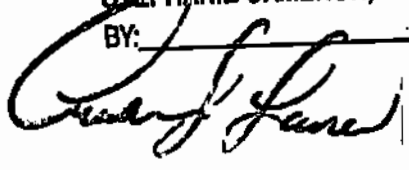


FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

DEC 07 2020

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Attorneys for Plaintiff, ROBERT LEIVA,
 on behalf of himself and all others similarly situated
 and aggrieved

CASE MANAGEMENT CONFERENCE

Hearing Date: 4-8-2021
 Time: 8:30am
 Department: 7

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

ROBERT LEIVA, on behalf of himself and all
 others similarly situated and aggrieved,

Plaintiffs,

v.

PIZZA PIE IN THE SKY, INC., d.b.a.
 DOMINO'S PIZZA, a California corporation;
 MATTHEW JAMES VIZZOLINI, an
 individual; and DOES 1 through 100,
 inclusive,

Defendants.

CASE NO. **285203**

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF;
4. FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF;
5. FAILURE TO PAY DUTY WAGES AT TERMINATION;
6. WAGE STATEMENT VIOLATIONS;
7. VIOLATIONS OF LABOR CODE § 2802;
8. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*
9. PENALTIES PER LABOR CODE § 210;
10. PENALTIES PER LABOR CODE § 226.3;
11. VIOLATION OF LABOR CODE § 558;
12. VIOLATION OF LABOR CODE § 1197.1; and
13. PENALTIES PER LABOR CODE § 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

COMES NOW plaintiff ROBERT LEIVA ("Plaintiff"), on behalf of himself and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, and a representative action, pursuant to the Labor code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA") against PIZZA PIE IN THE SKY, INC., doing business as Domino's Pizza, a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("PIZZA PIE"), and MATTHEW JAMES VIZZOLINI, an individual ("VIZZOLINI" and collectively with PIZZA PIE and DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and former similarly situated employees employed by or formerly employed by Defendants ("Class Members")

PARTIES

A. Plaintiff

2. Plaintiff, ROBERT LEIVA, is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, cleaning, providing customer service, and preparing and delivering food. Plaintiff began working for Defendants in approximately March of 2014 and worked through approximately April of 2020.

B. Defendants

3. Plaintiff is informed and believes and based thereon alleges that defendant PIZZA PIE, doing business as Domino's Pizza, is and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Tulare, State of California.

4. Plaintiff is informed and believes and based thereon alleges that defendant VIZZOLINI is, and at all times relevant hereto was, an individual residing in California and the owner of PIZZA PIE, and DOES 1 through 50, as further defined below, and the owner of PIZZA

1 PIE. Plaintiff is further informed and believes and based thereon alleges that VIZZOLINI, in his
2 capacity as the owner, director, officer, or managing agent violated, or caused to be violated, the
3 above-referenced and below-referenced Labor Code provisions in violation of Labor Code section

4 5. The true names and capacities, whether individual, corporate, associate, or
5 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
6 Plaintiffs, who therefore sues defendants by such fictitious names under Code of Civil Procedure
7 section 474. Plaintiffs are informed and believe and based thereon allege that each of the
8 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
9 referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true
10 names and capacities of the defendants designated hereinafter as DOES when such identities
11 become known. Plaintiffs are informed and believe, and based thereon allege, that each defendant
12 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a
13 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
14 defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter,
15 reference is made to "Defendants," it shall include PIZZA PIE, VIZZOLINI, and any of their
16 parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1
17 through 100 identified herein.

18 JOINT LIABILITY ALLEGATIONS

19 6. Plaintiff is informed and believes and based thereon alleges that all the times
20 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
21 representative, joint venture or co-conspirator of each of the other defendants, either actually or
22 ostensibly, and in doing the things alleged herein acted within the course and scope of such
23 agency, employment, joint venture, and conspiracy.

24 7. All of the acts and conduct described herein of each and every corporate defendant
25 was duly authorized, ordered, and directed by the respective and collective defendant corporate
26 employers, and the officers and management-level employees of said corporate employers. In
27 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
28 their said employees, agents, and representatives, and each of them; and upon completion of the

1 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
2 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
3 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
4 aforementioned corporate employees, agents and representatives.

5 8. Plaintiff is further informed and believes and based thereon alleges that
6 VIZZOLINI violated, or caused to be violated, the above-referenced and below-referenced Labor
7 Code provisions in violation of Labor Code section 558.1.

8 9. Plaintiff is informed and believes, and based thereon alleges, that there exists such
9 a unity of interest and ownership between Defendants, and each of them, that their individuality
10 and separateness have ceased to exist.

11 10. Plaintiff is informed and believes, and based thereon alleges that despite the
12 formation of the purported corporate existence of PIZZA PIE and DOES 1 through 50, inclusive
13 (the "Alter Ego Defendants"), they, and each of them, are one and the same with VIZZOLINI and
14 DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to, the
15 following reasons:

16 A. The Alter Ego Defendants are completely dominated and controlled by the
17 Individual Defendants who personally committed the wrongful and illegal acts and
18 violated the laws as set forth in this Complaint, and who has hidden and currently
19 hide behind the Alter Ego Defendants to perpetrate frauds, circumvent statutes, or
20 accomplish some other wrongful or inequitable purpose;

21 B. The Individual Defendants derive actual and significant monetary benefits by and
22 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
23 Defendants as the funding source for the Individual Defendants' own personal
24 expenditures;

25 C. Plaintiff is informed and believes and thereon alleges that the Individual
26 Defendants and the Alter Ego Defendants, while really one and the same, were
27 segregated to appear as though separate and distinct for purposes of perpetrating a
28 fraud, circumventing a statute, or accomplishing some other wrongful or

1 inequitable purpose;

2 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
3 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
4 mentioned herein were, so mixed and intermingled that the same cannot reasonably
5 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
6 are, and at all relevant times mentioned herein were, used by the Individual
7 Defendants as mere shells and conduits for the conduct of certain of their, and each
8 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
9 herein were, the alter egos of the Individual Defendants;

10 E. The recognition of the separate existence of the Individual Defendants and the
11 Alter Ego Defendants would promote injustice insofar that it would permit
12 defendants to insulate themselves from liability to Plaintiff for violations of the
13 Civil Code, Labor Code, and other statutory violations. The corporate existence of
14 these defendants should thus be disregarded in equity and for the ends of justice
15 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein;

16 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
17 Defendants (and vice versa), and the fiction of their separate corporate existence
18 must be disregarded;

19 11. As a result of the aforementioned facts, Plaintiff is informed and believes, and
20 based thereon alleges that Defendants, and each of them, are joint employers.

21 **JURISDICTION**

22 12. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
23 of Civil Procedure section 410.10.

24 13. Venue is proper in Tulare County, California pursuant to Code of Civil Procedure
25 sections 392, *et seq.* because, among other things, Tulare County is where: the causes of action
26 complained of herein arose; the county in which the employment relationship began; the county in
27 which performance of the employment contract, or part of it, between Plaintiff and Defendants
28 was due to be performed; the county in which the employment contract, or part of it, between

1 Plaintiff and Defendants was actually performed; and the county in which the employment
2 contract between Plaintiff and Defendants, or part of it, was breached by Defendants; and the
3 county in which Defendants, or some of them, reside. Finally, venue is proper in Tulare County as
4 the unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated and
5 aggrieved within Tulare County and the State of California, and because Defendants employ
6 numerous Class Members in Tulare County and the State of California.

7 14. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by
8 Defendants during the applicable statutory period and suffered one or more of the Labor Code
9 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term
10 "civil penalty" is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor
11 Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.*
12 ("PAGA") plus reasonable attorneys' fees and costs, for Plaintiff and all other aggrieved current
13 and former employees of Defendants during the Civil Penalty Period.

14 15. Specifically, Plaintiff seeks to recover PAGA civil penalties through a
15 representative action permitted by PAGA and the California Supreme Court in, among other
16 authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities,
17 class certification of the PAGA allegations described herein is not required.

18 16. During the period beginning one (1) year preceding the provision of notice to the
19 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
20 Defendants violated, *inter alia*, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7,
21 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699, 2802,
22 and 2810.5, among others.

23 17. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
24 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees
25 within the statutory period, to bring a civil action to recover civil penalties pursuant to the
26 procedures specified in Labor Code section 2699.3.

27 18. Plaintiff has complied with the procedures for bringing suit specified in Labor
28 Code section 2699.3. On or around August 10, 2020, Plaintiff gave written notice to the Labor

1 and Workforce Development Agency ("LWDA") and to Defendants of the specified provisions of
2 the Labor Code alleged to have been violated by it. The LWDA did not provide notice of its
3 intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the
4 August 10, 2020 postmarked date of the herein-described notice sent by Plaintiff to the LWDA
5 and Defendants.

6 FACTUAL BACKGROUND

7 19. For at least four (4) years prior to the filing of this action and continuing to the
8 present, Defendants have failed to pay all overtime wages due to Plaintiff and Class Members, or
9 some of them, in violation of California state wage and hour laws as a result of, without limitation,
10 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and
11 seven consecutive work days in a work week without being properly compensated for hours
12 worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week,
13 and/or hours worked on the seventh consecutive work day in a work week by, among other things,
14 failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of
15 pay; engaging, suffering, or permitting employees to work off the clock, including by failing to
16 pay for time spent donning and doffing uniforms; auto-deducting meal periods; editing and/or
17 manipulation of time entries to show less hours than actually worked; and for paying straight pay
18 instead of overtime pay.

19 20. For at least four (4) years prior to the filing of this Action and continuing to the
20 present, Defendants have failed to pay minimum wages to Plaintiff and Class Members, or some
21 of them, in violation of California state wage and hour laws as a result of, among other things,
22 failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of
23 pay; engaging, suffering, or permitting employees to work off the clock, including by failing to
24 pay for time spent donning and doffing uniforms; auto-deducting meal periods; editing and/or
25 manipulation of time entries to show less hours than actually worked; and failing to pay split shift
26 premiums.

27 / / /
28 / / /

21. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have failed to provide Plaintiff and Class Members, or some of them, with a full, timely thirty (30) minute, uninterrupted meal period for days on which the employees worked more than five (5) hours in a workday; a second thirty (30) minute, uninterrupted, and timely meal period for days on which employees worked in excess of ten (10) hours in a workday; and/or compensation for such unprovided meal periods as required by California wage and hour laws.

22. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have failed to authorize and permit Plaintiff and Class Members, or some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failed to provide compensation for such unprovided rest periods as required by California wage and hour law.

23. For at least three (3) years prior to the filing of this action and continuing to the present, Defendants have failed to pay Plaintiff and Class Members, or some of them, the full amount of their wages owed to them upon termination and/or resignation as required by Labor Code sections 201 and 202, including for, without limitation, failing to pay overtime wages, minimum wages, and a premium wage.

24. For at least one (1) year prior to the filing of this Action and continuing to the present, Defendants have failed to comply with Labor Code section 226, subdivision (a) by not providing itemized wage statements accurately showing, including but not limited to, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period; the corresponding number of hours worked at each hourly rate; and other such information as required by Labor Code section 226, subdivision (a).

25. For at least three (3) years prior to the filing of this action and continuing to the present, Defendants have failed to reimburse Plaintiff and similarly situated employees and aggrieved, during the relevant liability periods, as required under Labor Code section 2802 for the costs incurred in the purchase and maintenance of cellular phones for work purposes and reimbursement for mileage, in furtherance of their work duties, in violation of, among other authorities, Labor Code section 2802.

28. Plaintiff and other similarly situated and aggrieved employees or former employees at all times pertinent hereto were not exempt from the payment of overtime wages, minimum wages, payment of premium wages for missed rest periods, waiting time penalties, wage statement penalties, reimbursement for expenses incurred in furtherance of work duties, and other such provisions of California law, and the implementing rules and regulations of the IWC California Wage Orders.

29. Plaintiff brings this action on behalf of himself and all others similarly situated, as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current and former non-exempt employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Class Members").

/ / /

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

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

7 A. Numerosity

8 32. The potential Class Members as defined are so numerous that joinder of all the
9 members of the Class is impracticable. While the precise number of Class Members has not been
10 determined yet, Plaintiff is informed and believes that there are at least forty-five (45) Class
11 Members employed by Defendants within the State of California, which may be increased due to
12 employee turnover. Plaintiff alleges Defendants' employment records would provide information
13 as to the number and location of all Class Members. Joinder of all members of the proposed Class
14 is not practicable.

15 B. Commonality

16 33. There are questions of law and fact common to Class Members. These common
17 questions include, but are not limited to:

- 18 (a) Did Defendants violate Labor Code sections 510, 1194, and 1197 by their
19 failure to adequately track, and therefore adequately pay, for all minutes
20 Class Members were suffered, engaged, or permitted to work?
- 21 (b) Did Defendants violate Labor Code sections 510, 1194, and 1197 by their
22 failure to pay split shift premiums when Class Members worked split shifts?
- 23 (c) Did Defendants violate Labor Code sections 510 and 1194 by failing to pay
24 overtime at the proper rate of pay?
- 25 (d) Are Class Members entitled to liquidated damages under Labor Code
26 section 1194.2 for Defendants' failure to pay minimum wages for all hours
27 worked?
- 28 (e) Did Defendants violate Labor Code section 512 by not providing Class

- 1 Members with compliant meal periods?
- 2 (f) Did Defendants violate Labor Code section 226.7 by failing to providing
- 3 Class Members with premium wages for non-compliant meal periods?
- 4 (g) Did Defendants violate applicable Wage Orders by not providing Class
- 5 Members with compliant rest periods?
- 6 (h) Did Defendants violate Labor Code section 226.7 by failing to provide
- 7 Class Members with premium wages for non-compliant rest periods?
- 8 (i) Did Defendants violate Labor Code sections 201 and 202 by failing to pay
- 9 Class Members upon termination or resignation all wages earned?
- 10 (j) Are Defendants liable to Class Members for waiting time penalties under
- 11 Labor Code section 203?
- 12 (k) Did Defendants violate Labor Code section 226, subdivision (a) by not
- 13 furnishing Class Members with accurate wage statements?
- 14 (l) Did Defendants violate Labor Code section 2802 by requiring employees to,
- 15 incur expenses from cellular phone use and mileage for work purposes?
- 16 (m) Did Defendants violate the Unfair Competition Law, Business and
- 17 Professions Code section 17200, *et seq.*, by their unlawful practices as
- 18 alleged herein?
- 19 (n) Are Class Members entitled to restitution of wages under Business and
- 20 Professions Code section 17203?
- 21 (o) Are Class Members entitled to costs and attorneys' fees?
- 22 (p) Are Class Members entitled to interest?

23 C. Typicality

24 34. The claims of Plaintiff herein alleged are typical of those claims which could be

25 alleged by any Class members, and the relief sought is typical of the relief which would be sought

26 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and

27 damages arising out of and caused by Defendants' common course of conduct in violation of laws

28 and regulations that have the force and effect of law and statutes as alleged herein.

1 45. At all relevant times, Plaintiff and Class Members were employees of Defendants
2 covered by Labor Code section 1197 and applicable Wage Orders.

3 46. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
4 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
5 Defendants' control.

6 47. Defendants failed to pay Plaintiff and Class Members minimum wages for all
7 minutes worked as a result of, including but not limited to, Defendants failing to accurately track
8 and/or pay for all hours actually worked at the proper overtime rate of pay; engaging, suffering, or
9 permitting employees to work off the clock, including by failing to pay for time spent donning and
10 doffing uniforms; auto-deducting meal periods; editing and/or manipulation of time entries to
11 show less hours than actually worked; and for failing to pay for split-shift premiums.

12 48. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
13 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
14 for all minutes worked or otherwise due.

15 49. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
16 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled
17 to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
18 damages, reasonable attorneys' fees and costs of suit.

19 **THIRD CAUSE OF ACTION**

20 **(Failure to Provide Meal Periods – Against All Defendants)**

21 50. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs of this Complaint as though fully set forth hereat.

23 51. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer
24 shall employ an employee for a work period of more than five (5) hours without a timely meal
25 break of not less than thirty (30) minutes in which the employee is relieved of all of his or her
26 duties. Furthermore, no employer shall employ an employee for a work period of more than ten
27 (10) hours per day without providing the employee with a second timely meal period of not less
28 than thirty (30) minutes in which the employee is relieved of all of his or her duties.

