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18 Class Counsel

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF LOS ANGELES

19 BRIAN BEHAJEN, BORIS GNEZDILOV,
20 RAQUEL CRUZ, AND BERSAYNA
21 CLEMENTE, on Behalf of Themselves and All
22 Others Similarly Situated,

23 Plaintiffs,

24 vs.

25 PIZZA HUT, Inc.,

26 Defendant.

Case No. BC384563

Assigned for all purposes to Dept. 307

CLASS ACTION _____

FIFTH AMENDED COMPLAINT

1. FAILURE TO PROVIDE REQUIRED MEAL PERIODS

2. FAILURE TO PROVIDE REQUIRED REST PERIODS

3. FAILURE TO PAY OVERTIME COMPENSATION

4. FAILURE TO PAY MINIMUM WAGES

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5. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED OR QUITTING EMPLOYEES

6. FAILURE TO MAINTAIN REQUIRED RECORDS

7. FAILURE TO INDEMNIFY EMPLOYEES FOR ALL NECESSARY EXPENDITURES OR LOSSES INCURRED;

8. FAILURE TO PAY REPORTING TIME WAGES

9. CIVIL PENALTIES (LABOR CODE § 2699)

10. UNFAIR BUSINESS PRACTICES

11. FAIR LABOR STANDARDS ACT (29 U.S.C. §201 *et seq.*)

DEMAND FOR JURY TRIAL

FILED PURSUANT TO ORDER GRANTING PRELIMINARY APPROVAL (JULY 21, 2016)

Complaint Filed: January 29, 2008

1 PLAINTIFFS hereby allege as follows:

2 **JURISDICTION**

3 1. This Court is the proper court, and this action is properly filed in the Superior Court
4 of the State of California, County of Los Angeles, because DEFENDANTS maintain offices and
5 facilities and transact business in the County of Los Angeles, and because DEFENDANTS' illegal
6 payroll policies and practices which are the subject of this action were applied, at least in part, to
7 PLAINTIFFS in the County of Los Angeles.

8 **PLAINTIFFS**

9 2. PLAINTIFFS BRIAN BEHAEIN, BERSAYNA CLEMENTE, RAQUEL CRUZ,
10 and BORIS GNEZDILOV ("NAMED PLAINTIFFS") on behalf of themselves and other similarly
11 situated current and former employees in the State of California (collectively "PLAINTIFFS") of
12 PIZZA HUT, INC. dba Pizza Hut and DOES 1-100 (collectively "DEFENDANTS"), bring this
13 Class Action to recover, among other things, unpaid wages earned and due, penalties accruing
14 thereon, interest accruing thereon, attorneys' fees, costs, and expenses, all incurred as a result of
15 DEFENDANTS' illegal and unlawful policies with respect to payment of minimum wage and
16 overtime compensation, meal periods and rest breaks, maintenance of required records,
17 reimbursement for travel expenses and uniforms, and reporting time pay. PLAINTIFFS reserve the
18 right to name additional class representatives.

19 3. PLAINTIFFS are current and former non-exempt employees of DEFENDANTS,
20 who held the position of, among others, drivers and production employees (also referred to as
21 "cooks"), for a period of time within the four (4) years preceding the filing of this action.

22 **DEFENDANTS**

23 4. At all relevant times alleged herein, PLAINTIFFS are informed and believe, and
24 thereon allege that DEFENDANT PIZZA HUT, INC. dba Pizza Hut ("PIZZA HUT")¹, is, and at
25 all times relevant hereto was, a corporation organized and existing under the laws of the State of
26 California, and doing business in the State of California with offices and facilities throughout

27 ¹ On May 20, 2016, Pizza Hut, Inc. merged with Pizza Hut, LLC. and ceased to be existing entity.
28 Pizza Hut, LLC, however, has assumed all of Pizza Hut, Inc.'s rights and obligations.

1 California. PLAINTIFFS are further informed and believe, and thereon allege, that DEFENDANT
2 PIZZA HUT is authorized to conduct business in the State of California, and does conduct business
3 in the State of California. Specifically, DEFENDANT PIZZA HUT maintains offices and facilities
4 and conducts business in, and engages in illegal payroll practices or policies in counties throughout
5 California, including the County of Los Angeles, State of California.

6 5. The true names and capacities of DOES 1 through 100 inclusive, are unknown to
7 PLAINTIFFS, who therefore sue said DOE DEFENDANTS by fictitious names pursuant to Code
8 of Civil Procedure Section 474. PLAINTIFFS will amend this Complaint to show their true names
9 and capacities when they have been ascertained.

10 6. Consistently with California practice and procedure, certain material allegations in
11 this Complaint are made upon information and belief. PLAINTIFFS reasonably believe that such
12 are likely to have evidentiary support after a reasonable opportunity for further investigation and
13 discovery. Such allegations include without limitation the following:

14 a. Allegations concerning alter ego and disregard of corporate identity.

