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FILED/ENDORSED

JAN - 8 2021

By: R. San Miguel
Deputy Clerk

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

EMIL PETERSON, as an individual and on
behalf of all others similarly situated; and
WILLIE SUMPTER, JR., as an individual
and on behalf of all others similarly
situated,

Plaintiffs,

v.

BP FUND A LLC, an unknown corporate
entity; BLAZE PIZZA OPERATIONS,
LLC, a limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. 34-2020-00288162

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF CAL. LABOR CODE §
226(a); AND**

**(2) VIOLATION OF CAL. LABOR CODE §
2698, ET SEQ.**

DEMAND EXCEEDS \$25,000.00

Plaintiffs Emil Peterson ("PETERSON") and Willie Sumpter, Jr. ("SUMPTER")
(collectively, "Plaintiffs") hereby submit this First Amended Class Action Complaint
("Complaint") against Defendants BP FUND A LLC, an unknown corporate entity, BLAZE

1 PIZZA OPERATIONS, LLC, a limited liability company (collectively referred to as the
2 “Company”) and DOES 1-50 (hereinafter collectively referred to as “Defendants”), as
3 individuals and the Class of all other similarly situated current and former employees of
4 Defendants for penalties and/or damages for violations of the California Labor Code, and more
5 specifically, failure to provide employees with accurate itemized wage statements as follows:

6 **INTRODUCTION**

7 1. This class action is within the Court’s jurisdiction under California Labor Code §§
8 226 and 2698, *et seq.* and the California Industrial Welfare Commission’s (“IWC”) Wage Orders.

9 2. This Complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code against employees of Defendants.

11 3. Plaintiffs are informed and believe, and based thereon allege, that Defendants
12 jointly and severally have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees by failing to provide accurate itemized wage statements.

14 **JURISDICTION AND VENUE**

15 4. The Court has jurisdiction over the violations of the California Labor Code §§ 226,
16 and 2698, *et seq.* As alleged below, Plaintiffs have met all of the jurisdictional requirements to
17 proceed under the Private Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.*

18 5. Venue is proper in Sacramento County because Defendants maintain business
19 locations in Sacramento County and Plaintiffs performed work for Defendants’ facility located in
20 Sacramento County.

21 **PARTIES**

22 6. Plaintiff EMIL PETERSON (“PETERSON”) began working for the Company in
23 or around October 2014. On or about March 27, 2020, Plaintiff PETERSON’s employment with
24 the Company ended. Plaintiff PETERSON last worked for Defendant as a General Manager.

25 7. Plaintiff WILLIE SUMPTER, JR. (“SUMPTER”) began working for the
26 Company in or around November or December 2014. In or about June 2020, Plaintiff
27 SUMPTER’s employment with the Company ended. Plaintiff SUMPTER worked for Defendant
28 as a non-exempt hourly employee.

1 8. Defendant BP FUND A LLC, is an unknown corporate entity which operates pizza
2 restaurants throughout the State of California, including in Sacramento County, where Plaintiffs
3 worked.

4 9. Defendant BLAZE PIZZA OPERATIONS, LLC, is limited liability company,
5 which operates pizza restaurants throughout the State of California, including in Sacramento
6 County, where Plaintiffs worked.

7 10. Plaintiffs were and are victims of the policies, practices, and customs of
8 Defendants complained of in this action in ways that have deprived Plaintiffs of the rights
9 guaranteed by California Labor Code §§ 226 and 2698, *et seq.* and the applicable IWC Wage
10 Orders.

11 11. Plaintiffs are informed and believe, and based thereon allege, that at all times
12 herein mentioned Defendants and DOES 1 through 50 are and were business entities, individuals,
13 and partnerships, licensed to do business and actually doing business in the State of California.

14 12. As such, and based upon all the facts and circumstances incident to Defendants'
15 business in California, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*
16 and the IWC Wage Orders.

17 13. Plaintiffs do not know the true names or capacities, whether individual, partner or
18 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
19 said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
20 complaint when the true names and capacities are known. Plaintiffs are informed and believe,
21 and based thereon allege, that each of said fictitious Defendants was responsible in some way for
22 the matters alleged herein and proximately caused Plaintiffs and members of the general public
23 and class to be subject to the illegal employment practices, wrongs and injuries complained of
24 herein.

25 14. At all times herein mentioned, each of said Defendants participated in the doing of
26 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
27 Defendants, and each of them, were the agents, servants and employees of each of the other
28 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
within the course and scope of said agency and employment.

1 15. Plaintiffs are informed and believe, and based thereon allege, that at all times
2 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
3 joint venturer of, or working in concert with each of the other co- Defendants and was acting
4 within the course and scope of such agency, employment, joint venture, or concerted activity. To
5 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
6 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
7 Defendants.

8 16. At all times herein mentioned, Defendants, and each of them, were members of,
9 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
10 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

11 17. At all times herein mentioned, the acts and omissions of various Defendants, and
12 each of them, concurred and contributed to the various acts and omissions of each and all of the
13 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
14 herein mentioned, Defendants, and each of them, ratified each and every act or omission
15 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
16 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
17 the damages as herein alleged.

18 **CLASS ACTION ALLEGATIONS**

19 18. **Definition:** The named individual Plaintiff SUMPTER seeks class certification,
20 pursuant to California Code of Civil Procedure § 382, of the following class:

- 21 a. All current and former non-exempt California employees who were paid
22 wages from Defendants at any time during the period of time from May 2,
23 2019, through the present.

24 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
25 that joinder of all members would be impractical, if not impossible. The identity of the members
26 of the Class is readily ascertainable by review of the Company's records, including payroll
27 records. Plaintiff SUMPTER is informed and believes, and based thereon alleges, that the
28 Company failed to provide required itemized wage statements to employees in violation of Labor
Code § 226.

1 20. **Adequacy of Representation:** Plaintiff SUMPTER is fully prepared to take all
2 necessary steps to represent fairly and adequately the interests of the class defined above.
3 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and the
4 named Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in
5 the past and currently have a number of wage-and-hour class actions pending in California courts.

6 21. The Company uniformly administered a corporate policy, practice of failing to
7 provide required itemized wage statements to employees in violation of Labor Code § 226.

8 22. **Common Question of Law and Fact:** There are predominant common questions
9 of law and fact and a community of interest amongst Plaintiff SUMPTER and the claims of the
10 Class concerning the Company's failing to provide required itemized wage statements to
11 employees in violation of Labor Code § 226.

12 23. **Typicality:** The claims of the named Plaintiff SUMPTER are typical of the claims
13 of all members of the Class in that Plaintiffs have suffered the harm alleged in this Complaint in a
14 similar and typical manner as the Class members. Plaintiff SUMPTER was not provided proper
15 and accurate payroll records identifying all information required by Labor Code § 226(a).
16 Specifically, the wage statements issued by the Company to Plaintiff SUMPTER and Class
17 Members do not itemize and show the name of the legal entity that is the employer. Instead, "BP
18 Fund A LLC"—an entity which is not among the corporations, limited liability companies, and
19 limited partnerships of record with the California Secretary of State—is shown on wage
20 statements. Thus, Plaintiff SUMPTER is a member of the Class and has suffered the alleged
21 violations of California Labor Code § 226 and the applicable IWC Wage Orders.

22 24. The California Labor Code and upon which Plaintiff bases these claims are
23 broadly remedial in nature. These laws and labor standards serve an important public interest in
24 establishing minimum working conditions and standards in California. These laws and labor
25 standards protect the average working employee from exploitation by employers who may seek to
26 take advantage of superior economic and bargaining power in setting onerous terms and
27 conditions of employment.

28 25. The nature of this action and the format of laws available to Plaintiff SUMPTER
and members of the Class identified herein make the class action format a particularly efficient

1 and appropriate procedure to redress the wrongs alleged herein. If each employee were required
2 to file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable
3 advantage since it would be able to exploit and overwhelm the limited resources of the individual
4 Plaintiff with Defendants' vastly superior financial and legal resources. Requiring each Class
5 member to pursue an individual remedy would also discourage the assertion of lawful claims by
6 employees who would be disinclined to file an action against their former and/or current
7 employer for real and justifiable fear of retaliation and permanent damage to their careers at
8 subsequent employment.

9 26. The prosecution of separate actions by the individual class members, even if
10 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
11 to individual Class members against the Company and which would establish potentially
12 incompatible standards of conduct for the Company, and/or (b) adjudications with respect to
13 individual Class members which would, as a practical matter, be dispositive of the interest of the
14 other Class members not parties to the adjudications or which would substantially impair or
15 impede the ability of the Class members to protect their interests. Further, the claims of the
16 individual members of the Class are not sufficiently large to warrant vigorous individual
17 prosecution considering all of the concomitant costs and expenses.

