

HOGUE & BELONG

170 Laurel Street
San Diego, CA 92101
P. 619-238-4720
www.hoguebelonglaw.com

January 23, 2021

Via Certified Mail

Return Receipt Requested

California Labor and Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Via Certified Mail

Return Receipt Requested

D.O.S. Pizza, Inc.
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Via Certified Mail

Return Receipt Requested

Michael O'Connor, Esq.
Michael J. Morphew, Esq.
ATKINSON, ANDELSON, LOYA, RUDD & ROMO
4275 Executive Square, Suite 700
La Jolla, California 92037

Via Certified Mail

Return Receipt Requested

Anthony J. Zaller, Esq.
Anne McWilliams, Esq.
ZALLER LAW GROUP, PC
999 N. Pacific Coast Highway, Suite 525
El Segundo, CA 90245

**RE: Notice of Labor Code Violations Pursuant to Labor Code § 2699 *et seq.*
*Coro v. So-Cal Dominoids, Inc., and D.O.S. Pizza Inc., et al.***

Gentlepersons:

This office represents Ethan Coro, ("Complainant"), who will be joining as a named plaintiff in the PAGA lawsuit presently pending in the San Diego County Superior Court, entitled *Heather Phillips et al. v. So-Cal Dominoids, Inc. and D.O.S. Pizza Inc., et al.* (Case No. 37-2013-00056664-CU-OE-CTL) (the "PAGA Action"). The PAGA Action is brought against,

inter alia, D.O.S. Pizza, Inc. (“D.O.S.”) alleging that D.O.S. violated California Labor Code §§ 201, 202, 203, 218.5, 218.6, 226, 226.7, 512, 518, 558, 11050 *et seq.*, 11040 *et seq.*, 1174, 1175, 1194, 1198, and 2802. Pursuant to Labor Code § 2699.3, we hereby notify you that Complainant and Plaintiff in the PAGA Action intend to amend the PAGA Action complaint, on behalf of themselves and all other similarly situated current and former aggrieved non-exempt employees, to seek penalties under the Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698 *et seq.* Accordingly, this charge relates back to and is intended to supplement the charges previously filed by the Plaintiff in the PAGA Action (Heather Phillips), which PAGA charges and operative civil complaint are attached hereto as Exhibits A and B respectively, and incorporated herein by reference as though fully set forth herein.

Like the Plaintiff in the PAGA Action, Complainant alleges that D.O.S. improperly denied its non-exempt employees premium wages for overtime work and proper meal periods and rest breaks required by California law. Complainant alleges that, among other violations, D.O.S. improperly paid its non-exempt employees at their regular rate of pay for overtime hours worked, and denied these employees full thirty-minute meal periods and ten-minute rest periods, without compensating them with one hour’s wage in lieu of each missed meal and/or rest period. Complainant also alleges that D.O.S. failed to provide its non-exempt employees with split shift pay and failed to provide reporting time wages as required by law. And, Complainant alleges that D.O.S. failed to fully reimburse all expenses incurred by its non-exempt employees, including, without limitation, mileage and cell phone expenses.

Finally, Plaintiff alleges that D.O.S.’s failure to pay overtime, provide proper meal periods and rest periods, accurate itemized wage statements, to provide split shift pay and reporting their wages, and to provide expense reimbursements was all done on a regular and consistent basis.

Sincerely,

HOGUE & BELONG

/s/ Tyler Belong
Tyler J. Belong, Esq.

Exhibit “A”

August 22, 2013

Via Certified Mail (#7012 1010 0000 8335 7808)

Return Receipt Requested

California Labor and Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Via Certified Mail (#7012 1010 0000 8335 7815)

Return Receipt Requested

D.O.S. Pizza, Inc.
15335 Morrison Street, Suite 150
Sherman Oaks, CA 91403

**RE: Notice of Labor Code Violations Pursuant to Labor Code § 2699.3
*Phillips v. So-Cal Dominoids, Inc., et al.***

Gentlepersons:

This office represents Heather Phillips, who is pursuing a class action lawsuit against D.O.S. Pizza, Inc. ("D.O.S.") alleging that D.O.S. violated California Labor Code §§ 201, 202, 203, 218.5, 218.6, 226, 226.7, 512, 518, 558, 1174, 1175, 1194, and 1198. Pursuant to Labor Code § 2699.3, we hereby notify you Plaintiff intends to amend her complaint, on behalf of herself and all other similarly situated current and former employees, to seek penalties under the Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698 *et seq.*

Specifically, Plaintiff alleges that D.O.S. improperly denied its employees premium wages for overtime work and proper meal periods and rest breaks required by California law. Plaintiff alleges that, among other violations, D.O.S. improperly paid its non-exempt employees at their regular rate of pay for overtime hours worked, and denied these employees full thirty-minute meal periods and ten-minute rest periods, without compensating them with one hour's wage in lieu of each missed meal and/or rest period. Plaintiff also alleges that D.O.S. failed to provide employees with split shift pay and failed to provide reporting their wages.

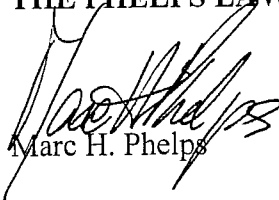
Page Two
August 22, 2013

In addition, Plaintiff alleges that, D.O.S. failed to provide Plaintiff and the other affected employees accurate itemized wage statements and failed to pay Plaintiff and the other affected employees all wages due at the time of termination or within 72 hours of their resignation.

Finally, Plaintiff alleges that D.O.S.'s failure to pay overtime, provide proper meal periods and rest periods, accurate itemized wage statements, to provide split shift pay and reporting their wages, and full wages due at termination/resignation was all done on a regular and consistent basis.

Sincerely,

THE PHELPS LAW GROUP



Marc H. Phelps

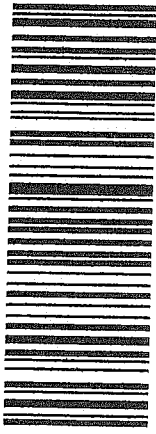
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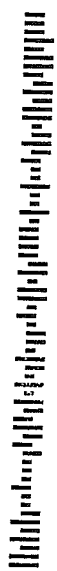
PHELPS LAVER
GRO

2030 Main Street, Suite 1300 • Irvine, CA 92614

CERTIFIED MAIL™



7012 1010 0000 8335 7815



D.O.S. Pizza, Inc.
15335 Morrison Street, Suite 150
Sherman Oaks CA 91403-1598

062S0007494523
\$6.110
US POSTAGE
FIRST-CLASS
FROM 92614
AUG 22 2013
stamps.com



NIXIE 917 DE 1040 0009/04/13

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

BC: 92614722023 *0252-02853-25-44

92614722023

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Tareq Hishmeh
Agent for service of process for
DOS PIZZA, Inc.
5450 Telegraph Rd, Ste 200
Ventura, CA 93003-4120

2. Article Number

(Transfer from service label)

7012 1010 0000 8335 7822

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-11

COMPLETE THIS SECTION ON DELIVERY

A. Signature

- ☒ Agent
- ☐ Addressee

B. Received by (Printed Name)

X B. Tareq Hishmeh

C. Date of Delivery

- D. Is delivery address different from item 1?** ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type

- ☒ Certified Mail
- ☐ Registered
- ☐ Insured Mail
- ☐ Express Mail
- ☐ Return Receipt for Merchandise
- ☐ C.O.D.

- 4. Restricted Delivery? (Extra Fee)** ☐ Yes ☐ No

**U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT**
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$.46
Certified Fee	3.10
Return Receipt Fee (Endorsement Required)	2.55
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.11

Postmark
Here

9/9/13

Sent To Tareq Hishmeh (SOP for Domino's)-U

Street, Apt. No., or PO Box No. 5450 Telegraph Rd, Suite 200

City, State, ZIP+4 Ventura, CA 93003

PS Form 3800, August 2006 See Reverse for Instructions

Exhibit “B”

F I L E
Clerk of the Superior Court

OCT 04 2013

4 Deputy

[COUNSEL OF RECORD LISTED ON NEXT PAGE]

Clerk of the Superior Court

OCT 04 2013

By: BUSINESS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO—CENTRAL

HEATHER PHILLIPS, JONATHAN
REIDER on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

SO-CAL DOMINOIDS, INC., a California
corporation; D. O. S. PIZZA INC, a
California corporation; PIZZA PARK
CORPORATION, a California corporation;
DOWNTOWN PIZZA CORP, a California
corporation, and DOES 1 through 300,
inclusive.

Defendants.

) CASE NO.: 37-2013-00056664-CU-OE-CTL

)
) Assigned to: Hon. Joel R. Wohlfeil
) Dept. C-73

) FIRST AMENDED CLASS ACTION
) COMPLAINT FOR DAMAGES

-) 1. Violation of IWC Wage Order 5-
2001(4); California Code of Regulations,
Title 8 §11050(4) – Failure to Pay Split
Shift Premiums;
) 2. Violation of IWC Wage Order 5-2001(5)
– Failure to Pay Reporting Time Wages;
California Code of Regulations, Title 8
§11050(5);
) 3. Violation of Labor Code §§201-203 –
Failure to Pay all Wages Due Upon
Ending of Employment;
) 4. Violation of IWC Wage Order 5-
2001(7)(A); California Code of
Regulations, Title 8, §11050(7)(A);
Labor Code §226 and §§1174-1175 –
Failure to Provide Accurate Itemized
Employee Wage Statements;
) 5. Violation of IWC Wage Order No. 5-
2001(11); California Code of
Regulations, Title 8, §11040(11); Labor
Code §§ 226.7, 512 – Failure to Provide
Meal Periods;
) 6. Violation of IWC Wage Order No. 5-
2001(12); California Code of
Regulations, Title 8, §11040(12); Labor
Code §226.7 – Failure to Provide Rest
Periods; and
) 7. Violation of Labor Code §2802, et. seq.,
IWC Wage Order No.5; California Code
of Regulations, Title 8 §13700-13706–
Failure to Reimburse Mileage Expenses
) 8. Violation of Business and Professions
Code §§17200 et seq. – Unfair Business
Practices.

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) 9. Enforcement of Private Attorneys
) General Act of 2004, Cal. Lab. Code §
) 2698 et seq.

) DEMAND FOR JURY TRIAL
)
)
)

1 JEFFREY L. HOGUE, ESQ. (SBN#234557)
2 TYLER J. BELONG, ESQ. (SBN#234543)
3 BRYCE A. DODDS, ESQ. (SBN#283491)

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THE CARTER LAW FIRM

22 2030 Main Street, Suite 1300
23 Irvine, California 92614
24 Telephone: (949) 260-4737
25 Facsimile: (949) 260-4754
26
27
28

1 Plaintiffs Heather Phillips and Jonathan Reider ("Plaintiffs") on behalf of themselves and
2 all others similarly situated, and demanding trial by jury, complain and allege upon information
3 and belief as follows:

4 5 **INTRODUCTION**

6 1. This is a class action brought by Plaintiffs, on behalf of themselves and all others
7 similarly situated (collectively referred to hereinafter as "Plaintiff Class" or "Plaintiff Subclass
8 Nos. 1 - 5"), who have sustained injuries or damages arising out of Defendants' (defined below)
9 deliberate violations of the wage and hour laws of the State of California.

10 2. Plaintiffs petition this Court to allow them to represent and prosecute claims
11 against Defendants in class action proceedings on behalf of all those similarly situated who are
12 residents of the State of California.

13 14 **JURISDICTION AND VENUE**

15 3. This class action is brought pursuant to California Code of Civil Procedure section
16 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal
17 jurisdictional limits of the Superior Court.

18 4. This Court has jurisdiction over this action pursuant to the California Constitution,
19 Article VI, section 10, which grants the Superior Court, "Original jurisdiction in all causes except
20 those given by statute to other courts." The statutes under which this action is brought do not
21 specify any other basis for jurisdiction.

22 5. This Court has jurisdiction over Defendants because upon information and belief,
23 each party is either a citizen of California, has sufficient minimum contacts in California, or
24 otherwise intentionally avails itself of the California market so as to render the exercise of
25 jurisdiction over it by the California courts consistent with traditional notions of fair play and
26 substantial justice.

27 6. Venue as to each defendant is proper in this judicial district pursuant to California
28 Code of Civil Procedure sections 395(a) and 395.5 as a portion of the acts complained of herein

1 occurred in the County of San Diego. The injuries to Plaintiffs and several others in the Plaintiff
2 Class occurred in the County of San Diego. Each defendant either owns, maintains offices,
3 transacts business, has an agent or agents within the County of San Diego or otherwise is found
4 within the County of San Diego. Plaintiffs were employed by Defendant in the County of San
5 Diego.

6 7 THE PARTIES

8 7. Plaintiffs are individuals and residents of the State of California.

9 8. Defendant SO-CAL DOMINIDS, INC., a California corporation ("SO-CAL"),
10 owns and operates various Domino's Pizza franchises throughout southern California.

11 9. Defendant D. O. S. PIZZA, INC., a California corporation ("DOS"), owns and
12 operates various Domino's Pizza franchises throughout southern California.

13 10. Defendant PIZZA PARK CORPORATION, a California corporation ("PPC") owns
14 and operates various Domino's Pizza franchises throughout southern California.

15 11. The true names and capacities, whether individual, corporate, partnership, associate
16 or otherwise of defendant DOES 1 through 300, inclusive, are unknown to Plaintiffs who therefore
17 sue Defendants by such fictitious names pursuant to California Code of Civil Procedure section
18 474. Plaintiffs will either seek leave to amend this First Amended Class Action Complaint or file
19 a DOE statement to allege the true names and capacities of DOES 1 through 300, inclusive, when
20 they are ascertained. SO-CAL, DOS, PPC, and DOES 1 through 300 may collectively be referred
21 to as "Defendants."

22 12. Plaintiffs are informed and believes, and based upon that information and belief,
23 alleges that each of the defendants named in this Class Action Complaint, including DOES 1
24 through 300, are responsible in some manner for one or more of the events that proximately
25 caused the injuries and damages hereinafter alleged.

26 13. Plaintiff is informed and believes, and based upon that information and belief,
27 alleges that each defendant named in this First Amended Class Action Complaint, including
28 DOES 1 through 300, inclusive, knowingly and willfully acted in concert, conspired and agreed

1 together among themselves and entered into a systemized campaign of activity to damage
2 Plaintiffs, the Plaintiff Class (defined below), and the Plaintiff Subclasses (defined below), and to
3 otherwise consciously and/or recklessly act in derogation of the Plaintiff Class' rights and the trust
4 reposed by the Plaintiff Class in each of said Defendants, said acts being negligently and/or
5 intentionally inflicted. Said conspiracy, and Defendants' concerted actions, were such that, to
6 Plaintiff Class' information and belief, and to all appearances, Defendants, and each of them,
7 represented a unified body so that the actions of one defendant was accomplished in concert with,
8 and with knowledge, ratification, authorization and approval of each of the other defendants.

9 14. Plaintiffs are informed and believe, and based upon that information and belief,
10 allege that each of the defendants named in this Class Action Complaint, including DOES 1
11 through 300, inclusive, are, and at all times mentioned herein were, the agent, servant, alter ego,
12 and/or employee of each of the other defendants and that each defendant was acting within the
13 course of scope of his, her, or its authority as the agent, servant and/or employee of each of the
14 other defendants. Consequently, all of the defendants are jointly and severally liable to Plaintiffs,
15 the Plaintiff Class, and the Plaintiff Subclasses (as defined below) for the damages incurred as a
16 proximate result of their conduct.

17 18 **FACTUAL ALLEGATIONS**

19 15. Plaintiffs bring this Class Action against Defendants to recover for, among other
20 things, failure to provide meal and rest periods, failure to provide split-shift pay, failure to provide
21 reporting time wages, failure to furnish accurate itemized wage statements, failure to timely pay
22 wages on the end of employment, interest, attorneys' fees, penalties, costs, and expenses on behalf
23 of themselves, the Plaintiff Class, and the Plaintiff Subclasses. Plaintiffs reserve all rights to name
24 additional representatives.

25 16. Defendants employed Plaintiff Phillips from approximately May 10, 2010 to
26 approximately December 12, 2012. Defendants currently employ Plaintiff Reider, who has been
27 their employee since approximately April 2008.

28 17. Defendants place an unusual emphasis on saving labor costs.

1 18. Plaintiff Phillips was a pizza delivery driver at three different locations—
2 Downtown San Diego, Ocean Beach, and Carlsbad. Plaintiff Reider has been a pizza delivery
3 driver and an assistant manager at the Ocean Beach store. At all three locations, Defendants
4 applied their policies uniformly in the manner described below.

5 19. At all times Plaintiffs and the Plaintiff Class were classified as “non-exempt” under
6 the applicable Industrial Wage Commission Orders, California Code of Regulations, and the
7 California Labor Code, earning \$8 per hour or minimum wage.

8 20. Defendants had a policy of requiring Plaintiffs and the Plaintiff Class to clock-in no
9 later than the start time of their regularly scheduled shifts, but to be “flexible” and willing to
10 clock-out early without additional compensation.

11 21. For Plaintiffs and members of the Plaintiff Class who Defendants scheduled to
12 work over six hours, Defendants would schedule Plaintiffs and the Plaintiff Class for a meal
13 period between 30–60 minutes. However, if Plaintiffs and the Plaintiff Class were scheduled to
14 work under six hours, no meal period was scheduled.

15 22. Regardless of how long Plaintiffs were scheduled to work, they would often work
16 two hours, then be instructed to clock-out and be on call.

17 23. Additionally, Defendants would send members of the Plaintiff Class on multiple
18 meal periods whenever the store was not busy.

19 **Split Shift Intervals.**

20 24. Defendants had no split-shift interval policy. This lack of a policy often times
21 caused Defendants to instruct Plaintiffs and the Plaintiff Class to work for a period of time, and
22 then instruct Plaintiff and the Plaintiff Class to take a meal break and clock out.

23 25. Frequently, Plaintiffs and the Plaintiff Class would be required to clock out for an
24 indefinite lunch (usually more than an hour), and then Defendants would instruct Plaintiffs and the
25 Plaintiff Class to clock back in and resume working.

26 26. Plaintiffs and the Plaintiff Class were never compensated an additional hour of
27 payment during the above-described occasions.

1 **Reporting Time Pay.**

2 27. Defendants had no reporting time pay policy. This lack of a policy often times
3 caused Defendants to instruct Plaintiffs to clock-out and wait in their cars when the store was not
4 busy. If business in the store picked back up, Plaintiffs would be summoned to work again. If
5 business did not pick back up, then Defendants would send Plaintiffs home. Defendants would
6 use this same technique with the members of the Plaintiff Subclass No. 1, below.

7 28. When this occurred, sometimes Defendant would send Plaintiffs home before half
8 of their scheduled shift had elapsed. On those occasions, Plaintiffs, however, were not paid for
9 half of their scheduled shift.

10 **Meal Breaks.**

11 29. Defendants' meal period policy was so defective that it either failed to provide
12 class members with a 30 minute duty free meal period before the start of the 5th hour of work, or
13 went the opposite way by giving Class Members long periods of time off the clock but required
14 them to be on-call, which it erroneously called "meal periods."

15 30. This practice and policy caused Plaintiffs and members of the Plaintiff Subclass
16 No. 4 to work over 5 hours without a meal period being provided.

17 **Rest Breaks.**

18 31. Defendants' rest period policy was defective, as Class Members were not
19 authorized or permitted to take a rest break of 10 minutes for every four hours worked or major
20 fraction thereof.

21 32. Plaintiffs never received a 10 minute duty free rest break on the occasions where
22 they worked over 3.5 hours.

23 33. On the rare occasion that a rest period theoretically could be taken, it never was.
24 When Defendants' stores were not busy, Defendants either instructed Plaintiffs and Plaintiff
25 Subclass No. 5 to clean the store (or some other menial chore), to leave early before their
26 scheduled shifts ended, or to clock-out for an indefinite lunch.

27 **Mileage Expenses.**

28 34. Plaintiffs and Class Members were not reimbursed for mileage driven in their own

1 vehicles while on the job, in the course of performing pizza deliveries throughout the day, or were
2 reimbursed on a per delivery basis that came out to less than the prevailing IRS rate per mile. On
3 information and belief, Plaintiffs allege that Plaintiffs and Class Members should have been
4 reimbursed at the prevailing IRS rate for these miles driven. However, Plaintiffs and the Class
5 Members were not so reimbursed.

6 **Final Pay.**

7 35. On December 12, 2012, Defendants terminated Plaintiff Phillips' employment.
8 However, Plaintiff Phillips did not receive her final paycheck on her termination date. Instead, on
9 December 20, 2012, Defendants called Plaintiff Phillips to inform her that her final paycheck was
10 available to be picked up. Additionally, the final paycheck was not inclusive of all wages due to
11 Plaintiff Phillips because it did not include all of the meal and rest period penalty pay, reporting
12 time pay, and other forms of pay described in this complaint, that were due to Plaintiff Phillips.

13 **Inaccurate Itemized Wage Statements.**

14 36. Defendants would furnish Plaintiffs wage statements that omitted the inclusive
15 dates of the pay period. This created an inability for Plaintiffs to make sure that she was paid for
16 all time worked. In other words, Plaintiffs could not promptly and easily determine from the wage
17 statement alone if they were paid the correct amount of gross wages or net wages. Additionally,
18 Plaintiffs and the Plaintiff Class' paychecks did not include compensation for the violations
19 addressed elsewhere in this complaint, such as missing meal and rest break premium and split shift
20 premium pay.

21 37. Plaintiffs are informed, believe, and thereon allege that the acts and omissions
22 alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents
23 and/or employees, and/or under the direction and control of each of the other Defendants, and that
24 said acts and failures to act were within the course and scope of said agency, employment and/or
25 direction and control.

26 38. As a direct and proximate result of Defendants' unlawful actions, Plaintiffs, the
27 Plaintiff Class, and the Plaintiff Subclasses have been denied wages and have otherwise been
28 damaged.

CLASS ALLEGATIONS

39. This class action is properly brought pursuant to the provisions of California Code of Civil Procedure section 382, and the procedural provisions of Rule 23 of the Federal Rules of Civil Procedure, which have been adopted by the California Supreme Court for use by the trial courts of this State. Plaintiffs bring this class action on behalf of themselves and all others similarly situated, with Plaintiffs proceeding as the representative member of the proposed class defined as follows:

All current, former, or prospective non-exempt employees in the State of California who have worked for Defendants from July 9, 2009 up to and including the time of trial for this matter without receiving compensation during those occasions where they worked split-shift intervals in violation of the California Labor Code and applicable wage orders. ("Plaintiff Class.")

Plaintiffs also seek certification of the following subclass:

All current, former, or prospective non-exempt employees in the State of California who have worked for Defendants from July 9, 2009 up to and including the time of trial for this matter who have been required to report to one of Defendants' stores who were not paid for their time at the store or were not paid for half of their normal scheduled work time for work on the day that they reported to the store in violation of the California Labor Code and applicable wage orders. ("Plaintiff Subclass No. 1.")

Plaintiffs also seek certification of the following subclass:

All current, former, or prospective non-exempt employees in the State of California who have worked for Defendants from July 9, 2010 up to and including the time of trial for this matter who were not timely paid all wages due to them upon separation, in violation of California Labor Code sections. ("Plaintiff Subclass No. 2.")

Plaintiffs also seek certification of the following subclass:

All current, former, or prospective non-exempt employees in the State of California who have worked for Defendants from July 9, 2009 up to and including the time of trial for this matter who were furnished an itemized wage statement that was not in compliance with the California Labor Code and applicable wage orders. ("Plaintiff Subclass No. 3.")

Plaintiffs also seek certification of the following subclass:

All current, former, or prospective non-exempt employees in the State of California

1 who have worked for Defendants from July 9, 2009 up to and including the time of
2 trial for this matter without receiving compensation failure to provide
3 compensation for missed meal periods in violation of the California Labor Code
4 and applicable wage orders. ("Plaintiff Subclass No. 4.")

5 Plaintiffs also seek certification of the following subclass:

6 All current, former, or prospective non-exempt employees in the State of California
7 who have worked for Defendants from July 9, 2009 up to and including the time of
8 trial for this matter without receiving compensation for missed rest periods in
9 violation of the California Labor Code and applicable wage orders. ("Plaintiff
10 Subclass No. 5.")

11 Plaintiffs also seek certification of the following subclass:

12 All current, former, or prospective non-exempt employees in the State of California
13 who have worked for Defendants from July 9, 2009 up to and including the time of
14 trial for this matter without receiving reimbursement for mileage expenses in
15 violation of the California Labor Code, the California Code of Regulations, and
16 applicable Wage Orders ("Plaintiff Subclass No. 6.")

17 Plaintiffs reserve the right under California Rules of Court, Rule 3.765 to amend or modify
18 the Class descriptions with greater specificity or further division into subclasses or limitation to
19 particular issues.

20 40. This action has been brought and may properly be maintained as a class action,
21 pursuant to the provisions of California Code of Civil Procedure section 382, because there is a
22 well-defined community of interest in the litigation and because the proposed class is easily
23 ascertainable, and for the other reasons explained in this First Amended Class Action Complaint.

24 41. The persons who comprise the Plaintiff Class are so numerous that joinder of all
25 such persons would be unfeasible and impracticable. The membership of the entire Plaintiff Class
26 is estimated to be three thousand.

27 42. There are common questions of fact and law arising out of Defendants' conduct, as
28 described in this Class Action Complaint, as well as its continued practice of engaging in illegal
payroll, wage and hour, and break policies as to all members of the Plaintiff Class. The action
focuses on Defendants' systematic course of illegal payroll practices or policies, which
Defendants applied to all non-exempt employees in violation of the California Industrial Welfare
Commission Wage Orders, California Code of Regulations, the California Labor Code, and the

1 California Business and Professions Code which prohibits unfair business practices arising from
2 such violations.

3 43. Furthermore, these common questions of law and fact predominate over questions
4 affecting only individual members, including (without limitation):

- 5 a. Whether Defendants' scheduling policy required Plaintiffs to work split-shift
6 intervals;
- 7 b. Whether Defendants' scheduling policy violated California's reporting pay
8 laws;
- 9 c. Whether Plaintiffs and the Plaintiff Class were affected by Defendants' policy
10 of not paying split shift premiums whenever they were called back to work for
11 a second shift;
- 12 d. Whether Defendants' final paycheck policy was facially compliant under
13 California law;
- 14 e. Whether Defendants had a common scheduling practice that made taking
15 timely meal periods extremely difficult;
- 16 f. Whether Defendants had a practice of pressuring Plaintiff Subclass No. 5 to
17 forego rest periods;
- 18 g. Whether Plaintiff and Plaintiff Subclass No. 4 ever worked more than 5 hours
19 for Defendants without a 30-minute meal period;
- 20 h. Whether Defendants failed to provide Plaintiffs and the Plaintiff Class with
21 meal period penalty payments pursuant to California Labor Code section 226.7
22 for all occasions where meal periods were not received until after 5 hours into
23 their shifts;
- 24 i. Whether Defendants failed to provide Plaintiff Subclass No. 4 with statutory
25 penalty payments pursuant to California Labor Code section 226.7 for all shifts
26 where they did not receive a rest period every four hours or major fraction
27 thereof;
- 28 j. Whether Defendants failed to provide Plaintiff Subclass No. 6 with
reimbursement for mileage expenses incurred on their behalf in violation of
and/or Wage Order 5-2001 or other applicable IWC Wage Orders, California
Labor Code section 2802, et. seq., and California Code of Regulations sections
13700-13706;
- k. Whether Defendants failed to issue timely payments to the Plaintiff Class in
violation of California Labor Code section 202; and
- l. Whether Defendants failed to issue timely payments to the Plaintiff Class in

violation of California Labor Code section 201.

