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From: Shaun Setareh

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ALAMEDA COUNTY

June 12, 2020

CLERK OF  
THE SUPERIOR COURT  
By Milagros Cortez, Deputy

CASE NUMBER:

**RG20064681**

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DANIEL ZELLER

## SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

12 DANIEL ZELLER, on behalf of himself, all  
13 others similarly situated, and the general  
public,

*Plaintiff,*

vs.

16 SOUTHERN CALIFORNIA PIZZA  
COMPANY, LLC, a Delaware Limited  
17 Liability Company; AMERICAN WEST  
RESTAURANT GROUP HOLDINGS, LLC,  
18 a Delaware Limited Liability Company; and  
DOES 1 through 50, inclusive,

*Defendants.*

Case No.

**REPRESENTATIVE ACTION****COMPLAINT**Civil Penalties (Lab. Code § 2698, *et seq.*)**JURY TRIAL DEMANDED**

1 Plaintiff DANIEL ZELLER (referred to as "Plaintiff"), on behalf of himself, all others  
2 similarly situated, and the general public, complains and alleges as follows:

### 3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant SOUTHERN CALIFORNIA  
5 PIZZA COMPANY, LLC, a Delaware Limited Liability Company; AMERICAN WEST  
6 RESTAURANT GROUP HOLDINGS, LLC, a Delaware Limited Liability Company; and DOES 1  
7 through 50, inclusive (collectively referred to as "Defendants") for alleged violations of the Labor  
8 Code and Business and Professions Code. As set forth below, Plaintiff alleges that Defendants  
9 have:

- 10 (1) failed to pay them at least minimum wage for all hours worked;
- 11 (2) failed to reimburse them for all necessary business expenses;
- 12 (3) failed to provide them with accurate written wage statements; and
- 13 (4) failed to pay them all of their final wages following separation of  
14 employment.

15 Based on these alleged Labor Code violations, Plaintiff now brings this class action to  
16 recover unpaid wages, restitution and related relief on behalf of himself, all others similarly  
17 situated, and the general public.

### 18 **JURISDICTION AND VENUE**

19 2. This Court has subject matter jurisdiction to hear this case because the monetary  
20 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal  
21 jurisdiction of the Superior Court of the State of California.

22 3. Venue is proper in the County of Alameda pursuant to Code of Civil Procedure  
23 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions  
24 that are the subject matter of this Complaint occurred therein and/or each defendant is found,  
25 maintains offices, transacts business and/or has an agent therein.

### 26 **PARTIES**

27 4. Plaintiff DANIEL ZELLER is, and at all relevant times mentioned herein, an  
28 individual residing in the State of California.

1           5.       Plaintiff is informed and believes, and thereupon alleges that Defendant  
2 SOUTHERN CALIFORNIA PIZZA COMPANY, LLC is, and at all relevant times mentioned  
3 herein, a Delaware limited liability company doing business in the State of California.

4           6.       Plaintiff is informed and believes, and thereupon alleges that Defendant  
5 AMERICAN WEST RESTAURANT GROUP HOLDINGS, LLC, is, and at all relevant times  
6 mentioned herein, a Delaware Limited Liability Company doing business in the State of California.

7           7.       Plaintiff is ignorant of the true names and capacities of the defendants sued herein as  
8 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.  
9 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants  
10 when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the  
11 fictitiously named defendants are responsible in some manner for the occurrences, acts and  
12 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these  
13 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and  
14 capacities of the DOE defendants when ascertained.

15          8.       Plaintiff is informed and believes, and thereupon alleges that, at all relevant times  
16 mentioned herein, some or all of the defendants were the representatives, agents, employees,  
17 partners, directors, associates, joint venturers, principals or co-participants of some or all of the  
18 other defendants, and in doing the things alleged herein, were acting within the course and scope of  
19 such relationship and with the full knowledge, consent and ratification by such other defendants.

20          9.       Plaintiff is informed and believes, and thereupon alleges that, at all relevant times  
21 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert  
22 and conspired with one another, and aided and abetted one another to accomplish the occurrences,  
23 acts and omissions alleged herein.

24                   **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

25          10.       Plaintiff worked for Defendants as a non-exempt, hourly employee from  
26 approximately August 1, 2018 through January 28, 2019.

27                   **Expense Reimbursement**

28          11.       Plaintiff and the aggrieved employees were required to utilize their own personal

1 tools to perform their job duties. Specifically, Plaintiff and the aggrieved employees were made to  
2 use their own personal vehicles to perform their job duties of delivering pizzas. Plaintiff and the  
3 aggrieved employees would only receive one dollar per delivery as a reimbursement, an amount that  
4 was woefully inadequate to reimburse their actual expenses incurred. Plaintiff and the aggrieved  
5 employees would be made to travel anywhere from 50-100 miles on a given shift but would only  
6 receive a dollar per delivery as reimbursement, which was in no way reflective of the actual costs  
7 that were incurred in maintaining the vehicle and the costs of gasoline.

8 12. Additionally, Plaintiff and the aggrieved employees were made to purchase shoes  
9 from Defendants as a necessary precondition of employment. The costs of the shoes provided to  
10 them was deducted from their paychecks.

#### 11 **Wage Statements**

12 13. Plaintiff and the putative class were not provided with accurate wage statements as  
13 mandated by law pursuant to Labor Code section 226.

14 14. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages  
15 earned” were not accurately reflected in that:

16 a. Defendants did not provide adequate reimbursements for all necessary business  
17 expenses and deducted the costs of shoes from their paychecks.

18 15. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours  
19 worked by the employee” were not accurately reflected in that:

20 a. Defendants did not provide adequate reimbursements for all necessary business  
21 expenses and deducted the costs of shoes from their paychecks.

22 16. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages  
23 earned” were not accurately reflected in that:

24 a. Defendants did not provide adequate reimbursements for all necessary business  
25 expenses and deducted the costs of shoes from their paychecks.

26 17. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable  
27 hourly rates in effect during the pay period and the corresponding number of hours worked at each  
28 hourly rate by the employee” were not accurately reflected in that:

- 1 a. Defendants did not provide adequate reimbursements for all necessary business  
2 expenses and deducted the costs of shoes from their paychecks.

3 **FIRST CAUSE OF ACTION**

4 **CIVIL PENALTIES**

5 **(Lab. Code §§ 2698, *et seq.*)**

6 18. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged  
7 herein.

8 19. During the applicable limitations period, Defendants have violated Labor Code §§  
9 201, 202, 203, 204, 223, 226, 558, 1194, 1197, 2802.

10 20. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, of behalf of  
11 himself and other current and former employees, to bring a representative civil action to recover  
12 civil penalties pursuant to the procedures specified in Labor Code section 2699.3 that may, but need  
13 not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

14 21. Plaintiff, as a former employee against whom Defendants committed one or more of  
15 the alleged Labor Code violations during the applicable limitations period, is an aggrieved  
16 employee within the meaning of Labor Code section 2699(c).

17 22. Plaintiff has complied with the procedures for bringing suit specified in Labor Code  
18 section 2699.3.

19 23. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil  
20 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226, 1194,  
21 1197, 1198 and 2802:

22 A. For violations of Labor Code sections 201, 202, 203, 226, 1194, 1198, and  
23 2802, \$100 for each employee per pay period for each initial violation and  
24 \$200 for each employee per pay period for each subsequent violation  
25 (penalties set by Labor Code section 2699(f)(2));

26 B. For violations of Labor Code section 203, a penalty in an amount not  
27 exceeding 30 days pay as waiting time (penalties set by Labor Code section  
28 256).

- 1 C. For violations of Labor Code section 204, \$100 for each employee for each  
2 initial violation that was neither willful nor intentional, \$200 for each  
3 employee, plus 25% of the amount unlawfully withheld from each employee,  
4 for each initial violation that was either willful or intentional, and \$200 for  
5 each employee, plus 25% of the amount unlawfully withheld from each  
6 employee, for each subsequent violation, regardless of whether the  
7 subsequent violation was either willful or intentional (penalties set by Labor  
8 Code section 210);
- 9 D. For violations of Labor Code section 223, \$100 for each employee for each  
10 initial violation that was neither willful nor intentional, \$200 for each  
11 employee, plus 25% of the amount unlawfully withheld from each employee,  
12 for each initial violation that was either willful or intentional, and \$200 for  
13 each employee, plus 25% of the amount unlawfully withheld from each  
14 employee, for each subsequent violation, regardless of whether the  
15 subsequent violation was either willful or intentional (penalties set by Labor  
16 Code section 225.5);
- 17 E. For violations of Labor Code section 226(a), if this action is deemed to be an  
18 initial citation, \$250 for each employee for each violation. Alternatively, if an  
19 initial citation or its equivalent occurred before the filing of this action,  
20 \$1,000 for each employee for each violation (penalties set by Labor Code  
21 section 226.3);
- 22 F. For violations of Labor Code section 1197, \$100 for each aggrieved  
23 employee for each initial violation of Labor Code section 1197 that was  
24 intentional, and \$250 for each aggrieved employee per pay period for each  
25 subsequent violation of Labor Code section 1197, regardless of whether the  
26 initial violation was intentional (penalties set by Labor Code section 1197.1).

27 24. Pursuant to Labor Code section 2699(g), Plaintiff seeks awards of reasonable costs  
28 and attorneys' fees in connection with his claims for civil penalties.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general  
3 public, prays for relief and judgment against Defendants as follows:

- 4 A. Pre-judgment interest;  
5 B. Statutory penalties;  
6 C. Civil penalties;  
7 D. Costs of suit;  
8 E. Reasonable attorneys' fees; and  
9 F. Such other relief as the Court deems just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff, on behalf of himself, all others similarly situated, and the general public, hereby  
12 demands a jury trial on all issues so triable.

13  
14 DATED: March 27, 2020

SETAREH LAW GROUP

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18 SHAUN SETAREH  
19 WILLIAM PAO  
20 Attorneys for Plaintiff  
21 DANIEL ZELLER  
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