18 27. Such a pattern, practice and uniform administration of corporate policy regarding
19 illegal employee compensation described herein is unlawful and creates an entitlement to
20 recovery by Plaintiffs and the Class identified herein, in a civil action any and all applicable
21 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
22 of California Labor Code §§ 226 and 2698, *et seq.*, the applicable IWC Wage Orders, and Code
of Civil Procedure § 1021.5.

23 28. Proof of a common business practice or factual pattern, which the named Plaintiffs
24 experienced and are representative of, will establish the right of each of the members of the Class
25 to recovery on the causes of action alleged herein. This action is brought for the benefit of the
26 entire class and will result in the creation of a common fund.

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1 **FIRST CAUSE OF ACTION**
2 **VIOLATION OF LABOR CODE § 226(a)**
3 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF SUMPTER AND THE**
4 **CLASS)**

5 29. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 28 as though
6 fully set for herein.

7 30. The Company failed in its affirmative obligation to provide accurate itemized
8 wage statements. The Company, as a matter of policy and practice, violated Labor Code § 226(a)
9 because the wage statements furnished to SUMPTER and Class Members failed to list the name
10 of the legal entity that actually employed SUMPTER and Class Members, pursuant to Labor
11 Code § 226(a)(8).

12 31. Such a pattern, practice and uniform administration of corporate policy as
13 described herein is unlawful and creates an entitlement to recovery by SUMPTER and the Class
14 identified herein, in a civil action, for all damages and/or penalties pursuant to Labor Code § 226,
15 including interest thereon, attorneys' fees, and costs of suit according to the mandate of California
16 Labor Code § 226.

17 **SECOND CAUSE OF ACTION**
18 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**
19 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFFS PETERSON AND**
20 **SUMPTER AS PROXIES FOR STATE OF CALIFORNIA)**

21 32. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 31 as though
22 fully set for herein.

23 33. Plaintiffs seeks penalties on behalf of the State of California and all similarly
24 aggrieved employees for the aforementioned violations of Labor Code § 226(a) committed
25 against Plaintiffs and similarly aggrieved employees arising from Defendant's failure to list the
26 actual entity which employed Plaintiffs and aggrieved employees on wage statements for the time
27 period of May 2, 2019, through the present.

28 34. On or about October 27, 2020, Plaintiff PETERSON sent notice to the Labor

1 Workforce Development Agency (the “LWDA”) of the violations of Labor Code § 226(a). On or
2 about December 18, 2020, Plaintiff SUMPTER sent his notice to the LWDA of the violations of
3 Labor Code §226a(a). On January 5, 2021, Plaintiff PETERSON amended his notice to the
4 LWDA to include Defendant Blaze Pizza Operations, LLC. On January 6, 2021, Plaintiff
5 SUMPTER amended his notice to the LWDA to include Defendant Blaze Pizza Operations, LLC.
6 As of the date of the filing of this Complaint, the LWDA has not notified Plaintiffs whether it
7 intends to investigate the claims. Therefore, Plaintiffs may seek applicable penalties under the
8 PAGA.

9 35. Such a pattern, practice and uniform administration of corporate policy as
10 described herein is unlawful and creates an entitlement to recovery by the Plaintiffs on behalf of
11 the State of California, in a civil action, for penalties pursuant to the PAGA, Labor Code §§ 226.3
12 and 2699(a), including interest thereon, attorneys’ fees, and costs of suit according to the mandate
13 of PAGA for Defendants’ violations of Labor Code § 226.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs pray for judgment individually and all others on whose behalf
16 this suit is brought against Defendants, jointly and severally, as follows:

- 17 1. For an order certifying the proposed Class;
- 18 2. For an order appointing SUMPTER as the representative of the Class as described
19 herein;
- 20 3. For an order appointing counsel for Plaintiffs as Class counsel;
- 21 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
22 California Labor Code § 226, and for costs and attorneys’ fees;
- 23 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
24 to Labor Code §§ 226.3, 2698, and 2699, and for costs and attorneys’ fees;
- 25 6. On all causes of action, for attorneys’ fees and costs as provided by California
26 Labor Code §§ 226, 2699, and Code of Civil Procedure § 1021.5; and

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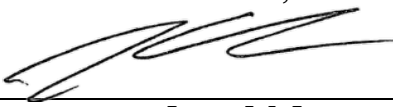
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7. For such other and further relief as the Court may deem just and proper.

DATED: January 7, 2021

DIVERSITY LAW GROUP, P.C.

By: _____


Larry W. Lee
Attorneys for PLAINTIFFS and the CLASS