

1 MARGARET A. KEANE (SBN 255378)  
margaret.keane@dlapiper.com  
2 ERIC ORTIZ (SBN 291618)  
eric.ortiz@dlapiper.com  
3 **DLA PIPER LLP (US)**  
555 Mission Street, Suite 2400  
4 San Francisco, California 94105-2933  
Tel: 415.836.2500  
5 Fax: 415.836.2501

6 Attorneys for Defendant  
DOMINO'S PIZZA LLC  
7

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 EDDIE SILVA on behalf of himself  
and all others similarly situated,  
12  
13 Plaintiffs,  
14  
15 v.  
16 DOMINO'S PIZZA, a Michigan  
Corporation, and Does 1-10, inclusive  
17 Defendant.

CASE NO.  
**DEFENDANT DOMINO'S PIZZA  
LLC'S NOTICE OF REMOVAL  
AND REMOVAL OF ACTION**  
**[28 U.S.C. §§ 1332, 1441, 1446]**  
Complaint Filed: October 23, 2018  
Complaint Served: October 31, 2018

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT, AND**  
2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** Defendant Domino's Pizza LLC  
4 ("Domino's") hereby removes to this Court pursuant to 28 U.S.C. Sections 1332,  
5 1441, and 1446, as amended in relevant part by the Class Action Fairness Act of  
6 2005 ("CAFA"), this action, which was originally filed in the Superior Court of the  
7 State of California for the County of Orange and assigned Case No. 30-2018-  
8 01027517-CU-OE-CXC. The grounds for this removal are set forth herein:

9 **I. INTRODUCTION**

10 1. On or about October 23, 2018, plaintiff Eddie Silva ("Plaintiff")  
11 commenced this action in the Superior Court of California in and for the County of  
12 Orange by filing a complaint entitled *Eddie Silva on behalf of himself, all others*  
13 *similarly situated, v. Domino's Pizza, and DOES 1-10*, as Case No. 30-2018-  
14 01027517-CU-OE-CXC (the "State Court Action").

15 2. On October 31, 2018, Plaintiff served Domino's with the Summons  
16 and Complaint, and related documents. True and correct copies of the Summons  
17 and Complaint are attached hereto as Exhibit A.

18 3. The Complaint alleges eight causes of action against Domino's: (1)  
19 violation of the California Private Attorney General Act, ("PAGA"); (2) failure to  
20 provide meal breaks; (3) failure to provide rest breaks; (4) failure to separately pay  
21 all wages for work performed; (5) failure to reimburse for work expenses; (6) failure  
22 to issue accurate itemized wage statements; (7) waiting time penalties; and (8) unfair  
23 business practices under the UCL.

24 **II. VENUE**

25 4. The Complaint was filed in the Superior Court of California for the  
26 County of Orange. Thus, venue properly lies in the United States District Court for  
27 the Central District of California, pursuant to 28 U.S.C. § 1391(b).

1 **III. REMOVAL IS TIMELY**

2 5. Removal of the Complaint is timely as Domino’s files this removal  
3 within thirty (30) days of service of the Complaint and Summons on Domino’s,  
4 which occurred on October 31, 2018.

5 **IV. DEFENDANT IS A NOT A STATE, STATE OFFICIAL OR OTHER**  
6 **GOVERNMENTAL ENTITY**

7 6. No states, state officials or other governmental entities are named as  
8 defendants in this action.

9 **V. JURISDICTION**

10 7. This Court has original jurisdiction over this action pursuant to 28 U.S.C.  
11 §1332(d), the Class Action Fairness Act (“CAFA”). CAFA grants federal courts  
12 original jurisdiction over, and permits removal of, class actions in which: 1) any  
13 member of a class of plaintiffs is a citizen of a state different from any defendant,  
14 thus establishing “minimal diversity”; 2) the aggregate number of proposed plaintiffs  
15 is 100 or more; 3) the primary defendants are not states, state officials or other  
16 governmental entities; and 4) the aggregate amount in controversy of all of the  
17 putative class members’ claims exceeds \$5,000,000. *See* 28 U.S.C. §§ 1332(d)(2)  
18 (A), d(5)(A)-(B), and (d)(6).

19 8. In *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 553  
20 (2014), the United States Supreme Court held that courts must apply the same liberal  
21 rules to removal allegations as to other matters of pleading. The Supreme Court also  
22 held that no presumption against removal exists under CAFA, which was enacted to  
23 facilitate adjudication of certain class actions in federal court. *Id.* at 554.

24 **A. THE PARTIES CITIZENSHIP**

25 9. The “minimal diversity” requirement is satisfied here because at least  
26 one member of the putative class is a citizen of a state different from at least one  
27 defendant.

1           10. As alleged, Plaintiff, “is and was a resident of the County of Riverside,  
2 State of California, at all relevant times including within the four years preceding the  
3 filing of this Complaint. (Complaint, ¶ 1.) There is no indication that he is a citizen  
4 of a state other than California. (*See id.*)

5           11. As described below in Paragraphs 12 to 13, Domino’s is not a citizen  
6 of the State of California.

7           12. Domino’s Pizza LLC is a Michigan limited liability company having  
8 its principal place of business in Ann Arbor, Michigan. *See* Declaration of Stacey  
9 Rodriguez In Support of Notice of Removal (“Rodriguez Declaration”), ¶ 3.  
10 Domino’s, Inc. is the sole member of Domino’s Pizza LLC. *Id.*

11           13. Domino’s, Inc. is a Delaware corporation organized and existing under  
12 the laws of the State of Delaware with its principal place of business and corporate  
13 headquarters in Ann Arbor, Michigan. *Id.* at ¶ 4.

14           14. Any potential “Doe” defendants are disregarded for purposes of  
15 removal. 28 U.S.C. § 1441(a); *see also Newcombe v. Adolf Coors*, 157 F.3d 686,  
16 690–91 (9th Cir. 1998). In addition, there are no allegations in the Complaint with  
17 respect to the potential ‘Doe’ defendants. (*See* Complaint, ¶ 3.)

18           **B. THE AGGREGATE NUMBER OF PROPOSED**  
19           **PLAINTIFFS IS GREATER THAN 100**

20           15. Plaintiff purports to represent a putative class which includes “all  
21 California drivers who performed work for Domino’s under its piece-rate  
22 compensation scheme from four (4) years prior to the filing of this Complaint to the  
23 date of final disposition.” (Complaint, ¶ 23.) Plaintiff “believes that over 100  
24 employees would fall within the putative Class.” (Complaint, ¶ 25.) Based on a  
25 preliminary analysis of its employment data, Domino’s estimates that it employed  
26 approximately 150 individuals within the State of California as hourly, non-exempt  
27 truck drivers (“Truck Drivers”) in the four years preceding the filing of the Complaint.

1           16. Claims for unfair competition or unfair business practices under  
2 California Business & Professions Code section 17200 et seq. must be commenced  
3 within four years after the cause of action accrues. Cal. Bus. & Prof. Code § 17208.  
4 Therefore, the class of plaintiffs for Plaintiff's eighth cause of action for violation of  
5 the Business & Professions Code potentially includes Truck Drivers employed within  
6 the four years before the filing of the Complaint: October 23, 2014 through October  
7 23, 2018.

8           **C. THE AMOUNT IN CONTROVERSY EXCEEDS \$5,000,000**

9           17. In *Dart Cherokee*, the Supreme Court held that a notice of removal need  
10 only include a plausible allegation that the amount in controversy exceeds \$5 million  
11 and need not include evidentiary submissions. 135 S.Ct. at 554; *see also Ibarra v.*  
12 *Manheim Investments, Inc.*, 775 F.3d 1193, 1195 (9th Cir. 2015) (“[A] removing  
13 party must initially file a notice of removal that includes ‘a plausible allegation that  
14 the amount in controversy exceeds the jurisdictional threshold.’”) (*quoting Dart*  
15 *Cherokee*). Thus, unless contested by a plaintiff or questioned by the court, a  
16 defendant's amount in controversy allegation should be accepted. *Id.* If a plaintiff  
17 does contest the allegation, both sides must submit proof and the court will decide,  
18 by a preponderance of the evidence, whether the amount in controversy requirement  
19 has been satisfied. *Id.*

20           18. While Domino's disputes the allegations of wrongdoing in the  
21 Complaint and further disputes that Plaintiff or the putative class are entitled to relief  
22 in any amount, the amount in controversy requirement is satisfied because Plaintiff's  
23 Complaint seeks aggregate relief for the putative class in excess of \$5,000,000. *See*  
24 28 U.S.C. § 1332(d)(2).

25           19. Plaintiff does not allege a specific amount of damages in the Complaint.  
26 However, as detailed below, the allegations in the Complaint more than satisfy the  
27 amount in controversy requirement.

1           20. Plaintiff's Complaint alleges that for at least four years prior to the  
2 filing of the Complaint, Domino's failed to provide meal breaks (Complaint, ¶¶ 12,  
3 53-54); failed to provide rest breaks (id. at ¶¶ 12, 57); failed to separately pay for  
4 work performed before and after driving shifts or for "waiting time" during driving  
5 routes (id. at ¶¶ 11, 45-46); failed to indemnify for necessary expenditures (id. at ¶¶  
6 13, 61); failed to provide accurate, itemized wage statements (id. at ¶¶ 14, 66-68);  
7 failed to provide all compensation due at termination (id. at ¶¶ 15 72-74); and  
8 engaged in false, unfair, fraudulent and deceptive business (id. at ¶¶ 77-78). Based  
9 on these contentions, Domino's is able to determine that the amount in controversy  
10 exceeds the \$5,000,000 jurisdictional threshold set forth in 28 U.S.C. § 1332(d). As  
11 set forth more fully below in paragraphs 22 through 42, Domino's uses  
12 conservative estimates when applying mathematical calculations to determine that  
13 the amount in controversy exceeds \$5,000,000.

14           21. The average rate of pay for putative class members varied  
15 significantly between putative class members. However, the average rate of pay  
16 based on available data at a representative point in the putative class period was  
17 approximately \$42.02 per hour. That average rate of pay of \$42.02 per hour was  
18 used to compute estimated damages for the putative class period.

19           Domino's Alleged Failure To Provide Meal or Rest Periods

20           22. Plaintiff alleges that, "throughout the liability period for the proposed  
21 classes, Defendant failed to inform or advise its drivers of their right to take meal  
22 breaks under California law. In fact, Defendant did not schedule meal breaks and did  
23 not inform drivers how to take them. As a result of Defendant's failure to advise and  
24 inform its employees of their right to take meal breaks, Defendant is liable to Plaintiff  
25 for one hour of additional pay at the regular rate of compensation." (Complaint, ¶¶  
26 53-54). Plaintiff also alleges that he and "other drivers were regularly permitted and  
27 compelled to work over a four-hour period (or major fraction thereof) without  
28 Domino's authorizing and permitting them to take paid ten-minute rest periods in

1 which they were completely relieved of all their duties as requires by Labor Code §  
2 226.7.” (id. at ¶¶ 12, 57-58.)

3 23. Under Labor Code § 512 and IWC Wage Order (“Wage Order”) No.  
4 9-2001(11), an employee who works more than five (5) hours per day must be  
5 provided a meal period of at least thirty (30) minutes. Labor Code § 512 and Wage  
6 Order No. 9-2001(11) also provide that employees who work more than ten (10)  
7 hours per day must be provided a second meal period of not less than thirty (30)  
8 minutes. Pursuant to Wage Order No. 9-2001(12) and California Code of  
9 Regulations, Title 8, § 11090, an employer must provide a ten (10) minute rest period  
10 per four (4) hours of work or major fraction thereof. Under Labor Code § 226.7, if  
11 an employer fails to provide an employee a meal or rest period, the employer shall  
12 pay the employee one (1) additional hour of pay at the employee’s regular rate of  
13 compensation for each workday that the meal or rest period is not provided. If an  
14 employer fails to provide both the rest period and the meal period, the employee is  
15 entitled to recover two (2) hours of pay at the employee’s regular rate of  
16 compensation. *United Parcel Service v. Superior Court of Los Angeles County*, 192  
17 Cal. App. 4th 1043, 1053 (2011).

18 24. Based on information and belief and estimates derived from  
19 Domino’s internal employment data at a representative point in the putative class  
20 period, the putative class worked more than five (5) hours per day on a collective  
21 total of approximately 724 days per month. With 48 months in the putative class  
22 period, the putative class worked more than five (5) hours per day on a collective  
23 total of approximately 34,752 days throughout the putative class period.

24 25. If Plaintiff could prove that Domino’s failed to provide meal and rest  
25 breaks on each of those days, Domino’s would be subject to a penalty of two (2)  
26 hours of pay on each of those 34,752 days. Using a regular rate of pay of \$42.02, and  
27 assuming a two (2) hour daily penalty for missed meal and rest breaks, the estimated  
28 penalties equal \$2,920,558.08.

1           26. Based on information and belief and Domino's internal employment data  
2 at a representative point in the putative class period, the putative class members  
3 worked at least four (4) and no more than five (5) hours on approximately 24 days  
4 per month. Applying that estimate across 48 months in the putative class period, the  
5 putative class worked at least four (4) hours and no more than five (5) hours on per  
6 day on a collective total of approximately 1,152 days throughout the putative class  
7 period. Because they worked five (5) hours or less in a day, these individuals have  
8 no claim for a missed meal break. However, Plaintiff alleges that they were denied  
9 rest periods.

10           27. If Plaintiff could prove that Domino's failed to provide a rest period on  
11 each of those days, Domino's would be subject to a penalty of one (1) hour on each  
12 of those 1,152 days. Using a regular rate of pay of \$42.02 (at a representative point  
13 in the putative class period), and assuming a one (1) hour daily penalty for a missed  
14 rest period, the penalties equal \$48,407.04.

15           28. Even assuming that Plaintiff and the putative class members were  
16 denied meal and rest breaks only 50% of the time, the estimated penalty amount for  
17 those individuals who worked over five (5) hours would be approximately  
18 \$1,460,279.04 and for those who worked between four (4) and five (5) hours, it would  
19 be approximately \$24,203.52.

20           Domino's Failure to Separately Pay All Wages for Work Performed

21           29. Plaintiff alleges that "as a result of Defendant's piece-rate compensation  
22 system, Plaintiff and its other drivers were not separately paid for any non-driving  
23 work including mandated pre- and post-trip inspections, waiting time during their  
24 routes, training and safety meetings, and rest breaks." (Complaint, ¶¶ 45-46.) In  
25 addition, Plaintiff alleges that Domino's "does not pay Plaintiff and other truck  
26 drivers for all the miles they drive" and that Domino's "often mandates that its drivers  
27 pick-up empty trays from customer sites, but provide[s] inadequate or no  
28 compensation for this task." (id.)



1 30. Although Plaintiff does not allege how often or how many times per  
2 week Domino's failed to separately pay for non-driving work, with a conservative  
3 estimate of only four (4) hours of unpaid compensation per week, the amount in  
4 controversy would be the number of putative class members (100 putative class  
5 members)<sup>1</sup> multiplied by the total number of weeks during the putative class period  
6 (208 weeks) multiplied by four (4) hours of straight pay at the average rate of pay  
7 (\$42.02), which equals \$3,501,056.

8 31. Assuming the estimate was six (6) hours of unpaid straight time per  
9 week, potential damages equal \$5,244,096.

10 Domino's Alleged Failure to Indemnify For All Necessary Expenditures

11 32. Plaintiff claims that "throughout the liability period, Domino's required  
12 Plaintiff and its drivers to purchase cell phones to communicate with and be available  
13 for Domino's" and that "Domino's failed to indemnify the Plaintiff and other drivers  
14 for the cost of these cell phones." (Complaint, ¶¶ 13, 61-62). Labor Code § 2802  
15 requires employers to reimburse employees for all "necessary expenditures or losses  
16 incurred by the employee in direct consequence of the discharge of his or her duties."

17 33. Assuming the average cost of a smartphone during the putative class  
18 period exceeds \$300, the reimbursement for the putative class would total \$45,000.<sup>2</sup>

19 34. According to the most recent U.S. Bureau of Labor Statistics data  
20 available, the average cellular phone service expenditure in 2014 was \$963. The total  
21 cost of reimbursement for the putative class would be \$593,208.<sup>3</sup>

22 Domino's Alleged Failure To Maintain And Provide Accurate Wage  
23 Statements

24 35. Plaintiff alleges that Domino's failed to maintain and provide accurate

25 \_\_\_\_\_  
26 <sup>1</sup> Although there are over 150 putative class members employed during the putative class period,  
27 Domino's estimates that approximately 100 putative class members were employed at an average  
28 point in time throughout the entire putative class period.

<sup>2</sup> <https://www.cnet.com/news/why-your-iphone-and-android-phone-will-get-more-expensive/>

<sup>3</sup> <https://www.bls.gov/opub/btn/volume-5/expenditures-on-celluar-phone-services-have-increased-significantly-since-2007.htm>

1 wage statements in violation of California Labor Code § 226 and that “Domino's  
2 knowingly and intentionally failed to furnish, and continues to knowingly and  
3 intentionally fail to furnish, Plaintiff and the Class with timely, itemized statements  
4 that accurately reflect the total number of hours worked, nor do they include the rate  
5 of pay, or a break-down of the flat daily rate paid to its drivers or any information  
6 regarding compensable rest or recovery periods as required by Labor Code § 226(a).”  
7 (Complaint, ¶ 68.)

8 36. Labor Code § 226 provides for a penalty in the event that an employee  
9 suffers an injury as a result of a wage statement that violates this section. If Plaintiff  
10 can prove that Domino’s violated Labor Code § 226, which Domino’s denies, the  
11 penalty for Plaintiff and each putative class member is \$50 for the initial pay period  
12 and \$100 for each additional pay period, with the total penalty not exceeding \$4,000  
13 per person. Cal. Lab. Code § 226(e)(1).

14 37. For these putative class members, courts have assumed a 100% violation  
15 rate in calculating the amount in controversy when the complaint does not allege a  
16 more precise calculation. *See e.g., Coleman v. Estes Express Lines, Inc.*, 730 F. Supp.  
17 2d 1141, 1150 (C.D. Cal. 2010) (“Plaintiff included no limitation on the number of  
18 violations, and, taking his complaint as true, Defendants could properly calculate the  
19 amount in controversy based on a 100% violation rate.”); *Munoz v. Pilot Travel*  
20 *Centers LLC*, Case No. CIV S-07-0325 FCD EFB, 2007 U.S. Dist. LEXIS 31515 at  
21 \*12-13 (E.D. Cal. Apr. 30, 2007). Assuming at least 125 putative class members were  
22 employed long enough to reach the \$4,000 cap, the potential damages for alleged  
23 wage statement violations is \$4,000 multiplied by 150 putative class members, which  
24 equals \$600,000.

25 Domino’s Alleged Failure To Timely Pay Final Wages

26 38. Plaintiff claims Domino’s violated California Labor Code §§ 201-203.  
27 (Complaint, ¶¶ 15, 72.) Specifically, Plaintiff alleges that “Plaintiff and Class  
28 Members who ceased employment with Defendant are entitled to unpaid

1 compensation, but to date have no received such compensation for unpaid non-  
2 driving work, and rest periods.” (id. at ¶ 73.) Plaintiff also alleges that “more than  
3 thirty days have passed since Plaintiff left Defendant’s employment.” (id. at ¶ 74.)

4 39. On information and belief and Domino’s internal employment data, in  
5 the four years prior to the filing of the Complaint, approximately 69 Truck Drivers  
6 terminated their employment with Domino’s at least thirty (30) days ago. If Plaintiff  
7 prevails on his principal theory, which Domino’s disputes, then the 69 terminated  
8 Truck Drivers would not have been paid all wages due at termination. Penalties  
9 based on this claim, which Domino’s denies, are calculated as follows: Assuming a  
10 regular rate of pay of \$42.02 and assuming that, on average, putative class members  
11 worked eight (8) hours per day, thirty (30) days’ wages for Plaintiff and all putative  
12 class members that terminated their employment more than thirty (30) days ago (69  
13 Truck Drivers), equals \$695,851.20. Plaintiff and the putative class would be entitled  
14 to approximately \$695,851.20 in waiting time penalties if it was proven that  
15 Domino’s willfully failed to pay all wages due at termination, which Domino’s  
16 denies.

17 Attorneys’ Fees

18 40. The amount in controversy increases when Domino’s factors in  
19 the attorneys’ fees to Plaintiff’s seeks to recover in this case, which Plaintiff seeks to  
20 recover in this case. (Complaint, Prayer for Relief, ¶ 17.) Attorneys’ fees are properly  
21 considered when determining the amount in controversy for the purpose of removal.  
22 *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1115, 1155-56 (9th Cir. 1998). In class  
23 action cases in California, prevailing plaintiffs have requested, and courts have  
24 frequently awarded, attorneys’ fees in the range of 25% to 33% of the overall  
25 recovery. *See Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491, 492 (E.D.  
26 Cal. 2010) (citing to five recent wage and hour cases where federal court judges  
27 approved fee awards that ranged from 30% to 33% and similarly approving  
28 percentage of the fund award of 33% to class counsel); *Romero v. Producers Dairy*

1 *Foods, Inc.*, 2007WL 3492841, at \*1-4 (E.D. Cal. Nov. 14, 2007) (approving award  
 2 of 33% of common fund); *McCrary v. Elations Company, LLC*, 2016 WL 769703,  
 3 at \*10 (C.D. Cal., 2016) (approving award of 26% of total settlement amount).  
 4 Utilizing the more conservative number of only 25% of recovery, the amount of  
 5 potentially recoverable attorneys’ fees is \$1,729,889.44.

6 41. Below is a chart summarizing the potential damages (which Domino’s  
 7 disputes) calculated in this removal as set forth above.

<u><b>Plaintiff’s Allegations</b></u>	<u><b>Potential Damages</b></u>
Alleged Failure to Provide Meal and Rest Breaks  (Discounted at 50%)	\$1,484,482.56
Alleged Failure to Pay Straight Compensation (assuming only four hours of straight pay)	\$3,501,056
Alleged Failure to Reimburse Business Expenses.	\$638,208
Alleged Failure to Maintain and Provide Accurate Wage Statements	\$600,000
Alleged Failure to Timely Pay Final Wages	\$695,851.20
<b>TOTAL BEFORE ATTORNEYS’ FEES</b>	<b>\$6,919,597.76</b>
Attorneys’ Fees (calculated at 25% of the potential recovery)	\$1,729,889.44
<b>GRAND TOTAL</b>	<b>\$8,649,487.20</b>

1 42. Therefore, the total amount in controversy considering all claims and  
2 attorneys’ fees, conservatively estimated, is approximately **\$8,649,487.20**—an  
3 amount that is higher than the \$5,000,000 CAFA threshold. With prejudgment  
4 statutory interest at the statutory rates, the potential damages are substantially higher  
5 than the estimated \$8,649,497.20

6 **VI. COMPLIANCE WITH STATUTORY REQUIREMENTS FOR**  
7 **REMOVAL**

8 43. This Notice is timely filed under 28 U.S.C. § 1446(b) as discussed in  
9 detail above.

