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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ALAMEDA**
11

12 CLARA BAILON and MONICA ALVAREZ,
13 as individuals and on behalf of others similarly
situated,

14 Plaintiffs,

15 v.

16 FORGE PIZZA, FORGE PIZZA DANVILLE,
17 LLC, LBT JLS LLC, and DOES 1 through 10

18 Defendants.
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**ENDORSED
FILED
ALAMEDA COUNTY**

APR 11 2016

CLERK OF THE SUPERIOR COURT

By M. Adams Deputy

Case No.: RG 16811165

CLASS ACTION COMPLAINT

- (1) MEAL PERIOD VIOLATIONS**
- (2) REST PERIOD VIOLATIONS**
- (3) WAGE STATEMENT VIOLATIONS**
- (4) WAITING TIME PENALTIES**
- (5) PRIVATE ATTORNEY GENERAL
ACT (Labor Code § 2698, et seq.)**
- (6) UNFAIR BUSINESS PRACTICES**

JURY TRIAL REQUESTED

1. Plaintiffs Clara Bailon and Monica Alvarez (hereinafter referred to as “PLAINTIFFS”), hereby submit their Complaint against Forge Pizza, Forge Pizza Danville, LLC, LBT JLS LLC, and Does 1-10 (hereinafter collectively referred to as “DEFENDANTS” or “FORGE PIZZA”) on behalf of themselves, and the class of others similarly situated. The allegations below are made on PLAINTIFFS’ information and belief.

I. INTRODUCTION

2. This class action is for the purpose of prosecuting claims under California Labor Code §§ 201-204, 226.7, 512, 1174 and 2699, California Business and Professions Code § 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare Commission (“IWC”) including IWC Wage Order No. 5.

3. This complaint challenges systemic illegal employment practices by DEFENDANTS resulting in violations of the California Labor Code, Business and Professions Code and IWC Wage Order No. 5.

4. The Private Attorney General Act of 2004 (“PAGA”) codified in Cal. Labor Code § 2698, et seq. allows a private citizen to pursue civil penalties on behalf of the State of California Labor and Workforce Development Agency (“LWDA”). The aggrieved employee is allowed to seek civil penalties not only for violations that he personally suffered but also for violations of “other current or former employees” pursuant to Cal. Labor Code § 2699(a).

5. PLAINTIFFS are informed and believe and based thereon allege that **DEFENDANTS**, jointly and severally have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees in receiving all wages and other benefits due and minimally required of every employer under California law.

6. PLAINTIFFS are informed and believe and based thereon allege DEFENDANTS have engaged in, among other things a system of willful violations of the California Labor Code, Business and Professions Code and IWC Wage Order No. 5 by creating and maintaining policies, practices and customs that knowingly deny employees: (1) compensation for improper/inadequate meal periods, (2) compensation for denied rest breaks, and (3) accurate,

1 itemized wage statements.

2 7. The policies, practices and customs of DEFENDANTS described above and below
3 have resulted in unjust enrichment of DEFENDANTS and an unfair business advantage over
4 businesses that routinely adhere to the strictures of the California Labor Code, Business and
5 Professions Code and IWC Wage Order No. 5.

6 **II. JURISDICTION AND VENUE**

7 8. The Court has jurisdiction over the violations of the California Labor Code §§ 201-
8 204, 226.7, 512, 1174 and 2699, California Business and Professions Code § 17200, et seq.,
9 (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare
10 Commission including IWC Wage Order No. 5.

11 9. Jurisdiction is proper in this Court because alleged damages exceed Twenty-five
12 Thousand Dollars (\$25,000.00). (*Cal. Code Civ. Pro. § 580, subd. (b)(2)*), and Plaintiffs meet the
13 requirements of C.C.P. § 382 to bring this action because, among other reasons, the question is
14 one of common or general interest, is a question of many persons and/or the parties are numerous
15 and it is impracticable to bring them all before the Court.

16 10. Venue is proper because FORGE PIZZA operates a restaurant in the county of
17 Alameda. PLAINTIFFS worked for DEFENDANTS in the county of Alameda.

18 **III. PARTIES**

19 11. Plaintiff Clara Bailon (“PLAINTIFF BAILON”) and Plaintiff Monica Alvarez
20 (“PLAINTIFF ALVAREZ”) are individuals, over the age of 18.

21 12. Forge Pizza, a business entity form unknown, does business in the State of
22 California as Forge Pizza Jack London Square in Oakland, California and Forge Pizza Danville
23 in Danville, California.

24 13. Forge Pizza Danville, LLC is a California Limited Liability Company doing
25 business in the State of California as Forge Pizza Jack London Square in Oakland, California and
26 Forge Pizza Danville in Danville, California.
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14. LBT JLS LLC is a California Limited Liability Company doing business in the State of California as Forge Pizza Jack London Square in Oakland, California and Forge Pizza Danville in Danville, California.

15. DEFENDANTS were the employer of PLAINTIFFS and other employees similarly situated during the relevant class claim period.

16. At all times herein mentioned DEFENDANTS and DOES 1 through 10, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. DEFENDANTS own and operate an industry, business and establishment throughout California and is headquartered in the county of Alameda, for the purpose of operating a restaurant chain. As such, and based upon all the facts and circumstances incident to DEFENDANTS' business in California, DEFENDANTS are subject to California laws that regulate the employment and working conditions of employees in California, including California Labor Code §§ 201-204, 226.7, 512, 1174 and 2699, California Business and Professions Code § 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare Commission including IWC Wage Order No. 5 §§ 7, 11 and 12.

17. PLAINTIFFS do not know the true names or capacities, whether individual, partner or corporate, of the DEFENDANTS sued herein as DOES 1 through 10, inclusive, and for that reason, said DEFENDANTS are sued under such fictitious names, and PLAINTIFFS pray leave to amend this complaint when the true names and capacities are known.

PLAINTIFFS are informed and believe and thereon allege that each of said fictitious DEFENDANTS was responsible in some way for the matters alleged herein and proximately caused PLAINTIFFS and members of the class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

IV. STATEMENT OF FACTS

18. DEFENDANTS operate Forge Pizza in Oakland, California and Danville, California.

1 **19.** The “CLASS PERIOD” is four years from the filing of this action through the
2 entry of final judgment in this action.

3 **20.** PLAINTIFF BAILON was employed with DEFENDANTS from approximately
4 August 2013 to August 25, 2015 at Forge Pizza in Oakland, California. Her last position was line
5 cook.

6 **21.** PLAINTIFF ALVAREZ was employed with DEFENDANTS from approximately
7 November 2013 to October 2015 at Forge Pizza in Oakland, California. Her last position was
8 dishwasher.

9 **22.** During the CLASS PERIOD, DEFENDANTS employed at least 70 non-exempt,
10 hourly-paid employees.

11 **23.** PLAINTIFFS and similarly situated employees work shifts for periods of more
12 than five (5) hours without proper meal periods of thirty (30) minutes.

13 **24.** PLAINTIFF and similarly situated employees often take meal periods that are
14 improper in that they last for shorter than thirty (30) minutes, are taken within the control of
15 DEFENDANTS, are taken while not being fully relieved from their job duties, and/or are taken
16 after more than five hours of work.

17 **25.** PLAINTIFFS and similarly situated employees are not provide a second meal
18 period when they work shifts for periods of more than (10) hours.

19 **26.** PLAINTIFFS and class members are not compensated one hour of their regular
20 rate of pay for every time they are not provided a required meal period and/or every time their
21 meal periods lasted less than thirty (30) minutes.

22 **27.** There is no payroll system in place that compensates employees for denied or
23 improper meal periods.

24 **28.** PLAINTIFFS and class members work for periods of more than four (4) hours
25 without a rest period of ten (10) minutes.

26 **29.** PLAINTIFFS and similarly situated employees often work shifts longer than four
27 (4) hours without any rest breaks because there is a lack of rest break policy.
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30. PLAINTIFFS and similarly situated employees are not compensated one hour of their regular rate of pay for each time they are not provided a rest break.

31. During the CLASS PERIOD, DEFENDANTS failed to establish and enforce a rest break policy.

32. DEFENDANTS have failed to deliver accurate itemized wage statements of all wages earned by PLAINTIFFS and similarly situated employees. The wage statements are not accurate in that they do not reflect the required compensation for denied or improper meal periods and rest breaks.

33. Employees are not able to ascertain if they are compensated for missed or improper meal periods and rest breaks.

V. CLASS ACTION ALLEGATIONS

34. PLAINTIFFS brings this lawsuit as a class action pursuant to Code of Civil Procedure § 382 on behalf of himself and all similarly situated employees. The class PLAINTIFFS seek to represent is defined as:

All current and former non-exempt, hourly-paid employees who worked for FORGE PIZZA during the period commencing four years from the filing of this action through the entry of final judgment in this action.

The claims herein have been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest among class members with respect to the claims asserted herein and the proposed class is easily ascertainable:

a. Ascertainability and Numerosity: The potential members of the class as defined herein are so numerous that joinder would be impracticable. DEFENDANTS have employed over 70 employees in California during the CLASS PERIOD. The names and addresses of the Class Members are available from DEFENDANTS. Notice can be provided to the Class Members via first class mail using techniques and a form of notice similar to those customarily used in class action lawsuits of this nature.

1 b. Commonality: There are questions of law and fact common to PLAINTIFFS and
2 the class that predominate over any questions affecting only individual members of the class.

