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8 JUAN PERALES, and all others similarly situated
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF STANISLAUS**
(UNLIMITED JURISDICTION)

12 JUAN PERALES, on behalf of himself and all
13 others similarly situated, and the general public,
14 and as an "Aggrieved Employee" on behalf of
15 other "Aggrieved Employees" under the Private
Attorneys General Act of 2004,

16 Plaintiff(s),

17 vs.

18
19 SHIPS PIZZA, INC, a California corporation;
20 CENTRAL VALLEY PIZZA LLC, a California
21 limited liability company; TEAM CENTRAL
22 VALLEY, INC, a California corporation; GREG
DEGRANDIS, an individual; and DOES 1-50,
inclusive,

23 Defendant(s).

Electronically Filed
2/22/2023
Superior Court of California
County of Stanislaus
Clerk of the Court
By: James Xiong, Deputy

Case No.: CV-22-004216

CLASS ACTION

**~~PROPOSED~~ SECOND AMENDED
COMPLAINT FOR:**

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§510, 558.1, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, 558.1, and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7, 558.1, and 1198);
4. Wage Statement Penalties (Lab. Code §§ 226 and 558.1);
5. Waiting Time Penalties (Lab. Code §§201, 202, 203, 558.1);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
7. Civil Penalties (Lab Code §§2698, et seq.)

JURY TRIAL DEMANDED



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1 Plaintiff, Juan Perales (hereafter “Plaintiff” or “Perales”), on behalf of himself and all
2 others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants SHIPS PIZZA,
7 INC, a California corporation, CENTRAL VALLEY PIZZA LLC, a California limited liability
8 company, TEAM CENTRAL VALLEY, INC, a California corporation, GREG DEGRANDIS,
an individual, and Does 1 through 50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
11 related relief. These claims are based on Defendants’ failures to:

12 (A) Pay all wages, including minimum, regular, and overtime wages, earned
13 for all hours worked at the correct rates of pay;

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

16 (D) Pay premium wages for unprovided meal periods;

17 (E) Pay premium wages for unprovided rest breaks;

18 (F) Issue only accurate and complete itemized wage statements; and

19 (G) Timely pay wages upon termination of employment

20 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
21 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.

22 **II. THE PARTIES**

23 3. Plaintiff Juan Perales is a resident of California. At all relevant times, Plaintiff was
24 an “employee” within the meaning of Title 8 California Code of Regulations Section 11050, and
an “aggrieved employee” within the meaning of California Labor Code § 2699(c).

25 4. Defendant SHIPS PIZZA, INC is a corporation organized and existing under the
laws of California and also a citizen of California based on Plaintiff’s information and belief.

26 5. Defendant CENTRAL VALLEY PIZZA LLC is a limited liability company
27 organized and existing under the laws of California and also a citizen of California based on
28 Plaintiff’s information and belief.



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1 6. Defendant TEAM CENTRAL VALLEY, INC is a corporation organized and
2 existing under the laws of California and also a citizen of California based on Plaintiff's
3 information and belief.

4 7. Defendant GREG DEGRANDIS is an individual and also a resident and citizen of
5 California based on Plaintiff's information and belief.

6 8. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
7 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
8 is informed and believes and thereon alleges that said Defendants are legally responsible for the
9 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
10 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
11 when ascertained.

12 9. Plaintiff is informed and believes and thereon alleges that, at all relevant times
13 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
14 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
15 within the course and scope of such agency, employment, direction and control, and with the
16 approval and ratification of each of the other Defendants.

17 10. At all relevant times, in perpetrating the acts and omissions alleged herein,
18 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
19 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
20 Members or otherwise complying with their rights in accordance with applicable California labor
21 laws as alleged herein.

22 11. At all relevant times, in perpetrating the acts and omissions alleged herein,
23 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
24 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
25 described class in accordance with applicable laws as alleged herein.

26 **III. CLASS ALLEGATIONS**

27 12. This action has been brought and may be maintained as a class action pursuant to
28 California Code of Civil Procedure section 382 because there is a well-defined community of
interest among the persons who comprise the readily ascertainable class defined below and
because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
a class action.



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1 13. **Class Definition:** The Class is defined as follows: All persons Defendants
2 employed in California as hourly and nonexempt, individuals performing work comparable to the
3 aforementioned, compensated comparably to the aforementioned, and individuals in similar
4 positions, at any time during the period beginning four years prior to the filing of this action and
5 ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

6 14. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
7 right to amend or modify the class definition with greater specificity, by further division into
8 subclasses and/or by limitation to particular issues.

9 15. **Numerosity:** The Class Members are so numerous that the individual joinder of
10 each individual Class Member is impractical. While Plaintiff does not currently know the exact
11 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
12 minimum required for numerosity under California laws.

13 16. **Commonality and Predominance:** Common questions of law and fact exist as to
14 all Class Members and predominate over any questions which affect only individual Class
15 Members. These questions include, but are not limited to:

16 A. Whether Defendants failed to pay all wages earned to Class Members for
17 all hours worked at the correct rates of pay, including minimum, regular, overtime, meal period
18 premium, and rest period premium wages;

19 B. Whether Defendants failed to provide the Class Members with all meal
20 periods in compliance with California law;

21 C. Whether Defendants failed to authorize and permit the Class Members to
22 take all rest periods in compliance with California law;

23 D. Whether Defendants knowingly and intentionally failed to provide the
24 class with accurate and complete itemized wage statements;

25 E. Whether Defendants willfully failed to provide the class with timely final
26 wages;

27 F. Whether Defendants engaged in unfair competition within the meaning of
28 Business and Professions Code sections 17200, et seq., with respect to the Class; and

 G. Whether Class Members are entitled to restitution of money or property
that Defendants may have acquired from them through alleged Labor Code violations.

 17. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims.



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1 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
2 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
3 Code, the Wage Order, and the Business and Professions Code.

4 18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
5 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
6 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
7 Members. Plaintiff will fairly and adequately represent and protect the interests of Class

8 19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
9 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
10 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
11 Plaintiff and absent Class Members.

12 20. **Superiority:** A class action is vastly superior to other available means for fair and
13 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
14 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
15 and efficiently prosecute their common claims in a single forum without the unnecessary
16 duplication of effort and expense that numerous individual actions would entail. In addition, the
17 monetary amounts due to many individual Class Members are likely to be relatively small and
18 would thus make it difficult, if not impossible, for individual Class Members to both seek and
19 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
20 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
21 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

22 **IV. STATEMENT OF FACTS**

23 21. The Wage Order applies to "all persons employed in the public housekeeping
24 industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The
25 Wage Order defines "Public Housekeeping Industry" to mean

26 any industry, business, or establishment which provides meals, housing, or
27 maintenance services whether operated as a primary business or when incidental
28 to other operations in an establishment not covered by an industry order of the
Commission, and includes, but is not limited to the following:

(1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters,



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cafeterias, boarding houses, clubs, and all similar establishments where food in either sold or liquid form is prepared and served to be consumed on the premises;

(2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;

(3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;

(4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;

(5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in additional to educational facilities;

(6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and

(7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Perales, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Perales, and all of the Class Members, worked for one or more restaurants. Accordingly, Perales and all of the other Class Members are entitled to the protections the Wage Order provides.

22. In 2020, the Defendants began to employ Perales in Turlock and Chowchilla. During his employment, Defendants employed Plaintiff in the position of hourly, nonexempt assistant manager. The Defendants continuously employed him in that capacity until on or about June 24, 2022 when his employment ended.

23. At all relevant times, the Defendants issued wages to Perales and all of the other Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Defendants classified Perales and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

24. At all relevant times, the Defendants failed to compensate Perales and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. The



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1 Defendants required Perales and the Class Members to prepare pizzas on a strict time schedule
2 and discouraged them from recording all of their hours worked in doing so. Accordingly, Perales
3 and the Class Members prepared pizzas and performed related duties off the clock, during meal
4 periods, and outside of their scheduled work shifts without pay.

5 25. At all relevant times, the Defendants failed to compensate Perales and all of the
6 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
7 in a week, and for the first eight hours of the seventh day of the workweek. Additionally, The
8 Defendants required Perales and the Class Members to perform the aforementioned activities in
9 excess of eight hours per day and in excess of 40 hours per week but discouraged them from
10 recording overtime hours. As a result, The Defendants required Perales and the Class Members
11 to work overtime hours without paying them overtime premium wages for such work.

12 26. At all relevant times, the Defendants failed to provide Perales and all of the other
13 Class Members with all timely 30-minute, off-duty meal periods. The Defendants required Perales
14 and the Class Members to prepare pizzas on a strict time schedule and discouraged them from
15 recording all of their hours worked in doing so. Accordingly, Perales and the Class Members
16 prepared pizzas and performed related duties during meal periods off the clock and without pay.
17 The Defendants also failed to pay premium wages for days on which they failed to provide Perales
18 and all of the other Class Members with meal periods as required by law.

19 27. At all relevant times, the Defendants failed to authorize and permit Perales and all
20 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
21 or major portion thereof. The Defendants required Perales and the Class Members to prepare
22 pizzas on a strict time schedule and discouraged them from recording all of their hours worked in
23 doing so. Accordingly, Perales and the Class Members prepared pizzas and performed related
24 duties during rest periods. The Defendants also failed to pay premium wages for days on which
25 they failed to authorize and permit Perales and all of the other Class Members to take rest breaks
26 as required by law.

27 28. At all relevant times, the Defendants failed to issue to Perales and all of the other
28 Class Members complete and accurate wage statements that state all hours worked at the correct
rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
the wage statements they issued to Perales and all of the other Class Members the unpaid wages
discussed above. The wage statements fail to state all minimum wages earned, all regular wages



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1 earned, all overtime wages earned, all meal period premium wages earned, all rest break premium
2 wages earned, and related information.

3 29. At all relevant times, the Defendants also failed to timely pay Perales and all of
4 the other Class Members all earned wages as described above during and at the conclusion of
5 employment.

6 30. At all relevant times, the Defendants failed to maintain accurate employee records
7 of Perales and all of the other Class Members.

8 31. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
9 unlawful practices and policies, Plaintiff and the Class Members were:

- 10 A. Not provided with all off duty meal periods;
- 11 B. Not authorized and permitted to take all rest break periods;
- 12 C. Not paid one hour's pay for each workday in which Defendants failed to
13 authorize and permit them to take one or more timely rest periods;
- 14 D. Not paid one hour's pay for each workday in which Defendants failed to
15 provide them with one or more timely meal periods;
- 16 E. Not paid all wages earned, including, but not limited to, minimum, regular,
17 overtime, and doubletime wages for work performed while clocked out;
- 18 F. Not provided with accurate and complete wage statements; and
- 19 G. Not timely paid all earned and unpaid wages at the time their employment
20 ended.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY OR WITHHOLDING ALL WAGES AT THE CORRECT RATES**

23 **Lab. Code §§ 510, 1194, 1197, and 1198**

24 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

25 32. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 33. At all relevant times, Plaintiff and the Class Members have been non-exempt
27 employees entitled to the protections of both the Labor Code and the Wage Order.

28 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY**

34. Section 2 of the Wage Order defines "hours worked" as "the time during which an
employee is subject to the control of an employer, and includes all the time the employee is



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suffered or permitted to work, whether or not required to do so.”

35. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

36. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

37. Labor Code section 510 states:



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Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

38. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

39. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

40. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

41. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

42. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Class Members for all hours worked, including, but not limited to minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and doubletime hours, respectively, that they worked at the correct rates of pay.

43. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Class Members for all hours worked at the correct rates of pay as required by California law.

B. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE



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1 44. In relevant part, Labor Code section 558.1 states:

2 (a) Any employer or other person acting on behalf of an employer,
3 who violates, or causes to be violated, any provision regulating
4 minimum wages or hours and days of work in any order of the
5 Industrial Welfare Commission, or violates, or causes to be
6 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
7 held liable as the employer for such violation.

8 (b) For purposes of this section, the term “other person acting on
9 behalf of an employer” is limited to a natural person who is an
10 owner, director, officer, or managing agent of the employer, and
11 the term “managing agent” has the same meaning as in subdivision
12 (b) of Section 3294 of the Civil Code.

13 At all relevant times, Greg DeGrandis was an employer of Perales and all of the other Class
14 Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other
15 employers identified above. Greg DeGrandis directly or indirectly, or through an agent or other
16 person, employed and exercised control over the wages, hours, and/or working conditions of the
17 Class Members, and caused the violations to the Labor Code and the Wage Order described above.
18 On behalf of himself and all of the other Class Members, Perales seeks an award of unpaid wages,
19 interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related
20 relief against Greg DeGrandis that is the same as the award against the other Defendants on the
21 same grounds for which Plaintiff seeks the award against the other Defendants.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS**

24 **Lab. Code §§ 226.7 and 512**

25 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

26 45. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

27 46. At all relevant times during the applicable limitations period, Plaintiff and the
28 Class Members have been employees of Defendants and entitled to the benefits and protections
of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

47. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the
commission shall be the maximum hours of work and the standard conditions of
labor for employees. The employment of any employee for longer hours than those



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fixed by the order or under conditions of labor prohibited by the order is unlawful.

48. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

49. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employee and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

50. In relevant part, California Labor Code § 226.7 states:



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(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

51. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants required Perales and the Class Members to prepare pizzas on a strict time schedule and discouraged them from recording all of their hours worked in doing so. Accordingly, Perales and the Class Members prepared pizzas and performed related duties during meal periods off the clock and without pay.

52. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

53. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal



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periods required by California law.

54. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

55. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

56. In relevant part, Labor Code section 558.1 states:

(c) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(d) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Greg DeGrandis was an employer of Perales and all of the other Class Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other employers identified above. Greg DeGrandis directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Class Members, Perales seeks an award of unpaid wages, premium wages, interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and related relief against Greg DeGrandis that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks the award against the other Defendants.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7



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(By Plaintiff, on behalf of himself and the Class, against all Defendants)

57. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

58. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

59. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

60. In relevant part, Section 12 of the Wage Order states:

Rest Periods

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

61. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.



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1 (c) If an employer fails to provide an employee a meal period
2 or rest period in accordance with a state law, including, but
3 not limited to, an applicable statute or applicable
4 regulation, standard, or order of the Industrial Welfare
5 Commission, the Occupational Safety and Health
6 Standards Board, or the Division of Occupational Safety
7 and Health, the employer shall pay the employee one
8 additional hour of pay at the employee's regular rate of
9 compensation for each work day that the meal or rest
10 period is not provided.

11 62. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
12 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
13 of work, or major fraction thereof.

14 63. Defendants intentionally failed to authorize and permit Plaintiff and the Class
15 Members to take all 10-minute rest periods free from any work duties in accordance with the
16 Wage Order.

17 64. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
18 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
19 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
20 Plaintiff and the other Class Members to take timely rest periods.

21 65. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
22 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
23 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
24 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
25 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
26 to authorize and permit them to take 10-minute rest periods every four hours worked or major
27 fraction thereof.

28 66. Plaintiff is informed and believes and thereon alleges that, at all relevant times
within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
take all rest breaks required by California law.

67. Defendants failed to provide Plaintiff with all required rest breaks in accordance
with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy



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1 which resulted in Defendants not providing the Class Members with all rest breaks required by
2 California law.

3 68. Defendants failed to pay Plaintiff the additional wages required by California
4 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
5 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
6 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
7 Class Members with additional wages for all rest breaks not provided to them as required by
8 California Labor Code § 226.7.

9 69. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
10 suffered damages in amounts subject to proof to the extent they were not paid additional wages
11 owed for all rest breaks not provided to them.

12 70. By reason of the above, Plaintiff and the Class Members are entitled to premium
13 wages for workdays in which one or more rest breaks were not provided to them pursuant to
14 California Labor Code § 226.7.

15 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
16 **LABOR CODE**

17 71. In relevant part, Labor Code section 558.1 states:

18 (e) Any employer or other person acting on behalf of an employer,
19 who violates, or causes to be violated, any provision regulating
20 minimum wages or hours and days of work in any order of the
21 Industrial Welfare Commission, or violates, or causes to be
22 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
23 held liable as the employer for such violation.

24 (f) For purposes of this section, the term "other person acting on
25 behalf of an employer" is limited to a natural person who is an
26 owner, director, officer, or managing agent of the employer, and
27 the term "managing agent" has the same meaning as in subdivision
28 (b) of Section 3294 of the Civil Code.

At all relevant times, Greg DeGrandis was an employer of Perales and all of the other Class
Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other
employers identified above. Greg DeGrandis directly or indirectly, or through an agent or other
person, employed and exercised control over the wages, hours, and/or working conditions of the
Class Members, and caused the violations to the Labor Code and the Wage Order described above.



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On behalf of himself and all of the other Class Members, Perales seeks an award of unpaid wages, premium wages, interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and related relief against Greg DeGrandis that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks the award against the other Defendants.

FOURTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code § 226

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS

72. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

73. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement showing:

A. Gross wages earned;

B. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

C. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

D. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;

E. Net wages earned;

F. The inclusive dates of the period for which the employee is paid;

G. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;

H. The name and address of the legal entity that is the employer; and

I. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.



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1 74. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
2 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
3 the employer fails to provide accurate and complete information as required by California Labor
4 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
5 alone one or more of the following:

6 A. The amount of the gross wages or net wages paid to the employee during
7 the pay period or any of the other information required to be provided on the itemized wage
8 statement pursuant to California Labor Code § 226(a);

9 B. Which deductions the employer made from gross wages to determine the
10 net wages paid to the employee during the pay period;

11 C. The name and address of the employer and, if the employer is a farm labor
12 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
13 and address of the legal entity that secured the services of the employer during the pay period;

14 D. The name of the employee and only the last four digits of his or her social
15 security number or an employee identification number other than a social security number; and

16 E. The number of piece-rate units earned and the piece rate.

17 75. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
18 means a reasonable person would be able to readily ascertain the information without reference
19 to other documents or information.

20 76. As alleged herein, at all relevant times during the applicable limitations period,
21 Defendants violated California Labor Code section 226 because they did not properly and
22 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
23 the corresponding number of hours worked at each rate by the employee and other requirements
24 of California Labor Code section 226. Defendants failed to state in the wage statements they
25 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
26 including, but not limited to, regular and overtime wages for work they performed off-the-clock
27 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
28 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
Members that state all minimum wages earned, all regular wages earned, all overtime wages
earned, all meal period premium wages earned, all rest break premium wages earned, and other



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required information.

77. Defendants' failure to provide Plaintiff and the other Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

78. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

79. In relevant part, Labor Code section 558.1 states:

- (g) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (h) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Greg DeGrandis was an employer of Perales and all of the other Class Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other employers identified above. Greg DeGrandis directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the



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1 Class Members, and caused the violations to the Labor Code and the Wage Order described above.
2 On behalf of himself and all of the other Class Members, Perales seeks an award of unpaid wages,
3 interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and related
4 relief against Greg DeGrandis that is the same as the award against the other Defendants on the
5 same grounds for which Plaintiff seeks the award against the other Defendants.

6 **FIFTH CAUSE OF ACTION**

7 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

8 **Lab. Code §§ 201, 202, and 203**

9 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

10 80. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 81. At all relevant times during the applicable limitations period, Plaintiffs and the
12 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
13 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

14 82. Labor Code § 201 provides that all earned and unpaid wages of an employee who
15 is discharged are due and payable immediately at the time of discharge.

16 83. Labor Code § 202 provides that all earned and unpaid wages of an employee who
17 quits after providing at least 72-hours notice before quitting are due and payable at the time of
18 quitting and that all earned and unpaid wages of an employee who quits without providing at least
19 72-hours notice before quitting are due and payable within 72 hours.

20 84. The Defendants failed to pay Perales and all of the other Class Members whose
21 employment ended all of the earned but unpaid wages described above by the conclusion of their
22 employment with Perales, including minimum wages, regular wages, overtime wages,
23 unprovided meal period premium wages, unprovided rest break premium wages, and other
24 required compensation.

25 85. By failing to pay such earned wages to Plaintiff and the Class Members,
26 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
27 § 201 or § 202.

28 86. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
and the Class Members all of their earned and unpaid wages (described above) have been willful
in that, at all relevant times, Defendants have deliberately maintained policies and practices that
violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,



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1 they have had the ability to comply with those legal requirements.

2 87. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
3 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
4 penalties for each Class Member.

5 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
6 **LABOR CODE**

7 88. In relevant part, Labor Code section 558.1 states:

8 (i) Any employer or other person acting on behalf of an employer,
9 who violates, or causes to be violated, any provision regulating
10 minimum wages or hours and days of work in any order of the
11 Industrial Welfare Commission, or violates, or causes to be
12 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
13 held liable as the employer for such violation.

14 (j) For purposes of this section, the term “other person acting on
15 behalf of an employer” is limited to a natural person who is an
16 owner, director, officer, or managing agent of the employer, and
17 the term “managing agent” has the same meaning as in subdivision
18 (b) of Section 3294 of the Civil Code.

19 At all relevant times, Greg DeGrandis was an employer of Perales and all of the other Class
20 Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other
21 employers identified above. Greg DeGrandis directly or indirectly, or through an agent or other
22 person, employed and exercised control over the wages, hours, and/or working conditions of the
23 Class Members, and caused the violations to the Labor Code and the Wage Order described above.
24 On behalf of himself and all of the other Class Members, Perales seeks an award of unpaid wages,
25 interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related
26 relief against Greg DeGrandis that is the same as the award against the other Defendants on the
27 same grounds for which Plaintiff seeks the award against the other Defendants.

28 **SIXTH CAUSE OF ACTION**

UNFAIR COMPETITION

Bus. & Prof. Code §§ 17200, et seq.

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

89. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

90. At all relevant times during the applicable limitations period, Plaintiff and the



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1 Class Members have been employees of Defendants and entitled to the benefits and protections
2 of the Business and Professions Code §§ 17200, *et seq.*

3 91. The unlawful conduct of Defendants alleged herein amount to and constitutes
4 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
5 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
6 gained a competitive advantage over other comparable companies doing business in California
7 that comply with their legal obligations to compensate employees for all earned wages.

8 92. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
9 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
10 Members were deprived of minimum wages, regular wages, overtime wages, missed meal period
11 premium wages, missed rest period premium wages, and comparable money and property.

12 93. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
13 Class Members are entitled to restitution of all monies rightfully belonging to them that
14 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
15 practices.

16 94. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
17 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
18 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

19 **SEVENTH CAUSE OF ACTION**

20 **CIVIL PENALTIES**

21 **(Lab Code §§2698, *et seq.*)**

22 **(By Plaintiff and the Aggrieved Employees against all Defendants)**

23 95. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

24 96. The "Aggrieved Employees" are all members of the Class defined above who
25 Defendants employed during the period beginning September 19, 2021 and ending on the date
26 that final judgment is entered in this action.

27 97. Labor Code § 204 states

28 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
or 204.2, earned by any person in any employment are due and payable twice
during each calendar month, on days designated in advance by the employer as the
regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
calendar month shall be paid for between the 16th and the 26th day of the month
during which the labor was performed, and labor performed between the 16th and
the last day, inclusive, of any calendar month, shall be paid for between the 1st



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and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

98. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

98. At all relevant times, Greg DeGrandis was an employer of Perales and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Greg DeGrandis directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Perales seeks the same civil penalties against Greg DeGrandis on the same grounds for which he seeks civil penalties against the other Defendants.

99. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such



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1 intervals for all wages earned and all hours worked.

2 100. Labor Code section 1174, which also pertains to recordkeeping, states:

3 Every person employing labor in this state shall

4 ...

5 (c) Keep a record showing the names and addresses of all employees
6 employed and the ages of all minors.

7 (d) Keep, at a central location in the state or at the plants or
8 establishments at which employees are employed, payroll records
9 showing the hours worked daily by and the wages paid to, and the number
10 of piece-rate units earned by and any applicable piece rate paid to,
11 employees employed at the respective plants or establishments. These
12 records shall be kept in accordance with rules established for this purpose
13 by the commission, but in any case shall be kept on file for not less than
14 three years. An employer shall not prohibit an employee from maintaining
15 a personal record of hours worked, or, if paid on a piece-rate basis, piece-
16 rate units earned.

17 101. Labor Code section 1174.5 states:

18 Any person employing labor who willfully fails to maintain the records
19 required by subdivision (c) of Section 1174 or accurate and complete
20 records required by subdivision (d) of Section 1174, or to allow any
21 member of the commission or employees of the division to inspect records
22 pursuant to subdivision (b) of Section 1174, shall be subject to a civil
23 penalty of five hundred dollars (\$500).

24 102. Section 7 of Wage Order states,

25 (A) Every employer shall keep accurate information with respect to each
26 employee, including the following:

27 (1) Full name, home address, occupation and social security number.

28 (2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work
period. Meal periods, split shift intervals and total daily hours worked shall also
be recorded. Meal periods during which, operations cease and authorized rest
periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging,
or other compensation actually furnished to the employee.



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(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

...

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

103. Defendants failed to compensate Plaintiff and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and the employer's name and address. As a result, Defendants have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Plaintiff and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

104. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558.1, 1174, 1194, 1197, and 1198.

105. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

106. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558.1, 1174, 1194, 1197, and 1198.

107. during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).



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1 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
2 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
3 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
4 California Labor Code § 226.3).

5 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
6 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
7 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
8 established by California Labor Code § 558).

9 D. For violations of California Labor Code § 1197, one hundred dollars
10 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
11 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
12 (regardless of whether the initial violations were intentionally committed) (penalty amounts
13 established by California Labor Code § 1197.1).

14 E. For violations of California Labor Code § 1174, \$500 for Each Aggrieved
15 employee for each violation of Labor Code section 1174 (penalties set by Labor Code
16 section 1174.5).

17 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, and
18 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
19 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
20 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

21 108. Plaintiff has complied with the procedures for bringing suit specified in California
22 Labor Code § 2699.3. By letters dated September 19, 2022 and December 5, 2022, Plaintiff filed
23 written notices online with the Labor and Workforce Development Agency (“LWDA”) and gave
24 written notices by certified mail to Defendants of the specific provisions of the California Labor
25 Code alleged to have been violated, including the facts and theories to support the alleged
26 violations. True and correct copies of the notices to the LWDA dated September 19, 2022 and
27 December 5, 2022 are attached collectively as Exhibit A. Plaintiff accompanied her LWDA notice
28 with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65
calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA will provide
written notice to Plaintiff informing her that it does not intend to investigate these allegations.

109. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved



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1 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
2 connection with their claims for civil penalties.

3 **V. PRAYER FOR RELIEF**

4 110. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
5 relief and judgment against Defendants as follows:

6 A. An order that the action be certified as a class action with respect to
7 Plaintiff's claims for violations of California law;

8 B. An order that Plaintiff be appointed class representative;

9 C. An order that counsel for Plaintiff be appointed class counsel;

10 D. Unpaid wages, including minimum, regular, overtime, missed meal period,
11 and missed rest period wages;

12 E. Liquidated damages;

13 F. Statutory penalties, including waiting time penalties;

14 G. Civil penalties;

15 H. Restitution;

16 I. Declaratory relief;

17 J. Actual damages;

18 K. Pre-judgment interest;

19 L. Costs of suit;

20 M. Reasonable attorneys' fees; and

21 N. Such other relief as the Court deems just and proper.

22 **VI. DEMAND FOR JURY TRIAL**

23 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
24 on all issues so triable.

25 Respectfully submitted,

26 THE SPIVAK LAW FIRM

27 Dated: February 21, 2023

28 By: 

DAVID G. SPIVAK,
CAROLINE TAHMASSIAN Attorneys
for Plaintiff(s), JUAN PERALES, and all
others similarly situated



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EXHIBIT A



THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 19, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Juan Perales / Ships Pizza, Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Juan Perales (hereafter “Perales” or “Complainant”) provides notice that Ships Pizza, Inc, a California corporation, and related entities (collectively “the Ships Pizza Employers” or “the Employers”) violated his rights and those of all other individuals the Ships Pizza Employers have employed or otherwise contracted with in California as hourly nonexempt, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Perales hereby provides this notice to the Labor & Workforce Development Agency and the Ships Pizza Employers and their agents and representatives.

At all relevant times, the Ships Pizza Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Perales and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately 2020, the Ships Pizza Employers began to employ Perales in Turlock and Chowchilla. During his employment, he held the position of hourly nonexempt assistant manager, among other hourly, non-exempt positions. The Ships Pizza Employers continuously employed him in that capacity until on or about June 24, 2022 when his employment ended.

At all relevant times, the Ships Pizza Employers issued wages to Perales and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Ships Pizza Employers classified Perales and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Ships Pizza Employers required Perales and the Aggrieved Employees to prepare pizzas on a strict time schedule and discouraged them from recording all of their hours worked in doing so. Accordingly, Perales and the Aggrieved Employees prepared pizzas and performed related duties off the clock, during meal periods, and outside of their scheduled work shifts without pay.

The Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Ships Pizza Employers required Perales and the Aggrieved Employees to perform the aforementioned activities in excess of eight hours per day and in excess of 40 hours per week but discouraged them from recording overtime hours. As a result, The Ships Pizza Employers required Perales and the Aggrieved Employees to work overtime hours without paying them overtime premium wages for such work.

At all relevant times, the Ships Pizza Employers failed to provide Perales and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Ships Pizza Employers required Perales and the Aggrieved Employees to prepare pizzas on a strict time schedule and discouraged them from recording all of their hours worked in doing so. Accordingly, Perales and the Aggrieved Employees prepared pizzas and performed related duties during meal periods off the clock and without pay. The Ships

Pizza Employers also failed to pay premium wages for days on which they failed to provide Perales and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Ships Pizza Employers failed to authorize and permit Perales and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Ships Pizza Employers required Perales and the Aggrieved Employees to prepare pizzas on a strict time schedule and discouraged them from recording all of their hours worked in doing so. Accordingly, Perales and the Aggrieved Employees prepared pizzas and performed related duties during rest periods. The Ships Pizza Employers also failed to pay premium wages for days on which they failed to authorize and permit Perales and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Ships Pizza Employers failed to issue to Perales and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Ships Pizza Employers knowingly and intentionally failed to state on the wage statements they issued to Perales and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

The Ships Pizza Employers also failed to timely pay Perales and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Ships Pizza Employers failed to maintain accurate employee records of Perales and all of the other Aggrieved Employees.

For the reasons stated herein, Perales alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Ships Pizza Employers failed to pay Perales and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;

- (b) The Ships Pizza Employers failed to provide Perales and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Ships Pizza Employers failed to authorize and permit Perales and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees at one hour's pay for each day in which the Ships Pizza Employers failed to provide them with one or more meal periods as required by law;
- (e) The Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees at one hour's pay for each day in which the Ships Pizza Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Ships Pizza Employers knowingly and intentionally failed to provide Perales and all of the other Aggrieved Employees with accurate wage statements;
- (g) The Ships Pizza Employers willfully failed to timely pay Perales and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Ships Pizza Employers and when their employment ended; and
- (h) The Ships Pizza Employers failed to maintain accurate employment records pertaining to Perales and all of the other Aggrieved Employees.

Accordingly, Perales now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Ships Pizza Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Ships Pizza Employers, Perales, and all of the Aggrieved Employees were covered by the Wage Order because the Ships Pizza Employers operated, and Perales, and all of the Aggrieved Employees, worked for one or more restaurants. Accordingly, Perales and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than

twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that

employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Ships Pizza Employers required Perales and the Aggrieved Employees to prepare pizzas on a strict time schedule and discouraged them from recording all of their hours worked in doing so. Accordingly, Perales and the Aggrieved Employees prepared pizzas and performed related duties off the clock, during meal periods, and outside of their scheduled work shifts without pay. Additionally, The Ships Pizza Employers required Perales and the Aggrieved Employees to perform the aforementioned activities in excess of eight hours per day and in excess of 40 hours per week but discouraged them from recording overtime hours. As a result, The Ships Pizza Employers required Perales and the Aggrieved Employees to work overtime hours without paying them overtime premium wages for such work.

At all relevant times during the applicable limitations period, the Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Perales now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6)

hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Ships Pizza Employers failed to provide Perales and all of the other Aggrieved Employees with all timely meal periods. The Ships Pizza Employers denied Perales and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Ships Pizza Employers required Perales and the Aggrieved Employees to prepare pizzas on a strict time schedule and discouraged them from recording all of their hours worked in doing so. Accordingly,

Perales and the Aggrieved Employees prepared pizzas and performed related duties during meal periods off the clock and without pay. Furthermore, the Ships Pizza Employers failed to pay premium wages for days on which they failed to provide Perales and all of the other Aggrieved Employees with timely meal periods. Accordingly, Perales now seeks civil penalties for these Labor Code violations that the Ships Pizza Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Ships Pizza Employers failed to authorize and permit Perales and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Ships Pizza Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Ships Pizza Employers required Perales and the Aggrieved Employees to prepare pizzas on a strict time schedule and discouraged them from recording all of their hours worked in doing so. Accordingly, Perales and the Aggrieved Employees prepared pizzas and performed related duties during rest periods. Moreover, the Ships Pizza Employers failed to pay Perales and all of the other Aggrieved Employees premium wages on workdays the Ships Pizza Employers failed to provide Perales and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Perales now seeks civil penalties for these Labor Code violations that the Ships Pizza Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Ships Pizza Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Ships Pizza Employers failed to state in the wage statements they issued to Perales and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Ships Pizza Employers knowingly and intentionally failed to state on the wage statements they issued to Perales and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage

statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

Accordingly, Perales seeks civil penalties for the Labor Code violations that the Ships Pizza Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation, at the intervals stated above. As a result, the Ships Pizza Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Perales now seeks civil penalties for the Labor Code violations that the Ships Pizza Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Ships Pizza Employers failed to pay Perales and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Perales, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. By failing to pay Perales and all of the other Aggrieved Employees as set forth above at the end of employment, the Ships Pizza Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Perales seeks civil penalties from the Ships Pizza Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

LWDA / The Ships Pizza Employers

Re: Juan Perales

September 19, 2022

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Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and related information. As a result, the Ships Pizza Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Perales and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Perales seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Juan Perales will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Mr. Juan Perales

Mr. Walter L. Haines Esq.

LWDA / The Ships Pizza Employers

Re: Juan Perales

September 19, 2022

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Ships Pizza, Inc
c/o Agent for service of process
Mr. Greg Degrandis
Chief Executive Officer, Ships Pizza, Inc.
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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

December 5, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Juan Perales / Ships Pizza, Inc

To Whom It May Concern:

This is an amended notice and incorporates the original notice dated September 19, 2022 (enclosed) in its entirety. The original notice inadvertently failed to include all related entities and individuals in the definition of “the Ships Pizza Employers” or “the Employers.”

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Juan Perales (hereafter “Perales” or “Complainant”) provides notice that Ships Pizza, Inc, a California corporation, Central Valley Pizza LLC, a California limited liability company, Team Central Valley, Inc, a California corporation, Greg DeGrandis, an individual, and related entities (collectively “the Ships Pizza Employers” or “the Employers”) violated his rights and those of all other individuals the Ships Pizza Employers have employed or otherwise contracted with in California as hourly nonexempt, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558.1, 1174, 1194, 1197, 1198, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Perales hereby provides this notice to the Labor & Workforce Development Agency and the Ships Pizza Employers and their agents and representatives.

At all relevant times, the Ships Pizza Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Perales and all of the other Aggrieved Employees are “employees” within the meaning

of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

Sometime in 2020, the Ships Pizza Employers began to employ Perales in Madera and Chowchilla. During his employment, he held the position of hourly nonexempt assistant manager, among other hourly, non-exempt positions. The Ships Pizza Employers continuously employed him in that capacity until on or about June 24, 2022 when his employment ended.

At all relevant times, the Ships Pizza Employers issued wages to Perales and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Ships Pizza Employers classified Perales and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Ships Pizza Employers required Perales and the Aggrieved Employees to prepare pizzas on a strict time schedule and discouraged them from recording all of their hours worked in doing so. Accordingly, Perales and the Aggrieved Employees prepared pizzas and performed related duties off the clock, during meal periods, and outside of their scheduled work shifts without pay.

The Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Ships Pizza Employers required Perales and the Aggrieved Employees to perform the aforementioned activities in excess of eight hours per day and in excess of 40 hours per week but discouraged them from recording overtime hours. As a result, The Ships Pizza Employers required Perales and the Aggrieved Employees to work overtime hours without paying them overtime premium wages for such work.

At all relevant times, the Ships Pizza Employers failed to provide Perales and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Ships

Pizza Employers required Perales and the Aggrieved Employees to prepare pizzas on a strict time schedule and discouraged them from recording all of their hours worked in doing so. Accordingly, Perales and the Aggrieved Employees prepared pizzas and performed related duties during meal periods off the clock and without pay. The Ships Pizza Employers also failed to pay premium wages for days on which they failed to provide Perales and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Ships Pizza Employers failed to authorize and permit Perales and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Ships Pizza Employers required Perales and the Aggrieved Employees to prepare pizzas on a strict time schedule and discouraged them from recording all of their hours worked in doing so. Accordingly, Perales and the Aggrieved Employees prepared pizzas and performed related duties during rest periods. The Ships Pizza Employers also failed to pay premium wages for days on which they failed to authorize and permit Perales and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Ships Pizza Employers failed to issue to Perales and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Ships Pizza Employers knowingly and intentionally failed to state on the wage statements they issued to Perales and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

The Ships Pizza Employers also failed to timely pay Perales and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Ships Pizza Employers failed to maintain accurate employee records of Perales and all of the other Aggrieved Employees.

For the reasons stated herein, Perales alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Ships Pizza Employers failed to pay Perales and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Ships Pizza Employers failed to provide Perales and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Ships Pizza Employers failed to authorize and permit Perales and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees at one hour's pay for each day in which the Ships Pizza Employers failed to provide them with one or more meal periods as required by law;
- (e) The Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees at one hour's pay for each day in which the Ships Pizza Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Ships Pizza Employers knowingly and intentionally failed to provide Perales and all of the other Aggrieved Employees with accurate wage statements;
- (g) The Ships Pizza Employers willfully failed to timely pay Perales and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Ships Pizza Employers and when their employment ended; and
- (h) The Ships Pizza Employers failed to maintain accurate employment records pertaining to Perales and all of the other Aggrieved Employees.

Accordingly, Perales now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Ships Pizza Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Ships Pizza Employers, Perales, and all of the Aggrieved Employees were covered by the Wage Order because the Ships Pizza Employers operated, and Perales, and all of the Aggrieved Employees, worked for one or more restaurants. Accordingly, Perales and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than

twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that

employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Ships Pizza Employers required Perales and the Aggrieved Employees to prepare pizzas on a strict time schedule and discouraged them from recording all of their hours worked in doing so. Accordingly, Perales and the Aggrieved Employees prepared pizzas and performed related duties off the clock, during meal periods, and outside of their scheduled work shifts without pay. Additionally, The Ships Pizza Employers required Perales and the Aggrieved Employees to perform the aforementioned activities in excess of eight hours per day and in excess of 40 hours per week but discouraged them from recording overtime hours. As a result, The Ships Pizza Employers required Perales and the Aggrieved Employees to work overtime hours without paying them overtime premium wages for such work.

At all relevant times during the applicable limitations period, the Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Perales now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6)

hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Ships Pizza Employers failed to provide Perales and all of the other Aggrieved Employees with all timely meal periods. The Ships Pizza Employers denied Perales and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Ships Pizza Employers required Perales and the Aggrieved Employees to prepare pizzas on a strict time schedule and discouraged them from recording all of their hours worked in doing so. Accordingly,

Perales and the Aggrieved Employees prepared pizzas and performed related duties during meal periods off the clock and without pay. Furthermore, the Ships Pizza Employers failed to pay premium wages for days on which they failed to provide Perales and all of the other Aggrieved Employees with timely meal periods. Accordingly, Perales now seeks civil penalties for these Labor Code violations that the Ships Pizza Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Ships Pizza Employers failed to authorize and permit Perales and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Ships Pizza Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Ships Pizza Employers required Perales and the Aggrieved Employees to prepare pizzas on a strict time schedule and discouraged them from recording all of their hours worked in doing so. Accordingly, Perales and the Aggrieved Employees prepared pizzas and performed related duties during rest periods. Moreover, the Ships Pizza Employers failed to pay Perales and all of the other Aggrieved Employees premium wages on workdays the Ships Pizza Employers failed to provide Perales and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Perales now seeks civil penalties for these Labor Code violations that the Ships Pizza Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment

of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Ships Pizza Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Ships Pizza Employers failed to state in the wage statements they issued to Perales and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Ships Pizza Employers knowingly and intentionally failed to state on the wage statements they issued to Perales and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime

wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

Accordingly, Perales seeks civil penalties for the Labor Code violations that the Ships Pizza Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation, at the intervals stated above. As a result, the Ships Pizza Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Perales now seeks civil penalties for the Labor Code violations that the Ships Pizza Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Ships Pizza Employers failed to pay Perales and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Perales, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. By failing to pay Perales and all of the other Aggrieved Employees as set forth above at the end of employment, the Ships Pizza Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Perales seeks civil penalties from the Ships Pizza Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Ships Pizza Employers failed to compensate Perales and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and related information. As a result, the Ships Pizza Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Perales and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Perales seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

LWDA / The Ships Pizza Employers

Re: Juan Perales

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At all relevant times, Greg DeGrandis was an employer of Perales and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Ships Pizza Employers and the other employers identified above. Greg DeGrandis directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Perales seeks the same civil penalties against Greg DeGrandis on the same grounds for which he seeks civil penalties against the Ships Pizza Employers.

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Juan Perales will seek both reasonable attorneys’ fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Mr. Juan Perales

Mr. Walter L. Haines
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/ / /

LWDA / The Ships Pizza Employers

Re: Juan Perales

December 5, 2022

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1 **PROOF OF SERVICE**

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
party to the within action. My business address is 1801 Century Park East
25th Fl Los Angeles CA 90067.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 States Postal Service. It is the practice that correspondence is deposited
with the United States Postal Service the same day it is submitted for
mailing.

10 On Tuesday, February 21, 2023, I served the foregoing document
11 described as **SECOND AMENDED COMPLAINT** on interested parties by placing a true
and correct copy thereof enclosed in a sealed envelope, with postage fully
prepaid, addressed as follows:

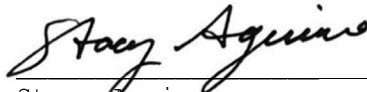
12 **Lonnie D. Giamela, Esq.**
13 **Assistant: Cina Kim**
14 **Fisher & Phillips LLP**
15 **444 South Flower Street, Suite 1500**
16 **Los Angeles, CA 90071**
lgiamela@fisherphillips.com
cakim@fisherphillips.com

17 XXXX(BY EMAIL) I caused the documents to be sent to the persons at the
18 electronic service addresses listed above from my electronic service address
stacy.aguirre@spivaklaw.com

19 EXECUTED on Tuesday, February 21, 2023, at Santa Barbara, California.

20 XXXX (State) I declare under penalty of perjury under the laws of the State
of California that the above is true and correct.

21 ____ (Federal) I declare that I am employed in the office of a member of the
22 bar of this court at whose direction the service was made.

23
24 
25 Stacy Aguirre
26
27
28