10 44. Pursuant to 28 U.S.C. § 1446(a), removal is made to the Central  
11 District of California, as the district court embracing the place where the State Court  
12 Action is pending.

13 45. In accordance with 28 U.S.C. § 1446(d), a Notice of Filing of Notice  
14 of Removal is being filed with the Clerk of the Superior Court of the State of  
15 California in and for the County of Orange where the State Court Action is pending,  
16 and Domino’s will provide written notice of the filing of this Notice of Removal and  
17 all other papers to counsel of record for Plaintiff.

18 46. If any question arises as to the propriety of the removal of this action,  
19 Domino’s respectfully requests the opportunity to present a brief, evidence, and oral  
20 argument in support of its position that this case is removable.

21 **VII. PRAYER**

22 47. Wherefore, Domino’s respectfully requests that the above-titled action  
23 now pending against it in the Superior Court of California, County of Orange, be  
24 removed to this Court.

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Dated: November 30, 2018

DLA PIPER LLP (US)

*Margaret A Keane*

By:

MARGARET A. KEANE  
ERIC ORTIZ  
Attorneys for Defendant  
DOMINO'S PIZZA LLC

# **EXHIBIT A**

1 DESAI LAW FIRM, P.C.  
2 Aashish Y. Desai, Esq. (SBN 187394)  
3 Adrienne De Castro, Esq. (SBN 238930)  
4 3200 Bristol St., Suite 650  
5 Costa Mesa, CA 92626  
6 Telephone: (949) 614-5830  
7 Facsimile: (949) 271-4190  
8 aashish@desai-law.com  
9 adrienne@desai-law.com

10 Attorneys for Plaintiffs

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**10/23/18**  
Clerk of the Superior Court  
By S. Loose, Deputy Clerk

11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF ORANGE, CIVIL COMPLEX CENTER**

13 EDDIE SILVA on behalf of himself and all others )  
14 similarly situated, )

15 Plaintiffs, )

16 v. )

17 DOMINO'S PIZZA, a Michigan Corporation, and )  
18 DOES 1-10, inclusive, )

19 Defendants. )

CASE NO.:  
30-2018-01027517-CU-OE-CXC

**CLASS ACTION COMPLAINT FOR:**

- (1) Violation of California Private Attorney General Act, ("PAGA")
- (2) Failure to Provide Meal Breaks
- (3) Failure to Provide Rest Breaks
- (4) Failure to Separately Pay All Wages for Work Performed
- (5) Failure to Reimburse for Work Expenses
- (6) Failure to Issue Accurate Itemized Wage Statements
- (7) Waiting Time Penalties
- (8) Unfair Business Practices Under the UCL

DEMAND FOR JURY TRIAL

Assigned: Judge William Claster  
Dept: CX104



1 Plaintiff Eddie Silva, on behalf of himself and all others similarly situated ("Plaintiff"),  
2 hereby file this Complaint against Defendant Domino's Pizza ("Domino's") and DOES 1-10  
3 (hereinafter collectively referred to as "Defendants"). Plaintiff brings this action against  
4 Defendant for its failure to separately pay Plaintiff and other drivers for performing certain work,  
5 including work done before and after shifts and mandatory meetings and trainings; its failure to  
6 provide meal breaks; its failure to provide rest breaks; its failure to reimburse employees for work  
7 expenses; its failure to provide accurate itemized wage statements; and its failure to pay  
8 Plaintiff's wages due upon termination of employment. As a result, Defendants have violated  
9 California statutory law as described below.

10 **PARTIES TO THE ACTION**

11 1. Plaintiff Eddie Silva has worked as a truck driver for Domino's Pizza from  
12 October 2005 – March 28, 2018 delivering products, including dough balls to Defendant's  
13 various pizza stores. He is and was a resident of the County of Riverside, State of California, at  
14 all relevant times including within the four years preceding the filing of this Complaint.  
15 Throughout the time he worked for Domino's Pizza, he spent most of his time driving routes in  
16 California and drove routes through and in Orange County and the Los Angeles area.

17 2. Defendant Domino's Pizza, LLC is a limited liability company organized under  
18 the law of the State of Michigan. Domino's operates as a pizza delivery company in the United  
19 States. As of 2018, it operates approximately 14,800 stores in approximately 85 markets. It is  
20 headquartered in Ann Arbor, Michigan. Domino's also operates as a transportation services  
21 company, of sorts, providing delivery services for its individual businesses throughout the nation,  
22 including California. Domino's employs hundreds of truck drivers in California and receives  
23 income from doing business in California.

24 3. The true names and capacities of Defendants DOES 1 to 10 are unknown to  
25 Plaintiff who will amend this complaint to allege such names and capacities as soon as they are  
26 ascertained. Each Defendant designated herein as DOE is in some manner legally responsible for  
27 the unlawful acts and damages alleged herein.  
28

GENERAL ALLEGATIONS

1  
2 4. Plaintiff Eddie Silva worked for Domino's Pizza, LLC as truck driver out of the  
3 Riverside County facility. The primary function of Domino's truck drivers is to drive a  
4 truck/trailer for the purpose of delivering and unloading various products (cheese, boxes, trays,  
5 meats, dough, sauce, etc). From a nationwide network of 16 supply chain centers, Domino's  
6 supports its individual stores with more than 200 different products. Delivery and Service drivers  
7 drive a truck, usually over an established route, to deliver these products to Domino's stores.

8 5. Each driver is required to perform all pre-trip duties, including reviewing driver  
9 manifests, counting and checking customer invoices of products that have been loaded, moving  
10 tractors to the loading dock to attach preloaded trailers, completing required trailer temperature  
11 checks, and performing pre-trip safety inspections according to DOT regulations. Next, each  
12 driver is required to drive to and deliver customer's orders and maintain adequate productivity  
13 rates to meet strict delivery schedules. Then, each driver must visually survey a customer's site  
14 during the approach to determine hazards. The drivers unload products from the trailer with a  
15 hand truck or by hand and place items in designated customer storage areas and verify delivery of  
16 correct items from the invoice and collect money (checks) where required. Sometimes, the  
17 drivers drive backhauls, which require picking up product from vendors and returning them to the  
18 warehouse for receiving while "staying within DOT Hours of Service." Drivers are required to  
19 attend company meetings. Drivers perform all post-trip responsibilities, including unloading  
20 damaged goods and customer returns and completing necessary paperwork, performing safety  
21 checks on the truck and trailer, completing DOT logs, and completing company vehicle  
22 maintenance reports (DVIR).

23 6. Domino's does not pay its drivers for any of this work. Plaintiff and other truck  
24 drivers were all paid the same: piece-rate compensation based on the number of miles and the  
25 weight of the load they carry. Thus, when the wheels are not rolling, they are not earning  
26 compensation.  
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1 trip and post-trip duties (which takes approximately 30 mins to an hour to complete before and  
2 after their shifts); performing visually surveys of customer sites; unloading products and verifying  
3 deliveries; driving backhauls; attending company meetings including safety meetings at least 4-6  
4 times per year; and waiting time on routes (i.e. time spent waiting to unload and deliver product).

5       b. Inaccurate Miles: In addition, Domino's also does not pay Plaintiff and other truck  
6 drivers for all the miles they drive. While Domino's compensation formula is based on miles  
7 driven (and weight which is constant), Domino's did not accurately compute those miles. Nor did  
8 Domino's adequately pay for the "tray" service it expected its drivers to perform. Domino's  
9 often mandates that its drivers pick-up empty trays from customer sites, but provide inadequate or  
10 no compensation for this task. Domino's would often short-change its drivers because it  
11 calculated mileage based on the distance to a city's post office, rather than a driver's final  
12 destination.

13       c. Unpaid Rest Breaks: Domino's also does not separately pay its drivers for rest breaks  
14 because its piece rate system of compensation (based on miles and weight) does not, by  
15 definition, provide payment for such breaks. This is illegal under Labor Code § 226.2; *See also*  
16 *Bluford v. Safeway Stores Inc.*, 216 Cal.App.4th 864 (2013) (holding that trucking company was  
17 required to separately compensate employees for rest breaks where the employer uses an activity-  
18 based compensation system that does not directly pay for rest breaks).

19       **Unlawful Failure to Provide Uninterrupted Off-Duty Meal and Rest Period**

20       12. Plaintiff and other drivers were regularly compelled to work in excess of five and  
21 ten hours a day without being afforded at least half-hour meal periods in which they were  
22 completely relieved of all duties as required by Labor Code § 226.7 and Wage Order 9-2001. The  
23 Plaintiff and other drivers were also regularly permitted and compelled to work over a four-hour  
24 period (or a major fraction thereof) without Domino's authorizing and permitting them to take  
25 paid ten-minute rest periods in which they were completely relieved of all their duties as required  
26 by Labor Code § 226.7.

27       The piece-rate compensation scheme, along with delivery schedules and internal timing  
28 requirements caused drivers to routinely miss both meal and rest breaks. Domino's would

1 encourage its driver to “paper over” meal breaks by simply listing that they took them on log  
2 books -- knowing that it was virtually impossible to take timely, routine breaks. The schedule  
3 simply didn’t allow for that. The difficulty of finding a place to park the massive tractor/trailers  
4 also discouraged timely and regular breaks.

5 **Unlawful Failure to Indemnify Employees for Necessary Expenditures**

6 13. Labor Code § 2802 requires employers indemnify its employees for necessary  
7 expenditures incurred by the employee in direct consequence of the discharge of his or her duties,  
8 or of his or her obedience to the directions of the employer. Domino’s required its drivers to  
9 purchase cell phones to communicate with and be available for Domino’s. Defendant failed and  
10 continues to fail to indemnify the Plaintiff and other drivers for the cost of these cell phones  
11 which were required for work.

12 **Failure to Furnish Accurate Wage Statements**

13 14. Labor Code § 226(a) requires employers to furnish each employee with a  
14 statement that accurately reflects gross wages earned, the total number of hours worked, and the  
15 net wages earned. Labor Code § 226(b) provides that if an employer fails to provide a statement  
16 itemizing, *inter alia*, the total hours worked by the employee, then the employee is entitled to  
17 recover the greater of all actual damages or \$50.00 for the initial violation and \$100.00 for each  
18 subsequent violation, up to \$4,000.00.

19 Domino’s intentionally failed to furnish and continue to intentionally fail to furnish each  
20 Plaintiff with timely, itemized statements that accurately reflect the gross wages earned, the total  
21 number of hours worked and the net wages earned as required. In particular, Domino’s fails to  
22 include its drivers’ piece rate, or actual hours worked directly on the paystubs.

23 **Waiting Time Penalties**

24 15. Labor Code § 201 requires an employer who discharges an employee to pay  
25 compensation due and owing to the employee immediately upon discharge. Labor Code § 202  
26 requires an employer to promptly pay compensation due and owing within 72 hours of that  
27 employee’s termination of employment by resignation or otherwise. California Labor Code § 203  
28 provides that if an employer willfully fails to pay compensation promptly upon discharge or

1 resignation, then the employer is liable for waiting time penalties in the form of continued  
2 compensation up to 30 workdays.

3 Domino's failed and refused, and continues to willfully fail and refuse, to timely pay  
4 compensation and wages, including unpaid wages and meal and rest break premium pay to the  
5 Plaintiff and other drivers whose employment terminated as required. As a result, Domino's is  
6 liable for waiting time penalties, together with interest and attorneys' fees and costs under  
7 California Labor Code § 203.

8 **Failure to Keep Required Payroll Records**

9 16. Domino's has violated Wage Order 9-2001, California Labor Code §§ 226 and  
10 1174 by willfully failing to keep required payroll records showing the actual hours worked on a  
11 daily basis by the Plaintiffs. Domino's is liable for civil penalties pursuant to California Labor  
12 Code §§ 1174.5 and 2698 in the amount of \$500.00 per violation.

13 **JURISDICTION AND VENUE**

14 17. Plaintiff was an employee of Domino's within the State of California and was  
15 subject to the unlawful policies at some point during the past four years.

16 18. This Court has jurisdiction over Plaintiff's California Labor Code claims. This  
17 Court has jurisdiction over Plaintiff's claims for restitution of unpaid wages and other ill-gotten  
18 benefits arising from Domino's unlawful and/or unfair business practices under California's  
19 Business & Professions Code §§ 17200 *et seq.*

20 19. The California Superior Court has jurisdiction of this matter because both the  
21 individual and aggregate monetary damages and restitution sought in this action exceed the  
22 minimum jurisdictional limits of the Superior Court and will be established at trial, according to  
23 proof. Plaintiff is informed and believe, however, that their wage claims against the Defendant  
24 are not worth more than \$5,000,000 in the aggregate and no plaintiff or putative class member has  
25 a wage claim that is worth more than \$75,000 individually. Thus, even though the Plaintiff and  
26 Defendant are from different states, the Complaint is not subject to removal under the Class  
27 Action Fairness Act of 2005 or traditional diversity laws.  
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**THE ARBITRATION AGREEMENT IS NOT ENFORCEABLE**

20. Plaintiffs do not know if a valid arbitration agreement exists. If one does exist, it is not enforceable.

21. From a nationwide network of supply chain centers, Domino's supports its individual stores with more than 200 different products. Thus, a significant portion of Domino's business involves the transportation of its products across state lines. In the event that Domino's argues that an individual arbitration agreement applies, it would be incorrect. *See Garrido v. Air Liquide Industrial U.S.*, 194 Cal.Rptr.3d 297 (Cal. Ct. App. 2015) (declining to enforce arbitration clause finding the FAA did not apply to interstate truck drivers because transportation workers' employment agreements are exempt from the FAA, even when the agreements say otherwise).

**CLASS ACTION ALLEGATIONS**

22. This action is maintainable as a class action pursuant to California Code of Civil Procedure § 382 as to claims for unpaid wages, unpaid rest breaks, the failure to provide meal breaks, the failure to provide rest breaks, the failure to indemnify certain necessary work expenditures, the failure to issue accurate itemized paystubs, and the failure to timely pay former employees. The Business & Professions Code § 17200 claim is based upon three theories: (i) unfair conduct as a result of the anti-competitive actions of Defendant, (ii) fraudulent behavior of Defendant as defined by the UCL, and (iii) the unlawful failure to comply with the California Labor Code. Plaintiff is representative of those other employees and is acting on behalf of their interests. These similarly situated employees are known to Defendant and are readily identifiable and locatable through Defendant's own employment records. Defendant can easily identify which employees resided in California and those employees who spent time sleeping in sleeper berths.

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23. Plaintiff identifies the following class:

**All California drivers who performed work for Domino's under its piece-rate compensation scheme from four (4) years prior to the filing of this Complaint to the date of final disposition.**

24. Plaintiff reserves the right under Rule 1855(b) of the California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

**NUMEROSITY OF CLASS**

25. The employees identified in the above classes identified above are so numerous that joinder of all members is impracticable. Although the precise number of such employees is unknown, the Plaintiff believes that over 100 employees would fall within the putative Class. The exact number is easily ascertained from Defendant's own employment records, which are presently within the control of Defendant. Furthermore, upon application by Plaintiff's counsel for certification of the Class, the Court may be requested to also incorporate or amend the sub-Classes in the interest of justice and judicial economy.

**EXISTENCE AND PREDOMINANCE OF COMMON QUESTIONS OF FACT AND LAW**

26. Common questions of law and fact exist as to the class members that predominate over any questions only affecting them individually and include, but are not limited to, the following:

- i. Whether Defendant violated California Labor Code § 204 and 1197 by failing to separately pay its drivers non-driving work;
- ii. Whether Domino's violated Labor Code § 226.2 for failing to separately pay its drivers for rest breaks;
- iii. Whether Domino's violated Labor Code §§ 226.7 and 512 by failing to afford (or discouraging) driver from taking their proper meal and rest periods;





1 violation, \$100.00 for each Plaintiff for each pay period during which the Plaintiff was not  
2 provided wages for all the work performed, including separate payment for rest breaks.

3 37. For its failure to provide uninterrupted off-duty meal and rest periods, Domino's is  
4 liable to all Plaintiffs for one hour of additional pay at the regular rate of compensation for each  
5 workday that the full and uninterrupted, off-duty rest and meal period were not provided.  
6 Domino's is also liable for civil penalties pursuant to Labor Code §§ 558 and 2699 as follows: for  
7 any initial violation, \$50.00 for each Plaintiff for each pay period during which the Plaintiff was  
8 not provided proper meal and rest breaks; and for each subsequent violation, \$100.00 for each  
9 Plaintiff for each pay period during which the Plaintiff was not provided proper meal and rest  
10 breaks.

11 38. For Domino's failure to indemnify Plaintiff and the Class for certain expenditures  
12 required for work, the Plaintiff and the Class are entitled to recover such amounts, plus interest  
13 thereon, attorney's fees and costs. Domino's is also liable for civil penalties pursuant to Labor  
14 Code §§ 558 and 2699 as follows: For any initial violation, \$50.00 for each Plaintiff for each pay  
15 period during which the Plaintiff was not paid for all necessary expenditures; and for each  
16 subsequent violation, \$100.00 for each Plaintiff for each pay period during which the Plaintiff  
17 was not paid for all necessary expenditures.

18 39. For Domino's failure to furnish accurate wage statements, Plaintiff and the Class  
19 are entitled to recover the greater of all actual damages or \$50.00 for the initial violation and  
20 \$100.00 for each subsequent violation, up to \$4,000.00. Domino's is additionally liable for civil  
21 penalties pursuant to Labor Code §§ 226.3 and 2699 in the amount of \$250.00 for each Plaintiff  
22 per initial violation and \$1,000.00 for each Plaintiff per subsequent violation.

23 40. For Domino's failure to keep accurate payroll records, Domino's is liable for civil  
24 penalties pursuant to California Labor Code §§ 1174.5 and 2699 in the amount of \$500.00 per  
25 violation.

26 41. For Domino's failure pay its former driver employees all wages due, Domino's is  
27 liable for waiting time penalties, together with interest and attorneys' fees and costs under  
28 California Labor Code § 203.



1 53. Throughout the liability period for the proposed classes, Defendant failed to  
2 inform or advise its drivers of their right to take meal breaks under California law. In fact,  
3 Defendant did not schedule meal breaks and did not inform drivers how to take them.

4 54. As a result of Defendant’s failure to advise and inform its employees of their right  
5 to take meal breaks, Defendant is liable to Plaintiff for one hour of additional pay at the regular  
6 rate of compensation for each workday that Defendant did not advise its drivers of their right to  
7 take meal breaks, pursuant to California Labor Code § 226.7.

8 55. Plaintiff also seeks attorneys’ fees and costs for vindicating a public interest in  
9 pursuing these rest period claims, under California Code of Civil Procedure § 1021.5.

10  
11 **FOURTH CAUSE OF ACTION**  
12 **FAILURE TO PROVIDE REST BREAKS**  
13 (California Labor Code §§ 226.7)

14 56. Plaintiff and the Class incorporates by reference in this cause of action each  
15 allegation of the preceding paragraphs as though fully set forth herein.

16 57. Plaintiff and the Class Members regularly worked more than three and one-half  
17 hours in a day without being authorized and permitted to take a 10-minute duty-free rest period,  
18 and regularly worked more than six hours in a day without being authorized and permitted to take  
19 two, 10-minute duty-free rest periods per four hours or major fraction thereof, as required under  
20 Cal. Labor Code § 226.7. Domino’s piece-rate compensation scheme, along with delivery  
21 scheduled and timing requires caused drivers to routine miss meal breaks.

22 58. As a result of Defendant’s failure to afford proper rest periods, it is liable to the  
23 Plaintiff and Class Members for one hour of additional pay at the regular rate of compensation for  
24 each workday that the proper rest periods were not provided, pursuant to Cal. Labor Code § 226.7  
25 and Wage Order No. 9-2001, § 12(b). Upon information and belief, Defendants never paid such  
26 premiums to Plaintiffs and the Class Members. Plaintiff and the Class Members are entitled to  
27 interest, applicable penalties, and attorneys’ fees and costs.  
28

1 59. Plaintiff also seeks attorneys' fees and costs for vindicating a public interest in  
2 pursuing these rest period claims, under California Code of Civil Procedure § 1021.5.

3  
4 **FIFTH CAUSE OF ACTION**  
5 **FAILURE TO INDEMNIFY FOR ALL NECESSARY EXPENDITURES**  
6 (California Labor Code § 2802)

7 60. Plaintiff and the Class incorporates by reference in this cause of action each  
8 allegation of the preceding paragraphs as though fully set forth herein.

9 61. Throughout the liability period, Domino's required Plaintiff and its drivers to  
10 purchase cell phones to communicate with and be available for Domino's. Domino's failed to  
11 indemnify the Plaintiff and other drivers for the cost of these cell phones.

12 62. Labor Code § 2802 requires an employer to indemnify his or her employee for all  
13 necessary expenditures or losses incurred by the employee in direct consequence of the discharge  
14 of their duties.

15 63. By failing to indemnify its drivers for the purchase of these cell phones, Defendant  
16 has violated Cal. Labor Code § 2802. As a direct and proximate result of Defendant's conduct,  
17 Plaintiff and other similarly-situated drivers have suffered substantial losses according to proof,  
18 as well as pre-judgment interest, costs, and attorney fees for the prosecution of this action.

19 64. Plaintiff, on behalf of himself and similarly situate drivers, request relief as  
20 described below.

21 **SIXTH CAUSE OF ACTION**  
22 **FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS**  
23 (California Labor Code §§ 226(a), 226(b), 226(e))

24 65. Plaintiff and the Class incorporates by reference in this cause of action each  
25 allegation of the preceding paragraphs as though fully set forth herein.

26 66. California Labor Code § 226(a) requires that employers semi-monthly or at the  
27 time of each payment of wages to furnish each employee with a statement that accurately reflects  
28 the total number of hours worked. California Labor Code § 226(a)(2)(A) further requires that the  
itemized statement shall, in addition to the other items specified in that subdivision, separately

1 state the following the total hours of compensable rest and recovery periods, the rate of  
2 compensation, and the gross wages paid for those periods during the pay period.

