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Attorneys for Plaintiff DEMECIO AGUIRRE VILLEGAS

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF MERCED**

DEMECIO AGUIRRE VILLEGAS,
individually and on behalf of all other
similarly situated employees,

Plaintiff,

vs.

G & H PIZZA, INC., a California Corporation;
JILL MARIE GAUTHIER, an individual;
JOHN JAMES GAUTHIER, an individual;
and DOES 1 to 100, inclusive,

Defendants.

Case No. 24CV-00447

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

- 1. Failure to Pay Overtime Wages**
- 2. Failure to Pay Minimum Wages**
- 3. Meal Period Violations**
- 4. Rest Period Violations**
- 5. Wage Statement Violations**
- 6. Waiting Time Penalties**
- 7. Failure to Reimburse Expenses**
- 8. Unfair Competition**
- 9. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

1 Plaintiff DEMECIO AGUIRRE VILLEGAS (“Plaintiff”), on behalf of himself and all other
2 similarly situated employees, hereby files this First Amended Complaint against Defendants G & H
3 PIZZA, INC., a California Corporation; JILL MARIE GAUTHIER, an individual; JOHN JAMES
4 GAUTHIER, an individual; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as
5 “Defendants”). On information and belief, Plaintiff allege the following:

6 **INTRODUCTION**

7 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by
8 Plaintiff for failure to provide overtime wages, failure to provide minimum wages, meal and rest period
9 violations, wage statement violations, waiting time penalties, failure to reimburse expenses, and unfair
10 competition.

11 **JURISDICTION AND VENUE**

12 2. The Merced County Superior Court has jurisdiction in this matter pursuant to California
13 Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code,
14 California Business and Professions Code, and Wage Order No. 5.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that some of
16 the wrongful acts and violations of law asserted herein occurred within Merced County, and Defendants'
17 obligation to pay wages arose in Merced County pursuant to *Madera Police Officers Assn. v. City of*
18 *Madera*, 36 Cal.3d 403, 414 (1984).

19 4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to
20 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
21 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
22 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
23 (“LWDA”) on approximately January 26, 2024. Plaintiff provided facts and legal bases for his claims
24 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause
25 of action. Plaintiff also submitted the \$75.00 filing fee. The January 26, 2024, notice was also sent via
26 certified mail to Defendants on the same day. To date, the LWDA has not provided any response to
27 Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies
28 pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of himself

1 and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A),
2 (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).

3 Aggrieved Employees include, but is not limited to the following: all non-exempt employees who
4 worked, or continue to work, for Defendants in California at any time from January 26, 2023 to the
5 present.

6 **PARTIES**

7 5. DEMECIO AGUIRRE VILLEGAS is an individual over the age of eighteen (18) and
8 is a resident of the State of California.

9 6. On information and belief, Plaintiff alleges, G & H PIZZA, INC., is now and/or at all
10 times mentioned in this Complaint was a California Corporation and the owner and operator of an
11 industry, business and/or facility doing business in the State of California.

12 7. On information and belief, Plaintiff alleges, JILL MARIE GAUTHIER, is now and/or
13 at all times mentioned in this Complaint was an individual and the owner and operator of an industry,
14 business and/or facility doing business in the State of California. Plaintiff is informed and believes,
15 and thereupon alleges, that JILL MARIE GAUTHIER is an individual over the age of eighteen (18)
16 and is a resident of the State of California. Plaintiff further alleges that JILL MARIE GAUTHIER is
17 an owner, director, officer, and/or managing agent of G & H PIZZA, INC., responsible for causing
18 the violations outlined in the (first) through (seventh) causes of action. As such JILL MARIE
19 GAUTHIER is individually liable pursuant to California Labor Code section 558.1. Pursuant to
20 California Labor Code section 558.1, G & H PIZZA, INC, and JILL MARIE GAUTHIER, are
21 jointly and severally liable for each cause of action asserted herein. On information and belief,
22 Plaintiff alleges that JILL MARIE GAUTHIER trained subordinate staff to implement and carry out
23 the policies and practices identified herein. As a result, whether directly or indirectly, JILL MARIE
24 GAUTHIER caused the violations identified herein. JILL MARIE GAUTHIER was responsible for
25 the violations stated herein as he was in a position of authority with the power and responsibility to
26 monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead.