15 b. Allegations concerning the identity, claims, and damages of class members other
16 than the NAMED PLAINTIFFS.

17 c. Allegations concerning the material causes of action.

18 7. As to each claim and cause of action, this claim shall be construed to be made on
19 behalf of the NAMED PLAINTIFFS and each Class Member or potential class member for the
20 fullest time period allowable under the applicable statute of limitations, including without
21 limitation any tolling or extension allowed by law, based upon the date of filing of the initial
22 Complaint in this action.

23 8. All claims against DEFENDANT PIZZA HUT are therefore also pled against their
24 owner, agent, instrumentality and alter ego, DEFENDANT DOES 1 through 100 inclusive.

25 9. As a direct and proximate result of the unlawful actions of DEFENDANTS,
26 PLAINTIFFS have suffered and continue to suffer from loss of earnings in amounts as yet
27 unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

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1 **CLASS ACTION DESIGNATION**

2 10. PLAINTIFFS respectfully seek class certification, pursuant to California Code of
3 Civil Procedure Section 382 of a class consisting of:

4 A. All persons employed in a Pizza Hut restaurant in the State of California at
5 any time from May 26, 2006 through December 13, 2010 as drivers, production employees (or
6 “cooks”), customer service representatives, hosts/servers, and any other non-exempt, non-
7 managerial hourly restaurant position (“Class”).

8 11. PLAINTIFFS also respectfully seek certification of the following subclasses:

9 A. All persons employed in a Pizza Hut restaurant in the State of California at
10 any time from June 6, 2006 through December 13, 2010 as drivers (“Driver Subclass”).

11 PLAINTIFFS BRIAN BEHAEIN and BORIS GNEZDILOV are the representative plaintiffs for
12 this subclass.

13 B. All persons employed in a Pizza Hut restaurant in the State of California at
14 any time from May 26, 2006 through December 13, 2010 in any non-exempt, non-managerial
15 hourly restaurant position other than driver, including but not limited to production employees (or
16 “cooks”), customer service representatives, and hosts/servers (“Non-driver Subclass”).

17 PLAINTIFFS BERSAYNA CLEMENTE and RAQUEL CRUZ are representative plaintiffs for
18 this subclass.

19 12. This action is appropriately suited for a Class Action because:

20 A. The potential Class is a significant number. Although the precise number of
21 such persons is not known to PLAINTIFFS at this time, because the facts related to that number are
22 within the sole control of DEFENDANTS, upon information and belief, the number of Class
23 members is in the thousands. The potential Subclasses are also significant in number. Upon
24 information and belief, the Driver Subclass and the Non-driver Subclass each comprise thousands
25 of members. Thus, joinder of all current and former non-managerial hourly employees
26 individually would be impractical.

27 B. This action involves common questions of law and fact to the potential class
28 because the action focuses on the DEFENDANTS’ systematic course of illegal payroll practices

1 and policies, which was applied to all non-managerial hourly employees in violation of the
2 California Labor Code, IWC Orders, and the California Business and Professions Code which
3 prohibits unfair business practices arising from such violations. The common questions of law and
4 fact include, without limitation:

5 1. Whether DEFENDANTS violated the California Labor Code and
6 Wage Orders by not compensating NAMED PLAINTIFFS and other Class Members for all hours
7 worked;

8 2. Whether DEFENDANTS violated the California Labor Code and
9 Wage Orders by failing to compensate NAMED PLAINTIFFS and other Class Members with a
10 minimum wage;

11 3. Whether DEFENDANTS violated the California Labor Code and
12 Wage Orders by compensating NAMED PLAINTIFFS and other Class Members overtime hours at
13 rates below the required overtime rate;

14 4. Whether DEFENDANTS violated the California Labor Code and
15 Wage Orders by failing to provide rest periods to NAMED PLAINTIFFS and other Class Members
16 for every four hours or major fraction thereof worked and failed to compensate said employees one
17 hours' wages in lieu of the rest period missed;

18 5. Whether DEFENDANTS violated the California Labor Code and
19 Wage Orders by failing to provide off-duty meal periods to NAMED PLAINTIFFS and other Class
20 Members on days they worked shifts in excess of five hours and failed to compensate said
21 employees one hours' wages in lieu of the off-duty meal period missed;

22 6. Whether DEFENDANTS violated the California Labor Code and
23 Wage Orders by failing to, among other things, maintain accurate records of PLAINTIFFS' and
24 other Class Members' earned wages and work periods, itemize in wage statements all hours
25 worked and wages earned, and accurately maintain other records pertaining to PLAINTIFFS and
26 the other Class Members;

27 7. Whether DEFENDANTS violated the California Labor Code and
28 Wage Orders by failing to pay all earned wages and/or premium wages due and owing at the time

1 that the employment of any Class Members, including PLAINTIFFS terminated;

