Overtime</u>

California *Labor Code* §§ 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") wage order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC wage order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

Employee and those similarly aggrieved worked shifts of eight (8) hours a day or more and/or forty (40) hours a week or more; at times, Employee and those similarly aggrieved worked shifts of twelve (12) hours a day or more.

At all relevant times, Employers maintained a uniform system with which to record employees' time. Despite this, Employers regularly failed to pay overtime wages to Employee and other aggrieved employees for all overtime hours worked, in violation of Labor Code sections 510 and 1198.

Employers knew or should have known that as a result of company-wide practices and/or policies, requiring Employee and aggrieved employees to work off-the-clock, as well as all other hours worked, Employee and aggrieved employees were suffered or permitted to perform work for which they were not paid. Because Employee and aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Employee and aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Employee and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Failure to Pay All Wages

During the relevant time period, Employers implemented policies that actively prevented employees from being compensated for all time worked by subjecting Employee and aggrieved employees to off-the-clock work as described above.

As a result, Employers did not pay at least minimum wages for all hours worked by Employee and other aggrieved employees, in violation of *Labor Code* § 1194, and the applicable Wage Order.

The applicable Wage Order, section 2(G) defines "hours worked" to mean "the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

Labor Code section 1194(a) provides in relevant part: "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage … is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage … including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 1194.2(a) provides in relevant part: "[i]n any action under section 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

Labor Code section 1197 provides: "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

Employee is informed and believes, and therefore alleges, that Employers' compensation schemes do not fairly compensate Employee and aggrieved employees for all hours spent performing their job duties.

The failure to pay at least minimum wages to Employee and aggrieved employees for each and every hour worked violates *Labor Code* sections 1182.11-1182.12, 1194, 1194.2, and 1197; the applicable IWC wage order.

The failure to pay designated wages to Employee and aggrieved employees for each and every hour worked violates *Labor Code* sections 221 and 223; and the applicable IWC wage order.

Accordingly, Employers regularly failed to pay at least minimum wages to Employee and other aggrieved employees for all the hours they worked in violation of *Labor Code* sections 1194, 1197, 1197.1 and 1198. Employee and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to *Labor Code* sections 1197.1 and/or 2699(a), (f)-(g).

<u>Failure to Provide Compliant Meal Breaks</u>

California *Labor Code* § 226.7(a) provides that: "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

California *Labor Code* § 512 provides that: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period more not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

The applicable Wage Order Section 11(D) states "If an employer fails to provide an employee a meal period in the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation each day that the meal period is not provided."

Under the foregoing, California employers must provide meal periods and authorize and permit rest periods to all employees during their shifts. In *Augustus v. ABM Security Services, Inc.*

(2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal and rest periods must be "off-duty," which means that employees must be relieved of "all work-related duties," including the duty to remain "on call," and they must be "free from employer control" over how they "spend their time." *Id*. at 264, 269. Employees must have the freedom to use meal and rest periods for their own purposes. *Id*. at 270; *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038-39.

When employees must either "remain at the ready and capable of being summoned to action," "respond when the employer seeks contact with [them]," "perform other work if the employer so requests," and/or remain "on call" during their meal and rest periods, the employees have not been "relieve[d] … of all work-related duties and employer control." *Augustus*, *supra*, 2 Cal.5th at 270. Such a meal or rest period is not "off duty" and therefore is "impermissible." *Ibid*.

The Supreme Court's decision in *Augustus* is just one of many in a series of meal and rest break cases that have affirmed California's broad, protective standard for employees.

Moreover, as the mere existence of a facially lawful meal and rest break policy is unavailing if there are practical constraints and pressures on employees to perform their duties in ways that omit breaks. *See Brinker*, *supra*, 53 Cal.4th at 1040.

Yet, during the relevant time period, Employers failed to provide Employee and aggrieved employees with compliant, duty-free meal breaks for at least thirty (30) minutes by the fifth hour of work (and/or again by the tenth hour of work), as the result of, *inter alia*, Employee and aggrieved employees' inability to leave the premises and return in time to be back on the clock within the 30 minutes provided for the meal periods. Additionally, Employers maintained policies and/or practices of having Employee and aggrieved employees call dispatch to clock them out for their meal periods, but continue working through the meal period nonetheless.

Thus, Employers have failed to perform their obligations to provide Employee and aggrieved employees with off-duty meal periods by the end of the fifth hour of work and a second meal period by the end of the tenth hour of work. Employers also have failed to pay Employee and aggrieved employees one (1) hour of pay at the regular rate for each off-duty meal period that they have been denied.

Employers knew or should have known that because of its policies and/or practices, that Employee and aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. Employers further knew or should have known that they did not pay Employee and aggrieved employees all meal period premiums when meal periods were missed, late, short, and/or interrupted. Furthermore, Employers have engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Employee and aggrieved employees have not received all premium pay for missed, interrupted, or late meal periods. Accordingly, Employer failed to provide all meal periods in violation of Labor Code sections 226.7, 512(a), 516, and 1198.

Employee and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Failure to Provide Compliant Rest Breaks

California *Labor Code* §§ 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the IWC. The applicable IWC wage order, section 11 provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under *Labor Code* § 226.7 and the applicable IWC wage order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus et al. v. ABM Security Services, Inc*. (2016) 2 Cal.5th 257, 269-270.

During the relevant time period, Employers regularly failed to authorize and permit Employee and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof, without duty, or provide such rest periods whatsoever.

As a result of Employers' practices and policies, Employee and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled.

Employers also have engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Employee and other aggrieved employees have not received premium pay for all non-compliant rest periods.

Accordingly, Employers failed to authorize and permit all rest periods in violation of *Labor Code* §§ 226.7, 516, and 1198. Employee and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to *Labor Code* §§ 2699(a), (f)-(g).

Failure to Pay All Sick Wages

Sick pay must be compensated at the employee's regular rate of pay, for the workweek in which the paid leave was taken, or at a rate determined by averaging over 90-days. (Lab. Code §

246(1)).

Employers failed to pay Employee and aggrieved employees sick pay at the correct rate. Employee received compensation in addition to hourly wages, but those additional amounts were not included when calculating sick pay wages.

Wage Statements

Labor Code § 226(a) requires employers make, keep, and provide true, accurate, and complete wage records. Employers have not provided Employee and other aggrieved employees with properly itemized wage statements. *Labor Code* § 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to section 226(a).

Labor Code § 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC wage order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC wage order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period.

During the relevant time period, Employers have knowingly and intentionally provided Employee and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, Employers issued uniform wage statements to Employee and other aggrieved employees that fail to correctly list: name of the employer; gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. This was largely the result of Employers' off-the-clock policies and practices, leading to missing hours worked, as well as failure to pay overtime, meal, and/or rest period premiums, as identified above.

As a result of not having kept accurate records, Employee and aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Employee and aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Employee and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to *Labor Code* §§ 226.3, 1174.5, and/or 2699(a), (f)-(g).

Failure to Timely Pay Wages During Employment

Labor Code § 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

Labor Code § 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, *Labor Code* § 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During all relevant times, Employers willfully failed to pay Employee and aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by Labor Code section 204.

In violation of the California Labor Code, Employers have failed to pay Employee and aggrieved employees their vested vacation time at termination.

Failure to Reimburse Business Expenses

California Labor Code § 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code § 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144.

At all times relevant hereto, Employers had company-wide policies and/or practices whereby non-exempt employees were required to undertake expenses on Employers' behalf. These expenses include, but are not limited to, the following: personal cell phone usage for business purposes on multiple occasions, including, but not limited to, calls and texts from managerial employees.

Employers failed to reimburse Employee and aggrieved employees for these costs; instead, Employers passed these operating costs off onto Employee and aggrieved employees. Thus, Employers had, and continue to have, company-wide policies and/or practices of not reimbursing employees for expenses necessarily incurred in violation of Labor Code § 2802.

Employee and aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon.

Conclusion

Employee respectfully requests that the LWDA notify this office within sixty (60) days if it wishes to investigate the additional claims involved in this matter by way of this amended notice. A copy is being sent via certified mail to Employers as well as Employers' counsel of record for the existing claims. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.

Thank you for your time and consideration.

Very truly yours,

BRADLEY/GROMBACHER, LLP

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