

1 LAW OFFICES OF THOMAS W. FALVEY
2 THOMAS W. FALVEY, SBN 65744
3 J.D. HENDERSON, SBN 235767
4 MICHAEL H. BOYAMIAN, SBN 256107
5 301 North Lake Avenue, Suite 800
6 Pasadena, California 91101
7 Telephone: (626) 795-0205
8 Facsimile: (626) 795-3096
9 E-mail: thomaswfalvey@gmail.com, hendersonj2004@gmail.com,
10 mike.falveylaw@gmail.com

11 HARTOUNIAN LAW FIRM
12 ALEX HARTOUNIAN, SBN 252210
13 65 North Catalina Avenue
14 Pasadena, California 91106
15 Telephone: (818) 794-9675
16 Facsimile: (818) 459-6997
17 E-mail: alex@h-lf.com

18 Attorneys for Plaintiff ADAIRE PURSELL,
19 individually and on behalf of all others similarly situated

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF LOS ANGELES

22 ADAIRE PURSELL, individually and on
23 behalf of all others similarly situated,

24 Plaintiff,

25 vs.

26 BUFFALO WILD WINGS
27 INTERNATIONAL, INC.; a Minnesota
28 corporation; PACIFIC WINGS, LLC, a
California limited liability company d/b/a
BUFFALO WILD WINGS; and DOES 1
through 25, inclusive,

Defendants.

CASE NO.: BC522083

[CLASS ACTION]

COMPLAINT FOR:

1. UNPAID WAGES (LABOR CODE §§ 216 and 1194);
2. FAILURE TO PAY MINIMUM WAGE (LABOR CODE §1194 *et seq.*);
3. FAILURE TO PAY REPORTING TIME AND CONTRACT WAGES (LABOR CODE §§ 1194 and 1198);
4. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (LABOR CODE § 226);
5. WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
6. FAILURE TO PROVIDE MEAL & REST PERIODS (LABOR CODE § 226.7 and 512);
7. INDEMNIFICATION (LABOR CODE §§ 2800 and 2802);
8. COMMON LAW CONVERSION;

CONFORMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 20 2013

John A. Clarke, Executive Officer/Clerk
BY Cristina Ornelas Deputy
Cristina Ornelas

- 1 _____)
2)
3)
4)
5)
6 _____)
9. UNFAIR COMPETITION
(BUSINESS AND PROFESSIONS
CODE § 17200, *et seq.*); and
10. PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE
§§ 2698 *et seq.*).

JURY TRIAL DEMANDED

7 Plaintiff ADAIRE PURSELL (“Plaintiff”), individually and on behalf of all similarly
8 situated individuals, alleges as follows:

9
10 **GENERAL ALLEGATIONS**

11 1. This is a proposed class action brought against Defendants BUFFALO WILD
12 WINGS INTERNATIONAL, INC., a Minnesota corporation, PACIFIC WINGS, LLC, a
13 California limited liability company, collectively doing business as BUFFALO WILD WINGS,
14 and DOES 1 through 25, inclusive (collectively, “Defendants” or “Company”), on behalf of
15 Plaintiff and all other individuals who were employed as servers, waiters, and waitresses
16 (collectively, “servers”), at any time during the four years preceding the filing of this action, and
17 continuing while this action is pending (“Class Period”), and who were denied the benefits and
18 protections required under the Labor Code and other statutes and regulations applicable to
19 employees in the State of California.

20 2. During the Class Period, Defendants:

- 21 a. failed to pay wages for all hours worked, including for hours worked in
22 excess of eight hours a day or forty hours a week, by the Servers;
- 23 b. failed to pay minimum wages due to the Servers;
- 24 c. failed to pay reporting time due to the Servers;
- 25 d. failed to provide the Servers with timely and accurate wage and hour
26 statements;
- 27 e. failed to pay the Servers compensation in a timely manner upon their
28 termination or resignation;

- 1 f. failed to maintain complete and accurate payroll records for the Servers;
2 g. failed to indemnify the Servers for all necessary expenditures or losses;
3 h. wrongfully withheld wages and compensation due to the Servers;
4 i. committed unfair business practices in an effort to increase profits and to
5 gain an unfair business advantage at the expense of the Servers and the
6 public; and
7 j. violated the Labor Code and owe civil penalties pursuant to Labor Code §
8 2699(a).

9 3. The foregoing acts and other acts by Defendants - committed throughout
10 California and Los Angeles County - violated numerous provisions of California law, including
11 Labor Code §§ 201, 202, 203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174,
12 1174.5, 1194, 1194.2, 1197, 1197.1, 1199, 2802, and 2698 *et seq.* and the applicable Wage
13 Orders issued by the Industrial Welfare Commission (collectively, "Employment Laws and
14 Regulations"), Business & Professions Code §§ 17200 *et seq.*, owe civil penalties pursuant to the
15 Private Attorneys General Act, Labor Code §§ 2698 *et seq.* ("PAGA"), and violated Plaintiff's
16 rights and the rights of the Servers.

