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Judge Randall J. Sherman

Dept. CX105

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

NICOLE SAENZ-VALENZUELA, an
individual, and on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

D. O. S. PIZZA, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 30-2023-01356528-CU-OE-CXC

COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the applicable Wage Order(s);

2. Retaliation in Violation of Labor Code § 1102.5, *et seq.*; and,

3. Discrimination and Harassment in Violation of FEHA.

DEMAND FOR A JURY TRIAL

1 Plaintiff Nicole Saenz-Valenzuela (“PLAINTIFF”), an individual, and on behalf of the
2 people of the State of California and as an “aggrieved employee” acting as a private attorney
3 general under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”),
4 alleges on information and belief, except for her own acts and knowledge which are based on
5 personal knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant D. O. S. Pizza, Inc. (referred to
8 as “DEFENDANT”) seeking to recover PAGA civil penalties for herself, and on behalf of all
9 current and former aggrieved employees that worked for DEFENDANT. As to the First Cause
10 of Action PLAINTIFF does **not seek to recover anything other than penalties as permitted**
11 **by California Labor Code § 2699**. To the extent that statutory violations are mentioned for
12 wage violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of herself and on behalf of others for PAGA penalties *only*.

16 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
17 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
18 is, penalties and any other relief the Court deems proper pursuant to the PAGA.

19 THE PARTIES

20 4. D. O. S. Pizza, Inc. (“DEFENDANT”) is a Corporation that at all relevant times
21 mentioned herein conducted and continues to conduct substantial business in California.

22 5. DEFENDANT owns and operates Pizza restaurants in California.

23 6. PLAINTIFF has been employed by DEFENDANT in California since April of
24 2022. PLAINTIFF has been at all times classified by DEFENDANT as a non-exempt employee,
25 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
26 of minimum and overtime wages due for all time worked.

27 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
28

1 the requirements and exhaust the administrative procedures under the Private Attorney General
2 Act, brings this Representative Action on behalf of the State of California with respect to herself
3 and all individuals who are or previously were employed by DEFENDANT in California,
4 including any employees staffed with DEFENDANT by a third party, and classified as non-
5 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of July 18, 2022
6 until a date as determined by the Court (the "PAGA PERIOD").

7
8 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES
9 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
10 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
11 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
12 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
13 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California
14 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the
15 applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED
16 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

17 9. The true names and capacities, whether individual, corporate, subsidiary,
18 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
19 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
20 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
21 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
22 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
23 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
24 50, inclusive, are responsible in some manner for one or more of the events and happenings
25 that proximately caused the injuries and damages hereinafter alleged.

26 10. The agents, servants and/or employees of the Defendants and each of them
27 acting on behalf of the Defendants acted within the course and scope of his, her or its
28 authority as the agent, servant and/or employee of the Defendants, and personally

1 participated in the conduct alleged herein on behalf of the Defendants with respect to the
2 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
3 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
4 all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the
5 conduct of the Defendants' agents, servants and/or employees.

6 7 THE CONDUCT

8 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
9 was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time
10 worked, meaning the time during which an employee is subject to the control of an
11 employer, including all the time the employee is suffered or permitted to work.
12 DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without
13 paying them for all the time they are under DEFENDANT's control. Among other things,
14 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to
15 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
16 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
17 break. DEFENDANT, as a matter of established company policy and procedure,
18 administers a uniform practice of rounding the actual time worked and recorded by
19 PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT,
20 so that during the course of their employment, PLAINTIFF and the AGGRIEVED
21 EMPLOYEES are paid less than they would have been paid had they been paid for actual
22 recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the
23 practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off
24 the clock in that DEFENDANT, as a condition of employment, required these employees to
25 submit to mandatory temperature checks and symptom questionnaires for COVID-19
26 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a
27 result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime
28 wage compensation, and off-duty meal breaks by working without their time being correctly

1 recorded and without compensation at the applicable rates. DEFENDANT's policy and
2 practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, is
3 evidenced by DEFENDANT's business records.

4 12. State law provides that employees must be paid overtime and meal and rest
5 break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the
6 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is
7 tied to specific elements of an employee's performance.

8 13. The second component of PLAINTIFF's and the AGGRIEVED
9 EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that
10 paid PLAINTIFF and the AGGRIEVED EMPLOYEES incentive wages based on their
11 performance for DEFENDANT. The non-discretionary incentive program provided all
12 employees paid on an hourly basis with incentive compensation when the employees met the
13 various performance goals set by DEFENDANT. However, when calculating the regular
14 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
15 the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
16 compensation as part of the employees' "regular rate of pay" for purposes of calculating
17 overtime pay and meal and rest break premium pay. Management and supervisors described
18 the incentive program to potential and new employees as part of the compensation package.
19 As a matter of law, the incentive compensation received by PLAINTIFF and the
20 AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to
21 do so has resulted in a underpayment of overtime compensation and meal and rest break
22 premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by DEFENDANT.

23 14. As a result of their rigorous work schedules, PLAINTIFF and the
24 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off
25 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
26 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as
27 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving
28 a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and

1 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in
2 which these employees were required by DEFENDANT to work ten (10) hours of work.
3 DEFENDANT also engaged in the practice of rounding the meal period times to avoid
4 paying penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the
5 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
6 and in accordance with DEFENDANT's corporate policy and practice.

7 15. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
8 EMPLOYEES were also required from time to time to work in excess of four (4) hours
9 without being provided ten (10) minute rest periods. Further, these employees were denied
10 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
11 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
12 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
13 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
14 hours or more from time to time. PLAINTIFF and the AGGRIEVED EMPLOYEES were
15 also not provided with one hour wages in lieu thereof. Additionally, the applicable
16 California Wage Order requires employers to provide employees with off-duty rest periods,
17 which the California Supreme Court defined as time during which an employee is relieved
18 from all work related duties and free from employer control. In so doing, the Court held that
19 the requirement under California law that employers authorize and permit all employees to
20 take rest period means that employers must relieve employees of all duties and relinquish
21 control over how employees spend their time which includes control over the locations
22 where employees may take their rest period. Employers cannot impose controls that prohibit
23 an employee from taking a brief walk - five minutes out, five minutes back. Here,
24 DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED EMPLOYEES from
25 unconstrained walks and is unlawful based on DEFENDANT's rule which states
26 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
27 their rest period.
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1 16. During the PAGA PERIOD, DEFENDANT failed to accurately record and
2 pay PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
3 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
4 DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for
5 all time worked, meaning the time during which an employee was subject to the control of
6 an employer, including all the time the employee was permitted or suffered to permit this
7 work. DEFENDANT required these employees to work off the clock without paying them
8 for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or
9 should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under
10 compensated for all time worked. As a result, PLAINTIFF and the AGGRIEVED
11 EMPLOYEES forfeited time worked by working without their time being accurately
12 recorded and without compensation at the applicable minimum wage and overtime wage
13 rates. To the extent that the time worked off the clock does not qualify for overtime
14 premium payment, DEFENDANT failed to pay minimum wages for the time worked off-
15 the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

16 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
17 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
18 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
19 provides that every employer shall furnish each of his or her employees with an accurate
20 itemized wage statement in writing showing, among other things, gross wages earned and all
21 applicable hourly rates in effect during the pay period and the corresponding amount of time
22 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
23 an hourly basis. As such, the wage statements should reflect all applicable hourly rates
24 during the pay period and the total hours worked, and the applicable pay period in which the
25 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
26 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to
27 identify such information. More specifically, the wage statements failed to identify the
28 accurate total hours worked each pay period. When the hours shown on the wage statements

1 were added up, they did not equal the actual total hours worked during the pay period in
2 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this
3 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
4 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
5 from time to time provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage
6 statements which violated Cal. Lab. Code § 226.

7 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
8 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
9 the wages are paid not more than seven (7) calendar days following the close of the payroll
10 period. Cal. Lab. Code § 210 provides:

11 in [I]n addition to, and entirely independent and apart from, any other penalty provided
12 this article, every person who fails to pay the wages of each employee as provided in
13 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
14 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

15 19. DEFENDANT from time to time failed to pay PLAINTIFF and the
16 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
17 accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Hourly”
18 regular wage payments.

19 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and the
20 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in
21 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
22 employees earn non-discretionary remuneration, including, but not limited to, incentives,
23 shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,
24 DEFENDANT underpays sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES at
25 their base rates of pay.

26 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
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1 employees be calculated by dividing the employee's total wages, not including overtime
2 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
3 days of employment.

4 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
5 at the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely
6 earned non-discretionary incentive wages which increased their regular rate of pay.
7 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
8 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as
9 required under Cal. Lab. Code Section 246.

10 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
11 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
12 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
13 believes and based thereon alleges that such failure to pay sick pay at regular rate was
14 willful, such that the AGGRIEVED EMPLOYEES whose employment has separated are
15 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

16 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
17 to collect or receive from an employee any part of wages theretofore paid by said employer
18 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and
19 the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
20 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
21 deductions from compensation payable to PLAINTIFF and the AGGRIEVED
22 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable
23 pay period and upon termination.

24 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
25 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred
26 by the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of
27 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
28 2802, employers are required to indemnify employees for all expenses incurred in the course

1 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
2 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
3 employee in direct consequence of the discharge of his or her duties, or of his or her
4 obedience to the directions of the employer, even though unlawful, unless the employee, at
5 the time of obeying the directions, believed them to be unlawful."

6 26. In the course of their employment PLAINTIFF and the AGGRIEVED
7 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
8 personal cellular phones as a result of and in furtherance of their job duties as employees for
9 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
10 associated with the use of their personal cellular phones for DEFENDANT's benefit.
11 Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were required by
12 DEFENDANT to use their personal cellular phones. As a result, in the course of their
13 employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES
14 incurred unreimbursed business expenses which included, but were not limited to, costs
15 related to the use of their personal cellular phones all on behalf of and for the benefit of
16 DEFENDANT.

17 27. In violation of the applicable sections of the California Labor Code and the
18 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
19 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
20 knowingly and systematically failed to provide PLAINTIFF and the other AGGRIEVED
21 EMPLOYEES suitable seating when the nature of these employees' work reasonably
22 permitted sitting.

23 28. DEFENDANT knew or should have known that PLAINTIFF and other
24 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
25 when it did not interfere with the performance of their duties, and that DEFENDANT did
26 not provide suitable seating and/or did not allow them to sit when it did not interfere with
27 the performance of their duties.
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1 29. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
2 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage
3 Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties
4 on behalf of PLAINTIFF and other AGGRIEVED EMPLOYEES as provided herein.
5 Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's
6 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
7 California Labor Code and regulations promulgated thereunder as herein alleged.

8 30. The employment of some AGGRIEVED EMPLOYEES has terminated and
9 DEFENDANT has not tendered payment of all wages owed as required by law.
10 Additionally, at all times during the term of PLAINTIFF's employment with DEFENDANT,
11 AGGRIEVED EMPLOYEES earned and accrued vested vacation and holiday time on the
12 date of their termination pursuant to DEFENDANT's uniform vacation policies and
13 applicable California law. The amount of vacation pay AGGRIEVED EMPLOYEES earned
14 and accumulated is evidenced by DEFENDANT's business records. Additionally,
15 DEFENDANT also underpaid accrued vested vacation wages to AGGRIEVED
16 EMPLOYEES by failing to pay such wages at the regular rate of pay and more specifically
17 the final rate of pay that included all non-discretionary incentive compensation. Rather than
18 pay vacation wages at the regular rate of pay, DEFENDANT underpaid vacation wages to
19 AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of the
20 AGGRIEVED EMPLOYEES' non-discretionary incentive compensation into the vacation
21 wage payment calculations. DEFENDANT failed to specify in DEFENDANT's written
22 vacation policy the rate at which AGGRIEVED EMPLOYEES would be paid vacation upon
23 leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful practice,
24 policy and procedure to deny paying the AGGRIEVED EMPLOYEES all of their vested
25 vacation and holiday time, DEFENDANT failed to pay AGGRIEVED EMPLOYEES all
26 vested vacation time as wages due upon employment termination, in violation of the
27 California Labor Code, Sections 201, 202, 203 and 227.3. Similarly, DEFENDANT
28 underpaid waiting time penalties to AGGRIEVED EMPLOYEES at their base rates of pay,

1 instead of including all of the AGGRIEVED EMPLOYEES' non-discretionary
2 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
3 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to
4 provide compensation for earned, accrued and vested vacation and holiday time, as well as
5 the corresponding waiting time penalties that were paid. DEFENDANT perpetrated this
6 unlawful, unfair and deceptive practice to the detriment of AGGRIEVED EMPLOYEES.
7 DEFENDANT's uniform practice and policy of failing to pay the AGGRIEVED
8 EMPLOYEES for all vested vacation and holiday time accumulated at employment
9 termination violated and continues to violate Section 227.3 of the California Labor Code.

10 31. All of the conduct and violations alleged herein occurred during the PAGA
11 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
12 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
13 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
14 2018 AJDAR 12157 (Certified for Publication 12/19/18).

15 32. Furthermore, specifically as to PLAINTIFF, starting in May of 2022 and
16 continuing until August of 2022, PLAINTIFF's Store Manager and PLAINTIFF were
17 involved in an intimate relationship. After the relationship ended in August of 2022,
18 PLAINTIFF informed DEFENDANT of the relationship and the sexual harassment she was
19 experiencing at her store, but to no avail. Continuing through out the rest of PLAINTIFF's
20 employment, PLAINTIFF engaged in protected activity by complaining to DEFENDANT of
21 DEFENDANT's failure to prevent further harassment of PLAINTIFF by her Store Manager.
22 DEFENDANT's Store Manager continues to cut PLAINTIFF's hours, change her schedule
23 with no notice, spread rumors about her and make it unbearable for PLAINTIFF to work for
24 DEFENDANT to the extent that she is afraid to go into work. As a direct consequence of
25 PLAINTIFF's complaints to DEFENDANT and ending of the intimate relationship with her
26 Store Manager, DEFENDANT retaliated against PLAINTIFF by reducing her hours
27 (amongst other things) which resulted in lost wages. PLAINTIFF raised complaints of
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1 illegality while she worked for DEFENDANT and was believed to be willing to raise
2 complaints, and DEFENDANT retaliated against her by taking adverse employment actions.

3
4 **JURISDICTION AND VENUE**

5 33. This Court has jurisdiction over this Action pursuant to California Code of
6 Civil Procedure, Section 410.10.

7 34. Venue is proper in this Court pursuant to California Code of Civil Procedure,
8 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
9 employs AGGRIEVED EMPLOYEES across California, including in this County, and
10 committed the wrongful conduct herein alleged in this County against AGGRIEVED
11 EMPLOYEES.

12 **FIRST CAUSE OF ACTION**

13 **For Violation of the Private Attorneys General Act**

14 **[Cal. Lab. Code §§ 2698, *et seq.*]**

15 **(By PLAINTIFF and Against All Defendants)**

16 35. PLAINTIFF realleges and incorporates by this reference, as though fully set
17 forth herein, the prior paragraphs of this Complaint.

18 36. PAGA is a mechanism by which the State of California itself can enforce state
19 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
20 the state's labor law enforcement agencies. An action to recover civil penalties under
21 PAGA is fundamentally a law enforcement action designed to protect the public and not to
22 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
23 but to create a means of "deputizing" citizens as private attorneys general to enforce the
24 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
25 public interest to allow aggrieved employees, acting as private attorneys general to recover
26 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
27 claims cannot be subject to arbitration.
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1 37. PLAINTIFF, and such persons that may be added from time to time who
2 satisfy the requirements and exhaust the administrative procedures under the Private
3 Attorney General Act, brings this Representative Action on behalf of the State of California
4 with respect to herself and all individuals who are or previously were employed by
5 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
6 party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
7 time period of July 18, 2022 until a date as determined by the Court (the "PAGA PERIOD").

8 38. On July 18, 2023, PLAINTIFF gave written notice by electronic mail to the
9 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
10 employer of the specific provisions of this code alleged to have been violated as required by
11 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
12 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
13 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
14 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
15 pursuant to Section 2699 as the proxy of the State of California with respect to all
16 AGGRIEVED EMPLOYEES as herein defined.

17 39. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
19 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
20 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
21 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
22 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
23 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
24 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2),
25 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
26 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure
27 to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil
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1 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties
2 as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative
3 of the State of California for the illegal conduct perpetrated on PLAINTIFF and the
4 AGGRIEVED EMPLOYEES.

5 **SECOND CAUSE OF ACTION**

6 **Retaliation**

7 **[Violation of Cal. Lab. Code § 1102.5, *et seq.*]**

8 **(By PLAINTIFF Against All Defendants)**

9 40. PLAINTIFF realleges and incorporates by reference, as though fully set forth
10 herein, the prior paragraphs of this Complaint.

11 41. At all relevant times, Labor Code section 1102.5 was in effect and was binding
12 on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
13 employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the
14 employee may disclose illegality.

15 42. Starting in May of 2022 and continuing until August of 2022, PLAINTIFF's
16 Store Manager and PLAINTIFF were involved in an intimate relationship. After the
17 relationship ended in August of 2022, PLAINTIFF informed DEFENDANT of the
18 relationship and the sexual harassment she was experiencing at her store, but to no avail.
19 Continuing through out the rest of PLAINTIFF's employment, PLAINTIFF engaged in
20 protected activity by complaining to DEFENDANT of DEFENDANT's failure to prevent
21 further harassment of PLAINTIFF by her Store Manager. DEFENDANT's Store Manager
22 continues to cut PLAINTIFF's hours, change her schedule with no notice, spread rumors
23 about her and make it unbearable for PLAINTIFF to work for DEFENDANT to the extent
24 that she is afraid to go into work. As a direct consequence of PLAINTIFF's complaints to
25 DEFENDANT and ending of the intimate relationship with her Store Manager,

27 ¹As to the First Cause of Action alleging violations of the PAGA, Plaintiff specifically
28 excludes and/or does not allege any claims under California Labor Code §558(a)(3).

1 DEFENDANT retaliated against PLAINTIFF by reducing her hours (amongst other things)
2 which resulted in lost wages. PLAINTIFF raised complaints of illegality while she worked
3 for DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT
4 retaliated against her by taking adverse employment actions.

5 43. As a proximate result of DEFENDANT's willful, knowing, and intentional
6 violation(s) of Labor Code section 1102.5, PLAINTIFF has suffered and continues to suffer
7 humiliation, emotional distress, and mental and physical pain and anguish, all to her damage
8 in a sum according to proof.

9 44. As a result of DEFENDANT's adverse employment actions against
10 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to
11 proof.

12 45. DEFENDANT's misconduct was committed intentionally, in a malicious,
13 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
14 against DEFENDANT.

15 **THIRD CAUSE OF ACTION**

16 **[Discrimination and Harassment For the Exercise of Rights Guaranteed Under the**
17 **FEHA, Participating in Protected Activities, and/or Opposing DEFENDANT's Failure**
18 **to Provide Such Rights]**

19 **Violation of FEHA Government Section 12900, *et. seq.***

20 **(By PLAINTIFF Against All Defendants)**

21 46. PLAINTIFF realleges and incorporates by reference, as though fully set forth
22 herein, the prior paragraphs of this Complaint. Prior to filing this action PLAINTIFF
23 exhausted her administrative remedies by filing a timely administrative complaint with the
24 Department of Fair Employment and Housing ("DFEH") and received a DFEH Right to Sue
25 letter on July 16, 2023.

26 47. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
27 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
28 including the following bases for liability:

1 a. Taking adverse employment actions against PLAINTIFF, including
2 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or
3 otherwise discriminating against PLAINTIFF, in whole or in part on the basis of
4 PLAINTIFF's gender and reporting of sexual harassment/hostile work environment in
5 violation of Government Code Section 12940(a);

6 b. Sexually Harassing PLAINTIFF and/or creating a hostile work
7 environment, in whole or in part on the basis of PLAINTIFF's gender and previous intimate
8 relationship with her supervisor;

9 c. Failing to take all reasonable steps to prevent discrimination and
10 harassment based on gender/sexual harassment in violation of Government Code section
11 12940(k);

12 d. Retaliating against PLAINTIFF for seeking to exercise rights
13 guaranteed under FEHA, participating in protected activities, and/or opposing
14 DEFENDANT's failure to provide such rights, in violation of Government Code Section
15 12940(h).

16 48. As a result of the good faith complaints PLAINTIFF made to DEFENDANT
17 regarding the sexual harassment and the previous intimate relationship with PLAINTIFF's
18 supervisor and the discriminatory practices stated above, and in direct retaliation for those
19 complaints and previous relationship, DEFENDANT's Store Manager continues to cut
20 PLAINTIFF's hours, change her schedule with no notice, spread rumors about her and make
21 it unbearable for PLAINTIFF to work for DEFENDANT to the extent that she is afraid to go
22 into work. As a direct consequence of PLAINTIFF's complaints to DEFENDANT and
23 ending of the intimate relationship with her Store Manager, DEFENDANT retaliated against
24 PLAINTIFF by reducing her hours and creating a hostile work environment (amongst other
25 things) which resulted in lost wages.

26 49. As a proximate result of DEFENDANT's willful, knowing, and intentional
27 discrimination and harassment against PLAINTIFF, PLAINTIFF has sustained and
28 continues to sustain substantial losses of earnings and other employment benefits.

50. As a proximate result of DEFENDANT's willful, knowing, and intentional discrimination and sexual harassment against PLAINTIFF, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and physical and mental pain and anguish, all to PLAINTIFF's damage in a sum according to proof.

51. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

52. DEFENDANT's misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against DEFENDANT.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699; and,

2. On behalf of PLAINTIFF for the Second and Third causes of action:

A) For all special damages which were sustained as a result of DEFENDANT's conduct, including, but not limited to, back pay, front pay, lost compensation and job benefits that PLAINTIFF would have received but for the retaliatory practices of DEFENDANT;

B) For all exemplary damages, according to proof, which were sustained as a result of DEFENDANT's conduct; and,

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C) Such other and further relief as the Court deems just and equitable.

Dated: October 19, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: /s/ Nicholas De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: October 19, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: /s/ Nicholas De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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1004

July 18, 2023
CA3011

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

D. O. S. Pizza, Inc.
Certified Mail #9589071052700182373500
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by D. O. S. Pizza, Inc. in California, including any employees staffed with D. O. S. Pizza, Inc. by a third party, and classified as non-exempt employees during the time period of July 18, 2022 until a date as determined by the Court. Our offices represent Plaintiff Nicole Saenz-Valenzuela (“Plaintiff”) and other Aggrieved Employees in a lawsuit against D. O. S. Pizza, Inc. (“Defendant”). Plaintiff has been employed by Defendant in California since April of 2022. Plaintiff has been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods.

See Vaquero v. Stoneledge Furniture, LLC, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.