3 These common questions of law and fact include, without limitation:

- 4 i. Whether DEFENDANTS have failed to provide adequate off-duty meal periods
5 and payments for denied meal periods, in violation of Labor Code §§ 226.7 and
6 512 and IWC wage order No. 5, § 11;
- 7 ii. Whether DEFENDANTS' failure to provide adequate meal periods and
8 payments for denied meal periods constitutes an unlawful, unfair, and/or
9 fraudulent business practice, under Business & Professions Code § 17200 et
10 seq;
- 11 iii. Whether DEFENDANTS have failed to authorize and permit adequate rest
12 periods and payments for denied rest periods, in violation of Labor Code §§
13 226.7 and IWC wage order No. 5, § 12;
- 14 iv. Whether DEFENDANTS' failure to authorize and permit adequate rest periods
15 and payment for denied rest periods constitutes an unlawful, unfair, and/or
16 fraudulent business practice, under Business & Professions Code § 17200 et
17 seq;
- 18 v. Whether DEFENDANTS have knowingly and intentionally failed to provide
19 employees with an accurate itemized statement showing all gross wages earned
20 with each payment of wages, as required by Labor Code § 226 and IWC wage
21 order No. 5, § 7;
- 22 vi. Whether DEFENDANTS' failure to provide an accurate itemized statement
23 showing all gross wages earned in each payment of wages constitutes an
24 unlawful, unfair, and/or fraudulent business practice, under Business &
25 Professions Code § 17200 et seq.;
- 26 vii. Whether DEFENDANTS have violated Labor Code § 1174 and IWC wage
27 order No. 5, § 7 by failing to maintain documentation of all gross wages earned
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1 each day by Employees;

2 viii. Whether DEFENDANTS' failure to maintain documentation of all gross wages
3 earned each day by Employees constitutes an unlawful, unfair, and/or fraudulent
4 business practice, under Business & Professions Code § 17200 et seq;

5 ix. Whether DEFENDANTS have violated Labor Code §§ 201-203, by failing,
6 upon termination, to timely pay Employees wages that were due for denied meal
7 and rest periods;

8 x. Whether DEFENDANTS' failure to pay all compensation owed at time of
9 termination of employment constituted an unlawful, unfair, and/or fraudulent
10 business practice, under Business & Professions Code § 17200 et seq;

11 xi. The proper formula for calculating restitution, damages, and waiting time and
12 other statutory penalties owed to PLAINTIFFS and the class alleged herein.

13 c. Typicality: Plaintiffs' claims are typical of the claims of the class.

14
15 DEFENDANTS' common course of unlawful conduct has caused PLAINTIFFS and similarly
16 situated employees to sustain the same or similar injuries and damages caused by the same
17 policies and/or practices of DEFENDANTS. PLAINTIFFS' claims are thereby representative of
18 and co-extensive with the claims of the class.

19 d. Adequacy of Representation: PLAINTIFFS do not have any conflicts of interest
20 with other class members and will prosecute the case vigorously on behalf of the class.

21 PLAINTIFFS will fairly and adequately represent and protect the interests of the class members.
22 The PLAINTIFFS' counsel are competent and experienced in litigating employment actions,
23 including wage and hour class actions.

24 e. Superiority of Class Action: A class action is superior to other available means
25 for the fair and efficient adjudication of this controversy. Individual joinder of all class members
26 is not practicable, and questions of law and fact common to the class predominate over any
27 questions affecting only individual members of the class. Each class member has been damaged
28 and is entitled to recovery by reason of DEFENDANTS' unlawful policies and/or practices

described herein. Because the damages suffered by individual Class Members may be relatively small, albeit significant, the expense and burden of individual litigation make it impractical for most Class Members individually to seek redress for the wrongful conduct alleged. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Moreover, the risk of reprisal against individual plaintiffs weighs in favor of class action treatment.

VI. DAMAGES

35. As a direct, foreseeable, and proximate result of DEFENDANTS' conduct, PLAINTIFFS and similarly situated employees are owed, among other things, payments for denied or improper meal and rest periods plus interest, waiting time penalties under Labor Code § 203, and other statutory penalties in an amount that exceeds \$25,000, the precise amount of which will be proven at trial.

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

By All PLAINTIFFS Against All DEFENDANTS

(FAILURE TO COMPENSATE FOR MEAL PERIOD VIOLATIONS)

36. PLAINTIFFS re-allege and incorporate the above allegations by reference.

37. DEFENDANTS failed in their affirmative obligation to ensure that all of their employees, including PLAINTIFFS and other members of the class, were actually relieved of all duties, not performing any work, and free to leave the premises during meal periods. PLAINTIFFS and the class were suffered and permitted to work through legally required meal periods. As such, DEFENDANTS are responsible for paying premium compensation for denied meal periods pursuant to Labor Code §§ 226.7 and 512, and IWC Wage Order No. 5 § 11(B). DEFENDANTS shall pay the each affected employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided.

38. PLAINTIFFS and class members regularly worked in excess of ten (10) hours per day and accordingly had a right to take two 30-minute meal periods each day worked in excess

1 of ten (10) hours.

2 **39.** As a pattern and practice, DEFENDANTS failed to provide its employees off-
3 duty meal periods no later than the end of an employee's fifth (5th) hour of work without proper
4 compensation in violation of California law.

5 **40.** As a pattern and practice, DEFENDANTS failed to provide its employees a
6 second off-duty meal period no later than the end of an employee's tenth (10th) hour of work
7 without proper compensation in violation of California law. In fact, DEFENDANTS did not
8 have a policy and system in place authorizing employees a second off-duty meal period when
9 they work more than ten (10) hours per day.

10 **41.** PLAINTIFFS are informed and believe and based thereon allege DEFENDANTS
11 failed to provide PLAINTIFFS and other members of the class with the opportunity to take off-
12 duty meal breaks was willful and done with the wrongful and deliberate intention of injuring
13 PLAINTIFFS and other members of the class.

14 **42.** Such a pattern, practice and uniform administration of corporate policy as
15 described herein is unlawful and creates an entitlement to recovery by the PLAINTIFFS and the
16 class identified herein, in a civil action, for the unpaid balance of the unpaid premium
17 compensation pursuant to Labor Code § 226.7 and IWC Wage Order No. 5 § 11(B), including
18 interest thereon and penalties.

19 **43.** DEFENDANTS' wrongful and illegal conduct in failing provide class members
20 with the opportunity to take off-duty meal periods and to provide premium compensation in
21 accordance with Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5 § 11(B) despite the
22 clear legal obligation to do so, unless and until enjoined and restrained by order of this court, will
23 cause great and irreparable injury to PLAINTIFFS and all members of the class in that the
24 DEFENDANTS will continue to violate these California laws, represented by labor statutes and
25 IWC wage orders, unless specifically ordered to comply with same. This expectation of future
26 violations will require current and future employees to repeatedly and continuously seek legal
27 redress in order to gain compensation to which they are entitled under California law.
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1 PLAINTIFFS have no other adequate remedy at law to insure future compliance with the
2 California labor laws and wage orders alleged to have been violated herein.

3 **SECOND CAUSE OF ACTION**

4 By All PLAINTIFFS Against All DEFENDANTS

5 **(FAILURE TO COMPENSATE FOR REST BREAK VIOLATIONS)**

6 44. PLAINTIFFS re-allege and incorporate the above allegations by reference.

7 45. DEFENDANTS affirmatively prevented PLAINTIFFS and class members from
8 taking legally mandated rest breaks. As such, DEFENDANTS are responsible for paying
9 premium compensation for missed rest periods pursuant to Labor Code § 226.7 and IWC Wage
10 Order No. 5 § 12(B). DEFENDANTS shall pay the each affected employee one (1) hour of pay
11 at the employee's regular rate of compensation for each workday that the rest break was not
12 provided.

13
14 46. PLAINTIFFS and class members regularly worked in excess of three and half (3
15 ½) hours per day. DEFENDANTS' policies and practices prevented PLAINTIFFS and class
16 members from enjoying their right to a ten (10) minute rest periods sometime before the end of
17 each four (4) hour work period.

18 47. As a pattern and practice, DEFENDANTS regularly required employees to work
19 through rest periods.

20 48. PLAINTIFFS are informed and believe and based thereon allege
21 DEFENDANTS' failure to provide PLAINTIFFS and other members of the class with the
22 opportunity to take rest breaks with the deliberate intention of injuring PLAINTIFFS and other
23 members of the class, from improper motives amounting to malice, and in conscious disregard of
24 PLAINTIFFS and other members of the class' rights.

25 49. PLAINTIFFS are informed and believe and based thereon allege DEFENDANTS
26 willfully failed to pay employees who were not provided the opportunity to take rest breaks the
27 premium compensation set out in Labor Code § 226.7 and IWC Wage Order No. 5 § 12(B).

28 50. Such a pattern, practice and uniform administration of corporate policy as

1 described herein is unlawful and creates an entitlement to recovery by the PLAINTIFFS and the
2 class identified herein, in a civil action, for the unpaid balance of the unpaid premium
3 compensation pursuant to Labor Code § 226.7 and IWC Wage Order No. 5 § 12(B), including
4 interest thereon and penalties.

5 **51.** DEFENDANTS' wrongful and illegal conduct in failing provide class members
6 with the opportunity to take rest breaks and to provide premium compensation in accordance
7 with Labor Code § 226.7 and IWC Wage Order No. 5 § 12(B) despite the clear legal obligation
8 to do so, unless and until enjoined and restrained by order of this court, will cause great and
9 irreparable injury to PLAINTIFFS and all members of the class in that the DEFENDANTS will
10 continue to violate these California laws, represented by labor statutes and IWC wage orders,
11 unless specifically ordered to comply with same. This expectation of future violations will
12 require current and future employees to repeatedly and continuously seek legal redress in order
13 to gain compensation to which they are entitled under California law. PLAINTIFFS have no
14 other adequate remedy at law to insure future compliance with the California labor laws and
15 wage orders alleged to have been violated herein.

16 **THIRD CAUSE OF ACTION**

17 By All PLAINTIFFS Against All DEFENDANTS

18 **(FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS)**

19 **52.** PLAINTIFFS re-allege and incorporate the above allegations by reference.

20 **53.** As a pattern and practice, DEFENDANTS failed to furnish PLAINTIFFS and all
21 similarly situated employees, either semimonthly or at the time of each payment of wages, either
22 as a detachable part o the check or separately, an accurate, itemized statement in writing showing
23 all gross wages earned, including the premium compensation for any denied meal and/or rest
24 breaks at the applicable hourly rates of PLAINTIFFS and all similarly situated employees.

25 **54.** The wage statements are not accurate in that they do not reflect all gross wages
26 earned. The wage statements do not reflect the required compensation for missed or improper
27 meal periods and rest breaks.
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1 **55.** DEFENDANTS willfully and intentionally failed to provide PLAINTIFFS and all
2 similarly situated employees with accurate, itemized statements, to show on such itemized
3 statements the gross wages earned by PLAINTIFFS and all similarly situated employees in that it
4 required or suffered them to work and failed to pay wages to them for all wages earned.
5 DEFENDANTS willfully and intentionally failed to show accurate gross wages earned by
6 PLAINTIFFS and all similarly situated employees at all applicable hourly rates.

7 **56.** As such, PLAINTIFFS and all similarly situated employees are entitled to
8 payment from DEFENDANTS of the greater of actual damages or \$50 for the initial pay period
9 in which the violation occurred and \$100 for each subsequent violation, up to a maximum of
10 \$4000, pursuant to Labor Code § 226, as well as reasonable attorney's fees and costs of suit.

11
12 **FOURTH CAUSE OF ACTION**

13 By All PLAINTIFFS Against All DEFENDANTS

14 **(WAITING TIME PENALTIES)**

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16 **57.** PLAINTIFFS re-allege and incorporate the above allegations by reference.

17 **58.** Labor Code § 201 requires an employer who discharges an employee to pay all
18 compensation due and owing to that employee immediately upon discharge.

19 **59.** Labor Code § 202 requires an employer to pay all compensation due and owing to
20 an employee who quits within 72 hours of that employee quitting, unless the employee provides
21 at least 72 hours notice of quitting, in which case all compensation is due at the end of the
22 employee's final day of work.

23 **60.** Labor Code § 203 provides that if an employer willfully fails to pay compensation
24 promptly upon discharge, as required by § 201 or § 202, then the employer is liable for waiting
25 time penalties in the form of continued compensation of up to 30 work days.

26 **61.** DEFENDANTS willfully failed and refused to timely pay compensation and
27 wages to class members as required by Labor Code § 201 or § 202, including unpaid
28 compensation for improper and denied meal breaks, and denied missed rest breaks.

1 **62.** As a result, DEFENDANTS are liable to PLAINTIFFS and class members who
2 are former employees for waiting time penalties pursuant to Labor Code § 203.

3 **FIFTH CAUSE OF ACTION**

4 By All PLAINTIFFS Against All DEFENDANTS

5 **CIVIL PENALTIES PURSUANT TO PRIVATE ATTORNEY GENERAL ACT**
6 **(Labor Code § 2698, et seq.)**

7 **63.** PLAINTIFFS re-allege and incorporate the above allegations by reference.

8 **64.** Pursuant to Labor Code §2699, the foregoing violations of statutes and
9 regulations permit PLAINTIFFS to recover a civil penalty through this action. Labor Code
10 §2699 provides in relevant part that:

11 (a) Notwithstanding any other provisions of law, any
12 provision of [the California Labor Code] that provides for a
13 civil penalty to be assessed and collected by the Labor and
14 Workforce Development Agency or any of its departments,
15 divisions, commissions, boards, agencies or employees, for
16 a violation of [the Labor Code], may, as an alternative, be
17 recovered through a civil action brought by an aggrieved
18 employee on behalf of himself or herself and other current
19 or former employees....(e) For all provisions of this code
20 except those for which a civil penalty is specifically
21 provided, there is established a civil penalty for a violation
22 of these provisions, as follows:(2) If at the time of the
23 alleged violation, the person employs one or more
24 employees, the civil penalty is one hundred dollars (\$100)
25 for each aggrieved employee per pay period for the initial
26 violation, and two hundred dollars (\$200) for each
27 aggrieved employee per pay period for each subsequent
28 violation.

23 **65.** DEFENDANTS' violations of California wage and hour laws enable
24 PLAINTIFFS to recover civil penalties as aggrieved employees on behalf of themselves and
25 other current and former employees of DEFENDANTS.

26 **66.** PLAINTIFFS has complied with the procedural requirements specified in Labor
27 Code §2699.3. As a result, PLAINTIFFS has exhausted all administrative procedures required
28

of them under Labor Code §§2698, 2699 and 2699.3, and are justified as a matter of right in bringing forward this cause of action.

67. On January 29, 2016, PLAINTIFFS through counsel, pursuant to the Labor Code Private Attorneys General Act of 2004, sent via certified mail a letter-notice of violations to the California Labor and Workforce Development Agency (“LWDA”), as required by Labor Code §2699.3. A copy of this letter-notice is attached to this Complaint as Exhibit “A.”

68. Because more than 33 days have passed since the mailing of PLAINTIFF'S letter-notice of violations to the LWDA, and PLAINTIFFS have not received a notice from the LWDA that it does not intend to investigate the alleged violations, PLAINTIFFS may commence a civil action pursuant to Labor Code §2699. Labor Code §2699.3(2)(A).

69. As a result of DEFENDANTS' violation of numerous provisions of the Labor Code, Plaintiff seeks all civil penalties, reasonable attorneys fees and costs available pursuant to Labor Code §2699.

70. PLAINTIFFS are likely to have evidentiary support, after research and reasonable opportunity for further investigation and discovery, to further penalties and violations. PLAINTIFFS will amend this Complaint if appropriate and required to seek all applicable penalties for violations which the LWDA has failed to investigate and/or failed to issue a citation.

71. Pursuant to Labor Code §2699(i), PLAINTIFFS should be awarded twenty-five percent (25%) of all penalties due under California law, interest, attorneys' fees and costs. The LWDA should be awarded seventy-five percent (75%) of the penalties due and awarded.

SIXTH CAUSE OF ACTION

By All PLAINTIFFS Against All DEFENDANTS

(BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ. VIOLATIONS)

72. PLAINTIFFS re-allege and incorporate the above allegations by reference.

73. Business & Professions Code § 17200 prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

1 **74.** Business & Professions Code § 17204 allows “any person acting for the interests
2 of itself, its members or the general public” to prosecute a civil action for violation of the UCL.

3 **75.** Beginning at an exact date unknown to PLAINTIFFS, but at least four years prior
4 to the filing of this action, DEFENDANTS have committed unlawful, unfair, and/or fraudulent
5 business acts and practices as defined by Cal. Business & Professions Code § 17200, by
6 engaging in the following:

- 7 a. Failing and refusing to provide meal periods to PLAINTIFFS and
8 similarly situated employees;
- 9 b. Failing and refusing to authorize and permit rest breaks to PLAINTIFFS
10 and similarly situated employees;
- 11 c. Failing to pay all accrued meal period and rest break compensation;
- 12 d. Failing to provide accurate itemized wage statements to PLAINTIFFS and
13 similarly situated employees;
- 14 e. Failing to maintain payroll records showing all premium compensation
15 earned each day for denied meal periods and rest breaks by PLAINTIFFS
16 and similarly situated employees; and
- 17 f. Intentionally denying PLAINTIFFS and similarly situated employees the
18 possession, use and enjoyment of monies and have been damaged in an
19 amount for each class member according to the proof.
20

21 **76.** The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate
22 acts and practices for purposes of Business and Professions Code § 17200.

23 **77.** As a direct and proximate result of DEFENDANTS’ unlawful, unfair, and/or
24 fraudulent acts and practices described herein, DEFENDANTS have received and continues to
25 hold ill-gotten gains belonging to PLAINTIFFS and similarly situated employees. As a direct
26 and proximate result of DEFENDANTS’ unlawful business practices, PLAINTIFFS and
27 similarly situated employees have suffered economic injuries including, but not limited to pay
28 for missed meal and rest periods, and waiting time penalties. DEFENDANTS have profited

1 from its unlawful, unfair, and/or fraudulent acts and practices in the amount of unpaid meal and
2 rest period compensation, and interest accrued by PLAINTIFFS and similarly situated
3 employees.

4 **78.** PLAINTIFFS and similarly situated employees are entitled to restitution pursuant
5 to Business & Professions Code §§ 17203 and 17208 for pay for missed meal and rest periods by
6 DEFENDANTS and interest since four years prior to the filing of this action.

