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

JEREMY D'AMBROSIO, as an
aggrieved employee pursuant to the
Private Attorneys General Act
("PAGA"), on behalf of the State of
California and other aggrieved
employees,

Plaintiff,

vs.

OCEAN CITIES PIZZA, INC.,
a California corporation; CENTRAL
CITIES PIZZA, INC.; a California
corporation; HISHMEH
ENTERPRISES, INC., a California
corporation; HOME COUNTY
PIZZA, INC., a California
corporation; TEAM SO-CAL, INC., a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

VENTURA
SUPERIOR COURT
FILED

OCT 20 2021

BRENDA L. McCORMICK
Executive Officer and Clerk
By: _____, Deputy
IVONNE PEACOCK

Case No. 56-2021-00559135-CU-OE-VTA

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Jeremy D'Ambrosio, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA") to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 ("LWDA") in this case on August 12, 2021, until judgment ("non-party Aggrieved
14 Employees"). Plaintiff's share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a "citizen" for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff's share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants filed Statement of
3 Information forms with the California Secretary of State designating a principal place of
4 business in the City of Ventura, County of Ventura, in accordance with California
5 Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in
6 this Court, because Defendants employ persons in this county and thus a substantial portion of
7 the transactions and occurrences related to this action occurred in this county.

8 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
9 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
10 attorneys general their current or former employers for various civil penalties for violations of
11 various provisions in the California Labor Code.

12 THE PARTIES

13 6. Plaintiff Jeremy D’Ambrosio is a resident of Oceano, in San Luis Obispo
14 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee
15 from approximately September 2019 to January 4, 2021. Plaintiff worked for Defendants as a
16 Delivery Driver for their restaurant location in Arroyo Grande, California. Plaintiff typically
17 worked 5.5 hours or more per day and several days per week. At the time Plaintiff’s
18 employment with Defendants ended, he was compensated approximately \$14.00 per hour. As
19 a Delivery Driver, his job duties included, without limitation, delivering pizzas, assisting with
20 the pizza oven, answering phone calls and taking customer orders, washing dishes, and
21 maintaining the restaurant premises.

22 7. On information and belief, Defendants required some employees, including
23 Plaintiff, to execute an arbitration agreement at the time of their hire or during their
24 employment. On further information and belief, Defendants’ arbitration agreement was and is
25 both procedurally and substantively unconscionable. Specifically, Defendants presented
26 employees with an “Arbitration Agreement” which had to be reviewed and signed
27 immediately. Also, employees did not have a meaningful opportunity to negotiate the terms
28 of the Arbitration Agreement. Rather, it was provided to Defendants’ employees for them to

sign on a take-it or leave-it basis, along with all of the other on-boarding documents.

8. OCEAN CITIES PIZZA, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

9. CENTRAL CITIES PIZZA, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

10. HISHMEH ENTERPRISES, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

11. HOME COUNTY PIZZA, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

12. TEAM SO-CAL, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

13. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

14. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of OCEAN CITIES PIZZA, INC.; CENTRAL CITIES PIZZA, INC.; HISHMEH ENTERPRISES, INC.; HOME COUNTY PIZZA, INC.; and TEAM SO-CAL, INC., at all relevant times.

15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, OCEAN CITIES PIZZA, INC.; CENTRAL CITIES PIZZA, INC.; HISHMEH ENTERPRISES, INC.; HOME COUNTY PIZZA, INC.; TEAM SO-CAL, INC.; and/or DOES 1 through 10 (collectively,

1 “Defendants” or “OCEAN CITIES PIZZA”), each acting as the agent, employee, alter ego,
2 and/or joint venturer of, or working in concert with, each of the other co-Defendants and was
3 acting within the course and scope of such agency, employment, joint venture, or concerted
4 activity with legal authority to act on the others’ behalf. The acts of any and all Defendants
5 were in accordance with, and represent, the official policy of Defendants.

6 16. At all relevant times, Defendants, and each of them, ratified each and every act
7 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
8 and abetted the acts and omissions of each and all the other Defendants in proximately causing
9 the damages herein alleged.

10 17. Plaintiff is informed and believes, and thereon alleges, that each of said
11 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
12 omissions, occurrences, and transactions alleged herein.

13 18. Under California law, Defendants are jointly and severally liable as employers
14 for the violations alleged herein because they have each exercised sufficient control over the
15 wages, hours, working conditions, and employment status of Plaintiff and other non-party
16 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
17 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
18 of employment, determined their rate of pay, and maintained their employment records.
19 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
20 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
21 common-law employment relationship. As joint employers of Plaintiff and other non-party
22 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
23 available to Plaintiff and other non-party Aggrieved Employees under the law.

24 19. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
25 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
26 non-party Aggrieved Employees because Defendants have:

- 27 (a) jointly exercised meaningful control over the work performed by
28 Plaintiff and other non-party Aggrieved Employees;

- 1 (b) jointly exercised meaningful control over Plaintiff's and other non-party
2 Aggrieved Employees' wages, hours, and working conditions, including
3 the quantity, quality standards, speed, scheduling, and operative details
4 of the tasks performed by Plaintiff and other non-party Aggrieved
5 Employees;
- 6 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
7 perform work which is an integral part of Defendants' businesses; and
- 8 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
9 Employees as a matter of economic reality in that Plaintiff and other
10 non-party Aggrieved Employees were dependent on Defendants, who
11 shared the power to set the wages of Plaintiff and other non-party
12 Aggrieved Employees and determined their working conditions, and
13 who jointly reaped the benefits from the underpayment of their wages
14 and noncompliance with other statutory provisions governing their
15 employment.

16 20. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
17 there has existed a unity of interest and ownership between Defendants such that any
18 individuality and separateness between the entities has ceased.

19 21. OCEAN CITIES PIZZA, INC.; CENTRAL CITIES PIZZA, INC.; HISHMEH
20 ENTERPRISES, INC.; HOME COUNTY PIZZA, INC.; TEAM SO-CAL, INC.; and DOES 1
21 through 10 are therefore alter egos of each other.

22 22. Adherence to the fiction of the separate existence of Defendants would permit
23 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
24 from liability for the wrongful acts committed by them.

25 23. Plaintiff further alleges, upon information and belief, that Defendants OCEAN
26 CITIES PIZZA, INC.; CENTRAL CITIES PIZZA, INC.; HISHMEH ENTERPRISES, INC.;
27 HOME COUNTY PIZZA, INC.; and TEAM SO-CAL, INC. are alter egos of each other for
28 the following reasons:

- 1 (a) On the California Secretary of State's website
2 (<https://businesssearch.sos.ca.gov/>), OCEAN CITIES PIZZA, INC.;
3 CENTRAL CITIES PIZZA, INC.; HISHMEH ENTERPRISES, INC.;
4 HOME COUNTY PIZZA, INC.; and TEAM SO-CAL, INC. share the
5 same entity address and mailing address, "1811 Knoll Drive. Ventura,
6 CA 93003;
- 7 (b) Based on the Statement of Information forms filed with the California
8 Secretary of State, OCEAN CITIES PIZZA, INC.; CENTRAL CITIES
9 PIZZA, INC.; HISHMEH ENTERPRISES, INC.; HOME COUNTY
10 PIZZA, INC.; and TEAM SO-CAL, INC. share the same officers,
11 "Tareq Hishmeh" and/or "Nick Hishmeh";
- 12 (c) On the California Secretary of State's website OCEAN CITIES PIZZA,
13 INC.; CENTRAL CITIES PIZZA, INC.; HISHMEH ENTERPRISES,
14 INC.; HOME COUNTY PIZZA, INC.; and TEAM SO-CAL, INC. share
15 the same agent for service of process "Yazan Hishmeh;" and
- 16 (d) On information and belief, OCEAN CITIES PIZZA, INC.; CENTRAL
17 CITIES PIZZA, INC.; HISHMEH ENTERPRISES, INC.; HOME
18 COUNTY PIZZA, INC.; and TEAM SO-CAL, INC. utilize the same
19 standardized employment forms and issue the same employment
20 policies.

21 **PAGA REPRESENTATIVE ALLEGATIONS**

22 24. Defendants own and operate at least 43 Domino's Pizza franchise locations
23 throughout California. Upon information and belief, Defendants maintain a single, centralized
24 Human Resources (HR) department at their corporate headquarters in Ventura, California, for
25 all non-exempt, hourly paid employees working for OCEAN CITIES PIZZA in California,
26 which is responsible for the recruiting and hiring of new employees, and communicating and
27 implementing Defendants' company-wide policies, including timekeeping policies and meal
28 and rest period policies, to employees throughout California.

1 25. In particular, Plaintiff and other non-party Aggrieved Employees, on
2 information and belief, received the same standardized documents and/or written policies.
3 Upon information and belief, the usage of standardized documents and/or written policies,
4 including new-hire documents, indicate that Defendants dictated policies at the corporate level
5 and implemented them company-wide, regardless of their employees' assigned locations or
6 positions. Upon information and belief, Defendants set forth uniform policies and procedures
7 in several documents provided at an employee's time of hire.

