

1 Kane Moon (SBN 249834)
E-mail: kane.moon@moonyanglaw.com
2 Brett Gunther (SBN 306448)
E-mail: brett.gunther@moonyanglaw.com
3 Sohyun "Julie" Oh (SBN 341157)
E-mail: julie.oh@moonyanglaw.com
4 **MOON & YANG, APC**
1055 W. Seventh St., Suite 1880
5 Los Angeles, California 90017
Telephone: (213) 232-3128
6 Facsimile: (213) 232-3125

7 Attorneys for Plaintiff Sophath Nhem

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN JOAQUIN**
10

11 SOPHATH NHEM, individually, and on behalf
of all others similarly situated,

12 Plaintiff,

13
14 vs.

15 POSITIVE PIZZA PEOPLE, INC., a California
16 corporation; and DOES 1 through 10, inclusive,

17 Defendants
18
19
20
21
22
23
24
25
26
27
28

FILED
SUPERIOR COURT-STOCKTON

2022 MAY 19 PM 1:41

BRANDON E. RILEY, CLERK

BY **POLLY KHIEU**
DEPUTY

Case No.: STK-CV-UOE-2022-0000557

[Assigned for all purposes to the Hon. George
J. Abdallah, Dept. 10A]

**[FILED AS A MATTER OF RIGHT PER
CAL. LABOR CODE § 2699.3, subd.
(a)(2)(C)]**

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

1 Plaintiff Sophath Nhem (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Positive Pizza People, Inc., and
6 Does 1 through 10 (collectively referred to as “Defendants”) for civil penalties under the Private
7 Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming
8 from Defendants’ failure to pay minimum wages, failure to pay overtime wages, failure to
9 provide meal periods, failure to authorize and permit rest periods, failure to maintain accurate
10 records of hours worked and meal periods, failure to timely pay all wages to terminated
11 employees, failure to indemnify necessary business expenses, and failure to furnish accurate
12 wage statements.

13 2. For over 50 years, California’s courts and legislature have recognized that this
14 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
15 Wages are not ordinary debts. Because of the economic position of the average worker and his
16 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
17 that employees are promptly paid the minimum/overtime wages that the Legislature has required
18 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
19 criminalized certain types of violations. In extending extra protection to deter violations of these
20 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
21 other damages other than civil penalties—California has enacted the PAGA to permit an
22 individual to bring an action on behalf of themselves and on behalf of others for PAGA penalties
23 only, which is the precise and sole nature of this action.

24 3. All California employees during the relevant statutes of limitations who are or
25 were harmed by Defendant’s illegal practices are “Aggrieved Employees.”

26 4. Defendants own/owned and operate/operated an industry, business, and
27 establishment within the State of California, including San Joaquin County. As such, and based
28 upon all the facts and circumstances incident to Defendants’ business in California, Defendants

are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”), and the California Business & Professions Code.

5. Despite these requirements, throughout the statutory period Defendants maintained a systematic, company-wide policy and practice of:

- (a) Failing to pay employees for all hours worked, including all minimum wages, and overtime wages in compliance with the California Labor Code and IWC Wage Orders;
- (b) Failing to provide employees with timely and duty-free meal periods in compliance with the California Labor Code and IWC Wage Orders, failing to maintain accurate records of all meal periods taken or missed, and failing to pay an additional hour’s pay for each workday a meal period violation occurred;
- (c) Failing to authorize and permit employees to take timely and duty-free rest periods in compliance with the California Labor Code and IWC Wage Orders, and failing to pay an additional hour’s pay for each workday a rest period violation occurred;
- (d) Failing to indemnify employees for necessary business expenses incurred;
- (e) Willfully failing to pay employees all minimum wages, overtime wages, meal period premium wages, and rest period premium wages due within the time period specified by California law when employment terminates; and
- (f) Failing to maintain accurate records of the hours that employees worked.
- (g) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders.

6. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their

1 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
2 willful and deliberate.

3 7. At all relevant times, Defendants were and are legally responsible for all of the
4 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
5 foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further,
6 Defendants are responsible for each of the unlawful acts or omissions complained of herein under
7 the doctrine of "respondeat superior".

8 **THE PARTIES**

9 **A. Plaintiff**

10 8. Plaintiff is a California resident that worked for Defendants in the County of San
11 Joaquin, State of California, as a delivery driver from approximately June 2019 to June 2021.

12 **B. Defendants**

13 9. Plaintiff is informed and believes, and based upon that information and belief
14 alleges, that Defendant Positive Pizza People, Inc. is:

- 15 (a) A California corporation with its principal places of business in San
16 Joaquin, California.
- 17 (b) A business entity conducting business in numerous counties throughout the
18 State of California, including in San Joaquin County;
- 19 (c) The former employer of Plaintiff, and the current and/or former employer
20 of the putative group of Aggrieved Employees. Defendants suffered and
21 permitted Plaintiff and the Aggrieved Employees to work, and/or
22 controlled their wages, hours, or working conditions;
- 23 (d) At all times mentioned herein, Defendants, and each of them, are and were
24 doing business as Domino's Pizza.

25 10. Plaintiff does not currently know the true names or capacities of the persons or
26 entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious
27 names. Each of the Doe Defendants was in some manner legally responsible for the damages
28 suffered by Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this

complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

11. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff and the Aggrieved Employees in the State of California.

12. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees described in the Aggrieved Employee definitions above, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

13. Plaintiff is a California resident who worked for Defendants in the County of San Joaquin, State of California, as a delivery driver, from approximately June 2019 to June 2021. During the statutory period, Defendants classified Plaintiff as non-exempt from California's overtime requirements, and paid Plaintiff an hourly wage.

14. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours worked (including minimum wages and overtime wages), failed to provide Plaintiff with uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest periods, failed to indemnify Plaintiff for necessary business expenses, failed to timely pay all

1 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
2 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
3 Defendants was typical and illustrative.

4 15. Throughout the statutory period, Defendants maintained a policy and practice of
5 not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime
6 wages. Plaintiff and the Aggrieved Employees were required to work "off the clock",
7 uncompensated. For example, Plaintiff and the Aggrieved Employees were required to drive
8 their personal vehicles while off the clock, which included to pick up or drop off supplies to or
9 from other locations. Also throughout the statutory period, Plaintiff and the Aggrieved
10 Employees were occasionally required to arrive at work, only to be told to return home
11 substantially earlier than the scheduled shift was supposed to end, without being paid reporting
12 time pay. Also throughout the statutory period, Plaintiff and the Aggrieved Employees received
13 non-discretionary bonuses or cash awards, and other remuneration. However, Defendants failed
14 to incorporate all remuneration when calculating the correct overtime rate of pay, leading to
15 underpayment. In maintaining a practice of not paying all wages owed, Defendants failed to
16 maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

17 16. Throughout the statutory period, Defendants have wrongfully failed to provide
18 Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants
19 sometimes, but not always, required Plaintiff and the Aggrieved Employees to work in excess of
20 five consecutive hours a day without providing 30-minute, continuous and uninterrupted, duty-
21 free meal period for every five hours of work, or without compensating Plaintiff and the
22 Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
23 work or tenth hour of work. Defendants also did not adequately inform Plaintiff and the
24 Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or,
25 for shifts greater than 10 hours, by the end of the tenth hour of work. Accordingly, Defendants'
26 policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in
27 compliance with California law.

1 17. Throughout the statutory period, Defendants have wrongfully failed to authorize
2 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.
3 Defendants sometimes, but not always, required Plaintiff and the Aggrieved Employees to work
4 in excess of four consecutive hours a day without Defendants authorizing and permitting them to
5 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or
6 major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees
7 for rest periods that were not authorized or permitted. Defendants also did not adequately inform
8 Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants
9 did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and
10 the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the
11 timing of rest periods. Defendants also did not have adequate policies or practices to verify
12 whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further,
13 Defendants did not maintain accurate records of employee work periods, and therefore
14 Defendants cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods
15 during the middle of each work period. Accordingly, Defendants' policy and practice was to not
16 authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance
17 with California law.

