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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JENNIFER SOLANO, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

DOMINOIDS, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 23STCV06937

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE §§ 201-203;
- (2) VIOLATION OF LABOR CODE §§ 226.7 AND 512;
- (3) VIOLATION OF LABOR CODE § 226.7;
- (4) VIOLATION OF LABOR CODE § 2802;
- (5) VIOLATION OF LABOR CODE § 226(a); AND
- (6) VIOLATION OF CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*
- (7) VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

Complaint Filed: March 29, 2023

1 Plaintiff Jennifer Solano (“Plaintiff”) hereby submits this First Amended Class and
2 PAGA Action Complaint (“Complaint”) against Defendant Dominoids, Inc. (“Defendant”) and
3 Does 1 through 50 (hereinafter collectively referred to as “Defendants”), on behalf of herself and
4 all other similarly situated current and former employees of Defendants, for damages and
5 penalties for violations of the California Labor Code and the California Business & Professions
6 Code, as follows:

7 **INTRODUCTION**

8 1. This Complaint is within the Court’s jurisdiction under California Labor Code §§
9 201-203, 226, 226.7, 246, 512, 2802, and 2698, *et seq.* the applicable Wage Orders of the
10 California Industrial Welfare Commission (“IWC”), and Business and Professions Code §
11 17200, *et seq.* (“UCL”).

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code and the UCL against individuals who worked for
14 Defendants.

15 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
16 jointly and severally, have acted intentionally and with deliberate indifference and conscious
17 disregard to the rights of all employees by failing to pay sick pay at the correct regular rate of
18 pay, failing to pay meal and rest period premium pay at the regular rate of pay, failing to
19 reimburse business expenses, failing to provide accurate itemized wage statements, and engaging
20 in unfair business practices.

21 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 have engaged in, among other things a system of willful violations of the California Labor Code
23 and the UCL by creating and maintaining policies, practices, and customs that knowingly deny
24 employees the above stated rights and benefits.

25 5. The policies, practices, and customs of Defendants described above and below
26 have resulted in unjust enrichment of Defendants and an unfair business advantage over
27 businesses that routinely adhere to the strictures of the California Labor Code and the UCL.
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7. Venue is proper because Defendants do business in Los Angeles County and Plaintiff worked for Defendants in Los Angeles County.

8. Plaintiff is a current employee of Defendants. Plaintiff began her employment with Defendants on or about July 4, 2015, as an hourly paid, non-exempt employee. Plaintiff works as an Assistant Manager at Defendants' location in Valley Village, California.

10. During her employment with Defendants, Plaintiff was required to use her personal cell phone for work-related purposes.

12. Plaintiff is informed and believes, and based thereon alleges, that Defendant Dominoids, Inc. was and is a California corporation in the food service/restaurant industry. Defendant operates numerous Domino's Pizza restaurants and locations throughout the State of California, including the County of Los Angeles.

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business, Defendants are subject to California Labor Code §§ 201-203, 226, 226.7, 246, 512, 2802, and 2698, *et seq.*, and the applicable Wage Orders of the IWC, and the UCL.

12. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff, the class, and members of the general public to be subject to the illegal employment practices, wrongs, and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

14. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

15. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership, and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

16. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times

herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure § 382, of the following Classes:

a. All current and former non-exempt employees who were employed by Defendants in the State of California at any time from March 29, 2019, through the present (the “Class” or “Class Members”);

b. All non-exempt employees of Defendants in the State of California who were paid non-discretionary incentive remuneration, including without limitation, bonuses, and sick pay in the same workweek, and whose employment ended (either voluntarily or involuntarily) at any time from March 29, 2020, through the present (“Sick Pay Regular Rate Sub-Class”);

c. All current and former non-exempt employees of Defendants in the State of California who were paid non-discretionary incentive remuneration, including without limitation, bonuses, and any meal period premium compensation in the same period that the non-discretionary remuneration was earned, at any time during the period of March 29, 2019, through the present (“Meal Period Regular Rate Sub-Class”);

d. All current and former non-exempt employees of Defendants in the State of California who were paid non-discretionary incentive remuneration, including without limitation, bonuses, and any rest period premium compensation in the same period that the non-discretionary remuneration was earned, at any time during the period of March 29, 2019, through the present (“Rest Period Regular Rate Sub-Class”).

18. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendants’ records, including payroll records.

1 Plaintiff is informed and believes, and based thereon alleges, that Defendants: (1) failed to pay
2 sick pay at the correct regular rate of pay, in violation of Labor Code §§ 201-203, and 246; (2)
3 failed to pay meal period premium pay at the correct regular rate of pay, in violation of Labor
4 Code §§ 226.7 and 512; (3) failed to pay rest period premium pay at the correct regular rate of
5 pay, in violation of Labor Code § 226.7; (4) failed to reimburse business expenses, in violation
6 of Labor Code § 2802; (5) failed to provide accurate itemized wage statements, in violation of
7 Labor Code § 226; and (6) engaged in Unfair Business Practices in violation of the UCL, the
8 California Labor Code, and the applicable IWC Wage Orders.

9 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
10 necessary steps to represent fairly and adequately the interests of the Class defined above.
11 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
12 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
13 actions in the past and currently have a number of wage-and-hour class actions pending in
14 California state and federal courts.

15 20. Defendants uniformly administered a corporate policy, practice of: (1) failing to
16 pay sick pay at the correct regular rate of pay, in violation of Labor Code §§ 201-203, and 246;
17 (2) failing to pay meal period premium pay at the correct regular rate of pay, in violation of
18 Labor Code §§ 226.7 and 512; (3) failing to pay rest period premium pay at the correct regular
19 rate of pay, in violation of Labor Code § 226.7; (4) failing to reimburse business expenses, in
20 violation of Labor Code § 2802; (5) failing to provide accurate itemized wage statements, in
21 violation of Labor Code § 226; and (6) engaging in Unfair Business Practices in violation of the
22 UCL, the California Labor Code, and the applicable IWC Wage Orders.

23 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
24 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
25 California Labor Code §§ 201-203, 226, 226.7, 246, 512, and 2802, the applicable Wage Orders
26 of the IWC, and the UCL.

27 22. **Common Question of Law and Fact:** There are predominant common questions
28 of law and fact and a community of interest amongst Plaintiff and the claims of the Class

1 concerning Defendants' policy and practice of: (1) failing to pay sick pay at the correct regular
2 rate of pay, in violation of Labor Code §§ 201-203, and 246; (2) failing to pay meal period
3 premium pay at the correct regular rate of pay, in violation of Labor Code §§ 226.7 and 512; (3)
4 failing to pay rest period premium pay at the correct regular rate of pay, in violation of Labor
5 Code § 226.7; (4) failing to reimburse business expenses, in violation of Labor Code § 2802; (5)
6 failing to provide accurate itemized wage statements, in violation of Labor Code § 226; and (6)
7 engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and
8 the applicable IWC Wage Orders.

9 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
10 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
11 as the Class Members. As with all other non-exempt employees in the State of California,
12 Plaintiff earned non-discretionary remuneration, including without limitation bonuses. However,
13 the non-discretionary wages were not factored into the regular rate of pay for the purposes of
14 paying meal and rest period premium pay. Whenever Plaintiff was paid meal and rest period
15 premium pay during periods in which Plaintiff earned non-discretionary incentive pay, the meal
16 and rest period premiums were only paid at the base rate of pay. Thus, Plaintiff is owed
17 additional meal and rest break premium pay based on the correct, higher regular rate of pay.
18 Similarly, Defendants failed to pay sick pay wages at the regular rate of pay. Whenever sick pay
19 wages were paid to Plaintiff, it was paid at the base rate of pay rather than the correct, higher
20 regular rate of pay that included any non-discretionary incentive pay. To date, Plaintiff has yet
21 to receive the underpaid meal and rest premiums and sick pay owed to her. Thus, Defendants are
22 liable for waiting time penalties under Labor Code § 203. Moreover, due to Defendants'
23 miscalculation of the regular rate of pay for purposes of paying meal/rest period premium pay
24 and sick pay wages, the wage statements provided to Plaintiff did not reflect the accurate rates of
25 pay and gross and net wages earned, in violation of Labor Code section 226(a). In addition, like
26 other employees, Plaintiff was required to use her personal cell phone for work purposes.
27 Plaintiff was routinely required to respond to work-related phone calls on her personal cell phone
28 and communicate with her supervisor and other employees regarding daily sales, bank deposits,

workplace issues, and meal breaks. Defendants did not reimburse Plaintiff for such business-related costs. Therefore, Plaintiff is a member of the Class and has suffered the alleged violations of Labor Code §§ 201-203, 226, 226.7, 246, 512, and 2802, the applicable Wage Orders of the IWC, and the UCL.

24. The California Labor Code and upon which Plaintiff bases these claims are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment.

25. The nature of this action and the format of laws available to Plaintiff and members of the Class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Requiring each Class Member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

26. The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual Class Members against Defendants and which would establish potentially incompatible standards of conduct for Defendants, and/or (b) adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interest of the other Class Members not parties to the adjudications or which would substantially impair or impede the ability of the Class Members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual

1 prosecution considering the concomitant costs and expenses.

2 27. Such a pattern, practice, and uniform administration of corporate policy regarding
3 illegal employee compensation described herein is unlawful and creates an entitlement to
4 recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages,
5 applicable penalties, reasonable attorneys' fees, and costs of suit according to the mandate of
6 California Labor Code §§ 201-203, 226, 226.7, 246, 512, and 2802, and Code of Civil Procedure
7 § 1021.5.

8 28. Proof of a common business practice or factual pattern, which the named Plaintiff
9 experienced and is representative of, will establish the right of each of the members of the Class
10 to recovery on the causes of action alleged herein.

11 29. The Class is commonly entitled to a specific fund with respect to the
12 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
13 restitution of those funds being improperly withheld by Defendants. This action is brought for
14 the benefit of the entire class and will result in the creation of a common fund.

15 **FIRST CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE §§ 201-203**

17 **(BY PLAINTIFF AND THE SICK PAY REGULAR RATE SUB-CLASS AGAINST ALL**
18 **DEFENDANTS)**

19 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
20 though fully set forth herein.

21 31. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees be
22 “calculated in the same manner as the regular rate of pay for the workweek in which the
23 employee uses paid sick time, whether or not the employee actually works overtime in that
24 workweek.”

25 32. Labor Code § 246(l)(2) further provides that paid sick time for non-exempt
26 employees be “calculated by dividing the employee’s total wages, not including overtime
27 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
28 of employment.”

1 33. Defendants violated Labor Code § 246 by failing to pay sick pay at the regular
2 rate of pay. Plaintiff and Class Members routinely earned non-discretionary incentive wages,
3 including without limitation, bonuses, thereby increasing their regular rates of pay to amounts
4 that were higher than their base rates of pay. However, whenever sick pay was paid to Plaintiff
5 and Class Members, it was paid at their base rates of pay rather than the correct, higher regular
6 rates of pay, as required under Labor Code § 246.

7 34. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class
8 Members their correct wages and accordingly owe waiting time penalties pursuant to Labor
9 Code § 203. Further, Plaintiff is informed and believes and based thereon alleges that such
10 failure to pay sick pay at the correct regular rate was willful, such that Plaintiff and Class
11 Members whose employment has separated are entitled to waiting time penalties pursuant to
12 Labor Code §§ 201-203.

13 35. Such as pattern, practice and uniform administration of corporate policy regarding
14 illegal employee compensation as described herein is unlawful and creates an entitlement to
15 recovery by the Plaintiff and the Class identified herein, in a civil action, for the unpaid balance
16 of the full amount of damages and penalties, attorneys' fees, and costs of suit according to the
17 mandate of California Labor Code §§ 201-203, 218.5, and 1194.

18 **SECOND CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

20 **(BY PLAINTIFF AND THE MEAL PERIOD REGULAR RATE SUB-CLASS AGAINST**
21 **ALL DEFENDANTS)**

22 36. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
23 though fully set forth herein.

24 37. This cause of action is brought pursuant to Labor Code §§ 226.7 and 512, and the
25 applicable IWC Wage Order. Specifically, Labor Code § 226.7(c) provides that "the employer
26 shall pay the employee one additional hour of pay at the employee's regular rate of
27 compensation for each workday that the meal or rest or recovery period is not provided."
28

1 38. At all relevant times, Defendants failed in their affirmative obligation to ensure
2 that Plaintiff and Class members had the opportunity to take and were provided with timely, off-
3 duty meal periods in accordance with the mandates of the California Labor Code and the
4 applicable IWC Wage Order. As such, Defendants are responsible for paying premium
5 compensation for missed meal periods pursuant to Labor Code § 226.7 and the applicable IWC
6 Wage Order.

7 39. As a matter of corporate policy and practice, Defendants regularly failed to pay
8 meal period premium compensation to Plaintiff and Class members at the regular rate of pay.
9 Defendants, as a matter of corporate policy and practice, failed to correctly calculate such
10 premium compensation for each missed and/or noncompliant meal period in accordance with the
11 California Labor Code.

12 40. Specifically, Plaintiff and Class members regularly earned non-discretionary
13 incentives, such as bonuses. However, at all relevant times herein, Defendants did not factor
14 said non-discretionary incentives into the regular rate of pay for purposes of paying meal period
15 premiums to Plaintiff and Class members. Instead, during the time periods in which Plaintiff and
16 Class members earned non-discretionary incentives, Defendants improperly paid the meal period
17 premiums at the lower, base rate of pay.

18 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 willfully failed to include all non-discretionary incentives into the calculation of the regular rate
20 of pay for purposes of paying meal period premiums, as required by California law. Plaintiff
21 further alleges that Plaintiff and Class members are owed wages for the underpaid meal period
22 premiums as set forth above.

23 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
24 willful failure to provide all meal period premium wages due and owing to Plaintiff and Class
25 members upon separation from employment results in a continued payment of wages up to thirty
26 (30) days from the time the wages were due. Therefore, Plaintiff and Class members who have
27 separated from employment are entitled to compensation pursuant to Labor Code § 203.
28

43. Such a pattern, practice, and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class members identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation pursuant to Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order, including interest thereon, penalties, and costs of suit.

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226.7

**(BY PLAINTIFF AND THE REST PERIOD REGULAR RATE SUB-CLASS AGAINST
ALL DEFENDANTS)**

44. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

45. This cause of action is brought pursuant to Labor Code § 226.7, which requires an employer to provide a duty-free, 10-minute rest period for every 4 hours worked, or major fraction thereof. Plaintiff and other Class members regularly worked shifts of three and one-half (3.5) hours or more per day, and accordingly had a right to take a 10-minute rest period each day.

46. Specifically, Labor Code § 226.7(c) provides that “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.”

47. At all relevant times, Defendants failed in their affirmative obligation to provide Plaintiff and other Class members with the opportunity to take rest periods in accordance with the mandate of the California Labor Code and the applicable IWC Wage Order. As such Defendants are responsible for paying premium compensation for missed rest breaks pursuant to Labor Code § 226.7.

48. As a matter of corporate policy and practice, Defendants regularly failed to pay rest period premium compensation to Plaintiff and Class members at the regular rate of pay. Defendants, as a matter of corporate policy and practice, failed to correctly calculate such premium compensation for each missed and/or noncompliant rest period in accordance with the California Labor Code.

1 49. Specifically, Plaintiff and Class members regularly earned non-discretionary
2 incentives, such as bonuses. However, at all relevant times herein, Defendants did not factor
3 said non-discretionary incentives into the regular rate of pay for purposes of paying rest period
4 premiums to Plaintiff and Class members. Instead, during the time periods in which Plaintiff and
5 Class members earned non-discretionary incentives, Defendants improperly paid the rest period
6 premiums at the lower, base rate of pay.

7 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 willfully failed to include all non-discretionary incentives into the calculation of the regular rate
9 of pay for purposes of paying rest period premiums, as required by California law. Plaintiff
10 further alleges that Plaintiff and Class members are owed wages for the underpaid rest period
11 premiums as set forth above.

12 51. Plaintiff is informed and believes, and based thereon allege, that Defendants'
13 willful failure to provide all rest period premium wages due and owing to Plaintiff and Class
14 members upon separation from employment results in a continued payment of wages up to thirty
15 (30) days from the time the wages were due. Therefore, Plaintiff and other members of the Class
16 who have separated from employment are entitled to compensation pursuant to Labor Code
17 § 203.

18 52. Such a pattern, practice, and uniform administration of corporate policy as
19 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a
20 civil action, for the unpaid balance of the unpaid premium compensation pursuant to California
21 Labor Code § 226.7 and the applicable IWC Wage Order, including interest thereon, penalties,
22 and costs of suit.

23 **FOURTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 2802**

25 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

26 53. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
27 though fully set forth herein.

28 54. This cause of action is brought pursuant to Labor Code §2802, which provides

1 that employees are entitled to be indemnified for expenses and losses in discharging the duties of
2 their employers.

3 55. At all relevant times herein, Defendants regularly failed to reimburse and
4 indemnify Plaintiff and Class Members for business expenses necessary for the discharge of their
5 duties, including without limitation, the costs incurred with the use of personal cell phones for
6 work-related purposes. Specifically, Plaintiff and Class Members were required to use their
7 personal cell phones for work communications, including communications regarding daily sales,
8 bank deposits, work place issues, and meal breaks.

9 56. Defendants had a uniform corporate pattern, practice, and procedure regarding the
10 above practice in violation of Labor Code § 2802.

11 57. Such a pattern, practice, and uniform administration of corporate policy regarding
12 illegal employee compensation as described herein is unlawful and creates an entitlement to
13 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
14 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
15 to the mandate of California Labor Code § 2802.

16 **FIFTH CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE § 226**

18 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

19 58. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
20 though fully set forth herein.

21 59. Labor Code § 226(a) requires employers to provide itemized wage statements to
22 its employees that identify accurate information, including without limitation, hourly rates of
23 pay, gross wages earned, and net wages earned. Defendants, as a matter of policy and practice,
24 failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiff
25 and Class members.

26 60. As a result of the sick pay, meal period premium, and rest period premium
27 underpayments as alleged above, the wage statements issued to Plaintiff and Class members
28 failed to identify the correct rates of pay, gross wages earned, and net wages earned.

1 61. The issuance of inaccurate wage statements caused “injury” under Labor Code §
2 226(e) to Plaintiff and Class members as they cannot accurately verify and/or calculate their
3 wages. Without identifying the correct wages for sick pay and for premium compensation, gross
4 and net wages earned, Plaintiff and Class members will have no way of verifying whether they
5 were correctly paid wages for each particular pay period.

6 62. Such a pattern, practice, and uniform administration of corporate policy as
7 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
8 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
9 including interest thereon, attorneys’ fees, and costs of suit according to the mandate of
10 California Labor Code § 226.

11 **SIXTH CAUSE OF ACTION**

12 **VIOLATIONS OF THE UCL, BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.***
13 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

14 63. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
15 though fully set forth herein.

16 64. Defendants have engaged and continue to engage in unfair and unlawful business
17 practices in California by practicing, employing, and utilizing the employment practices outlined
18 above, including by: (1) failing to pay meal period premium pay at the regular rate of pay, in
19 violation of Labor Code §§ 226.7 and 512; (2) failing to pay rest period premium pay at the
20 regular rate of pay, in violation of Labor Code § 226.7; and (3) failing to reimburse business
21 expenses, in violation of Labor Code § 2802.

22 65. Defendants’ utilization of such unfair and unlawful business practices constitutes
23 unfair and unlawful competition and provides an unfair advantage over Defendants’ competitors.

24 66. Plaintiff seeks, individually and on behalf of other members of the Class, full
25 restitution of monies, as necessary and according to proof, to restore any and all monies
26 withheld, acquired and/or converted by the Defendants by means of the unfair practices
27 complained of herein.

28 67. Plaintiff is informed and believes, and based thereon alleges, that at all times

herein mentioned Defendants have engaged in unlawful, deceptive, and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiff and other members of the Class the minimum working condition standards and conditions due to them under the California laws and the applicable IWC Wage Orders as specifically described therein.

SEVENTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

(BY PLAINTIFF, ON BEHALF OF THE STATE OF CALIFORNIA AND AGGRIEVED EMPLOYEES, AGAINST ALL DEFENDANTS)

68. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

69. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from March 7, 2022, through the present, for Defendants' violations of Labor Code §§ 201-203, 226, 226.7, 246, 512, and 2802 and the IWC Wage Orders, arising from Defendants' failure to: (1) pay sick pay at the correct regular rate of pay, in violation of Labor Code §§ 201-203, and 246; (2) pay meal period premium pay at the correct regular rate of pay, in violation of Labor Code §§ 201-203, 226.7, and 512; (3) pay rest period premium pay at the correct regular rate of pay, in violation of Labor Code §§ 201-203 and 226.7; (4) reimburse business expenses, in violation of Labor Code § 2802; and (5) provide accurate itemized wage statements, in violation of Labor Code § 226.

70. Defendants violated Labor Code §§ 201-203, 226.7, and 512 by improperly paying meal and rest period premium pay. In this regard, Labor Code § 226.7(c) provides that "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."

Specifically, Plaintiff and Aggrieved Employees earned non-discretionary remuneration, including without limitation bonuses. However, the non-discretionary wages were not factored into the regular rate of pay for the purposes of paying meal and rest period premium pay.

Whenever Defendants paid Plaintiff and Aggrieved Employees meal and rest period premium

1 pay during periods in which Plaintiff and Aggrieved Employees earned non-discretionary
2 incentive pay, Defendants improperly paid meal and rest period premiums based on the base rate
3 of pay. Thus, Plaintiff and Aggrieved Employees are owed additional meal and rest break
4 premium pay based on the correct, higher regular rate of pay.

5 71. Similarly, Defendants also violated Labor Code §§ 201-203 and 246 by failing to
6 pay sick pay wages at the regular rate of pay. Labor Code § 246(l)(1) provides that paid sick
7 time for non-exempt employees be “calculated in the same manner as the regular rate of pay for
8 the workweek in which the employee uses paid sick time, whether or not the employee actually
9 works overtime in that workweek.” In this regard, as mentioned above, Plaintiff and Aggrieved
10 Employees routinely earned non-discretionary incentives, such as bonuses, that increased their
11 regular rates of pay to amounts that were higher than their base rates of pay. However, whenever
12 sick pay wages were paid to Plaintiff and Aggrieved Employees, it was paid at the base rate of
13 pay rather than the correct, higher regular rate of pay that included any non-discretionary
14 incentive pay. As such, Plaintiff and Aggrieved Employees were underpaid sick pay wages.

15 72. Furthermore, Plaintiff and Aggrieved Employees who have separated from
16 employment have yet to receive the underpaid meal and rest premiums and sick pay wages.
17 Thus, Defendants have violated Labor Code § 201-203 by failing to pay all wages owed at
18 separation of employment.

19 73. Labor Code § 226(a) requires employers to provide itemized wage statements to its
20 employees that identify accurate information, including without limitation, hourly rates of pay,
21 gross wages earned, and net wages earned. Defendants, as a matter of policy and practice, failed
22 in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and
23 Aggrieved Employees. Specifically, due to Defendants’ miscalculation of the regular rate of pay
24 for purposes of paying meal/rest period premium pay and sick pay wages, the wage statements
25 provided to Plaintiff and Aggrieved Employees did not reflect the accurate rates of pay and gross
26 and net wages earned, in violation of Labor Code § 226(a).

27 74. Finally, Plaintiff and Aggrieved Employees were required to use their personal
28 cell phones for work purposes. Plaintiff and Aggrieved Employees were routinely required to

1 respond to work-related phone calls on their personal cell phones and communicate with their
2 supervisors and other employees regarding daily sales, bank deposits, workplace issues, and
3 meal breaks. Under Labor Code § 2802, Plaintiff and Aggrieved Employees are entitled to be
4 indemnified for expenses and losses incurred in discharging the duties for Defendants.
5 Nonetheless, Defendants failed to reimburse Plaintiff and Aggrieved Employees for such
6 business-related costs, in violation of Labor Code § 2802.

7 75. Based on the above-stated Labor Code violations, Plaintiff is an “aggrieved
8 employee” as defined in Labor Code § 2699(a). As such, Plaintiff brings this cause of action on
9 behalf of the State of California for violations committed against all similarly situated Aggrieved
10 Employees of Defendants.

11 76. On or about March 7, 2023, Plaintiff sent written notices to the California Labor
12 & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-
13 203, 226, 226.7, 246, 512, and 2802, pursuant to Labor Code § 2698, *et seq.* As of the date of
14 the filing of this Complaint, the LWDA has yet to provide notice to Plaintiff as to whether it
15 intends to investigate the Labor Code violations provided for in Plaintiff’s written notice. In
16 addition to the LWDA, Plaintiff also sent her written notice to Defendants via certified mail
17 according to Labor Code § 2699.3.

18 77. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
19 applicable civil penalties for Defendants’ violations of Labor Code §§ 201-203, 226, 226.7, 246,
20 512, and 2802, for the time period described above, on behalf of herself and other Aggrieved
21 Employees.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
24 this suit is brought against Defendants, jointly and severally, as follows:

- 25 1. For an order certifying the proposed class and sub-classes;
- 26 2. For an order appointing Plaintiff as the representative of the Class as described
27 herein;
- 28 3. For an order appointing counsel for Plaintiff as Class Counsel;

1 4. Upon the First Cause of Action, for penalties pursuant to statute as set forth in
2 California Labor Code §§ 201-203, and for costs and attorneys' fees;

3 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
4 statute as set forth in Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys' fees;

5 6. Upon the Third Cause of Action, for damages and/or penalties pursuant to statute
6 as set forth in Labor Code §§ 201-203, and 226.7, and for costs and attorneys' fees;

7 7. Upon the Fourth Cause of Action, for damages pursuant to statute as set forth in
8 Labor Code § 2802, and for costs and attorneys' fees;

9 8. Upon the Fifth Cause of Action, for penalties pursuant to statute as set forth in
10 Labor Code § 226, and for costs and attorneys' fees;

11 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
12 affected members of the general public of all funds unlawfully acquired by Defendants by means
13 of any acts or practices declared by this Court to be in violation of Business and Professions
14 Code § 17200, *et seq.*;

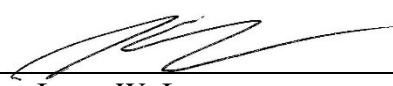
15 10. Upon the Seventh Cause of Action, for penalties pursuant to the PAGA,
16 California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

17 11. On all causes of action for attorneys' fees and costs as provided by California
18 Labor Code §§ 201-203, 226, 226.7, 246, 512, 2699, and 2802, and Code of Civil Procedure §
19 1021.5; and

20 12. For such other and further relief as the Court may deem just and proper.
21

22 DATED: July 18, 2023

DIVERSITY LAW GROUP, P.C.

23
24 By: 

Larry W. Lee

Max W. Gavron

Mai Tulyathan

Attorneys for Plaintiff, the Class, and Aggrieved
27 Employees
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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA

ss.

COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On July 18, 2023, I served the following document(s) described as: **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action as follows:

James C. Fessenden Steven D. Eheart Fisher & Phillips LLP 4747 Executive Drive, Suite 1000 San Diego, CA 92121	<i>Attorneys for Defendant Dominoids, Inc.</i> jfessenden@fisherphillips.com seheart@fisherphillips.com mfilio@fisherphillips.com nlivengood@fisherphillips.com
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BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the ACE Attorney Service E-Filing System at the website www.efile.acelegal.com, addressed to all parties appearing on this proof of service for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 18, 2023, at Los Angeles, California.



Erika Mejia