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Superior Court of California
County of Los Angeles

DEC 23 2020

Sherri K. [Signature], CLERK OF COURT
By [Signature], Deputy
Steven Drew

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 MICHAEL MANZO, on behalf of himself,
and on behalf of other members of the
11 general public similarly situated,

12 Plaintiff,
13 v.

14 SOUTHSIDE PIZZA, INC., a California
corporation; PRIMA PIZZA, INC., a
15 California corporation; DOMINO'S
PIZZA, LLC, a Michigan limited liability
16 company; DOMINO'S PIZZA
FRANCHISING, LLC, a Delaware limited
17 liability company; and DOES 1 through
18 100, inclusive,

19 Defendants.

CASE NO.

CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:

- 20 **20STCV48870**
1. Failure to Pay Minimum Wages for all Hours Worked (Labor Code §§ 221, 350, 351, 1194, 1194.2, 1197, 1197.1, and Wage Order 5-2001);
 2. Failure to Pay Overtime Compensation (Labor Code §§ 510, 1198, and Wage Order No. 5-2001);
 3. Failure to Provide Duty-Free Meal Periods (Labor Code §§ 226.7, 512, and Wage Order No. 5-2001);
 4. Failure to Authorize and Permit Rest Breaks (Labor Code § 226.7 and Wage Order No. 5-2001);
 5. Failure to Maintain and Provide Accurate Itemized Wage Statements (Labor Code §§ 226, 226.3, and 1174);
 6. Failure to Pay all Wages Owed Timely and Upon Separation of Employment (Labor Code §§ 201, 202, 203, 204, and 210);
 7. Failure to Reimburse Business Expenses (Labor Code § 2802);
 8. Unfair Competition (Bus. & Prof. Code § 17200, *et seq.*); and
 9. Penalties per the Private Attorneys General Act of 2004 (Labor Code § 2698, *et seq.*)

DEMAND FOR JURY TRIAL

CLASS AND REPRESENTATIVE ACTION COMPLAINT

BY FAX

1 Plaintiff MICHAEL MANZO, an individual, (“Plaintiff”), on behalf of himself, the State
2 of California, and all others similarly situated, alleges and complains of Defendants SOUTHSIDE
3 PIZZA, INC., a California corporation, PRIMA PIZZA, INC., a California corporation,
4 DOMINO’S PIZZA, LLC, a Michigan limited liability company, DOMINO’S PIZZA
5 FRANCHISING, LLC, a Delaware limited liability company, and DOES 1 through 100, inclusive
6 (collectively, “Defendants”), and each of them, as follows:

7 **I. INTRODUCTION**

8 1. This is a class action, pursuant to California Code of Civil Procedure section 382,
9 on behalf of Plaintiff and the following class: *All current and former hourly paid or non-exempt*
10 *employees who worked for Southside Pizza, Inc., Prima Pizza, Inc, Domino’s Pizza LLC,*
11 *Domino’s Pizza Franchising LLC, and/or their predecessor or merged entities, within the State of*
12 *California from four years prior to the filing of the Complaint and continuing to the present* (the
13 “Class” or “Class Members”).

14 2. Throughout the time period involved in this case, Defendants willfully maintained
15 a consistent policy of: failing to pay at least the minimum wage for all hours worked; failing to
16 pay all overtime wages owed and/or for failing to pay for all overtime hours worked; failing to
17 provide timely duty-free meal periods and/or paying the required premiums; failing to authorize
18 and permit duty-free rest breaks and/or paying the required premiums; failing to maintain and
19 provide accurate itemized wage statements; failing to pay all wages owed timely and upon
20 separation of employment; and failing to reimburse for business expenses incurred. Defendants’
21 illegal conduct has also given rise to derivative claims for unfair business practices and violation
22 of the Private Attorneys General Act of 2004 (“PAGA”).

23 3. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant
24 to California Business and Professions Code sections 17200 through 17208, also seeks all monies
25 owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled.
26 Plaintiff seeks an order by the Court awarding restitution, injunctive relief, and all other legal and
27 equitable relief allowed, plus interest, attorneys’ fees and costs.

28 4. Plaintiff, on behalf of himself and all other similarly situated aggrieved employees,

1 also brings this representative action against Defendants to recover wages and penalties owed
2 pursuant to Labor Code section 2699 (the “Aggrieved Employees”). Plaintiff was compelled to
3 retain the services of counsel to file this action to protect his interests and those of Aggrieved
4 Employees and has thereby incurred attorneys’ fees and costs, which he is likewise entitled to
5 recover under Labor Code section 2699.

6 5. For purposes of the allegations set forth herein, Class Members, along with those
7 similarly situated Aggrieved Employees comprising the PAGA representative action are
8 collectively referred to as “Employees” except as otherwise specified.

9 **II. JURISDICTION AND VENUE**

10 6. This Court has subject matter jurisdiction over all causes of action asserted herein
11 pursuant to Article VI, section 10 of the California Constitution and California Code of Civil
12 Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in
13 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
14 arises under the laws of the State of California or is subject to adjudication in the courts of the
15 State of California.

16 7. This Court has personal jurisdiction over Defendants because each has caused
17 injuries in Orange County and the State of California through their acts, and by their violation of
18 the California Labor Code, California state common law, and California Business & Professions
19 Code sections 17200, *et seq.* Defendants also transact business throughout California and have
20 obtained the benefits of the laws of the United States and the State of California and are therefore
21 subject to the personal jurisdiction of this Court.

22 8. Venue as to each defendant is proper in this judicial district pursuant to Code of
23 Civil Procedure section 395. Defendants operate within California and do business within Los
24 Angeles County. The unlawful acts alleged herein have a direct effect on Plaintiff and Employees
25 within the State of California and Orange County.

26 9. This case should be classified as complex according to California Rules of Court,
27 Rule 3.400 and assigned to a complex litigation judge and department, as it is a class action, will
28 involve substantial documentary evidence, a large number of witnesses, and is likely to involve

1 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
2 and would require substantial post judgment judicial supervision.

3 **III. PARTIES**

4 10. Plaintiff Michael Manzo is a resident of Los Angeles, California. At all relevant
5 times herein, Defendants employed Plaintiff as an hourly paid non-exempt employee, and
6 subjected him to the same employment policies and practices that affected Employees.

7 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant
8 Southside Pizza, Inc. is, and at all times relevant hereto was, a corporation organized and existing
9 under and by virtue of the laws of the State of California and doing business in California and, at
10 all times hereinafter mentioned, was and is an employer as defined in and subject to the Labor
11 Code and Industrial Welfare Commission ("IWC") Wage Orders, whose employees are engaged
12 throughout this county and the State of California.

13 12. Plaintiff is informed and believes, and based thereon alleges, that Defendant Prima
14 Pizza, Inc. is, and at all times relevant hereto was, a corporation organized and existing under and
15 by virtue of the laws of the State of California and doing business in California and, at all times
16 hereinafter mentioned, was and is an employer as defined in and subject to the Labor Code and
17 Industrial Welfare Commission ("IWC") Wage Orders, whose employees are engaged throughout
18 this county and the State of California.

19 13. Plaintiff is informed and believes, and based thereon alleges, that Defendant
20 Domino's Pizza, LLC, is, and at all times relevant hereto was, a Michigan limited liability
21 company and existing under and by virtue of the laws of the State of Michigan, with its principal
22 place of business in Michigan. At all times herein, Domino's Pizza, LLC was authorized to
23 conduct business, and actually conducted business, in numerous counties throughout the State of
24 California. Further, at all times hereinafter mentioned, Domino's Pizza, LLC was and is an
25 employer as defined in and subject to the Labor Code and Industrial Welfare Commission
26 ("IWC") Wage Orders, whose employees are engaged throughout this county and the State of
27 California.

28 14. Plaintiff is informed and believes, and based thereon alleges, that Defendant

1 Domino's Pizza Franchising, LLC, is, and at all times relevant hereto was, a Delaware limited
2 liability company and existing under and by virtue of the laws of the State of Delaware, with its
3 principal place of business in Michigan. At all times herein, Domino's Pizza Franchising, LLC
4 was authorized to conduct business, and actually conducted business, in numerous counties
5 throughout the State of California. Further, at all times hereinafter mentioned, Domino's Pizza
6 Franchising, LLC was and is an employer as defined in and subject to the Labor Code and
7 Industrial Welfare Commission ("IWC") Wage Orders, whose employees are engaged throughout
8 this county and the State of California.

9 15. The true names and capacities, whether individual, corporate, associate, or
10 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
11 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
12 section 474. Plaintiff is informed and believes and based thereon alleges that each of the
13 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
14 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
15 names and capacities of the defendants designated hereinafter as DOES when such identities
16 become known.

17 16. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
18 include DOES 1 through 100 identified herein.

19 17. On information and belief, it is alleged that at all relevant times each Defendant,
20 directly or indirectly, or through agents or other persons, employed Plaintiff and Employees within
21 the State of California, and exercised control over their wages, hours, and working conditions.
22 Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all
23 respects pertinent to this action, as the agent of the other Defendants, carried out a joint scheme,
24 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
25 attributable to the other Defendants. Plaintiff is further informed and believes and based thereon
26 alleges that Defendants are joint employers in that they employed Plaintiff and Employees, at the
27 same time and were operating as a joint enterprise and single entity at all relevant time periods.

1 18. California courts have recognized that the definition of “employer” for purposes of
2 enforcement of the California Labor Code goes beyond the concept of traditional employment to
3 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
4 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who
5 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
6 person to work or exercises control over the wages, hours, or working conditions of any person,
7 may be liable for violations of the California Labor Code as to that person.

8 19. California law also permits and recognizes the piercing of a corporate veil between
9 sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App. 4th 107,
10 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise rule
11 applies where “there are two or more personalities, there is but one enterprise; and that this
12 enterprise has been so handled that it should respond, as a whole, for the debts of certain
13 component elements of it.” *Hasso, supra*, 227 Cal. App. 4th at 155; *Greenspan, supra*, 191 Cal.
14 App. 4th at 512.

15 20. At all times throughout their employment, Plaintiff and Employees were regularly
16 and consistently subject to the common policies and practices utilized by Defendants.

17 21. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and
18 Employees to perform services from which they benefitted. To the extent the aforementioned
19 entities had the right to exercise control over the wages, hours, and/or working conditions of
20 Plaintiff and Employees at all relevant times herein, they are to be considered joint employers.

21 **IV. FACTUAL BACKGROUND**

22 **Defendants Systematically Violated State Wage and Hour Laws**

23 22. During the period from November 2018 through June 2020, Plaintiff Michael
24 Manzo worked as an hourly-paid, non-exempt employee in Defendants’ Manchester Avenue, Los
25 Angeles, California store location. During the relevant time, Plaintiff worked as a delivery driver
26 and assistant manager.

27 23. Plaintiff and Employees are non-exempt employees pursuant to the applicable IWC
28 Wage Orders. This action seeks recovery for wages and compensation due and owing to Plaintiff

1 and the Employees under California laws for the maximum period allowed to the present, as set
2 out below.

3 24. Plaintiff alleges that Defendants did not fully compensate Plaintiff and Employees
4 who worked in non-exempt and hourly-paid positions because they were regularly required to
5 perform activities that were off-the-clock, as well as during meal periods. Through these policies
6 and/or practices, Defendants artificially reduced the actual hours worked and ultimately
7 disadvantaged Plaintiff and Employees.

8 25. Labor Code section 1197 states the California requirement that employees must be
9 paid at least the minimum wage fixed by the Commission, and any payment of less than the
10 minimum wage is unlawful. Labor Code section 1194 entitles “any employee receiving less than
11 the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
12 minimum wage.” IWC Wage Order 5-2001¹ subdivision 4 also obligates employers to pay each
13 employee minimum wages for all hours worked.

14 26. Throughout the applicable time period, Defendants did not pay and continue to not
15 pay Plaintiff and the Employees at least the California minimum wage for all hours worked,
16 thereby violating Labor Code section 1194. Pursuant to Labor Code section 1194.2, Plaintiff and
17 the Employees are entitled to recover liquidated damages (double damages) for Defendants’
18 failure to pay minimum wages. Likewise, Plaintiff also seeks penalties on behalf of himself and
19 Employees under Labor Code section 1199.

20 27. Here, Defendants’ hourly, non-exempt employees were not paid wages for all hours
21 worked. Defendants failed to pay Plaintiff and Employees for pre-shift and/or post-shift off-the-
22 clock work (prep work, putting expiration dates on products, counting money, making pizzas,
23 taking food orders, doing inventory, etc.) Additionally, to the extent Defendants interrupted
24 Employees’ meal periods by requiring or pressuring Employees to perform work during or before
25 completing their thirty (30) minute meal periods, some of the unpaid meal period time constitutes

26 _____
27 ¹ Upon information and belief, Plaintiff alleges that IWC Wage Order No. 5-2001 is applicable. However,
28 Plaintiff reserves the right to amend and/or allege any other applicable IWC Wage Order(s) that may be
gleaned relevant after discovery.

1 off-the-clock hours resulting in unpaid minimum wages (along with unpaid overtime wages) owed
2 to Plaintiff and Employees. Due to Defendants exerting pressure to meet onerous quantity and
3 efficiency of delivery demands and their failure to provide adequate staffing, Plaintiff and
4 Employees were compelled to perform work off-the-clock, resulting in uncompensated minimum
5 wages.

6 28. In addition, Defendants had a policy and practice of requiring Plaintiff and their
7 non-exempt Employees to share tips with those not entitled. For example, Plaintiff was required
8 to share the tips he earned with Defendants' employer agents, including employees with
9 management level authority. Specifically, tips were an itemized deduction on Plaintiff's wage
10 statements, but then simultaneously were line-item deductions. These deductions violate the
11 mandate that, "It shall be unlawful for any employer to collect or receive from an employee any
12 part of wages theretofore paid by said employer to said employee." Labor Code § 221.

13 29. Moreover, Labor Code Section 351 states that,

14 No employer or agent shall collect, take, or receive any gratuity or a part thereof
15 that is paid, given to, or left for an employee by a patron, or deduct any amount
16 from wages due an employee on account of a gratuity, or require an employee to
credit the amount, or any part thereof, of a gratuity against and as a part of the
wages due the employee from the employer.

17 It also constitutes violation of minimum wage law whenever said deductions drop the Employees'
18 hourly pay rate below minimum wage standards.

19 30. During the relevant period, Defendants also had a consistent policy of failing to pay
20 overtime wages at the proper amounts and/or failing to pay for all overtime hours worked to
21 Plaintiff and the Employees. When Plaintiff and the Employees worked overtime, Defendants
22 often failed to include all hours and/or compensation when calculating overtime.

23 31. Further, the work times of Plaintiff and Employees very frequently have been, and
24 continue to be, greater than eight (8) hours per day and/or forty (40) hours per week. Yet, because
25 Defendants wanted to keep labor costs down while demanding high production from their
26 workforce, Defendants failed to pay all overtime wages owed to Plaintiff and Employees. Thus,
27 Defendants retained the benefits of their hard-working hourly workforce without assuming the
28

1 legally-mandated costs of labor. Since Defendants owe Plaintiff and Employees the legally
2 required wages for unpaid hours that were worked off-the-clock, as discussed herein and alleged
3 *supra*, Plaintiff and Employees suffered damages in the amounts attributable to those overtime
4 hours as well.

5 32. Labor Code section 510 requires an employer to compensate an employee who
6 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
7 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the
8 regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to
9 compensate employees at no less than twice the regular rate of pay when an employee works more
10 than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of
11 work.

12 33. By their common policy and/or practice of requiring Plaintiff and Employees to
13 work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
14 compensating them at the applicable overtime rate of pay, Defendants willfully violated the
15 provisions of Labor Code sections 510 and 1198, as well as IWC Wage Order No. 5-2001.

16 34. Defendants regularly failed to provide Plaintiff and Employees with timely duty-
17 free meal periods. Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001 require
18 employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period
19 within the first five (5) hours of work. *See also, Brinker Rest. Corp. v. Superior Court* (2012) 53
20 Cal. 4th 1004, 1042 (“Accordingly, first meal periods must start after no more than five hours.”).
21 Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second
22 thirty (30) minute uninterrupted and duty-free meal period.

23 35. Defendants regularly denied Plaintiff and Employees meal periods that comply
24 with Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001. The demands of the job
25 duties of Plaintiff and Employees were such that they were prevented from taking timely,
26 uninterrupted meal periods. For example, Plaintiff took numerous meal periods after his fifth hour
27 of work that were in violation of Labor Code sections 226.7, 512, and IWC Wage Order No. 5-
28 2001. Further, Plaintiff and Employees frequently had their meal breaks interrupted by

1 management, customers, and dispatch and/or missed their meal breaks entirely in that they
2 continued working and without entering into a lawful on-duty meal period agreement.

3 36. Moreover, Plaintiff and Employees were also not provided second meal periods for
4 shifts worked in excess of ten (10) hours, such conduct is in violation of Labor Code sections
5 226.7, 512, and IWC Wage Order No. 5-2001. Having been subjected to late, short, interrupted,
6 and/or missed meal periods, Plaintiff and Employees did not receive their statutorily mandated
7 meal periods.

8 37. The same late, short, interrupted, and missed breaks also occur in connection with
9 what are supposed to be Plaintiff's and Employees' timely, duty-free rest breaks. Defendants were
10 obligated but failed to provide Plaintiff and the Employees with net ten (10) minute rest breaks for
11 work shifts exceeding four (4) hours or a major fraction thereof worked as required by Labor Code
12 section 226.7 and IWC Wage Order No. 5-2001. Since Plaintiff and Employees frequently worked
13 shifts that were longer than three and one-half (3.5) or six (6) hours in duration, Defendants were
14 required but regularly failed to provide Plaintiff and Employees with all the timely duty-free rest
15 breaks.

16 38. Plaintiff and Employees were not compensated with one (1) hour's worth of pay at
17 their regular rate of compensation when they were not provided with compliant meal and rest
18 periods in accordance with Labor Code section 226.7(b).

19 39. Plaintiff and Employees were not furnished with accurate itemized wage
20 statements that accurately showed their gross wages earned, total hours worked, net wages earned,
21 premium payments for meal and rest breaks, all applicable hourly rates and corresponding number
22 of hours worked at each hourly rate in effect during their pay periods, along with other
23 information required by Labor Code section 226(a).

24 40. During the relevant time period, Defendants have knowingly and intentionally
25 failed to provide Plaintiff and Employees with the above-described writing through actions alleged
26 herein in violation of Labor Code section 226. Plaintiff and Employees have been injured by
27 Defendants' intentional violation of Labor Code section 226(a) because they were denied both
28 their legal right to receive, and their protected interest in receiving, accurate itemized wage

1 statements.

2 41. In addition, because Defendants failed to provide the accurate and mandated
3 information on the itemized wage statements, Plaintiff and Employees have been prevented by
4 Defendants from determining, *inter alia*, if all hours worked were paid and the extent of the
5 underpayment. Plaintiff has had to file this lawsuit and will be required to conduct discovery and
6 perform computations in order to analyze whether, and to what extent, Plaintiff and Employees
7 suffered underpayment, thereby causing Plaintiff to incur expenses and time lost. Thus, Plaintiff
8 and Employees are owed the amounts provided for in Labor Code section 226(e).

9 42. Further, for the violations described above, Plaintiff and Aggrieved Employees
10 may also recover civil penalties through Labor Code section 226.3 and PAGA for Defendants'
11 violations of Labor Code section 226(a).

12 43. Additionally, Plaintiff and Employees have been denied their legal right and
13 protected interest in having available at a central location at the plant or establishment where they
14 are employed, accurate and complete payroll records showing the hours worked daily by, and the
15 wages paid to, employees at those respective locations pursuant to Labor Code section 1174.
16 Through Labor Code section 1174.5 and PAGA, Plaintiff and Aggrieved Employees may also
17 recover civil penalties for violations of Labor Code section 1174(d).

18 44. Labor Code section 203 provides "if an employer willfully fails to pay...any wages
19 of an employee who is discharged or who quits, the wages of the employee shall continue as a
20 penalty..." for up to 30 days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal. App. 4th 487,
21 492.

22 45. Due to Defendants' non-compliant policies and/or practices described herein,
23 Plaintiff and Employees whose employment with Defendants concluded were deprived of full
24 compensation for all straight-time and overtime hours worked, for all meal and rest break
25 premiums owed, and for reimbursement of business expenses incurred. Thus, Defendants have
26 failed to pay Plaintiff and Employees all wages owed, whose sums were certain, at the time of
27 termination or within seventy-two (72) hours of their resignation and have failed to pay those
28 sums for thirty (30) days thereafter in violation of Labor Code section 203.

1 46. Labor Code section 204 expressly requires that “[a]ll wages...earned by any person
2 in any employment are due and payable twice during each calendar month, on days designated in
3 advance by the employer as the regular paydays.” Pursuant to Labor Code section 204(d), these
4 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
5 payroll if the wages are paid not more than seven (7) calendar days following the close of the
6 payroll period.” Due to Defendants’ failure to pay Plaintiff and Employees for, *inter alia*, all
7 straight-time and overtime hours worked, Defendants failed to timely pay Plaintiff and Employees
8 within seven (7) days of the close of the payroll period in accordance with Labor Code section 204
9 on a regular and consistent basis.

10 47. Through Labor Code section 210 and PAGA, and to the extent permitted by law,
11 Plaintiff and Aggrieved Employees are entitled to recover civil penalties for violations of Labor
12 Code section 204.

13 48. Defendants violated Labor Code sections 2800 and 2802 by failing to pay and
14 indemnify Plaintiff and the Employees for their necessary expenditures and losses incurred (*i.e.*,
15 unpaid mileage for use of personal vehicle used to make deliveries and perform other work related
16 tasks and cost and use of personal cell phones) in direct consequence of the discharge of their
17 duties.

18 49. Based on the foregoing, Defendants have also engaged in unlawful and unfair
19 business practices in violation of California’s Business and Professions Code sections 17200, *et*
20 *seq.*, thereby entitling Plaintiff and Class Members to restitution, disgorgement of profits, and/or
21 other equitable remedies.

22 **V. CLASS ACTION ALLEGATIONS**

23 50. Plaintiff brings this action on behalf of himself and all others similarly situated, as a
24 class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a
25 proposed class composed of and defined as follows:

26 *All current and former hourly paid or non-exempt employees who worked for*
27 *Southside Pizza, Inc., Prima Pizza, Inc, Domino’s Pizza LLC, Domino’s Pizza*
28 *Franchising LLC, and/or their predecessor or merged entities, within the State of*
 California from four years prior to the filing of the Complaint and continuing to the

1 *present* (again, “Class” or “Class Members”).

2 51. Plaintiff reserves the right under California Rule of Court, Rule 3.765(b), to amend
3 or modify the class description identified herein with greater specificity or further division into
4 subclasses or limitation to particular issues.

5 52. This action has been brought and may properly be maintained as a class action
6 under the provisions of Code of Civil Procedure section 382 because there is a well-defined
7 community of interest in the litigation and the Class is easily ascertainable.

8 **A. Numerosity**

9 53. The potential members of the Class as defined are so numerous that joinder of all
10 the members of the Class is impracticable. While the precise number of Class Members has not
11 been determined at this time, Plaintiff is informed and believes that there are over one hundred
12 (100) Class Members employed by Defendants within the State of California at any given time.
13 Accounting for employee turnover during the relevant time periods necessarily increases this
14 number substantially.

15 54. Plaintiff alleges Defendants’ employment records would provide information as to
16 the number and location of all Class Members.

17 **B. Commonality**

18 55. There are questions of law and fact common to the Class that predominate over any
19 questions affecting only individual Class Members. These common questions of law and fact
20 include, without limitation:

21 i. Whether Defendants violated Labor Code sections 221, 350, 351, 1194, 1194.2,
22 1197, 1197.1, and/or IWC Wage Order 5-2001 by not compensating Plaintiff and Class Members
23 minimum wages for all hours worked and/or making unlawful deductions;

24 ii. Whether Defendants violated Labor Code sections 510, 1198, and/or IWC Wage
25 Order No. 5-2001 by not compensating Plaintiff and Class Members with proper overtime wages;

26 iii. Whether Defendants violated Labor Code section 226.7, 512, and/or IWC Wage
27 Order No. 5-2001 by not providing Plaintiff and Class Members with compliant duty-free meal
28 and/or rest breaks and failing to pay premiums owed thereon;

1 iv. Whether Defendants violated Labor Code section 226(a) by not furnishing Plaintiff
2 and Class Members with accurate itemized wage statements;

3 v. Whether Defendants failed to maintain in a central location at the respective plants
4 or establishment accurate payroll records in violation of Labor Code section 1174(d);

5 vi. Whether Defendants violated Labor Code sections 201 and 202 by failing to pay
6 Plaintiff and Class Members upon termination and/or resignation all wages earned;

7 vii. Whether Defendants are liable to Plaintiff and Class Members for waiting time
8 penalties under Labor Code section 203;

9 viii. Whether Defendants violated Labor Code sections 204 and 210 by not paying
10 Plaintiff and Class Members all their wages owed within seven (7) days of the close of payroll;

11 ix. Whether Defendants failed to reimburse Plaintiff and Class Members for all
12 necessary business expenses incurred;

13 x. Whether Defendants engaged in unfair business practices in violation of the Unfair
14 Competition Law, Business and Professions Code sections 17200, *et seq.*;

15 xi. Whether Plaintiff and Class Members are entitled to costs and attorneys' fees;

16 xii. Whether Plaintiff and Class Members are entitled to interest; and

17 xiii. The proper formula(s) for calculating damages, restitution, and interest owed to
18 Plaintiff and Class Members.

19 **C. Typicality**

20 56. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and Class
21 Members sustained injuries and damages arising out of and caused by Defendants' common
22 course of conduct in violation of laws and regulations that have the force and effect of law and
23 statutes, as alleged herein.

24 **D. Adequacy of Representation**

25 57. Plaintiff will fairly and adequately represent and protect the interests of the Class.
26 Counsel who represent Plaintiff and Class Members are competent and experienced in litigating
27 wage and hour class actions and have the financial resources to litigate the claims at issue.
28

1 **E. Superiority of Class Action**

2 58. A class action is superior to other available means for the fair and efficient
3 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
4 questions of law and fact common to the Class predominate over any questions affecting only
5 individual members of the Class. Each member of the Class has been damaged and is entitled to
6 recovery by reason of Defendants' illegal policy and/or practice of failing to properly pay
7 minimum wages and overtime, failing to provide timely duty-free meal periods, failing to
8 authorize and permit duty-free rest breaks, failing to maintain and provide accurate itemized wage
9 statements, failing to pay all wages owed in a timely manner, failing to pay all wages due upon
10 termination and/or resignation, unreimbursed business expenses, and engaging in unfair business
11 practices.

12 59. Class action treatment will allow those similarly situated persons to litigate their
13 claims in a manner that is most efficient and economical for the parties and the judicial system.
14 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
15 action that would preclude its maintenance as a class action.

16 **FIRST CAUSE OF ACTION**
17 **FAILURE TO PAY MINIMUM WAGES**
18 **Labor Code §§ 221, 350, 351, 1194, 1194.2, 1197, 1197.1, and IWC Wage Order No. 5-2001**
 [On Behalf of Plaintiff and the Class Against All Defendants]

19 60. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
20 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
21 fully alleged herein.

22 61. At all times relevant herein, Defendants did not pay, and continue to not pay,
23 Plaintiff and Class Members the legal minimum wage for all time worked. Among other things,
24 Plaintiff and Class Members were regularly required to perform pre-shift and post-shift activities
25 that were off-the-clock, as well as during meal periods. For example, Defendants failed to
26 compensate Plaintiff and Class Members for all hours actually worked, such as the work
27 performed by Plaintiff and Class Members before clocking in and after clocking out for the day.
28 Plaintiff and Class Members were required by Defendants to perform work such as prep work,

1 putting expiration dates on products, counting money, making pizzas, and taking calls before
2 clocking in for their shifts. Post-shift, Plaintiff and Class Members were required by Defendants to
3 perform tasks such as taking inventory and taking food orders. Plaintiff and Class Members are
4 not paid for the time before or after they clock out but remain working or under Defendants'
5 control. Due to Defendants' pressure to meet onerous quantity and efficiency of delivery demands
6 and their failure to provide adequate staffing, Plaintiff and Class Members were compelled to
7 perform work off-the-clock, resulting in uncompensated hours.

8 62. Moreover, Defendants had a policy and practice of requiring Plaintiff and the Class
9 Members whom he seeks to represent to share tips with those not entitled to the tips. For example,
10 Plaintiff was required to share the tips he earned with Defendants' employer agents, including
11 employees with management level authority. Specifically, tips were an itemized deduction on
12 Plaintiff's wage statements, but then simultaneously were line-item deductions. For example,
13 Plaintiff's wage statement included a row entitled "TipsReport" with an amount (*i.e.*, \$73.23) as a
14 line item in the "Gross Pay" section. But on that same wage statement, the entry simultaneously
15 re-appears in a section entitled "Other Deductions from Pay" where the "TipsReport" was
16 itemized again with the identical amount (*i.e.*, \$73.23) now depicted and, in fact, made as a
17 deduction. These deductions violate the mandate that "It shall be unlawful for any employer to
18 collect or receive from an employee any part of wages theretofore paid by said employer to said
19 employee." *See*, Labor Code § 221.

20 63. Moreover, Labor Code Section 351 states that,

21 No employer or agent shall collect, take, or receive any gratuity or a part thereof
22 that is paid, given to, or left for an employee by a patron, or deduct any amount
23 from wages due an employee on account of a gratuity, or require an employee to
24 credit the amount, or any part thereof, of a gratuity against and as a part of the
25 wages due the employee from the employer.

26 64. It also constitutes violation of minimum wage laws when said deductions drop the
27 hourly pay rate below minimum wage standards

28 65. Defendants' failure to pay Plaintiff and Class Members the minimum wage as
required is unlawful and violates Labor Code sections 221, 350, 351, 1194, 1194.2, 1197, 1197.1

1 and IWC Wage Order 5-2001. As a result, Plaintiff and Class Members are entitled to recover the
2 unpaid balance of their minimum wage compensation, as well as interest, costs, attorneys' fees,
3 and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

4 **SECOND CAUSE OF ACTION**
5 **FAILURE TO PAY OVERTIME WAGES**
6 **Labor Code §§ 510 and 1198 and IWC Wage Order No. 5-2001**
7 **[On Behalf of Plaintiff and the Class Against All Defendants]**

8 66. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
9 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
10 fully set forth herein.

11 67. Labor Code section 1198 and the applicable IWC Wage Order(s) provide that it is
12 unlawful to employ persons without compensating them at a rate of pay either time-and-one-half
13 or two-times that person's regular rate of pay, depending on the number of hours worked by the
14 person on a daily or weekly basis.

15 68. At all times relevant herein, Plaintiff and the Class regularly worked shifts that
16 consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a
17 workweek and were not paid proper overtime wages for all overtime hours worked as a result of,
18 but not limited to, systematic pressure on Plaintiff and Class Members to perform work off the
19 clock, including during meal periods, that resulted in unaccounted work hours.

20 69. Overtime pay is computed based on the regular rate of pay. The regular rate of pay
21 includes many different kinds of remuneration. Under California law, the determination of regular
22 rate of pay for purposes of determining overtime pay must include the employee's commissions,
23 bonuses, or other non-hourly compensation. *See* https://www.dir.ca.gov/dlse/FAQ_Overtime.htm

24 70. Labor Code section 200 defines "wages" as "all amounts for labor performed by
25 employees of every description, whether the amount is fixed or ascertained by the standard of
26 time, task, piece, commission basis or other methods of calculation."

27 71. During their employment, when Plaintiff and Class Members worked overtime,
28 Defendants failed to include all hours and/or compensation when calculating the regular rates of
pay used to figure overtime premiums.

1 72. As a result, Plaintiff and Class Members were underpaid overtime wages when they
2 worked in excess of eight (8) hours in any workday and/or forty (40) hours in a workweek.

3 73. Further, Labor Code section 510 codifies the right to overtime compensation at
4 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a
5 day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of
6 work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of
7 twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

8 74. Specifically, subdivision 3 of IWC Wage Order No. 5-2001 provides that an
9 employee shall not be employed more than eight (8) hours in any workday and/or more than forty
10 (40) hours in any workweek unless the employee receives one and one-half (1 ½) times such
11 employee's regular rate of pay for all hours worked over eight (8) hours in any workday and/or
12 more than forty (40) hours in any workweek. Further, an employer must compensate employees at
13 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in
14 a workday or more than eight (8) hours on the seventh consecutive day of work.

15 75. During the relevant time period, Plaintiff and Class Members worked in excess of
16 eight (8) hours in a workday, and/or in excess of forty (40) hours in a week, but were not properly
17 compensated at one-and-one-half times their regular hourly rate of pay for such hours. Because
18 Defendants owe Plaintiff and Class Members the legally required wages for unpaid hours that
19 were worked off-the-clock, as described in the above minimum wage cause of action, Plaintiff and
20 Class Members suffered damages in the amounts attributable to those overtime hours as well.

21 76. During the relevant time period, Defendants intentionally and willfully failed to
22 pay overtime wages owed to Plaintiff and Class Members.

23 77. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
24 overtime compensation, as required by California laws, violates the provisions of Labor Code
25 sections 510 and 1198, and is therefore unlawful.

26 78. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to
27 recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
Labor Code §§ 226.7, 512, and IWC Wage Order No. 5-2001
[On behalf of Plaintiff and the Class Against All Defendants]

79. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

80. Defendants regularly denied Plaintiff and Class Members meal periods that comply with Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001. The demands of the job duties of Plaintiff and the Class were such that they were prevented from taking compliant meal periods. Specifically, Plaintiff and Class Members worked off-the-clock and during their meal periods without receiving proper compensation and without entering into a lawful on-duty meal period agreement.

81. Labor Code section 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).” Labor Code section 512 and IWC Wage Order No. 5-2001 require employers to provide employees with thirty (30) minute uninterrupted and duty-free meal periods within the first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1042 (“Accordingly, first meal periods must start after no more than five hours.”) Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

82. Plaintiff took numerous meal periods after his fifth hour of work that were in violation of Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001. Further, Plaintiff and Class Members frequently had their meal breaks interrupted by management, customers, and dispatch and/or missed their meal breaks entirely in that they continued working and without entering into a lawful on-duty meal period agreement.

1 83. Moreover, Plaintiff and Class Members were not provided second meal periods for
2 shifts worked in excess of ten (10) hours, such conduct is in violation of Labor Code sections
3 226.7, 512, and IWC Wage Order No. 5-2001.

4 84. Having been subjected to late, short, interrupted, and missed meal periods, Plaintiff
5 and Class Members thus did not receive their statutorily mandated meal periods.

6 85. Under Labor Code section 226.7 and IWC Wage Order No. 5-2001, Plaintiff and
7 each Class Member is entitled to be paid one (1) hour of additional wages for each day he or she
8 was not provided with all required meal periods. Defendants regularly failed to pay Plaintiff and
9 Class Members the additional wages to which they were entitled for non-compliant meal periods.

10 86. As a result, Defendants are liable to Plaintiff and each Class Member for one (1)
11 hour of additional wages for each workday a compliant meal period was not provided.

12 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
14 **Labor Code § 226.7 and IWC Wage Order No. 5-2001**
 [On behalf of Plaintiff and the Class Against All Defendants]

15 87. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
16 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
17 fully alleged herein.

18 88. Under IWC Wage Order No. 5-2001, subdivision 12, an employer must authorize
19 and permit all employees to take ten (10) minute duty free rest periods for every major fraction of
20 four (4) hours worked. Labor Code section 226.7 provides “an employer shall not require an
21 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
22 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

23 89. Defendants are required by California law to authorize and permit breaks of ten
24 (10) uninterrupted minutes for each four (4) hours of work or major fraction thereof (i.e., more
25 than two hours). That is, the required number of rest breaks is equal to the number of work hours
26 divided by four, and if the work time is not evenly divisible by four, any remainder of two hours
27 or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class
28 Member’s work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the

1 work time is nine hours, the employee is still entitled to only two rest breaks. (There is an
2 exception: if the shift is under three and one-half hours, no rest break is required.) Each failure to
3 authorize rest breaks as so required is itself a violation of California's rest break laws.

4 90. Despite these legal requirements, Defendants failed to authorize Plaintiff and Class
5 Members to take timely, duty-free rest breaks regardless of whether they worked more than four
6 (4) hours in a workday.

7 91. Plaintiff and Class Members were also prohibited from leaving the premises during
8 their shifts. As a result, Defendants retained control over Plaintiff and the Class during their rest
9 breaks. Pursuant to Labor Code section 226.7 and subdivision 12(A) of IWC Wage Order 5-2001,
10 employees must be relieved of all duties during rest periods. *See, Augustus v. ABM Security*
11 *Services Inc.* (2016) 2 Cal. 5th 257, 273 (holding "that employers [must] relinquish any control
12 over how employees spend their break time, and relieve their employees of all duties."). *Id.* at 273.
13 On-duty rest periods are prohibited. Plaintiff and the Class thus did not receive timely and
14 compliant rest breaks.

15 92. Under Labor Code section 226.7 and IWC Wage Order No. 5-2001, Plaintiff and
16 each Class Member is entitled to be paid one (1) hour of wages for each day he or she was not
17 provided with all required rest breaks. Defendants regularly failed to pay Plaintiff and Class
18 Members the additional wages to which they were entitled for rest breaks that Defendants failed to
19 authorize and permit.

20 93. As a result, Defendants are liable to Plaintiff and each Class Member for one (1)
21 hour of additional wages for each workday they did not receive a compliant rest break.

22 **FIFTH CAUSE OF ACTION**
23 **FAILURE TO MAINTIAN AND PROVIDE ACCURATE WAGE STATEMENTS**
24 **Labor Code §§ 226 and 1174**
[On Behalf of Plaintiff and the Class Against All Defendants]

25 94. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
26 reference all of the allegations contained in the preceding paragraphs as though fully set forth
27 herein.

28 95. Labor Code section 226(a) requires employers, semi-monthly or at the time or each

1 payment of wages, to furnish employees an accurate itemized statement in writing showing:

- 2 (1) gross wages earned;
- 3 (2) total hours worked by the employee;
- 4 (3) the number of piece-rate units earned and any applicable piece rate if the
- 5 employee is paid on a piece rate;
- 6 (4) all deductions, provided that all deductions made on written orders of the
- 7 employee may be aggregated and shown as one item;
- 8 (5) net wages earned;
- 9 (6) the inclusive dates of the period for which the employee is paid;
- 10 (7) the name of the employee and only the last four digits of his or her social security
- 11 number or an employee identification number other than a social security number;
- 12 (8) the name and address of the legal entity that is the employer...; and
- 13 (9) all applicable hourly rates in effect during the pay period and the corresponding
- 14 number of hours worked at each hourly rate by the employee...

15 96. During the relevant time period, due to Defendants' failure to, *inter alia*, provide
16 Plaintiff and Class Members with lawful meal periods and rest breaks (and pay missed meal and
17 rest break premiums thereon), along with the failure to pay minimum and overtime wages and
18 reimburse for necessary business expenditures, means that the wage statements issued by
19 Defendants, at a minimum, do not indicate the correct amount of gross wages earned, the correct
20 total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in
21 effect during the pay period and the corresponding number of hours worked at each hourly rate in
22 violation of Labor Code section 226(a)(1), (2), (5), and (9).

23 97. An employee suffering injury as a result of a knowing and intentional failure by an
24 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
25 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one
26 hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not
27 exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of
28 costs and reasonable attorneys' fees.

1 98. The absence of accurate information on their wage statements has delayed timely
2 challenge to Defendants' unlawful pay practices, requires discovery and mathematical
3 computations to determine the amount of wages owed, causes difficulty and expense in attempting
4 to reconstruct time and pay records, and led to submission of inaccurate information about wages
5 and amounts deducted from wages to state and federal governmental agencies. Plaintiff would not
6 have had to engage in these efforts and incur these costs had Defendants provided accurate wage
7 statements. This also delayed Plaintiff's ability to demand and recover the underpayment of wages
8 from Defendants.

9 99. Thus, Plaintiff and Class Members have been injured by Defendants' intentional
10 violation of Labor Code section 226(a) because they were denied both their legal right to receive,
11 and their protected interest in receiving, accurate itemized wage statements.

12 100. Plaintiff and Class Members are thus entitled to recover from Defendants the
13 greater of their actual damages caused by Defendants' failure to comply with Labor Code section
14 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee
15 pursuant to Labor Code section 226(e), and/or any other allowable penalties including those
16 pursuant to Labor Code section 226.3.

17 101. Pursuant to Labor Code section 1174(d), an employer shall keep at a central
18 location in the state or at the plants or establishments at which employees are employed, payroll
19 records showing the hours worked daily by, and wages paid to, employees employed at the
20 respective plants or establishments. These records shall be kept in accordance with rules
21 established for this purpose by the commission, but in any case shall be kept on file for not less
22 than three (3) years.

23 102. Defendants have intentionally and willfully failed to keep accurate and complete
24 records showing the hours worked daily and wages paid to Plaintiff and Class Members. Thus,
25 Plaintiff and Class Members have been denied their legal right and protected interest in having
26 available at a central location at the plant or establishment where they are employed, accurate and
27 complete payroll records showing the hours worked daily by, and the wages paid to, employees at
28 those respective locations pursuant to Labor Code section 1174.

SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER
AND UPON SEPARATION OF EMPLOYMENT

Labor Code §§ 201, 202, 203, 204, and 210
[On behalf of Plaintiff and the Class Against All Defendants]

103. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

104. Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

105. Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) work days.

106. As alleged herein and above, Defendants' failure to pay wages was willful in that Defendants knew wages (including overtime and meal/rest break premiums) and unreimbursed business expenses were owed to Plaintiff and Class Members, but failed to pay said wages and expenses, at the time of termination, or within 72 hours of resignation, thus entitling Plaintiff and Class Members to penalties under Labor Code section 203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

107. Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and 15th day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than

1 those wages due upon termination of an employee, are due and payable between the 1st and 10th
2 day of the following month. Labor Code section 204 also requires that all wages earned for labor
3 in excess of the normal work period shall be paid no later than the payday for the next regular
4 payroll period.

5 108. The requirements of Labor Code section 204 shall be deemed satisfied by the
6 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
7 than seven (7) calendar days following the close of the payroll period when the wages were
8 earned.

9 109. During the relevant time period, Defendants failed to pay Plaintiff and Class
10 Members all wages due to them within any time period specified by Labor Code section 204
11 including, but not limited to, unpaid minimum and overtime wages, along with unpaid meal and
12 rest break premiums.

13 110. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each
14 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
15 imposes upon Defendants for each subsequent violation, or any willful or intentional violation, of
16 failure to pay the wages of each employee a penalty of \$200.00, plus 25 percent of the amount
17 unlawfully withheld.

18 111. Pursuant to Labor Code sections 218.5 and 218.6, along with California Civil Code
19 sections 3287(b) and 3289, Plaintiff requests that the Court award reasonable attorneys' fees and
20 costs incurred by him in this action, along with pre-judgment interest on all amounts recovered
21 herein, as well as any statutory penalties Defendants may owe under the California Labor Code
22 and/or any other statute.

23 **SEVENTH CAUSE OF ACTION**
24 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
25 **Business & Professions Code § 2802**
[On Behalf of Plaintiff and the Class Against All Defendants]

26 112. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
27 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
28 fully alleged herein.

1 113. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence
3 of the discharge of his or her duties.” “Necessary” business expenses is defined to include all
4 “reasonable expenses.” *See*, Labor Code § 2802(c).

5 114. Plaintiff and Class Members incurred necessary business expenses (*i.e.* personal
6 cell phone usage and mileage associated with use of personal vehicle) in order to make deliveries
7 and in discharging their work-related duties for Defendants. However, Defendants did not pay
8 fully, or at all, for these necessary business expenses incurred by Plaintiff and Class Members.

9 115. Defendants’ failure to pay for or reimburse the work-related business expenses of
10 Plaintiff and Class Members violated non-waivable rights secured to Plaintiff and Class Members
11 by Labor Code sections 2800 and 2802.

12 116. Plaintiff and Class Members are entitled to reimbursement for these necessary
13 expenditures, plus interest pursuant to Labor Code section 2802(b) and attorneys’ fees and costs
14 under Labor Code section 2802(c).

15 **EIGHTH CAUSE OF ACTION**
16 **UNFAIR COMPETITION LAW VIOLATIONS**
17 **Cal. Business & Professions Code §§ 17200, *et seq.***
[On Behalf of Plaintiff and the Class Against All Defendants]

18 117. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
19 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
20 fully set forth herein.

21 118. The Unfair Competition Law (“UCL”), California Business & Professions Code
22 sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business
23 & Professions Code section 17204 allows “any person who has suffered injury in fact and has lost
24 money or property” to prosecute a civil action for violation of the UCL. Such a person may bring
25 such an action on behalf of himself or herself and others similarly situated who are affected by the
26 unlawful, unfair, or fraudulent business practice.

27 119. The statute of limitations for a claim under the UCL is four (4) years. Accordingly,
28 the actionable period for this cause of action is four (4) years prior to the filing of this Complaint

1 through the present, and on-going until the violations are corrected, and/or the Class is certified.

2 120. Labor Code section 90.5(a) states that it is the public policy of California to enforce
3 vigorously minimum labor standards in order to ensure employees are not required to work under
4 substandard and unlawful conditions, and to protect employers who comply with the law from
5 those who attempt to gain competitive advantage at the expense of their workers by failing to
6 comply with minimum labor standards.

7 121. A violation of Business and Professions Code sections 17200, *et seq.* may be
8 predicated upon the violation of any state or federal law. Defendants' policies and/or practices
9 have violated state law in at least the following respects:

- 10 (a) Requiring Plaintiff and Class Members to work without paying them
11 minimum wage for all hours worked in violation of Labor Code sections
12 221, 350, 351, 1194, 1194.2, 1197, and IWC Wage Order No. 5-2001;
- 13 (b) Requiring Plaintiff and Class Members to work overtime without paying
14 them proper compensation in violation of Labor Code sections 510, 1198,
15 and IWC Wage Order No. 5-2001;
- 16 (c) Failing to provide timely duty-free meal periods and failing to authorize and
17 permit duty-free rest breaks to Plaintiff and Class Members in violation of
18 Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001;
- 19 (d) Failing to maintain and provide Plaintiff and Class Members with accurate
20 itemized wage statements in violation of Labor Code sections 226 and
21 1174;
- 22 (e) Failing to timely pay all wages to Plaintiff and Class Members during their
23 employment and upon separation of employment in violation of Labor Code
24 sections 201, 202, 203, 204, and 210; and
- 25 (f) Failing to reimburse Plaintiff and Class Members for necessary business
26 expenses incurred in violation of Labor Code sections 2800 and 2802.

27 Thus, Defendants engaged in unlawful competition in violation of sections 17200, *et seq.* of the
28 California Business & Professions Code by violating sections 201, 202, 203, 204, 210, 221, 226,

1 226.7, 350, 351, 510, 512, 1174, 1194, 1194.2, 1197, 1198, 2800, and 2802 of the Labor Code and
2 IWC Wage Order No. 5-2001.

3 122. As a direct and proximate result of Defendants' unlawful business practices,
4 Plaintiff and Class Members have suffered economic injuries because Defendants' conduct has
5 damaged Plaintiff and Class Members by wrongfully denying them all straight-time and overtime
6 wages owed for all hours worked, failing to pay all meal and rest breaks premiums owed, while
7 supplying them inaccurate and misleading wage statements, and failing to pay all wages owed in a
8 timely manner and upon separation. Such conduct is substantially injurious to Plaintiff and Class
9 Members.

10 123. Additionally, Defendants intentionally avoided paying Plaintiff and Class
11 Members' wages and monies, thereby creating for Defendants an artificially lower cost of doing
12 business in order to undercut their competitors and establish a greater foothold in the marketplace.
13 Through their actions alleged herein, Defendants have engaged in unfair competition within the
14 meaning of section 17200 of the California Business & Professions Code.

15 124. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and
16 practices. Plaintiff and Class Members are entitled to monetary relief pursuant to Business &
17 Professions Code sections 17203 and 17208 for all unpaid wages, including underpaid overtime
18 compensation, from at least four (4) years prior to the filing of this Complaint through the date of
19 such restitution, at rates specified by law. Defendants should be required to disgorge all the profits
20 and gains they have reaped and restore such profits and gains to Plaintiff and Class Members,
21 from whom they were unlawfully taken.

22 125. Defendants' course of conduct, acts and practices in violation of the California laws
23 mentioned above constitute independent violations of sections 17200, *et seq.* of the California
24 Business & Professions Code.

25 126. Plaintiff and Class Members are entitled to enforce all applicable penalty
26 provisions of the Labor Code pursuant to Business & Professions Code section 17202.

27 127. Plaintiff has assumed the responsibility of enforcement of the laws and public
28 policies specified herein by suing on behalf of himself and Class Members previously or presently

1 employed by Defendants in California. Plaintiff's success in this action will enforce important
2 rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in
3 the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate
4 pursuant to Code of Civil Procedure section 1021.5.

5 **NINTH CAUSE OF ACTION**
6 **PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**
7 **Cal. Labor Code §§ 2698, *et seq.***
8 **[On Behalf of Plaintiff and Aggrieved Employees Against All Defendants]**

9 128. Plaintiff, on behalf of himself and Aggrieved Employees, re-alleges and
10 incorporates by reference all of the allegations contained in the previous paragraphs of this
11 Complaint as though fully set forth herein.

12 129. Plaintiff, on behalf of himself and Aggrieved Employees, brings this representative
13 action against Defendants to recover wages and penalties pursuant to the Private Attorneys
14 General Act of 2004 ("PAGA"), Labor Code section 2698, *et seq.*

15 130. Based on the above allegations incorporated by reference, Defendants have violated
16 Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194,
17 1194.2, 1197, 1197.1, 1198, 2800, and 2802, as well as IWC Wage Order No. 5-2001.

18 131. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
19 section 2699 because of Defendants' violations of Labor Code sections 201, 202, 203, 204, 210,
20 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, as
21 well as IWC Wage Order No. 5-2001.

22 132. Under Labor Code sections 2699(a), (f), and 2699.5, for each such violation,
23 Plaintiff and Aggrieved Employees are entitled to penalties in an amount to be shown at the time
24 of trial subject to the following formula:

25 \$100.00 for the initial violation per employee per pay period; and

26 \$200.00 for each subsequent violation per employee per pay period.

27 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
28 Development Agency ("LWDA") and twenty-five percent (25%) to the affected employees. These

1 penalties may be stacked separately for each of Defendants' violations of the California Labor
2 Code.

3 133. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate
4 itemized wage statements in compliance with Labor Code section 226(a). Plaintiff seeks separate
5 PAGA penalties for Defendants' violations of Labor Code section 226(a) and (e). *Lopez v. Friant*
6 & Assocs., LLC (2017) 15 Cal. App. 5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11,
7 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant*
8 that "[t]o the extent the Court's Order [granting summary judgment to *Home Depot*] was
9 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs' derivative
10 claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read to grant
11 summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section
12 226(a)."]]. For violations of Labor Code section 226(a), Plaintiff seeks the default penalty
13 provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny employer
14 who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two
15 hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
16 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer
17 fails to provide the employee a wage deduction statement or fails to keep the required records in
18 subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law
19 Plaintiff and Aggrieved Employees are entitled to recover penalties for violations of Labor Code
20 section 226.3 and seek default PAGA penalties for each of Defendants' numerous violations of
21 Labor Code section 226(a).

22 134. Labor Code section 210 provides that "[i]n addition to, an entirely independent and
23 apart from, any other penalty provided in this article, every person who fails to pay the wages of
24 each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1)
25 [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
26 [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
27 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." As a
28

1 result of the faulty compensation policies and/or practices, Plaintiff and Aggrieved Employees are
2 also entitled to recover penalties under Labor Code section 210 through PAGA.

3 135. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
4 liquidated damages, in the amount of: “(1) [f]or any initial violation that is intentionally
5 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for
6 which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific
7 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
8 which the employee is underpaid regardless of whether the initial violation is intentionally
9 committed.” Accordingly, through PAGA and to the extent permitted by law, Plaintiff and
10 Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

11 136. Plaintiff has fully and completely exhausted his administrative remedies under
12 PAGA prior to proceeding with the PAGA claim. On August 24, 2020, Plaintiff gave written
13 notice to the LWDA and by certified mail to Defendants of the specific code provisions alleged to
14 have been violated and paid the required filing fee.

15 137. The LWDA has not provided notice of its intent to investigate the alleged
16 violations within 65 calendar days of the postmark date of the aforesaid letter. By operation of the
17 law, Plaintiff is entitled to commence this cause of action in the California Superior Court as a
18 representative action under PAGA.

19 138. Plaintiff, as a personal representative of the general public, will and does seek to
20 recover any and all penalties for each and every violation shown to exist or to have occurred
21 during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring
22 an action, in an amount according to proof, as to those penalties that are otherwise only available
23 to public agency enforcement actions. Funds recovered will be distributed in accordance with the
24 PAGA, with at least 75 percent of the penalties recovered being reimbursed to the State of
25 California and the LWDA.

26 139. Plaintiff was compelled to retain the services of counsel to file this action to protect
27 his interests and those of Aggrieved Employees, and to assess and collect the wages and penalties
28

1 owed by Defendants. Plaintiff has and/or may in the future thereby incur attorneys' fees and costs,
2 and which he is entitled to recover under Labor Code section 2699(g)(1).

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff prays for the following relief:

- 5 1. For an order certifying this action as a class action;
- 6 2. For compensatory damages in the amount of the unpaid minimum wage and
7 overtime compensation for work performed by Plaintiff and Employees, as may be proven;
- 8 3. For liquidated damages in the amount equal to the unpaid minimum wage and
9 interest thereon, as may be proven;
- 10 4. For compensatory damages in the amount of the hourly wage made by Plaintiff and
11 Employees for each noncompliant meal period for which premium pay was not paid, as may be
12 proven;
- 13 5. For compensatory damages in the amount of the hourly wage made by Plaintiff and
14 Employees for each day of noncompliant rest breaks for which premium pay was not paid, as may
15 be proven;
- 16 6. For actual damages and/or penalties pursuant to Labor Code section 226(e) for
17 Plaintiff and Employees, as may be proven;
- 18 7. For penalties pursuant to Labor Code section 203 for Plaintiff and Employees who
19 quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as may be
20 proven;
- 21 8. For reimbursement of business expenditures, as may be proven;
- 22 9. For restitution for unfair competition pursuant to Business & Professions Code
23 sections 17200, *et seq.*, including disgorgement of profits, as may be proven;
- 24 10. For a civil penalty in the amount of \$100 for the initial violation and \$200 for each
25 subsequent violation as specified in section 2699(f)(2) of the Labor Code in the representative
26 action brought on behalf of Plaintiff and Aggrieved Employees pursuant the Private Attorneys
27 General Act of 2004;
- 28 11. For all civil penalties available under section 210 of the Labor Code and the Private

1 Attorneys General Act of 2004;

2 12. For all civil penalties available under section 226.3 of the Labor Code and the
3 Private Attorneys General Act of 2004;

4 13. For all civil penalties available under section 1174.5 of the Labor Code and the
5 Private Attorneys General Act of 2004;

6 14. For all civil penalties available under section 1197.1 of the Labor Code and the
7 Private Attorneys General Act of 2004;

8 15. For an order enjoining Defendants and their agents, servants, and employees, and
9 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
10 duties adumbrated in this complaint;

11 16. For an award of pre-judgment and post-judgment interest;

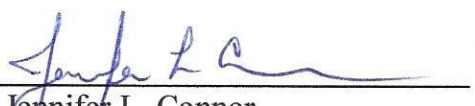
12 17. For an award providing for the payment of the costs of this suit;

13 18. For an award of attorneys' fees, to the extent provided by law; and

14 19. For such other and further relief as the Court may deem proper and just.

15
16 Dated: December 21, 2020

Respectfully submitted,
COUNSELONE, P.C.

17
18
19 By: 

Jennifer L. Connor
Anthony J. Orshansky
Attorneys for Plaintiff

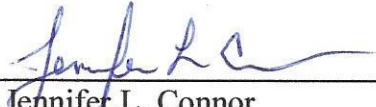
DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

Dated: December 21, 2020

Respectfully submitted,
COUNSELONE, P.C.

By: _____


Jennifer L. Connor
Anthony J. Orshansky
Attorneys for Plaintiff