18 18. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
19 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
20 Defendants without reimbursement, which included face masks. Plaintiff and the Aggrieved
21 Employees were also required to use their own cellular telephones for work, without
22 reimbursement. Plaintiff and the Aggrieved Employees were also occasionally required to use
23 their own vehicles for work, without full reimbursement of automobile expenses for all use of the
24 vehicles (which included the off the clock work of traveling to pick up or deliver items to or from
25 other Domino's Pizza locations). Plaintiff and the Aggrieved Employees were also not
26 reimbursed for automobile expenses and repairs, or for car rentals when needed.

27 19. Throughout the statutory period, Defendants willfully failed and refused to timely
28 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages for

1 all minimum wages, overtime wages, meal period premium wages, and rest period premium
2 wages. Further, Defendants did not pay Plaintiff and the Aggrieved Employees their final
3 paychecks immediately upon termination.

4 20. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
5 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
6 rates, and all gross and net wages earned (including correct hours worked, correct wages earned
7 for hours worked, correct overtime hours worked, correct wages for meal periods that were not
8 provided in accordance with California law, correct wages for rest periods that were not
9 authorized and permitted to take in accordance with California law, and Defendant's address).
10 Further, the wage statements do not show Defendant's address as required by California law. As
11 a result of these violations of California Labor Code § 226(a), the Plaintiff and the Aggrieved
12 Employees suffered injury because, among other things:

- 13 (a) the violations led them to believe that they were not entitled to be paid
14 minimum wages, overtime wages, meal period premium wages, and rest
15 period premium wages to which they were entitled, even though they were
16 entitled;
- 17 (b) the violations led them to believe that they had been paid the minimum,
18 overtime, meal period premium, and rest period premium wages, even
19 though they had not been;
- 20 (c) the violations led them to believe they were not entitled to be paid
21 minimum, overtime, meal period premium, and rest period premium wages
22 at the correct California rate even though they were;
- 23 (d) the violations led them to believe they had been paid minimum, overtime,
24 meal period premium, and rest period premium wages at the correct
25 California rate even though they had not been;
- 26 (e) the violations hindered them from determining the amounts of minimum,
27 overtime, meal period premium, and rest period premium owed to them;

- 1 (f) in connection with their employment before and during this action, and in
2 connection with prosecuting this action, the violations caused them to have
3 to perform mathematical computations to determine the amounts of wages
4 owed to them, computations they would not have to make if the wage
5 statements contained the required accurate information;
- 6 (g) by understating the wages truly due them, the violations caused them to
7 lose entitlement and/or accrual of the full amount of Social Security,
8 disability, unemployment, and other governmental benefits;
- 9 (h) the wage statements inaccurately understated the wages, hours, and wages
10 rates to which Plaintiff and the Aggrieved Employees were entitled, and
11 Plaintiff and the Aggrieved Employees were paid less than the wages and
12 wage rates to which they were entitled.

13 **FIRST CAUSE OF ACTION**

14 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
15 **2004, Cal. Lab. Code § 2698 et seq.)**

16 21. Plaintiff incorporates by reference and re-alleges as if fully stated herein
17 paragraphs 1 through 20 in this Complaint.

18 22. At all times herein mentioned, Defendants were subject to the Labor Code of the
19 State of California and the applicable Industrial Welfare Commission Orders.

20 23. California Labor Code § 2699(a) specifically provides for a private right of action
21 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
22 law, any provision of this code that provides for a civil penalty to be assessed and collected by
23 the Labor and Workforce Development Agency or any of its departments, divisions,
24 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
25 be recovered through a civil action brought by an aggrieved employee on behalf of herself or
26 herself and other current or former employees pursuant to the procedures specified in Section
27 2699.3.”
28

1 24. Plaintiff has exhausted the administrative remedies pursuant to California Labor
2 Code § 2699.3. On January 22, 2022, Plaintiff gave written notice by online filing to the Labor
3 and Workforce Development Agency and by certified mail to Defendants of the specific
4 provisions of the Labor Code that Defendants have violated against Plaintiff and current and
5 former aggrieved employees, including the facts and theories to support the violations. Plaintiff
6 also paid the filing fee shortly after January 22, 2022. Plaintiff's PAGA case number is LWDA-
7 CM-864102-22.

8 25. The statute of limitations is tolled while a plaintiff exhausts his/her administrative
9 remedies with California's Labor and Workforce Development Agency (LWDA) prior to suit,
10 which is required by the statute. (See Cal. Lab. Code § 2699.3(d).)

11 26. More than 65 days has elapsed since Plaintiff provided notice, but the Labor and
12 Workforce Development Agency has not indicated that it intends to investigate Defendants'
13 Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil
14 action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of
15 the Labor Code described in this Complaint. These penalties include, but are not limited to,
16 penalties under California Labor Code §§ 210, 226.3, 1197.1, and 2699(f)(2).

17 27. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor
18 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
19 employing labor who willfully fails to maintain accurate and complete records required by
20 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
21 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
22 begins and ends each work period. Meal periods, and total hours worked daily shall also be
23 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
24 keep total hours worked in the payroll period and applicable rates of pay.

25 28. During the time period of employment for Plaintiff and the Aggrieved Employees,
26 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
27 maintain accurate records showing meal periods, and accurate records showing when employees
28 begin and end each work period. Defendants' failure to provide and maintain records required by

1 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
2 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
3 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
4 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
5 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
6 Employees have suffered and continue to suffer, substantial losses related to the use and
7 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
8 to compel Defendants to fully perform its obligation under state law, all to their respective
9 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
10 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
11 Employees have also suffered an injury in that they were prevented from knowing,
12 understanding, and disputing the wage payments paid to them.

13 29. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
14 of civil penalties on behalf of Plaintiff, the State of California, and similarly Aggrieved
15 Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount
16 to be shown according to proof at trial. These penalties are in addition to all other remedies
17 permitted by law.

18 30. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
19 pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
20 shall be entitled to an award of reasonable attorney's fees and costs."
21

22 **PRAYER FOR RELIEF**

23 Plaintiff, individually, and on behalf of all other similarly situated Aggrieved Employees,
24 prays for relief and judgment against Defendants, jointly and severally, as follows:

25 1. That the Court declare, adjudge and decree that Defendants violated the California
26 Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and
27 overtime wages), failing to provide meal periods, failing to authorize and permit rest periods,
28 failing to furnish accurate wage statements, failing to reimburse for necessary business expenses

1 incurred by Plaintiff and the Aggrieved Employees, and failing to maintain accurate records of
2 all hours worked and meal periods;

3 2. An award of civil penalties on behalf of Plaintiff and all similarly aggrieved
4 employees pursuant to PAGA;

5 3. Pre-judgment and post-judgment interest at the maximum rate allowed;

6 4. Attorneys' fees and costs reasonably incurred;

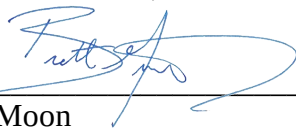
7 5. Injunctive and declaratory relief to the extent allowed by PAGA; and

8 6. For any additional relief that the Court deems just and proper.

9
10 Dated: April 13, 2022

Respectfully submitted,

11 MOON & YANG, APC

12
13 By: 

Kane Moon

Brett Gunther

Sohyun "Julie" Oh

Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 1055 West Seventh Street, Suite 1880,
7 Los Angeles, California 90017. On May 19, 2022, I served the foregoing document described as:

8 **FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT**

9 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
10 addressed as follows:

11 DEREK C. DECKER
12 **KROGH & DECKER, LLP**
13 555 Capitol Mall, Suite 700
14 Sacramento, CA 95814
15 916.498.9000 (p)
16 916.498.9005 (f)
17 derekdecker@kroghdecker.com

18 Attorneys for Defendant Positive Pizza people, Inc.

19 [✓] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The
20 envelope was mailed with postage thereon fully prepaid. I am “readily familiar” with
21 the firm’s practice of collection and processing correspondence for mailing. Under that
22 practice it would be deposited with U.S. postal service on that same day with postage
23 thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am
24 aware that on motion of the party served, service is presumed invalid if postal
25 cancellation date or postage meter date is more than one day after date of deposit for
26 mailing in affidavit.

27 X (State) I declare under penalty of perjury under the laws of the State of
28 California that the above is true and correct.

Executed on May 19, 2022, at Los Angeles, California.

29 Ivette Hernandez
30 Name

31 
32 Signature