8 26. Upon information and belief, Defendants maintain a centralized Payroll
9 department at their corporate headquarters in Ventura, California, which processes payroll for
10 all non-exempt, hourly paid employees working for Defendants at their various locations and
11 jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based
12 upon information and belief, Defendants issue the same formatted wage statements to all non-
13 exempt, hourly paid employees in California, irrespective of their work locations. Upon
14 information and belief, Defendants process payroll for departing employees in the same
15 manner throughout the State of California, regardless of the manner in which each employee's
16 employment ends.

17 27. Defendants continue to employ non-exempt or hourly paid employees in
18 California.

19 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
21 and advisors knowledgeable about California labor and wage law, employment and personnel
22 practices, and about the requirements of California law.

23 29. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
24 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
25 were not recorded.

26 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 receive at least minimum wages for compensation and that they were not receiving at least

1 minimum wages for work that was required to be done off-the-clock. In violation of the
2 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
3 least minimum wages for work done off-the-clock.

4 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and/or other non-party Aggrieved Employees were entitled
6 to receive certain wages for overtime compensation and that they were not receiving certain
7 wages for overtime compensation.

8 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that other non-party Aggrieved Employees were entitled to be paid at a
10 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
11 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
12 compensation, but failed to incorporate all forms of remuneration in calculating the regular
13 rate of pay for other non-party Aggrieved Employees.

14 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and/or other non-party Aggrieved Employees were entitled
16 to meal periods in accordance with the California Labor Code and applicable IWC Wage
17 Order or payment of one (1) additional hour of pay at their regular rates of pay when they
18 were not provided with timely, uninterrupted, thirty (30) minute meal periods and that
19 Plaintiff and/or other non-party Aggrieved Employees were not provided with all meal periods
20 or payment of one (1) additional hour of pay at their regular rates of pay when they did not
21 receive a timely, uninterrupted, thirty (30) minute meal period.

22 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
25 payment of one (1) additional hour of pay at their regular rates of pay when they were not
26 authorized and permitted to take a compliant rest period. In violation of the California Labor
27 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted
28 to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party

1 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
2 pay when they were not authorized and permitted to take a compliant rest period.

3 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
5 receive complete and accurate wage statements in accordance with California law. In
6 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
7 were not provided complete and accurate wage statements.

8 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that they had a duty to maintain accurate and complete payroll records in
10 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
11 and intentionally failed to do so.

12 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 timely payment of all wages earned upon termination of employment. In violation of the
15 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
16 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
17 and/or meal and rest premiums, within permissible time periods.

18 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 timely payment of wages during their employment. In violation of the California Labor Code,
21 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
22 including, but not limited to, overtime wages, minimum wages, and/or meal and rest
23 premiums, within permissible time periods.

24 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 receive reimbursement for all business-related expenses and costs they incurred during the
27 course and scope of their employment and that they did not receive reimbursement of
28 applicable business-related expenses and costs incurred.

1 40. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
3 and other non-party Aggrieved Employees with material terms of employment, but failed to
4 do so.

5 41. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned, Defendants knew or should have known that they had a duty to compensate
7 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
8 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
9 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
10 that they were properly denied wages, all in order to increase Defendants' profits.

11 42. At all times herein set forth, PAGA provides that any provision of law under
12 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
13 assessed and collected by the LWDA for violations of the California Labor Code and
14 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
15 civil action brought on behalf of themselves and other current or former employees pursuant
16 to procedures outlined in California Labor Code section 2699.3.

17 43. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
18 person who was employed by the alleged violator and against whom one or more of the
19 alleged violations was committed."

20 44. Plaintiff and other current and former employees of Defendants are "aggrieved
21 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
22 or former employees and one or more of the alleged violations were committed against them.

23 45. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
24 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
25 following requirements have been met:

- 26 (a) The aggrieved employee shall give written notice by online filing
27 (hereinafter "Employee's Notice") to the LWDA and by certified mail
28 to the employer of the specific provisions of the California Labor Code

1 alleged to have been violated, including the facts and theories to support
2 the alleged violations.

3 (b) An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(a) and any employer response to that notice shall be
5 accompanied by a filing fee of seventy-five dollars (\$75).

6 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
7 employer and the aggrieved employee by certified mail that it does not
8 intend to investigate the alleged violation within sixty (60) calendar
9 days of the postmark date of the Employee's Notice. Upon receipt of
10 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
11 five (65) calendar days of the postmark date of the Employee's Notice,
12 the aggrieved employee may commence a civil action pursuant to
13 California Labor Code section 2699 to recover civil penalties in addition
14 to any other penalties to which the employee may be entitled.

15 46. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
16 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
17 provision other than those listed in Section 2699.5 after the following requirements have been
18 met:

19 (a) The aggrieved employee or representative shall give written notice by
20 online filing to the LWDA and by certified mail to the employer of the
21 specific provisions of the California Labor Code alleged to have been
22 violated (other than those listed in Section 2699.5), including the facts
23 and theories to support the alleged violation.

24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(c) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).

27 (c) The employer may cure the alleged violation within thirty-three (33)
28 calendar days of the postmark date of the notice. The employer shall

1 give written notice by certified mail within that period of time to the
2 aggrieved employee or representative and the agency if the alleged
3 violation is cured, including a description of actions taken, and no civil
4 action pursuant to Section 2699 may commence. If the alleged violation
5 is not cured within the 33-day period, the employee may commence a
6 civil action pursuant to Section 2699.

7 47. On August 12, 2021, Plaintiff provided written notice by online filing to the
8 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
9 Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
11 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
12 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
13 Plaintiff PAGA Case Number LWDA-CM-841170-21. A true and correct copy of Plaintiff's
14 written notice to the LWDA and Defendants dated August 12, 2021, is attached hereto as
15 "Exhibit 1."

16 48. As of the filing date of this complaint, over 65 days have passed since Plaintiff
17 sent the LWDA Notice described above, and the LWDA has not responded that it intends to
18 investigate Plaintiff's claims, and Defendants have not cured the violations.

19 49. Thus, Plaintiff has satisfied the administrative prerequisites under California
20 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
21 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
22 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

23 50. Labor Code section 558(a) provides "[a]ny employer or other person acting on
24 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the Industrial Welfare
26 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
27 dollars (\$50) for each underpaid employee for each pay period for which the employee was
28 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each

1 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
2 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
3 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
4 as a private attorney general, seeks assessment and collection of civil penalties under Labor
5 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
6 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
7 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
8 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
9 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
10 applicable IWC Wage Order.

11 51. Defendants, at all times relevant to this complaint, were employers or persons
12 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
13 Employees’ rights by violating various sections of the California Labor Code as set forth
14 above.

15 52. As set forth below, Defendants have violated numerous provisions of both the
16 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
17 Order.

18 53. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
19 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
20 private attorney general, seeks assessment and collection of civil penalties for himself, all
21 other non-party Aggrieved Employees, and the State of California against Defendants for
22 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
23 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

24 **FIRST CAUSE OF ACTION**

25 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

26 **(Against all Defendants)**

27 54. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 55. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
2 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
3 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
4 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits
5 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those
6 Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

7 56. Defendants' conduct, as alleged herein, violates numerous sections of the
8 California Labor Code, including, but not limited to, the following:

- 9 (a) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
10 applicable IWC Wage Order for Defendants' failure to compensate
11 Plaintiff and other non-party Aggrieved Employees with at least
12 minimum wages for all hours worked, as set forth below;
- 13 (b) Violation of Labor Code sections 510 and 1198, and the applicable IWC
14 Wage Order for Defendants' failure to compensate Plaintiff and/or other
15 non-party Aggrieved Employees with all required overtime pay and
16 failure to properly calculate the overtime rates paid to other non-party
17 Aggrieved Employees, as set forth below;
- 18 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
19 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
20 and/or other non-party Aggrieved Employees with meal periods, as set
21 forth below;
- 22 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
23 applicable IWC Wage Order for Defendants' failure to authorize and
24 permit Plaintiff and other non-party Aggrieved Employees to take rest
25 periods, as set forth below;
- 26 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
27 IWC Wage Order for failure to provide accurate and complete wage
28 statements to Plaintiff and other non-party Aggrieved Employees, as set

1 forth below;

2 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
3 IWC Wage Order for failure to maintain payroll records, as set forth
4 below;

5 (g) Violation of Labor Code section 204 for failure to pay all earned wages
6 during employment, as set forth below;

7 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
8 earned wages upon termination, as set forth below;

9 (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
10 and other non-party Aggrieved Employees for all business expenses
11 necessarily incurred, as set forth below; and

12 (j) Violation of Labor Code sections 2810.5 for failure to provide Plaintiff
13 and other non-party Aggrieved Employees with material terms of
14 employment, as set forth below.

15 **FAILURE TO PAY MINIMUM WAGES**

16 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

17 57. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
18 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
19 to be paid to employees, and the payment of a wage less than the minimum so fixed is
20 unlawful. Compensable work time is defined by the applicable wage order, IWC Wage Order
21 No. 5-2001, as “the time during which an employee is subject to the control of an employer,
22 and includes all the time the employee is suffered or permitted to work, whether or not
23 required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

24 58. First, Defendants had, and continue to have, a company-wide policy and/or
25 practice of requiring Plaintiff and other non-party Aggrieved Employees to perform tasks off-
26 the-clock before and after their scheduled shifts. Indeed, Defendants implemented a
27 timekeeping system that prevented employees from clocking in until one minute before their
28 scheduled shifts in order to keep them from recording time worked prior to the start of their

1 scheduled shifts. Consequently, on information and belief, other non-party Aggrieved
2 Employees performed work prior to the start of their shifts, but were prohibited from
3 recording this time worked off the clock. Likewise, on at least two (2) occasions, Plaintiff
4 clocked out at the end of his scheduled shift but was forced to continue working about 5-10
5 minutes to finish cleaning the restaurant. In addition, on at least 3-4 occasions, Plaintiff's
6 supervisors would send him text messages, forcing Plaintiff to spend time off-the-clock
7 reviewing and/or responding to work-related inquiries from his supervisors, time for which he
8 was not compensated. Thus, Defendants failed to track the time Plaintiff and other non-party
9 Aggrieved Employees spent working before and after their scheduled shifts, and Plaintiff and
10 other non-party Aggrieved Employees received no compensation for this time.

11 59. Second, on information and belief, Defendants had, and continue to have, a
12 company-wide policy and/or practice of strictly staffing their restaurant locations based on the
13 labor hours allocated by corporate for each location. Defendants' uniform use of labor
14 budgets, combined with heavy workloads, resulted in chronic understaffing and a failure to
15 provide Plaintiff and/or other non-party Aggrieved Employees with adequate meal period
16 coverage, because there were too few employees on duty to handle the workload and attend to
17 customers. Moreover, on information and belief, Defendants also had a practice of failing to
18 schedule and/or adhere to a schedule for meal periods, which further caused Plaintiff and/or
19 other non-party Aggrieved Employees to not be relieved of their duties for compliant meal
20 periods. As a result of this lack of meal period coverage and failure to schedule and/or adhere
21 to a schedule for meal periods, Plaintiff and/or other non-party Aggrieved Employees were
22 not always afforded 30-minute meal periods during shifts when they were entitled to receive a
23 meal period.

24 60. In addition, on information and belief, Defendants had a requirement that a
25 managerial employee be present on the restaurant floor at all times and prohibited managers
26 from leaving the premises unless another manager was also on duty, resulting in a lack of
27 meal period coverage for managerial employees. At the same time, the labor budgets
28 Defendants implemented did not always allow for more than one manager to be on the

1 schedule at all times. As a result, other managerial employees were sometimes the only
2 managers on duty, and were required to continue working to supervise the restaurant and
3 respond to customer complaints. Because managerial employees were effectively prohibited
4 from leaving Defendants' premises for meal periods without coverage, and because there were
5 too few employees and other managers on duty to handle the workload and attend to
6 customers, other non-party Aggrieved Employees were denied uninterrupted 30-minute meal
7 periods, and were required to work through and/or to return early from meal periods.

8 61. Thus, Defendants did not pay at least minimum wages for all hours worked by
9 Plaintiff and/or non-party Aggrieved Employees. Also, to the extent that these off-the-clock
10 hours did not qualify for overtime premium payment, Defendants did not pay at least
11 minimum wages for those hours worked off-the-clock in violation of California Labor Code
12 sections 1182.12, 1194, 1197, and 1198.

13 62. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
14 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
15 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
16 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

17 **FAILURE TO PAY OVERTIME**

18 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

19 63. Labor Code section 1198 makes it illegal to employ an employee under
20 conditions of labor that are prohibited by the applicable wage order. California Labor Code
21 section 1198 requires that "... the standard conditions of labor fixed by the commission shall
22 be the ... standard conditions of labor for employees. The employment of any employee ...
23 under conditions of labor prohibited by the order is unlawful."

24 64. California Labor Code section 1198 and the applicable IWC Wage Order
25 provide that it is unlawful to employ persons without compensating them at a rate of pay
26 either time-and-one-half or two-times that person's regular rate of pay, depending on the
27 number of hours worked by the person on a daily or weekly basis.

28 65. Specifically, the applicable IWC Wage Order provides that Defendants are and

1 were required to pay Plaintiff and/or other non-party Aggrieved Employees working more
2 than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time
3 and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than
4 forty (40) hours in a workweek.

5 66. The applicable IWC Wage Order further provides that Defendants are and were
6 required to pay Plaintiff and/or other non-party Aggrieved Employees working more than
7 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate
8 of pay. An employee's regular rate of pay includes all remuneration for employment paid to,
9 or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

10 67. California Labor Code section 510 codifies the right to overtime compensation
11 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
12 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
13 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
14 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
15 in a day on the seventh (7th) day of work.

16 68. As stated above, during the relevant period, Defendants implemented a
17 timekeeping system that prevented employees from clocking in until one minute before their
18 scheduled shifts, which prevented other non-party Aggrieved Employees from recording time
19 worked prior to the start of their scheduled shifts. Additionally, Defendants required Plaintiff
20 and other non-party Aggrieved Employees to perform work off-the-clock after they had
21 clocked out at the end of their shifts, such as continuing to clean the restaurant and responding
22 to supervisors on their personal cellular phones about work-related matters, but did not
23 compensate them for this time. Further, on information and belief, due to Defendants'
24 company-wide practices of utilizing labor budgets and assigning heavy workloads, failure to
25 schedule and/or adhere to scheduling meal periods, policy requiring managerial employees to
26 stay on or near the restaurant premises during meal periods, and subsequent lack of meal
27 period coverage, Plaintiff and/or other non-party Aggrieved Employees were impeded from
28 taking all uninterrupted meal periods to which they were entitled and were required to work

1 off-the-clock during their meal periods, time for which they were not paid.

2 69. Defendants knew or should have known that as a result of these company-wide
3 practices and/or policies, Plaintiff and/or other non-party Aggrieved Employees were
4 performing assigned duties off-the-clock before and after their shifts and during meal periods,
5 and were suffered or permitted to perform work for which they were not paid. Because
6 Plaintiff and/or other non-party Aggrieved Employees worked shifts of eight (8) hours a day
7 or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for
8 overtime premium pay. Therefore, Plaintiff and/or other non-party Aggrieved Employees
9 were not paid overtime wages for all of the overtime hours they actually worked.

10 70. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
11 correct overtime rate for the recorded overtime hours that they generated. In addition to an
12 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
13 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
14 California Labor Code, Defendants failed to incorporate all compensation, including incentive
15 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
16 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
17 times when other non-party Aggrieved Employees worked overtime and received these other
18 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate
19 than required.

20 71. Defendants' failure to pay Plaintiff and/or other non-party Aggrieved
21 Employees the balance of overtime compensation as required by California law, violates the
22 provisions of California Labor Code sections 510 and 1198. Plaintiff and/or other non-party
23 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
24 sections 558 and/or 2699(a), (f), and (g).

25 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

26 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

27 72. At all relevant times herein set forth, the applicable IWC Wage Order and
28 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and

1 non-party Aggrieved Employees' employment by Defendants.

2 73. At all relevant times herein set forth, California Labor Code section 512(a)
3 provides that an employer may not require, cause, or permit an employee to work for a period
4 of more than five (5) hours per day without providing the employee with a meal period of not
5 less than thirty (30) minutes, except that if the total work period per day of the employee is
6 not more than six (6) hours, the meal period may be waived by mutual consent of both the
7 employer and the employee. Under California law, first meal periods must start after no more
8 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

9 74. At all relevant times herein set forth, California Labor Code sections 226.7,
10 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
11 meal period mandated by an applicable order of the IWC.

12 75. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
13 and the applicable IWC Wage Order also require employers to provide a second meal period
14 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
15 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
16 total hours worked is no more than twelve (12) hours, the second meal period may be waived
17 by mutual consent of the employer and the employee only if the first meal period was not
18 waived.

19 76. During the relevant period, Defendants maintained a company-wide, unlawful
20 written meal period policy insofar as it fails to state the timing of when meal periods must
21 occur. Under California law, first meal periods must start after no more than five (5) hours of
22 work and second meal periods must start after no more than ten (10) hours of work. *Brinker*,
23 53 Cal. 4th at 1041-1042. However, Defendants' written meal period policy states in relevant
24 part: "You are entitled to a 30-minute meal period if you work for five hours or more in one
25 day. You are entitled to a second 30-minute meal period if you work more than 10 hours in
26 one day." Defendants' written policy fails to state the correct timing of when first and second
27 meal periods must take place (i.e., within the first five (5) hours of work and within the first
28 ten (10) hours of work) under California law and is therefore facially invalid.

1 77. Also, as stated above, Defendants had, and continue to have, a company-wide
2 policy and/or practice of understaffing locations due to labor budgeting, which, combined
3 with the assignment of heavy workloads and a failure to schedule meal periods and/or adhere
4 to a schedule for meal periods, has resulted in a lack of meal period coverage and prevented
5 Plaintiff and/or other non-party Aggrieved Employees from taking all timely, uninterrupted
6 meal periods to which they were entitled. In conjunction with understaffing their restaurants,
7 as stated above, on information and belief, Defendants had a requirement that a managerial
8 employee be present on the restaurant floor at all times, but Defendants' labor budgets did not
9 always allow for more than one manager to be on the schedule at all times. As a result, other
10 managerial employees were sometimes the only managers on duty, and would have their meal
11 periods interrupted or would work through them in order to assist their coworkers and
12 customers. Consequently, Plaintiff and/or other non-party Aggrieved Employees suffered
13 missed and/or interrupted meal periods, work for which they were not paid.

