

JAMES HAWKINS APLC
James R. Hawkins (#192925)
Gregory Mauro (#222239)
Michael Calvo (#314986)
Lauren Falk (#316893)
Ava Issary (#342252)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com
Email: Lauren@jameshawkinsaplc.com
Email: Ava@jameshawkinsaplc.com

Attorneys for Plaintiff LORENZO ALARCON GARCIA
on behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

LORENZO ALARCON GARCIA, on behalf of
the general public as private attorney general,

Plaintiff,

v.

DIHO INCORPORATED, is a California
Corporation doing business as BIG NICK'S
PIZZA and DOES 1-50, inclusive,

Defendant.

Case No. **24STCV34791**
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq*).**

COMES NOW Plaintiff LORENZO ALARCON GARCIA (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendant DIIO INCORPORATED, is a California Corporation doing business as BIG NICK’S PIZZA and DOES 1-50, inclusive (“Defendant”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendant violated various provisions of the California Labor Code. As set forth below, Defendant implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) failure to pay minimum and overtime wages, (b) failure to provide meal periods, (c) failure to provide rest periods, (d) failure to provide accurate itemized wage statements, and (e) failure to reimburse necessary business expenses. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendant because, upon information and belief, Defendant either has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California Courts consistent with traditional notions of fair play and substantial justice.

1 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
2 Civil Procedure section 395. Defendant is doing business throughout California, including but not
3 limited to Los Angeles County, and each Defendant is within the jurisdiction of this Court for
4 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and
5 all other aggrieved employees within the State of California. Defendant employs numerous
6 aggrieved employees in in the State of California.

7 6. On information and belief, Defendant has conducted business within the State of
8 California during the purported liability period and continue to conduct business throughout the
9 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
10 similarly situated aggrieved employees within California.

11 7. The California Superior Court also has jurisdiction in this matter because on
12 information and belief there are no federal questions at issue, as the issues herein are based solely
13 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
14 California Code of Civil Procedure, the California Civil Code, and the California Business and
15 Professions Code.

16 8. On information and belief, during the statutory liability period and continuing to
17 the present ("liability period"), Defendant consistently maintained and enforced against
18 Defendant's aggrieved Employees, among others, the following unlawful practices and policies,
19 in violation of California state wage and hour laws: (a) failure to pay minimum and overtime
20 wages, (b) failure to provide meal periods, (c) failure to provide rest periods, (d) failure to provide
21 accurate itemized wage statements, and (e) failure to reimburse necessary business expenses.

22 9. On information and belief, during the statutory liability period and continuing to
23 the present, Defendant has had a consistent policy of failing to pay wages including overtime
24 wages for hours worked while subject to the control of Defendant.

25 10. On information and belief, during the statutory liability period and continuing to
26 the present, Defendant has failed to provide meal periods to Plaintiff and aggrieved employees.
27 Defendant has also failed to provide meal premiums for missed meal periods.
28

11. On information and belief, during the statutory liability period and continuing to the present, Defendant has failed to provide rest periods to Plaintiff and aggrieved employees. Defendant has also failed to provide rest premiums for missed rest periods.

12. On information and belief, during the statutory liability period and continuing to the present, Defendant has failed to provide Plaintiff and aggrieved employees accurate itemized wage statements.

13. On information and belief, during the statutory liability period and continuing to the present, Defendant has failed to reimburse necessary business expenses to Plaintiff and aggrieved employees.

14. Plaintiff on behalf of the general public as private attorney general and all other aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations enumerated under 2699.5 as follows: sections 226, 510, 512, 558, 226.3, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802 and seeking penalties, interest, attorneys' fees and costs.

III. PARTIES

A. Plaintiff

15. Plaintiff, LORENZO ALARCON GARCIA, was at all times relevant to this action, a resident of California. Plaintiff was employed by Defendant in 2018 as a Non-Exempt Employee and worked during the liability period for Defendant, until Plaintiff's separation from Defendant's employ in approximately March of 2024.

16. As Defendant's employee, Plaintiff, and all other aggrieved employees were regularly required to and subsequently suffered:

- a) to perform work subject to the control of the employer without being compensated all wages including overtime, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Order (“IWC”);
- b) not provided meal periods nor paid premium wages;
- c) not provided first and second rest periods nor paid premium wages;
- d) not provided accurate itemized wage statements; and

1 e) not reimbursed for necessary business expenses.

2 17. On information and belief, Defendant willfully failed to pay all earned wages in
3 the form regular wages and overtime wages, to its Non-Exempt Employees and members of the
4 Representative Group; nor have Defendant returned to Plaintiff or members of the
5 Representative Group, upon or after separation from employment with Defendant, all wages
6 earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the
7 general public as private attorney general and all other aggrieved employees.

8 **B. Defendant**

9 18. DIIO INCORPORATED, is a California Corporation doing business as BIG
10 NICK'S PIZZA, a pizzeria operating in San Pedro, California. Defendant also operates two other
11 restaurants in California under the business names "Big E Pizza" and "Jimmy's E Bar + Grill".
12 Plaintiff estimates there are in excess of one hundred (100) Non-Exempt Employees who work or
13 have worked for Defendant over the last year.

14 19. Other than identified herein, Plaintiff is unaware of the true names, capacities,
15 relationships and extent of participation in the conduct alleged herein, of the Defendant sued as
16 DOES 1 through 50, but is informed and believes and thereon alleges that said Defendant is legally
17 responsible for the wrongful conduct alleged herein and therefore sues these Defendant by such
18 fictitious names. Plaintiff will amend this complaint when their true names and capabilities are
19 ascertained.

20 20. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
21 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
22 Representative Group, and exercised control over their wages, hours, and working conditions.
23 Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects
24 pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business
25 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
26 to the other Defendant.
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

$$\begin{matrix} 2 \\ 3 \end{matrix}$$

4
5
6

8
910
11
12

15

17

19

21
22

23
24
25
26
27

28

1 practices, work demands, and Defendant's policies and practices, Defendant frequently failed to
2 provide Plaintiff and Aggrieved Employees timely, legally complaint uninterrupted 30-minute
3 meal periods on shifts over five hours as required by law.

4 11. On information and belief, Plaintiff and Aggrieved Employees did not sign a meal
5 waiver.

6 12. Plaintiff and Aggrieved Employees were not provided with valid lawful on-duty
7 meal periods.

8 13. Despite the above-mentioned meal period violations, Defendant failed to
9 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
10 one additional hour of pay at their regular rate as required by California law when meal periods
11 were not timely or lawfully provided in a compliant manner.

12 14. Plaintiff are informed and believe, and thereon alleges, that Defendant know,
13 should know, knew, and/or should have known that Plaintiff and Aggrieved Employees were
14 entitled to receive premium wages based on their regular rate of pay under California Labor Code
15 § 226.7 but were not receiving such compensation.

16 15. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
17 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
18 period for every four hours worked or major fraction thereof, which is a violation of the California
19 Labor Code and IWC wage order.

20 16. Defendant maintained and enforced scheduling practices, policies, and imposed
21 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
22 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
23 requisite rest periods were not timely authorized and permitted as a result of Defendant's failure
24 to provide relief for Plaintiff and Aggrieved Employees to take their lawfully required breaks.

25 17. Despite the above-mentioned rest period violations, Defendant did not compensate
26 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
27 pay at their regular rate as required by California law, including California Labor Code § 226.7
28

1 and the applicable IWC wage order, for each day on which lawful rest periods were not authorized
2 and permitted.

3 18. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, Defendant knew that at the time of termination of employment (or within 72 hours
5 thereof for resignations without prior notice as the case may be) they had a duty to accurately
6 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages,
7 meal and rest period premiums, and any associated profit shares earned by Plaintiff and Aggrieved
8 Employees which Defendant had the financial ability to pay such compensation, but willfully,
9 knowingly, recklessly, and/or intentionally failed to do so in part because of the above-specified
10 violations.

11 19. Defendant failed to reimburse Plaintiff and Aggrieved Employees for business
12 expenses incurred pursuant to California Labor Code § 2802. Plaintiff and Aggrieved Employees
13 were not reimbursed for costs associated with uniform maintenance.

14 20. Upon information and belief, Defendant knew and or should have known that it is
15 improper to implement policies and commit unlawful acts such as:

16 (a) requiring employees to work four (4) hours or a major fraction thereof without
17 being provided a minimum ten (10) minute rest period and without compensating the employees
18 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
19 rest period was not provided;

20 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day
21 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
22 and without compensating employees with one (1) hour of pay at the regular rate of compensation
23 for each workday that such a meal period was not provided;

24 (c) failing to pay overtime and minimum wages;

25 (d) failing to pay timely wages upon separation from Defendant's employ;

26 (e) failing to provide accurate wage statements;

27 (f) failing to reimburse necessary business expenses
28

1 21. In addition to the violations above, and on information and belief, Defendant knew
2 they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted
3 herein, and that Defendant had the financial ability to pay such compensation, but willfully,
4 knowingly, recklessly, and/or intentionally failed to do so.

5 22. Plaintiff and Aggrieved Employees they seek to represent are covered by, and
6 Defendant is required to comply with, applicable California Labor Codes, Industrial Welfare
7 Commission Occupational Wage Orders (hereinafter “IWC Wage Orders”) and corresponding
8 applicable provisions of California Code of Regulations, Title 8, § 11000 *et seq.*

9 **V. REPRESENTATIVE CLAIMS**

10 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.***

11 21. Plaintiff incorporates by reference and re-alleges each and every allegation
12 contained above, as though fully set forth herein.

13 22. PAGA is a mechanism by which the State of California can enforce state labor laws
14 through the employee suing under the PAGA who do so as the proxy or agent of the state’s labor
15 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a
16 law enforcement action designed to protect the public and not to benefit private parties. The
17 purpose of the PAGA is not to recover damages or restitution, but to create a means of “deputizing”
18 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
19 Legislature specified that “it was...in the public interest to allow aggrieved employees, acting as
20 private attorneys general to recover civil penalties for Labor Code violations...” Stats. 2003, Ch.
21 906, section 1. Accordingly, PAGA claims cannot be subject to arbitration.

22 23. Plaintiff brings this Representative Action on behalf of the State of California with
23 respect to himself and all other individuals who are or previously were employed by Defendant as
24 non-exempt California employees during the applicable statutory period (the “aggrieved
25 employees”).

26 24. On October 25, 2024 Plaintiff complied with notice requirements pursuant to Labor
27 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
28

1 indicating that the LWDA and Defendant were put on notice of the claims alleged here and that
2 the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not
3 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
4 representative capacity. The substance and violations set forth in this Complaint of which the
5 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
6 Action Complaint to the LWDA.

7 25. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
8 Plaintiff brings this cause of action on behalf of all current and former California non-exempt
9 Employees of Defendant.

10 26. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
11 which Defendant is liable due to numerous Labor Code violations as set forth in this Complaint,
12 including without limitation Labor Code section 226, 226.3, 226(b), 510, 512, 558, 1174, 1174.5,
13 1175, 1194, 1197, 1197.1, 1198, 1198.5 2802, and 2698 *et seq.*, applicable IWC Wage Orders and
14 California Code of Regulations, Title 8, section 11000 *et. seq.*

15 27. Defendant violated Labor Code section 510, and 1194 by failing to accurately pay
16 overtime wages owed. Therefore, Defendant violated section 510, and 1194 by not compensating
17 its Non-Exempt Employees for work performed in excess of eight hours (8) in a day or forty hours
18 in a work week (40). Section 510 of the Labor Code codifies the right to overtime compensation
19 at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight
20 (8) hours in a day or forty (40) hours in a work week and to overtime compensation twice the
21 regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight
22 (8) hours in a day on the seventh day of work in a particular work week.

23 28. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
24 period of more than five (5) hours without providing a meal break of not less than thirty (30)
25 minutes in which the employee is relieved of all of his or her duties. Also pursuant to California
26 law and the relevant IWC Wage Order(s), no employer shall require an employee to work more
27 than ten hours without being provided a second meal period, which can be waived by mutual
28

1 consent up until the twelfth hour.

2 29. For the Liability Period, Defendant failed to provide Plaintiff and the Aggrieved
3 Employees timely and uninterrupted first meal periods of not less than thirty (30) minutes.

4 30. For the Liability Period, Defendant failed to provide Plaintiff and the Aggrieved
5 Employees proper second meal periods for shifts in excess of ten hours.

6 31. Pursuant to the IWC wage orders applicable to Plaintiff and the Aggrieved
7 Employees, "Every employer shall authorize and permit all employees to take rest periods, which
8 insofar as practicable shall be in the middle of each work period.... [The] authorized rest period
9 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per
10 four (4) hours worked or major fraction thereof.... Authorized rest period time shall be counted as
11 hours worked, for which there shall be no deduction from wages." Labor Code §226.7(a) prohibits
12 an employer from requiring any employee to work during any rest period mandated by an
13 applicable order of the IWC. Defendant were required to authorize and permit employees such as
14 Plaintiff and the Aggrieved Employees to take rest periods, based upon the total hours worked at
15 a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof, with no
16 deduction from wages.

17 32. Despite said requirements applicable to Plaintiff and the Aggrieved Employees,
18 Defendant failed and refused to authorize and permit Plaintiff and the Aggrieved Employees to
19 take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.
20 Plaintiff regularly worked shifts without properly authorized rest periods. Defendant did not pay
21 Plaintiff an hour of wages for each day that a rest period violation occurred. On information and
22 belief, the Aggrieved Employees endured similar violations as a result of Defendant's rest period
23 policies and practices.

24 33. By their failure to provide rest periods for every four (4) hours or major fraction
25 thereof worked by Plaintiff and the Aggrieved Employees, Defendant violated the provisions of
26 Labor Code sections 226.7 and the applicable IWC Wage Order(s).

27 34. Plaintiff and the Aggrieved Employees were also injured because the wage
28

1 statements Defendant provided to them failed to accurately state the hours worked and also to state
2 that the Aggrieved Employees were being paid one hour of pay at their regular rate for days in
3 which they were not provided with each of their authorized meal and rest periods. Defendant has
4 made it impossible to properly calculate important information from the wage statements that were
5 provided to Plaintiff and the Aggrieved Employees throughout the liability period.

6 35. On information and belief, Defendant willfully failed to pay all wages due and
7 owing upon separation from employment. These wages include minimum and overtime wages.

8 36. On information and belief, Defendant willfully failed to pay all wages due and
9 owing during employment. These wages include minimum and overtime wages.

10 37. On information and belief, Defendant failed to provide accurate itemized wage
11 statements which failed to include all hours worked, including overtime, due and owing to Plaintiff
12 and the aggrieved employees pursuant to Labor Code section 226(a).

13 38. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
14 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
15 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
16 for each violation in a subsequent citation, for which the employer fails to provide the employee a
17 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

18 39. Additionally, Defendant has no accurate records relating to aggrieved employees'
19 work periods, total daily hours worked, total hours worked per payroll period and applicable pay
20 rates, in violation of applicable Wage Orders. Similarly, Defendant failed to maintain accurate
21 records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

22 40. As a result of Defendant's unlawful conduct, Plaintiff and aggrieved employees
23 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
24 worked.

25 41. On information and belief, Defendant failed to reimburse Plaintiff and aggrieved
26 Employees for business expenses incurred as described above. Labor Code § 2802 requires
27 Defendant to indemnify Plaintiff and aggrieved Employees for necessary expenditures incurred in
28

1 direct consequences of the discharge of his or her duties. Despite these realities of the job,
2 Defendant failed to provide reimbursements.

3 42. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or
4 implied, made by any employee to waive the benefits of this article or any part thereof is null and
5 void, and this article shall not deprive any employee or his or her personal representative of any
6 right or remedy to which he is entitled under the laws of this State”

7 43. Plaintiff and the Representative aggrieved Employees are entitled to recover
8 Penalties and attorneys’ fees and costs under Labor Code section 2698, et. seq.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

- 11 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 12 2. For reasonable attorneys’ fees and costs; and
- 13 3. For such other and further relief as the Court deems proper.
- 14

15 Dated: December 31, 2024

JAMES HAWKINS APLC

16
17 By: 

18 JAMES R. HAWKINS
19 GREGORY MAURO
20 MICHAEL CALVO
LAUREN FALK
AVA ISSARY

21 Attorneys for Plaintiff LORENZO
22 ALARCON GARCIA on behalf of the
23 general public as private attorney general
24
25
26
27
28

EXHIBIT A

JAMES JH HAWKINS
A PROFESSIONAL LAW CORPORATION
9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

October 25, 2024

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

DIIO INCORPORATED, is a California Corporation doing business as BIG NICK'S PIZZA
Agent for Service of Process:
JT FOX, ESQ.
556 S. FAIR OAKS AVENUE, SUITE 444
PASADENA, CA 91105
Receipt No.: 9589 0710 5270 1738 0509 13

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

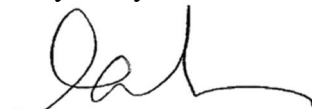
To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff LORENZO ALARCON GARCIA individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, DIIO INCORPORATED, is a California Corporation doing business as BIG NICK'S PIZZA through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Los Angeles County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,



Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint