

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

William Bisek,

Case Type: Employment

Court File No. _____

Judge _____

Plaintiff,

SUMMONS

v.

Border Foods, Inc.,

Defendant.

THIS SUMMONS IS DIRECTED TO BORDER FOODS, INC.

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at:

SCHAEFER HALLEEN, LLC
412 South Fourth Street, Suite 1050
Minneapolis, Minnesota 55415

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

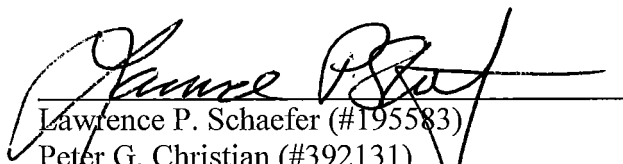
4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint. If you do not want to contest the claims stated in the complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: May 30, 2017

SCHAEFER HALLEEN, LLC



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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

William Bisek,

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Plaintiff,

v.

COMPLAINT AND JURY DEMAND

Border Foods, Inc.,

Defendant.

Plaintiff William Bisek, by his attorneys, brings this action seeking relief from Defendant's unlawful actions, stating and alleging the following as his claims against Defendant:

INTRODUCTION

Plaintiff William Bisek was a successful Taco Bell Restaurant General Manager in-training for Defendant Border Foods, Inc. – one of the largest Taco Bell franchisees in the United States – until he reported serious and shocking food safety violations by the company that jeopardized the health of customers. These food safety violations included water contamination, beverage contamination, the service of expired food to customers, and unacceptable levels of restaurant uncleanliness. He was terminated the day after he escalated his reports to upper management. He now brings this lawsuit to remedy illegal retaliation for engaging in protected conduct under the Minnesota Whistleblower Act, Minn. Stat. § 181.932, *et seq.*

PARTIES, JURISDICTION AND VENUE

1. Plaintiff William Bisek (“Bisek” or “Plaintiff”) is a resident of the State of Minnesota. During times relevant to this Complaint, Plaintiff was employed by Border Foods, Inc. (“Defendant” or “Border Foods”).

2. Border Foods is a Minnesota-based franchisee of Taco Bell. It has 187 locations, throughout Minnesota, Illinois, Michigan, South Dakota, Wisconsin and Wyoming. It is one of the largest Taco Bell franchisees in the United States.

3. Defendant’s principal executive office is at 5425 Boone Ave N, New Hope, Minnesota 55428–5542.

4. The Court has subject matter jurisdiction over these proceedings because the claims involve violations of Minnesota laws.

5. This Court has personal jurisdiction over Defendant because Defendant is a Minnesota corporation.

6. Venue is proper in this Court because Defendant’s principal executive office is in Hennepin County and Defendant conducts business in Hennepin County.

FACTS

7. Bisek joined Border Foods in January 2017 as a Taco Bell Restaurant General Manager, reporting to Nate Wenger, an Area Coach for Border Foods.

8. Bisek was thrilled with the opportunity and shared with Wenger that his goal was to own a franchise with the company. Given Bisek’s distinguished background in the restaurant industry – including owning and operating successful restaurants in Centerville and Fridley for over two decades – this was clearly a realistic goal and the General Manager position provided an ideal bridge to such ownership.

9. The first two months of Bisek's employment were to be a training period at the Taco Bell in Columbia Heights, after which he would transition to managing his own Taco Bell store. He reported to the Columbia Heights' location's store manager during his training period.

10. Bisek officially started work at the Columbia Heights Taco Bell on January 25, 2017 and proceeded with his training. By any measure, he performed well during his training period and received no indication that he was not on the path to managing his own store starting in late March.

11. The training provided to him, however, was haphazard and ineffective. The store manager failed to put in place even a basic plan for it and he was used more for labor purposes than trainee purposes.

12. Unfortunately, during his training, Bisek noticed *shocking* food safety problems at the Columbia Heights Taco Bell location. As a restaurant owner and operator for decades, he quickly identified these issues as serious violations of basic federal, state, and county regulations.

For example, these issues included:

- Water contamination, including extensive and clearly visible mold growing in the water supply tank;
- Beverage contamination, including molded and decayed spouts for the beverage dispensing machines used by customers and employees;
- Expired food, including an expired box of steak for which the expiration date was disregarded (and indeed fraudulently changed by an employee) and many containers of tortillas, tortilla chips, and taco shells which were served after the use-by date (and again had their use-by date changed by employees);
- A water temperature for the hand sink of approximately 70 degrees, which is well below the required minimum temperature of 110 degrees F;
- A water temperature for the three compartment dish washing sink of 70 degrees, which is well below the required minimum temperature of 171 degrees F;

- An air temperature for the food cooler of over 50 degree; which is over the required maximum temperature of 41 degrees;
- Poorly maintained and clogged filters for the refrigeration machines; and
- Generally unacceptable levels of uncleanliness, including keeping the toilet brush and plunger – often dripping with used tissue paper and toilet water – at the front counter where customers placed their orders and where money was exchanged.

13. Bisek genuinely believed that sharing these problems with the store manager and the company could help the company come into compliance with the law. He understood that the Columbia Heights location had failed an internal audit related to food safety immediately before he arrived for his training, that this failure had resulted in the store manager not receiving a monthly bonus, and that a re-inspection would be occurring soon. He believed that reporting these issues was necessary to pass the audit.

14. Accordingly, Bisek reported the above issues to the store manager on several occasions. For example, in the middle of February, after Bisek received reports from customers that the water from the beverage machines tasted bad, he showed the store manager (and eventually two other store managers who visited the location) that the spouts dispensing water and soda for the customers were in a disgusting condition. He demonstrated that when the plastic covering was removed, an appalling amount of mold was visible growing on the plastic – the mold was green, gooey, with a foul odor, and clearly contaminating the beverages. Bisek explained that the spouts should be soaked every night to avoid this growth, as he had done for decades at his restaurants.

15. As another example, Bisek repeatedly pointed out that the store's practice of keeping the toilet brush and plunger – often wet with toilet water and tissue paper – at the front counter presented extremely serious health risks given their close proximity to customers and their placement next to cleaning materials used to wipe down the dining area. He explained to the store

manager how a similar practice at Hoggsbreath in Little Canada had resulted in many customers contracting hepatitis A and significant public outcry and media coverage leading to devastating effects for the restaurant.

16. Unfortunately, the store manager largely ignored Bisek's concerns regarding food safety.

17. On February 23, 2017, Bisek escalated his concerns about food safety in several ways. First, he reduced to writing many of the issues described above in the store log, using as a guide the Safety Hazard Checklist provided to him by the company, apparently mandated by Taco Bell corporate. In the log, he clearly described how the company was in violation of law with regard to its water temperature, its food storage cooler temperature, and its failure to address water contamination, among other issues.

18. Moreover, Bisek escalated reports to Wenger and Area Manager, Ken Lund, both of whom made unannounced visits to the store on February 23. Bisek informed Wenger that a case of steak in the cooler room would be expiring that day – accordingly, it appeared set to be served to consumers after the expiration date. Bisek asked Wenger what the company planned to do with the expired steak. Incredibly, when Bisek returned to work the following day, he discovered that the box of steak was still in the cooler and that the expiration date written on the box had been changed to a later date, demonstrating that the store clearly intended to serve expired meat to its customers.

19. Bisek also reported food safety violation to Lund on February 23. He took Lund to the water supply tank and showed him its disgusting condition. He showed Lund how a shocking amount of mold was clearly growing in the tank and contaminating the water. Lund

responded simply by telling him that the store should probably fill out a work order request for new equipment.

20. Bisek also showed Lund the terrible state of the air filter for the food refrigeration/cooler unit. He explained that the failure of the unit to hold the proper temperature – which had obvious ramifications for the quality of the food stored there – was likely due to the faulty air filter. He asked Lund if the refrigeration units were serviced on a scheduled basis by a third party and Lund indicated that they were not serviced regularly.

21. On February 24, the day after he escalated his reports of food safety violations and reduced them to writing, Bisek was terminated by Wenger.

22. The termination both devastated and shocked Bisek. As he had been given no indication that he was not performing up to expectations, he attempted to secure from Wenger an explanation for the termination.

23. Wenger provided no substantive reason, though he did provide a very revealing one: Wenger told him that, “*You don’t seem to fit in.*” Bisek understood Wenger to be referring to his persistent reports regarding food safety violations.

24. The following Monday, February 27, Bisek reached out to Lund to get a better explanation for the sudden and unexpected termination. Lund could provide no rationale.

25. Bisek promptly requested in writing the truthful reason for his termination from Border Foods. On March 2, Human Resources Director, Julie Pung, responded in writing, stating that Bisek was terminated “for failure to meet performance expectations during training,” including a “failure to retain training.” This rationale lacked credibility to Bisek. During his haphazard training, Border Foods had never told him that he was not meeting expectations and had never expressed concern about his “retention” of the training. Moreover, these reasons were

not discussed by Wenger at the termination meeting, nor were they discussed by Lund when Bisek discussed the termination with him.

26. Border Foods written rationale for termination is pretext masking a retaliatory motive stemming from Bisek's reports concerning food safety violations.

COUNT 1
VIOLATIONS OF THE
MINNESOTA WHISTLEBLOWER ACT

27. Plaintiff restates and re-alleges the allegations contained within the preceding paragraphs as though fully stated herein.

28. The Minnesota Whistleblower Act (MWA) prohibits, among other things, retaliation against employees for reporting violations, suspected violations and/or planned violations of law. Minn. Stat. § 181.932.