7 **79.** PLAINTIFFS and similarly situated employees are entitled to enforce all
8 applicable penalty provisions of the Labor Code pursuant to Business & Professions Code §
9 17202.

10 **80.** PLAINTIFFS and similarly situated employees' success in this action will enforce
11 important rights affecting the public interest. In this regard, PLAINTIFFS sue on behalf of the
12 public as well as on behalf of himself and others similarly situated. PLAINTIFFS seek and are
13 entitled to reimbursement of business expenses, the unpaid compensation, declaratory and
14 injunctive relief, civil penalties, and any other appropriate remedy.

15 **81.** Injunctive relief is necessary and appropriate to prevent DEFENDANTS from
16 continuing and repeating its unlawful, unfair and fraudulent business acts and practices alleged
17 above.

18 **82.** In order to prevent DEFENDANTS from profiting and benefiting from their
19 wrongful and illegal acts and continuing those acts, PLAINTIFFS request an order requiring
20 DEFENDANTS to disgorge all the profits and gains they have reaped and restore such profits
21 and gains to Employees, from whom they were unlawfully taken.

22 **83.** PLAINTIFFS have assumed the responsibility of enforcement of the laws and
23 lawful claims specified herein. There is a financial burden incurred in pursuing this action which
24 is in the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Code
25 of Civil Procedure § 1021.5.
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1 **84.** By all of the foregoing alleged conduct, DEFENDANTS have committed, and are
2 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the
3 meaning of Business & Professions Code §17200 et seq.

4 **85.** As a direct and proximate result of the unfair business practices described above,
5 PLAINTIFFS, other Employees, and members of the general public have all suffered significant
6 losses, and DEFENDANTS have been unjustly enriched.

7 **86.** Pursuant to Business & Prof. Code §17203, PLAINTIFFS, other Employees, and
8 members of the general public are entitled to: (a) restitution of money acquired by
9 DEFENDANTS by means of its unfair business practices, in amounts not yet ascertained but to
10 be ascertained at trial; (b) injunctive relief against DEFENDANTS' continuation of its unfair
11 business practices; and (c) a declaration that DEFENDANTS' business practices are unlawful,
12 unfair, and/or fraudulent within the meaning of the statute.

13
14 **87.** PLAINTIFFS, on behalf of themselves and similarly situated employees, request
15 relief as described below.

16 **VIII. PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFFS on their own behalf and on the behalf of the members of the
18 class, prays for judgment as follows:

- 19 1. For an order certifying the proposed class;
- 20 2. For consequential damages according to proof as set forth in California Labor Code §
21 226.7 and IWC Wage Order No. 5 § 11(B) related to meal periods;
- 22 3. DEFENDANTS be ordered to show cause why they should not be enjoined and ordered
23 to comply with the applicable California Industrial Welfare Commission wage orders
24 related to meal breaks; and for an order enjoining and restraining DEFENDANTS and
25 their agents, servants and employees related thereto;
- 26 4. For consequential damages according to proof as set forth in California Labor Code §
27 226.7 and IWC Wage Order No. 5 § 12(B) related to rest breaks;
- 28 5. DEFENDANTS be ordered to show cause why they should not be enjoined and ordered

- 1 to comply with the applicable California Industrial Welfare Commission wage orders
2 related to rest breaks; and for an order enjoining and restraining DEFENDANTS and
3 their agents, servants and employees related thereto;
- 4 6. For consequential damages according to proof as set forth in California Labor Code §§
5 201 and 204.
- 6 7. For actual damages or statutory penalties according to proof as set forth in California
7 Labor Code § 226 and IWC Wage Order No. 5 § 7(B) related to record keeping;
- 8 8. DEFENDANTS be ordered to show cause why they should not be enjoined and ordered
9 to comply with the applicable California Industrial Welfare Commission wage orders
10 related to record keeping for DEFENDANTS' employees related to same; and for an
11 order enjoining and restraining DEFENDANTS and their agents, servants and
12 employees related thereto;
- 13 9. For waiting time penalties pursuant to Labor Code §§ 201, 202 and 203 for failure to
14 pay for denied meal and rest periods.
- 15 10. For restitution to Plaintiffs and other similarly effected members of the class of all funds
16 unlawfully acquired by DEFENDANTS by means of any acts or practices declared by
17 this Court to be violative of the mandate established by California Business and
18 Professions Code § 17200 et seq.;
- 19 11. Pursuant to Labor Code §2699(i), PLAINTIFFS should be awarded twenty-five percent
20 (25%) of all penalties due under California law, interest, attorneys' fees and costs. The
21 LWDA should be awarded seventy-five percent (75%) of the penalties due and
22 awarded;
- 23 12. For an injunction to prohibit DEFENDANTS to engage in the unfair business practices
24 complained of herein;
- 25 13. For an injunction requiring DEFENDANTS to give notice to persons to whom
26 restitution is owing of the means by which to file for restitution;
- 27 14. For pre-judgment interest as allowed by California Labor Code § 218.6 and California
28

1 Civil Code § 3287;

2 15. For reasonable attorneys fees, expenses and costs as provided by California Labor Code
3 2699(g)(1), and Code of Civil Procedure § 1021.5; and

4 16. For such other and further relief the court may deem just and proper.
5

6 Dated: April 6, 2016

LIBERATION LAW GROUP, P.C.

7
8 By: Un Kei Wu
9 Un Kei Wu
10 Attorneys for Plaintiffs

11 **IX. JURY DEMAND**

12 PLAINTIFFS hereby demand a trial by jury.
13

14 Dated: April 6, 2016

LIBERATION LAW GROUP, P.C.

15
16 By: Un Kei Wu
17 Un Kei Wu
18 Attorneys for Plaintiffs
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EXHIBIT A

Arlo Uriarte, Esq.
Un Kei Wu, Esq.
Ernesto Sanchez, Esq.
Brent Robinson, Esq.
Nick Aguilar, Adm. In Fl.

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Legal Assistants:
Briana Aleman
Lorenzo Barrera
Miriam Salazar
Cynthia Bourjac

January 29, 2016

VIA CERTIFIED MAIL

Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: *Clara Baelon and Monica Alvarez v. Forge Pizza Danville, LLC dba
Forge Pizza Jack London Square and Forge Pizza Danville*
Notice of Violations

Dear PAGA Administrator:

Pursuant to the Private Attorneys General Act of 2004, attached is a list of violations relevant to this action. Further investigation and discovery may result in shedding light to further violations. Please consider this letter and the attached as the notice required by California Labor Code Section 2699.3.

Pursuant to Labor Code 2699(a), Plaintiffs Clara Baelon and Monica Alvarez hereby apply to recover through civil action on behalf of themselves and other current and former employees.

Very truly yours,

LIBERATION LAW GROUP, P.C.

Un Kei Wu

Un Kei Wu

w/enclosures

cc: Forge Pizza Danville, LLC
Dennis Holahan, Agent for Service of
Process
2049 Century Park East Ste 3180
Los Angeles, CA 90067

Forge Pizza Jack London Square
66 Franklin Street, Oakland, CA 94607

Forge Pizza Danville
345 Railroad Ave., Danville, CA 94526

Forge Pizza Labor Code 2699 Notice of Violations

Clara Baelon and Monica Alvarez, and current and former employees (collectively referred to as "Plaintiffs") are or were employed at Forge Pizza. Plaintiffs worked as kitchen employees.

Forge Pizza Danville, LLC ("Defendant") denied Plaintiffs proper meal periods and rest breaks. When meal periods or rest breaks were not properly provided, the required one hour compensation was not provided. Moreover, Defendant failed to provide Plaintiffs' with accurate itemized wage statements.

Pursuant to Labor Code § 2699, Plaintiffs seek to recover civil penalties against Defendants for Labor Code violations pursuant to, but not limited to:

Defendants violated Labor Code §§ 201 and 203 by failing to pay Plaintiffs and other aggrieved former employees all wages and compensation due on the date of the employees' termination or within 72 hours of resignation. Violations to Labor Code §§ 201 and 203 - penalties pursuant to Labor Code section 2699(f).

Defendant violated Labor Code §§ 226.7 (a) and 512, and sections 11 and 12 of the Industrial Welfare Commission Wage Order No. 5, by failing to provide Plaintiffs timely meal periods and rest breaks and then failing to provide Plaintiffs the required one hour compensation when meal periods were not properly provided. Defendant violated § 204 by failing to Plaintiffs all wages due on the designated days of pay. Violations to Labor Code § 226.7 (a), § 512 - penalties pursuant to §§ 558 and 2699(f); and violations to § 11 and § 12 of Wage Order No. 5 - penalties pursuant to § 20 of Wage Order No. 5. Violations to Labor Code § 204 – penalties pursuant to § 2699(f).

Defendant violated Labor Code § 226(a) and Wage Order No. 5 section 7 by failing to provide Plaintiffs and other aggrieved employees with an accurate itemized statement in writing (commonly referred to as "paycheck stub") providing at least the following required information: (1) gross wages earned, (2) total actual hours worked by the employee, (3) net wages earned, and (4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employees. Violations to Labor Code § 226(a), and penalty pursuant to Labor Code section 2699(f); violations to Wage Order No. 5 section 7 – penalties pursuant to § 20 of Wage Order No. 5.