17 18 **JURISDICTION AND VENUE**

19 4. This Court has jurisdiction over all causes of action herein pursuant to the
20 California Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and
21 Professions Code § 17203.

22 5. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5
23 because Defendants operate in this County, Plaintiff Adaire Pursell resides in and/or worked in
24 this county and the injuries that are the subject of this lawsuit arose in this county.

25 26 **THE PARTIES**

27 6. Plaintiff Adaire Pursell was employed by Defendants as a server/waitress within
28 the last year, and was assigned to Defendants' restaurant located in Palmdale, California.

1 Plaintiff resided in and performed duties in the County of Los Angeles during the last year
2 preceding the filing of this action.

3 7. Defendants BUFFALO WILD WINGS INTERNATIONAL, INC. ("BWVI") and
4 PACIFIC WINGS, LLC ("PACIFIC"), are, and at all relevant times were, corporations
5 conducting business in the State of California, including the County of Los Angeles. PACIFIC
6 WINGS is alleged to be a franchise of BWVI, a dining restaurant and sports bar franchise.
7 Plaintiff is informed and believes, and based upon such information and belief, alleges that
8 BWVI exercised control over the operations of PACIFIC from its resources, food offerings and
9 preparation, and management, to PACIFIC utilizing BWVI international logo in advertisements,
10 displays, employee uniforms, and menus.

11 8. The degree of control exercised by BWVI over PACIFIC is enough to reasonably
12 deem PACIFIC an agent of BWVI under traditional agency principles. PACIFIC can
13 legitimately be described as only a means through which BWVI acts and conducts its global
14 business. Defendants PACIFIC and BWVI have such a unity of interest and ownership that the
15 separate personalities do not in reality exist and that the corporate structure is just a shield for the
16 alter ego of each other. Plaintiff therefore is informed and believes and thereupon alleges
17 PACIFIC, BWVI, and each of them, were her employer under California law, that Defendants
18 herein did acts consistent with the existence of an employer-employee relationship with Plaintiff
19 and that PACIFIC was owned, controlled, directly or indirectly, by BWVI.

20 9. Plaintiff is currently unaware of the true names and capacities of the defendants
21 sued in this action by the fictitious names DOES 1 through 25, inclusive, and therefore sue those
22 defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names
23 and capacities of such fictitiously named defendants when they are ascertained. Plaintiff is
24 informed and believe and based thereon state that the persons sued herein as DOES are in some
25 manner responsible for the conduct, injuries and damages herein alleged.

26 10. Plaintiff is informed and believe and based thereon allege that each defendant
27 sued in this action, including each defendant sued by the fictitious names DOES 1 through 25,

28 ///

1 inclusive, is responsible in some manner for the occurrences, controversies and damages alleged
2 below.

3 11. Plaintiff is informed and believe and based thereon allege that DOES 1 through
4 25, inclusive, were the agents, servants and/or employees of Defendants and, in doing the things
5 hereinafter alleged and at all times, were acting within the scope of their authority as such agents,
6 servants and employees, and with the permission and consent of Defendants.

7 12. Plaintiff is informed and believes and based thereon alleges that Defendants
8 ratified, authorized, and consented to each and all of the acts and conduct of each other as alleged
9 herein. Each of the defendants was the agent and/or employee of the others, and the conduct of
10 each defendant herein alleged was authorized and/or ratified by the others. The conduct of the
11 Company was carried on by and through its authorized agents, including owners, officers,
12 directors, managers and supervisors.

13
14 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 13. Plaintiff alleges that on or about July 30, 2013, Plaintiff provided written notice
16 by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendant of
17 the facts and theories regarding the violations of the Employment Laws and Regulations.
18 Attached as Exhibit 1 is a true and correct copy of the letter sent to the LWDA and the Company.

19 14. More than 33 calendar days have elapsed since Plaintiff's notice to the LWDA
20 and Defendants. The LWDA has not advised Plaintiff that it intends to investigate Plaintiff's
21 claims, nor have Defendants provided notice that the alleged violations have been cured.

22 15. Plaintiff has therefore exhausted all administrative procedures required under
23 Labor Code §§ 2698, 2699 and 2699.3, and as a result, are justified as a matter of right in seeking
24 penalties pursuant to PAGA.

25 ///

26 ///

27 ///

28 ///

FACTS

1
2 16. Plaintiff is an individual who was a resident of the County of Los Angeles, during
3 the four years preceding the filing of this action. Plaintiff was employed by Defendant as a
4 Server in Los Angeles County within the last four years preceding the filing of this action.

5 17. During Plaintiff's employment with Defendants, the Company required Plaintiff
6 to monitor and manage her tables when she supposedly was on her meal and rest breaks.
7 Plaintiff was provided a "breaker card" so that she can continue to perform transactions on the
8 register even though she was on her purported breaks. Plaintiff therefore was not relieved of all
9 duty and accordingly was not provided with legally compliant meal and rest periods.

10 18. Throughout her employment with Defendants, the Company forced Plaintiff to
11 clock out at the end of her shift but instructed her to continue working off the clock by cleaning
12 tables, restocking, etc. In addition, on many occasions Plaintiff reported to work only to be told
13 by Defendants that no work was available, and did not receive the appropriate amount of waiting
14 time pay that the appropriate wage order mandates. This compensation scheme is illegal and is
15 in violation of the Employment Laws and Regulations.

16 19. During Plaintiff's employment with Defendants, Defendants failed and refused to
17 provide Plaintiff with timely and accurate wage and hour statements in violation of the
18 Employment Laws and Regulations.

19 20. During Plaintiff's employment with Defendants, Plaintiff was required to
20 purchase clothing unique to her employment at the Company but Defendants failed to indemnify
21 Plaintiff for all these necessary expenditures or losses incurred by her in direct consequence of
22 the discharge of her duties, or for her obedience to the directions of Defendants.

23 21. During Plaintiff's employment with Defendants, Defendants wrongfully withheld
24 from Plaintiff and failed to pay wages and other compensation due for all hours worked, and as
25 otherwise required per Employment Laws and Regulations.

26 22. To the extent that any Server, including Plaintiff, entered into any arbitration
27 agreement with any Defendant, such agreement is void and unenforceable. Any such agreement
28 was one of adhesion, executed under duress, lacked consideration and mutuality, and is otherwise

1 void under both Labor Code § 229 and the California Supreme Court case of *Armendariz v.*
2 *Foundation Health Psychare Services, Inc.* (2000) 24 Cal.4th 83.

3
4 **CLASS ACTION ALLEGATIONS**

5 23. All current and former Servers who were employed by Defendants in California
6 during the Class Period, including Plaintiff, are proposed class members (henceforth, “Class
7 Members”).

8 24. The Servers’ duties and activities during their respective working hours and each
9 shift are known to and directed by Defendants, and are set and controlled by Defendants.

10 25. During the Class Period, Defendants have routinely failed to provide Servers with
11 legally compliant and mandated meal and rest breaks.

12 26. During the Class Period, the Company refused to compensate Servers for all
13 wages earned (“off-the-clock” work) and for all hours worked including time during which
14 Servers were subject to Defendants’ control and were suffered or permitted to work for the
15 Company. The Company failed and refused to pay Servers for all hours worked, including but
16 not limited to time worked after the official end times of their shifts.

17 27. During the Class Period, Defendants have failed and refused to provide Servers
18 with timely and accurate wage and hour statements.

19 28. During the Class Period, Defendants have failed and refused to pay accrued wages
20 and other compensation earned and due immediately to Servers who were terminated, and
21 Defendants have failed and refused to pay accrued wages and other compensation earned and due
22 within seventy-two hours to Servers who ended their employment.

23 29. During the Class Period, Defendants have failed and refused to maintain complete
24 and accurate payroll records for Servers showing gross hours earned, total hours worked, all
25 deductions made, net wages earned, and all applicable hourly rates in effect during each pay
26 period and the corresponding number of hours worked at each hourly rate.

27 30. During the Class Period, Defendants have failed and refused to indemnify the

28 ///

1 Servers for all necessary expenditures or losses incurred by them in direct consequence of the
2 discharge of their duties, or of their obedience to the directions of Defendants.

3 31. During the Class Period, Defendants have wrongfully withheld and failed to pay
4 Servers wages and other compensation earned and due them for all hours worked and as otherwise
5 required pursuant to the Employment Laws and Regulations.

6 32. During the Class Period, Defendants have refused and failed to fully compensate
7 Servers with reporting time pay.

8 32. Defendants' conduct violated the Employment Laws and Regulations. Defendants'
9 systematic acts and practices also violated, *inter alia*, Business & Professions Code §§ 17200, *et*
10 *seq.*

11 33. Plaintiff also seeks of all other compensation and all benefits required pursuant to
12 the Employment Laws and Regulations, plus penalties and interest, owed to Servers.

13 34. The duties and business activities of the Class Members were essentially the same
14 as the duties and activities of the Plaintiff described above. At all times during the Class Period,
15 all of the Class Members were employed in the same or similar job as Plaintiff (as a waiter,
16 waitress, or server) and were paid in the same manner and under the same standard employment
17 procedures and practices as Plaintiff.

18 35. During the Class Period, Defendants were fully aware that Plaintiff and the Class
19 Members were performing "off-the-clock" unpaid work and not being paid for all hours worked in
20 violation of the provisions of the Labor Code.

21 36. Defendants' violations of the Employment Laws and Regulations were repeated,
22 willful and intentional.

23 37. Plaintiff and the Class Members have been damaged by Defendants' conduct.

24 38. While the exact number of Class Members is unknown to Plaintiff at the present
25 time, based on information and belief, there are more than 40 such persons. A class action is the
26 most efficient mechanism for resolution of the claims of the Class Members.

27 39. In addition, a class action is superior to other available methods for the fair and
28 efficient adjudication of this controversy because the damages suffered by individual Class