29. Defendant is an "employer" and Plaintiff is an "employee" within the meaning of Minn. Stat. § 181.931.

30. Plaintiff reported to Defendant, in good faith, suspected violations of law by Defendant, including violations of statutory and common law.

31. Plaintiff reported what he reasonably and in good faith believed to be conduct that would constitute violations of state laws or common laws or rules adopted pursuant to law, including by way of illustration and not limitation:

- a. Minnesota Food Code (Minn. R. 4626.0010, *et. al.*);
- b. Anoka County ordinances related to food safety such as Ordinance #99-1 and #2009-2; and
- c. Minnesota Department of Health regulation such as its regulation regarding Temperature and Time Requirements for Foods.

32. Defendant retaliated against Plaintiff because of his reports to Defendant by, among other things, terminating Plaintiff's employment.

33. Defendant's retaliation against Plaintiff violated the MWA.

34. By its conduct, Defendant intentionally violated Minn. Stat. § 181.932.

35. The unlawful employment practices complained of above were intentional and were performed by Defendant with malice and/or with reckless indifference to the MWA, which protects Plaintiff.

36. As a direct and proximate result of Defendant's illegal conduct, Plaintiff has suffered, and continues to suffer, emotional distress, humiliation, mental anguish, embarrassment, pain and suffering, loss of reputation, loss of enjoyment of life, lost wages and benefits, and has incurred attorneys' fees and expenses and other serious damages.

COUNT 2
WRONGFUL DISCHARGE IN VIOLATION
OF PUBLIC POLICY

37. Plaintiff restates and re-alleges the allegations contained within the preceding paragraphs as though fully stated herein.

38. Minnesota common law recognizes a cause of action for an employee who reports actions that contravene public policy.

39. Defendant, through its managers and employees acting on behalf of Defendant and within the scope of their employment, engaged in practices that contravene clear public policy.

40. Plaintiff reported behaviors that contravene clear public policies, including basic protection of consumers in the food marketplace.

41. Defendant retaliated against Plaintiff for reporting activities that contravene clear public policy.

42. Defendant terminated Plaintiff because he reported to Defendant that Defendant's business practices were jeopardizing the safety of the general public.

43. Defendant failed to take all reasonable steps to prevent retaliation against Plaintiff from occurring.

44. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered, and continues to suffer, emotional distress, mental anguish, humiliation, embarrassment, pain and suffering, loss of reputation, loss of enjoyment of life, lost wages and benefits, and has incurred attorneys' fees, costs and expenses and suffered other serious damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays:

- a. That the practices complained of herein be adjudged, decreed and declared to be in violation of Plaintiff's legal rights under Minnesota law.
- b. That Defendant be required to make Plaintiff whole for its adverse, retaliatory and unlawful actions through restitution in the form of back pay, including the monetary value of any employment benefits he would have been entitled to as an employee of Defendant, with interest of an appropriate inflation factor.
- c. That Plaintiff be reinstated to his job.
- d. That Plaintiff be awarded front pay and the monetary value of any employment benefits he would have been entitled to as an employee of Defendant.
- e. That Plaintiff be awarded compensatory damages in excess of fifty thousand dollars (\$50,000.00), in an amount to be determined at trial.

f. Plaintiff gives notice of intent to seek leave to amend his Complaint to seek punitive damages, pursuant to Minn. Stat. § 549.191.

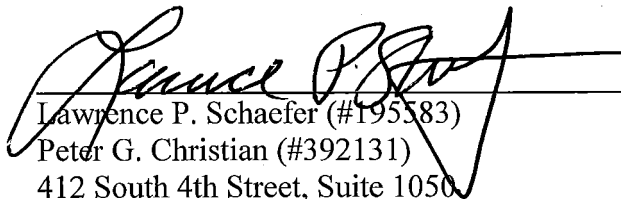
g. That the Court award Plaintiff all attorneys' fees, costs and disbursements pursuant to any applicable laws or statutes.

h. That the Court grant such other and further relief as it deems fair and equitable.

PLAINTIFF DEMANDS A JURY ON ALL COUNTS

Dated: May 30, 2017

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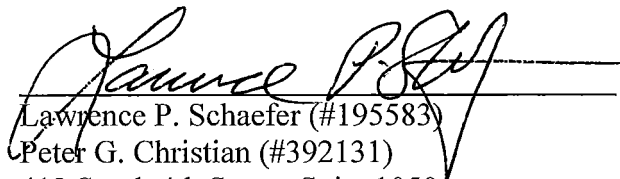
ATTORNEY FOR PLAINTIFF

ACKNOWLEDGMENT

Plaintiff, by its attorneys, hereby acknowledges that costs, disbursements and reasonable attorneys' and witness fees may be awarded to the opposing parties if Minn. Stat. § 549.211 is found to apply.

Dated: May 30, 2017

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