3 67. Labor Code § 226(e) provides that if an employer knowingly and intentionally  
4 fails to provide a statement itemizing, *inter alia*, the total hours worked by the employee, then the  
5 employee is entitled to recover the greater of all actual damages or \$50 for the initial violation  
6 and \$100 for each subsequent violation, up to \$4000.

7 68. Domino’s wage statements are woefully inadequate in this regard. Domino’s  
8 knowingly and intentionally failed to furnish, and continues to knowingly and intentionally fail to  
9 furnish, Plaintiff and the Class with timely, itemized statements that accurately reflect the total  
10 number of hours worked, nor do they include the rate of pay, or a break-down of the flat daily rate  
11 paid to its drivers or any information regarding compensable rest or recovery periods as required  
12 by Labor Code § 226(a).

13 69. Plaintiff thus seek the amounts provided in Labor Code § 226(e) for the three-year  
14 period prior to the filing of this Complaint, up to and including the present, plus interest, and  
15 attorneys’ fees and costs, as well as all other legal and equitable relief such as a court may find  
16 just and proper.

17 70. Indeed, Domino’s paystub policy was not an “isolated and unintentional payroll  
18 error due to a clerical or inadvertent mistake.”

19  
20 **SEVENTH CAUSE OF ACTION**  
21 **LATE PAY AND WAITING TIME PENALTIES**  
22 (Cal. Labor Code §§ 200-203)

23 71. Plaintiff and the Class incorporate by reference in this cause of action each  
24 allegation of the preceding paragraphs as though fully set forth herein.

25 72. California Labor Code §§ 201 and 202 require an employer to pay its employees  
26 all wages due within the time specified by law. Labor Code § 203 provides that if an employer  
27 willfully fails to pay such wages, the employer must continue to pay the subject employees’  
28

1 wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty  
2 days of wages.

3 73. Plaintiff and Class Members who ceased employment with Defendant are entitled  
4 to unpaid compensation, but to date have not received such compensation for unpaid non-driving  
5 work, and rest periods.

6 74. More than thirty days have passed since Plaintiff left Defendant's employment.  
7 Defendant willfully failed to pay any overtime, or any meal or rest period premiums.

8 75. As a consequence of Defendant's willful failure to timely compensate Plaintiff and  
9 the proposed Class for all hours worked and all rest breaks, the Plaintiff and Class Members whose  
10 employment ended during the applicable Class Period are entitled to thirty days' wages under  
11 Labor Code § 203, together with interest thereon and attorneys' fees and costs, including and  
12 attorneys' fees and costs for vindicating a public interest in pursuing these late pay claims, under  
13 California Code of Civil Procedure § 1021.5.

14  
15 **EIGHTH CAUSE OF ACTION**  
16 **UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES**  
(California Business and Professions Code Section 17200, et seq.)

17 76. Plaintiff and the Class incorporate by reference in this cause of action each  
18 allegation of the preceding paragraphs as though fully set forth herein.

19 77. Labor Code § 90.5(a) articulates the public policy of this State to vigorously  
20 enforce minimum labor standards, including the requirements to separately compensate for all  
21 non-piece rate work and rest breaks pursuant to Labor Code § 226.2; to reimburse employees for  
22 all necessary expenditures under Labor Code § 2802; to provide adequate meal and periods  
23 pursuant to Labor Code §§ 226.7 and 512; to provide accurate itemized wage statements and  
24 keep payroll records pursuant to Labor Code §§ 226, 226.2; and to pay all wages due upon  
25 termination of employment under California Labor Code §§ 201 and 202. Domino's conduct of  
26 failing to separately pay for all hours worked include rest breaks, failure to provide meal and rest  
27 breaks, failure to reimburse its employees for necessary expenditures, allowing its employees to  
28 work without providing accurate itemized wages statements, and failing maintain accurate

1 records directly violate state law, constitute and was intended to constitute unfair competition and  
2 unlawful and unfair acts and practices within the meaning of the UCL.

3 78. Defendant’s numerous violations of California law, as well as the other statutory  
4 and regulatory violations alleged herein, constitute unlawful business actions and practices in  
5 violation of Business and Professions Code § 17200, et seq.

6 79. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff and the  
7 proposed Classes are entitled to restitution of the unpaid wages, unpaid rest breaks, unreimbursed  
8 expenditures, among other relief alleged herein, that were withheld and retained by Defendant  
9 during a period that commences four years prior to the filing of this action.

10 80. Plaintiff further seeks injunctive relief under the UCL to enjoin Defendant’s  
11 unfair, lawful, and deceptive practice of failing to compensate its employees according to law.  
12 Plaintiff may pursue these injunctive claims without complying with class certification  
13 requirements. *McGill v. Citibank, N.A.*, \_\_ Cal.5th \_\_ (Slip op at 13-14) (April 6, 2017).

14 81. Plaintiff also requests an award of attorneys’ fees and costs pursuant to Code of  
15 Civil Procedure § 1021.5 and other applicable law, and costs.

16  
17 **REQUEST FOR RELIEF**

18 1. WHEREFORE, Plaintiff, on behalf of himself and the proposed class, request  
19 judgment and the following specific relief against Defendant as follows:

20 2. That the Court determine that this action may be maintained as a class action under  
21 Code of Civil Procedure § 382;

22 3. That Defendant is found to have violated the above-referenced provisions of the  
23 California Labor Code and IWC Wage Order 9 as to Plaintiff and the Class;

24 4. That the Court find that Domino’s has violated the record-keeping provisions of  
25 Labor Code §§ 226 and 1174(d) as to Plaintiff and the Class;

26 5. That the Court find that Domino’s has violated California Labor Code §§ 226.7  
27 and 512, and Wage Order No. 9-2001 by failing to afford Plaintiff and the Class full and  
28 uninterrupted off-duty meal and rest periods or compensation in lieu thereof;



1           6.       That the Court find Domino's violated California Labor Code §§ 204, 1197, 1198,  
2 226.2 and Wage Order No. 9-2001 by failing to compensate Plaintiff and the Class for all the  
3 work they performed for Defendant and by failing to separately compensate Plaintiff and the  
4 Class for rest breaks;

5           7.       That the Court find that Domino's has violated California Labor Code § 226 by  
6 failing to timely furnish Plaintiff and the Class itemized statements accurately showing the total  
7 hours worked by each of them;

8           8.       That the Court find that Domino's has violated Labor Code §§ 201, 202, and 203  
9 for willful failure to pay all compensation owed at the time of termination of employment to  
10 Plaintiff and the class;

11          9.       That the Court find that Domino's has violated Labor Code § 2802 for its failure to  
12 reimburse Plaintiff and the Class for all necessary expenditures;

13          10.      That the Court find that Domino's has violated Business & Professions Code  
14 § 17200 by failing to pay all wages due, failing to separately compensate for rest breaks, failing to  
15 reimburse for all necessary expenditures, failing to keep proper time records, by failing to afford  
16 Plaintiff and the Class full and uninterrupted off-duty meal and rest periods, and by failing to  
17 timely furnish Plaintiff and the Class with statements accurately showing total hours worked;

18          11.      That the Court find that Defendant has violated the Private Attorney General Act,  
19 Cal. Labor Code § 2699, *et seq.* for all aggrieved employees by failing to keep proper time  
20 records, by failing to afford Plaintiff and the Class full and uninterrupted off-duty meal and rest  
21 periods, by failing to pay Plaintiff and the Class all wages due, and by failing to timely furnish  
22 Plaintiff and the Class with statements accurately showing total hours worked, and failing to  
23 reimburse Plaintiff and the Class for all necessary expenditures;

24          12.      That the Court find that Defendant's violations as described have been willful;

25          13.      That the Court award to Plaintiff and all aggrieved employees damages and  
26 restitution for all wages earned by Plaintiffs including for missed meal and rest periods; work  
27 performed without compensation; and damages for failure to timely furnish statements accurately  
28 showing total hours worked and penalties subject to proof at trial;

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14. That the Court impose penalties against Defendant on behalf of all aggrieved employees according to the Private Attorney General Act;

15. That Defendant be ordered and enjoined to pay restitution to Plaintiffs due to Defendant's unlawful and/or unfair activities, pursuant to Business & Professions Code §§ 17200-17205;

16. That Domino's further be enjoined to cease and desist from unlawful and/or unfair activities in violation of Business & Professions Code § 17200, pursuant to Section 17203;


17. That Plaintiff and the Class be awarded reasonable attorneys' fees and costs pursuant to Labor Code § 2699, Civil Procedure Code § 1021.5, and/or other applicable law; and

18. That the Court award such other and further relief as this Court may deem appropriate.

Dated: October 23, 2018

DESAI LAW FIRM, P.C.

By: \_\_\_\_\_


  
Aashish Y. Desai  
Adrienne DeCastro  
Attorneys for Plaintiffs

Plaintiffs demand trial by jury on all issues so triable.

Dated: October 23, 2018

DESAI LAW FIRM, P.C.

By: \_\_\_\_\_

  
Aashish Y. Desai  
Adrienne DeCastro  
Attorneys for Plaintiffs

# EXHIBIT 1

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
 Aashish Y. Desai, Esq. (SBN 187394)  
 Desai Law Firm, P.C.  
 3200 Bristol Street, Suite 650  
 Costa Mesa, CA 92626  
 TELEPHONE NO.: 949-614-5830 FAX NO.: 949-271-4190  
 ATTORNEY FOR (Name): Plaintiff Eddie Silva

FOR COURT USE ONLY  
**ELECTRONICALLY FILED**  
 Superior Court of California,  
 County of Orange  
**10/23/18**  
 Clerk of the Superior Court  
 By S. Loose, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE  
 STREET ADDRESS: 751 W Santa Ana Blvd  
 MAILING ADDRESS:  
 CITY AND ZIP CODE: Santa Ana 92701  
 BRANCH NAME: Civil Complex Center

CASE NAME:  
 Eddie Silva v. Domino's Pizza, a Michigan Corporation, et al.

**CIVIL CASE COVER SHEET**  
 **Unlimited** (Amount demanded exceeds \$25,000)  
 **Limited** (Amount demanded is \$25,000 or less)

**Complex Case Designation**  
 **Counter**  **Joinder**  
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 30-2018-01027517-CU-OE-CXC  
 JUDGE: Judge William Claster  
 DEPT: CX104

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:


<p><b>Auto Tort</b></p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p><b>Other P/IPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b></p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/W/D (23) <p><b>Non-P/IPD/W/D (Other) Tort</b></p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/IPD/W/D tort (35) <p><b>Employment</b></p> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<p><b>Contract</b></p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p><b>Real Property</b></p> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p><b>Unlawful Detainer</b></p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p><b>Judicial Review</b></p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b></p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p><b>Enforcement of Judgment</b></p> <input type="checkbox"/> Enforcement of judgment (20) <p><b>Miscellaneous Civil Complaint</b></p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p><b>Miscellaneous Civil Petition</b></p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties  | d. <input checked="" type="checkbox"/> Large number of witnesses   |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive
4. Number of causes of action (specify): Eight (8)
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 24, 2018  
 Aashish Y. Desai

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)



**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**SUMMONS  
(CITACION JUDICIAL)**

**SUM-100**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange

**10/23/18**

Clerk of the Superior Court  
By S. Loose, Deputy Clerk

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

Domino's Pizza, a Michigan Corporation, and DOES 1-10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Eddie Silva, on behalf of himself and all others similarly situated

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentados por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Orange County  
Superior Court of California, Civil Complex Center,  
751 W Santa Ana Blvd, Santa Ana, CA 92701

CASE NUMBER:  
(Número del Caso):  
30-2018-01027517CU-OE-CXC

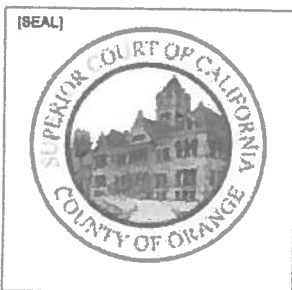
Judge William Cluster

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Aashish Y. Desai, Esq., Desai Law Firm PC, 3200 Bristol St., Ste. 650, Costa Mesa, CA 92626, 949-614-5830

DATE: 10/23/18  
(Fecha)

David H. Yamasaki, Clerk of the Court  
Clerk, by \_\_\_\_\_, Deputy  
(Secretario) *S. Loose* (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)). **S. Loose**



**NOTICE TO THE PERSON SERVED: You are served**

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): Domino's Pizza, a Michigan Corporation  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
- by personal delivery on (date):

1 MARGARET KEANE (Bar No. 255378)  
margaret.keane@dlapiper.com  
2 ERIC A. ORTIZ (Bar No. 291618)  
eric.ortiz@dlapiper.com  
3 DLA PIPER LLP (US)  
555 Mission Street, 24th Floor  
4 San Francisco, California 94105  
Tel: 415.836.2500  
5 Fax: 415.836.2501

6 Attorneys for Defendant,  
DOMINO'S PIZZA, LLC  
7

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 EDDIE SILVA on behalf of himself  
11 and all others similarly situated,

12 Plaintiff,

13 v.

14 DOMINO'S PIZZA, a Michigan  
15 Corporation, and DOES 1-10,  
inclusive.

16 Defendants.  
17  
18

CASE NO.

**DECLARATION OF STACEY  
RODRIGUEZ IN SUPPORT OF  
DEFENDANT DOMINO'S PIZZA  
LLC'S NOTICE OF REMOVAL  
AND REMOVAL OF ACTION**

[28 U.S.C. §§ 1332, 1441, 1446]

Complaint Filed: October 23, 2018  
Complaint Served: October 31, 2018

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**DECLARATION OF STACEY RODRIGUEZ**

I, Stacey Rodriguez, declare as follows:

1. I am employed by Domino's Pizza LLC as a Senior Paralegal. I make this declaration in support of the Notice of Removal filed by Domino's Pizza LLC in the matter of *Eddie Silva v. Domino's Pizza LLC*. I have personal knowledge of the matters set forth herein and, if called as a witness, I could and would testify competently thereto.

2. As a Senior Paralegal, I have access to and am familiar with business records related to Domino's Pizza LLC, including those related to the membership of Domino's Pizza LLC.

3. Domino's Pizza LLC is a Michigan limited liability company having its principal place of business in Ann Arbor, Michigan. Domino's, Inc. is the sole member of Domino's Pizza LLC.

4. Domino's, Inc. is a Delaware corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate headquarters in Ann Arbor, Michigan. Domino's, Inc. is fully owned by Domino's Pizza, Inc.

5. Domino's Pizza, Inc. is a Delaware corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate headquarters in Ann Arbor, Michigan. Domino's Pizza, Inc. is publicly traded.

6. As set forth above, Domino's Pizza LLC has no member residents in the State of California.

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I, Stacey Rodriguez, declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed this 30<sup>th</sup> day of November, 2018 at Ann Arbor, Michigan.



Stacey Rodriguez



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Domino's Pizza Truck Drivers Owed for Unpaid Non-Driving Work](#)

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