

THE DAILY JOURNAL

San Mateo County's homepage

San Bruno supports new Hooters

July 23, 2009, By Heather Murtagh

Hot wings and beer served by women donning the iconic orange Hooters shorts could soon be a dining option for patrons of the Shops at Tanforan after the San Bruno Planning Commission approved the alcohol permit for the proposal Tuesday.

An alcohol permit for a Hooters, planned to open at 1150 El Camino Real No. 210 in the Shops at Tanforan was approved by the Planning Commission Tuesday. It was one of three restaurant-related permits that went before the commission. San Bruno could soon also have a new burger joint at 851 Cherry Ave. No. 19 and a restaurant at the Crossings.

"It is important to the city that vacant restaurant spaces are being filled and new commercial developments are being created, especially during this economy," said Community Development Director Aaron Aknin.

Doug Kappy, vice president of operations for Hotwings, Inc., was drawn to the San Bruno location since it was between the airport and Candlestick Park.

"It's a great mix of business and residential," he said, adding the mall is a great location.

Kappy set an aggressive November opening date.

San Bruno first became aware of interest from Hotwings, Inc., the Modesto-based company looking to open a Hooters franchise in San Bruno, about two months ago, said Aknin. Plans have since gone through an architectural review and Tuesday's permit approval. Next step would be to pull building permits.

Plans include 273 seats, 219 inside the restaurant and 54 on an outside patio. Ninety-one of the inside seats will be in the bar area. The restaurant will be open 11 a.m. to midnight Monday through Friday and 10 a.m. to 11 p.m. on weekends.

The alcohol permit approval came with a condition from the police department that a fully licensed, unarmed and bonded uniformed security guard patrol the restaurant during the first week of business from 4 p.m. until closing. Aknin noted a similar condition was placed on the movie theater when it opened last year.

TIP POOLING – Key Cases

(This summary of cases should not be regarded as providing any legal advice)

1. **Leighton v. Old Heidelberg, Ltd.**
(1990) 219 Cal.App.3d 1062
 - Mandatory tip pooling plan is legal under certain conditions
 - It is **ILLEGAL** for the employer to take part of tip pool

2. **Jameson v. Five Feet Restaurant, Inc.**
(2003) 197 Cal.App.4th 138
 - “Tip pooling is permissible under California law if an employer or agent does not take part of a gratuity given to an employee by a patron ...” 197 Cal.App.4th at 141
 - Floor manger was the agent of the employer and, therefore, it was illegal to give the floor manager 10% of tip pool

3. **Lu v. Hawaiian Gardens Casino**
(1/22/09) 170 Cal.App.4th 466 – review granted in May, 2009 by CA Supreme Court
 - Conversion – if an employee owns or has right to possess the property at the time, claim exists for conversion (for example, taking of tips)
 - Shift managers are agents of the employer and cannot take part of the tips

4. **Budrow v. Dave & Busers of CA, Inc.**
(2009) 171 Cal.App.4th 875
 - Tip pooling has two limitations: (1) tips CANNOT be taken by the employer and (2) share of the tips can only be given to certain hourly, non-exempt employees – those to whom the patron intended to give the tip
 - There are limits as to which employees get part of the tip pool, based on the *patron's intent*

5. **Grodensky v. Artichoke Joe's Casino**
(2009) 171 Cal.App.4th 1399
 - Individuals have a right to bring a lawsuit under Labor Code Section 351 to contest an illegal tip pooling scheme
 - A court can order the employer to disgorge (give back) and to make restitution

(give back) money improperly taken from tip pool

6. ***Etheridge v. Reins International California, Inc.***
(2009) 172 Cal.App.4th 908

- Tip pooling agreement must be “fair & reasonable” (concurring opinion)



Labor & Workforce Development Agency

Governor
Arnold
Schwarzenegger

July 08, 2009

CERTIFIED MAIL

Acting Secretary
Douglas Hoffner

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Agricultural
Labor
Relations
Board

RE: Employer: Hott Wings, Inc.; Dublin Wings, Inc. dba Hooters of
RE: Employee(s): Dublin; Hooters, Inc. C/o McCormick Barstow LLP
Dina Partridge, Jessica Rose, Marcie O'Brien, Danielle
RE: LWDA No: Firkins, Nicole Talbert Donoghue, Sunnie Heng, Sandra
Sandoval and Sarah Peterson
4782

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This is to inform you that the Labor and Workforce Development Agency (LWDA) received your notice of alleged Labor Code violations pursuant to Labor Code Section 2699, postmarked June 2, 2009, and after review, does not intend to investigate the allegations.

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As a reminder to you, the provisions of Labor Code Section 2699(i) provides that "...civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code." Labor Code Section 2699(l) specifies "[T]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part."

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Consequently, you must advise us of the results of the litigation, and forward a copy of the court judgment or the court-approved settlement agreement. Please be certain to reference the above LWDA assigned Case Number in any future correspondence.

Department of
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Sincerely,

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Robert Jones
Deputy Secretary, Special Counsel

Employment
Development
Department

Employment
Training
Panel

Cc: Hott Wings, Inc.; Dublin Wings, Inc. dba Hooters of Dublin; Hooters, Inc
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