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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 JOHN RALPH, individually and on
12 behalf of similarly situated persons,
13
14 Plaintiff,

15 Case No.: '17CV1332 JM JMA
16 **CLASS AND COLLECTIVE**
17 **ACTION COMPLAINT**

18 v.

19 DAN HOSSEINI d/b/a "HJ
20 ENTERPRISES, INC.," SHANE
21 CASEY d/b/a "D.O.S. PIZZA, INC.,"
22 NORTH COUNTY PIZZA, INC.,
23 PIZZAFELLA, LLC, PIZZA
24 ENTERPRISES, INC., PIZZA
25 ENTERPRISES II, INC., PIZZA
26 ENTERPRISES III, INC., SYRIANI
27 & SERYANI, INC., SLAMMED
28 PIZZA, INC., SLAMMED PIZZA
JR., INC. AND DOES 1-25
Defendants.

Plaintiff John Ralph, individually and on behalf of all other similarly situated delivery drivers, for his Complaint against Defendants, alleges as follows:

1. Defendants together operate a chain of approximately 74 "Domino's Pizza" stores in Southern California. Defendants employ delivery drivers who use their own automobiles to deliver pizzas and other food items to their customers. Instead of reimbursing drivers for the reasonably approximate costs of the business use of their vehicles, Defendants use a flawed method to determine reimbursement rates that provides such an unreasonably low rate beneath any reasonable approximation of the

1 expenses they incur that the drivers' unreimbursed expenses cause their wages to fall
2 below the federal and California minimum wage during some or all workweeks.

3 2. Plaintiff John Ralph brings this lawsuit as a collective action under Section 16(b)
4 of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), to recover unpaid
5 minimum wages owed to himself and similarly situated delivery drivers and as a class
6 action under Cal. Lab. Code §§ 2802 & 1194, Cal. Bus. & Prof. Code § 17204, and Fed.
7 R. Civ. P. 23 to recover unreimbursed vehicle costs, unpaid minimum wages, and
8 disgorgement of profits on behalf of himself and all of Defendants' other delivery drivers
9 employed within the recovery periods.

10 **Jurisdiction and Venue**

11 3. The FLSA authorizes actions by private parties to recover damages for violation
12 of its wage and hour provisions. Jurisdiction over Plaintiff's claims alleging violation of
13 the FLSA is based on 29 U.S.C. § 216(b) and 28 U.S.C. § 1331 (federal question).

14 4. The Court has jurisdiction over Plaintiff's and Class Members' claims for failure
15 to reimburse business expenses under Cal. Lab. Code § 2802 and 28 U.S.C. § 1367
16 (pendent claims).

17 5. The Court has jurisdiction over Plaintiff's and Class Members' claim for failure
18 to pay the California minimum wage under Cal. Lab. Code § 1194 and 28 U.S.C. § 1367
19 (pendent claims).

20 6. The Court has jurisdiction over Plaintiff's and Class Members' claims for
21 restitution of unpaid business expenses arising from Defendants' unlawful and unfair
22 business practices under Cal. Bus. & Prof. Code § 17204 and 28 U.S.C. § 1367 (pendent
23 claims).

24 7. Venue in this District is proper under 28 U.S.C. § 1391 because some of the
25 Defendants reside in this District, Defendants are subject to the Court's personal
26 jurisdiction with respect to this civil action, Defendants employed Plaintiff within this
27 District, and a substantial part of the events or omissions giving rise to the claim occurred
28 in this District.

Parties

1
2 8. Based on information and belief, Defendant Dan Hosseini d/b/a “HJ Enterprises,
3 Inc.” is an individual maintaining his principal place of business in Culver City,
4 California and operating Domino’s stores within this District.

5 9. Based on information and belief, Defendant Shane Casey d/b/a “D.O.S. Pizza,
6 Inc.” is an individual maintaining his principal place of business within this District and
7 operating Domino’s stores within this District.

8 10. Defendant North County Pizza, Inc. is a Georgia corporation maintaining its
9 principal place of business within this District and operating Domino’s stores within this
10 District.

11 11. Defendant Pizzafella, LLC is a California limited liability company maintaining
12 its principal place of business within this District and operating Domino’s stores within
13 this District.

14 12. Defendant Pizza Enterprises, Inc. is a California corporation maintaining its
15 principal place of business within this District and operating Domino’s stores within this
16 District.

17 13. Defendant Pizza Enterprises II, Inc. is a California corporation maintaining its
18 principal place of business within this District and operating Domino’s stores within this
19 District.

20 14. Defendant Pizza Enterprises III, Inc. is a California corporation maintaining its
21 principal place of business within this District and operating Domino’s stores within this
22 District.

23 15. Defendant Syriani & Seryani, Inc. is a California corporation maintaining its
24 principal place of business within this District and operating Domino’s stores within this
25 District.

26 16. Defendant Slammed Pizza, Inc. is a California corporation maintaining its
27 principal place of business within this District and operating Domino’s stores within this
28 District.

1 17. Defendant Slammed Pizza Jr., Inc. is a California corporation maintaining its
2 principal place of business within this District and operating Domino's stores within this
3 District.

4 18. Defendants Does 1-25 inclusive are to be identified later through discovery as
5 entities that, together with the other Defendants, form a single enterprise and / or
6 constitute joint employers under the FLSA and / or California law.

7 19. Defendants comprise a "single integrated enterprise" or "single employer" and
8 jointly operate a chain of approximately 74 Domino's restaurants as they maintain
9 interrelated operations, centralized control of labor relations, common management and
10 common ownership and financial control.

11 20. Alternatively, Defendants are liable for each other's acts and omissions because
12 they constitute joint employers as they share power to hire and fire employees, share
13 supervision and control of employee work schedules or conditions of employment,
14 jointly determine the rate and method of payment, and jointly maintain employment
15 records.

16 21. Alternatively, because the work performed by Plaintiff and all other delivery
17 drivers simultaneously benefited all Defendants and directly or indirectly furthered their
18 joint interests, Defendants are collectively the joint employers of Plaintiff and other
19 similarly situated employees under the FLSA's broad definition of "employer."

20 22. Plaintiff John Ralph has been employed by Defendants from approximately June
21 2012 to present as a delivery driver at their Domino's stores and he currently works at
22 Defendants' store located at 805 San Marcos Blvd, in San Marcos, CA, which is located
23 within this District. Plaintiff Ralph's Consent to Become a Party Plaintiff under 29
24 U.S.C. § 216(b) is attached as **Exhibit 1**.

25 **General Allegations**

26 ***Defendants' Business***

27 23. During times relevant, Defendants have owned and operated as many as
28 approximately 74 Domino's franchise stores in Southern California.

1 24. Defendants' Domino's stores employ delivery drivers who all have the same
2 primary job duty: to deliver pizzas and other food items to customers' homes or
3 workplaces.

4 ***Defendants' Flawed Reimbursement Policy***

5 25. Defendants require their delivery drivers to maintain and pay for safe, legally-
6 operable, and insured automobiles when delivering pizza and other food items.

7 26. Defendants' delivery drivers incur costs for gasoline, vehicle parts and fluids,
8 repair and maintenance services, insurance, depreciation, and other expenses
9 ("automobile expenses") while delivering pizzas for the primary benefit of Defendants.

10 27. Defendants' delivery driver reimbursement policy reimburses drivers on a per-
11 delivery basis, but given the distance of the average delivery the per-delivery
12 reimbursement equates to a per-mile rate far below the IRS business mileage
13 reimbursement rate or any other reasonable approximation of the cost to own and operate
14 a motor vehicle. This policy applies to all of Defendants' delivery drivers.

15 28. The result of Defendants' delivery driver reimbursement policy is a
16 reimbursement of much less than a reasonable approximation of their drivers'
17 automobile expenses.

18 29. During the applicable California limitations period, the IRS business mileage
19 reimbursement rate has ranged between \$.535 and \$.575 per mile between 2014 and
20 2017. Likewise, reputable companies that study the cost of owning and operating a
21 motor vehicle and/or reasonable reimbursement rates, including the AAA, have
22 determined that the average cost of owning and operating a sedan vehicle ranged
23 between \$.571 and \$.608 per mile between 2014 and 2016 for drivers who drive a sedan
24 approximately 15,000 miles per year. These figures represent a reasonable
25 approximation of the average cost of owning and operating a vehicle for use in delivering
26 pizzas during the recovery period.

27 30. The Division of Labor Standards Enforcement ("DLSE"), the state agency
28 authorized to enforce California's labor laws, accepts the IRS rate as the reasonable per-

1 mile cost of driving a vehicle. *See* DLSE Opinion Letter No. 1994.09.14, p. 1 (“[T]he
2 DLSE has long recognized the IRS rate for automobile reimbursement as a
3 presumptively reasonable rate.”).

4 31. The driving conditions associated with the pizza delivery business cause more
5 frequent maintenance costs, higher costs due to repairs associated with driving, and more
6 rapid depreciation from driving as much as, and in the manner of, a delivery driver.
7 Defendants’ delivery drivers further experience lower gas mileage and higher repair
8 costs than the average driver used to determine the average cost of owning and operating
9 a vehicle described above due to the nature of the delivery business, including frequent
10 starting and stopping of the engine, frequent braking, short routes as opposed to highway
11 driving, and driving under time pressures.

12 32. Defendants’ reimbursement policy does not reimburse delivery drivers for even
13 their ongoing out-of-pocket expenses, much less other costs they incur to own and
14 operate their vehicle, and thus Defendants uniformly fail to reimburse their delivery
15 drivers at any reasonable approximation of the cost of owning and operating their
16 vehicles for Defendants’ benefit.

17 33. Defendants’ systematic failure to adequately reimburse automobile expenses
18 constitutes a “kickback” to Defendants such that the hourly wages it pays to Plaintiff
19 and Defendants’ other delivery drivers are not paid free and clear of all outstanding
20 obligations to Defendants.

21 34. Defendants fail to reasonably approximate the amount of their drivers’
22 automobile expenses to such an extent that their drivers’ net wages are diminished
23 beneath the federal and California minimum wage requirements.

24 35. In sum, Defendants’ reimbursement policy and methodology fail to reflect the
25 realities of their delivery drivers’ automobile expenses.
26
27
28

1 ***Defendants’ Failure to Reasonably Reimburse Automobile Expenses Causes***
2 ***Minimum Wage Violations***

3 36. Regardless of the precise amount of the per-delivery reimbursement at any given
4 point in time, Defendants’ reimbursement formula has resulted in an unreasonable
5 underestimation of delivery drivers’ automobile expenses throughout the recovery
6 period, causing systematic violations of the federal and California minimum wage.

7 37. Plaintiff Ralph was paid the exact California minimum wages of \$8.00 per hour
8 until about July 1, 2014, \$9.00 per hour from about July 2014 to December 2015, \$10.00
9 per hour from about January 2016 to January 2017, and \$10.50 per hour since January
10 2017.

11 38. The federal minimum wage has been \$7.25 per hour since July 24, 2009.

12 39. Defendants’ per-delivery reimbursement rate at the store where Plaintiff Ralph
13 now works is approximately \$1.16, which is fairly consistent with the reimbursement
14 rates at Defendants’ other stores.

15 40. Throughout his employment with Defendants, Plaintiff Ralph experienced an
16 average round-trip delivery distance of about 5 miles.

17 41. Thus, during the applicable limitations period, Defendants’ average effective
18 reimbursement rate for Plaintiff Ralph was approximately \$0.23 per mile (\$1.16 per
19 delivery / 5 miles per delivery) or less.

20 42. During this same time period, the lowest IRS business mileage reimbursement
21 rate was \$.535 per mile, which reasonably approximated the automobile expenses
22 incurred delivering pizzas. [http://www.irs.gov/Tax-Professionals/Standard-Mileage-](http://www.irs.gov/Tax-Professionals/Standard-Mileage-Rates)
23 [Rates](http://www.irs.gov/Tax-Professionals/Standard-Mileage-Rates). Using the IRS rate as a reasonable approximation of Plaintiff Ralph’s automobile
24 expenses, every mile driven on the job decreased his net wages by approximately \$.305
25 (\$.535 - \$.23) per mile. Considering Plaintiff Ralph’s estimate of approximately 5
26 average miles per delivery, Defendants under-reimbursed him about \$1.53 per delivery
27 (\$.305 x 5 miles) or more.

1 43. During his employment by Defendants, Plaintiff Ralph typically averaged
2 approximately 2.5 deliveries per hour.

3 44. Thus, comparing Defendants' reimbursement rate to the IRS rate, Plaintiff Ralph
4 consistently "kicked back" to Defendants approximately \$3.81 per hour (\$1.53 per
5 delivery x 2.5 deliveries per hour), for an effective hourly wage rate of about:

- 6 a. \$4.19 (\$8.00 per hour - \$3.81 kickback) in 2013;
- 7 b. \$5.19 (\$9.00 per hour - \$3.81 kickback) in 2014 and 2015;
- 8 c. \$6.19 (\$10.00 per hour - \$3.81 kickback) in 2016; and
- 9 d. \$6.69 (\$10.50 per hour - \$3.81 kickback) in 2017.

10 45. All of Defendants' delivery drivers had similar experiences to those of Plaintiff
11 Ralph. They were subject to the same reimbursement policy; received similar
12 reimbursements; incurred similar automobile expenses; completed deliveries of similar
13 distances and at similar frequencies; and were paid at or near the California minimum
14 wage before deducting unreimbursed business expenses.

15 46. Because Defendants paid their drivers a gross hourly wage at precisely, or at
16 least very close to, the California minimum wage, and because the delivery drivers
17 incurred unreimbursed automobile expenses, the delivery drivers "kicked back" to
18 Defendants an amount sufficient to cause minimum wage violations.

19 47. While the amount of Defendants' actual reimbursements per delivery may vary
20 somewhat over time, Defendants are relying on the same flawed policy and methodology
21 with respect to all delivery drivers at all of their other Domino's stores. Thus, although
22 reimbursement amounts may differ somewhat by time or region, the amounts of under-
23 reimbursements relative to automobile costs incurred are relatively consistent between
24 time and region.

25 48. Defendants' low reimbursement rates were a frequent complaint of at least some
26 of Defendants' delivery drivers, including Plaintiff, yet Defendants continued to
27 reimburse at a rate much less than any reasonable approximation of delivery drivers'
28 automobile expenses.

1 49. The net effect of Defendants’ flawed reimbursement policy is that they willfully
2 fail to pay the federal minimum wage to their delivery drivers. Defendants thereby enjoy
3 ill-gained profits at the expense of their employees.

4 **Collective Action Allegations**

5 50. Plaintiff brings this FLSA claim as an “opt-in” collective action on behalf of
6 similarly situated delivery drivers pursuant to 29 U.S.C. § 216(b).

7 51. The FLSA claims may be pursued by those who opt-in to this case pursuant to
8 29 U.S.C. § 216(b).

9 52. Plaintiff, individually and on behalf of other similarly situated employees, seeks
10 relief on a collective basis challenging Defendants’ practice of failing to pay employees
11 federal minimum wage. The number and identity of other plaintiffs yet to opt-in may be
12 ascertained from Defendants’ records, and potential class members may be notified of
13 the pendency of this action via mail.

14 53. Plaintiff and all of Defendants’ delivery drivers are similarly situated in that:

- 15 a. They have worked as delivery drivers for Defendants delivering pizza and
16 other food items to Defendants’ customers;
- 17 b. They have delivered pizzas and food items using automobiles not owned or
18 maintained by Defendants;
- 19 c. Defendants required them to maintain these automobiles in a safe, legally-
20 operable, and insured condition;
- 21 d. They incurred costs for automobile expenses while delivering pizzas and food
22 items for the primary benefit of Defendants;
- 23 e. They were subject to similar driving conditions, automobile expenses,
24 delivery distances, and delivery frequencies;
- 25 f. They were subject to the same pay policies and practices of Defendants;
- 26 g. They were subject to the same delivery driver reimbursement policy that
27 underestimates automobile expenses per mile, and thereby systematically
28

1 c. Whether Defendants' formula and/or methodology used to calculate payment
2 of reimbursement for vehicle expenses resulted in under-reimbursement of
3 Class members.

4 59. The questions set forth above predominate over any questions affecting only
5 individual persons, and a class action is superior with respect to considerations of
6 consistency, economy, efficiency, fairness, and equity to other available methods for
7 the fair and efficient adjudication of the state law claims.

8 60. Plaintiff's claims are typical of those of the Class in that:

- 9 a. Plaintiff and the Class have worked as delivery drivers for Defendants'
10 delivering pizza and other food items to Defendants' customers;
- 11 b. Plaintiff and the Class delivered pizza and food items using automobiles not
12 owned or maintained by Defendants;
- 13 c. Defendants required Plaintiff and the Class to maintain these automobiles in a
14 safe, legally-operable, and insured condition;
- 15 d. Plaintiff and the Class incurred costs for automobile expenses while delivering
16 pizzas and food items for the primary benefit of Defendants;
- 17 e. Plaintiff and the Class were subject to similar driving conditions, automobile
18 expenses, delivery distances, and delivery frequencies;
- 19 f. Plaintiff and the Class were subject to the same pay policies of Defendants;
- 20 g. Plaintiff and the Class were subject to the same delivery driver reimbursement
21 policy that underestimates automobile expenses per mile, and thereby
22 systematically deprived of reasonably approximate reimbursements, resulting
23 in wages below the state minimum wage in some or all workweeks;
- 24 h. Plaintiff and the Class were reimbursed similar set amounts of automobile
25 expenses per mile; and
- 26 i. Plaintiff and the Class were paid at or near the California minimum wage
27 before deducting unreimbursed business expenses.
- 28

1 61. A class action is clearly the appropriate method for the fair and efficient
2 adjudication of this controversy. Defendants have acted or refused to act on grounds
3 generally applicable to the Class.

4 62. Plaintiff is an adequate representative because he is a member of the Class and
5 his interests do not conflict with the interest of the members of the Class he seeks to
6 represent. The interests of the members of the Class will be fairly and adequately
7 protected by Plaintiff and the undersigned counsel, who have extensive experience
8 prosecuting complex wage and hour, employment, and class action litigation.

9 63. Maintenance of this action as a class action is superior to other available methods
10 for fairly and efficiently adjudicating the controversy as members of the Class have
11 little interest in individually controlling the prosecution of separate class actions, no
12 other litigation is pending over the same controversy, it is desirable to concentrate the
13 litigation in this Court due to the relatively small recoveries per member of the Class,
14 and there are no material difficulties impairing the management of a class action.

15 64. It would be impracticable and undesirable for each member of the Class who
16 suffered harm to bring a separate action. In addition, the maintenance of separate actions
17 would place a substantial and unnecessary burden on the courts and could result in
18 inconsistent adjudications, while a single class action can determine, with judicial
19 economy, the rights of all Class members.

20 **Count I: Violation of the Fair Labor Standards Act of 1938**

21 65. Plaintiff reasserts and re-alleges the allegations set forth above.

22 66. The FLSA regulates, among other things, the payment of minimum wage by
23 employers whose employees are engaged in interstate commerce, or engaged in the
24 production of goods for commerce, or employed in an enterprise engaged in commerce
25 or in the production of goods for commerce. 29 U.S.C. §206(a).

26 67. Defendants are subject to the FLSA's minimum wage requirements because they
27 are enterprises engaged in interstate commerce, and their employees are engaged in
28 commerce.

1 68. At all relevant times herein, Plaintiff has been entitled to the rights, protections,
2 and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

3 69. Section 13 of the FLSA, codified at 29 U.S.C. § 213, exempts certain categories
4 of employees from federal minimum wage obligations. None of the FLSA exemptions
5 apply to Plaintiff or other similarly situated delivery drivers.

6 70. Under Section 6 of the FLSA, codified at 29 U.S.C. § 206, employees have been
7 entitled to be compensated at a rate of at least \$7.25 per hour since July 24, 2009.

8 71. As alleged herein, Defendants have, and continue to, uniformly reimburse
9 delivery drivers less than the reasonably approximate amount of their automobile
10 expenses to such an extent that it diminishes these employees' wages beneath the federal
11 minimum wage.

12 72. Defendants knew or should have known that their pay and reimbursement
13 policies, practices and methodology result in failure to compensate delivery drivers at
14 the federal minimum wage.

15 73. Defendants, pursuant to their policy and practice, violated the FLSA by refusing
16 and failing to pay federal minimum wage to Plaintiff and other similarly situated
17 employees.

18 74. Plaintiff and all similarly situated delivery drivers are victims of a uniform and
19 employer-based compensation and reimbursement policy. This uniform policy, in
20 violation of the FLSA, has been applied, and continues to be applied, to all delivery
21 driver employees in Defendants' stores.

22 75. Plaintiff and all similarly situated employees are entitled to damages equal to the
23 minimum wage minus actual wages received after deducting reasonably approximated
24 automobile expenses within the later of three years from the date each Plaintiff joins this
25 case or the date that Defendants became the employers of each Plaintiff, plus periods of
26 equitable tolling, because Defendants acted willfully and knew, or showed reckless
27 disregard for, whether their conduct was unlawful.
28

1 76. Defendants have acted neither in good faith nor with reasonable grounds to
2 believe that their actions and omissions were not a violation of the FLSA, and as a result,
3 Plaintiff and other similarly situated employees are entitled to recover an award of
4 liquidated damages in an amount equal to the amount of unpaid minimum wages under
5 29 U.S.C. § 216(b). Alternatively, should the Court find Defendants are not liable for
6 liquidated damages, Plaintiff and all similarly situated employees are entitled to an
7 award of prejudgment interest at the applicable legal rate.

8 77. As a result of the aforesaid willful violations of the FLSA's minimum wage
9 provisions, minimum wage compensation has been unlawfully withheld by Defendants
10 from Plaintiff and all similarly situated employees. Accordingly, Defendants are liable
11 under 29 U.S.C. § 216(b), together with an additional amount as liquidated damages,
12 pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this
13 action.

14 WHEREFORE, Plaintiff and all similarly situated delivery drivers demand judgment
15 against Defendants and request: (1) compensatory damages; (2) liquidated damages; (3)
16 attorneys' fees and costs as allowed by Section 16(b) of the FLSA; (4) pre-judgment and
17 post-judgment interest as provided by law; and (5) such other relief as the Court deems
18 fair and equitable.

19 **Count II: Violation of California Labor Code § 2802**

20 78. Plaintiff reasserts and re-alleges the allegations set forth above.

21 79. Labor Code § 2802(a) expressly provides: "An employer shall indemnify his or
22 her employee for all necessary expenditures or losses incurred by the employee in direct
23 consequence of the discharge of his or her duties...." *Id.*

24 80. At all relevant times herein, Defendants, by virtue of their mileage
25 reimbursement policies and practices, failed to indemnify Plaintiff and the Class
26 appropriately for all necessary automobile expenses that Plaintiff and the Class incurred
27 while performing work for Defendants.
28

1 81. Plaintiff and the Class incurred significant and substantial out-of-pocket losses
2 because of Defendants' failure to reimburse Plaintiff and the Class appropriately for all
3 necessary automobile expenses that Plaintiff and the Class incurred while performing
4 work for Defendants. To date, Defendants have failed to indemnify Plaintiff and the
5 Class for these out-of-pocket losses.

6 82. Under Labor Code § 2802(c), Plaintiff and the Class are entitled to recover all
7 reasonable costs, including attorneys' fees, incurred in enforcing their rights granted by
8 Labor Code § 2802.

9 WHEREFORE, Plaintiff and the Class demand judgment against Defendants and
10 request: (1) indemnification to Plaintiff and the Class for necessary expenditures or
11 losses they incurred in the direct consequence of the discharge of their duties for
12 Defendants; (2) attorneys' fees and costs as allowed by Section 2802(c) of the Labor
13 Code; (3) pre-judgment and post-judgment interest as provided by law; and (4) such
14 other relief as the Court deems fair and equitable.

15 **Count III: Violation of California Labor Code §§ 1194, 1194.2, 1197,**
16 **1197.1, and IWC Minimum Wage Order and Wage Order No. 5**

17 83. Plaintiff reasserts and re-alleges the allegations set forth above.

18 84. Pursuant to Labor Code §§ 1194, 1194.2, 1197, and 1197.1, it is unlawful for an
19 employer to permit a California employee to work without paying wages at the proper
20 minimum wage for all time worked, as required by the applicable IWC Minimum Wage
21 Order and Wage Order No. 5.

22 85. At all relevant times herein, Plaintiff and the Class nominally performed work
23 for at or near the California minimum wage.

24 86. At all relevant times herein, Defendants continually failed to reimburse Plaintiff
25 and the Class for all necessary, automobile expenses that Plaintiff and the Class incurred
26 while performing work for Defendants, causing the total hourly compensation paid to
27 Plaintiff and the Class continually to fall below the state minimum wage.
28

1 87. At all relevant times herein, under the provisions of the IWC Wage Orders,
2 Plaintiff and the Class should have received not less than the minimum wage in a sum
3 according to proof for the time worked but not compensated.

4 88. For all time that Plaintiff and the Class worked and received less than the state
5 minimum wage, they are entitled to no less than the state minimum wage, and pursuant
6 to Labor Code § 1194.2(a), liquidated damages in an amount equal to the unpaid
7 minimum wage and interest thereon. Pursuant to Labor Code § 1194, Plaintiff and the
8 Class are also entitled to their attorneys' fees, costs, and interest according to proof.

9 WHEREFORE, Plaintiff and the Class demand judgment against Defendants and
10 request: (1) payment of minimum wage in an amount according to proof; (2) liquidated
11 damages; (3) attorneys' fees and costs as allowed by Section 1194.2(a) of the Labor
12 Code; (4) pre-judgment and post-judgment interest as provided by law; and (5) such
13 other relief as the Court deems fair and equitable.

14 **Count IV: Violation of California Business & Professions Code § 17200, et seq.**

15 89. Plaintiff reasserts and re-alleges the allegations set forth above.

16 90. Defendants' violations of the California Labor Code and regulations, including
17 their failure and refusal to indemnify Plaintiff and the Class appropriately for necessary
18 automobile expenses they incurred and Defendants' failure to pay minimum wages to
19 Plaintiff and the Class constitute unfair business practices in violation of California
20 Business & Professions Code § 17200, et seq.

21 91. As a result of Defendants' unfair business practices, Defendants have reaped
22 unfair benefits and illegal profits at the expense of Plaintiff, the Class, and the public.
23 Defendants' should be made to disgorge their ill-gotten gains and restore such monies
24 to Plaintiff and the Class.

25 92. Defendants' unfair business practices entitle Plaintiff to seek preliminary and
26 permanent injunctive relief, including but not limited to orders that Defendants account
27 for, disgorge and restore to Plaintiff and the Class the compensation and reimbursement
28 unlawfully withheld from them.

1 WHEREFORE, Plaintiff and the Class demand judgment against Defendants and
2 request: (1) disgorgement of profits garnered as a result of Defendants' unlawful failure
3 to indemnify necessary, automobile expenses and pay minimum wages and other
4 compensation earned; (2) restitution under Business & Professions Code § 17200, et
5 seq.; (3) permanent injunctive and declaratory relief under § 17200, et seq.; (4) pre- and
6 post-judgment interest as provided by law; and (5) such other relief as the Court deems
7 fair and equitable.

8 **Demand for Jury Trial**

9 Plaintiff hereby requests a trial by jury of all issues triable by jury.

10
11 DATED: June 29, 2017

Respectfully submitted,

12 **PAUL LLP**

/s/ Richard M. Paul III

13 Richard M. Paul III (MO Bar #44233)

(pro hac vice forthcoming)

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22 **ATTORNEYS FOR PLAINTIFF**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS JOHN RALPH, individually and on behalf of similarly situated persons
(b) County of Residence of First Listed Plaintiff San Diego
(c) Attorneys (Firm Name, Address, and Telephone Number) Malcolm B. Roberts (LANDAY ROBERTS LLP; 101 West Broadway, Suite 300 San Diego, California 92101; 619-230-5712), Richard M. Paul III (Paul LLP; 601 Walnut, Ste 300, KCMO 64106; 816-984-8100)

DEFENDANTS DAN HOSSEINI d/b/a "HJ ENTERPRISES, INC.
County of Residence of First Listed Defendant San Diego
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known) '17CV1332 JM JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
REAL PROPERTY
PERSONAL INJURY
CIVIL RIGHTS
TORTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 216(b) and 28 U.S.C. § 1331
Brief description of cause:
Recovery of unpaid wages

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT 1

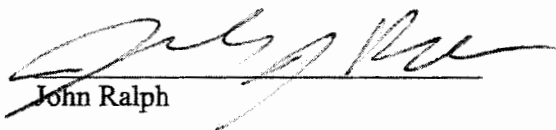
CONSENT TO BECOME A PARTY PLAINTIFF

Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b)

I hereby consent to become a party plaintiff seeking unpaid wages against P.J. Enterprises Inc., DOS Pizza Inc., North County Pizza Inc., Team Pizzafella LC, Pizza Enterprises Inc., Syriani & Seryani Inc, Slammed Pizza Inc., its owners and/or related entities.

Date: _____

6/7/2017



John Ralph

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Domino's Delivery Drivers Paid Below Minimum Wage, Suit Says](#)