1 52. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
2 with a meal period as provided in the applicable Wage Order of the Industrial Welfare
3 Commission, the employer shall pay the employee one (1) additional hour of pay at the
4 employee's regular rate of compensation for each workday that the meal period is not provided.

5 53. Plaintiff and Class Members were, during the relevant time period, not provided
6 with compliant meal periods as contemplated under the law.

7 54. By their failure to provide Plaintiff and Class Members with the meal periods
8 contemplated by Labor Code section 512, among other California authorities, and failure to
9 provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
10 violated the provisions of Labor Code section 512 and applicable Wage Orders.

11 55. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
12 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
13 owed for missed, untimely, interrupted and/or incomplete meal periods.

14 56. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
15 additional pay for missed meal periods, in amounts to be determined at trial, and are entitled to
16 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under
17 Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil
18 Code section 3287.

19 **FOURTH CAUSE OF ACTION**

20 **(Failure to Provide Rest Periods ~ Against All Defendants)**

21 57. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs of this Complaint as though fully set forth hereat.

23 58. California law and applicable Wage Orders require that employers "authorize and
24 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
25 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-
26 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
27 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20)
28 minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be

1 provided thirty (30) minutes of paid rest period.

2 59. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
3 with a meal period or rest period as provided in the applicable Wage Order of the Industrial
4 Welfare Commission, the employer shall pay the employee one additional hour of pay at the
5 employee's regular rate of compensation for each work day that the rest period is not provided.

6 60. By their failure to provide Plaintiff and Class Members with the rest periods
7 contemplated by California law, and failure to provide compensation for such unprovided rest
8 periods, as alleged above, Defendants willfully violated the provisions of Labor Code section
9 226.7 and applicable Wage Orders.

10 61. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
11 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
12 owed for missed rest periods.

13 62. Pursuant to Labor Code section 226.7, Code of Civil Procedure section 1032, and
14 Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of
15 their premium pay for unprovided rest periods, interest and penalties thereon, and costs of suit.

16 **FIFTH CAUSE OF ACTION**

17 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

18 63. Plaintiff realleges and incorporates by reference all of the allegations contained in
19 the preceding paragraphs of this Complaint as though fully set forth heretofore.

20 64. At all relevant times, Plaintiff and Class Members were employees of Defendants
21 covered by Labor Code sections 201 and 202.

22 65. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
23 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
24 Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge
25 immediately upon termination. Employees who resigned were entitled to payment of all wages
26 earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they
27 gave 72 hours' previous notice, they were entitled to payment of all wages earned and unpaid at
28 the time of resignation.

1 66. Plaintiff is informed and believes, and based thereon alleges, that Defendants, due
2 to the failure to provide wages as mentioned above, failed to pay Plaintiff and Class Members all
3 wages earned and unpaid, including overtime wages and minimum wages, prior to resignation or
4 termination in accordance with Labor Code sections 201 or 202.

5 67. Defendants' failure to pay Plaintiff and Class Members all wages earned prior to
6 termination in accordance with Labor Code sections 201 and 202 was willful. Defendants had the
7 ability to pay all wages earned by Plaintiff and Class Members at the time of termination in
8 accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices
9 incompatible with the requirements of Labor Code sections 201 and 202.

10 68. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
11 waiting time penalties from the date their earned and unpaid wages were due, upon termination,
12 until paid, up to a maximum of thirty (30) days.

13 69. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
14 suffered damages in an amount subject to proof, to the extent they were not paid for all wages
15 earned prior to termination.

16 70. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
17 suffered damages in an amount subject to proof, to the extent they were not paid all waiting time
18 penalties owed under Labor Code section 203.

19 71. Pursuant to Labor Code sections 203, 218, 218.5, 218.6, Code of Civil Procedure
20 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled
21 to recover waiting time penalties under Labor Code section 203, reasonable attorneys' fees on
22 their unpaid wages, and costs of suit.

23 72. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
24 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
25 waiting time penalties, interest, and other costs of suit on the waiting time penalties, as well.

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28 ///

SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements – Against All Defendants)

73. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

74. At all relevant times, Plaintiff and Class Members were employees of Defendants covered by Labor Code section 226.

75. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement that accurately reflects, among other things, gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

76. Plaintiff is informed and believe, and based thereon alleges, that at all relevant times, Defendants, due to the failure to pay due wages for the reasons described herein, also failed to issue wage statements that accurately set out amounts due to, among other things, gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

77. Thus, Defendants failed to provide Plaintiff and Class Members accurate itemized wage statements in accordance with Labor Code section 226, subdivision (a).

78. Defendants' failure to provide Plaintiff and Class Members with accurate wage statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff and Class Members with accurate wage statements, but willfully provided wage statements that Defendants knew were not accurate.

79. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered injury. The absence of accurate information on their wage statements has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and mathematical computations to determine the amount of wages owed; causes difficulty and expense in attempting to reconstruct time and pay records; and led to submission of inaccurate information about wages and amounts deducted from wages to state and federal governmental agencies.

81. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable attorneys' fees, and costs of suit.

(Violation of Labor Code § 2802 – Against All Defendants)

87. Pursuant to Labor Code section 2802, Code of Civil Procedure section 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover actual costs incurred for their costs incurred for cellular phone use and mileage, reasonable attorney's fees and costs of

1 suit.

2 **EIGHTH CAUSE OF ACTION**

3 **(Unfair Competition – Against All Defendants)**

4 88. Plaintiff realleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs of this Complaint as though fully set forth hereat.

6 89. The unlawful conduct of Defendants alleged herein constitutes unfair competition
7 within the meaning of Business and Professions Code section 17200. Due to their unlawful
8 business practices in violation of the Labor Code, Defendants have gained a competitive
9 advantage over other comparable companies doing business in the State of California that comply
10 with their obligations to compensate employees in accordance with the Labor Code.

11 90. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
12 Members have suffered injury in fact and lost money or property. Plaintiff and Class Members
13 have been, deprived of overtime compensation; minimum wage compensation; provision of meal
14 breaks or compensation in lieu thereof; provision of rest breaks or compensation in lieu thereof;
15 provision of all wages upon termination or resignation; accurate wage statements; and
16 reimbursements for costs incurred in furtherance of job duties, among other things.

17 91. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
18 Members are entitled to restitution of all wages and other monies owed to them under the Labor
19 Code, including interest thereon, in which they had a property interest and which Defendants
20 nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of
21 the money owed to Plaintiff and Class Members is necessary to prevent Defendants from
22 becoming unjustly enriched by their failure to comply with the Labor Code.

23 92. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
24 Procedure section 1032 and interest under Civil Code section 3287.

25 **NINTH CAUSE OF ACTION**

26 **(Civil Penalties Under Labor Code § 210 – Against All Defendants)**

27 93. Plaintiff realleges and incorporates by reference all of the allegations contained in
28 the preceding paragraphs as though fully set forth hereat.

1 94. At all relevant times herein, Labor Code section 204, requires and required that:
2 "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid
3 for between the 16th and 26th day of the month during which the labor was performed, and labor
4 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
5 between the 1st and 10th day of the following month."

6 95. At all relevant times herein, Labor Code section 210, subdivision (a) states and
7 stated that "[i]n addition to, and entirely independent and apart from, any other penalty provided in
8 this article, every person who fails to pay the wages of each employee as provided in Sections
9 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1)
10 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee" and
11 "(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars
12 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

13 96. At all relevant times herein, Defendants have had a consistent policy or practice of,
14 failing to pay Plaintiff and aggrieved employees during their employment on a timely basis as per
15 Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other aggrieved
16 employees or former employees she seeks to represent are entitled to recover civil penalties for
17 Defendants' violations of Labor Code section 204, in the amount of one hundred dollars (\$100)
18 for each aggrieved employee or former employee for each initial violation per employee, and two
19 hundred dollars (\$200) for each aggrieved employee or former employee for each subsequent
20 violation in connection with each payment that was made in violation of Labor Code section 204.

21 **TENTH CAUSE OF ACTION**

22 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

23 97. Plaintiff realleges and incorporates by reference all of the allegations contained in
24 the preceding paragraphs as though fully set forth hereat.

25 98. Defendants have had a consistent policy or practice of failing to comply with Labor
26 Code section 226, subdivision (a) by intentionally failing to furnish employees with itemized wage
27 statements that accurately reflect gross wages earned; total hours worked by the employee; all
28 deductions; net wages earned; the inclusive dates of the period for which the employee is paid; all

1 applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate by the employee; and other such information as required by Labor
3 Code section 226, subdivision (a).

4 99. Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a)
5 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
6 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
7 for each violation in a subsequent citation, for which the employer fails to provide the employee a
8 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226."

9 100. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in
10 this section are in addition to any other penalty provided by law."

11 101. Plaintiff is informed and believes and based thereon alleges that Defendants failed
12 and continue to fail to furnish non-exempt employees, including, without limitation, Plaintiff, with
13 itemized wage statements that accurately reflect gross wages earned; total hours worked by the
14 employee; all deductions; net wages earned; the inclusive dates of the period for which the
15 employee is paid; all applicable hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate by the employee; and other such information, as
17 required by Labor Code section 226, subdivision (a) and 226.2.

18 102. Pursuant to Labor Code section 226.3, Plaintiff and other aggrieved employees or
19 former employees Plaintiff seeks to represent are entitled to recover civil penalties for Defendants'
20 violation of Labor Code section 226, subdivision (a) in the amount of two hundred fifty dollars
21 (\$250) for each aggrieved employee or former employee per pay period for the initial violation,
22 and one thousand dollars (\$1,000) for each aggrieved employee or former employee per pay
23 period for each subsequent violation.

24 **ELEVENTH CAUSE OF ACTION**

25 **(Violation of Labor Code § 558 – Against All Defendants)**

26 103. Plaintiff realleges and incorporates by reference all of the allegations contained in
27 the preceding paragraphs as though fully set forth heretofore.

28 / / /

1 104. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other
2 person acting on behalf of an employer who violates, or causes to be violated . . . any provision
3 regulating hours and days of work in any order of the Industrial Welfare Commission" shall be
4 subject to a civil penalty as follows:

- 5 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for
6 each pay period for which the employee was underpaid in addition to an
7 amount sufficient to recover underpaid wages;
- 8 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
9 employee for each pay period for which the employer was underpaid in
10 addition to an amount sufficient to recover underpaid wages;
- 11 (3) Wages recovered pursuant to this section shall be paid to the affected
12 employee."

13 105. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
14 each of them, violated, or caused to be violated, the Labor Code sections described herein,
15 including causing Plaintiff and other aggrieved employees not to: be paid overtime wages and
16 minimum wages; receive meal and rest periods or compensation in lieu thereof; reimbursed for
17 costs incurred in cellular phone use for work purposes and reimbursement for mileage, in
18 furtherance of their work duties, and be paid timely wages during their employment and after their
19 employment separation.

20 106. As a direct and proximate result of Defendants' conduct, Plaintiff and other
21 aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to
22 Labor Code section 558 in amounts to be determined at trial.

23 **TWELFTH CAUSE OF ACTION**
24 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

25 107. Plaintiff realleges and incorporates by reference all of the allegations contained in
26 the preceding paragraphs as though fully set forth hereat.

27 108. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other
28 person acting either individually or as an officer, agent, or employee of another person, who pays

1 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
2 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
3 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
4 Section 203 as follows: For any initial violation that is intentionally committed, one hundred
5 dollars (\$100) for each underpaid employee for each pay period for which the employee is
6 underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages,
7 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to
8 Section 203.

9 (1) For each subsequent violation for the same specific offense, two hundred fifty
10 dollars (\$250) for each underpaid employee for each pay period for which the
11 employee is underpaid regardless of whether the initial violation is intentionally
12 committed. This amount shall be in addition to an amount sufficient to recover
13 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
14 applicable penalties imposed pursuant to Section 203.

15 (2) For each subsequent violation for the same specific offense, two hundred fifty
16 dollars (\$250) for each underpaid employee for each pay period for which the
17 employee is underpaid regardless of whether the initial violation is intentionally
18 committed. This amount shall be in addition to an amount sufficient to recover
19 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
20 applicable penalties imposed pursuant to Section 203.

21 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
22 Section 203, recovered pursuant to this section shall be paid to the affected
23 employee."

24 109. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made
25 the decision that Plaintiff would not be paid their due minimum wages as required due to, among
26 other things, Defendants, failing to accurately track and/or pay for all minutes actually engaged,
27 suffered, or permitted to work and failing to pay shift premiums when employees worked split
28 shifts, to the detriment of Plaintiff and other aggrieved employees.

1 110. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled to
2 recover directly from Defendants, civil penalties, as set forth above, pursuant to Labor Code
3 section 1197.1.

4 **THIRTEENTH CAUSE OF ACTION**

5 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

6 111. Plaintiff realleges and incorporates by reference all of the allegations contained in
7 the preceding paragraphs as though fully set forth hereat.

8 112. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
9 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
10 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
11 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
12 action brought by an aggrieved employee on behalf of himself or herself and other current or
13 former employees pursuant to the procedures specified in Labor Code section 2699.3.

14 113. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the
15 Labor Code except those for which a civil penalty is specifically provided, the established civil
16 penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the
17 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
18 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
19 each aggrieved employee per pay period for each subsequent violation.

20 114. Plaintiff is informed and believes and based thereon alleges that Defendants, and
21 each of them, violated the Labor Code sections described herein, including, without limitation, for
22 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
23 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages
24 during employment and after employment separation; provide employees the opportunity to
25 inspect employment records; provide reimbursement for costs incurred in cellular phone use for
26 work purposes and reimbursement for mileage, in furtherance of their work duties; and provide
27 notice as required under Labor Code section 2810.5 entitling Plaintiff and other aggrieved
28 employees to civil penalties for each of these Labor Code violations in the amounts set forth in

1 Labor Code section 2699, subdivision (f).

2 115. Moreover, Plaintiff and other aggrieved current and former employees within the
3 State of California whom she seeks to represent are entitled to an award of reasonable attorneys'
4 fees and costs in connection with their herein-described claims for civil penalties.

5 **DEMAND FOR JURY TRIAL**

6 116. Plaintiff demands a trial by jury on all causes of action contained herein.

7 **PRAYER**

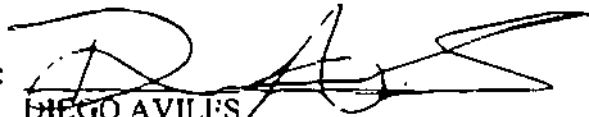
8 WHEREFORE, on behalf of himself and all others similarly situated and aggrieved,
9 Plaintiff prays for judgment against Defendants as follows:

- 10 A. An order certifying this case as a Class Action;
- 11 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
12 counsel as class counsel;
- 13 C. Damages for all wages earned and owed, including minimum and overtime wages
14 under Labor Code sections 510, 558.1, 1194, 1197 and 1199;
- 15 D. Liquidated damages pursuant to Labor Code sections 512, 558.1 and 1194.2;
- 16 E. Damages for unpaid premium wages from missed meal and rest periods under,
17 among other Labor Code sections, 512, 558.1 and 226.7;
- 18 F. Penalties for inaccurate wage statements under Labor Code section 226,
19 subdivision (e) and 558.1;
- 20 G. Damages for unpaid penalty wages under Labor Code section 203 and 558.1;
- 21 H. Waiting time penalties under Labor Code section 203 and 558.1;
- 22 I. Reimbursement for costs incurred in furtherance of work duties under Labor Code
23 section 2802 and 558.1;
- 24 J. Preliminary and permanent injunctions prohibiting Defendants from further
25 violating the California Labor Code and requiring the establishment of appropriate
26 and effective means to prevent future violations;
- 27 K. Restitution of wages and benefits due which were acquired by means of any unfair
28 business practice, according to proof;

- 1 L An award for civil penalties pursuant to Labor Code sections 210, 226.3, 558,
- 2 1197.1, and 2699;
- 3 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
- 4 210, 226.3, 558, 1197.1, and 2699;
- 5 N. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 6 O. For attorneys' fees in prosecuting this action;
- 7 P. For costs of suit incurred herein; and
- 8 Q. For such other and further relief as the Court deems just and proper
- 9

10
11 Dated: December 7, 2020

BIBIYAN LAW GROUP, P.C.

12
13 BY: 

DIEGO AVILES

Attorneys for Plaintiff ROBERT LEIVA, on behalf
of himself and all others similarly situated.