14 78. Defendants' practices and policies prevented Plaintiff and/or other non-party
15 Aggrieved Employees from taking all compliant meal periods to which they were entitled. As
16 a result, Plaintiff and/or other non-party Aggrieved Employees were forced to work in excess
17 of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to
18 forgo their meal periods altogether.

19 79. Additionally, on information and belief, Defendants did not provide other non-
20 party Aggrieved Employees with second 30-minute meal periods on days when they worked
21 in excess of 10 hours in one day. Plaintiff and other non-party Aggrieved Employees did not
22 sign valid meal period waivers on days that they were entitled to meal periods and were not
23 relieved of all duties.

24 80. Furthermore, Defendants had a company-wide policy of requiring all
25 employees, including Plaintiff and other non-party Aggrieved Employees, to sign blanket
26 meal period waivers. Defendants took the position that non-exempt, hourly paid employees
27 working six (6) hour shifts had waived their rights to take a 30-minute meal period on these
28 particular shifts, for the entirety of their employment. Moreover, Defendants' meal period

1 waiver form requires employees to provide written notification should they wish to revoke the
2 waiver. Defendants' presumption that first meal periods would not be provided for shifts in
3 excess of five (5) hours but less than six (6) hours, and imposition on employees to revoke the
4 waivers in writing discouraged and impeded Plaintiff and/or other non-party Aggrieved
5 Employees from taking all meal periods to which they were entitled.

6 81. Furthermore, an employer's obligation to provide a meal period is only
7 "triggered" when the employer "employs an employee for a work period of more than five
8 hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits
9 anyone to work for a full five hours, its meal break obligation is triggered.").

10 [A]fter the meal break obligation is triggered . . . an employer is put to a
11 choice: it must (1) afford an off-duty meal period; (2) consent to a
12 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
13 obtain written agreement to an on-duty meal period if circumstances
14 permit. Failure to do one of these will render the employer liable for
15 premium pay.

16 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
17 require employees to sign meal period waivers simultaneously at or near their time of hire (as
18 opposed to on a specific work day) renders them invalid and unenforceable, because
19 Defendants' obligation to provide Plaintiff and/or other non-party Aggrieved Employees with
20 meal periods did not arise until Defendants had employed them for a full five (5) hours.

21 82. Defendants knew or should have known that as a result of their company-wide
22 policies and/or practices, that Plaintiff and/or other non-party Aggrieved Employees were not
23 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
24 knew or should have known that they did not pay Plaintiff and/or other non-party Aggrieved
25 Employees meal period premiums when meal periods were missed, late, short, and/or
26 interrupted.

27 83. Defendants have also engaged in a company-wide practice and/or policy of not
28 paying all meal period premiums owed when compliant meal periods are not provided.
Because of this practice and/or policy, Plaintiff and/or other non-party Aggrieved Employees
have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to

1 the extent that Defendants did pay other non-party Aggrieved Employees premium pay for
2 missed, late, and interrupted meal periods, Defendants did not pay other non-party Aggrieved
3 Employees at the correct rate of pay for premiums because Defendants systematically failed to
4 include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or
5 other forms of remuneration, in the regular rate of pay.

6 84. Thus, Defendants failed to provide Plaintiff and/or other non-party Aggrieved
7 Employees compliant meal periods and failed to pay the full meal period premiums due.
8 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
9 sections 226.7, 512(a), 516, and 1198. Plaintiff and/or other non-party Aggrieved Employees
10 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
11 2699(a), (f), and (g).

12 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

13 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

14 85. At all relevant times herein set forth, the applicable IWC Wage Order and
15 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
16 non-party Aggrieved Employees' employment by Defendants.

17 86. At all relevant times, the applicable IWC Wage Order provides that "[e]very
18 employer shall authorize and permit all employees to take rest periods, which insofar as
19 practicable shall be in the middle of each work period" and that the "rest period time shall be
20 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
21 hours or major fraction thereof" unless the total daily work time is less than three and one-half
22 (3 ½) hours.

23 87. At all relevant times, California Labor Code section 226.7 provides that no
24 employer shall require an employee to work during any rest period mandated by an applicable
25 order of the California IWC. To comply with its obligation to authorize and permit rest
26 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
27 employer must "relinquish any control over how employees spend their break time, and
28 relieve their employees of all duties—including the obligation that an employee remain on

1 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
2 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

3 88. Pursuant to the applicable IWC Wage Order and California Labor Code section
4 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
5 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
6 required rest period was not authorized and permitted.

7 89. During the relevant time period, Defendants regularly failed to authorize and
8 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
9 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
10 Defendants’ company-wide practices, including understaffing their locations pursuant to labor
11 budgets and assigning heavy workloads, prevented Plaintiff and other non-party Aggrieved
12 Employees from being relieved of all duty to take compliant rest periods. Additionally,
13 Defendants failed to schedule rest periods, which, coupled with Defendants’ failure to provide
14 adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved
15 Employees not being authorized and permitted to take compliant rest periods.

16 90. Furthermore, upon information and belief, Defendants maintained and
17 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
18 and/or other non-party Aggrieved Employees remain on the work premises during their rest
19 periods. Because Plaintiff and/or other non-party Aggrieved Employees were restricted from
20 leaving the premises during rest periods, they were denied the ability to use their rest periods
21 freely for their own purposes, such as running personal errands. Thus, Defendants effectively
22 maintained control over Plaintiff and/or other non-party Aggrieved Employees during rest
23 periods.

24 91. As a result of Defendants’ practices and policies, Plaintiff and other non-party
25 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
26 excess of 10 hours without being permitted and authorized to take all ten (10) minute rest
27 periods as they were entitled. For example, Plaintiff was never authorized or permitted to take
28 10-minute rest periods despite working shifts in excess of 3.5 hours, due to a lack of rest

1 period coverage.

2 92. Defendants also engaged in a company-wide practice and/or policy of not
3 paying all rest period premiums owed when compliant rest periods are not authorized and
4 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
5 Employees have not received premium pay for all missed rest periods. Alternatively, to the
6 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
7 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
8 Employees at the correct rate of pay for premiums because Defendants failed to include all
9 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
10 of remuneration, in the regular rate of pay.

11 93. Defendants' conduct violates the applicable IWC Wage Order and California
12 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
13 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
14 558 and/or 2699(a), (f), and (g).

15 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
16 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

17 94. At all relevant times herein, California Labor Code section 226(a) provides that
18 every employer shall furnish each of his or her employees an accurate and complete itemized
19 wage statement in writing, including, but not limited to, the name and address of the legal
20 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
21 applicable rates of pay.

22 95. During the relevant time period, Defendants have knowingly and intentionally
23 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
24 inaccurate wage statements. For example, Defendants issued uniform wage statements to
25 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
26 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
27 the pay period, including rates of pay for overtime wages and/or meal and rest period
28 premiums, and the corresponding number of hours worked at each hourly rate. Specifically,

1 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

2 96. Because Defendants did not record the time Plaintiff and other non-party
3 Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount
4 of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in
5 compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason,
6 Defendants failed to accurately list the total number of hours worked by Plaintiff and other
7 non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list the
8 applicable hourly rates of pay in effect during the pay period and the corresponding accurate
9 number of hours worked at each hourly rate, in violation of section 226(a)(9).

10 97. Additionally, because Defendants did not calculate other non-party Aggrieved
11 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
12 and rest period premiums, Defendants did not list the correct amount of gross wages in
13 compliance with section 226(a)(1). For the same reason, Defendants also failed to list the
14 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
15 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates
16 of pay for overtime wages and/or meal and rest period premiums, in violation of section
17 226(a)(9).

18 98. The wage statement deficiencies also include, among other things, failing to list
19 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
20 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
21 for which aggrieved employees were paid; failing to list the name of the employee and only
22 the last four digits of his or her social security number or an employee identification number
23 other than a social security number; failing to list the name and address of the legal entity that
24 is the employer; and/or failing to state all hours worked as a result of not recording or stating
25 the hours they worked off-the-clock.

26 99. California Labor Code section 1174(d) provides that "[e]very person employing
27 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
28 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the

1 plants or establishments at which employees are employed, payroll records showing the hours
2 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
3 applicable piece rate paid to, employees employed at the respective plants or
4 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
5 civil penalty if they fail to maintain accurate and complete records as required by section
6 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
7 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
8 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
9 as a result of failing to record the off-the-clock hours that they worked.

10 100. California Labor Code section 1198 provides that the maximum hours of work
11 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
12 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
13 employment of any employees for longer hours than those fixed by the order or under
14 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
15 Wage Order, employers are required to keep accurate time records showing when the
16 employee begins and ends each work period and meal period. During the relevant time
17 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
18 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
19 in violation of section 1198. Furthermore, in light of Defendants’ failure to provide other
20 non-party Aggrieved Employees with second 30-minute meal periods to which they were
21 entitled, Defendants kept no records of start and end times for second meal periods.

22 101. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198.
23 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
24 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

25 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

26 **VIOLATION OF LABOR CODE SECTION 204**

27 102. At all relevant times herein set forth, California Labor Code section 204
28 requires that all wages earned by any person in any employment between the 1st and the 15th

1 days, inclusive, of any calendar month, other than those wages due upon termination of an
2 employee, are due and payable between the 16th and the 26th day of the month during which
3 the labor was performed. Labor Code section 204 further provides that all wages earned by
4 any person in any employment between the 16th and the last day, inclusive, of any calendar
5 month, other than those wages due upon termination of an employee, are due and payable
6 between the 1st and the 10th day of the following month.

7 103. At all relevant times herein, California Labor Code section 204 also requires
8 that all wages earned for labor in excess of the normal work period shall be paid no later than
9 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
10 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
11 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
12 more than seven (7) calendar days following the close of the payroll period.

13 104. During the relevant time period, Defendants willfully failed to pay Plaintiff and
14 other non-party Aggrieved Employees all wages due to them within any time period specified
15 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
16 wages, and/or meal and rest period premiums.

17 105. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
18 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

19 **FAILURE TO PAY WAGES UPON TERMINATION**

20 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

21 106. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
22 that if an employer discharges an employee, the wages earned and unpaid at the time of
23 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
24 her employment, his or her wages shall become due and payable not later than seventy-two
25 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
26 his or her intention to quit, in which case the employee is entitled to his or her wages at the
27 time of quitting.

28 107. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved

1 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
2 above, including but not limited to, overtime wages, minimum wages, meal and rest period
3 premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two
4 (72) hours of their leaving Defendants' employ.

5 108. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
6 who are no longer employed by Defendants their wages earned and unpaid at the time of
7 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
8 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
9 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
10 2699(a), (f), and (g).

11 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

12 **VIOLATION OF LABOR CODE SECTION 2802**

13 109. At all times herein set forth, California Labor Code section 2802 provides that
14 an employer must reimburse employees for all necessary expenditures and losses incurred by
15 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
16 to prevent employers from passing off their cost of doing business and operating expenses on
17 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
18 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen the
19 employer requires the use of tools or equipment or they are necessary to the performance of a
20 job, such tools and equipment shall be provided and maintained by the employer, except that
21 an employee whose wages are at least two (2) times the minimum wage may provide and
22 maintain hand tools and equipment customarily required by the particular trade or craft."

23 110. First, during the relevant time period, Defendants, on a company-wide basis,
24 required that Plaintiff and other non-party Aggrieved Employees use their own personal
25 cellular phones and cellular data to carry out their job duties, but failed to reimburse them for
26 the costs of their work-related cellular phone expenses. Plaintiff and other non-party
27 Aggrieved Employees were required to use their personal cellular phones to complete their
28 work-related tasks, including responding to phone calls from supervisors and other employees.

1 For example, Plaintiff was required to use the GPS application on his personal cellular phone
2 to navigate and make deliveries to customers throughout the day, which was an essential
3 function of his job. In addition, as stated, Plaintiff was contacted by his supervisors at least 3-
4 4 times on his personal cellular phone to discuss work-related matters. Although Defendants
5 required Plaintiff and other non-party Aggrieved Employees to utilize their personal cellular
6 phones to carry out their work-related duties, Defendants failed to reimburse them for this
7 cost.

8 111. Second, during the relevant period, Defendants, on a company-wide basis,
9 expected Plaintiff and other non-party Aggrieved Employees to report to work wearing clean
10 uniform shirts with the company logo while simultaneously failing to provide employees with
11 an adequate number of those uniforms. For example, Defendants provided Plaintiff with only
12 one (1) uniform shirt during his employment. Because Defendants failed to provide Plaintiff
13 and other non-party Aggrieved Employees with a sufficient number of uniform items in
14 relation to their scheduled shifts and for the tasks they were required to perform, Plaintiff and
15 other non-party Aggrieved Employees were forced to clean their uniforms frequently and
16 incur expenses for doing so. Due to the nature of restaurant work, Plaintiff's and other non-
17 party Aggrieved Employees' uniforms would collect grease and grime quickly, and Plaintiff
18 and other non-party Aggrieved Employees would be required to wash their uniform shirts
19 more frequently and separately from their other clothes, increasing their overall laundry costs.

20 112. Third, during the relevant time period, Defendants, on a company-wide basis,
21 required Plaintiff and other non-party Aggrieved Employees to purchase tools, supplies,
22 and/or equipment that were necessary for the completion of their work-related duties. For
23 example, Plaintiff was forced to purchase his own supplies, such as pens and notepads, which
24 were necessary to carry out his job duties, and spent approximately \$30 on these items.
25 Although Defendants required Plaintiff and other non-party Aggrieved Employees to purchase
26 and use their own tools, supplies, and/or equipment in the performance of their duties,
27 Defendants did not reimburse them for these expenses.

28 113. Defendants could have provided Plaintiff and other non-party Aggrieved

1 Employees with the actual tools for use on the job, such as company phones, an adequate
2 number of uniforms and/or access to laundering services, and necessary supplies. Or,
3 Defendants could have reimbursed employees for the costs of their cellular phone usage and
4 data, laundering expenses incurred for their uniform maintenance, and necessary work
5 supplies. Instead, Defendants passed these operating costs off onto Plaintiff and other non-
6 party Aggrieved Employees. At all relevant times, Plaintiff did not earn at least two (2) times
7 the minimum wage.

8 114. Defendants' company-wide policy and/or practice of passing on their operating
9 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
10 section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
11 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

12 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
13 **EMPLOYMENT**

14 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

15 115. California's Wage Theft Prevention Act was enacted to ensure that employers
16 provide employees with basic information material to their employment relationship at the
17 time of hiring, and to ensure that employees are given written and timely notice of any
18 changes to basic information material to their employment. Codified at California Labor
19 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
20 employer must provide written notice to employees containing basic and material payroll
21 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
22 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
23 overtime, the regular payday designated by the employer, and any allowances claims as part
24 of the minimum wage, including meal or lodging allowances. Cal. Labor Code
25 § 2810.5(a)(1)(A)-(C).

26 116. During the relevant time period, Defendants failed to provide Plaintiff and
27 other non-party Aggrieved Employees with written notice that lists all the requisite
28 information set forth in California Labor Code section 2810.5(a)(1)(A)-(C).

1 117. Defendants' failure to provide Plaintiff and other non-party Aggrieved
2 Employees with written notice of basic information regarding their employment with
3 Defendants is in violation of Labor Code section 2810.5. Plaintiff and other non-party
4 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to California
5 Labor Code sections 2699(a), (f), and (g).

6 **REQUEST FOR JURY TRIAL**

7 Plaintiff requests a trial by jury.

8 **PRAYER FOR RELIEF**

9 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
10 judgment against Defendants, jointly and severally, as follows:

11 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
12 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
13 amount.

14 **As to the First Cause of Action**

15 2. That the Court declare, adjudge and decree that Defendants violated the
16 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
17 Employees: 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all
18 hours worked); 510 and 1198 (by failing to pay all overtime compensation); 226.7, 512(a),
19 516, 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to
20 authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide
21 accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to
22 timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages
23 during employment); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing
24 to provide material terms of employment);

25 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
26 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
27 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

28 4. For attorneys' fees and costs pursuant to California Labor Code section

1 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
2 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
3 1197, 1198, 2802, and 2810.5;

4 5. For pre-judgment and post-judgment interest as provided by law; and

5 6. For such other and further relief as the Court may deem equitable and
6 appropriate.

7
8 Dated: October 18, 2021

Respectfully submitted,

9 Capstone Law APC

10
11 By: 

12 Orlando Villalba
13 Helga Hakimi
14 Roxanna Tabatabaeepour

15 Attorneys for Plaintiff Jeremy D'Ambrosio
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EXHIBIT “A”



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HELGA HAKIMI
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August 12, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Jeremy D'Ambrosio v. Ocean Cities Pizza, Inc., et al.*

Dear PAGA Administrator:

This office represents Jeremy D'Ambrosio in connection with his claims under the California Labor Code. Mr. D'Ambrosio was an employee of OCEAN CITIES PIZZA, INC., CENTRAL CITIES PIZZA INC.; HISHMEH ENTERPRISES, INC.; HOME COUNTY PIZZA, INC.; and/or TEAM SO-CAL, INC. For the purpose of this letter, Mr. D'Ambrosio collectively refers to these entities as "OCEAN CITIES PIZZA".

The employers may be contacted directly at the addresses below:

OCEAN CITIES PIZZA, INC.
1811 KNOLL DRIVE
VENTURA, CA 93003

HOME COUNTY PIZZA, INC.
1811 KNOLL DRIVE
VENTURA, CA 93003

CENTRAL CITIES PIZZA, INC.
1811 KNOLL DRIVE
VENTURA, CA 93003

TEAM SO-CAL, INC.
1811 KNOLL DRIVE
VENTURA, CA 93003

HISHMEH ENTERPRISES, INC.
1811 KNOLL DRIVE
VENTURA, CA 93003

Mr. D'Ambrosio intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. D'Ambrosio seeks relief on behalf of himself, the State of California, and other persons who are or were employed by OCEAN CITIES PIZZA as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

OCEAN CITIES PIZZA employed Mr. D'Ambrosio as an hourly paid, non-exempt employee from approximately September 2019 to January 4, 2021. Mr. D'Ambrosio worked for OCEAN CITIES PIZZA as a Delivery Driver for its restaurant location in Arroyo Grande, California. During his employment, Mr. D'Ambrosio typically worked five-and-half (5.5) or more hours per day and two (2) or more days per week. At the time Mr. D'Ambrosio's employment with OCEAN CITIES PIZZA ended, he earned approximately \$14.00 per hour. His job duties included, without limitation, delivering pizzas, assisting with the pizza oven, answering phone calls and taking customer orders, washing dishes, and maintaining the restaurant premises.

OCEAN CITIES PIZZA committed one or more of the following Labor Code violations against Mr. D'Ambrosio, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

OCEAN CITIES PIZZA's Company-Wide and Uniform Payroll and HR Practices

OCEAN CITIES PIZZA, INC.; CENTRAL CITIES PIZZA INC.; HISHMEH ENTERPRISES, INC.; HOME COUNTY PIZZA, INC.; and TEAM SO-CAL, INC. are California corporations. Together, OCEAN CITIES PIZZA owns and operates at least 43 Domino's Pizza franchise locations throughout California. Upon information and belief, OCEAN CITIES PIZZA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Ventura, California, for all non-exempt, hourly paid employees working for OCEAN CITIES PIZZA in California, including Mr. D'Ambrosio and other aggrieved employees. At all relevant times, OCEAN CITIES PIZZA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. D'Ambrosio and other aggrieved employees, regardless of its location or position.

Upon information and belief, OCEAN CITIES PIZZA maintains a centralized Payroll department at its corporate headquarters in Ventura, California, which processes payroll for all non-exempt, hourly paid employees working for OCEAN CITIES PIZZA in California, including Mr. D'Ambrosio and other aggrieved employees. Further, OCEAN CITIES PIZZA issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. D'Ambrosio and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, OCEAN CITIES PIZZA utilized the same methods and formulas when calculating wages due to Mr. D'Ambrosio and other aggrieved employees in California.

¹ These facts, theories, and claims are based on Mr. D'Ambrosio's experience and counsel's review of those records currently available relating to Mr. D'Ambrosio's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. D'Ambrosio reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission (“IWC”). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

First, OCEAN CITIES PIZZA had, and continues to have, a company-wide policy and/or practice of requiring Mr. D’Ambrosio and other aggrieved employees to perform tasks off-the-clock before and after their scheduled shifts. Indeed, OCEAN CITIES PIZZA implemented a timekeeping system that prevented employees from clocking in until one minute before their scheduled shifts in order to prohibit and prevent them from recording time worked prior to the start of their scheduled shifts. Consequently, on information and belief, other aggrieved employees worked prior to the start of their shift but were prevented from recording this time worked off the clock. Likewise, on at least two (2) occasions, Mr. D’Ambrosio had to clock out at the end of his scheduled shift but was forced to continue working about 5-10 minutes to finish cleaning the restaurant. In addition, on at least 3-4 occasions, Mr. D’Ambrosio’s supervisors would text him on his personal cellular phone when he was not working about work-related matters, forcing Mr. D’Ambrosio to spend time off-the-clock reviewing and/or responding to work-related inquiries from his supervisors, time for which he was compensated. Thus, OCEAN CITIES PIZZA failed to track the time Mr. D’Ambrosio and other aggrieved employees spent working before and after their scheduled shifts, and Mr. D’Ambrosio and other aggrieved employees received no compensation for this time.

Second, on information and belief, OCEAN CITIES PIZZA had, and continues to have, a company-wide policy and/or practice of strictly staffing its restaurant locations based on the labor hours allocated by corporate for each location. OCEAN CITIES PIZZA’s uniform use of labor budgets, combined with heavy workloads, resulted in chronic understaffing and a failure to provide Mr. D’Ambrosio and/or other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. Moreover, on information and belief, OCEAN CITIES PIZZA also had a practice of failing to schedule and/or adhere to a schedule for meal periods, which further caused Mr. D’Ambrosio and/or other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage and failure to schedule and/or adhere to a schedule for meal periods, Mr. D’Ambrosio and/or other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period.

In addition, on information and belief, OCEAN CITIES PIZZA had a requirement that a managerial employee be present on the restaurant floor at all times and prohibited managers from leaving the premises unless another manager was also on duty, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets OCEAN CITIES PIZZA implemented did not always allow for more than one manager to be on the schedule at all times. As a result, other managerial employees were sometimes the only managers on duty, and were required to supervise the restaurant and respond to customer complaints. Because managerial employees were effectively prohibited from leaving OCEAN CITIES PIZZA’s premises for meal periods without coverage, and because there were too few employees and other managers on duty to handle the workload and attend

to customers, other aggrieved employees were denied uninterrupted 30-minute meal periods, and were required to work through and/or to return early from meal periods.

Thus, OCEAN CITIES PIZZA did not pay at least minimum wages for all hours worked by Mr. D'Ambrosio and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, OCEAN CITIES PIZZA did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, OCEAN CITIES PIZZA regularly failed to pay at least minimum wages to Mr. D'Ambrosio and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Mr. D'Ambrosio and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

OCEAN CITIES PIZZA willfully failed to pay all overtime wages owed to Mr. D'Ambrosio and/or other aggrieved employees. During the relevant time period, Mr. D'Ambrosio and/or other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

As stated above, OCEAN CITIES PIZZA implemented a timekeeping system that prevented employees from clocking in until one minute before their scheduled shifts which prevented other aggrieved employees from recording time worked prior to the start of their scheduled shifts, and required Mr. D'Ambrosio and other aggrieved employees to perform work off-the-clock after they had clocked out at the end of their shift, such as requiring Mr. D'Ambrosio to continue cleaning the restaurant after clocking out and supervisors contacting Mr. D'Ambrosio on his personal cell phone about work-related matters off-the-clock, but did not compensate them for this time. Further, as stated, on information and belief, due to OCEAN CITIES PIZZA's company-wide practice of utilizing labor budgets and assigning heavy workloads, failure to schedule and/or adhere to scheduling meal periods, policy requiring managerial employees to stay on or near the restaurant premises during meal periods, and subsequent lack of meal period coverage, Mr. D'Ambrosio and/or other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during their meal periods, time for which they were not paid.

OCEAN CITIES PIZZA knew or should have known that as a result of these company-wide practices and/or policies, Mr. D'Ambrosio and/or other aggrieved employees were performing

assigned duties during meal periods and off-the-clock before and after their shifts, and were suffered or permitted to perform work for which they were not paid. Because Mr. D'Ambrosio and/or other aggrieved employees sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. D'Ambrosio and/or other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, OCEAN CITIES PIZZA did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, OCEAN CITIES PIZZA paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, OCEAN CITIES PIZZA failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, OCEAN CITIES PIZZA failed to pay all overtime wages by paying a lower overtime rate than required.

OCEAN CITIES PIZZA's failure to pay Mr. D'Ambrosio and/or other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. D'Ambrosio and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, OCEAN CITIES PIZZA maintained a company-wide, unlawful written meal period policy insofar as it fails to state the timing of when meal periods must occur. Under California law, first meal periods must start after no more than five (5) hours of work and second meal periods must start after no more than ten (10) hours of work. *Brinker*, 53 Cal. 4th at 1041-1042. However, OCEAN CITIES PIZZA's written meal period policy states in relevant part: "You are entitled to a 30-minute meal period if you work for five hours or more in one day. You are entitled to a second 30-minute meal period if you work more than 10 hours in one day." OCEAN

CITIES PIZZA's written policy fails to state the correct timing of when first and second meal periods must take place (i.e., within the first five (5) hours of work and within the first ten (10) hours of work) under California law and is therefore facially invalid.

Also, as stated above, OCEAN CITIES PIZZA had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting, which, combined with assigning heavy workloads and a failure to schedule meal periods and/or adhere to a schedule for meal periods, has resulted in a lack of meal period coverage and prevented Mr. D'Ambrosio and/or other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its restaurants, as stated above, on information and belief, OCEAN CITIES PIZZA had a requirement that a managerial employee be present on the restaurant floor at all times, but OCEAN CITIES PIZZA's labor budgets did not always allow for more than one manager to be on the schedule at all times. As a result, other managerial employees were sometimes the only managers on duty, and would have their meal periods interrupted or would work through them in order to assist their coworkers and customers. Consequently, Mr. D'Ambrosio and/or other aggrieved employees suffered missed and/or interrupted meal periods, work for which they were not paid.

OCEAN CITIES PIZZA's practices and policies prevented Mr. D'Ambrosio and/or other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. D'Ambrosio and/or other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether.

Additionally, on information and belief, OCEAN CITIES PIZZA did not provide other aggrieved employees with all second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. D'Ambrosio and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, OCEAN CITIES PIZZA implemented a company-wide policy of requiring all employees, including Mr. D'Ambrosio and other aggrieved employees, to sign blanket meal period waivers. OCEAN CITIES PIZZA took the position that non-exempt, hourly paid employees working six (6) hour shifts had waived their rights to take a 30-minute meal period on these particular shifts, for the entirety of their employment. Moreover, OCEAN CITIES PIZZA's meal period waiver form requires employees to provide written notification should they wish to revoke the waiver. OCEAN CITIES PIZZA's presumption that first meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours due to company-wide use of blanket meal period waivers signed at or near the time of hire and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. D'Ambrosio and/or other aggrieved employees from taking all meal periods to which they were entitled.

OCEAN CITIES PIZZA knew or should have known that as a result of its non-compliant policies and practices, that Mr. D'Ambrosio and/or other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. OCEAN CITIES PIZZA further knew or should have known that it did not pay Mr. D'Ambrosio and/or other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, OCEAN CITIES PIZZA engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of

this practice and/or policy, Mr. D'Ambrosio and/or other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that OCEAN CITIES PIZZA did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, OCEAN CITIES PIZZA did not pay other aggrieved employees at the correct rate of pay for premiums because OCEAN CITIES PIZZA systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, OCEAN CITIES PIZZA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. D'Ambrosio and/or other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, OCEAN CITIES PIZZA regularly failed to authorize and permit Mr. D'Ambrosio and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, OCEAN CITIES PIZZA's company-wide practices, including understaffing its locations pursuant to labor budgets and assigning heavy workloads, prevented Mr. D'Ambrosio and other aggrieved employees from being relieved of all duty to take their rest periods. Additionally, OCEAN CITIES PIZZA failed to schedule rest periods, which, coupled with OCEAN CITIES PIZZA's failure to provide adequate rest period coverage, further led to Mr. D'Ambrosio and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, upon information and belief, OCEAN CITIES PIZZA maintained a company-wide on-premises rest period policy, which mandated that Mr. D'Ambrosio and/or other aggrieved employees remain on OCEAN CITIES PIZZA's premises during their rest periods. Because Mr. D'Ambrosio and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running

personal errands. Thus, OCEAN CITIES PIZZA effectively maintained control over Mr. D'Ambrosio and/or other aggrieved employees during rest periods.

As a result of OCEAN CITIES PIZZA's practices and policies, Mr. D'Ambrosio and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. D'Ambrosio was never authorized or permitted to take 10-minute rest periods despite working shifts in excess of 3.5 hours due to a lack of rest period coverage.

OCEAN CITIES PIZZA also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. D'Ambrosio and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that OCEAN CITIES PIZZA did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, OCEAN CITIES PIZZA did not pay other aggrieved employees at the correct rate of pay for premiums because OCEAN CITIES PIZZA failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, OCEAN CITIES PIZZA failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. D'Ambrosio and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. OCEAN CITIES PIZZA has not provided Mr. D'Ambrosio and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, OCEAN CITIES PIZZA has knowingly and intentionally provided Mr. D'Ambrosio and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, OCEAN CITIES PIZZA issued uniform wage statements to Mr. D'Ambrosio and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, OCEAN CITIES PIZZA violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because OCEAN CITIES PIZZA did not record the time Mr. D'Ambrosio and other aggrieved employees spent working off-the-clock, OCEAN CITIES PIZZA did not list the correct amount of gross wages and net wages earned by Mr. D'Ambrosio and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, OCEAN CITIES PIZZA failed to accurately list the total number of hours worked by Mr. D'Ambrosio and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Furthermore, because OCEAN CITIES PIZZA did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, OCEAN CITIES PIZZA did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, OCEAN CITIES PIZZA also failed to list the correct amount of net wages in violation of section 226(a)(5). OCEAN CITIES PIZZA also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), OCEAN CITIES PIZZA willfully failed to maintain accurate payroll records for Mr. D'Ambrosio and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, OCEAN CITIES PIZZA failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. D'Ambrosio and other aggrieved employees, in violation of section 1198. Furthermore, in light of OCEAN CITIES PIZZA's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, OCEAN CITIES PIZZA kept no records of meal start and end times for second meal periods.

Because OCEAN CITIES PIZZA failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. D'Ambrosio and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. D'Ambrosio and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. D'Ambrosio and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, OCEAN CITIES PIZZA willfully failed to pay Mr. D'Ambrosio and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and meal and rest period premiums, within the time periods specified by California Labor Code section 204.

Mr. D'Ambrosio and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

OCEAN CITIES PIZZA willfully failed to pay Mr. D'Ambrosio and other aggrieved employees who are no longer employed by OCEAN CITIES PIZZA the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving OCEAN CITIES PIZZA's employ.

Mr. D'Ambrosio and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, OCEAN CITIES PIZZA had a company-wide policy of requiring Mr. D'Ambrosio and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but OCEAN CITIES PIZZA failed to reimburse them for the costs of their work-related cellular phone expenses. Mr. D'Ambrosio and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, including responding to phone calls from supervisors and other employees. For example, Mr. D'Ambrosio, was required to use the GPS application on his personal cellular phone to navigate and make deliveries to customers throughout the day, which was an essential function of his job duties. In addition, as stated, Mr. D'Ambrosio was contacted by his supervisors at least 3-4 times on his personal cellular phone to discuss work-related matters. Although OCEAN CITIES PIZZA required Mr. D'Ambrosio and other aggrieved employees to utilize their personal cellular phones to carry out their work-related duties, OCEAN CITIES PIZZA failed to reimburse them for this cost.

Second, during the relevant time period, OCEAN CITIES PIZZA, on a company-wide basis, expected Mr. D'Ambrosio and other aggrieved employees to report to work wearing clean uniform shirts with the company logo while simultaneously failing to provide employees with an adequate number of those uniforms. For example, OCEAN CITIES PIZZA provided Mr. D'Ambrosio with only one (1) uniform shirt during his employment. Because OCEAN CITIES PIZZA failed to provide Mr. D'Ambrosio and other aggrieved employees with a sufficient number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Mr. D'Ambrosio and other aggrieved employees were forced to clean their uniforms frequently and incur expenses for doing so. Due to the nature of food preparation work, Mr. D'Ambrosio and other aggrieved employees' uniforms would collect grease and grime quickly and Mr. D'Ambrosio and other aggrieved employees would be required to wash their uniform shirts more frequently and separately from their other clothes, increasing their overall laundry costs.

Third, during the relevant time period, OCEAN CITIES PIZZA, on a company-wide basis, forced Mr. D'Ambrosio and other aggrieved employees to purchase tools, supplies, and/or equipment that were necessary for the completion of their work-related duties. For example, Mr. D'Ambrosio was forced to purchase his own supplies, such as pens and notepads, which were necessary to carry out his job duties and spent approximately \$30 on these items. Although OCEAN CITIES PIZZA required Mr. D'Ambrosio and other aggrieved employees to purchase and use their own tools, supplies, and/or equipment in the performance of their duties, it did not reimburse them for these expenses.

OCEAN CITIES PIZZA could have provided Mr. D'Ambrosio and other aggrieved employees with the actual tools for use on the job, such as company phones, an adequate number of uniforms and/or access to laundering services, and necessary supplies to carry out their job functions. Or, OCEAN CITIES PIZZA could have reimbursed employees for the costs of their cellular phone usage and data, laundering expenses incurred for their uniform maintenance, and necessary work supplies. Instead, OCEAN CITIES PIZZA passed these operating costs off onto Mr. D'Ambrosio and other aggrieved employees. At all relevant times, Mr. D'Ambrosio did not earn at least two (2) times the minimum wage.

Thus, OCEAN CITIES PIZZA had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. D'Ambrosio and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, on information and belief, OCEAN CITIES PIZZA failed, on a company-wide basis, to provide written notice to Mr. D'Ambrosio and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). OCEAN CITIES PIZZA's failure to provide Mr. D'Ambrosio and other aggrieved employees with written notice of basic information material to their employment with OCEAN CITIES PIZZA is in violation of Labor Code section 2810.5.

Mr. D'Ambrosio and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the

employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” OCEAN CITIES PIZZA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. D’Ambrosio’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. D’Ambrosio seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. D’Ambrosio, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against OCEAN CITIES PIZZA for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. D’Ambrosio seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. D’Ambrosio’s reasonable attempt to settle his dispute with OCEAN CITIES PIZZA prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform OCEAN CITIES PIZZA of Mr. D’Ambrosio’s aforementioned grievances and the proposed remedies as detailed below, while affording OCEAN CITIES PIZZA a reasonable opportunity to satisfy Mr. D’Ambrosio’s demands.

Demand is hereby made that OCEAN CITIES PIZZA shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. OCEAN CITIES PIZZA shall pay Mr. D’Ambrosio and all other aggrieved employees employed by OCEAN CITIES PIZZA at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. OCEAN CITIES PIZZA shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, and provided lawful meal and rest periods.
3. OCEAN CITIES PIZZA shall conduct a survey or interview all current and former aggrieved employees in California who worked for OCEAN CITIES PIZZA in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for cellular phone expenses; tools, supplies, and/or equipment; uniform maintenance; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. OCEAN CITIES PIZZA shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. OCEAN CITIES PIZZA also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for

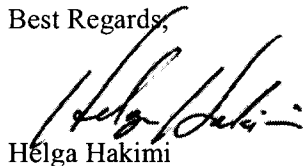
each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.

5. OCEAN CITIES PIZZA shall reimburse Mr. D'Ambrosio and those aggrieved employees who were required to pay for any business expenses incurred for OCEAN CITIES PIZZA's benefit, including, but not limited to, costs of cellular phone expenses; tools, supplies, and/or equipment; and uniform maintenance, as required by Labor Code section 2802.
6. OCEAN CITIES PIZZA shall pay accrued legal interest to Mr. D'Ambrosio and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. OCEAN CITIES PIZZA shall provide Mr. D'Ambrosio and all aggrieved employees employed by OCEAN CITIES PIZZA at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. OCEAN CITIES PIZZA shall provide Mr. D'Ambrosio and all aggrieved employees employed by OCEAN CITIES PIZZA at any time during the past three years from the date of this notice with written notice of basic information material to their employment with OCEAN CITIES PIZZA that include the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
9. OCEAN CITIES PIZZA shall pay waiting time penalties, equal to 30 days of pay, to Mr. D'Ambrosio and each former aggrieved employee who was not paid all wages due as described herein.
10. OCEAN CITIES PIZZA shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1194.5, 1197.1, and 2699, and IWC Wage Order No. 5-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Helga Hakimi
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Helga Hakimi

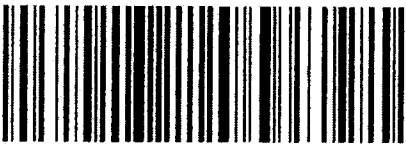
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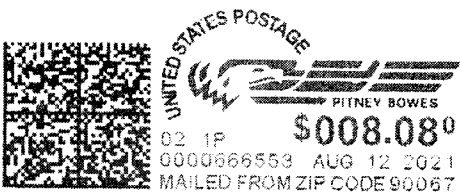
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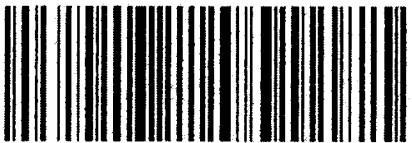
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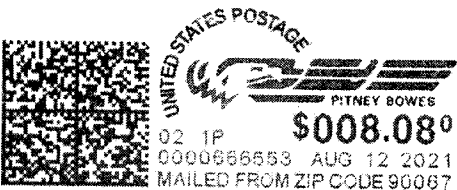
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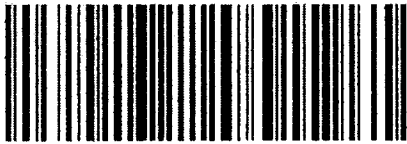
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☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)	☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery

one

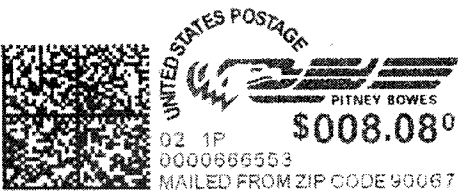
LAW APC

y Park East, Ste 1000
, CA 90067

CERTIFIED MAIL



7019 0700 0001 7653 1872



HOME COUNTY PIZZA, INC.
1811 KNOLL DRIVE
VENTURA, CA 93003

7019 0700 0001 7653 1872

U.S. Postal ServiceTM	
CERTIFIED MAIL[®] RECEIPT	
<i>Domestic Mail Only</i>	
For delivery information, visit our website at www.usps.com	
OFFICIAL USE	
Certified Mail Fee \$ <u>3.60</u>	Postmark Here D'Mb b 510 v Hone County 1128, Jn.
Extra Services & Fees (check box, add fee as appropriate)	
☒ Return Receipt (hardcopy) \$ <u>2.85</u>	
☐ Return Receipt (electronic)	
☐ Certified Mail Restricted Delivery	
☐ Adult Signature Required	
☐ Adult Signature Restricted Delivery	
Postage \$ <u>1.63</u>	
Total Postage and Fees \$ <u>5.08</u>	
Sent to HOME COUNTY PIZZA, INC.	
Street and Apt. No. 814 KNOLL DRIVE	
City, State, ZIP+4[®] VENTURA, CA 93003	
PS Form 3800, April 2015 PSN 7530-02-000-9083 See Reverse for instructions	

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- 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:

HOME COUNTY PIZZA, INC.
1811 KNOLL DRIVE
VENTURA, CA 93003

9590 9402 1512 5362 2495 98

2. Article Number (Transfer from service label)

7019 0700 0001 7653 1872

PS Form 3811, July 2015 PSN 7530-02-000-9083

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express [®] |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail [™] |
| ☐ Certified Mail [®] | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation [™] |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail [®] | |
| ☐ Insured Mail Restricted Delivery (at \$500) | |

Domestic Return Receipt

one

LAW APC

ry Park East, Ste 1000
s, CA 90067

CERTIFIED MAIL

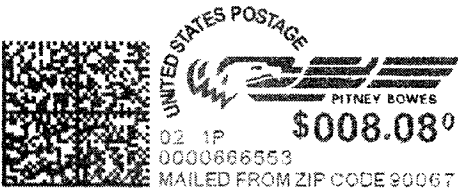


7020 1290 0001 8879 3467

TEAM SO-CAL, INC.
1811 KNOLL DRIVE
VENTURA, CA 93003

7020 1290 0001 8879 3467

U.S. Postal Service TM	
CERTIFIED MAIL [®] RECEIPT	
Domestic Mail Only	
For delivery information, visit our website at www.usps.com	
OFFICIAL USE	
Certified Mail Fee \$ 3.60	Postmark Here Dumbarton, Tenn So-cal, Inc.
Extra Services & Fees (check box, add fee as appropriate) ☐ Return Receipt (hardcopy) \$ 2.85 ☐ Return Receipt (electronic) \$ ☐ Certified Mail Restricted Delivery \$ ☐ Adult Signature Required \$ ☐ Adult Signature Restricted Delivery \$	
Postage \$ 1.63	
Total Postage and Fees \$ 4.08	
Sent To TEAM SO-CAL, INC.	
Street and Apt. No. 1811 KNOLL DRIVE	
City, State, ZIP+4 [®] VENTURA, CA 93003	
PS Form 3800, April 2015 PSN 7530-02-000-9083 See Reverse for Instructions	



SENDER: COMPLETE THIS SECTION	
☐ Complete items 1, 2, and 3. ☐ 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: TEAM SO-CAL, INC. 1811 KNOLL DRIVE VENTURA, CA 93003	
2. Article Number (Transfer from service label) 7020 1290 0001 8879 3467	
PS Form 3811, July 2015 PSN 7530-02-000-9083	
COMPLETE THIS SECTION ON DELIVERY	
A. Signature ☒ Signature	☐ Agent ☐ Addressee
B. Received by (Printed Name)	C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☐ Certified Mail ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)	
☐ Priority Mail Express [®] ☐ Registered Mail [™] ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation [™] ☐ Signature Confirmation Restricted Delivery	
Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ 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.		A. Signature <u>X JT RT 78 C-19</u> B. Received by (Printed Name) <u>HISHMEH</u> C. Date of Delivery <u>8/16/21</u> D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No AUG 18 2021	
1. Article Addressed to: CENTRAL CITIES PIZZA, INC. 1811 KNOLL DRIVE VENTURA, CA 93003 9590 9402 1512 5362 2495 74		3. Service Type ☐ Agent Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery ☐ Insured Mail ☐ Signature Confirmation Restricted Delivery (over \$500)	
2. Article Number (Transfer from service label) 7020 1290 0001 8879 2231		PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ 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.		A. Signature <u>X JT RT 78 C-19</u> B. Received by (Printed Name) <u>HISHMEH</u> C. Date of Delivery <u>8/16/21</u> D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No AUG 18 2021	
1. Article Addressed to: TEAM SO-CAL, INC. 1811 KNOLL DRIVE VENTURA, CA 93003 9590 9402 1512 5362 2496 04		3. Service Type ☐ Agent Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery ☐ Insured Mail ☐ Signature Confirmation Restricted Delivery (over \$500)	
2. Article Number (Transfer from service label) 7020 1290 0001 8879 3467		PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ 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.		A. Signature <u>X YES</u> B. Received by (Printed Name) <u>HISHMEH</u> C. Date of Delivery <u>8/16/21</u> D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No AUG 18 2021	
1. Article Addressed to: HOME COUNTY PIZZA, INC. 1811 KNOLL DRIVE VENTURA, CA 93003 9590 9402 1512 5362 2495 98		3. Service Type ☐ Agent Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery ☐ Insured Mail ☐ Signature Confirmation Restricted Delivery (over \$500)	
2. Article Number (Transfer from service label) 7019 0700 0001 7653 1872		PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ 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.		A. Signature <u>X JT RT 78 C-19</u> B. Received by (Printed Name) <u>HISHMEH</u> C. Date of Delivery <u>8/16/21</u> D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No AUG 18 2021	
1. Article Addressed to: HISHMEH ENTERPRISES, INC. 1811 KNOLL DRIVE VENTURA, CA 93003 9590 9402 1512 5362 2495 81		3. Service Type ☐ Agent Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery ☐ Insured Mail ☐ Signature Confirmation Restricted Delivery (over \$500)	
2. Article Number (Transfer from service label) 7020 1290 0001 8879 2248		PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- 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:

OCEAN CITIES PIZZA, INC.
1811 KNOLL DRIVE
VENTURA, CA 93003



9590 9402 1512 5362 2498 40

2. Article Number (Transfer from service label)

7020 1290 0001 8879 3474

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ST RT 78 C19

☐ Agent

☒ Addressee

B. Received by (Printed Name)

HISHMEH

C. Date of Delivery

8/16/21

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt