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Attorney for Plaintiffs Salvador Rodriguez, German Rodriguez and All Other Current and Former Employees Similarly Situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT

SALVADOR RODRIGUEZ, GERMAN RODRIGUEZ, on Behalf of Themselves and All Other Current and Former Employees Similarly Situated, **Plaintiffs,** **v.** **WNU LLC DBA PAPA JOHNS,** a Washington Limited Liability Company, **PAUL URBINA, BRISIA OCHOA,** Individuals, and **DOES 1 to 50, Inclusive.** **Defendants.**	**CASE NO.** 23STCV28934 **CLASS ACTION COMPLAINT FOR DAMAGES AND RESTITUTION:** 1. Failure to Provide Required Rest Breaks, *California Labor Code* § 226.7; 2. Failure to Provide Meal Periods, *California Labor Code* § 226.7; 3. Failure to Pay Minimum Wages, *California Labor Code* §§1194, 1197 and 1197.1; 4. Failure to Pay Overtime Wages, *California Labor Code* §§510 and 1194; 5. Failure to Provide Accurate Itemized Wage Statement to Employees, *California Labor Code* §226 (a) and §226(e)(2)(B); 6. Failure to Pay Unpaid Wages Upon Termination, *California Labor Code* §203; 7. Failure to Indemnify Employees, *California Labor Code* §2802 and Failure to Maintain a Uniform; 8. Failure to pay Split Shift Premium, *California Labor Code* §1194; 9. PAGA, Labor Code §2699 10. Unlawful Business Practices Under *Business and Professions Code* §17200. **DEMAND FOR JURY TRIAL**

Plaintiffs, Salvador Rodriguez and German Rodriguez, on behalf of themselves and all other current and former employees similarly situated, complain of Defendants, and each of them, as follows:

1. This is a Class Action, pursuant to *Code of Civil Procedure* §382, on behalf of Plaintiffs and all individuals who hold or held the positions of non-exempt "employees," who are or were employed by, WNU LLC DBA PAPA JOHNS (herein referred to as "PAPA JOHNS") and/or PAUL URBINA and BRISIA OCHOA, individuals (collectively referred to as "DEFENDANTS") within the State of California.

2. From at least four (4) years prior to the filing of this action continuing to the present, Defendants have had a consistent policy of failing to pay overtime wages for hours worked in excess of eight; failing to pay minimum wages; failing to provide required meal and rest periods; failing to provide an accurate itemized statement in writing to their employees showing gross wages earned, total hours worked, and all deductions; failure to indemnify employees for their expenses – the cost of cell phone use, mileage reimbursement and gas for deliveries and trips to other stores, and the cost of washing their uniforms; failing to pay Plaintiffs and the members of the class a split shift premium of one hour's pay at the minimum wage when they worked split shifts; engaging in unfair business practices; and failing to pay unpaid wages to employees upon their termination.

3. Plaintiffs on behalf of themselves and all Class Members, bring this action pursuant to *Labor Code* §§ 201, 202, 203, 226.7, 510, 512, 558, 1194, 1194.2, 1199, 2699, and 2802, seeking minimum wage, overtime, rest and meal periods, expenses reimbursement and split

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shift compensation, penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

4. Plaintiffs were, at all times relevant herein, employees of Defendants, and bring this action as a Class Action on behalf of themselves and others similarly situated.

5. Plaintiffs, on behalf of themselves and all Class Members, pursuant to *Business & Professions Code* §§17200 – 17203, also seek injunctive relief, restitution and disgorgement of all benefits Defendants enjoyed from their failure to pay proper compensation.

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JURISDICTION AND VENUE

6. Venue as to each Defendant is proper in this judicial district, pursuant to *Code of Civil Procedure* § 395. The unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly situated within the State of California.

7. This Court is the proper Court, and this action is properly filed in the Superior Court of the State of California, County of Los Angeles, because Defendants' obligations and liability arise in the County of Los Angeles, because Defendants maintain offices and transact business in the County of Los Angeles, and because the work, which is the subject of this action, was performed by Plaintiffs in the County of Los Angeles.

PARTIES

Plaintiffs

8. Plaintiff, Salvador Rodriguez (herein "SALVADOR") is a resident of the County of Los Angeles, and performed work for Defendants in the County of Los Angeles at Defendants' Lynwood location.

9. Plaintiff, German Rodriguez (herein "GERMAN") is a resident of the County of Los Angeles, and performed work for Defendants in the County of Los Angeles. He performed work as a driver for PAPA JOHNS and would bring food to the Compton, Los Angeles, Downey, Artesia, and Bellflower locations.

Defendants

10. Plaintiffs are informed and believe and therefore allege that Defendant WNU LLC DBA PAPA JOHNS, ("PAPA JOHNS"), at all relevant times hereto, was and is a Washington Limited Liability Company, is duly authorized to do business in the State of California with its principal place of business located at 10040 Rosecrans Boulevard, Bellflower, CA 90712 in the County of Los Angeles. At all relevant times hereto, PAPA JOHNS was, and now is, doing business and employing individuals in the County of Los Angeles, State of California. PAPA JOHNS has multiple locations located throughout Los Angeles Country, including, but not limited to, Compton, Los Angeles, Downey, Artesia, Bellflower, Lynwood, Inglewood, Gardena, Lakewood, Mission Hills, Lawndale, and other locations. All of the contracts, events, incidents, and transactions that took place between Plaintiffs and PAPA JOHNS that are the subject of this action were entered into or occurred in Los Angeles County, California. All of the Plaintiffs would work at various PAPA JOHNS locations throughout the County of Los Angeles.

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11. Defendant PAUL URBINA ("URBINA") is an individual, who is the owner of PAPA JOHNS, and is a managing agent of PAPA JOHNS, and therefore his acts or omissions are imputed to him under the A Fair Day's Pay Act. Plaintiffs are informed and believe that at all relevant times hereto, URBINA was, and now is, doing business and employing individuals in the County of Los Angeles, State of California. All of the contracts, events, incidents and transactions that took place between Plaintiffs and URBINA that are the subject of this action were entered into or occurred in Los Angeles County, California.

12. Defendant BRISIA OCHOA ("OCHOA") is an individual, who is an Operations Director of PAPA JOHNS, and is a managing agent of PAPA JOHNS, and therefore her acts or omissions are imputed to her under the A Fair Day's Pay Act. Plaintiffs are informed and believe that at all relevant times hereto, OCHOA was, and now is, doing business and employing individuals in the County of Los Angeles, State of California. All of the contracts, events, incidents and transactions that took place between Plaintiffs and OCHOA that are the subject of this action were entered into or occurred in Los Angeles County, California.

13. The A Fair Day's Pay Act amends the Labor Code and adds Section 588.1, which expressly defines "employer or other person acting on behalf of an employer" to include a "natural person who is an owner, director, officer, or managing agent of the employer." As a result, an employee is allowed to bring wage and hour claims against the corporate owners, directors, officers, or managing agents (e.g., department supervisors, payroll managers, human resources managers, other employees with the authority to

transact on behalf of the business) who violate or cause to be violated various wage and hour laws in the Labor Code and name them as individual defendants in a lawsuit. As a result, individual corporate defendants are no longer immunized from personal liability for wage and hour violations.

14. The true names and capacities of the Defendants named herein as DOES 1 through 50, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiffs who therefore sue such Defendants by fictitious names pursuant to California *Code of Civil Procedure* §474. Plaintiffs are informed and believe that all of the DOE Defendants are California residents. At all relevant times, DOES 1 through 50 were acting within the course and scope of their employment and agency with URBINA, OCHOA, and/or with PAPA JOHNS. Plaintiffs will amend this Complaint to show such true names and capacities when they have been determined. Plaintiffs are informed and believe and thereby allege that each DOE Defendant herein is in some manner responsible for the injuries and damages herein. All references to "Defendants" herein include the named Defendants URBINA, OCHOA, PAPA JOHNS and DOE defendants 1 through 50.

15. Plaintiffs are informed and believe that URBINA, OCHOA and DOES 1-50, at all relevant times herein, have been employees of, a manager of, and supervisors with PAPA JOHNS, and have had day to day oversight, control and management of PAPA JOHNS' business and operations. Plaintiffs are informed and believe that URBINA, OCHOA, and DOES 1-50 exercised frequent and consistent authority over Plaintiffs in their day-to-day performance of their job function.

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16. Plaintiffs are informed and believe that, at all relevant times, URBINA, OCHOA, and DOES 1-50 have acted on or have overseen administrative functions of Defendants, including wages, hours and working conditions, including payroll and employment policies, and that Defendants have maintained certain books and records under their direction.

17. Plaintiffs are informed and believe that, at all relevant times, URBINA, OCHOA, and DOES 1-50 engaged in the acts alleged herein, and/or condoned, permitted, authorized, and/or ratified the conduct of their employees and agents, and other Defendants, and are vicariously or strictly liable for the wrongful conduct of their employees and agents as alleged herein.

18. Plaintiffs are informed and believe that, at all relevant times, URBINA, OCHOA, and DOES 1-50 were employers and have caused the provisions of the *Labor Code* regulating hours and days of work in the Wage Orders to be violated under *Labor Code* §558(a).

19. At all relevant times hereto, Plaintiffs were non-exempt employee of Defendants and were directly supervised by URBINA, OCHOA, and DOES 1-50, and each of them.

Alter Ego

20. Plaintiffs are informed and believe, and thereon allege, that Defendant URBINA is the owner of Defendant PAPA JOHNS. There exists and, at all times mentioned has existed a unity of interest and ownership between Defendant URBINA, on the one hand, and Defendant PAPA JOHNS, on the other hand, such that any

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individuality and separateness among these Defendants and individuals, and each of them, have ceased, and that PAPA JOHNS is the *alter ego* of Defendant URBINA.

21. Plaintiffs are informed and believe, and thereon allege that:

A. Defendant URBINA has completely controlled dominated, managed and operated Defendant PAPA JOHNS, for his sole and exclusive benefit;

B. Defendant URBINA was the equitable owner and person in charge of Defendant PAPA JOHNS;

C. Defendant URBINA commingled the assets of the company with his assets to suit his needs and convenience;

D. Defendant URBINA has failed to maintain the proper degree of separateness with Defendant PAPA JOHNS and has failed to observe corporate formalities to maintain a legal and separate corporate existence. The activities of Defendant PAPA JOHNS have been carried out without the holding of corporate formalities, meetings, and proper records or minutes of company proceedings have not been maintained.

E. Defendant URBINA at all times herein mentioned, has controlled and operated Defendant PAPA JOHNS and other companies, devised to avoid individual agency and respondent superior liability and for the purpose of substituting a financially insolvent company and/or company with limited financial resources, in the place of Defendant URBINA.

F. Defendant URBINA has so inadequately capitalized Defendant PAPA JOHNS, compared with the business to be done by this company and the risks of loss attendant thereto, that their capitalization is trifling and/or illusory. Plaintiffs are informed and believe and thereon allege that Defendant URBINA has committed additional acts and omissions sufficient to impose alter ego liability of which Plaintiffs are presently unaware. Additional acts and omissions on the part of Defendant URBINA consistent with those factors listed in *Associated Vendors Inc. v. Oakland Meat Co.* (1962) 210 Cal. App. 2d 825, 838-840, and subsequent cases, will be developed during discovery of this litigation.

G. An inequitable result will ensue if the corporate veil is not pierced, including, but not limited to, Plaintiffs' inability to recover damages for violations of California law. As such, adherence to the fiction of the separate existence of Defendant PAPA JOHNS, as an entity distinct from Defendant URBINA would permit an abuse of the corporate privilege, sanction fraud and promote injustice and insulate them from liability to Plaintiffs for violations of the California Labor Code. Defendant PAPA JOHNS, a Washington Limited Liability Company, has insufficient assets to respond to the ultimate award of general damages, special damages, attorneys' fees, costs, and interest in this action.

22. Plaintiffs are informed and believe and on such grounds allege that at all times herein mentioned Defendants and each of them were, and are doing business throughout California and in the County of Los Angeles, and are "persons" as defined in California *Labor Code* §18. In addition, Defendants are each considered to be an "employer" as that term is used in the California *Labor Code*, and the applicable

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California Industrial Welfare Commission's Order ("Wage Order") regulating wages, hours and working conditions.

Factual Background

23. From at least four (4) years prior to the filing of this action and continuing to the present, Plaintiffs and the Class have not been provided 30-minute uninterrupted meal periods no later than the fifth hour of their shifts for workdays in excess of five (5) hours and were not compensated one hour wages in lieu thereof.

24. From at least four (4) years prior to the filing of this action and continuing to the present, Plaintiffs and the Class have not been provided 10-minute rest periods for work periods in excess of four (4) hours and were not compensated one hour wages in lieu thereof, as required by California State wage and hour laws.

25. From at least four (4) years prior to the filing of this action continuing to the present, Defendants have had a consistent policy of failing to pay employees for all hours worked, and failing to pay minimum wages for all time as required by California Law. Specifically, Plaintiffs worked in excess of eight (8) hours a day, 40 hours in one workweek, and/or on a seventh consecutive workday. Plaintiffs regularly worked 12 hours or more per day 5 days per week. However, Plaintiffs were not paid overtime wages for hours worked in excess of 8 hours a day, 40 hours in one workweek, and/or on a seventh consecutive day, causing Plaintiffs to be paid less than legal minimum and overtime wage rates for all hours worked.

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26. From at least four (4) years prior to the filing of this action and continuing to the present, Plaintiffs and the Class have not been provided with an *accurate* itemized statement in writing showing gross wages earned, total hours worked, and all deductions.

27. Defendants willfully failed to provide all wages to Plaintiffs and the Class at the resignation/termination of their employment with Defendants, within the applicable limitations period.

28. From at least four (4) years prior to the filing of this action continuing to the present, Defendants have consistently failed to reimburse Plaintiffs and the Class incurred necessary expenditures in the performance of their job duties for Defendants-namely the cost of cell phone use, mileage reimbursement and gas for deliveries and trips to other stores and the cost of washing their uniforms.

29. From at least four (4) years prior to the filing of this action continuing to the present, Defendants have failed to pay Plaintiffs and the Class one hour's pay at the minimum wage when they work a split shift, as required by California State wage and hour laws.

30. Plaintiffs and the Class are, and at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

31. Plaintiffs and the Class are covered by California Industrial Welfare Commission Order No. 5.

CLASS ACTION ALLEGATIONS

32. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a Class Action pursuant to §382 of the *Code of Civil Procedure*. Plaintiffs seek to represent one Class defined as follows:

> *All persons who are employees employed or have been employed, as non-exempt "employees" by WNU LLC, DBA PAPA JOHNS at its locations in the State of California since four (4) years prior to the filing of this action.*

33. Further, Plaintiffs seek to represent the following Subclasses composed of and defined as follows:

A. Subclass 1. Meal Period Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods no later than the fifth hour of their shift for every five hours worked or one hour of pay at the Employee's regular rate of pay in lieu thereof.

B. Subclass 2. Rest Break Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

C. Subclass 3. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

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D. Subclass 4. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

E. Subclass 5. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

F. Subclass 6. Waiting Time Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay all wages due upon termination.

G. Subclass 7. Expense Reimbursement Subclass. All Class members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendants and who were subject to a policy and/or practice under which such expenses were not reimbursed.

H. Subclass 8. Split Shift Subclass. All Class members who were not compensated one hour's pay at the minimum wage when they worked a split shift.

I. Subclass 9. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

34. Plaintiffs reserve the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or

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limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class against Defendants, the Class Period should be adjusted accordingly.

35. Defendants, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendants failed to correctly calculate compensation for the time worked by the Plaintiffs and the other members of the Class, even though Defendants enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. Defendants have uniformly denied these Class Members wages to which these employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

36. This action has been brought and may properly be maintained as a Class Action under the provisions of *Code of Civil Procedure* §382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. <u>Numerosity</u>

37. The potential numbers of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiffs are informed and believes that

Defendants currently employ, and during relevant time periods employed, over 150 employees.

38. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Plaintiffs allege Defendants' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. <u>Commonality</u>

39. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

(a) Whether Defendants violated *Labor Code* §§226.7 and 512, IWC Wage Order 5-2001 or other applicable IWC Wage Orders and Cal. Code Regs., by failing to provide meal periods before the fifth hour of employment and failing to compensate said employees one (1) hour's wages in lieu of meal periods;

(b) Whether Defendants violated *Labor Code* §§226.7 and 512, Wage Order 4-2001 or other applicable IWC Wage Orders and Cal. Code Regs., by failing to provide daily rest periods for every four (4) hours or major fraction thereof worked and failing to compensate said employees one (1) hour's wages in lieu of rest periods;

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(c) Whether Defendants failed to pay minimum wages as required by the Labor Code and Wage Orders;

(d) Whether Defendants failed to pay overtime wages as required by *Labor* Code §§510, 1194 and Wage Order 4-2001.

(e) Whether Defendants violated *Labor Code* §226 by failing to provide an accurate itemized wage statement;

(f) Whether Defendants violated §§201-203 of the *Labor Code* by failing to pay compensation due and owing at the time that any Class Member's employment with Defendants terminated;

(g) Whether Defendants violated Labor Code §2802 by failing to reimburse all necessary business expenses Defendants required them to incur in performing their job duties;

(h) Whether Defendants' conduct was willful;

(i) Whether Defendants violated Labor Code §1194 by failing to pay employees no less than one hour's pay at the minimum wage when they work a split shift;

(j) Whether Defendants violated §17200, *et seq*. of the *Business & Professions Code* by engaging in the acts previously alleged; and

(k) Whether Plaintiffs and the members of the Class are entitled to equitable relief, pursuant to *Business & Professions Code* §17200, et seq.

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C. Typicality

40. The claims of the named Plaintiffs are typical of the claims of the Class. Plaintiffs and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, and regulations that have the force and effect of law and statutes as alleged herein.

D. Adequacy of Representation

41. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represents Plaintiffs is competent and experienced in litigating wage and hour class actions.

E. Superiority of Class Action

42. A Class Action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any question affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of denying Class Members proper compensation.

43. Class Action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a Class Action.

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FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(*LABOR CODE* §226.7)

(On Behalf of Plaintiffs and All Others Similarly Situated Against All Defendants)

44. Plaintiffs and the members of the Class incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

45. *Labor Code* §226.7(a) states: "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

46. *Labor Code* §516 provides that the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods for any workers in California consistent with the health and welfare of those workers.

47. Section 12(A) of the IWC Wage Order(s) states: "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."

48. Section 12(B) of the IWC Wage Order(s) states: "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."

49. Plaintiffs and the members of the Class consistently worked over four (4) hours per day and therefore were entitled to a rest period of not less than ten (10) minutes prior to exceeding four (4) hours of employment.

50. As a matter of Defendants' established company policy, Defendants failed to authorize and permit the required rest periods established by Labor Code §226.7 and Labor Code §516 and Section 12 of the IWC Wage Order(s).

51. Pursuant to Section 12 of the IWC Wage Order(s) and Labor Code §226.7(b) which states "if an employer fails to provide an employee a meal or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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," Plaintiffs and the members of the Class are entitled to damages in an amount equal to one (1) additional hour of pay at each employee's regular rate of compensation for each work day that the rest period was not so provided.

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52. Pursuant to *Labor Code* §218.6 and *Civil Code* §3287, Plaintiffs and the members of the Class seek recovery of pre-judgment interest on all amounts recovered herein.

53. Pursuant to *Labor Code* §218.5, Plaintiffs and the members of the Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REQUIRED MEAL PERIODS (*LABOR CODE* §226.7)
(On Behalf of Plaintiffs and All Others Similarly Situated Against All Defendants)

54. Plaintiffs and the members of the Class incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

55. *Labor Code* §226.7(a) provides that "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

56. *Labor Code* §512 provides that "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."

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57. *Labor Code* §516 provides that the Industrial Welfare Commission may adopt or amend working condition orders with respect to meal periods for workers in California consistent with the health and welfare of those workers.

58. Section 11(A) of the IWC Wage Order(s) provides that "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."

59. Section 11(B) of the IWC Wage Order(s) provides that "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."

60. Plaintiffs and the members of the Class worked over five (5) hours per day and therefore were entitled to an uninterrupted meal period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

61. Plaintiffs and the members of the Class did not validly or legally waive their meal periods, by mutual consent with Defendants or otherwise.

62. Plaintiffs and the members of the Class did not enter into any written agreement with Defendants agreeing to an on-the-job paid meal period.

63. As a matter of Defendants' established company policy, Defendants failed to comply with the meal period requirements established by *Labor Code* §226.7, *Labor Code* §512, *Labor Code* §516 and Section 11 of the IWC Wage Order(s) by failing to provide Plaintiff and the members of the Class with a legally compliant meal period.

64. Pursuant to Section 11(B) of the IWC Wage Order(s) and *Labor Code* §226.7(b) which states "if an employer fails to provide an employee a meal or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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," Plaintiffs and the members of the Class are entitled to damages in an amount equal to one (1) additional hour of pay at each employee's regular rate of compensation for each work day that the meal period was not provided, in a sum to be proven at trial.

65. Pursuant to *Labor Code* §218.6 and *Civil Code* §3287, Plaintiffs and the members of the Class seek recovery of pre-judgment interest on all amounts recovered herein.

66. Pursuant to *Labor Code* §218.5, Plaintiffs and the members of the Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

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<u>THIRD CAUSE OF ACTION</u>

FAILURE TO PAY MINIMUM HOURLY WAGES (*LABOR CODE* §1197)

(On Behalf of Plaintiffs and All Others Similarly Situated Against All Defendants)

67. Plaintiffs and the members of the Class incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

68. Pursuant to *Labor Code* §1197, payment of less than the minimum wage fixed by the Industrial Welfare Commission is unlawful.

69. The IWC Wage Orders §4 (A) state: "Every employer shall pay to each employee wages … not less than twelve dollars per hour ($12.00) for all hours worked, effective January 1, 2019, and not less than thirteen dollars ($13.00) per hour for all hours worked, effective January 1, 2020, and not less than Fourteen dollars ($14.00) per hour for all hours worked, effective January 1, 2021, and not less than fifteen dollars ($15.00) per hour for all hours worked, effective January 1, 2022, and not less than fifteen dollars and fifty cents ($15.50) per hour for all hours worked, effective January 1, 2023."

70. Defendants required the Plaintiffs and members of the Class to remain under Defendants' control without paying therefore, which resulted in their earning less than the legal minimum wage in the State of California.

71. Defendants' pattern and practice in uniform administration of corporate policy regarding Defendants' failure to pay the legal minimum wage to Plaintiffs and the members of the Class as described herein is unlawful and creates entitlement, pursuant to

Labor Code §1194(a), to recovery by Plaintiffs and the members of the Class, in a civil action, for the unpaid balance of the full amount of the unpaid minimum wages owed, calculated as the difference between the straight time compensation paid and the applicable minimum wage, including interest thereon.

72. Pursuant to *Labor Code* §1194.2(a) (which provides that in any action under *Labor Code* §1194, an employee shall be entitled to recover liquidated damages), Plaintiffs and the members of the Class seek recovery of liquidated damages on the straight-time portion of uncompensated hours of work in an amount equal to the wages unlawfully unpaid and interest thereon.

73. Pursuant to *Labor Code* §218.6, *Labor Code* §1194(a) and *Civil Code* §3287, Plaintiffs and the members of the Class seek recovery of pre-judgment interest on all amounts recovered herein.

74. Pursuant to *Labor Code* §218.5 and/or *Labor Code* §1194(a), Plaintiffs and the members of the Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

FOURTH CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES (*LABOR CODE* §§510 and 1194)
(On Behalf of Plaintiffs and All Others Similarly Situated Against All Defendants)

75. Plaintiffs and the members of the Class incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

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76. At all relevant times, Plaintiffs and members of the Class have been non-exempt employees of Defendants and entitled to the full protections of the Labor Code and of the Wage Order.

77. *Labor Code* §1198 makes it unlawful for an employer to employ any person under conditions of employment that violate the Wage Order.

78. Section 2(G) of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of the employer, [which] includes all the time the employee is suffered or permitted to work, whether or not required to do so."

79. *Labor Code* §§510 and 1194, and Section 3 of the Wage Order, require employers to pay overtime wages to their non-exempt employees at no less than one and one-half times their regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in excess of forty hours in one workweek, and for the first eight hours worked on a seventh consecutive workday.

80. *Labor Code* §§510 and 1194, and Section 3 or the Wage Order, also require employers to pay overtime wages to their non-exempt employees at no less than two times their regular rates of pay for all hours worked in excess of twelve hours in one workday, and for all hours worked in excess of eight hours on a seventh consecutive workday.

81. At all relevant times during Plaintiffs' employment, Defendants failed to pay Plaintiff and members of the Class' overtime wages for overtime hours worked.

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82. Pursuant to *Labor Code* §1194, Plaintiffs and members of the Class seek recovery of all unpaid overtime wages, interest thereon, costs of suit, and reasonable attorneys' fees, all in amounts subject to proof.

FIFTH CAUSE OF ACTION
FOR FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS (*LABOR CODE* §226)
(On Behalf of Plaintiff and All Others Similarly Situated Against All Defendants)

83. Plaintiffs and the members of the Class incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

84. *Labor Code* §226(a) states in pertinent part: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee… (4) all deductions… (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid… (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by the employee….".

85. Further, the IWC Wage Orders §7(A) states in pertinent part: "(A) Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work

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period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded…(5) Total hours worked in the payroll period and applicable rates of pay…."

86. Therefore, pursuant to *Labor Code* §226(a) and the IWC Wage Orders §7(A), California employers are required to maintain accurate records pertaining to the total hours worked for Defendants by Plaintiffs and the members of the Class, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

87. As a pattern and practice, in violation of *Labor Code* §226(a) and the IWC Wage Orders §7(A), Defendants did not and still do not furnish each Plaintiffs and the members of the Class with an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

88. As a pattern and practice, in violation of *Labor Code* §226(a) and the IWC Wage Orders §7(A), Defendants did not and do not maintain accurate records pertaining to the total hours worked for Defendants by Plaintiffs and the members of the Class, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

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89. Plaintiffs and the members of the Class have suffered injury as a result of Defendants' failure to maintain accurate records for Plaintiffs and the members of the Class in that they were not timely provided written accurate itemized statements showing all requisite information, including but not limited to total hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of *Labor Code* §226 and the IWC Wage Orders §7(A), such that Plaintiffs and the members of the Class were misled by Defendants as to the correct information regarding various items, including but not limited to total hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

90. Pursuant to *Labor Code* §226(e), Plaintiffs and the members of the Class are entitled to fifty dollars ($50.00) per employee for the initial pay period in which a violation hereunder occurs and one hundred dollars ($100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000.00).

91. Pursuant to *Labor Code* §226(g), the currently-employed members of the Class are entitled to injunctive relief to ensure Defendants' compliance with Labor Code §226.

92. Pursuant to *Labor Code* §226(e) and/or §226(g), Plaintiffs and the members of the Class are also entitled to an award of costs and reasonable attorneys' fees.

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SIXTH CAUSE OF ACTION

FOR FAILURE TO PAY UNPAID WAGES UPON TERMINATION IN VIOLATION OF *LABOR CODE* §203

(On Behalf of Plaintiffs and All Others Similarly Situated Against All Defendants)

93. Plaintiffs and the members of the Class incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

94. *Labor Code* §203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with *Labor Code* §§201, 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

95. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned wages of Defendants' former employees, according to amendment or proof.

96. Defendants willfully failed to pay Plaintiffs and the members of the Class their entire wages due and owing at the time of their termination or within seventy-two (72) hours of their resignation, and failed to pay those sums for thirty (30) days thereafter.

97. Defendants' willful failure to pay wages to Plaintiffs and the members of the Class violates *Labor Code* §203 because Defendants knew or should have known wages were due to the members of the Class, but Defendants failed to pay them.

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98. Thus, Plaintiffs and the members of the Class are entitled to recovery pursuant to *Labor Code* §203, in the amount of each Class members' daily wage multiplied by thirty (30) days.

99. Pursuant to *Civil Code* §3287, Plaintiffs and the members of the Class seek recovery of pre-judgment interest on all amounts recovered herein.

<u>SEVENTH CAUSE OF ACTION</u>

FAILURE TO INDEMNIFY EMPLOYEES IN VIOLATION OF CALIFORNIA LABOR CODE §2802 AND FAILURE TO MAINTAIN A UNIFORM

(On Behalf of Plaintiffs and All Others Similarly Situated Against All Defendants)

100. Plaintiffs and the members of the Class incorporate by reference all of the allegations contained in the preceding paragraphs of this complaint as though fully set forth herein.

101. Under *Labor Code* §2802(a) an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

102. Employees incurred necessary expenditures in the performance of their job duties for Defendants, namely the cost of cell phone use, mileage and gas reimbursement for deliveries and trips to other stores, and the cost of washing their uniforms incurred in performing their daily job duties, as addressed above. From four (4) years prior to the original filing of this lawsuit and continuing to the present, Defendants consistently failed to reimburse Employees for these necessarily incurred business expenses.

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103. Wage Orders Subsection 9A states:

(A) "When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" meaning apparel and accessories of distinction in the design of color."

104. Defendant failed to maintain Plaintiffs and the members of the Class' uniforms. According to the DLSE, Plaintiffs and the members of the class are entitled to a weekly maintenance allowance of one hour's pay at the state minimum wage for each work week that the uniforms were maintained.

105. As a result of the unlawful acts of Defendants, Employees have been deprived of reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

EIGHTH CAUSE OF ACTION
FAILURE TO PAY SPLIT-SHIFT PREMIUM WAGES IN VIOLATION OF CALIFORNIA LABOR CODE §1194
(On behalf of Plaintiffs and All Others Similarly Situated AGAINST all Defendants)

106. Plaintiffs and the members of the Class incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

107. At all relevant times, Plaintiffs and members of the class were hourly non-exempt employees of Defendants covered by Labor Code section 1197 and

Wage Order 5-2001. California Wage Order 5 subdivision (4)(C) states that: "When an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment."

108. In conjunction, these provisions of the *Labor Code* and the Wage Order require employers to pay their non-exempt employees no less than one hour's pay at the minimum wage when they work a split shift.

109. At all relevant times during Plaintiffs' employment, Defendants failed to pay Plaintiffs and members of the Class split shift premiums when the members of the Class would work a split shift where they would work in the morning, and then they would leave work, and later return and work a shift later in the day.

110. Under the aforementioned wage order and regulations. Plaintiffs and the members of the Class are entitled to recover comprehension for all unpaid split-shift premiums.

111. Plaintiffs and the members of the Class seek recovery of all applicable split-shift premiums, interest and/or penalties for the time period of four years preceding the filing of this Complaint;

112. Plaintiffs and the members of the Class further demand reasonable attorney's fees, cost of suit, and interest pursuant to applicable California Labor Code Sections 218.5, 218.6, and Wage Order 5.

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NINTH CAUSE OF ACTION

CIVIL PENALTIES (*LABOR CODE* §§2699, *et seq.*)

(On Behalf of Plaintiffs and All Others Similarly Situated Against All Defendants)

113. Plaintiffs and the members of the Class incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint, as though fully set forth herein.

114. At all times mentioned, the *California Labor Code* §2698, *et seq.*, was applicable to Plaintiffs and the members of the Class and their employment by Defendants.

115. At all times mentioned, *California Labor Code* §2698, *et seq.*, "The Labor Code Private Attorney General Act" (hereinafter "PAGA") provides that for any provision of law under the Labor Code that provides for a Civil penalty to be assessed and collected by the Labor and Workforce Development Agency for violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee pursuant to procedures outlined in *California Labor Code* §2699.3.

116. Pursuant to *Labor Code* §2699.3, an aggrieved employee, may commence a civil action arising under *Labor Code* §2699 after the following requirements have been met:

a. The aggrieved employee shall give written notice (hereinafter "Notice") by online filing with the Labor and Workforce Development Agency (hereinafter "Agency") and by certified mail to the employer of the

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specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.

b. A notice filed with the Labor and Workforce Development Agency and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars ($75).

c. The Agency shall notify the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Notice. Upon receipt of the Notice or if no Notice is provided within sixty-five (65) calendar days of the postmark date of the Notice, the aggrieved employee may amend an existing complaint within sixty days of receiving the Notice that the Agency does not intend to investigate the alleged violation, to add a cause of action pursuant to *Labor Code* §2699 to recover civil penalties in addition to any other penalties that the employee may be entitled to.

d. When filing a new PAGA lawsuit in court, a filed-stamped copy of the Complaint must be provided to LWDA.

117. Plaintiffs have satisfied the jurisdictional prerequisites to the maintenance of this Cause of Action as more fully set out in *Labor Code* §2699.3 in that on April 24, 2023 Plaintiffs and all members of the Class gave notice to the Labor and Workforce Development Agency of Defendants' violations of *Labor Code* §§201, 202, 203, 204, 210,

226(a), 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198 and 2802, including the facts and theories to support the alleged violation, and Plaintiffs' intent to recover penalties based on the violations set forth herein. This same notice was served upon the LWDA online and to Defendants by certified mail on or about April 24, 2023. See Exhibit No.1, April 24, 2023 Notice to the LWDA and the Defendants. Plaintiffs therefore satisfied the requirements of Labor Code §2699 and may recover civil penalties, in addition to other remedies for violations of California Labor Code §§201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1174.5, 1197, 1198, and 2802.

118. Plaintiffs therefore satisfied the requirements of *Labor Code* §2699 and may recover civil penalties, in addition to other remedies for violations of *California Labor Code* §§201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802.

119. As set forth more fully above, Defendants violated §§201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802.

120. Plaintiffs and all other similarly situated current and former non-exempt employees, seek relief against them under *Labor Code* §558.

121. Pursuant to *Labor Code* §2699(f) and (g), Plaintiffs, and all other current and former non-exempt employees similarly situated, are entitled to recover civil penalties in the amount of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay

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period for each subsequent violation, plus costs and attorney's fees, for violations of *Labor Code* §§201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802.

122. Defendant URBINA is the owner of PAPA JOHNS; Defendant OCHOA is an Operations Director of PAPA JOHNS, they held meetings every three weeks where no one else was allowed to attend; and each of them formulated corporate policies for Defendant PAPA JOHNS' employees regarding wages, hours, and working conditions. Therefore, the individual Defendants, URBINA and OCHOA are "other persons" within the meaning of Labor Code §558, because they were personally responsible for the Labor Code Violations described in the First through Eighth Causes of Actions, which they condoned and ratified.

123. As set forth more fully above, Defendants PAPA JOHNS and URBINA violated *Labor Code* §§201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802.

124. Plaintiffs and all other similarly situated current and former non-exempt employees, seek relief against them under *Labor Code* §558.

125. Pursuant to *Labor Code* §2699(f) and (g), Plaintiff Salvador Rodriguez and German Rodriguez, and all other current and former non-exempt employees similarly situated, are entitled to recover civil penalties in the amount of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two

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hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorney's fees, for violations of *Labor Code* §§201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802.

<u>TENTH CAUSE OF ACTION</u>
UNLAWFUL BUSINESS PRACTICES
(BUSINESS AND PROFESSIONS CODE §17200)
(On Behalf of Plaintiffs and All Others Similarly Situated Against All Defendants)

126. Plaintiffs and the members of the Class incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

127. *Business & Professions Code* §17200 provides in pertinent part that: "…[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act…".

128. *Business & Professions Code* §17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition "are cumulative to each other and to the remedies or penalties available under all other laws of this state."

129. *Business & Professions Code* §17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

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130. Defendants have engaged in unlawful, unfair and fraudulent business acts or practices prohibited by *Business & Professions Code* §17200, including those set forth in the preceding paragraphs of the Complaint, thereby depriving Plaintiffs and all the members of the Class of the minimum working standards and conditions due to them under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

131. Defendants have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices outlined in the preceding paragraphs, specifically, by requiring employees to perform the labor services complained of herein without the requisite compensation.

132. Defendants' use of such practices constitutes an unfair business practice, unfair competition and provides an unfair advantage over Defendants' competitors.

133. Plaintiffs and the members of the Class have suffered injury in fact and have lost money or property as a result of such unfair competition.

134. Plaintiffs and the members of the Class seek full restitution from Defendants, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair practices complained of herein.

135. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will continue to practice, employ and utilize the employment practices outlined in the preceding paragraphs.

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136. Therefore, Plaintiffs and the members of the Class request that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the above conduct.

137. Plaintiffs, on behalf of themselves and the members of the Class, seek the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendants.

RELIEF REQUESTED

WHEREFORE, Plaintiff and the Members of the Class pray for the following relief.

1. As to the First Cause of Action for Failure to Provide Required Paid Rest Periods from at least four (4) years prior to the filing of this action to the present, as may be proven:

a. For one (1) hour of pay at the regular rate of compensation for Plaintiffs and each member of the Class for each workday that a rest period was not provided;

b. For pre-judgment interest as authorized by *Labor Code* §218.6 and *Civil Code* §3287;

c. For an award of reasonable attorneys' fees and costs pursuant to *Labor Code* §218.5;

2. As to the Second Cause of Action for Failure to Provide Meal Periods from at least four (4) years prior to the filing of this action to the present, as may be proven:

a. For one (1) hour of pay at the regular rate of compensation for Plaintiffs and each member of the Class for each workday that a meal period was not provided;

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b. For pre-judgment interest as authorized by *Labor Code* §218.6 and *Civil Code* §3287;

c. For an award of reasonable attorneys' fees and costs pursuant to *Labor Code* §218.5;

3. As to the Third Cause of Action for Failure to Pay Minimum Wages from at least four (4) years prior to the filing of this action to the present, as may be proven:

a. For recovery of the unpaid balance of the full amount of the minimum wages due and owing, according to proof;

b. For liquidated damages on the straight-time portion of uncompensated hours of work, as authorized by *Labor Code* §1194.2(a);

c. For pre-judgment interest as allowed by *Labor Code* §218.6, *Labor Code* §1194(a) and *Civil Code* §3287;

d. For an award of reasonable attorneys' fees and costs pursuant to *Labor Code* §218.5 and/or *Labor Code* §1194(a);

4. As to the Fourth Cause of Action for Failure to Pay Overtime Wages from at least four (4) years prior to the filing of this action to the present, as may be proven:

a. For recovery of the unpaid overtime wages due and owing according to proof;

b. For reasonable attorneys' fees, costs of suits' interest pursuant to *Labor Code* §1194;

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c. For an award of costs and reasonable attorneys' fees pursuant to *Labor Code* §226(e) and/or §226(g);

5. <u>As to the Fifth Cause of Action for Failure to Timely Furnish Accurate Itemized Wage Statements from at least one (1) year prior to the filing of this action to the present, as may be proven</u>:

a. For recovery as authorized by *Labor Code* §226(e) of fifty dollars ($50) for the initial pay period and one hundred dollars ($100) for each violation in a subsequent pay period, not exceeding an aggregate of four thousand ($4000) dollars per employee;

b. For injunctive relief to ensure Defendants' compliance with *Labor Code* §226 and the IWC Wage Orders §7(A) pursuant to *Labor Code* §226(g);

6. <u>As to the Sixth Cause of Action for Violations of Labor Code §203 from at least four (4) years prior to the filing of this action to the present, as may be proven</u>:

a. For recovery as authorized by *Labor Code* §203 for all employees who were terminated or resigned, without being paid all of their wages, equal to their daily wage times thirty (30) days;

b. For pre-judgment interest and post judgment interest as allowed by *Civil Code* §3287;

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7. <u>As to the Seventh Cause of Action for Reimbursement of Necessary Expenditures and Failure to Maintain a Uniform from at least four (4) years prior to the filing of this action to the present, as may be proven:</u>

a. For restitution and/or damages for all amounts unlawfully withheld from the wages for all Class members.

b. For One Hour of pay at the state minimum wage for Plaintiffs and each member of the Class for each work week where the employers failed to maintain the employees' uniforms.

8. <u>As to the Eighth Cause of Action Failure to Pay Split Shift Premium from at least four (4) years prior to the filing of this action to the present, as may be proven:</u>

a. For one (1) hour of pay at the regular rate of compensation for Plaintiffs and each member of the class for each workday that they worked a split shift;

b. For pre-judgment interest as authorized by *Labor Code* §§ 218.5, 218.6.

c. For an award of reasonable attorneys' fees and costs pursuant to *Labor Code* §§ 218.5, 218.6.

9. <u>As to the Ninth Cause of Action for Violation of PAGA from at least one (1) year prior to the filing of this action, as may be proven:</u>

a. For civil penalties allowable under *Labor Code* §§201, 202, 203, 204, 210, 226(a), 226.7, 226.8, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802.