44. The defenses of Defendants, to the extent that any such defenses are applied, are applicable generally to the whole Plaintiff Class and are not distinguishable on an individual by individual basis.

45. The claims of Plaintiffs herein are typical of the claims for the members of the Plaintiff Class as a whole, all of whom have incurred and/or will incur damages, including irreparable harm, as a proximate or legal result of the common course of the conduct of Defendants as complained of in this First Amended Class Action Complaint. Plaintiffs' claims are typical of the Plaintiff Class because Defendants subjected all of its non-exempt employees to the identical violations of the California Industrial Welfare Commission Wage Orders, California Code of Regulations, the California Labor Code, and the California Business and Professions Code, which prohibit unfair business practices arising from such violations.

46. Plaintiffs, on behalf of themselves and all others similarly situated, will fairly and adequately protect the interests of all members of the Plaintiff Class, in connection with which they have retained attorneys. Plaintiffs are able to fairly and adequately protect the interests of all members of the Plaintiff Class because it is in their best interest to prosecute the claims alleged herein to obtain full compensation due to them for all services rendered and hours worked. Further, Plaintiffs' counsel are adequate class counsel as they have previously certified, litigated, and tried many other wage and hour class actions.

47. Under the facts and circumstances set forth above, class action proceedings are superior to any other methods available for both fair and efficient adjudication of the rights of each class member who has, or in the past was, a non-exempt employee, inasmuch as joinder of individual members of the Plaintiff Class is not practical and, if the same were practical, said Plaintiff Class members could not individually afford the litigation, such that individual litigation would be inappropriately burdensome, not only to said citizens, but also the courts of the nation.

48. To process individual cases would increase both the expenses and the delay not only to class members, but also to Defendants and the Court. In contrast, a class action of this matter will avoid case management difficulties and provide multiple benefits to the litigating

1 parties, including efficiency, economies of scale, unitary adjudication with consistent results, and
2 equal protection of the rights of each class member, all by way of the comprehensive and efficient
3 supervision of the litigation by a single court.

4 49. There is a community of interest in obtaining appropriate legal and equitable relief
5 for the common law and statutory violations and other improprieties, and in obtaining adequate
6 compensation for the damages and injuries which Defendants' actions have inflicted upon the
7 Plaintiff Class.

8 50. There is a community of interest in ensuring that the combined assets and available
9 insurance of Defendants are sufficient to adequately compensate the members of the Plaintiff
10 Class for the injuries sustained.

11 51. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses are entitled to the monies
12 unlawfully withheld from them. Further, the public is entitled to restitution and restitutionary
13 disgorgement of those funds being improperly withheld by Defendants, and each of them. This
14 action is brought as a representative action under the Unfair Competition Law.

15 52. Notice of the pendency and any result or resolution of the litigation can be provided
16 to Plaintiff Class and Subclass members by the usual forms of publication or such other methods
17 of notice as deemed appropriate by the Court.

18 53. Without class certification, the prosecution of separate actions by individual
19 members of the Plaintiff Class and Subclasses would create a risk of:

- 20 a. Inconsistent or varying adjudications with respect to individual members of the
21 Plaintiff Class and Subclasses that would establish incompatible standards of
22 conduct for Defendants; and/or
23 b. Adjudications with respect to the individual members of the Plaintiff Class and
24 Subclasses that would, as a practical matter, result in disparities of the interests
25 of the other members not parties to the adjudication, or would substantially
26 impair or impede their ability to protect their interests.

27 **FIRST CAUSE OF ACTION**

28 **FOR FAILURE TO PAY SPLIT-SHIFT PREMIUMS**

(Against all Defendants)

[IWC Wage Order No. 5-2001(4); California Code of Regulations, Title 8, § 11050(4); California

54. Plaintiffs and the Plaintiff Class re-allege and incorporate by reference, as though fully set forth herein, all of the preceding paragraphs of this First Amended Class Action Complaint.

55. This cause of action is brought by Plaintiffs and the Plaintiff Class. This cause of action is pled against Defendants.

56. California Labor Code section 1198 codifies the Industrial Wage Commission's ("IWC") Wage Orders.

57. IWC Wage Order 5-2001(4) and California Code of Regulations, Title 8, section 11050(4) requires employers to pay an employee an extra hour of pay whenever that employee works a split shift.

58. Defendants have intentionally and improperly denied payment of an extra hour of pay when Defendants required Plaintiffs and the Plaintiff Class to work split shifts in violation of IWC Wage-Order 5(4) and California Code of Regulations, Title 8, section 11050(4).

59. By virtue of Defendants' unlawful failure to provide split shift premiums, Plaintiffs and the Plaintiff Class have incurred, and will continue to incur, damages in amounts which are presently unknown to Plaintiffs and the Plaintiff Class, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

60. Plaintiffs and the Plaintiff Class request recovery of split shift premiums pursuant to IWC Wage Order 5(4)(C), California Code of Regulations, Title 8, section 11050(4)(C), as well as the assessment of any statutory penalties against Defendants, and each of them, in a sum as provided by the California Labor Code and/or other statutes.

61. Plaintiffs and the Plaintiff Class are entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 1194(a) and 218.5, and interest pursuant to California Labor Code section 218.6.

SECOND CAUSE OF ACTION

FOR FAILURE TO PAY REPORTING TIME WAGES

(Against all Defendants)

1 [IWC Wage Order No. 5-2001(5); California Code of Regulations, Title 8, § 11050(5); California
2 Labor Code § 1198]

3 62. Plaintiffs and Plaintiff Subclass No. 1 re-allege and incorporate by reference, as
4 though fully set forth herein, all of the preceding paragraphs of this First Amended Class Action
5 Complaint.

6 63. This cause of action is brought by Plaintiffs and Plaintiff Subclass No. 1. This
7 cause of action is pled against Defendants.

8 64. California Labor Code section 1198 codifies the Industrial Wage Commission's
9 ("IWC") Wage Orders.

10 65. IWC Wage Order 5-2001(5) and California Code of Regulations, Title 8, section
11 11050(5) requires employers to pay employees for half of their usual or scheduled day's work, but
12 in no event for less than two hours nor more than four hours, at the employee's regular rate of pay,
13 for each workday that an employee is required to report to work and does report, but is not put to
14 work or is furnished less than half of the employee's usual or scheduled day's work.

15 66. Defendants failed to pay Plaintiffs and members of Plaintiff Subclass No. 1
16 reporting time pay in violation of Wage Order 5-2001 and the California Code of Regulations
17 ("CCR"). Defendants had no reporting time pay policy and maintained a practice of consistently
18 requiring their non-exempt employees to clock-out after two hours of work and then sending them
19 home prior to the end of their scheduled shift.

20 67. As a result of Defendants' unlawful conduct, Plaintiffs and other members of
21 Plaintiff Subclass No. 1 have suffered damages in an amount, subject to proof, to the extent that
22 they were not paid reporting time wages for all hours worked. The total amount of reporting time
23 wages owing to Plaintiffs and Plaintiff Subclass No. 1 is currently unknown, but subject to proof
24 at the time of trial.

25 68. Pursuant to Wage Order 5-2001 and the CCR, Plaintiffs and other members of
26 Plaintiff Subclass No. 1 are entitled to the full amount of their reporting time wages, reasonable
27 attorneys' fees, and costs of suit.

1 **THIRD CAUSE OF ACTION**

2 **FOR FAILURE TO PAY ALL WAGES DUE UPON ENDING EMPLOYMENT**

3 (Against all Defendants)

4 [Violation of California Labor Code §§ 201, 202, and 203]

5 69. Plaintiff Phillips and Plaintiff Subclass No. 2 re-allege and incorporate by
6 reference, as though fully set forth herein, all of the preceding paragraphs of this First Amended
7 Class Action Complaint.

8 70. This cause of action is brought by Plaintiff Phillips and Plaintiff Subclass No. 2.
9 This cause of action is pled against Defendants.

10 71. California Labor Code section 201 requires that an employer remit payment of
11 wages earned and unpaid immediately upon discharge.

12 72. California Labor Code section 202 requires that if an employee quits his or her
13 employment, his or her wages shall become due and payable not later than 72 hours thereafter,
14 unless the employee has given 72 hours previous notice of his or her intention to quit, in which
15 case the employee is entitled to his or her wages at the time of quitting. California Labor Code
16 section 202 also requires that an employer remit payment to an employee who quits no later than
17 72 hours thereafter.

18 73. Violations of California Labor Code sections 201 and 202 are a violation of
19 California Labor Code section 203.

20 74. Plaintiff Phillips and Plaintiff Subclass No. 2 quit or were discharged from their
21 employment and not paid timely. Since Defendants failed to timely pay wages due, Plaintiff
22 Phillips and Plaintiff Subclass No. 2 are owed penalties pursuant to California Labor Code section
23 203.

24 75. Defendants failed to pay said employees any premium payments or timely payment
25 pursuant to California Labor Code sections 201 and 202. Thus, Defendants are liable for waiting
26 time penalties. Defendants' failure to pay said wages within the required time was willful within
27 the meaning of California Labor Code section 203.

28 76. Therefore, both Plaintiff Phillips and Plaintiff Subclass No. 2 are entitled to one

1 day's wages for each day he or she was not timely paid all said wages due, up to a maximum of
2 thirty days' wages.

3 77. Because none of said employees were ever compensated for reporting pay wages,
4 split shift intervals, or meal and rest periods they missed, this cause of action is also derivative in
5 nature.

6 78. Plaintiff Phillips and Plaintiff Subclass No. 2, therefore request waiting time
7 penalties for all Class Members no longer in Defendants' employ at the time of Judgment.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED EMPLOYEE WAGE STATEMENTS**

10 (Against All Defendants)

11 [IWC Wage Order 5-2001(7)(A); California Code of Regulations, Title 8, § 11050(7)(A);
12 California Labor Code §§ 226, 1174-1175]

13 79. Plaintiffs and Plaintiff Subclass No. 3 re-allege and incorporate by reference, as
14 though fully set forth herein, all of the preceding paragraphs of this First Amended Class Action
15 Complaint.

16 80. This cause of action is brought by Plaintiffs and Plaintiff Subclass No. 3. This
17 cause of action is pled against Defendants.

18 81. IWC Wage Order 5-2001(7)(A), California Code of Regulations, Title 8, section
19 11050(7)(A), and California Labor Code section 226(a) each require Defendants to provide their
20 employees with accurate itemized wage statements containing various categories of information.
21 By virtue of Defendants' unlawful pay practices of not adequately compensating Plaintiffs and
22 Plaintiff Subclass No. 3 as described up above, Defendants have inaccurately recorded gross
23 wages earned and net wages earned. Also, Defendants have also inaccurately recorded gross
24 wages earned and net wages earned by virtue of the fact that Defendants' wage statements did not
25 include any penalties for any labor code violations as described above.

26 82. Additionally, Defendants' wage statements never provided the inclusive dates of
27 the pay period.

28 83. Defendants knowingly and intentionally omitted this information for Plaintiffs and

1 Plaintiff Subclass No. 3. Defendants' failure to comply with California Labor Code section 226
2 caused injury to Plaintiffs and Plaintiff Subclass No. 3 in an amount currently unascertainable.

3 84. California Labor Code section 1174 requires Defendants to maintain and preserve,
4 in a centralized location, among other items, records showing the names and addresses of all
5 employees employed, payroll records showing the hours worked daily by and the wages paid to its
6 employees. Defendants have failed to comply with California Labor Code section 1174.
7 Defendants' failure to comply with California Labor Code section 1174 is a violation of California
8 Labor Code section 1175.

9 85. Because Defendants have knowingly and intentionally failed to comply with
10 California Labor Code section 226, Plaintiffs and Plaintiff Subclass No. 3 are entitled to receive
11 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
12 occurred and one hundred dollars (\$100) per employee for each violation in a subsequent pay
13 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), for one year
14 preceding the filing of this action, and is entitled to an award of costs and reasonable attorneys'
15 fees pursuant to California Labor Code section 226(e).

16 **FIFTH CAUSE OF ACTION**

17 **FOR FAILURE TO PROVIDE MEAL PERIODS**

18 (Against All Defendants)

19 [IWC Wage Order No. 5-2001(11); California Code of Regulations, Title 8, § 11050(11);
20 California Labor Code §§ 226.7, 512]

21 86. Plaintiffs and Plaintiff Subclass No. 4 re-allege and incorporate by reference, as
22 though fully set forth herein, all of the preceding paragraphs of this First Amended Class Action
23 Complaint.

24 87. This cause of action is brought by Plaintiffs and Plaintiff Subclass No. 4. This
25 cause of action is pled against Defendants.

26 88. California Labor Code section 1198 codifies the Industrial Wage Commission's
27 ("IWC") Wage Orders.

28 89. IWC Wage Order 4-2001(11)(A) and California Code of Regulations, Title 8,

1 section 11040(11)(A) require that employers authorize and permit all employees to take a duty
2 free meal period of at least thirty (30) minutes within the first five (5) hours worked.

3 90. California Labor Code section 512 provides that no employer shall employ any
4 person for a work period of more than five (5) hours without a duty free meal period of not less
5 than 30 minutes.

6 91. IWC Wage Order 4-2001(11)(B) and California Code of Regulations, Title 8,
7 section 11040(11)(B) provide that if an employer fails to provide an employee a duty free meal
8 period in accordance with this section, the employer shall pay the employee one (1) hour of pay at
9 the employee's regular rate of compensation for each workday that the meal period is not
10 provided.

11 92. Further, Plaintiffs and Plaintiff Subclass No. 4 are entitled to damages under
12 California Labor Code section 226.7 of one additional hour of pay at the employee's regular rate
13 of pay for each duty free meal period that was not provided.

14 93. Defendants, and each of them, have intentionally and improperly denied meal
15 periods to Plaintiffs and Plaintiff Subclass No. 4 in violation of all applicable Wage Orders,
16 California Regulations, and California Labor Code sections.

17 94. By virtue of Defendants' unlawful failure to provide timely meal periods to
18 Plaintiffs and Plaintiff Subclass No. 4, Plaintiffs and Plaintiff Subclass No. 4 have incurred, and
19 will continue to incur, damages in amounts which are presently unknown to Plaintiffs and Plaintiff
20 Subclass No. 4, but which exceed the jurisdictional limits of this Court and which will be
21 ascertained according to proof at trial.

22 95. Plaintiffs and Plaintiff Subclass No. 4 are entitled to seek and recover reasonable
23 attorneys' fees and costs pursuant to California Labor Code sections 218.5, 218.6, and 1198, and
24 penalties pursuant to California Labor Code sections 203, 226.7, and 558.

25 **SIXTH CAUSE OF ACTION**

26 **FOR FAILURE TO PROVIDE REST PERIODS**

27 (Against All Defendants)

28 [IWC Wage Order No. 5-2001(12); California Code of Regulations, Title 8, § 11050(12);

96. Plaintiffs and Plaintiff Subclass No. 5 re-allege and incorporate by reference, as though fully set forth herein, all of the preceding paragraphs of this First Amended Class Action Complaint.

97. This cause of action is brought by Plaintiffs and Plaintiff Subclass No. 5. This cause of action is pled against Defendants.

98. IWC Wage Order 5-2001(12)(A) and California Code of Regulations, Title 8, section 11050(12)(A) require that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes for every four (4) hours of work, or major fraction thereof.

99. IWC Wage Order 5-2001(12)(B) and California Code of Regulations, Title 8, section 11050(12)(B), provide that if an employer fails to provide an employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. This remedy is codified under California Labor Code section 226.7.

100. Defendants, and each of them, have intentionally and improperly denied rest periods to Plaintiffs and members of Plaintiff Subclass No. 5 in violation of IWC Wage-Order 5(12)(A) and California Code of Regulations, Title 8, section 11050(12)(A).

101. By virtue of Defendants' unlawful failure to provide rest periods to Plaintiff and Plaintiff Subclass No. 5, Plaintiffs and Plaintiff Subclass No. 5 have incurred, and will continue to incur, damages in amounts which are presently unknown to Plaintiffs and Plaintiff Subclass No. 5, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

102. Plaintiffs and members of Plaintiff Subclass No. 5 are informed and believe, and based upon that information and belief allege, that Defendants, and each of them, knew or should have known that Plaintiffs and Plaintiff Subclass No. 5 were entitled to rest periods and purposely elected not to provide rest periods.

103. Plaintiff, themselves, and on behalf of employees similarly situated, requests recovery of rest period compensation pursuant to IWC Wage Order(12)(B), California Code of

1 Regulations, Title 8, section 11040(12)(B), as well as the assessment of any statutory penalties
2 against these Defendants, and each of them, in a sum as provided by the California Labor Code
3 and/or other statutes.

4 104. Further, Plaintiffs and Plaintiff Subclass No. 5 are entitled to seek and recover
5 reasonable attorneys' fees and costs pursuant to California Labor Code sections 218.5 and 1194,
6 and penalties pursuant to California Labor Code sections 203, 226, and 558.

7 **SEVENTH CAUSE OF ACTION**

8 **FOR FAILURE TO REIMBURSE MILEAGE EXPENSES**

9 (Against All Defendants)

10 [IWC Wage Order No. 5-2001; California Labor Code §2802; California Code of Regulations,
11 Title 8, § 13700-13706]

12 105. Plaintiffs, Plaintiff Class, and Plaintiff Subclasses re-allege and incorporate by
13 reference, as though fully set forth herein, all of the preceding paragraphs of this First Amended
14 Class Action Complaint.

15 106. Labor Code Section 2802 requires the employer to indemnify its employees for "all
16 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
17 of his or her duties..." Subdivision (c) of Section 2802 defines "necessary expenditures or losses"
18 to include "all reasonable costs." Title 8 of the California Code of Regulations, sections 13000-
19 13706, provide that employers must compute and pay mileage reimbursement when wages are
20 paid, or at least once per calendar month, as determined by the employer; that all such payments
21 must be made not later than the end of the calendar month following the calendar month in which
22 the expenses were incurred; that the employer must provide an itemized statement in writing,
23 explaining the computation of the mileage reimbursement, and keep daily mileage records.

24 107. Plaintiffs and the Class Members are thereby entitled to reimbursement for mileage
25 required for their employment at the prevailing IRS rates.

26 108. In violation of these provisions, Defendants required Plaintiffs and other Class
27 Members to drive their personal vehicles to make pizza deliveries, yet did not provide them with
28

1 any reimbursement for miles driven or provided such reimbursement on a per delivery basis, that
2 resulted in payment per mile of much lower than the prevailing IRS rate.

3 109. As a result of the unlawful acts of Defendants, Plaintiffs and the Subclass Members
4 they seek to represent are entitled to recovery of such mileage at the prevailing IRS rate, plus
5 interest and penalties thereon, attorneys' fees, and costs.

6 110. WHEREFORE, Plaintiffs and Subclass Number 6 that he seeks to represent request
7 relief as described herein and below.

8 **EIGHTH CAUSE OF ACTION**

9 **FOR UNFAIR COMPETITION**

10 (Against All Defendants)

11 [California Business & Professions Code §§ 17200, *et. seq.*]

12 110. Plaintiffs, Plaintiff Class, and Plaintiff Subclasses re-allege and incorporate by
13 reference, as though fully set forth herein, all of the preceding paragraphs of this First Amended
14 Class Action Complaint.

15 111. This cause of action is brought by Plaintiffs, the Plaintiff Class, and the Plaintiff
16 Subclasses. This cause of action is pled against Defendants.

17 112. By and through the conduct described above, Plaintiffs, members of the Plaintiff
18 Class, and Plaintiff Subclasses, and all persons similarly situated have been deprived and injured.

19 113. Violation of the California Labor Code is an "Unfair Business Practice."

20 114. By and through their unfair, unlawful and/or fraudulent business practices
21 described herein, Defendants have obtained valuable property, money, and services from
22 Plaintiffs, members of the Plaintiff Class and Plaintiff Subclasses, and all persons similarly
23 situated, have deprived Plaintiffs and members of the Plaintiff Class and Plaintiff Subclasses, and
24 all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their
25 detriment.

26 115. All of the acts described herein as violations of, among other things, the California
27 Labor Code, California Code of Regulations, and Industrial Welfare Commission Wage Orders,
28 are unlawful and in violation of public policy; and in addition, are immoral, unethical, oppressive,

1 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
2 practices in violation of California Business and Professions Code sections 17200, *et seq.*

3 116. Plaintiffs, the Plaintiff Class, the Plaintiff Subclasses, and all persons in interest,
4 are entitled to, and do seek such relief as may be necessary to disgorge the profits which
5 Defendants have acquired, or of which Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses
6 have been deprived, by means of the above-described unfair, unlawful and/or fraudulent business
7 practices.

8 117. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses are further entitled to and
9 do seek a declaration that the above described business practices are unfair, unlawful and/or
10 fraudulent, and injunctive relief restraining Defendants, and each of them, from engaging in any of
11 the above-described unfair, unlawful and/or fraudulent business practices in the future.

12 118. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses have no plain, speedy,
13 and/or adequate remedy at law to redress the injuries which they have suffered as a consequence
14 of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair,
15 unlawful and/or fraudulent business practices described above, Plaintiffs, the Plaintiff Class, and
16 the Plaintiff Subclasses have suffered and will continue to suffer irreparable harm unless
17 Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful
18 and/or fraudulent business practices.

19 119. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses also allege that if
20 Defendants are not enjoined from the conduct set forth herein above, Defendants will continue to
21 fail to compensate their non-exempt employees in compliance with Wage Order 5-2001 and the
22 California Labor Code.

23 120. Plaintiffs, Plaintiff Class, and Plaintiff Subclasses request that the Court issue a
24 preliminary and permanent injunction prohibiting Defendants, and each of them, from requiring
25 members of the Plaintiff Class and Plaintiff Subclasses to work more than five hours without a
26 duty free meal period and without compensating them with one hour of pay at their regular rate of
27 pay for each workday that the meal or rest period is not provided within the five hour work period.

28 121. Plaintiffs, Plaintiff Class, and Plaintiff Subclass No. 2 request that the Court issue a

1 preliminary and permanent injunction prohibiting Defendants, and each of them, from continuing
2 to issue untimely payments to any employees whose employment has ended.

3 122. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses also request that the
4 Court order Defendants to, as restitution, disgorge all illegally obtained monies from failing to pay
5 taxes, state disability insurance premiums, and unemployment taxes, obtained by way of their
6 violation of California Business & Professions Code sections 17200, *et seq.*

7 123. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses also request an order that
8 Defendants identify, locate and make restitution to affected members of the general public
9 nationwide, and specifically subscribers to the registry, all funds and the value of all things or
10 property acquired by the acts of unfair competition and deceptive practices set forth above, and all
11 additional orders necessary to accomplish this purpose, pursuant to California Business &
12 Professions Code section 17203.

13 124. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses also request an order that
14 Defendants disgorge any profits arising from acts of unfair competition.

15 125. For the four (4) years preceding the filing of this action, as a result of Defendants'
16 unfair business practices, Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses have incurred
17 damages, and request damages and/or restitution of all monies and profits to be disgorged from
18 Defendants in an amount according to proof at time of trial.

19 **NINTH CAUSE OF ACTION**

20 **(ENFORCEMENT OF PRIVATE ATTORNEYS GENERAL ACT OF 2004,**
21 **CAL. LAB. CODE § 2698 ET SEQ.)**

22 **[As to So-Cal Dominoids, Inc.; Pizza Park Corporation; and D.O.S. Pizza, Inc.]**

23 126. Plaintiffs incorporate all previous paragraphs of this First Amended Class Action
24 Complaint as though fully set forth herein.

25 127. Defendants' failure to pay split shift premiums, to provide reporting time wages,
26 and to provide proper duty-free meal and/or rest periods or to pay compensation of one hour's pay
27 in lieu thereof, in accordance with California Labor Code Sections 226.7 and 512, entitles
28 Plaintiffs to recover a civil penalty as an aggrieved employee on behalf of herself and other Class

1 Members employed by Defendants pursuant to California Labor Code Section 2699(f).

2 128. Plaintiffs have complied with the procedural requirements specified in Labor Code
3 Section 2699.3 as to each of the alleged violations herein. On August 22, 2013, Plaintiff gave the
4 written notice required by that section to So-Cal Dominoids, Inc., Pizza Park Corporation, and
5 D.O.S. Pizza, Inc., including facts and theories to support the alleged violations. More than 33
6 days have passed since the mailing of this notice, and the Labor and Workforce Development
7 Agency has failed to independently investigate the alleged violations asserted by Plaintiff, thus
8 entitling Plaintiff to pursue a cause of action pursuant to the Private Attorneys General Act of
9 2004, California Labor Code Sections 2698 *et seq.*

10 129. WHEREFORE, Plaintiffs request relief as described herein and below.

11
12 **PRAYER FOR RELIEF**

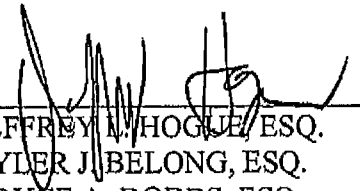
13 WHEREFORE, Plaintiffs, Plaintiff Class, and Plaintiff Subclasses pray for judgment as
14 follows:

- 15 1. that the Court determine that this action may be maintained as a class action;
- 16 2. that judgment be entered for wages for Plaintiffs and each member of Plaintiff
17 Class and Plaintiff Subclasses;
- 18 3. For nominal damages;
- 19 4. For compensatory damages;
- 20 5. For restitution of all monies due to Plaintiffs, Plaintiff Class, and Plaintiff
21 Subclasses, and disgorge profits from the unlawful business practices of
22 Defendants;
- 23 6. For penalties pursuant to California Labor Code sections 202, 203, 218.5,
24 218.6, 221, 225.5, 226, 226.7, 512, 558, 2699 and 2802;
- 25 7. For injunctive relief as described herein;
- 26 8. For interest accrued to date;
- 27 9. For costs of suit and expenses incurred herein pursuant to California Labor
28 Code sections 218.5, 226, and 1194;
10. For reasonable attorneys' fees pursuant to California Labor Code sections
218.5, 226, and 1194; and

1 11. For all such other and further relief the Court may deem just and proper.

2
3 Dated: October 4, 2013

HOGUE & BELONG

4
5 By: 

JEFFREY L. HOGUE, ESQ.

6 TYLER J. BELONG, ESQ.

7 BRYCE A. DODDS, ESQ.

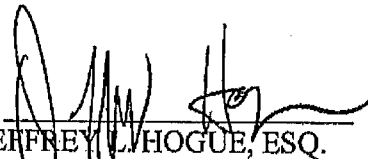
8 Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

Dated: October 4, 2013

HOGUE & BELONG

By: 

JEFFREY L. HOGUE, ESQ.

TYLER J. BELONG, ESQ.

BRYCE A. DODDS, ESQ.

Attorneys for Plaintiff