27 8. On information and belief, Plaintiff alleges, JOHN JAMES GAUTHIER, is now
28 and/or at all times mentioned in this Complaint was an individual and the owner and operator of an

1 industry, business and/or facility doing business in the State of California. Plaintiff is informed and
2 believes, and thereupon alleges, that JOHN JAMES GAUTHIER is an individual over the age of
3 eighteen (18) and is a resident of the State of California. Plaintiff further alleges that JOHN JAMES
4 GAUTHIER is an owner, director, officer, and/or managing agent of G & H PIZZA, INC.,
5 responsible for causing the violations outlined in the (first) through (seventh) causes of action. As
6 such JOHN JAMES GAUTHIER is individually liable pursuant to California Labor Code section
7 558.1. Pursuant to California Labor Code section 558.1, G & H PIZZA, INC, and JOHN JAMES
8 GAUTHIER, are jointly and severally liable for each cause of action asserted herein. On
9 information and belief, Plaintiff alleges that JOHN JAMES GAUTHIER trained subordinate staff to
10 implement and carry out the policies and practices identified herein. As a result, whether directly or
11 indirectly, JOHN JAMES GAUTHIER caused the violations identified herein. JOHN JAMES
12 GAUTHIER was responsible for the violations stated herein as he was in a position of authority with
13 the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to
14 ratify them instead.

15 9. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
16 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
17 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
18 names and capacities of these DOE Defendants when they are ascertained.

19 10. At all times mentioned herein, each Defendant was the agent or employee of each of the
20 other Defendants and was acting within the course and scope of such agency or employment. The
21 Defendants are jointly and severally liable to Plaintiff.

22 11. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
23 were members of and/or engaged in a joint employment, joint venture, partnership and common
24 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
25 joint venture, partnership and common enterprise.

26 12. Defendants, and each of them, now and/or at all times mentioned in this Complaint
27 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.
28

1 13. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
2 wrongs, complaints, injuries and/or damages alleged in this Complaint.

3 **CLASS ALLEGATIONS**

4 14. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all
5 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.
6 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

7 All non-exempt employees who worked or continue to work for
8 Defendants in California at any time between January 26, 2020, to the
9 present.

10 15. This action has been brought and may be properly maintained as a class action,
11 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
12 defined community of interests in the litigation and the proposed class is easily ascertainable.

13 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
14 is impracticable under the circumstances of this case. While the exact number of class
15 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
16 Defendants have employed as many as fifty (50) individuals falling within the above
17 stated class definition throughout the State of California during the applicable statute of
18 limitations, who were subjected to the policies and practices outlined in this Complaint.
19 As such, joinder of all members of the putative class is not practicable.

20 (b) Common Questions Predominate: Common questions of law and fact exist as to all
21 members of the putative class and predominate over questions that affect only individual
22 members of the class. These common questions of law and fact include, without
23 limitation, the following:

- 24 (1) Whether Defendants maintained accurate payroll records;
25 (2) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
26 class members were not paid all overtime wages owed;
27 (3) Whether Defendants paid Plaintiff and putative class members for all hours
28 worked;

- (4) Whether Defendants failed to pay meal and rest period premiums for meal and rest period violations;
- (5) Whether Defendants failed to reimburse Plaintiff and putative class members for the use of personal cell phones and personal cars for work purposes;
- (6) Whether as a result of Defendants' policies and practices Plaintiff's and putative class members received all wages, due and owing, at the time of their termination or separation; and
- (7) Whether Defendants provided Plaintiff's and putative class members with wage statements that complied with Labor Code section 226.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees who were not paid all minimum wages owed, overtime wages owed, meal and rest period premiums, as a result of Defendants' policies and practices resulting in inaccurate wage statements that did not itemize the accurate minimum wages owed, overtime wages owed, meal and rest period premiums, and sick leave wages. Additionally, Defendants issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff is an adequate representative of the putative class as Plaintiff has no interests that are adverse to those of putative class members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

16. Plaintiff is 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.

GENERAL ALLEGATIONS

17. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 16 as though fully set forth herein.

18. Plaintiff was initially employed with Defendants from May 2018 to April 2022 as a non-exempt employee. Defendants rehired Plaintiff in January 2023. Plaintiff is currently employed with Defendants as a non-exempt employee and his rate of pay is \$15.50 per hour. Plaintiff works as a cashier for Defendants. Defendants operate a pizza restaurant or restaurants under the Little Caesars' Pizza Franchise. Plaintiff and similarly situated employees make pizzas and sell pizzas as part of their job responsibilities and duties. They also wash dishes and perform other tasks such as customer service and cleaning. Plaintiff and similarly situated employees usually worked four (4) to eight (8) hours per day and twenty-five (25) to thirty (30) hours per week. At times, Plaintiff and similarly situated employees worked over eight (8) hours per day and over forty (40) hours per week. Plaintiff and similarly situated employees worked in a fast-paced environment where they had to make pizzas, take customer orders, and provide customer service in a timely and efficient manner. Plaintiff and similarly situated employees

1 were also busy because of lack of staffing. Typically, Plaintiff worked alongside only another employee
2 during his shift. As a result, Plaintiff and similarly situated employees did not have coverage for meal
3 and rest periods because there would be only one person running the restaurant.

4 19. Plaintiff and similarly situated employees had to clock in and out using a computer
5 located inside the restaurant. The time required for the computer program to clock in and out varied
6 because of poor internet and Plaintiff and similarly situated employees would have to either restart the
7 computer, wait for the program to eventually load, or both. As a result, it would take one (1) to two (2)
8 minutes for Plaintiff and similarly situated employees to clock in. Defendants did not compensate
9 Plaintiff and similarly situated employees for the time that they spent clocking in prior to their shift.
10 Additionally, Defendants required Plaintiff and similarly situated employees to wash all the dishes prior
11 to the closing of the restaurant which was at midnight. However, Plaintiff and similarly situated
12 employees were not always able to wash all the dishes prior to midnight. As a result, Plaintiff and
13 similarly situated employees would clock out at midnight and then wash dishes off-the-clock for
14 approximately twenty (20) minutes. Defendants did not pay Plaintiff and similarly situated employees
15 for the time that they worked off-the-clock after the end of their shift. This occurred at least once per
16 week. Some of the off-the-clock work was overtime work. Defendants did not pay Plaintiff and similarly
17 situated employees for such work. Plaintiff and similarly situated employees were not paid for off-the-
18 clock work, resulting in unpaid minimum and overtime wages.

19 20. Moreover, Defendants failed to authorize and permit Plaintiff and similarly situated
20 employees to take compliant meal and rest periods. Typically, Defendants scheduled Plaintiff and
21 similarly situated employees to work four (4) or five (5) hours per shift. However, Defendants often
22 required Plaintiff and similarly situated employees to work longer than their scheduled shift. As a result,
23 Plaintiff and similarly situated employees would work over five (5) hours per day but not receive any
24 meal periods because they were never scheduled to receive any for their shift. Plaintiff and similarly
25 situated employees were not able to take their meal periods due to the volume of work. Also,
26 Defendants' meal practices and policy did not authorize and permit employees to receive a meal period
27 if they worked less than six (6) hours. Defendants' meal period policy states that "a meal period must be
28 taken before an employee has worked five (5) hours if the employee is scheduled more than six (6)

hours on duty.” Defendants’ meal period policy is defective and resulted in Plaintiff and similarly situated employees not taking their meal periods. Even when Plaintiff and similarly situated employees took meal periods, such meal periods were taken after the fifth hour of work and were late meal periods.

21. Furthermore, Defendants also failed to authorize and permit Plaintiff and similarly situated employees to take compliant rest periods. Plaintiff and similarly situated employees were not able to take their rest periods due to the volume of work. Defendants failed to authorize and permit Plaintiff and similarly situated employees to take ten (10) minute rest period every four (4) hours *or major fraction of thereof*. Defendants’ rest period policy omits any “major fraction thereof” authorizing language. Thus, Defendants’ rest period policy is defective. Defendants did not pay Plaintiff and similarly situated employees meal period or rest period premiums for noncompliant meal and rest periods.

22. Furthermore, Defendants also did not have a policy to reimburse Plaintiff and similarly situated employees for the use of their personal cell phones for work purposes. Defendants required Plaintiff and similarly situated employees to communicate with managers or supervisors regarding supplies and work-related questions. Defendants did not reimburse Plaintiff and similarly situated employees for using their personal cell phones for work purposes.

23. Finally, Defendants failed to provide Plaintiff and similarly situated employees with all their earned sick pay. Because Defendants required Plaintiff and similarly situated employees to work off-the-clock, Plaintiff and similarly situated employees did not accrue the appropriate amount of sick leave based on actual hours worked. This resulted in the failure to pay Plaintiff and similarly situated employees all sick leave wages they would have otherwise been due and prevented Plaintiff and Similarly situated employees from taking all their earned sick days.

24. As a result of Defendants’ failure to pay Plaintiff and similarly situated employees all minimum wages, overtime wages, meal and rest period premiums, and sick leave wages, the wage statements Defendants issued were inaccurate. The paystubs that Defendants issued did not accurately itemize all hours worked, the accurate rates of pay, minimum and overtime wages earned, the number of meal and rest period premiums owed, the accurate accrued sick leave pay, and the accurate gross and net wages earned.

25. As of this date of this letter, Defendants have not paid Plaintiff and similarly situated employees all the minimum wages, overtime wages, meal and rest period premiums, and sick leave wages. Defendants did not pay all the minimum wages, overtime wages, meal and rest period premiums, and sick leave wages to Plaintiff when Plaintiff stopped working for Defendants in April of 2022.

26. Plaintiff is informed and believes that JILL MARIE GAUTHIER, and JOHN JAMES GAUTHIER were the Secretary, and Chief Executive Officer/Chief Financial Officer of G & H PIZZA, INC., during Plaintiff’s employment. Ms. GAUTHIER and Mr. GAUTHIER were responsible for creating, implementing, and overseeing the wage and hour policies and practices outlined herein that resulted in the violation of the California Labor Code.

27. Defendant G & H PIZZA, INC., identified Defendant JILL MARIE GAUTHIER in its filings with the California Secretary of State from at least July 7, 2023, to the present as its Secretary. Plaintiff is informed and believes that JILL MARIE GAUTHIER was responsible for creating and electing to implement G & H PIZZA, INC.’s payroll and compensation policies and practices or that JILL MARIE GAUTHIER was aware of such policies and practices and ratified them.

28. Defendant G & H PIZZA, INC., identified Defendant JOHN JAMES GAUTHIER in its filings with the California Secretary of State from at least July 7, 2023, to the present as its Chief Executive Officer and Chief Financial Officer. Plaintiff is informed and believes that JOHN JAMES GAUTHIER was responsible for creating and electing to implement G & H PIZZA, INC.’s payroll and compensation policies and practices or that JOHN JAMES GAUTHIER was aware of such policies and practices and ratified them.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to all Defendants)

29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully set forth herein.

30. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for

1 hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 5, section (3)(A);
2 Cal. Lab. Code §§ 510, 1194.

3 31. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
4 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
5 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
6 worked at their regular rate of pay.

7 32. Plaintiff and similarly situated employees were not exempt from overtime protections
8 employees under the California Wage Orders and Labor Code.

9 33. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
10 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
11 the extent pertinent as if set forth here in full.

12 **SECOND CAUSE OF ACTION**
13 **FAILURE TO PAY MINIMUM WAGES**
14 **(As to all Defendants)**

15 34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully
16 set forth herein.

17 35. For the period preceding the filing of this Complaint, Defendants were required to
18 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
19 every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 5, section 4(A); Cal. Lab. Code §
20 1194.

21 36. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their
22 obligation to pay the minimum wage for each hour worked but failed to do so.

23 37. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
24 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
25 the extent pertinent as if set forth here in full.

26 **THIRD CAUSE OF ACTION**
27 **MEAL PERIOD VIOLATIONS**
28 **(As to all Defendants)**

38. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 37 as though fully
set forth herein.

40. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 5, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

42. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

44. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

45. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 44 as though fully set forth herein.

1 46. An employer must provide an employee a rest period in accordance with the
2 applicable Wage Order and California Labor Code section 226.7.

3 47. California Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an
4 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
5 four (4) hours or a major fraction thereof.

6 48. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
7 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
8 they worked more than four (4) hours or a major fraction thereof.

9 49. Defendants further failed to pay Plaintiff and similarly situated employees the
10 applicable rest period premiums for any such missed rest periods.

11 50. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
12 employees have been damaged as stated in the section below entitled "DAMAGES," which is
13 incorporated here to the extent pertinent as if set forth here in full.

14 **FIFTH CAUSE OF ACTION**
15 **WAGE STATEMENT VIOLATIONS**
16 **(As to all Defendants)**

17 51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully
18 set forth herein.

19 52. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
20 statement to an employee, semimonthly or at the time of each payment of wages, showing:

21 *(1) gross wages earned, (2) total hours worked by the employee, except for*
22 *any employee whose compensation is solely based on a salary and who is*
23 *exempt from payment of overtime under subdivision (a) of Section 515 or*
24 *any applicable order of the Industrial Welfare Commission, (3) the*
25 *number of piece-rate units earned and any applicable piece rate if the*
26 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
27 *all deductions made on written orders of the employee may be aggregated*
28 *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
 the last four digits of his or her social security number or an employee
 identification number other than a social security number, (8) the name
 and address of the legal entity that is the employer and, if the employer is
 a farm labor contractor, as defined in subdivision (b) of Section 1682, the
 name and address of the legal entity that secured the services of 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 payment of wages shall be

1 *recorded in ink or other indelible form, properly dated, showing the*
2 *month, day, and year, and a copy of the statement and the record of the*
3 *deductions shall be kept on file by the employer for at least three years at*
4 *the place of employment or at a central location within the State of*
5 *California.*

6 53. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
7 itemized statement or failed to provide an accurate and complete itemized statement showing the
8 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
9 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime
10 and double time hours worked and corresponding rates of pay, and gross and net wages earned. The
11 paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours
12 worked due to Defendants' lack of staffing, timekeeping practices, meal and rest period policies, that
13 resulted in off-the-clock work and work during meal and rest periods. Plaintiff and similarly situated
14 employees were not able to promptly and easily determine their total hours worked from their
15 paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over
16 whether they received all wages owed and were prevented from effectively challenging information
17 on their wage statements.

18 54. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
19 employees have been damaged as stated in the section below entitled "DAMAGES," which is
20 incorporated here to the extent pertinent as if set forth here in full.

21 **SIXTH CAUSE OF ACTION**
22 **WAITING TIME PENALTIES**
23 **(As to all Defendants)**

24 55. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 54 as though fully
25 set forth herein.

26 56. An employer must pay an employee who is terminated all unpaid wages immediately
27 upon termination. *See* Cal. Lab. Code § 201.

28 57. An employer must pay an employee who resigns all unpaid wages within seventy-two
(72) hours of their resignation. *See* Cal. Lab. Code § 202.

59. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Cal. Lab. Code § 203.

61. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully set forth herein.

63. California Labor Code section 2802(a) states that “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, or of his or her obedience to the directions of the employer, even

1 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
2 unlawful.”

3 64. Defendants required Plaintiff and similarly situated employees to use their personal cell
4 phones to communicate with supervisors and managers for work purposes. Plaintiff and similarly
5 situated employees communicated with managers and supervisors regarding supplies and work-related
6 questions. Defendants failed to reimburse them for such use.

7 65. As a proximate result of Defendants’ conduct, Plaintiff and similarly situated employees
8 have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to
9 the extent pertinent as if set forth here in full.

10 **EIGHTH CAUSE OF ACTION**
11 **UNFAIR COMPETITION**
12 **(As to G & H PIZZA, INC. and DOES 1 to 100)**

13 66. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 65 as though fully
14 set forth herein.

15 67. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
16 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
17 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
18 California Business and Professions (“B&P”) Code § 17200.

19 68. Plaintiff and similarly situated employees were not paid all wages owed, including
20 minimum and overtime wages, and meal and rest period premiums, paid sick leave, or reimbursed for
21 business expenses, during their employment or any time thereafter. Moreover, through Defendants’
22 conduct Plaintiff and similarly situated employees were denied statutory protections regarding meal and
23 rest periods.

24 69. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
25 California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to
26 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

27 70. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to the
28 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code

sections 17203, 17208, violations of California Labor Code sections 226.7, 245 et seq, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

71. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 70 as though fully set forth herein.

72. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)

74. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

DAMAGES

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Wages in an amount to be proven at trial;

b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

6. As to the Fifth Cause of Action:

- a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

7. As to the Seventh Cause of Action:

- a. An amount to be proven at trial;
- b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

8. As to the Ninth Cause of Action:

- a. For civil penalties as provided in the Labor Code for each enumerated violation;
- b. For those Labor Code sections where there is no civil penalty provided for their violation, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

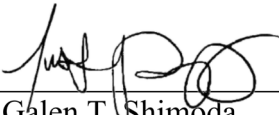
9. For such other and further relief as this Court may deem just and proper, including, but not limited to:

- a. Wages as proved at trial;
- b. Injunctive and Declaratory relief;

- c. Attorney’s fees and costs as provided for by law; and
- d. Interest.

Dated: April 3, 2024

Shimoda & Rodriguez Law, PC

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