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10. <u>As to the Tenth Cause of Action for Unlawful Business Practices from at least four (4) years prior to the filing of this action to the present, as may be proven:</u>

a. For an accounting, under administration of Plaintiffs and/or the receiver and subject to Court review, to determine the amount to be returned by Defendants, and the amounts to be refunded to members of the Class who are owed monies by Defendants;
b. For an Order requiring Defendants to identify each of the members of the Class by name, home address, and home telephone number;
c. For an Order requiring Defendants to make full restitution and payment pursuant to California law:
d. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from engaging in the acts complained of herein;
e. For the creation of an administrative process wherein each injured member of the Class may submit a claim in order to receive his/her money;
f. For all other appropriate injunctive, declaratory and equitable relief;
g. For interest to the extent permitted by law;

10. <u>As to All Causes of Action:</u>

a. An award providing for payment of costs of suit;
b. An award of attorney fees; and
c. Such other and further relief as this court may deem proper and just.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

Dated: November 22, 2023

ELI M. KANTOR
Attorney for Plaintiffs SALVADOR RODRIGUEZ, GERMAN RODRIGUEZ and All Others Similarly Situated

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Exhibit 1

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ELI M. KANTOR
JONATHAN D. KANTOR

April 24, 2023

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Labor Workforce Development Agency
800 Capitol Mall
Suite 5000
Sacramento, CA 95814

RE: SALVADOR RODRIGUEZ, GERMAN RODRIGUEZ/WNU LLC DBA PAPA JOHNS, Paul Urbina, Brisia Ochoa, et al.

Dear Sir or Madam:

Pursuant to Labor Code Sections 2998, *et seq.*, of the Private Attorneys General Act, Salvador Rodriguez and German Rodriguez (herein "Rodriguez et al.") provides notice on behalf of themselves and other current and former non-exempt California employees (herein "aggrieved employees") with employer, WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa and any and all related entities or parties which are the alter egos of such employers (hereinafter "employers"), of violations of *Labor Code* Sections 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802, and Wage Order 5 Subsection 4c, 9a, and 15A and B, and any other applicable sections affording the types of penalties described.

As set forth below, Rodriguez et al. alleges that WNU LLC DBA PAPA JOHNS, Paul Urbina, Brisia Ochoa, and their agents, have violated the above sections of the Labor Code by failing to provide them and other aggrieved employees with accurate wage statements; failing to pay them minimum and overtime wages for all hours worked, by failing to provide them and other aggrieved employees with meal and rest periods, or pay them premium wages in lieu thereof, failing to keep records, and failing to reimburse them for business expenses, failing to timely pay them earned wages, failing to timely pay them earned wages upon termination, failing to provide them with a weekly maintenance allowance of one hour's pay in lieu of maintaining uniforms, failing to maintain a temperature at work that provides reasonable comfort consistent with industry wide standards for the nature of the process and work performed, and failing to provide them with "split-shift" premium pay.

Relevant Facts

Salvador Rodriguez was hired by WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa on May 3, 2022. He was terminated by the above mentioned employers on March 29, 2023.

German Rodriguez was hired by WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa in or about 2012. He was terminated by the above mentioned employers on March 29, 2023.

Therefore, as set forth below, Rodriguez et al. allege that WNU LLC DBA PAPA JOHNS, Paul Urbina, Brisia Ochoa and their agents, have violated the above sections of the Labor Code by failing to provide them and other aggrieved employees with accurate wage statements; failing to pay them minimum and overtime wages for all hours worked, by failing to provide them and other aggrieved employees with meal and rest periods, or pay them premium wages in lieu thereof, failing to keep records, and failing to reimburse them for business expenses, failing to timely pay them earned wages, failing to timely pay them earned wages upon termination, failing to provide them with a weekly maintenance allowance of one hour's pay in lieu of maintaining uniforms, failing to maintain a temperature at work that provides reasonable comfort consistent with industry wide standards for the nature of the process and work performed, and failing to provide them with "split-shift" premium pay.

The employers who are being sent copies of this letter may be contacted directly at:

WNU LLC DBA PAPA JOHNS
10040 Rosecrans Blvd.
Bellflower, CA 90712

Paul Urbina
10040 Rosecrans Blvd.
Bellflower, CA 90712

Brisia Ochoa
10040 Rosecrans Blvd.
Bellflower, CA 90712

BACKGROUND

Rodriguez et al. have been subject to one or more of the alleged violations during their employment within the one-year period before the mailing of this notice.

Rodriguez et al. are informed and believe that, at all relevant times, employers have been the agents, employees, representatives, servants, masters, employers, or alter egos of each other, and in doing the things herein alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of these other employers.

Rodriguez et al. are informed and believe that, at all relevant times, each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all employers mentioned herein, each acting as agents and/or employees, and/or under the direction and control of each of the other employers, and that said acts and failures were within the course and scope of said agency, employment, and/or direction or control.

At all relevant times, Rodriguez et al. and aggrieved employees have been both "employees" within the meaning of Section 2(F) of the Wage Order and "aggrieved employees" within the meaning of *Labor Code* §2699(c). At all relevant times, Rodriguez et al. and aggrieved employees have been non-exempt employees of employers, and are entitled to the full protections of the *Labor Code* and the Wage Order.

At all relevant times, employers have failed to keep legally required records concerning Rodriguez et al. and aggrieved employees, including, but not limited to, accurate records of their hours worked.

Failures to Provide Accurate Wage Statements
(*Labor Code* § 226(a))

Labor Code § 226 (a) states:

> Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (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 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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

At all relevant times, Defendants failed to provide Rodriguez et al. and aggrieved employees with accurate itemized wage statements in writing as required under *Labor Code* 226(a). Specifically, the wage statements given to Rodriguez et al. and the aggrieved employees failed to accurately reflect:

1. Their applicable wage rates, and corresponding units worked at each applicable rate, by not paying them premium wages in lieu of meal and rest periods;

2. Their premium wage penalties;

3. Their applicable hours worked at corresponding each wage rate as a result of Defendants' not paying them legal overtime wages for all hours worked; and

4. The amounts of their gross and net wages earned as a result of these failures.

For employers' violations of *Labor Code* § 226(a), Rodriguez et al. intend to seek civil penalties against them as follows on behalf of themselves and aggrieved employees in the amount of $250 per employee per violation if a civil action results in an initial citation or its functional equivalent, and $1,000 per employee per violation if a civil action results in a subsequent citation or its functional equivalent (penalties established by *Labor Code* § 226.3).

Failures to Provide Meal and Rest Periods
(*Labor Code* §§226.7, 512 and 1198)

Labor Code §512(a) 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 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, *Labor Code* §1198 states:

> The employment of any employee... under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 11 of Wage Order 5 states:

> (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 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.

At all relevant times, employers have violated, and/or caused to be violated, the above referenced provisions of the *Labor Code* and the Wage Order by:

1. Failing to maintain practices that ensure that legally mandated meal periods are provided to Rodriguez et al. and aggrieved employees, and that rest periods are affirmatively authorized and permitted for Rodriguez et al. and aggrieved employees. Specifically, Rodriguez et al. and aggrieved employees were required to remain under the Employers' control and work through their rest periods, which they were continuously denied. Rodriguez et al. and aggrieved employees were

required to work through their meal periods which they were consistently denied. On shifts over ten hours, second meal periods were not provided:

2. Inducing employees to work "off-the-clock" during their meal periods;

3. Not allowing employees to take their meal period until after the 5th hour of their shift;

4. Interrupting employees during their meal and rest periods and requiring them to return to work before the end of their break;

5. Employers failed to pay Rodriguez et al. and aggrieved employees "premium pay," i.e. one hour of wages at each Employee's effective regular rate of pay, for each meal period that the Employers failed to provide. Employers failed to pay Rodriguez et al. and aggrieved employees "premium pay," i.e. one hour of wages for each day on which requisite rest breaks were not provided;

6. Employing Rodriguez et al. and aggrieved employees, or causing them to be employed, under conditions that violate the *Labor Code* and the Wage Order; and

7. Underpaying Rodriguez et al. and aggrieved employees, or causing them to be underpaid, in violation of the *Labor Code* and the Wage Order.

For employers' violations of the above referenced *Labor Code* sections, Rodriguez et al. intend to seek civil penalties against them on behalf of themselves and aggrieved employees as follows:

1. **Against any and all employers, including, but not limited to WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For all initial violations of *Labor Code* §512, $50.00 for each aggrieved employee per pay period for each violation, in addition to an amount sufficient to recover underpaid wages and, for all subsequent violations, $100.00 for each aggrieved employee per pay period for each violation, in addition to an amount sufficient to recover underpaid wages (penalty amounts established by *Labor Code* §558);

2. **Against any and all employers, including, but not limited to WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For all violations of *Labor Code §§226.7* and 1198, $100.00 for each aggrieved employee per pay period for each violation and, for all subsequent violations, $200.00 for each aggrieved employee per pay period for each violation (penalty amounts established by *Labor Code* §2699(f)(2));

3. **Against WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:, in addition to any such penalties afforded above:** For violations of *Labor Code* §§226.7 and 1198, a civil penalty of $500.00 (penalty amount established by *Labor Code* §2699(f)(1)).

Failure to Pay Minimum and Overtime Wages
(*Labor Code* §§ 510, 1194, 1197 and 1198)

Labor Code §1194(a) states:

> 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, Section 4 of Wage Order 5 states:

> (A) Every employer shall pay to each employee wages not less than Twelve dollars ($12.00) per hour for all hours worked, effective January 1, 2019 and not less than thirteen dollars ($13.00) per hour for all hours worked effective January 1, 2020 and not less than fourteen dollars ($14.00) per hour for all hours worked effective January 1, 2021, and not less than fifteen dollars ($15.00) per hour for all hours worked, effective January 1, 2022 and not less than fifteen dollars and fifty cents ($15.50) per hour for all hours worked, effective January 1, 2023.
>
> (B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

In relevant part, Section 3 of Wage Order 5 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; and
>
> (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.

In conjunction, these provisions of the *Labor Code* and the Wage Order require employers to pay their non-exempt employees no less than minimum at all relevant times, WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa: and employers have violated, and/or caused to be violated, the above-referenced provisions of the *Labor Code* and the Wage Order by:

1. Specifically, Rodriguez et al. and aggrieved employees worked in excess of eight (8) hours a day, 40 hours in one workweek, and/or on a seventh consecutive workday. Rodriguez et al. and aggrieved employees regularly worked overtime. However, Rodriguez et al. and aggrieved employees were not paid overtime wages for hours worked in excess of 8 hours a day, 40 hours in one workweek, and/or on a seventh consecutive day.

2. Causing Rodriguez et al. and aggrieved employees to be paid less than legal minimum and overtime wage rates for all hours worked.

For employers' violations of the above-referenced *Labor Code* sections, Rodriguez et al. intend to seek civil penalties against them as follows on behalf of themselves and aggrieved employees:

1. **Against any and all employers, including, but not limited to WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For all initial violations of *Labor*

Code § 510, $50.00 for each aggrieved employee per pay period for each violation, in addition to an amount sufficient to recover underpaid wages, and for all subsequent violations, $100.00 for each aggrieved employee per pay period for each violation, in addition to an amount sufficient to recover underpaid wages (penalty amounts established by *Labor Code* § 558);

2. **Against any and all employers, including, but not limited to WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For each initial violation of *Labor Code* § 1197 deemed to be intentionally committed, $100.00 for each aggrieved employee per pay period for each violation, and, for all subsequent violations, $250.00 for each aggrieved employee per pay period for each violation, regardless of whether the initial violation is deemed to be intentionally committed (penalty amounts established by *Labor Code* § 1197.1);

Untimely Wage Payments
(*Labor Code* §§ 201, 202, 203, 204 and 256)

In relevant part, *Labor Code* § 201(a) states:

> If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

In relevant part, *Labor Code* § 203(a) states:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any 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 therefore is commenced; but the wages shall not continue for more than 30 days.

In relevant part, *Labor Code* § 204 states:

> (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, or 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. However, salaries of executive, administrative, and professional employees

> of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13 (a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time.
>
> (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.

For employers' violations of the above-referenced *Labor Code* sections, Rodriguez et al. intend to seek civil penalties against them as follows on behalf of themselves and aggrieved employees:

1. **Against any and all employers, including, but not limited to, WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For all initial violations of *Labor Code* § 201, 203, and 204, $100 for each aggrieved employee per pay period for each violation and, for all subsequent violations, $200.00 for each aggrieved employee per pay period for each violation (penalty amounts established by *Labor Code* § 2699(f)(2)); and

2. **Against any and all employers, including, but not limited to, WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For violations of *Labor Code* §§ 201, 203, and 204, a civil penalty of $500.00 (penalty established by *Labor Code* § 2699(f)(1)).

In relevant part, Labor Code § 210 states:

> (a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

At all relevant times, employers have violated, and/or caused to be violated, the above-referenced provisions of the *Labor Code* and the Wage Order by willfully not timely paying earned wages to Rodriguez et al. and aggrieved employees as a result of the conduct set forth above. Rodriguez et al. and the aggrieved employees did not receive all the wages that they earned and were owed to them.

For employer's violations of the above referenced *Labor Code* sections, Rodriguez et al. intend to seek civil penalties against them as follows on behalf of themselves and aggrieved employees:

1. **Against any and all employers, including, but not limited to, WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For all initial violations of *Labor Code* § 210, $100 for each aggrieved employee per pay period for each violation and, for all subsequent violations, $200.00 for each aggrieved employee per pay period for each violation (penalty amounts established by *Labor Code* § 2699(f)(2)).

Failure to Keep Records in Accordance with Labor Code 1174, 1174.5
(*Labor Code* §§1174, 1174.5)

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Rodriguez et al. and aggrieved employees proper wages, overtime, premium pay, etc., all discussed herein, Employers failed to maintain proper employment records pursuant to section 1174.

For employers' violations of the above-referenced *Labor Code* sections, Rodriguez et al. intend to seek civil penalties against them as follows on behalf of themselves and aggrieved employees:

1. **Against any and all employers including but not limited to WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For violations of *Labor Code* §§ 1174 a civil penalty of $500.00 (penalty amount established by *Labor Code* §1174.5).

2. **Against any and all employers including but not limited to WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For all initial violations of *Labor Code* §§ 1174 $100.00 for each aggrieved employee per pay period for each violation, and for all subsequent violations, $200.00 for each aggrieved employee per pay period for each violation (penalty amount established by *Labor Code* §2699(f)(2).

3. **Against WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For violations of *Labor Code* §§1174, a civil penalty of $500.00 (penalty amount established by *Labor Code* §2699(f)(1)).

Employers' Failure to Indemnify
(*Labor Code* §§2802)

In relevant part, *Labor Code* 2802 (a) states:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...

In the present case, Rodriguez et al. and aggrieved Employees incurred necessary expenditures in the performance of their job duties for Employers including, but not limited to, the cost of cell phone use, mileage reimbursement for deliveries and trips to other stores, and the cost of washing their uniforms. From four years prior to the original filing of this letter and continuing to the present, Employers consistently failed to reimburse Rodriguez et al. and aggrieved employees for these necessary incurred business expenses. For employer's violations of the above referenced *Labor Code* sections, Rodriguez et al. intend to seek civil penalties against them on behalf of themselves and aggrieved employees as follows:

1. **Against any and all employers, including but not limited to WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For all violations of *Labor Code* §2802, $100.00 for each aggrieved employee per pay period for each violation and, for all subsequent violations, $200.00 for each aggrieved employee per pay period for each violation (penalty amounts established by *Labor Code* §2699(f)(2)):

2. **Against WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For violations of *Labor Code* §2802, a civil penalty of $500.00 (penalty amount established by *Labor Code* §2699(f)(1)).

Failure to Pay Split Shift Premium
(*Labor Code* § 1194)

Labor Code §1194(a) states:

> 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, Section 4(c) of Wage Order 5 states:

> When an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

In conjunction, these provisions of the *Labor Code* and the Wage Order require employers to pay their non-exempt employees no less than one hour's pay at the minimum wage when they work a split shift. At all relevant times, WNI LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa: and employers have violated, and/or caused to be violated, the above referred provisions of the *Labor Code* and the Wage Order by:

1. Specifically, Rodriguez et al. and aggrieved employees would work a split shift where they would work in the morning, and then they would leave work, and later return and work a shift later in the day. However, Rodriguez et al. and aggrieved employees were not paid a split shift premium at one hour's pay at the minimum wage when they worked split shifts.

For employers' violations of the above-referenced *Labor Code* sections, Rodriguez et al. intend to seek civil penalties against them as follows on behalf of themselves and aggrieved employees:

1. **Against any and all employers, including but not limited to WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For all violations of *Labor Code* §2802, $100.00 for each aggrieved employee per pay period for each violation and, for all subsequent violations, $200.00 for each aggrieved employee per pay period for each violation (penalty amounts established by *Labor Code* §2699(f)(2)).

Failure to Maintain a Uniform
(*Labor Code* § 2802)

In relevant part, *Labor Code* 2802 (a) states:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties…

In relevant part, Wage Order 5 subsection 9A states:

> (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" meaning apparel and accessories of distinction in the design or color.

If the employer does not choose to maintain employees uniforms itself where it is required to do so, the Division of Labor Standards Enforcement takes the position that the employer may pay each affected employee a weekly maintenance allowance of an hour's pay at the state minimum wage rate in lieu of maintaining the uniforms.

At all relevant times, Rodriguez et al. and aggrieved employees wore uniforms ie: shirts with the Papa John's logo on them; however, WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa never compensated these employees for maintaining their uniforms. For employers' violations of the above referred Labor Code sections, Rodriguez et al. intend to seek civil penalties against them as follows on behalf of themselves and aggrieved employees:

2. **Against any and all employers, including but not limited to WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For all violations of *Labor Code* §2802, $100.00 for each aggrieved employee per pay period for each violation and, for all subsequent violations, $200.00 for each aggrieved employee per pay period for each violation (penalty amounts established by *Labor Code* §2699(f)(2));

3. **Against WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For violations of *Labor Code* §2802, a civil penalty of $500.00 (penalty amount established by *Labor Code* §2699(f)(1)).

Failure to provide Reasonable Temperature
(*Labor Code* § 1198)

In relevant part, *Labor Code* §1198 states:

> The employment of any employee... under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 15 of Wage Order 5 states:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

At all relevant times, employers have violated, and/or caused to be violated, the above referenced provisions of the *Labor Code* and the Wage Order by:

1. Failing to maintain a temperature at work that provided reasonable comfort to Rodriguez et al. and aggrieved employees. Specifically, Rodriguez et al. and aggrieved employees were required to work in oppressive heat adjacent to the pizza oven when the Air Conditioning was not operating properly throughout their employment.

For employers' violations of the above-referenced *Labor Code* sections, Rodriguez et al. intend to seek civil penalties against them as follows on behalf of themselves and aggrieved employees as follows:

1. **Against any and all employers, including but not limited to WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For all violations of *Labor Code* §1198, $100.00 for each aggrieved employee per pay period for each violation and, for all subsequent violations, $200.00 for each aggrieved employee per pay period for each violation (penalty amounts established by *Labor Code* §2699(f)(2));

2. **Against WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa:** For violations of *Labor Code* §1198, a civil penalty of $500.00 (penalty amount established by *Labor Code* §2699(f)(1)).

Conclusion

As indicated above, this letter constitutes the notice required under *Labor Code* § 2699.3. Insofar as it is directed toward employers, including, but not limited to WNU LLC DBA PAPA JOHNS, Paul Urbina, Brisia Ochoa, and any other applicable entities or parties, please be advised that Rodriguez et al. intend to seek attorneys' fees and costs, in addition to civil penalties, in a civil action should the LWDA decline to investigate this matter.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

ELI M. KANTOR

EMK:sn
cc: WNU LLC DBA PAPA JOHNS, Paul Urbina, and Brisia Ochoa

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WNU LLC DBA PAPA JOHNS
10040 Rosecrans Blvd.
Bellflower, CA 90712

9590 9402 6817 1074 8546 83

2. Article Number (Transfer from service label)

7017 2400 0000 8297 3741

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted D
☐ Certified Mail®
☐ Certified Mail Restricted Deli
☐ Collect on Delivery
☐ Collect on Delivery Restricted
Insured Mail
Insured Mail Restricted Deliv
(over $500)

7017 2400 0000 8297 3741

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
$ 3.35

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $ 2.75
☐ Return Receipt (electronic) $
☐ Certified Mail Restricted Delivery $
☐ Adult Signature Required $
☐ Adult Signature Restricted Delivery $

Postage
$ .60 x 4

Total Postage and Fees
$ 8.50

4/25

Postmark Here

PAPA JOHNS
PAGA

Sent To
WNU LLC DBA PAPA JOHNS
Street and Apt. No., or PO Box No.
10040 Rosecrans Blvd.
City, State, ZIP+4®
Bellflower, CA 90712

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Brisia Ochoa
10040 Rosecrans Blvd
Bellflower, CA 90712

9590 9402 6817 1074 8547 06

2. Article Number (Transfer from service label)

7017 2400 0000 8297 3765

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
Insured Mail
Insured Mail Restricted Delivery
over $500)

7017 2400 0000 8297 3765

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
$ 3.35

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $ 2.75
☐ Return Receipt (electronic) $
☐ Certified Mail Restricted Delivery $
☐ Adult Signature Required $
☐ Adult Signature Restricted Delivery $

Postage
$ .6 x 4

Total Postage and Fees
$ 8.50

4/25

Postmark Here

Brisia Ochoa
PAPA JOHNS
PAGA

Sent To
Brisia Ochoa
Street and Apt. No., or PO Box No.
10040 Rosecrans Blvd.
City, State, ZIP+4®
Bellflower, CA 90712

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WNU LLC DBA PAPA JOHNS
Paul Urbina
10040 Rosecrans Blvd.
Bellflower, CA 90712

9590 9402 6817 1074 8546 52

2. Article Number *(Transfer from service label)*

7017 0660 0001 1712 0313

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* C. Date of Delivery

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

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)

7017 2400 0000 8297 3420

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee $ 3.35

Extra Services & Fees (check box, add fee as appropriate)
- ☐ Return Receipt (hardcopy) $ 2.75
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage $ .60

Total Postage and Fees $ 6.70

Paul Urbina

Postmark Here

4/28

Sent To WNU LLC DBA PAPA JOHNS - Paul Urbina
Street and Apt. No., or PO Box No. 10040 Rosecrans Blvd
City, State, ZIP+4® Bellflower, CA 90706

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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SENDER: *COMPLETE THIS SECTION*

- ~~Complete items 1, 2, and 3.~~
- ~~Print your name and address on the reverse so that we can return the card to you.~~
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Labor Workforce Development Agency
800 Capitol Mall, Suite 5000
Sacramento, CA 95814

9590 9402 6817 1074 8547 20

2. Article Number *(Transfer from service label)*

7017 2400 0000 8297 3406

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X RECEIVED ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* C. Date of Delivery

MAY 01 2023

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

CENTRAL OFFICE
MAIL ROOM

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted D
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Del
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricte
- ☐ Insured Mail
- ☐ Insured Mail Restricted Del (over $500)

7017 2400 0000 8297 3406

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee $ 3.35

Extra Services & Fees (check box, add fee as appropriate)
- ☐ Return Receipt (hardcopy) $ 2.75
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage $ .60 x4

Total Postage and Fees $ $8.50

Papa Johns
PAGA

Postmark Here

4/24

Sent To Labor Workforce Development Agy
Street and Apt. No., or PO Box No. 800 Capitol Mall, Suite 5,000
City, State, ZIP+4® Sacramento, CA 95814

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WNU LLC DBA PAPA JOHNS
Paul Urbina
10040 Rosecrans Blvd
Bellflower, CA 90706

9590 9402 6817 1074 8546 69

2. Article Number *(Transfer from service label)*

7017 2400 0000 8297 3420

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X. NG

☐ Agent

B. R.

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

3. Service Type

☐ Adult Signature
☐ Adult Signat
☐ Certified M
☐ Certified M
☐ Collect on
☐ Collect on
☐ Insured Ma
☐ Insured Ma (over $500)

☐ Priority Mail Express®
☐ Registered Mail™

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

7017 2400 0000 8297 3758

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
$ 3.35

Extra Services & Fees *(check box, add fee as appropriate)*

☐ Return Receipt (hardcopy) $ 2.75
☐ Return Receipt (electronic) $
☐ Certified Mail Restricted Delivery $
☐ Adult Signature Required $
☐ Adult Signature Restricted Delivery $

Postage
$ .60 ¢

Total Postage and Fees
$ 8.50

4/25

Postmark Here

AGH

Paul Urbina,
Papa Johns

Sent To
Paul Urbina

Street and Apt. No., or PO Box No.
10040 Rosecrans Blvd.

City, State, ZIP+4®
Bellflower, CA 90712

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Paul Urbina
10040 Rosecrans Blvd.
Bellflower, CA 90712

9590 9402 6817 1074 8546 90

2. Article Number *(Transfer from service label)*

7017 2400 0000 8297 3758

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SE

A. Signature

X

B. Received by (Prin

D. Is delivery address
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt