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BWW RESOURCES, LLC, INSPIRE BRANDS, INC.
7 AND BUFFALO WILD WINGS, INC.

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

11 RYAN DEVORE, individually and on behalf of
12 all others similarly situated,

13 Plaintiffs,

14 v.

15 BWW RESOURCES, LLC, a Delaware
Corporation; INSPIRE BRANDS, INC., a
16 Georgia Corporation; BUFFALO WILD
WINGS, INC., a Minnesota Corporation; and
17 DOES 1 through 20, inclusive,

18 Defendants.

Case No.

[Sacramento Superior Court
Case No. 34-2021-00304976]

**DEFENDANTS BWW RESOURCES,
LLC; INSPIRE BRANDS, INC.; AND
BUFFALO WILD WINGS, INC.'S
NOTICE TO FEDERAL COURT OF
REMOVAL OF CIVIL ACTION FROM
STATE COURT PURSUANT TO 28
U.S.C. §§ 1332, 1441 AND 1446**

Trial Date: Not Set
Complaint Filed: July 27, 2021

28 DEFENDANTS' NOTICE TO FEDERAL
COURT OF REMOVAL OF CIVIL ACTION
PURSUANT TO 28.U.S.C. §§ 1332, 1441
AND 1446

CASE NO. 34-2021-00304976

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN**
2 **DISTRICT OF CALIFORNIA, PLAINTIFF, AND HIS ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that Defendants BWW RESOURCES, LLC; INSPIRE BRANDS,
4 INC.; and BUFFALO WILD WINGS, INC. (collectively “Defendants”) hereby remove the state court
5 action described herein, filed by Plaintiff Ryan DeVore (“Plaintiff”) in the Superior Court in the State
6 of California for the County of Sacramento, Case No. 34-2021-00304976, to the United States District
7 Court for the Eastern District of California, pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446, and Civ.
8 L.R. 120(d). Defendants make the following allegations in support of its Notice of Removal:

9 **I. STATEMENT OF JURISDICTION**

10 1. This Court has original jurisdiction over this action pursuant to the Class Action
11 Fairness Act of 2005 (“CAFA”), which vests the United States district courts with original jurisdiction
12 of any civil action: (a) that is a class action with a putative class of more than a hundred members; (b)
13 in which any member of a class of plaintiffs is a citizen of a state different from any defendant; and
14 (c) in which the matter in controversy exceeds \$5,000,000, exclusive of interest and costs. *See* 28
15 U.S.C. § 1332(d). CAFA authorizes removal of such actions in accordance with 28 U.S.C. § 1446.
16 As set forth below, this case meets all of CAFA’s requirements for removal and is timely and properly
17 removed by the filing of this Notice of Removal.

18 **II. VENUE**

19 2. Plaintiff originally brought this action in the Superior Court of the State of California,
20 County of Sacramento. Therefore, venue lies in the Eastern District of California pursuant to 28
21 U.S.C. §§ 84(a)(1), 1441(a), and 1446(a).

22 **III. PLEADINGS, PROCESS, AND ORDERS**

23 3. On July 27, 2021, Plaintiff filed a Class Action Complaint against Defendants and
24 various Doe defendants in the Sacramento County Superior Court entitled *Ryan DeVore, individually*
25 *and on behalf of all others similarly situated, v. BWW Resources, LLC, a Delaware Corporation;*
26 *Inspire Brands, Inc., a Georgia Corporation; Buffalo Wild Wings, Inc., a Minnesota Corporation; and*
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1 *Does 1 through 20, inclusive*, Case No. 34-2021-00304976 (the “Complaint”). (See **Exhibit (“Ex.”)**
2 **A**, attached hereto; see also Declaration of Stacey E. James (“James Decl.”) ¶ 2.)

3 4. The Complaint asserts the following causes of action: (1) Violation of California Unfair
4 Competition Law; (2) Failure to Provide Accurate Wage Statements; (3) Failure to Pay Minimum
5 Wage for All Hours Worked; (4) Failure to Provide Meal and Rest Periods; (5) Waiting Time
6 Penalties; (6) Failure to Reimburse Business Expenses; (7) Civil Penalties Pursuant to Private Attorney
7 General Act, Labor Code § 2698 et seq. (See **Ex. A**.) The allegations in the Complaint are
8 incorporated into this Notice of Removal by reference without admitting the truth of any of them.

9 5. On August 4, 2021, Defendant Buffalo Wild Wings, Inc. (“BWW Inc.”) was served
10 with the Complaint, along with copies of the Civil Case Cover Sheet and Summons, and Notice of
11 Case Assignment through BWW Inc.’s registered agent for service of process, CSC. (See **Ex. B**,
12 attached hereto; see also James Decl., ¶ 3.)

13 6. On August 4, 2021, Defendant BWW Resources, LLC (“BWW LLC”) was served with
14 the Complaint, along with copies of the Civil Case Cover Sheet and Summons, and Notice of Case
15 Assignment through BWW LLC’s registered agent for service of process, CSC. (See **Ex. C**, attached
16 hereto; see also James Decl., ¶ 4.)

17 7. On August 11, 2021, Defendant Inspire Brands, Inc. (“Inspire Brands”) was served
18 with the Complaint, along with copies of the Civil Case Cover Sheet and Summons, and Notice of
19 Case Assignment through Inspire Brand’s registered agent for service of process, CSC. (See **Ex. D**,
20 attached hereto; See also James Decl., ¶ 5.)

21 8. On September 2, 2021, Defendants filed an Answer to the Complaint. (See **Ex. E**,
22 attached hereto; see also James Decl., ¶ 6.)

23 9. To Defendants’ knowledge, no further process, pleadings, or orders related to this case
24 have been filed in the Sacramento County Superior Court or served by any party other than as
25 described above. (James Decl., ¶ 7.) To Defendants’ knowledge, no proceedings related hereto have
26 been heard in the Sacramento County Superior Court. (Id.)
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1 **IV. TIMELINESS OF REMOVAL**

2 10. An action may be removed from state court by filing a notice of removal – together with a
3 copy of all process, pleadings, and orders served on the defendant – within thirty days of defendant
4 receiving service of the initial pleading. 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Mitchetti Pipe*
5 *Stringing, Inc.*, 526 U.S. 344, 354 (1999) (the thirty-day removal period runs from the service of the
6 summons and complaint).

7 11. Removal of this action is timely because this Notice of Removal has been filed within
8 thirty days of August 4, 2021, when Defendants BWW Inc. and BWW LLC were served with the
9 Summons and Complaint. *See* 28 U.S.C. § 1446(b). Because Plaintiff personally served the Summons
10 and Complaint upon defendants BWW Inc.’s and BWW LLC’s agents for service of process on August
11 4, 2021, the thirty-day period for removal runs through September 3, 2020. As referenced above, this
12 Notice of Removal also contains all process, pleadings, and orders that were served on Defendants or
13 otherwise obtained by Defendants, and the Answer filed and served by Defendants on September 2,
14 2021. (See James Decl., ¶¶ 2-6; Exs. A-E.)

15 **V. CAFA JURISDICTION**

16 12. CAFA grants federal district courts original jurisdiction over civil class action lawsuits
17 filed under federal or state law in which any member of a class of plaintiffs is a citizen of a state
18 different from any defendant, where there are at least 100 putative class members, and where the
19 matter’s amount in controversy exceeds \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C.
20 § 1332(d). CAFA authorizes removal of such actions in accordance with 28 U.S.C. § 1446. As set
21 forth below, this case meets each CAFA requirement for removal, and is properly removed by the
22 filing of this Notice of Removal.

23 **A. This is a Class Action.**

24 13. Plaintiff filed this action as a class action. (Complaint, ¶¶ 1, 2, 14-16.)

25 **B. The Proposed Class Contains At Least 100 Members.**

26 14. The provisions of CAFA apply to proposed class actions involving 100 individuals or
27 more. 28 U.S.C. § 1332(d)(5)(B). This requirement is met in this case.

1 15. Plaintiff seeks to represent a putative class consisting of “All non-exempt employees
2 who were employed by Defendants in California at any time four (4) years prior to the filing of this
3 Action up to the date that this matter is certified as a class action.” (Complaint, ¶ 14.)

4 16. As it relates to the putative class, Defendants employed in excess of 100 employees in
5 the State of California as hourly, non-exempt employees from July 27, 2017 to July 31, 2021.
6 (Declaration of Kristin Winslow in Support of Notice of Removal to Federal Court [“Winslow Decl.”],
7 ¶ 5.) During the relevant time period, BWW LLC and its predecessor affiliate employed at least
8 16,140 non-exempt employees in California.¹ (Id.) Thus, CAFA’s requirement that the action involve
9 100 or more individuals is easily satisfied.

10 **C. Defendants Are Not A State, State Official, Or Governmental Entity.**

11 17. CAFA does not apply to class actions where “primary defendants are States, State
12 officials, or other governmental entities against whom the district court may be foreclosed from
13 ordering relief.” 28 U.S.C. § 1332(d)(5)(B).

14 18. Defendants are each companies, and none are a state, state official, or other
15 governmental entity. (See Declaration of Tony Harmon [“Harmon Decl.”], ¶¶ 3-5.)

16 **D. There Is Diversity Between At Least One Putative Class Member And One**
17 **Defendant.**

18 19. CAFA’s minimal diversity requirement is satisfied, *inter alia*, when “any member of a
19 class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. §§ 1332(d)(2)(A),
20 1453(b). In a class action, only the citizenship of the named parties is considered for diversity purposes
21 and not the citizenship of the unnamed putative class members. *Snyder v. Harris*, 394 U.S. 332, 339-
22 40 (1969). Additionally, for removal purposes, diversity must exist both at the time the action was
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24 ¹ Of these 16,140 employees, many of them (but not all) may have entered into an agreement to
25 arbitrate their claims with Defendants and agreeing to waive their right to participate in a class action.
26 This precise number is not reasonably ascertainable at this point in the litigation. For the purposes of
27 removal, Defendants are including these employees for the purposes of calculating the amount in
28 controversy based on the allegations in Plaintiff’s Complaint. Defendants can easily meet the amount
in controversy irrespective of the number of employees who may have entered into the arbitration
agreement, given the putative class size of 16,140. Defendants reserve the right to challenge the
allegations in Plaintiff’s Complaint and enforce all class action waivers executed by members of the
putative class.

1 commenced in state court and at the time of removal. *Strotek Corp. v. Air Transp. Ass'n of Am.*, 300
2 F.3d 1129, 1131 (9th Cir. 2002). Diversity of citizenship exists here because Plaintiff and Defendants
3 are citizens of different states.

4 20. For diversity purposes, a person is a “citizen” of the state in which he is domiciled.
5 *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (confirming that a person’s domicile
6 is the place he resides with the intention to remain). Furthermore, allegations of residency in a state
7 court complaint can create a rebuttable presumption of domicile supporting diversity of citizenship.
8 *Lew v. Moss*, 797 F.2d 747, 751 (9th Cir. 1986); *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514,
9 519-20 (10th Cir. 1994) (allegation by party in state court complaint of residency “created a
10 presumption of continuing residence in [state] and put the burden of coming forward with contrary
11 evidence on the party seeking to prove otherwise”); *Overholt v. Airista Flow Inc.*, No. 17cv1337-
12 MMA (AGS), 2018 WL 355231, at *4 (S.D. Cal. Jan. 10, 2018) (citations omitted).

13 21. Here, at the time Plaintiff commenced this action and, upon information and belief, at
14 the time of removal, Plaintiff resided in and was a citizen of the State of California. (Complaint, ¶ 5
15 [“Plaintiff RYAN DEVORE is over the age of eighteen (18) and is a resident of the State of California
16 and an employee of Defendants.”].) Accordingly, for purposes of diversity jurisdiction, Plaintiff is a
17 citizen of the State of California.

18 22. For diversity purposes, a limited liability company is deemed to be a citizen of every
19 state of which its members are citizens. *See Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-96 (1990);
20 *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“An LLC is a citizen
21 of every state of which its owners/members are citizens.”).

22 23. Here, at the time Plaintiff filed his Complaint on July 27, 2021, BWW LLC was, and
23 still is, a limited liability company organized under the laws of the State of Delaware. (Harmon Decl.,
24 ¶ 5.) BWW LCC has its principal office in Atlanta, Georgia. (Id.) As of the time of the filing of the
25 Complaint and at the time of this removal, IRB Holding Corp, the sole member of BWW LLC, was
26 not a citizen of the State of California. (See Harmon Decl., ¶ 5, Exh. 1 [Statement of Information filed
27 with the California Secretary of State confirming BWW LCC is organized under the laws of Delaware
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1 and IRB Holding Corp. has its principal place of business in Atlanta, Georgia and listing its address
2 as Atlanta, Georgia].) As of the time of the filing of the Complaint and at the time of this removal,
3 BWW LLC is a citizen of Delaware and Georgia and is not a citizen of the State of California.

4 24. Inspire Brands is a corporation organized under the laws of the State of Delaware, with
5 its principal place of business in Atlanta, Georgia. (Harmon Decl., ¶ 3.) As of the time of the filing
6 of the Complaint and at the time of this removal, Inspire Brands is a citizen of Delaware and Georgia
7 and is not a citizen of the State of California.

8 25. BWW Inc. is a corporation organized under the laws of the State of Minnesota, with its
9 principal place of business in Atlanta, Georgia. (Harmon Decl., ¶ 4.) As of the time of the filing of
10 the Complaint and at the time of this removal, BWW Inc. is a citizen of Minnesota and Georgia and
11 is not a citizen of the State of California.

12 26. The presence of Doe defendants in this case has no bearing on diversity with respect to
13 removal. *See* 28 U.S.C. § 1441(a) (“For purposes of removal under this chapter, the citizenship of
14 defendants sued under fictitious names shall be disregarded.”); *Newcombe v. Adolf Coors Co.*, 157
15 F.3d 686, 690-91 (9th Cir. 1998) (“28 U.S.C. § 1441(a) explicitly provides that the citizenship of
16 defendants sued under fictitious names shall be disregarded for purposes of removal.”).

17 27. Accordingly, the named Plaintiff is a citizen of a state (California) different from
18 Defendants, and diversity exists for purposes of CAFA jurisdiction. *See* 28 U.S.C. §§ 1332(d)(2)(A),
19 1453.

20 **E. The Amount In Controversy Exceeds \$5,000,000.**

21 28. The removal statute requires a defendant seeking to remove a case to federal court to
22 file a notice “containing a short and plain statement of the grounds for removal.” 28 U.S.C. § 1446(a).
23 In *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014), the Supreme Court
24 recognized that “as specified in § 1446(a), a defendant’s notice of removal need include only a
25 plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” Only if the
26 plaintiff contests or the court questions the allegations of the notice of removal is supporting evidence
27 required. *Id.* at 554. “[T]he defendant’s amount-in-controversy allegation should be accepted” just
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1 as a plaintiff's amount-in-controversy allegation is accepted when a plaintiff invokes federal court
2 diversity jurisdiction. *Id.* at 553.

3 29. For purposes of determining whether the amount in controversy has been satisfied, the
4 Court must presume that Plaintiff will prevail on his claims. *Kenneth Rothschild Trust v. Morgan*
5 *Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (citing *Burns v. Windsor Ins. Co.*,
6 31 F.3d 1092, 1096 (11th Cir. 1994) (stating that the amount in controversy analysis presumes that
7 "plaintiff prevails on liability")). The ultimate inquiry is the amount that is put "in controversy" by
8 the allegations of a plaintiff's complaint, not what a defendant might actually owe. *Rippee v. Boston*
9 *Market Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005); *accord Ibarra v. Manheim Invs., Inc.*, 775
10 F.3d 1193, 1198 n.1 (9th Cir. 2015) (explaining that even when the court is persuaded the amount in
11 controversy exceeds \$5,000,000, defendants "are still free to challenge the actual amount of damages
12 in subsequent proceedings and at trial" because they are only estimating the amount in controversy).

13 30. Defendants deny the validity and merit of the entirety of Plaintiff's claims, the legal
14 theories upon which they are ostensibly based, and the claims for monetary and other relief that flow
15 therefrom. For purposes of removal only, however, and without conceding that Plaintiff or the putative
16 class are entitled to any damages or penalties whatsoever, it is readily apparent that the allegations of
17 Plaintiff's Complaint establish that the amount in controversy exceeds CAFA's jurisdictional
18 minimum of \$5,000,000.²

19 31. When, as here, a plaintiff's complaint does not state the amount in controversy, the
20 defendant's notice of removal may do so. Defendants' notice of removal must simply include "a
21 plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart*, 135 S.
22 Ct. at 554.

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25 ² As noted, the assumptions and estimations considered herein are based only on Plaintiff's allegations
26 in his Complaint, and do not constitute an admission by Defendants of any wrongdoing. Defendants
27 maintain that at all times they complied with all applicable California wage and hour laws. The
28 assumptions and estimations made herein are for the sole purpose of demonstrating that Plaintiff's
Complaint puts at issue more than the minimum jurisdictional amount required for removal under the
CAFA. Defendants reserve the right to deny, challenge, and dispute the allegations in Plaintiff's
Complaint.

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i. Wage Statements Penalties

32. Defendants are entitled to base calculations, for purposes of calculating the amount in controversy, on the argument and allegations by Plaintiff in his Second Cause of Action alleging failure to provide accurate wage statements.

33. Plaintiff alleges the following:

- a. “Defendants issued wage statements to Plaintiff and similarly situated employees that did not comply with California law because, among other things, they did not include all hours worked.” (Complaint, ¶ 2.)
- b. “Defendants did not provide Plaintiff and similarly situated employees legally compliant wage statements noting, among other things, total hours worked, gross wages earned, the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. (Complaint, ¶ 28.)
- c. “. . . Defendants failed to issue to Plaintiff and similarly situated employees an itemized wage statement that lists all the requirements under California Labor Code 226 et seq.” (Complaint, ¶ 30.)
- d. “Defendants failed to list on the wage statements provided to Plaintiff and similarly situated employees all hours worked and the applicable rates of pay and overtime rate . . . [and] Plaintiff alleges that Defendants failed to provide accurate itemized wage statements in accordance with Labor Code section 226(a) to all members of the Labor Code Class.” (Complaint, ¶ 42.)
- e. “Plaintiff alleges he suffered injury as a result of Defendants’ knowing and intentional failure to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of Labor Code section 226, subdivision (a), and Plaintiff cannot promptly and easily determine (i.e. a reasonable person in each Plaintiff’s position would not be able to readily

1 ascertain the information without reference to other documents or information)
2 from the wage statement alone. Cal. Lab Code § 226(e)(2)(B)(iv).” (Complaint,
3 ¶ 43.)

4 34. Thus, Plaintiff alleges that he “. . . and Class Members were damaged and are entitled
5 to statutory and civil penalties under the Labor Code, and attorney’s fees and costs, in an amount to
6 be proven at trial.” (Complaint, ¶ 44.)

7 35. Accordingly, it is reasonable to assume, as Plaintiff alleges, that under Plaintiff’s
8 theory, each wage statement issued during the relevant period of time allegedly failed to include total
9 hours worked, gross wages earned, the applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate. *See Duberry v. J. Crew Grp., Inc.*, No.
11 2:14-cv-08810-SVW-MRW, 2015 WL 4575018, at *6-7 (C.D. Cal. July 28, 2015) (finding it
12 reasonable to apply a 100% violation rate as to the inaccurate wage statement claim); *Korn v. Polo*
13 *Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1204 (E.D. Cal. 2008) (courts may consider maximum
14 penalty in calculating amount in controversy for wage statement claim).

15 36. As it relates to the putative class, Defendants employed in excess of 100 employees in
16 the State of California as hourly, non-exempt employees from July 27, 2020 to August 31, 2021.
17 (Winslow Decl., ¶ 5.) During the relevant time period, BWW LLC employed 7,197 non-exempt
18 employees in California. (Id.)

19 37. Plaintiff’s wage statement claim is subject to a one-year statute of limitations. *See*
20 *Blackwell v. SkyWest Airlines, Inc.*, 245 F.R.D. 453, 462 (S.D. Cal. 2007) (recovery under Section
21 226(a) constitutes a penalty and therefore is governed by a one-year statute of limitations under
22 California Code of Civil Procedure § 340(a)). During the period of July 27, 2020, to the date of this
23 removal, Defendants issued wage statements to its California employees on a bi-weekly basis.
24 (Winslow Decl., ¶ 6.) California Labor Code § 226(c) provides for penalties in the amount of “fifty
25 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per
26 employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four
27 thousand dollars (\$4,000).” Accordingly, a conservative estimate of Plaintiff’s claim for Section
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1 226(c) penalties for 7,197 employees would result in an amount in controversy for the statutory time
2 period of at least \$19,791,750.00 (7,197 employees x (1 pay period x \$50 + 27 pay periods x \$100)).

3 38. These assumptions are conservative and reasonable.

4 **ii. Minimum Wage Penalties**

5 39. Defendants are entitled to base its calculations, for purposes of calculating the amount
6 in controversy, on the argument and allegations by Plaintiff regarding minimum wage violations.
7 Plaintiff makes various allegations including:

8 a. “. . . Defendants failed to . . . pay all minimum wages owed. . .” (Complaint, ¶
9 19.)

10 b. “Claimant and similarly situated employees were suffered and permitted to
11 work off the clock without compensation when they were required to drive to
12 other store locations in their own personal vehicles without pay.” (Complaint,
13 ¶ 25.)

14 c. “Defendants’ uniform policies and practices to not [pay] Plaintiff and Class
15 Members. . . all minimum wages earned. . .” (Complaint, ¶ 31.)

16 40. Plaintiff alleges that “Defendants’ conduct. . . violates California Labor Code section
17 1194, and Wage Orders. As a proximate result of Defendants’ conduct, Plaintiff and the Plaintiff Class
18 have been damaged and deprived of minimum wages, in an amount to be established at trial. Plaintiff
19 and the Plaintiff Class now seek these wages, liquidated damages pursuant to California Labor Code
20 section 1194.2, attorney’s fees and costs, and interest pursuant to California Labor Code sections
21 1194.” (Complaint, ¶ 51.)

22 41. Based on Plaintiff’s allegations, it is reasonable to assume – for purposes of calculating
23 the amount placed in controversy by Plaintiff’s Third Cause of Action for minimum wage violations
24 – that between July 27, 2017 to July 31, 2021 (dates within the relevant time period alleged in the
25 Complaint), at least ten percent of the 16,140 California employees, or putative class members, worked
26 off the clock traveling in their personal vehicles at least once each week. Assuming 10 minutes of
27 uncompensated time each week, the amount in controversy for the time period of July 27, 2017 to July
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1 31, 2021 is at least \$602,126.91 (1,614 employees (10% of the 16,140 in the putative class) x 209
2 weeks x .17 hours x \$10.50/hour).

3 42. These assumptions are reasonable. Defendants assume this claim only affected 10%
4 of the putative class and assumed the average of the minimum wage rate of \$10.50/hour for the entire
5 time period, despite that many employees undoubtedly earned more than minimum wage throughout
6 the relevant time period.³

7 43. In conclusion, the amount in controversy on Plaintiff's Third Cause of Action for
8 minimum wage violations is at least \$602,126.91.

9 **iii. Meal & Rest Period**

10 44. Defendants are entitled to base calculations, for purposes of calculating the amount in
11 controversy, on the argument and allegations by Plaintiff in his Fourth Cause of Action for Meal and
12 Rest Period Violations. Plaintiff makes various allegations including:

- 13 a. "Defendants failed to provide meal and rest periods to Plaintiff and similarly
14 situated employees. . ." (Complaint ¶ 19.)
- 15 b. "Defendants did not allow Claimant and similarly situated employees to take
16 their statutorily required meal and rest periods. Defendants required Claimant
17 and other similarly situated employees to clock out for a 30-minute meal period
18 at the start of their shift, and required Claimant and other similarly situated
19 employees to then work the remainder of their six to eight-hour shifts without
20 any meal break period." (Complaint ¶ 22.)
- 21 c. "Defendants also refused to provide rest periods to Claimant and similarly
22 situated employees for every 4 hours worked or major fraction thereof."
23 (Complaint ¶ 23.)
- 24 d. ". . . Defendants maintained a policy and procedure by which Defendants failed
25 to provide Plaintiff and similarly situated employees with compliant meal
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27 ³ For employers of 26 or more employees, including Defendants, the minimum wage in California was
28 as follows: As of January 1, 2017: \$10.50/hour; January 1, 2018: \$11.00/hour; January 1, 2019:
\$12.00/hour; January 1, 2020: \$13.00/hour; January 1, 2021: \$14.00/hour.

1 breaks by requiring employees to clock out for their meal break immediately
2 after clocking-in at the beginning of their shift, and then requiring employees
3 to work the remainder of their six (6) to eight (8) hour shift without any meal
4 break. In this way, Plaintiff and similarly situated employees essentially started
5 their shift thirty (30) minutes later than the scheduled time, and were denied a
6 compliant meal break.” (Complaint ¶ 56.)

7 e. “. . . Defendants failed to provide rest breaks of at least ten (10) minutes for each
8 work period that he and similarly situated employees worked for four (4) hours
9 or major fraction thereof.” (Complaint ¶ 57.)

10 45. Plaintiff asserts that Plaintiff and members of the putative class are “entitled to one (1)
11 hour of pay at the regular rate of compensation for each meal period and/or rest period not provided,
12 as a wage, from three (3) years of the filing of this action . . .” (Complaint ¶ 58.) *See also* Labor Code
13 § 226.7.

14 46. Between July 27, 2018 to July 31, 2021, dates within the relevant time period alleged
15 in the Complaint, Defendants employed at least 12,164 employees in the State of California as hourly,
16 non-exempt employees. (Winslow Decl., ¶ 5.) The minimum wage during the time period ranged
17 from \$11.00 to \$14.00/hour.

18 47. Defendant “may make mathematical calculations using reasonable averages of, for
19 example, hourly, monthly, and annual incomes of comparable employees when assessing the amount-
20 in-controversy.” *Garcia v. ACE Cash Express, Inc.*, No. SACV 14-0285-DOC (RNBx), 2014 WL
21 2468344, at *2 (C.D. Cal. May 30, 2014) (citing *Coleman v. Estes Express Lines, Inc.*, 730 F. Supp.
22 2d 1141, 1148-49 (C.D. Cal. 2010)). Accordingly, assuming a conservative estimate of fifty percent
23 of the putative class suffered one meal period violation and one rest break violation per workweek
24 during the relevant time period, the amount at issue for Plaintiff’s Fourth Cause of Action for Meal
25 and Rest Period Violations is **\$20,873,424.00**. (156 weeks x 6,082 employees (50% of 12,164
26 employees) x 2 violations x \$11.00). *See Long v. Destination Maternity Corp.*, No. 15cv2836-WQH-
27 RBB, 2016 WL 1604968, at *8 (S.D. Cal. April 21, 2016) (“Because Plaintiff does not include fact-
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1 specific allegations regarding the circumstances of the alleged . . . rest periods, it is reasonable for
2 Defendant to estimate damages sought based on one . . . rest period violation per employee per week.”
3 (citations omitted)).

4 48. Defendants’ conservative assumptions of one meal period violation and one rest break
5 violation per workweek, applicable to only 50% of the putative class to calculate the amount in
6 controversy on Plaintiff’s meal and rest break claims are reasonable, particularly given that courts
7 often assume violation rates of 100% in calculating the amount in controversy when the complaint
8 does not allege a more precise calculation. *See, e.g., Ritenour v. Carrington Mortgage Servs. LLC*,
9 228 F. Supp. 3d 1025, 1030 (C.D. Cal. 2017) (“Given the vague language of the Complaint and the
10 broad definition of the class, it is reasonable for Defendants to assume a 100% violation rate.”);
11 *Thomas v. Aetna Health of Cal., Inc.*, No. 1:10-cv-01906-AWI-SKO, 2011 WL 2173715, at *20 (E.D.
12 Cal. June 2, 2011); *Navarro v. Servisair, LLC*, No. C 08-02716 MHP, 2008 WL 3842984, at *8-9
13 (N.D. Cal. Aug. 14, 2008); *Alvarez v. Ltd. Express, LLC*, No. 07CV1051 IEG (NLS), 2007 WL
14 2317125, at *3 (S.D. Cal. Aug. 8, 2007); *Muniz v. Pilot Travel Centers LLC*, No. CIV. S-07-0325
15 FCD EFB, 2007 WL 1302504, at *4 (E.D. Cal. May 1, 2007).

16 49. These courts recognize “that imposing overly stringent requirements on a defendant to
17 proving the amount in controversy would run the risk of essentially asking defendants to prove the
18 plaintiffs’ case.” *Altamirano v. Shaw Indus., Inc.*, No. C-13-0939 EMC, 2013 WL 2950600, at *5
19 (N.D. Cal. June 14, 2013); *see also Jones v. Tween Brands, Inc.*, No. 2:14-CV-1631-ODW (PLAx),
20 2014 WL 1607636, at *2 (C.D. Cal. Apr. 22, 2014) (finding defendant did not need to provide payroll
21 data to support removal because defendant “is not required to meet such a high burden.”) (citing *Muniz*,
22 2007 WL 1302504, at *7).

23 50. For example, in *Muniz* the district court held that “a removing defendant is *not*
24 obligated to ‘research, state, and prove the plaintiff’s claims for damages.’” *Muniz*, 2007 WL
25 1302504, at *2 (quoting *McCraw v. Lyons*, 863 F. Supp. 430, 434 (W.D. Ky. 1994)); *see also Korn v.*
26 *Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1204–05 (E.D. Cal. 2008). A defendant is thus not
27 obligated “to support removal with production of extensive business records to prove or disprove
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1 liability and/or damages with respect to plaintiff or the putative class members at this premature (pre-
2 certification) stage of the litigation.” *Muniz*, 2007 WL 1302504, at *5 (citing *McGraw*, 863 F. Supp.
3 2d at 434); *see also Thomas*, 2011 WL 2173715, at *20 (“[R]equiring Defendants to forecast an exact
4 violation rate would essentially force a removing defendant to prove the plaintiff’s case.” (citing
5 *Muniz*, 2007 WL 1302504, at *3)).

6 51. In *Alvarez*, the plaintiff broadly alleged meal and rest period violations based on an
7 “‘extreme workload’ that made it ‘virtually impossible’ for defendant’s employees to take meal
8 periods and rest breaks” and a “‘company culture’ that discouraged meal periods and rest breaks.”
9 2007 WL 2317125, at *3. Assuming the allegations in the complaint were true, the court concluded
10 the plaintiff’s complaint could support a 100% violation rate. *Id.*

11 52. Similarly, in *Muniz*, the plaintiff did not allege “facts specific to the circumstances of
12 her or the class members’ allegedly missed meal and/or rest periods”; “[i]nstead, plaintiff allege[d] a
13 common course of conduct in violation of the law resulting in injury to herself and every other hourly
14 employee employed by defendant in the State of California in the four years preceding the filing of
15 the Complaint.” 2007 WL 1302504 at *4. The court permitted the defendant to use a 100% violation
16 rate to determine the maximum penalties, since the plaintiff was the “‘master of [her] claim[s],’ and if
17 she wanted to avoid removal, she could have alleged facts specific to her claims which would narrow
18 the scope of the putative class or the damages sought.” *Id.* (quoting *Caterpillar, Inc. v. Williams*, 482
19 U.S. 386, 392 (1987)); *see also Ford v. CEC Entm’t, Inc.*, No. CV 14-01420 RS, 2014 WL 3377990,
20 at *3 (N.D. Cal. July 10, 2014) (finding plaintiff’s allegation that “[d]efendants implemented a
21 *systematic, company-wide policy* to not pay rest period premiums” justified defendant’s assumption
22 of a 100% violation rate that was “‘reasonably grounded in the complaint.’”); *Leos v. Fed. Express*
23 *Corp.*, No. 2:14-cv-02864-ODW(AGRx), 2014 WL 2586866, at *5 (C.D. Cal. June 10, 2014) (“courts
24 have allowed the assumption of a 100–percent violation rate where the plaintiff alleges in the
25 complaint that each member of the class has been harmed.” (citing *Coleman*, 730 F. Supp. 2d at 1149)).

26 53. In *Coleman*, the court held that where the plaintiff does not include a limitation on the
27 number of violations, and taking the complaint as true, the court may find the “Defendants could
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1 properly calculate the amount in controversy based on a 100% violation rate.” 730 F. Supp. 2d at
 2 1149-51. As in *Coleman*, here, Plaintiff fails to include any limitations on the alleged number of meal
 3 period or rest break violations or limitations on the number of putative class members allegedly
 4 injured. Thus, as in *Coleman*, Defendants would be justified calculating the amount in controversy
 5 based on a 100% violation rate.

6 54. That being said, for purposes of this removal Defendants assume only one meal period
 7 violation and one rest break violation per week, applicable to only 50% of the putative class, and use
 8 the most conservative minimum wage given the relevant period of time. As noted above, assuming a
 9 conservative estimate of fifty percent of the putative class suffered one meal period violation and one
 10 rest break violation per workweek during the relevant time period, the amount at issue for Plaintiff’s
 11 Fourth Cause of Action for Meal and Rest Period Violations is estimated to be at least **\$20,873,424.00**.

12 **iv. Waiting time penalties**

13 55. Defendant is also entitled to base its calculations, for purposes of calculating the
 14 amount in controversy, on Plaintiff’s claim for waiting time penalties. (Complaint ¶¶ 59-64.)

15 56. Waiting time penalties under California Labor Code § 203(a) are calculated at an
 16 employee’s final daily rate of pay (*i.e.*, the employee’s final wage rate times the employee’s average
 17 shift length) times the number of days of waiting time penalties (up to 30 days). *See Mamika v. Barca*,
 18 68 Cal. App. 4th 487, 491-93 (1998). Based on Plaintiff’s allegations, it is reasonable to assume – for
 19 purposes of calculating the amount in controversy only – that none of the terminated putative class
 20 members were paid all of their wages owed upon termination. Taking the allegations in the Complaint
 21 as true, each of these employees is entitled to 30 days’ wages in waiting time penalties under California
 22 Labor Code § 203. *See Cal. Lab. Code § 203; Giannini v. Northwestern Mut. Life Ins. Co.*, No. C 12-
 23 77 CW, 2012 WL 1535196, at *4 (N.D. Cal. April 20, 2012) (“Defendants can properly assume that
 24 all members of the former employee subclass were entitled to maximum waiting time penalties under
 25 Labor Code section 203.”); *Wilson v. Best Buy Co., Inc.*, No. 2:10-cv-3136-GEB-KJN, 2011 WL
 26 445848, at *2 (E.D. Cal. Feb. 8, 2011) (finding defendant provided plausible evidence to support all
 27 former employees were entitled to thirty days of penalties based on allegation that plaintiff and class
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1 members did not receive their wages within 72 hours of termination); *Korn v. Polo Ralph Lauren*
2 *Corp.*, 536 F. Supp. 2d 1199, 1206 n.4 (E.D. Cal. 2008) (applying full 30 days' worth of wages for
3 Section 203 penalties because plaintiff "cannot avoid satisfaction of the amount in controversy by
4 arguing that the class plaintiffs may be awarded less than the statutory maximum.").

5 57. The statute of limitations on a claim for waiting time penalties is three years. *See*
6 *Pineda v. Bank of Am., N.A.*, 50 Cal. 4th 1389, 1395 (2010) ("[N]o one disputes that when an employee
7 sues to recover both unpaid final wages and the resulting section 203 penalties, the suit is governed
8 by the same three-year limitations period that would apply had the employee sued to recover only the
9 unpaid wages.").

10 58. Between July 27, 2018 and July 31, 2021, dates within the relevant time period alleged
11 in the Complaint, Defendants employed approximately 12,164 non-exempt employees in the State of
12 California, 8,997 of whom had their employment terminated. (Winslow Decl., ¶ 5.) Conservatively
13 assuming that the average final pay rate for these terminated employees was the state minimum wage
14 in 2018 (*i.e.*, \$11.00/hour), and further conservatively assuming that these employees worked only 4-
15 hour shifts (*i.e.*, the minimum shift length scheduled by BWW LLC (Winslow Decl., ¶ 6)), the amount
16 in controversy at issue for Plaintiff's claim for waiting time penalties is at least **\$11,876,040.00** (8,997
17 former non-exempt employees x \$11.00 average rate of pay x 4 hours per day x 30 days). *See Jones*,
18 2014 WL 1607636, at *3 (defendant could rely on assumption of 100% violation rate where plaintiff
19 sought "the statutory penalty wages for each day [the class members] were not paid, up to a thirty (30)
20 day maximum pursuant to California Labor Code section 203" and found the declaration in support of
21 defendant's removal was sufficient where it set forth the total number of non-exempt employees within
22 the class definition and the average hourly wage over the relevant time period).

23 59. These assumptions are conservative and reasonable. Defendants assume a final hourly
24 rate of only \$11.00 for the entire time period, despite: (a) California's minimum wage was increased
25 to \$12.00/hour effective January 1, 2019, increased to \$13.00/hour beginning January 1, 2020, and
26 increased to \$14.00 effective January 1, 2021; and (b) many employees undoubtedly earned more than
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1 minimum wage. Second, Defendants assume only a four-hour workday despite the fact that four hours
 2 is the minimum shift length scheduled by BWW LLC.

3 60. In conclusion, the amount in controversy on Plaintiff’s request for waiting time
 4 penalties is at least **\$11,876,040.00**.

5 **iv. The aggregate amount in controversy exceeds \$5,000,000**

6 61. As set forth above, CAFA’s amount in controversy requirement is satisfied by
 7 Plaintiff’s claims for unpaid minimum wages, meal and rest period premiums, and waiting time
 8 penalties. Based on the above calculations, Defendant’s conservative estimate of the aggregate
 9 minimum amount in controversy for only these claims is at least **\$53,143,340.00**.

10 62.

Cause of Action	Amount in Controversy
Wage Statements	\$19,791,750.00
Minimum Wage	\$602,126.91
Meal and Rest Periods	\$20,873,424.00
Waiting Time	\$11,876,040.00
Indemnification	Not calculated
Total:	\$53,143,340.00

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18 63. Defendants’ amount in controversy calculation does not take into account any
 19 additional amount placed in controversy due to Plaintiff’s First Cause of Action for Violation of
 20 California Unfair Competition Law, Sixth Cause of Action for Reimbursement of Business Expenses,
 21 or Seventh Cause of Action for Civil Penalties Pursuant to Private Attorney General Act, Labor Code
 22 § 2698 et seq.

23 64. Plaintiff also seeks attorneys’ fees (*see* Complaint, ¶¶ 1, 44, 51, 68; Prayer for Relief,
 24 ¶ 7), which the Court could consider and include in the amount in controversy since the California
 25 Labor Code allows recovery of such fees. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th
 26 Cir. 1998) (“We hold that where an underlying statute authorizes an award of attorneys’ fees, either
 27 with mandatory or discretionary language, such fees may be included in the amount in controversy.”).
 28

1 Attorneys’ fees awards in California wage and hour class actions can total millions of dollars. *See*,
 2 *e.g.*, *McGuigan v. City of San Diego*, 183 Cal. App. 4th 610, 638 (2010) (noting attorneys’ fees paid
 3 in settlement of \$1.6 million); *Pellegrino v. Robert Half Int’l, Inc.*, 182 Cal. App. 4th 278, 287, 296
 4 (2010) (affirming \$558,926.85 in attorneys’ fees in exemption misclassification class action, but
 5 reversing as to multiplier); *Vasquez v. California*, 45 Cal. 4th 243, 249 (2008) (affirming award of
 6 \$727,000 in attorneys’ fees plus a multiplier that equates to total fees of \$1,199,550 in class action
 7 involving violations of a living wage ordinance, the California Labor Code, as well as unfair
 8 competition and contract claims); *Jasso v. Money Mart Express, Inc.*, No. 11-CV-5500 YGR, 2012
 9 WL 699465 (N.D. Cal. Mar. 1, 2012) (“[I]t is well established that the Ninth Circuit ‘has established
 10 25% of the common fund as a benchmark award for attorney fees.’” (quoting *Hanlon v. Chrysler*
 11 *Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998)). Assuming 25% toward attorneys’ fees, the additional
 12 amount in controversy would be \$13,285,835.00 (25% of \$53,143,340.00).

13 65. Even without considering Plaintiff’s claims for expense reimbursement, or attorneys’
 14 fees, Plaintiff’s claims place more than \$5,000,000 in controversy. Removal of this action is therefore
 15 proper as the aggregate value of Plaintiff’s class claims for statutory damages, statutory penalties, and
 16 attorneys’ fees is well in excess of the CAFA jurisdictional requirement of \$5,000,000. *See* 28 U.S.C.
 17 § 1332(d)(2).

18 66. In light of the above, there is no question that Plaintiff’s claims exceed the jurisdictional
 19 minimum. Accordingly, the “amount in controversy” requirement under CAFA is satisfied in this
 20 case.

21 **VI. NOTICE OF REMOVAL TO ADVERSE PARTY AND STATE COURT**

22 67. Following the filing of this Notice of Removal in the United States District Court for
 23 the Eastern District of California, written notice of such filing will be given by the undersigned to
 24 Plaintiff’s counsel of record, Timothy B. Del Castillo and Lisa L. Bradner of Castle Law: California
 25 Employment Counsel, PC and a copy of the Notice of Removal will be filed with the Clerk of the
 26 Sacramento County Superior Court in accordance with 28 U.S.C. § 1446(d). (James Decl., ¶ 8.)

27 WHEREFORE, Defendants hereby remove this action from the Superior Court of the State of
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1 California, County of Sacramento, to the United States District Court for the Eastern District of
2 California.

3
4 Dated: September 3, 2021

LITTLER MENDELSON, P.C.

5
6 /s/ Stacey E. James

7 Stacey E. James
8 Heidi E. Hegewald

9 Attorneys for Defendants
10 BWW RESOURCES, LLC, INSPIRE BRANDS,
11 INC. and BUFFALO WILD WINGS, INC.

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EXHIBIT A

FILED
Superior Court Of California,
Sacramento
07/27/2021
mwhitaker
By _____, Deputy
Case Number:
24-2021-00304975

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9 Attorneys for Plaintiff RYAN DEVORE
10 on behalf of himself and similarly situated employees

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

13 RYAN DEVORE, individually and on)
14 behalf of all others similarly situated,)
15 Plaintiffs,)
16 vs.)
17 BWV RESOURCES, LLC, a Delaware)
18 Corporation; INSPIRE BRANDS, INC., a)
19 Georgia Corporation; BUFFALO WILD)
20 WINGS, INC., a Minnesota Corporation;)
21 and Does 1 through 20, inclusive,)
22 Defendants.)
23)
24)
25)

CLASS ACTION

COMPLAINT FOR DAMAGES:

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

JURY TRIAL DEMANDED

BY FAX

1 Plaintiff RYAN DEVORE (“Plaintiff”), on behalf of himself and all other similarly situated
2 employees hereby files this Complaint against Defendants BWW RESOURCES, LLC, a Delaware
3 Corporation; INSPIRE BRANDS, INC., a Georgia Corporation, BUFFALO WILD WINGS, INC., a
4 Minnesota Corporation; Does 1 through 20 (collectively referred to as “Defendants”). Plaintiff alleges
5 the following:

6 **INTRODUCTION**

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

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

17 **JURISDICTION AND VENUE**

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

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

23 **PARTIES**

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

26 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant BWW
27 RESOURCES, LLC, is a Delaware Corporation; an industry, business and/or facility licensed to do
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1 business and actually doing business in the State of California, as among other things, Buffalo Wild
2 Wings.

3 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant, BUFFALO
4 WILD WINGS, INC., is a Minnesota Corporation, and Plaintiff's joint-employer. BUFFALO WILD
5 WINGS, INC., does business in California as a restaurant.

6 8. Plaintiff is informed and believes, and thereupon alleges, that Defendant, INSPIRE
7 BRANDS, INC., is a Georgia Corporation, doing business in California as Buffalo Wild Wings, and
8 is Plaintiff's joint-employer.

9 9. Plaintiff is informed and believes, and thereupon alleges that Defendant BWW
10 RESOURCES, LLC is now and/or at all times mentioned in this Complaint a Delaware Limited
11 Liability Company, doing business in California as Buffalo Wild Wings, and is Plaintiff's joint-
12 employer.

13 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
14 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
15 employees.

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

19 12. Plaintiff is further informed and believes, and thereon alleges, that each of the
20 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
21 joint venturer of the remaining defendants and was acting within the course and scope of that
22 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
23 herein gave consent to, ratified and authorized the acts alleged herein to each of the remaining
24 defendants. The true names and capacities of the defendants named herein Does 1 through 20,
25 inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
26 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
27 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
28 through 20, inclusive, when they have been determined.

1 13. On July 21, 2021, Plaintiff filed his Labor Code § 2699.3 Private Attorney General Act
2 (“PAGA”) Notice with the California Labor & Workforce Development Agency (“LWDA”). On July
3 26, 2021, Plaintiff filed an Amended PAGA Notice with the LWDA. After the expiration of 65 days
4 from the filing of the PAGA Notice, if the LWDA does not respond, Plaintiff will have fully exhausted
5 his administrative remedy.

6 CLASS ALLEGATIONS

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

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

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

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

24 (b) Common Questions Predominate: Common questions of law and fact exist as to all
25 members of the Plaintiff Class and predominate over questions that affect only
26 individual members of the class. These common questions of law and fact include,
27 without limitation, the following:
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- (1) Whether Defendants accurately stated all required information on paystubs issued to members of the Plaintiff Class;
- (2) Whether Defendants maintained the time and payroll records for their employees as required under the California Labor Code;
- (3) Whether Defendants provided meal and rest periods to their employees as required under the California Labor Code;
- (4) Whether Defendants maintained policies and practices that deprived meal and rest periods to their employees in violation of the California Labor Code;
- (5) Whether Defendants paid all required minimum wages to their employees as required under the California Labor Code;
- (6) Whether Defendants reimbursed employees for reasonable business expenses, including mileage.

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

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. Plaintiff resides in California and is an adequate representative of the putative class as he has no interests that are adverse to those of absent class members. Additionally, Plaintiff has retained counsel who have substantial experience in complex civil litigation and wage and hour matters.

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

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

16 **GENERAL ALLEGATIONS**

17 17. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
18 fully set forth herein.

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

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

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

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

9 22. Defendants did not allow Claimant and similarly situated employees to take their
10 statutorily required meal and rest periods. Defendants required Claimant and other similarly
11 situated employees to clock out for a 30-minute meal period at the start of their shift, and required
12 Claimant and other similarly situated employees to then work the remainder of their six to eight-
13 hour shifts without any meal break period.

14 23. Defendants also refused to provide rest periods to Claimant and similarly situated
15 employees for every 4 hours worked or major fraction thereof.

16 24. Defendants' management staff were aware this was occurring, and Claimant
17 specifically complained about it to Defendants, and still Defendants did not ensure meal and/ or
18 rest periods were provided to Claimant and similarly situated employees in compliance with
19 California law.

20 25. Claimant and similarly situated employees were suffered and permitted to work off
21 the clock without compensation when they were required to drive to other store locations in their
22 own personal vehicles without pay. Defendants and Claimant's manager were aware of this
23 additional work, but Claimant has not been compensated for it.

24 26. Claimant and similarly situated employees also incurred business expenses without
25 reimbursement. For example, Claimant was required to travel to Defendants' other locations in
26 his personal vehicle, and Defendants never reimbursed Claimant and similarly situated employees
27 for mileage.

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1 27. As a result of the practices listed above Under California Labor Code Section 2802,
2 employers are required to indemnify employees for all expenses incurred in the course and scope
3 of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his
4 or her employee for all necessary expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
6 employer, even though unlawful, unless the employee, at the time of obeying the directions,
7 believed them to be unlawful."

8 28. Because of these Labor Code violations, Defendants did not provide Plaintiff and
9 similarly situated employees legally compliant wage statements noting, among other things, total
10 hours worked, gross wages earned, the applicable hourly rates in effect during the pay period and
11 the corresponding number of hours worked at each hourly rate.

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

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

20 31. Defendants' uniform policies and practices to not provide Plaintiff and Class
21 Members meal and rest periods, not pay all minimum wages earned, not pay all wages owed at
22 termination or resignation, and not to provide compliant wage statements are evidenced by
23 Defendants' business records.

24 32. Defendants, as a matter of corporate policy, practice, and procedure, intentionally,
25 knowingly and systematically failed to reimburse and indemnify Plaintiff and other Class Members
26 for required business expenses incurred in direct consequence of discharging their duties on behalf
27 of Defendants.

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

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

12 **FIRST CAUSE OF ACTION**
13 **UNFAIR COMPETITION**

14 35. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
15 fully set forth herein.

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

20 37. Defendants committed numerous violations of the California Labor Code
21 throughout the employment relationship.

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

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

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

4
5 **SECOND CAUSE OF ACTION**
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

6 40. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
7 fully set forth herein.

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

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

25 42. Defendants failed to list on the wage statements provided to Plaintiff and similarly
26 situated employees all hour worked and the applicable rates of pay and overtime rate. Plaintiff
27 alleges that Defendants failed to provide accurate itemized wage statements in accordance with
28 Labor Code section 226(a) to all members of the Labor Code Class.

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

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

10 **THIRD CAUSE OF ACTION**
11 **FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED**

12 45. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
13 fully set forth herein.

14 46. Defendants were required to compensate Plaintiff with at least the State's minimum
15 wage for all hours worked. *See* Cal. Labor Code § 1194; MW Order-2014; MW Order-2017.

16 47. Defendants were aware of their obligation to pay the minimum wages but failed to
17 do so.

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

23 49. California Labor Code section 558.1, subsection (b), further provides that the term
24 "other person acting on behalf of any employer" means "a natural person who is an owner, director,
25 officer, or managing agent of the employer."

26 50. Provisions regulating minimum wages or hours and days of work in any order of
27 the Industrial Welfare Commission, such as IWC Wage Order No. 5-2001, and California Labor
28 Code section 1194 have been violated by, or were caused to be violated by, Defendants. Plaintiff

1 is informed and thereon believes that each Defendant was acting on behalf of each other Defendant,
2 including as an owner and/or managing agent of Defendants, within the meaning of California
3 Labor Code section 558.1. Therefore, each Defendant may be held liable as the employer for the
4 violations of provisions regulating minimum wages or hours and days of work in any order of the
5 Industrial Welfare Commission, including IWC Wage Order No. 5-2001, and California Labor
6 Code section 1194.

7 51. Defendants' conduct described herein violates California Labor Code section 1194,
8 and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff and the Plaintiff Class
9 have been damaged and deprived of minimum wages, in an amount to be established at trial.
10 Plaintiff and the Plaintiff Class now seek these wages, liquidated damages pursuant to California
11 Labor Code section 1194.2, attorney's fees and costs, and interest pursuant to California Labor
12 Code sections 1194.

13 **FOURTH CAUSE OF ACTION**
FAILURE TO PROVIDE MEAL AND REST PERIODS

14 52. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
15 fully set forth herein.

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

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

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

25 56. Plaintiff alleges that Defendants maintained a policy and procedure by which
26 Defendants failed to provide Plaintiff and similarly situated employees with compliant meal breaks
27 by requiring employees to clock out for their meal break immediately after clocking-in at the
28 beginning of their shift, and then requiring employees to work the remainder of their six (6) to

1 eight (8) hour shift without any meal break. In this way, Plaintiff and similarly situated employees
2 essentially started their shift thirty (30) minutes later than the scheduled time, and were denied a
3 compliant meal break.

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

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

12 **FIFTH CAUSE OF ACTION**
WAITING TIME PENALTIES

13 59. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
14 fully set forth herein.

15 60. An employer must pay an employee who is terminated all unpaid wages
16 immediately upon termination. California Labor Code § 201.

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

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

23 63. Defendants knew of their obligation to pay Plaintiff and Class Members and
24 Defendants' failure to pay all wages was in complete disregard of their obligations. Such conduct
25 shows Defendants' knowledge of their obligation to pay all wages owed upon termination and
26 willful refusal.
27
28

1 California Labor Code, including but not necessarily limited to, those Labor Code violations
2 identified above.

3 71. On or about July 21, 2021, Plaintiff sent written notice to the LWDA regarding
4 Defendants' violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*,
5 PAGA. On July 26, 2021, Plaintiff filed an amended PAGA Notice. As of the date of the filing of
6 this Complaint, the LWDA has not informed Plaintiff whether the LWDA intends to investigate
7 Plaintiff's PAGA claims.

8 72. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California
9 and all Aggrieved Employees for all violations of the Labor Code from July 21, 2020, through trial
10 on this matter.

11 **DAMAGES**

12 WHEREFORE Plaintiff requests relief as follows:

- 13 1. A jury trial;
- 14 2. For an order certifying the class;
- 15 3. For an order certifying Plaintiff's counsel as class counsel;
- 16 4. For an order appointing Plaintiff as class representative;
- 17 5. For penalties and liquidated damages under the California Labor Code according to
18 proof allowed by law;
- 19 6. For compensatory damages, including, but not limited to, unpaid wages, plus
20 interest, according to proof allowed by law;
- 21 7. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
22 fees;
- 23 8. For injunctive relief;
- 24 9. For an award of prejudgment and post-judgment interest; and

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10. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

Dated: July 26, 2021

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del-Castillo
Lisa L. Bradner
Attorneys for Plaintiff RYAN DEVORE and the Class


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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: July 26, 2021

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del Castillo
Lisa L. Bradner
Attorneys for Plaintiff RYAN DEVORE and the Class

EXHIBIT B



Notice of Service of Process

Transmittal Number: 23587713
Date Processed: 08/04/2021

Primary Contact: Brad Orschel
Inspire Brands, Inc.
3 Glenlake Pkwy
Fl 5
Atlanta, GA 30328-3584

Electronic copy provided to: Matthew Becker
Bridget Peterson
Derek Ensminger
John Hopkins

Entity: Buffalo Wild Wings, Inc.
Entity ID Number 2654686

Entity Served: Buffalo Wild Wings Inc

Title of Action: Ryan Devore vs. BWW Resources LLC

Document(s) Type: Summons/Complaint

Nature of Action: Class Action

Court/Agency: Sacramento County Superior Court, CA

Case/Reference No: 34-2021-00304976

Jurisdiction Served: California

Date Served on CSC: 08/04/2021

Answer or Appearance Due: 30 Days

Originally Served On: CSC

How Served: Personal Service

Sender Information: Timothy B. Del Castillo
916-245-0122

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BWW RESOURCES, LLC, a Delaware Corporation; INSPIRE BRANDS, INC., a Georgia Corporation; BUFFALO WILD WINGS, INC., a Minnesota Corporation; and Does 1 through 20, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

RYAN DEVORE, individually and on behalf of all others similarly situated,

FILED FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
Superior Court of California,
Sacramento
07/30/2021
mwhitaker
By _____, Deputy
Case Number:
34-2021-00304976

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

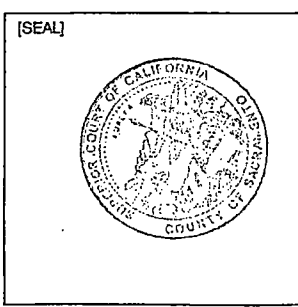
The name and address of the court is:
(El nombre y dirección de la corte es):
Gordon D. Schaber Sacramento County Courthouse
720 9th Street
Sacramento CA 95814

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Timothy B. Del Castillo (SBN 277296) 916-245-0122
2999 Douglas Blvd., Suite 180 Roseville CA 95661

DATE: JUL 30 2021 Clerk, by M. WHITAKER, Deputy
(Fecha) (Secretario) (Adjunto)

CASE NUMBER:
(Número del Caso):

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): Buffalo Wild Wings, Inc., a Minnesota Corporation
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

FILED
Superior Court Of California,
Sacramento
07/27/2021
mwhitaker
By _____, Deputy
Case Number:
24-2021-00304975

1 TIMOTHY B. DEL CASTILLO (SBN: 277296)
2 tdc@castleemploymentlaw.com
3 LISA L. BRADNER (SBN: 197952)
4 lb@castleemploymentlaw.com
5 **CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC**
6 2999 Douglas Blvd., Suite 180
7 Roseville, CA 95661
8 Telephone: (916) 245-0122

9 Attorneys for Plaintiff RYAN DEVORE
10 on behalf of himself and similarly situated employees

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

13 RYAN DEVORE, individually and on
14 behalf of all others similarly situated,

15 Plaintiffs,

16 vs.

17 BWW RESOURCES, LLC, a Delaware
18 Corporation; INSPIRE BRANDS, INC., a
19 Georgia Corporation; BUFFALO WILD
20 WINGS, INC., a Minnesota Corporation;
21 and Does 1 through 20, inclusive,

22 Defendants.

23 **CLASS ACTION**

24 **COMPLAINT FOR DAMAGES:**

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

JURY TRIAL DEMANDED

BY FAX

1 Plaintiff RYAN DEVORE (“Plaintiff”), on behalf of himself and all other similarly situated
2 employees hereby files this Complaint against Defendants BWW RESOURCES, LLC, a Delaware
3 Corporation; INSPIRE BRANDS, INC., a Georgia Corporation, BUFFALO WILD WINGS, INC., a
4 Minnesota Corporation; Does 1 through 20 (collectively referred to as “Defendants”). Plaintiff alleges
5 the following:

6 **INTRODUCTION**

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

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

17 **JURISDICTION AND VENUE**

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

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

23 **PARTIES**

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

26 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant BWW
27 RESOURCES, LLC, is a Delaware Corporation; an industry, business and/or facility licensed to do
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1 business and actually doing business in the State of California, as among other things, Buffalo Wild
2 Wings.

3 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant, BUFFALO
4 WILD WINGS, INC., is a Minnesota Corporation, and Plaintiff's joint-employer. BUFFALO WILD
5 WINGS, INC., does business in California as a restaurant.

6 8. Plaintiff is informed and believes, and thereupon alleges, that Defendant, INSPIRE
7 BRANDS, INC., is a Georgia Corporation, doing business in California as Buffalo Wild Wings, and
8 is Plaintiff's joint-employer.

9 9. Plaintiff is informed and believes, and thereupon alleges that Defendant BWW
10 RESOURCES, LLC is now and/or at all times mentioned in this Complaint a Delaware Limited
11 Liability Company, doing business in California as Buffalo Wild Wings, and is Plaintiff's joint-
12 employer.

13 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
14 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
15 employees.

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

19 12. Plaintiff is further informed and believes, and thereon alleges, that each of the
20 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
21 joint venturer of the remaining defendants and was acting within the course and scope of that
22 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
23 herein gave consent to, ratified and authorized the acts alleged herein to each of the remaining
24 defendants. The true names and capacities of the defendants named herein Does 1 through 20,
25 inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
26 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
27 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
28 through 20, inclusive, when they have been determined.

1 13. On July 21, 2021, Plaintiff filed his Labor Code § 2699.3 Private Attorney General Act
2 (“PAGA”) Notice with the California Labor & Workforce Development Agency (“LWDA”). On July
3 26, 2021, Plaintiff filed an Amended PAGA Notice with the LWDA. After the expiration of 65 days
4 from the filing of the PAGA Notice, if the LWDA does not respond, Plaintiff will have fully exhausted
5 his administrative remedy.

6 **CLASS ALLEGATIONS**

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

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

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

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

24 (b) Common Questions Predominate: Common questions of law and fact exist as to all
25 members of the Plaintiff Class and predominate over questions that affect only
26 individual members of the class. These common questions of law and fact include,
27 without limitation, the following:
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- (1) Whether Defendants accurately stated all required information on paystubs issued to members of the Plaintiff Class;
- (2) Whether Defendants maintained the time and payroll records for their employees as required under the California Labor Code;
- (3) Whether Defendants provided meal and rest periods to their employees as required under the California Labor Code;
- (4) Whether Defendants maintained policies and practices that deprived meal and rest periods to their employees in violation of the California Labor Code;
- (5) Whether Defendants paid all required minimum wages to their employees as required under the California Labor Code;
- (6) Whether Defendants reimbursed employees for reasonable business expenses, including mileage.

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

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. Plaintiff resides in California and is an adequate representative of the putative class as he has no interests that are adverse to those of absent class members. Additionally, Plaintiff has retained counsel who have substantial experience in complex civil litigation and wage and hour matters.

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

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

16 **GENERAL ALLEGATIONS**

17 17. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
18 fully set forth herein.

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

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

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

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

9 22. Defendants did not allow Claimant and similarly situated employees to take their
10 statutorily required meal and rest periods. Defendants required Claimant and other similarly
11 situated employees to clock out for a 30-minute meal period at the start of their shift, and required
12 Claimant and other similarly situated employees to then work the remainder of their six to eight-
13 hour shifts without any meal break period.

14 23. Defendants also refused to provide rest periods to Claimant and similarly situated
15 employees for every 4 hours worked or major fraction thereof.

16 24. Defendants' management staff were aware this was occurring, and Claimant
17 specifically complained about it to Defendants, and still Defendants did not ensure meal and/ or
18 rest periods were provided to Claimant and similarly situated employees in compliance with
19 California law.

20 25. Claimant and similarly situated employees were suffered and permitted to work off
21 the clock without compensation when they were required to drive to other store locations in their
22 own personal vehicles without pay. Defendants and Claimant's manager were aware of this
23 additional work, but Claimant has not been compensated for it.

24 26. Claimant and similarly situated employees also incurred business expenses without
25 reimbursement. For example, Claimant was required to travel to Defendants' other locations in
26 his personal vehicle, and Defendants never reimbursed Claimant and similarly situated employees
27 for mileage.

28

1 27. As a result of the practices listed above Under California Labor Code Section 2802,
2 employers are required to indemnify employees for all expenses incurred in the course and scope
3 of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his
4 or her employee for all necessary expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
6 employer, even though unlawful, unless the employee, at the time of obeying the directions,
7 believed them to be unlawful."

8 28. Because of these Labor Code violations, Defendants did not provide Plaintiff and
9 similarly situated employees legally compliant wage statements noting, among other things, total
10 hours worked, gross wages earned, the applicable hourly rates in effect during the pay period and
11 the corresponding number of hours worked at each hourly rate.

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

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

20 31. Defendants' uniform policies and practices to not provide Plaintiff and Class
21 Members meal and rest periods, not pay all minimum wages earned, not pay all wages owed at
22 termination or resignation, and not to provide compliant wage statements are evidenced by
23 Defendants' business records.

24 32. Defendants, as a matter of corporate policy, practice, and procedure, intentionally,
25 knowingly and systematically failed to reimburse and indemnify Plaintiff and other Class Members
26 for required business expenses incurred in direct consequence of discharging their duties on behalf
27 of Defendants.

28

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

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

12 **FIRST CAUSE OF ACTION**
13 **UNFAIR COMPETITION**

14 35. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
15 fully set forth herein.

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

20 37. Defendants committed numerous violations of the California Labor Code
21 throughout the employment relationship.

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

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

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

4
5 **SECOND CAUSE OF ACTION**
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

6 40. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
7 fully set forth herein.

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

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

25 42. Defendants failed to list on the wage statements provided to Plaintiff and similarly
26 situated employees all hour worked and the applicable rates of pay and overtime rate. Plaintiff
27 alleges that Defendants failed to provide accurate itemized wage statements in accordance with
28 Labor Code section 226(a) to all members of the Labor Code Class.

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

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

10 **THIRD CAUSE OF ACTION**
11 **FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED**

12 45. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
13 fully set forth herein.

14 46. Defendants were required to compensate Plaintiff with at least the State's minimum
15 wage for all hours worked. *See* Cal. Labor Code § 1194; MW Order-2014; MW Order-2017.

16 47. Defendants were aware of their obligation to pay the minimum wages but failed to
17 do so.

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

23 49. California Labor Code section 558.1, subsection (b), further provides that the term
24 "other person acting on behalf of any employer" means "a natural person who is an owner, director,
25 officer, or managing agent of the employer."

26 50. Provisions regulating minimum wages or hours and days of work in any order of
27 the Industrial Welfare Commission, such as IWC Wage Order No. 5-2001, and California Labor
28 Code section 1194 have been violated by, or were caused to be violated by, Defendants. Plaintiff

1 is informed and thereon believes that each Defendant was acting on behalf of each other Defendant,
2 including as an owner and/or managing agent of Defendants, within the meaning of California
3 Labor Code section 558.1. Therefore, each Defendant may be held liable as the employer for the
4 violations of provisions regulating minimum wages or hours and days of work in any order of the
5 Industrial Welfare Commission, including IWC Wage Order No. 5-2001, and California Labor
6 Code section 1194.

7 51. Defendants' conduct described herein violates California Labor Code section 1194,
8 and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff and the Plaintiff Class
9 have been damaged and deprived of minimum wages, in an amount to be established at trial.
10 Plaintiff and the Plaintiff Class now seek these wages, liquidated damages pursuant to California
11 Labor Code section 1194.2, attorney's fees and costs, and interest pursuant to California Labor
12 Code sections 1194.

13 **FOURTH CAUSE OF ACTION**
FAILURE TO PROVIDE MEAL AND REST PERIODS

14 52. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
15 fully set forth herein.

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

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

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

25 56. Plaintiff alleges that Defendants maintained a policy and procedure by which
26 Defendants failed to provide Plaintiff and similarly situated employees with compliant meal breaks
27 by requiring employees to clock out for their meal break immediately after clocking-in at the
28 beginning of their shift, and then requiring employees to work the remainder of their six (6) to

1 eight (8) hour shift without any meal break. In this way, Plaintiff and similarly situated employees
2 essentially started their shift thirty (30) minutes later than the scheduled time, and were denied a
3 compliant meal break.

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

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

12 **FIFTH CAUSE OF ACTION**
13 **WAITING TIME PENALTIES**

14 59. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
15 fully set forth herein.

16 60. An employer must pay an employee who is terminated all unpaid wages
17 immediately upon termination. California Labor Code § 201.

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

21 62. Plaintiff and similarly situated employees did not receive all wages at their
22 termination or separation from employment, including, but not limited to, unpaid minimum wages,
23 and unpaid meal and rest period penalties.

24 63. Defendants knew of their obligation to pay Plaintiff and Class Members and
25 Defendants' failure to pay all wages was in complete disregard of their obligations. Such conduct
26 shows Defendants' knowledge of their obligation to pay all wages owed upon termination and
27 willful refusal.
28

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

4 **SIXTH CAUSE OF ACTION**
5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 65. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
7 fully set forth herein.

8 66. Labor Code section 2802(a) states that "An employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence
10 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
11 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
12 be unlawful."

13 67. Defendants knew that Plaintiff and members of the Class incurred expenses for
14 work purposes, including but not necessarily limited to business use of employee personal vehicles
15 to travel between locations that were not their principal place of work for deliveries and for other
16 purposes. However, Defendants did not reimburse Plaintiff or members of the Class for these
17 expenses.

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

22 **SEVENTH CAUSE OF ACTION**
23 **CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.**

24 69. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
25 fully set forth herein.

26 70. Plaintiff brings this cause of action as a proxy for the State of California and in this
27 capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants' violations of the
28

1 California Labor Code, including but not necessarily limited to, those Labor Code violations
2 identified above.

3 71. On or about July 21, 2021, Plaintiff sent written notice to the LWDA regarding
4 Defendants' violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*,
5 PAGA. On July 26, 2021, Plaintiff filed an amended PAGA Notice. As of the date of the filing of
6 this Complaint, the LWDA has not informed Plaintiff whether the LWDA intends to investigate
7 Plaintiff's PAGA claims.

8 72. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California
9 and all Aggrieved Employees for all violations of the Labor Code from July 21, 2020, through trial
10 on this matter.

11 **DAMAGES**

12 WHEREFORE Plaintiff requests relief as follows:

- 13 1. A jury trial;
- 14 2. For an order certifying the class;
- 15 3. For an order certifying Plaintiff's counsel as class counsel;
- 16 4. For an order appointing Plaintiff as class representative;
- 17 5. For penalties and liquidated damages under the California Labor Code according to
18 proof allowed by law;
- 19 6. For compensatory damages, including, but not limited to, unpaid wages, plus
20 interest, according to proof allowed by law;
- 21 7. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
22 fees;
- 23 8. For injunctive relief;
- 24 9. For an award of prejudgment and post-judgment interest; and

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10. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

Dated: July 26, 2021

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del Castillo
Lisa L. Bradner
Attorneys for Plaintiff RYAN DEVORE and the Class

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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: July 26, 2021

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del Castillo
Lisa L. Bradner
Attorneys for Plaintiff RYAN DEVORE and the Class

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Timothy B. Del Castillo (SBN 277296) Castle Law: California Employment Counsel, PC 2999 Douglas Blvd., Suite 180 Roseville CA 95661 TELEPHONE NO.: 916-245-0122 FAX NO. (Optional): ATTORNEY FOR (Name): Ryan DeVore		FOR COURT USE ONLY FILED Superior Court Of California, Sacramento 07/27/2021 InWhitaker By _____, Deputy Case Number: 34-2021-00304976
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 9th Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento 95814 BRANCH NAME: Gordon D. Schaber Sacramento County Courthouse		CASE NUMBER: JUDGE: DEPT.:
CASE NAME: DeVore v. BWW Resources, LLC et al.		JUDGE: DEPT.:
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 7

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
 Date: 07/26/2021

Timothy B. Del Castillo BY FAX

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

EXHIBIT C



Notice of Service of Process

Transmittal Number: 23589406
Date Processed: 08/05/2021

Primary Contact: Brad Orschel
Inspire Brands, Inc.
3 Glenlake Pkwy
FI 5
Atlanta, GA 30328-3584

Electronic copy provided to: Matthew Becker
Bridget Peterson
Derek Ensminger
John Hopkins

Entity: BWW Resources, LLC
Entity ID Number 3866210

Entity Served: BWW Resources, LLC

Title of Action: Ryan DeVore vs. BWW Resources, LLC

Document(s) Type: Summons/Complaint

Nature of Action: Class Action

Court/Agency: Sacramento County Superior Court, CA

Case/Reference No: 34-2021-00304976

Jurisdiction Served: California

Date Served on CSC: 08/04/2021

Answer or Appearance Due: 30 Days

Originally Served On: CSC

How Served: Personal Service

Sender Information: Timothy B. Del Castillo
916-245-0122

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

BWW RESOURCES, LLC, a Delaware Corporation; INSPIRE BRANDS, INC., a Georgia Corporation; BUFFALO WILD WINGS, INC., a Minnesota Corporation; and Does 1 through 20, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

RYAN DEVORE, individually and on behalf of all others similarly situated,

FILED FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
Superior Court of California,
Sacramento
07/30/2021
mwhitaker
By _____, Deputy
Case Number:
34-2021-00304976

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Gordon D. Schaber Sacramento County Courthouse
720 9th Street
Sacramento CA 95814

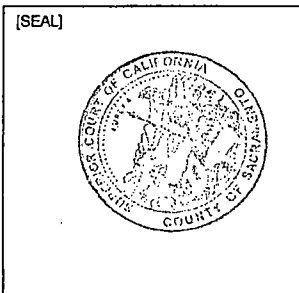
CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Timothy B. Del Castillo (SBN 277296) 916-245-0122
2999 Douglas Blvd., Suite 180 Roseville CA 95661

DATE:
(Fecha) JUL 30 2021

Clerk, by M. WHITAKER, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): BWW Resources, LLC, a Delaware Corporation
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify): Corporation Code: 17061 (Limited Liability Company)
4. by personal delivery on (date):

FILED
Superior Court Of California,
Sacramento
07/27/2021
mwhitaker
By _____, Deputy
Case Number:
24-2021-00304976

1 TIMOTHY B. DEL CASTILLO (SBN: 277296)
2 tdc@castleemploymentlaw.com
3 LISA L. BRADNER (SBN: 197952)
4 lb@castleemploymentlaw.com
5 **CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC**
6 2999 Douglas Blvd., Suite 180
7 Roseville, CA 95661
8 Telephone: (916) 245-0122

9 Attorneys for Plaintiff RYAN DEVORE
10 on behalf of himself and similarly situated employees

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

13 RYAN DEVORE, individually and on)
14 behalf of all others similarly situated,)

15 Plaintiffs,)

16 vs.)

17 BWW RESOURCES, LLC, a Delaware)
18 Corporation; INSPIRE BRANDS, INC., a)
19 Georgia Corporation; BUFFALO WILD)
20 WINGS, INC., a Minnesota Corporation;)
21 and Does 1 through 20, inclusive,)

22 Defendants.)
23)
24)
25)
26)
27)
28)

CLASS ACTION

COMPLAINT FOR DAMAGES:

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

JURY TRIAL DEMANDED

BY FAX

1 Plaintiff RYAN DEVORE (“Plaintiff”), on behalf of himself and all other similarly situated
2 employees hereby files this Complaint against Defendants BWW RESOURCES, LLC, a Delaware
3 Corporation; INSPIRE BRANDS, INC., a Georgia Corporation, BUFFALO WILD WINGS, INC., a
4 Minnesota Corporation; Does 1 through 20 (collectively referred to as “Defendants”). Plaintiff alleges
5 the following:

6 **INTRODUCTION**

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

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

17 **JURISDICTION AND VENUE**

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

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

23 **PARTIES**

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

26 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant BWW
27 RESOURCES, LLC, is a Delaware Corporation; an industry, business and/or facility licensed to do
28

1 business and actually doing business in the State of California, as among other things, Buffalo Wild
2 Wings.

3 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant, BUFFALO
4 WILD WINGS, INC., is a Minnesota Corporation, and Plaintiff's joint-employer. BUFFALO WILD
5 WINGS, INC., does business in California as a restaurant.

6 8. Plaintiff is informed and believes, and thereupon alleges, that Defendant, INSPIRE
7 BRANDS, INC., is a Georgia Corporation, doing business in California as Buffalo Wild Wings, and
8 is Plaintiff's joint-employer.

9 9. Plaintiff is informed and believes, and thereupon alleges that Defendant BWW
10 RESOURCES, LLC is now and/or at all times mentioned in this Complaint a Delaware Limited
11 Liability Company, doing business in California as Buffalo Wild Wings, and is Plaintiff's joint-
12 employer.

13 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
14 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
15 employees.

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

19 12. Plaintiff is further informed and believes, and thereon alleges, that each of the
20 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
21 joint venturer of the remaining defendants and was acting within the course and scope of that
22 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
23 herein gave consent to, ratified and authorized the acts alleged herein to each of the remaining
24 defendants. The true names and capacities of the defendants named herein Does 1 through 20,
25 inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
26 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
27 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
28 through 20, inclusive, when they have been determined.

1 13. On July 21, 2021, Plaintiff filed his Labor Code § 2699.3 Private Attorney General Act
2 (“PAGA”) Notice with the California Labor & Workforce Development Agency (“LWDA”). On July
3 26, 2021, Plaintiff filed an Amended PAGA Notice with the LWDA. After the expiration of 65 days
4 from the filing of the PAGA Notice, if the LWDA does not respond, Plaintiff will have fully exhausted
5 his administrative remedy.

6 **CLASS ALLEGATIONS**

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

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

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

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

24 (b) Common Questions Predominate: Common questions of law and fact exist as to all
25 members of the Plaintiff Class and predominate over questions that affect only
26 individual members of the class. These common questions of law and fact include,
27 without limitation, the following:
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- (1) Whether Defendants accurately stated all required information on paystubs issued to members of the Plaintiff Class;
- (2) Whether Defendants maintained the time and payroll records for their employees as required under the California Labor Code;
- (3) Whether Defendants provided meal and rest periods to their employees as required under the California Labor Code;
- (4) Whether Defendants maintained policies and practices that deprived meal and rest periods to their employees in violation of the California Labor Code;
- (5) Whether Defendants paid all required minimum wages to their employees as required under the California Labor Code;
- (6) Whether Defendants reimbursed employees for reasonable business expenses, including mileage.

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

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. Plaintiff resides in California and is an adequate representative of the putative class as he has no interests that are adverse to those of absent class members. Additionally, Plaintiff has retained counsel who have substantial experience in complex civil litigation and wage and hour matters.

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

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

16 **GENERAL ALLEGATIONS**

17 17. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
18 fully set forth herein.

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

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

26 20. Plaintiff brings this Class Action on behalf of himself and similarly situated
27 employees in order to fully compensate himself and Class Members for their losses incurred during
28

1 the class period caused by Defendants' uniform policies and practices which failed to lawfully
2 compensate these employees.

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

9 22. Defendants did not allow Claimant and similarly situated employees to take their
10 statutorily required meal and rest periods. Defendants required Claimant and other similarly
11 situated employees to clock out for a 30-minute meal period at the start of their shift, and required
12 Claimant and other similarly situated employees to then work the remainder of their six to eight-
13 hour shifts without any meal break period.

14 23. Defendants also refused to provide rest periods to Claimant and similarly situated
15 employees for every 4 hours worked or major fraction thereof.

16 24. Defendants' management staff were aware this was occurring, and Claimant
17 specifically complained about it to Defendants, and still Defendants did not ensure meal and/ or
18 rest periods were provided to Claimant and similarly situated employees in compliance with
19 California law.

20 25. Claimant and similarly situated employees were suffered and permitted to work off
21 the clock without compensation when they were required to drive to other store locations in their
22 own personal vehicles without pay. Defendants and Claimant's manager were aware of this
23 additional work, but Claimant has not been compensated for it.

24 26. Claimant and similarly situated employees also incurred business expenses without
25 reimbursement. For example, Claimant was required to travel to Defendants' other locations in
26 his personal vehicle, and Defendants never reimbursed Claimant and similarly situated employees
27 for mileage.

28

1 27. As a result of the practices listed above Under California Labor Code Section 2802,
2 employers are required to indemnify employees for all expenses incurred in the course and scope
3 of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his
4 or her employee for all necessary expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
6 employer, even though unlawful, unless the employee, at the time of obeying the directions,
7 believed them to be unlawful."

8 28. Because of these Labor Code violations, Defendants did not provide Plaintiff and
9 similarly situated employees legally compliant wage statements noting, among other things, total
10 hours worked, gross wages earned, the applicable hourly rates in effect during the pay period and
11 the corresponding number of hours worked at each hourly rate.

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

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

20 31. Defendants' uniform policies and practices to not provide Plaintiff and Class
21 Members meal and rest periods, not pay all minimum wages earned, not pay all wages owed at
22 termination or resignation, and not to provide compliant wage statements are evidenced by
23 Defendants' business records.

24 32. Defendants, as a matter of corporate policy, practice, and procedure, intentionally,
25 knowingly and systematically failed to reimburse and indemnify Plaintiff and other Class Members
26 for required business expenses incurred in direct consequence of discharging their duties on behalf
27 of Defendants.

28

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

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

12 **FIRST CAUSE OF ACTION**
13 **UNFAIR COMPETITION**

14 35. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
15 fully set forth herein.

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

20 37. Defendants committed numerous violations of the California Labor Code
21 throughout the employment relationship.

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

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

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

4
5 **SECOND CAUSE OF ACTION**
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

6 40. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
7 fully set forth herein.

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

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

25 42. Defendants failed to list on the wage statements provided to Plaintiff and similarly
26 situated employees all hour worked and the applicable rates of pay and overtime rate. Plaintiff
27 alleges that Defendants failed to provide accurate itemized wage statements in accordance with
28 Labor Code section 226(a) to all members of the Labor Code Class.

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

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

10 **THIRD CAUSE OF ACTION**
11 **FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED**

12 45. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
13 fully set forth herein.

14 46. Defendants were required to compensate Plaintiff with at least the State's minimum
15 wage for all hours worked. *See* Cal. Labor Code § 1194; MW Order-2014; MW Order-2017.

16 47. Defendants were aware of their obligation to pay the minimum wages but failed to
17 do so.

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

23 49. California Labor Code section 558.1, subsection (b), further provides that the term
24 "other person acting on behalf of any employer" means "a natural person who is an owner, director,
25 officer, or managing agent of the employer."

26 50. Provisions regulating minimum wages or hours and days of work in any order of
27 the Industrial Welfare Commission, such as IWC Wage Order No. 5-2001, and California Labor
28 Code section 1194 have been violated by, or were caused to be violated by, Defendants. Plaintiff

1 is informed and thereon believes that each Defendant was acting on behalf of each other Defendant,
2 including as an owner and/or managing agent of Defendants, within the meaning of California
3 Labor Code section 558.1. Therefore, each Defendant may be held liable as the employer for the
4 violations of provisions regulating minimum wages or hours and days of work in any order of the
5 Industrial Welfare Commission, including IWC Wage Order No. 5-2001, and California Labor
6 Code section 1194.

7 51. Defendants' conduct described herein violates California Labor Code section 1194,
8 and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff and the Plaintiff Class
9 have been damaged and deprived of minimum wages, in an amount to be established at trial.
10 Plaintiff and the Plaintiff Class now seek these wages, liquidated damages pursuant to California
11 Labor Code section 1194.2, attorney's fees and costs, and interest pursuant to California Labor
12 Code sections 1194.

13 **FOURTH CAUSE OF ACTION**
FAILURE TO PROVIDE MEAL AND REST PERIODS

14 52. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
15 fully set forth herein.

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

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

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

25 56. Plaintiff alleges that Defendants maintained a policy and procedure by which
26 Defendants failed to provide Plaintiff and similarly situated employees with compliant meal breaks
27 by requiring employees to clock out for their meal break immediately after clocking-in at the
28 beginning of their shift, and then requiring employees to work the remainder of their six (6) to

1 eight (8) hour shift without any meal break. In this way, Plaintiff and similarly situated employees
2 essentially started their shift thirty (30) minutes later than the scheduled time, and were denied a
3 compliant meal break.

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

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

12 **FIFTH CAUSE OF ACTION**
WAITING TIME PENALTIES

13 59. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
14 fully set forth herein.

15 60. An employer must pay an employee who is terminated all unpaid wages
16 immediately upon termination. California Labor Code § 201.

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

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

23 63. Defendants knew of their obligation to pay Plaintiff and Class Members and
24 Defendants' failure to pay all wages was in complete disregard of their obligations. Such conduct
25 shows Defendants' knowledge of their obligation to pay all wages owed upon termination and
26 willful refusal.

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

4 **SIXTH CAUSE OF ACTION**
5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 65. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
7 fully set forth herein.

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

13 67. Defendants knew that Plaintiff and members of the Class incurred expenses for
14 work purposes, including but not necessarily limited to business use of employee personal vehicles
15 to travel between locations that were not their principal place of work for deliveries and for other
16 purposes. However, Defendants did not reimburse Plaintiff or members of the Class for these
17 expenses.

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

22 **SEVENTH CAUSE OF ACTION**
23 **CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.**

24 69. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
25 fully set forth herein.

26 70. Plaintiff brings this cause of action as a proxy for the State of California and in this
27 capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants’ violations of the
28

1 California Labor Code, including but not necessarily limited to, those Labor Code violations
2 identified above.

3 71. On or about July 21, 2021, Plaintiff sent written notice to the LWDA regarding
4 Defendants' violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*,
5 PAGA. On July 26, 2021, Plaintiff filed an amended PAGA Notice. As of the date of the filing of
6 this Complaint, the LWDA has not informed Plaintiff whether the LWDA intends to investigate
7 Plaintiff's PAGA claims.

8 72. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California
9 and all Aggrieved Employees for all violations of the Labor Code from July 21, 2020, through trial
10 on this matter.

11 **DAMAGES**

12 WHEREFORE Plaintiff requests relief as follows:

- 13 1. A jury trial;
- 14 2. For an order certifying the class;
- 15 3. For an order certifying Plaintiff's counsel as class counsel;
- 16 4. For an order appointing Plaintiff as class representative;
- 17 5. For penalties and liquidated damages under the California Labor Code according to
18 proof allowed by law;
- 19 6. For compensatory damages, including, but not limited to, unpaid wages, plus
20 interest, according to proof allowed by law;
- 21 7. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
22 fees;
- 23 8. For injunctive relief;
- 24 9. For an award of prejudgment and post-judgment interest; and

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10. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

Dated: July 26, 2021

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del Castillo
Lisa L. Bradner
Attorneys for Plaintiff RYAN DEVORE and the Class

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: July 26, 2021

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del Castillo
Lisa L. Bradner
Attorneys for Plaintiff RYAN DEVORE and the Class

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Timothy B. Del Castillo (SBN 277296) Castle Law: California Employment Counsel, PC 2999 Douglas Blvd., Suite 180 Roseville CA 95661 TELEPHONE NO.: 916-245-0122 FAX NO. (Optional): ATTORNEY FOR (Name): Ryan DeVore		FOR COURT USE ONLY FILED Superior Court Of California, Sacramento 07/27/2021 mwhitelater By _____, Deputy Case Number: 34-2021-00304976
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 9th Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento 95814 BRANCH NAME: Gordon D. Schaber Sacramento County Courthouse		
CASE NAME: DeVore v. BWW Resources, LLC et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PI/D/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PI/D/WD (23) Non-PI/PI/D/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PI/D/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 7

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
 Date: 07/26/2021

Timothy B. Del Castillo

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

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To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

<p>Auto Tort Auto (22)–Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i></p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability <i>(not asbestos or toxic/environmental)</i> (24) Medical Malpractice (45) Medical Malpractice–Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD</p> <p>Non-PI/PD/WD (Other) Tort Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice <i>(not medical or legal)</i> Other Non-PI/PD/WD Tort (35)</p> <p>Employment Wrongful Termination (36) Other Employment (15)</p>	<p>Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract <i>(not unlawful detainer or wrongful eviction)</i> Contract/Warranty Breach–Seller Plaintiff <i>(not fraud or negligence)</i> Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case–Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage <i>(not provisionally complex)</i> (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute</p> <p>Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i></p> <p>Unlawful Detainer Commercial (31) Residential (32) Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i></p> <p>Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ–Administrative Mandamus Writ–Mandamus on Limited Court Case Matter Writ–Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal–Labor Commissioner Appeals</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41)</p> <p>Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment <i>(non-domestic relations)</i> Sister State Judgment Administrative Agency Award <i>(not unpaid taxes)</i> Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case</p> <p>Miscellaneous Civil Complaint RICO (27) Other Complaint <i>(not specified above)</i> (42) Declaratory Relief Only Injunctive Relief Only <i>(non-harassment)</i> Mechanics Lien Other Commercial Complaint Case <i>(non-tort/non-complex)</i> Other Civil Complaint <i>(non-tort/non-complex)</i></p> <p>Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition <i>(not specified above)</i> (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition</p>
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EXHIBIT D



Notice of Service of Process

Transmittal Number: 23621058
Date Processed: 08/12/2021

Primary Contact: Brad Orschel
Inspire Brands, Inc.
3 Glenlake Pkwy
Fl 5
Atlanta, GA 30328-3584

Electronic copy provided to: Derek Ensminger
Bridget Peterson
John Hopkins
Matthew Becker

Entity: Inspire Brands, Inc.
Entity ID Number 3978154

Entity Served: Inspire Brands, Inc.

Title of Action: Ryan Devore vs. BWW Resources, LLC

Document(s) Type: Summons/Complaint

Nature of Action: Class Action

Court/Agency: Sacramento County Superior Court, CA

Case/Reference No: 34-2021-00304976

Jurisdiction Served: Georgia

Date Served on CSC: 08/11/2021

Answer or Appearance Due: 30 Days

Originally Served On: CSC

How Served: Personal Service

Sender Information: Timothy B. Del Castillo
916-245-0122

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

FILED FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
Superior Court of California,
Sacramento
07/30/2021
mwhitaker
By _____, Deputy
Case Number:
34-2021-00304976

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BWW RESOURCES, LLC, a Delaware Corporation; INSPIRE BRANDS, INC., a Georgia Corporation; BUFFALO WILD WINGS, INC., a Minnesota Corporation; and Does 1 through 20, inclusive,
**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
RYAN DEVORE, individually and on behalf of all others similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):
Gordon D. Schaber Sacramento County Courthouse
720 9th Street
Sacramento CA 95814

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Timothy B. Del Castillo (SBN 277296) 916-245-0122
2999 Douglas Blvd., Suite 180 Roseville CA 95661

DATE: JUL 30 2021
(Fecha)

Clerk, by M. WHITAKER, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

(SEAL)



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): Inspire Brands, Inc., a Georgia Corporation

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

4. by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Timothy B. Del Castillo (SBN 277296) Castle Law: California Employment Counsel, PC 2999 Douglas Blvd., Suite 180 Roseville CA 95661 TELEPHONE NO.: 916-245-0122 FAX NO. (Optional): ATTORNEY FOR (Name): Ryan DeVore		FOR COURT USE ONLY FILED Superior Court Of California, Sacramento 07/27/2021 mwhtaker By _____, Deputy Case Number: 34-2021-00304976
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 9th Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento 95814 BRANCH NAME: Gordon D. Schaber Sacramento County Courthouse		
CASE NAME: DeVore v. BWW Resources, LLC et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PPD/WD (23) Non-PI/PPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 7

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
 Date: 07/26/2021

BY FAX

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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Page 1 of 2

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To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

FILED
Superior Court Of California,
Sacramento
07/27/2021
mwhitaker
By _____, Deputy
Case Number:
24-2021-00304975

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Attorneys for Plaintiff RYAN DEVORE
on behalf of himself and similarly situated employees

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

RYAN DEVORE, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

BWW RESOURCES, LLC, a Delaware
Corporation; INSPIRE BRANDS, INC., a
Georgia Corporation; BUFFALO WILD
WINGS, INC., a Minnesota Corporation;
and Does 1 through 20, inclusive,

Defendants.

CLASS ACTION

COMPLAINT FOR DAMAGES:

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

JURY TRIAL DEMANDED

BY FAX

1 Plaintiff RYAN DEVORE (“Plaintiff”), on behalf of himself and all other similarly situated
2 employees hereby files this Complaint against Defendants BWW RESOURCES, LLC, a Delaware
3 Corporation; INSPIRE BRANDS, INC., a Georgia Corporation, BUFFALO WILD WINGS, INC., a
4 Minnesota Corporation; Does 1 through 20 (collectively referred to as “Defendants”). Plaintiff alleges
5 the following:

6 **INTRODUCTION**

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

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

17 **JURISDICTION AND VENUE**

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

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

23 **PARTIES**

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

26 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant BWW
27 RESOURCES, LLC, is a Delaware Corporation; an industry, business and/or facility licensed to do
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1 business and actually doing business in the State of California, as among other things, Buffalo Wild
2 Wings.

3 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant, BUFFALO
4 WILD WINGS, INC., is a Minnesota Corporation, and Plaintiff's joint-employer. BUFFALO WILD
5 WINGS, INC., does business in California as a restaurant.

6 8. Plaintiff is informed and believes, and thereupon alleges, that Defendant, INSPIRE
7 BRANDS, INC., is a Georgia Corporation, doing business in California as Buffalo Wild Wings, and
8 is Plaintiff's joint-employer.

9 9. Plaintiff is informed and believes, and thereupon alleges that Defendant BWW
10 RESOURCES, LLC is now and/or at all times mentioned in this Complaint a Delaware Limited
11 Liability Company, doing business in California as Buffalo Wild Wings, and is Plaintiff's joint-
12 employer.

13 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
14 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
15 employees.

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

19 12. Plaintiff is further informed and believes, and thereon alleges, that each of the
20 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
21 joint venturer of the remaining defendants and was acting within the course and scope of that
22 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
23 herein gave consent to, ratified and authorized the acts alleged herein to each of the remaining
24 defendants. The true names and capacities of the defendants named herein Does 1 through 20,
25 inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
26 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
27 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
28 through 20, inclusive, when they have been determined.

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

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

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. Plaintiff resides in California and is an adequate representative of the putative class as he has no interests that are adverse to those of absent class members. Additionally, Plaintiff has retained counsel who have substantial experience in complex civil litigation and wage and hour matters.

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

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

16 **GENERAL ALLEGATIONS**

17 17. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
18 fully set forth herein.

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

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

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

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

9 22. Defendants did not allow Claimant and similarly situated employees to take their
10 statutorily required meal and rest periods. Defendants required Claimant and other similarly
11 situated employees to clock out for a 30-minute meal period at the start of their shift, and required
12 Claimant and other similarly situated employees to then work the remainder of their six to eight-
13 hour shifts without any meal break period.

14 23. Defendants also refused to provide rest periods to Claimant and similarly situated
15 employees for every 4 hours worked or major fraction thereof.

16 24. Defendants' management staff were aware this was occurring, and Claimant
17 specifically complained about it to Defendants, and still Defendants did not ensure meal and/ or
18 rest periods were provided to Claimant and similarly situated employees in compliance with
19 California law.

20 25. Claimant and similarly situated employees were suffered and permitted to work off
21 the clock without compensation when they were required to drive to other store locations in their
22 own personal vehicles without pay. Defendants and Claimant's manager were aware of this
23 additional work, but Claimant has not been compensated for it.

24 26. Claimant and similarly situated employees also incurred business expenses without
25 reimbursement. For example, Claimant was required to travel to Defendants' other locations in
26 his personal vehicle, and Defendants never reimbursed Claimant and similarly situated employees
27 for mileage.

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1 27. As a result of the practices listed above Under California Labor Code Section 2802,
2 employers are required to indemnify employees for all expenses incurred in the course and scope
3 of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his
4 or her employee for all necessary expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
6 employer, even though unlawful, unless the employee, at the time of obeying the directions,
7 believed them to be unlawful."

8 28. Because of these Labor Code violations, Defendants did not provide Plaintiff and
9 similarly situated employees legally compliant wage statements noting, among other things, total
10 hours worked, gross wages earned, the applicable hourly rates in effect during the pay period and
11 the corresponding number of hours worked at each hourly rate.

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

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

20 31. Defendants' uniform policies and practices to not provide Plaintiff and Class
21 Members meal and rest periods, not pay all minimum wages earned, not pay all wages owed at
22 termination or resignation, and not to provide compliant wage statements are evidenced by
23 Defendants' business records.

24 32. Defendants, as a matter of corporate policy, practice, and procedure, intentionally,
25 knowingly and systematically failed to reimburse and indemnify Plaintiff and other Class Members
26 for required business expenses incurred in direct consequence of discharging their duties on behalf
27 of Defendants.

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

4 **SECOND CAUSE OF ACTION**
5 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

6 40. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
7 fully set forth herein.

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

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

25 42. Defendants failed to list on the wage statements provided to Plaintiff and similarly
26 situated employees all hour worked and the applicable rates of pay and overtime rate. Plaintiff
27 alleges that Defendants failed to provide accurate itemized wage statements in accordance with
28 Labor Code section 226(a) to all members of the Labor Code Class.

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

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

10 **THIRD CAUSE OF ACTION**
11 **FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED**

12 45. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
13 fully set forth herein.

14 46. Defendants were required to compensate Plaintiff with at least the State's minimum
15 wage for all hours worked. *See* Cal. Labor Code § 1194; MW Order-2014; MW Order-2017.

16 47. Defendants were aware of their obligation to pay the minimum wages but failed to
17 do so.

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

23 49. California Labor Code section 558.1, subsection (b), further provides that the term
24 "other person acting on behalf of any employer" means "a natural person who is an owner, director,
25 officer, or managing agent of the employer."

26 50. Provisions regulating minimum wages or hours and days of work in any order of
27 the Industrial Welfare Commission, such as IWC Wage Order No. 5-2001, and California Labor
28 Code section 1194 have been violated by, or were caused to be violated by, Defendants. Plaintiff

1 is informed and thereon believes that each Defendant was acting on behalf of each other Defendant,
2 including as an owner and/or managing agent of Defendants, within the meaning of California
3 Labor Code section 558.1. Therefore, each Defendant may be held liable as the employer for the
4 violations of provisions regulating minimum wages or hours and days of work in any order of the
5 Industrial Welfare Commission, including IWC Wage Order No. 5-2001, and California Labor
6 Code section 1194.

7 51. Defendants' conduct described herein violates California Labor Code section 1194,
8 and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff and the Plaintiff Class
9 have been damaged and deprived of minimum wages, in an amount to be established at trial.
10 Plaintiff and the Plaintiff Class now seek these wages, liquidated damages pursuant to California
11 Labor Code section 1194.2, attorney's fees and costs, and interest pursuant to California Labor
12 Code sections 1194.

13 **FOURTH CAUSE OF ACTION**
FAILURE TO PROVIDE MEAL AND REST PERIODS

14 52. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
15 fully set forth herein.

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

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

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

25 56. Plaintiff alleges that Defendants maintained a policy and procedure by which
26 Defendants failed to provide Plaintiff and similarly situated employees with compliant meal breaks
27 by requiring employees to clock out for their meal break immediately after clocking-in at the
28 beginning of their shift, and then requiring employees to work the remainder of their six (6) to

1 eight (8) hour shift without any meal break. In this way, Plaintiff and similarly situated employees
2 essentially started their shift thirty (30) minutes later than the scheduled time, and were denied a
3 compliant meal break.

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

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

12 **FIFTH CAUSE OF ACTION**
WAITING TIME PENALTIES

13 59. Plaintiff incorporates by reference and re-alleges the above paragraphs as though
14 fully set forth herein.

15 60. An employer must pay an employee who is terminated all unpaid wages
16 immediately upon termination. California Labor Code § 201.

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

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

23 63. Defendants knew of their obligation to pay Plaintiff and Class Members and
24 Defendants' failure to pay all wages was in complete disregard of their obligations. Such conduct
25 shows Defendants' knowledge of their obligation to pay all wages owed upon termination and
26 willful refusal.

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1 California Labor Code, including but not necessarily limited to, those Labor Code violations
2 identified above.

3 71. On or about July 21, 2021, Plaintiff sent written notice to the LWDA regarding
4 Defendants' violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*,
5 PAGA. On July 26, 2021, Plaintiff filed an amended PAGA Notice. As of the date of the filing of
6 this Complaint, the LWDA has not informed Plaintiff whether the LWDA intends to investigate
7 Plaintiff's PAGA claims.

8 72. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California
9 and all Aggrieved Employees for all violations of the Labor Code from July 21, 2020, through trial
10 on this matter.

11 **DAMAGES**

12 WHEREFORE Plaintiff requests relief as follows:

- 13 1. A jury trial;
- 14 2. For an order certifying the class;
- 15 3. For an order certifying Plaintiff's counsel as class counsel;
- 16 4. For an order appointing Plaintiff as class representative;
- 17 5. For penalties and liquidated damages under the California Labor Code according to
18 proof allowed by law;
- 19 6. For compensatory damages, including, but not limited to, unpaid wages, plus
20 interest, according to proof allowed by law;
- 21 7. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
22 fees;
- 23 8. For injunctive relief;
- 24 9. For an award of prejudgment and post-judgment interest; and

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10. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

Dated: July 26, 2021

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del-Castillo
Lisa L. Bradner
Attorneys for Plaintiff RYAN DEVORE and the Class

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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: July 26, 2021

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del Castillo
Lisa L. Bradner
Attorneys for Plaintiff RYAN DEVORE and the Class

EXHIBIT E

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6 Attorneys for Defendants
BWW RESOURCES, LLC, INSPIRE BRANDS, INC.
7 AND BUFFALO WILD WINGS, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

11 RYAN DEVORE, individually and on behalf of
12 all others similarly situated,

13 Plaintiffs,

14 v.

15 BWW RESOURCES, LLC, a Delaware
Corporation; INSPIRE BRANDS, INC., a
16 Georgia Corporation; BUFFALO WILD WINGS,
INC., a Minnesota Corporation; and Does 1
17 through 20, inclusive,

18 Defendants.

Case No. 34-2021-00304976

ASSIGNED FOR ALL PURPOSES TO
JUDGE RICHARD K. SUEYOSHI

**DEFENDANTS BWW RESOURCES,
LLC, INSPIRE BRANDS, INC., AND
BUFFALO WILD WINGS, INC.'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

Trial Date: TBD
Complaint Filed: July 27, 2021

1 Defendants BWW RESOURCES, LLC, INSPIRE BRANDS, INC. and BUFFALO WILD
2 WINGS, INC. (“Defendants”) hereby answer the Complaint (“Complaint”) filed by Plaintiff RYAN
3 DEVORE (“Plaintiff”), as follows:

4 **GENERAL DENIAL**

5 Pursuant to California Code of Civil Procedure section 431.30(d), Defendants deny generally
6 and specifically each and every allegation contained in the Complaint. In addition, Defendants deny
7 that Plaintiff has sustained, or will sustain, any loss or damage in the manner or amount alleged, or
8 otherwise, by reason of any act or omission, or any other conduct or absence thereof on the part of
9 Defendants.

10 **AFFIRMATIVE DEFENSES**

11 Defendants further assert the following affirmative defenses to the Complaint and each claim
12 therein. By asserting the defenses, Defendants do not concede that they have has the burden of
13 production nor proof as to any affirmative defense asserted below. Defendant does not presently know
14 all of the facts concerning the conduct of Plaintiff sufficient to state all affirmative defenses at this
15 time. Defendant will seek leave of this Court to amend this Answer should it later discover facts
16 demonstrating the existence of additional affirmative defenses.

17 **FIRST AFFIRMATIVE DEFENSE**

18 **(Failure to State a Cause of Action)**

19 As a separate and distinct affirmative defense to Plaintiff’s Complaint and each purported cause
20 of action therein, Defendants allege that the Complaint and each purported Cause of Action therein,
21 fails in whole or in part to state facts sufficient to constitute a claim against Defendants.

22 **SECOND AFFIRMATIVE DEFENSE**

23 **(Statutes of Limitation)**

24 As a separate and distinct affirmative defense, Defendants are informed and believe that a
25 reasonable opportunity for investigation and discovery will reveal and, on that basis allege, that
26 Plaintiff’s Complaint and each cause of action alleged therein, or some of them, cannot be maintained
27 against them insofar as they are barred, in whole or in part, by the applicable statutes of limitation,
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1 including, but not limited to, California Labor Code section 203, California Code of Civil Procedure
2 sections 335.1, 337, 338, 339, 340 and 343 and California Business and Professions Code section
3 17208.

4 **THIRD AFFIRMATIVE DEFENSE**

5 **(Res Judicata/Collateral Estoppel)**

6 As a separate and affirmative defense to the Complaint and each purported cause of action
7 therein, Defendants allege that Plaintiff's Complaint, and each and every cause of action therein, is
8 barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 **(Set-Off from Related Cases or Charges)**

11 As a separate and distinct affirmative defense, Defendants allege that even if Plaintiff and/or
12 the putative class members are entitled to any compensation as a result of the Complaint, which
13 Defendants deny, any such compensation must be set-off in an amount equal to the amount(s)
14 previously paid to and/or recovered by Plaintiff and/or putative class members for time not actually
15 worked and/or for the same or similar claims asserted in any related cases or charges, so as to prevent
16 unjust enrichment of Plaintiff and the putative class members.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 **(Set-Off from Amounts Paid)**

19 As a separate and distinct affirmative defense, Defendants allege that if Plaintiff and/or the
20 putative class members succeed in establishing any violation of the law, and to the extent any sums
21 are found due and owing to Plaintiff and/or the putative class members, Defendants are entitled to a
22 set-off against said sum to the extent paid, tendered, waived, compromised, and/or released prior to
23 the adjudication herein including, but not limited to, those amounts paid, tendered, waived,
24 compromised, and/or released through any other proceeding, either formal or informal, or to the extent
25 any additional compensation was paid to Plaintiff and/or the putative class members over and above
26 their wages.

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1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Equitable Doctrines – Estoppel, Waiver, Consent, and Laches)**

3 As a separate and affirmative defense to the Complaint and each purported cause of action
4 therein, Defendants allege, based upon the belief that further investigation and discovery will reveal
5 facts supporting such defense, that Plaintiff’s claims are barred in whole or in part by the equitable
6 doctrines of waiver, estoppel, consent, and laches. Among other things, Defendants are entitled to
7 rely upon attestations made by Plaintiff, and/or putative class members, at the conclusion of their shifts
8 and on a weekly basis that they had accurately recorded all hours worked, submission of expense
9 reimbursement requests, and to rely upon their failure to raise concerns during employment at the time
10 when the alleged failure to compensate or related issues could have been resolved.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 **(Substantial Compliance)**

13 As a separate and distinct affirmative defense, Defendants allege that, even assuming,
14 arguendo that Defendants failed to comply with any provision of the Labor Code, which Defendants
15 deny, Defendants substantially complied with the Labor Code, thus rendering an award of civil
16 penalties inappropriate under the circumstances.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 **(Accord and Satisfaction)**

19 As a separate and affirmative defense to the Complaint and each purported cause of action
20 therein, Defendants allege, based upon the belief that further investigation and discovery will reveal
21 facts supporting such defense, that Plaintiff’s claims are barred, in whole or in part, to the extent that
22 Plaintiff or any putative class member has received, or will receive, compensation for any outstanding
23 wages, penalties, or damages purportedly due.

24 **NINTH AFFIRMATIVE DEFENSE**

25 **(No Damage or Harm)**

26 As a separate and affirmative defense to the Complaint and each purported cause of action
27 therein, Defendants allege, based upon the belief that further investigation and discovery will reveal

1 facts supporting such defense, that Plaintiff's claims are barred, in whole or in part, because neither
2 Plaintiff nor any putative class member has suffered any cognizable damage or other harm as a result
3 of any act or omission of Defendants.

4 **TENTH AFFIRMATIVE DEFENSE**

5 **(No Causation)**

6 As a separate and affirmative defense to the Complaint and each purported cause of action
7 therein, Defendants allege, based upon the belief that further investigation and discovery will reveal
8 facts supporting such defense, that Plaintiff's claims are barred, in whole or in part, because the alleged
9 losses or harms sustained by Plaintiff and the putative class members, if any, resulted from causes
10 other than any act or omission of Defendants, or from the acts or omissions of Plaintiff and/or the
11 putative class members.

12 **ELEVENTH AFFIRMATIVE DEFENSE**

13 **(Outside Scope of Authority)**

14 As a separate and affirmative defense to the Complaint and each purported cause of action
15 therein, Defendants allege, based upon the belief that further investigation and discovery will reveal
16 facts supporting such defense, that Plaintiff's claims are barred, in whole or in part, because any
17 unlawful or other wrongful acts of any person(s) employed by Defendants were outside of the scope
18 of their authority and such acts, if any, were not authorized, ratified, or condoned by Defendants nor
19 did Defendants know or have reason to be aware of such alleged conduct.

20 **TWELFTH AFFIRMATIVE DEFENSE**

21 **(Claims Discharged)**

22 As a separate and distinct affirmative defense, Defendants allege that the Complaint, and each
23 cause of action set forth therein, or some of them, is barred because all or a portion of the wages,
24 premium pay, interest, attorneys' fees, penalties and/or other relief sought by Plaintiff on his own
25 behalf and/or on behalf of the putative class members were, or will be before the conclusion of this
26 action, paid or collected, and therefore, Plaintiff's claims and/or the claims of the putative class
27 members have been partially or completely discharged.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(After-Acquired Evidence)**

3 As a separate and affirmative defense to the Complaint and each purported cause of action
4 therein, Defendants allege, based upon the belief that further investigation and discovery will reveal
5 facts supporting such defense, that evidence acquired subsequent to the filing of Plaintiff's Complaint
6 bars and/or limits the amount of damages Plaintiff can recover, assuming *arguendo*, Defendants are
7 found liable for any asserted claim.

8 **FOURTEENTH AFFIRMATIVE DEFENSE**

9 **(Avoidable Consequences)**

10 As a separate and distinct affirmative defense, Defendants are informed and believe that a
11 reasonable opportunity for investigation and discovery will reveal and on that basis allege, that
12 Plaintiff's claims for damages on behalf of himself, and/or putative class members are barred by the
13 doctrine of avoidable consequences because, among other things: (a) Defendants maintained adequate
14 and appropriate policies including open door policies with complaint procedures; (b) Defendants
15 exercised reasonable care to prevent and correct promptly any unlawful behavior; and (c) Plaintiff
16 and/or putative class members unreasonably failed to take advantage of any preventative or corrective
17 opportunities provided by Defendants or to otherwise avoid harm. Consequently, Plaintiff's claims
18 for damages are barred by the doctrine of avoidable consequences.

19 **FIFTEENTH AFFIRMATIVE DEFENSE**

20 **(Class Action - Denies Defendants' Due Process Rights)**

21 As a separate and distinct affirmative defense, Defendants allege that Plaintiff's Complaint and
22 each purported cause of action therein is barred because the certification of a class, as applied to the
23 facts and circumstances of this case, would constitute a denial of Defendants' due process rights, both
24 substantive (see *Timbs v. Indiana*, 203 L. Ed. 2d 11, 18-19, (2019)) and procedural, and to a trial by
25 jury, both substantively and procedurally in violation of the Due Process and Equal Protection clauses
26 of the Fourteenth Amendment of the United States Constitution and the Due Process and Equal
27 Protection clauses of Article I, Section 7 of the California Constitution. Specifically, this court may

1 not award penalties based upon claims by strangers to the litigation. *Philip Morris USA v. Williams*,
2 549 U.S. 346, 353 (2007).

3 **SIXTEENTH AFFIRMATIVE DEFENSE**

4 **(Wage Orders – Violation of Due Process)**

5 As a separate and distinct affirmative defense, Defendants allege that Plaintiff’s Complaint
6 and/or causes of action therein are barred because the applicable wage orders of the Industrial Welfare
7 Commission are unconstitutionally vague and ambiguous and violate Defendants’ rights under the
8 United States Constitution and the California Constitution as to, among other things, due process of
9 law.

10 **SEVENTEENTH AFFIRMATIVE DEFENSE**

11 **(No Injury)**

12 As a separate and distinct affirmative defense, Defendants are informed and believe that a
13 reasonable opportunity for investigation and discovery will reveal, and on that basis allege, that
14 Plaintiff’s Complaint and each Cause of Action alleged therein, or some of them, are barred because
15 Plaintiff and the alleged putative class Plaintiff seeks to represent have not suffered any injury from
16 any alleged act or failure by Defendants.

17 **EIGHTEENTH AFFIRMATIVE DEFENSE**

18 **(No Compensation for Alleged “Off-the-Clock” Work)**

19 As a separate and distinct defense, Defendants allege that any “off-the-clock” hours allegedly
20 worked by Plaintiff and/or the putative class members are not compensable hours worked within the
21 meaning of the California Labor Code, the applicable Wage Orders of the Industrial Welfare
22 Commission, and/or other applicable law, and/or Plaintiff’s claims on behalf of himself and and/or the
23 putative class members are barred as to all “off-the-clock” hours allegedly worked of which
24 Defendants lacked actual and/or constructive knowledge.

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1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 **(Good Faith Dispute)**

3 As a separate and distinct affirmative defense, Defendants are informed and believe that further
4 investigation and discovery will reveal, and on that basis Defendants allege, that any violation of the
5 California Labor Code or an Order of the Industrial Welfare Commission was an act or omission made
6 in good faith and Defendants had reasonable grounds for believing that their practices complied with
7 applicable laws and that any such act or omission was not a violation of the California Labor Code or
8 any Order of the Industrial Welfare Commission such that Plaintiff, and the alleged putative class
9 Plaintiff seeks to represent, are not entitled to any penalties.

10 **TWENTIETH AFFIRMATIVE DEFENSE**

11 **(Bona Fide Dispute)**

12 As a separate and distinct affirmative defense, Defendants alleges that the penalties in
13 Plaintiff's Complaint, including but not limited to those under Cal. Lab. Code § 203, are barred, in
14 whole or in part, because, among other things, (1) there are bona fide disputes as to whether further
15 compensation is due to Plaintiff and some or all of the allegedly putative class on whose behalf he
16 seeks to collect wages and/or civil penalties, and, if so, as to the amount of such further compensation,
17 (2) Defendants have not willfully failed to pay such additional compensation, if any is owed, and (3)
18 to impose penalties would be inequitable and unjust.

19 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

20 **(De Minimis)**

21 As a separate and distinct affirmative defense, Defendants allege that some or all of the hours
22 allegedly worked by Plaintiff, and the alleged putative class members that Plaintiff seeks to represent,
23 and claimed as causing a violation of any laws relating to wage requirements were *de minimis* and do
24 not qualify as compensable hours worked within the meaning of the California Labor Code and the
25 Wage Order(s) issued by the California Industrial Wage Commission.

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1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 **(Irregular and Brief)**

3 As a separate and affirmative defense to the Complaint and each purported cause of action
4 therein, Defendants allege that Plaintiff and the alleged putative class members that Plaintiff seeks to
5 represent are barred from recovering damages or penalties because even if he establishes such claims,
6 their claims involve activities that are so irregular or brief in duration that it would not be reasonable
7 to require Defendants to compensate him for the time he allegedly spent on it. *See Troester v.*
8 *Starbucks Corp.*, 5 Cal. 5th 829, 835 (2018).

9 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

10 **(Waiting Time Penalties – Absent, Refused or Avoided Payment)**

11 As a separate and distinct affirmative defense, Defendants are informed and believe that further
12 discovery may disclose information supporting such affirmative defense, that Plaintiff's claims for
13 waiting time penalties are barred because Plaintiff and/or some, or all, of the putative class members
14 Plaintiff seeks to represent, secreted or absented themselves to avoid payment of wages, or refused
15 payment fully tendered by Defendants, thereby relieving Defendants of liability for waiting time
16 penalties under the Labor Code, including but not limited to Labor Code section 203.

17 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

18 **(Lawful Business Reasons)**

19 As a separate and distinct affirmative defense, Defendants allege that Plaintiff and the putative
20 class members Plaintiff seeks to represent were treated fairly and in good faith, and that all actions
21 taken concerning them were done for lawful business reasons and with good intent.

22 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

23 **(Conduct By Others)**

24 As a separate and distinct affirmative defense, Defendants alleges that the Complaint cannot
25 be maintained against Defendants because any alleged losses or harms sustained by Plaintiff and the
26 putative class members Plaintiff seeks to represent, if any, which Defendants deny, resulted from
27 causes other than any act or omission, if any, by Defendants. Such parties acted without the

1 knowledge, participation, approval or ratification of Defendants, and Defendants had no duty to
2 control the actions of such third party or third parties. This defense is being asserted as a matter of
3 right.

4 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

5 **(Bus. & Prof. Code Section 17200 – Unconstitutionally Vague and Overbroad)**

6 As a separate and distinct affirmative defense, Defendants allege that the prosecution of a
7 representative action on behalf of the general public under California Business and Professions Code
8 section 17200, et seq., is unconstitutionally vague and overbroad and, as applied to the facts and
9 circumstances of this case, would constitute a denial of Defendants’ due process rights, both
10 substantive and procedural, and right to equal protection in violation of the California Constitution
11 and the Fourteenth Amendment to the United States Constitution, in that it would prevent Defendants
12 from raising individual defenses against each putative class member. Indeed, the violation is both
13 procedural, by imposing a procedure that would render it impossible for Defendants to defend their
14 interests and property, and substantive, by imposing remedies constitutionally disproportionate to the
15 wrongs committed. *See People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707 (2005).

16 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

17 **(Bus. & Prof. Code Section 17200 – Compliance With Obligations)**

18 As a separate and affirmative defense, Defendants allege that Plaintiff’s claims and claims of
19 putative class members Plaintiff seeks to represent, are barred, in whole or in part, because of
20 Defendants’ compliance with all applicable laws, statutes and regulations, said compliance affording
21 Defendants a safe harbor to any claim under California Business and Professions Code section 17200,
22 *et seq.*

23 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

24 **(No Standing for Equitable Relief)**

25 As a separate and distinct affirmative defense, Defendants allege that Plaintiff and/or the
26 putative class members are not entitled to equitable relief with respect to any and all alleged violations
27 of the California Labor Code and/or California Business and Professions Code section 17200 *et seq.*

1 to the extent that such alleged violations have discontinued, ceased, and/or are not likely to reoccur
2 and because there is an adequate remedy at law.

3 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

4 **(Offset/Set-Off)**

5 As a separate and affirmative defense to the Complaint and each purported cause of action
6 therein, Defendants allege, based upon the belief that further investigation and discovery will reveal
7 facts supporting such defense, that Plaintiff's claims and claims of the putative class members Plaintiff
8 seeks to represent are barred, in whole or in part, because they are subject to the doctrines of set-off,
9 offset and/or recoupment in favor of Defendants.

10 **THIRTIETH AFFIRMATIVE DEFENSE**

11 **(No Entitlement to Prejudgment Interest)**

12 As a separate and distinct affirmative defense, Defendants allege that Plaintiff's Complaint,
13 and each cause of action set forth therein, or some of them, fails to state a claim upon which
14 prejudgment interest may be granted because the damages claimed are not sufficiently certain to allow
15 an award of prejudgment interest.

16 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

17 **(Failure to Exhaust Internal Remedies)**

18 As a separate and distinct affirmative defense, Defendants allege that Plaintiff's Complaint,
19 and each cause of action set forth therein is barred, in whole or in part, by Plaintiff's failure and the
20 failure of putative class members Plaintiff seeks to represent, to exhaust appropriate internal remedies,
21 including but not limited to raising any issues with management in response to that attestation
22 language, in which Plaintiff, putative class members, verified that their hours were accurately
23 recorded.

24 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

25 **(Failure to Exhaust Administrative Remedies)**

26 As a separate and affirmative defense to the Complaint, and each purported cause of action
27 therein, Defendants allege that Plaintiff's Complaint and each purported cause of action therein is

1 barred to the extent that Plaintiff has failed to properly exhaust all of the contractual, administrative
2 and/or statutorily required remedies prior to filing suit.

3 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

4 **(Duplicative Penalties – Violation of Due Process)**

5 As a separate and distinct affirmative defense, Defendants allege that the imposition of
6 replicating individual penalties would deprive Defendants of their constitutional rights to due process
7 under the Fourteenth Amendment of the United States Constitution and under the Constitution and
8 laws of the State of California. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003);
9 *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707 (2005).

10 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

11 **(Excessive Fines)**

12 As a separate and distinct affirmative defense, Defendants allege that Plaintiff's Complaint is
13 barred because an award of penalties would result in the imposition of excessive fines in violation of
14 the Eighth Amendment to the United States Constitution and Article I, Section 7 of the California
15 Constitution.

16 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

17 **(Failure to Mitigate)**

18 As a separate and distinct affirmative defense, Defendants are informed and believe that a
19 reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that
20 Plaintiff and/or the putative class members failed to exercise reasonable care to mitigate damages, if
21 any were suffered. By failing to report any allegations of unpaid or untimely wages, non-compliant
22 wage statements, Plaintiff and/or the putative class members failed to mitigate their damages, and if
23 the Court determines that Plaintiff and/or the putative class members have the right to any recovery
24 against Defendants, the Court should reduce and/or eliminate the recovery by such failure.

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1 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

2 **(Breach of Duties)**

3 As a separate and distinct affirmative defense, Defendants allege that the Complaint is barred,
4 in whole or in part, because Plaintiff and/or the putative class members he seeks to represent breached
5 their duties owed to Defendants under California Labor Code section 2856.

6 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

7 **(Labor Code Section 226 - No Willfulness)**

8 As a separate and distinct affirmative defense, Plaintiff's cause of action, including on behalf
9 of the putative class members he seeks to represent, for the alleged failure to provide accurate itemized
10 wage statements is barred, in whole or in part, because any alleged failure by Defendants to provide
11 wage statements in conformity with California Labor Code section 226 was not willful.

12 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

13 **(Labor Code Section 226 – No “Knowing and Intentional Failure”)**

14 As a separate and distinct affirmative defense, Plaintiff's cause of action, including on behalf
15 of the putative class members he seeks to represent, for the alleged failure to provide accurate itemized
16 wage statements is barred because even assuming *arguendo*, that Plaintiff or any other employees
17 were not provided with proper itemized statements of wages, Defendants' alleged failure to comply
18 with California Labor Code Section 226 was not “knowing and intentional” under California law.

19 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

20 **(No Employment Relationship – Buffalo Wild Wings, Inc.)**

21 As a separate and distinct affirmative defense, Defendant Buffalo Wild Wings, Inc. alleges that
22 there was no employment relationship between it and Plaintiff and/or any of the putative class
23 members Plaintiff purports to represent; therefore, the Complaint, and each cause of action set forth
24 therein, fails to state a claim upon which relief can be granted as to Defendant Buffalo Wild Wings,
25 Inc.

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1 **FORTIETH AFFIRMATIVE DEFENSE**

2 **(No Employment Relationship – Inspire Brands, Inc.)**

3 As a separate and distinct affirmative defense, Defendant Inspire Brands, Inc. alleges that there
4 was no employment relationship between it and Plaintiff and/or any of the putative class members
5 Plaintiff purports to represent; therefore, the Complaint, and each cause of action set forth therein,
6 fails to state a claim upon which relief can be granted as to Defendant Inspire Brands, Inc.

7 **FORTY-FIRST AFFIRMATIVE DEFENSE**

8 **(Failure to Take Breaks Provided)**

9 As a separate and affirmative defense to the Complaint and each purported cause of action
10 therein, Defendants allege, based upon the belief that further investigation and discovery will reveal
11 facts supporting such defense, that Plaintiff or members of the putative class Plaintiff purports to
12 represent have no right to a premium payment under California Labor Code section 226.7 because, to
13 the extent, if any, that any person did not take meal or rest breaks, it was because s/he: (1) failed to
14 take meal or rest breaks that were provided to her/him in compliance with California law; (2) chose
15 not to take meal or rest breaks that were authorized and permitted; or (3) waived her/his right to meal
16 breaks under California Labor Code section 512(a).

17 **FORTY-SECOND AFFIRMATIVE DEFENSE**

18 **(No Knowledge or Permission)**

19 As a separate and affirmative defense to the Complaint and each purported cause of action
20 therein, Defendants allege to the extent Plaintiff did not take meal and/or rest periods, Plaintiff did so
21 without permission or knowledge of Defendants.

22 **FORTY-THIRD AFFIRMATIVE DEFENSE**

23 **(Meal Period Waiver)**

24 As a separate and distinct affirmative defense, Defendants allege that Plaintiff's causes of
25 action for meal period liability are barred, in whole or in part, because Plaintiff and/or other members
26 of the putative class entered into lawful meal period waiver agreements.

1 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

2 **(Independent Judgment)**

3 As a separate and distinct affirmative defense, Defendants allege that any purported failure of
4 Plaintiff or other putative class members to record all hours of work or to take meal and/or rest periods
5 was the result of their exercise of discretion, independent judgment, and self-determination.

6 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

7 **(Expenses Unnecessary)**

8 As a separate and distinct affirmative defense, Defendants allege that any claim based upon an
9 alleged failure to comply with California Labor Code section 2802 is barred, in whole or in part, because
10 any alleged expenditures or losses were not necessary and/or were not the direct consequence of the
11 discharge of Plaintiff's and the putative class members' employment duties to Defendants.

12 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

13 **(Expenses Unwarranted)**

14 As a separate and distinct affirmative defense, Defendants allege that Plaintiff and the putative
15 class members are not entitled to reimbursement expenses to the extent that they did not satisfy the
16 conditions for obtaining such reimbursement and/or to the extent that reimbursement was not
17 warranted.

18 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

19 **(Contractual Obligation to Arbitrate)**

20 As a separate and distinct affirmative defense, Defendants allege that Plaintiff's Complaint,
21 and each cause of action contained therein, is barred on the grounds there exists a written agreement,
22 entered into under the provisions of the Federal Arbitration Act, 8 U.S.C. §§ 1 *et seq.*, between Plaintiff
23 and/or numerous putative class members and Defendants, to submit any and all employment-related
24 claims, including claims at issue in this case, to final and binding arbitration. Each and every cause
25 of action alleged in the Complaint is thus subject to final and binding arbitration in accordance with
26 the terms of said written agreement, which included a valid class action waiver provision. *See AT&T*
27 *Mobility, LLC v. Concepcion*, 563 U.S. 333 (2011). Defendants do not waive their rights to enforce

1 the signed arbitration agreements of any and all of the putative class members or Plaintiff.

2 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

3 **(Class Claims Waived/Barred by Arbitration Agreements)**

4 As a separate and distinct affirmative defense, Defendants allege that the Complaint, and each
5 and every cause of action therein, is waived and/or barred because Defendants' arbitration agreement,
6 to the extent applicable, requires putative class members and Plaintiff to proceed exclusively through
7 final and binding arbitration on an individual basis and not on a class or collective basis.

8 **FORTY-NINTH AFFIRMATIVE DEFENSE**

9 **(Federal Arbitration Act)**

10 As a separate and distinct affirmative defense, Defendants allege that the Complaint and each
11 cause of action therein is barred and subject to arbitration pursuant to the Federal Arbitration Act, 8
12 U.S.C. §§ 1, *et seq.* because many of the individuals Plaintiff seeks to represent are subject to an
13 enforceable and binding arbitration agreement encompassing all of the causes of action alleged in the
14 Complaint. This Court thus lacks subject matter jurisdiction over this action as all of Plaintiff's
15 purported causes of action are subject to a valid arbitration agreement pursuant to which binding
16 arbitration is the sole and exclusive method to resolve any and all disputes arising out of Plaintiff's,
17 putative class members' employment with Defendants. Defendants do not waive their right to enforce
18 the signed arbitration agreements of Plaintiff and/or any of the putative class members.

19 **ADDITIONAL AFFIRMATIVE DEFENSES**

20 Defendants presently have insufficient knowledge or information upon which to form a belief
21 as to whether there may be additional, as yet unstated, defenses and therefore Defendants reserve their
22 rights to assert additional defenses or claims which may become known during the course of discovery.

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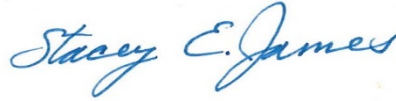
PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment from this Court as follows:

1. That Plaintiff take nothing by this action;
2. That the Complaint be dismissed with prejudice and that judgment be entered against Plaintiff and in favor of Defendants on each of Plaintiff's causes of action;
3. That Plaintiff be ordered to pay Defendants' costs and attorneys' fees, including, but not limited to, costs and attorneys' fees provided under California Labor Code section 218.5; and
4. Such other and further relief as the Court deems appropriate and proper.

Dated: September 2, 2021

LITTLER MENDELSON, P.C.



Stacey E. James
Heidi E. Hegewald
Attorneys for Defendants
BWW RESOURCES, LLC, INSPIRE
BRANDS, INC. AND BUFFALO WILD
WINGS, INC.

4838-1447-7815.1 / 061451-1384

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Stacey E. James, SBN 185651; Heidi E. Hegewald, SBN 326834 LITTLER MENDELSON, P.C. 501 W. Broadway, Suite 900 San Diego, CA 92101-3577 TELEPHONE NO.: (619) 232-0441 FAX NO. (Optional): (619) 232-4302 E-MAIL ADDRESS (Optional): sjames@littler.com ; hhegewald@littler.com ATTORNEY FOR (Name): Defs. BWW Resources, LLC, Inspire Brands, Inc., et al.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 9 th Street MAILING ADDRESS: 720 9 th Street CITY AND ZIP CODE: Sacramento, CA 95814 BRANCH NAME: Gordon D. Schaber Courthouse	CASE NUMBER: 34-2021-00304976
PLAINTIFF/PETITIONER: Ryan DeVore DEFENDANT/RESPONDENT: BWW Resources, LLC, Inspire Brands, et al.	JUDGE: Hon. Richard K. Sueyoshi DEPT.: 40
PROOF OF SERVICE—CIVIL	
Check method of service (only one): <input type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax <input type="checkbox"/> By Electronic Service	

(Do not use this proof of service to show service of a Summons and complaint.)

1. At the time of service I was over 18 years of age and **not a party to this action.**
2. My residence or business address is:
501 W. Broadway, Suite 900, San Diego, CA 92101-3577.
3. The fax number or electronic service address from which I served the documents is *(complete if service was by fax or electronic service)*: mruvalcaba@littler.com
4. On *(date)*: September 2, 2021 I served the following **documents** *(specify)*:

DEFENDANTS BWW RESOURCES, LLC, INSPIRE BRANDS, INC., AND BUFFALO WILD WINGS, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT

The documents are listed in the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)).

5. I served the documents on the **person or persons** below, as follows:

a. Name of person served:

b. *(Complete if service was by personal service, mail, overnight delivery, or messenger service.)*

Business or residential address where person was served:

CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC, 2999 Douglas Blvd., Suite 180, Roseville, CA 95661

c. *(Complete if service was by fax or electronic service.)*

(1) Fax number or electronic service address where person was served:

Timothy B. Del Castillo - tdc@castleemploymentlaw.com; Lisa L. Bradner - lb@castleemploymentlaw.com;

(2) Time of service:

The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).

6. The documents were served by the following means *(specify)*: **MAIL**

a. **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME

DeVore v. BWW Resources, LLC, Inspire Brands, Inc., et al.

CASE NUMBER:

34-2021-00304976

6. b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*): **San Diego, CA**
- c. **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f. **By electronic service.** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in item 5.

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

Date: September 2, 2021

Ann Posthill

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (*date*):

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

Date:

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

RYAN DEVORE, an individual,

(b) County of Residence of First Listed Plaintiff Sacramento (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Timothy B. Del Castillo, SBN 277296
Lisa L. Bradner, SBN 197952

DEFENDANTS

BWW RESOURCES, LLC; INSPIRE BRANDS, INC., et al.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Stacey E. James, SBN 185651
Heidi E. Hegewald, SBN 326834

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF Citizen of This State
PTF DEF Citizen of Another State
PTF DEF Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), and 28 U.S.C. §§ 1441 and 1446
Brief description of cause:
Class action cause of action alleging wage and hour violations.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE: September 3, 2021 SIGNATURE OF ATTORNEY OF RECORD: /s/ Stacey E. James, Esq.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

1 STACEY E. JAMES, Bar No. 185651
sjames@littler.com
2 HEIDI E. HEGEWALD
hhegewald@littler.com
3 LITTLER MENDELSON, P.C.
501 W. Broadway, Suite 900
4 San Diego, California 92101.3577
Telephone: 619.232.0441
5 Fax No.: 619.232.4302

6 Attorneys for Defendants
BWW RESOURCES, LLC, INSPIRE BRANDS, INC.
7 AND BUFFALO WILD WINGS, INC.

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 RYAN DEVORE, individually and on behalf of
12 all others similarly situated,

13 Plaintiffs,

14 v.

15 BWW RESOURCES, LLC, a Delaware
Corporation; INSPIRE BRANDS, INC., a
16 Georgia Corporation; BUFFALO WILD
WINGS, INC., a Minnesota Corporation; and
17 DOES 1 through 20, inclusive,

18 Defendants.
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Case No. _____

[Sacramento Superior Court
Case No. 34-2021-00304976]

**DEFENDANTS' NOTICE OF PENDENCY
OF OTHER ACTIONS OR
PROCEEDINGS**

Trial Date: Not Set
Complaint Filed: July 27, 2021

1 **TO THE CLERK OF THE ABOVE ENTITLED COURT AND TO PLAINTIFF AND HIS**
2 **ATTORNEYS OF RECORD:**

3 Please take notice of the following related cases or administrative actions pending before any
4 federal Court or state court of agency:

5 None.

6
7 Dated: September 3, 2021

LITTLER MENDELSON, P.C.

8
9 /s/ Stacey E. James

10 Stacey E. James
11 Heidi E. Hegewald

12 Attorneys for Defendants
13 BWW RESOURCES, LLC, INSPIRE BRANDS,
14 INC. and BUFFALO WILD WINGS, INC.

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1 STACEY E. JAMES, Bar No. 185651
sjames@littler.com
2 HEIDI E. HEGEWALD
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501 W. Broadway, Suite 900
4 San Diego, California 92101.3577
Telephone: 619.232.0441
5 Fax No.: 619.232.4302

6 Attorneys for Defendants
BWW RESOURCES, LLC, INSPIRE BRANDS, INC.
7 AND BUFFALO WILD WINGS, INC.

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 RYAN DEVORE, individually and on
12 behalf of all others similarly situated,,

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16 Georgia Corporation; BUFFALO WILD
WINGS, INC., a Minnesota Corporation;
17 and DOES 1 through 20, inclusive,

18 Defendants.
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Case No. _____

[Sacramento Superior Court
Case No. 34-2021-00304976]

**DEFENDANTS' NOTICE OF
RELATED CASES**

Trial Date: Not Set
Complaint Filed: July 27, 2021

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**
2 **EASTERN DISTRICT OF CALIFORNIA:**

3 Pursuant to Eastern District Local Rule 123, Defendants BWW RESOURCES,
4 LLC, INSPIRE BRANDS, INC. and BUFFALO WILD WINGS, INC. hereby disclose
5 the following related cases in this matter:

6 There are no related cases pending in the Eastern District of California.

7 Dated: September 3, 2021

LITTLER MENDELSON, P.C.

8
9 /s/ Stacey E. James

10 Stacey E. James
11 Heidi E. Hegewald

12 Attorneys for Defendants
13 BWW RESOURCES, LLC, INSPIRE BRANDS,
14 INC. and BUFFALO WILD WINGS, INC.

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Case Claims Calif. Buffalo Wild Wings Employees Owed Unpaid Wages for Off-the-Clock Work](#)