2 8. Whether DEFENDANTS violated section 17200 et seq. of Business
3 and Professions Code by unlawfully requiring PLAINTIFFS and other Class Members to work at
4 hourly wage rates below the minimum wage and converting same to DEFENDANTS' own use;
5 unlawfully requiring PLAINTIFFS and other Class Members to work overtime hours below the
6 applicable overtime wage and converting same to DEFENDANTS' own use; failing to provide
7 rest and meal periods without compensating PLAINTIFFS and other Class Members one hour's
8 pay for each instance such periods were not provided and converting same to DEFENDANTS'
9 own use; failing to pay all wages and compensation due and owing after PLAINTIFFS' and certain
10 other Class Members' employment with DEFENDANTS was terminated; and failing to keep
11 accurate records;

12 9. Whether DEFENDANTS violated Labor Code § 2802 by failing to
13 indemnify employees for all necessary expenditures, such as uniforms, or losses incurred by the
14 employees in direct consequence of the discharge of the employees' duties.

15 a. Whether DEFENDANTS violated Labor Code § 2802 by
16 failing to reimburse members of the Driver Subclass for all necessary expenditures or losses
17 incurred by the employee in direct consequence of the discharge of the employees' duties, such as
18 costs incurred in the making of deliveries.

19 10. Whether DEFENDANTS violated section 17200 et seq. of the
20 Business and Professions Code by violations of fundamental public policy underlying the
21 California Labor Code and/or Wage Orders;

22 11. Whether PLAINTIFFS and other Class Members are entitled to
23 damages, restitution, statutory penalties, declaratory, injunctive and declaratory relief, attorney'
24 fees and costs, and other relief pursuant to the California Labor Code and Wage Orders, Business
25 and Professions Code section 17200 et seq.

26 C. The claims of the NAMED PLAINTIFFS are typical of the Class because
27 DEFENDANTS subjected all of their hourly employees to the identical violations of the California
28 Labor Code and California Business and Professions Code. The claims of PLAINTIFFS BRIAN

1 BEHAEIN and BORIS GNEZDILOV are typical of the Driver Subclass. The claims of
2 PLAINTIFFS BERSAYNA CLEMENTE and RAQUEL CRUZ are typical of the Non-Driver
3 Subclass.

4 D. The NAMED PLAINTIFFS are able to fairly and adequately protect the
5 interests of all members of the Class because it is in their best interest to prosecute the claims
6 alleged herein to obtain full compensation due to them for all services rendered, hours worked, and
7 unreimbursed expenditures incurred. PLAINTIFFS BRIAN BEHAEIN and BORIS GNEZDILOV
8 are able to fairly and adequately protect the interests of all members of the Driver Subclass because
9 they were employed by DEFENDANTS as delivery driver employees and it is in their best interest
10 to prosecute the claims alleged herein to obtain all compensation due to drivers for all the services
11 rendered, hours worked, and unreimbursed expenditures incurred. PLAINTIFFS BERSAYNA
12 CLEMENTE and RAQUEL CRUZ are able to fairly and adequately protect the interests of all
13 members of the Non-driver Subclass because they were employed by DEFENDANTS as non-
14 driver employees and it is in their best interest to prosecute the claims alleged herein to obtain all
15 compensation due to all non-drivers for all the services rendered, hours worked, and unreimbursed
16 expenditures incurred.

17 **COLLECTIVE ACTION DESIGNATION**

18 13. PLAINTIFFS BRIAN BEHAEIN and BORIS GNEZDILOV bring the Eleventh
19 Cause of Action as a collective action pursuant to the federal Fair Labor Standards Act (“FLSA”),
20 Section 16(b), 29 U.S.C. §216(b), on behalf of all members of the Driver Subclass employed by
21 DEFENDANTS on or after the date that is three years preceding the filing of the Complaint in this
22 case, plus any applicable periods of equitable tolling.

23 14. At all relevant times, PLAINTIFFS BRIAN BEHAEIN and BORIS GNEZDILOV
24 and the members of the Driver Subclass have been similarly situated, have had the same job titles
25 and substantially similar job requirements, job duties, and pay provisions, and have been subject to
26 DEFENDANTS’ common policies, practices, and procedures willfully failing and refusing to
27 provide adequate reimbursement for those class members’ business-related vehicle expenses such
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1 that DEFENDANTS failed and refused to pay those class members the legally-required federal
2 minimum wage.

3 15. The Eleventh Cause of Action is properly brought under and maintained as an opt-in
4 collective action pursuant to §16(b) of the FLSA, 29 U.S.C. §216(b). The members of the Driver
5 Subclass are readily ascertainable. For purpose of notice and other purposes related to this action,
6 their names and addresses are readily available from DEFENDANTS. Notice can be provided to
7 members of the Driver Subclass via first class mail to the last address known to DEFENDANTS.

8 **FIRST CAUSE OF ACTION**

9 **Failure to Provide Required Meal Periods**

10 **(All Defendants)**

11 16. PLAINTIFFS incorporate herein by specific reference as though fully set forth the
12 allegations in paragraphs 1 through 15.

13 17. At all times relevant herein, as part of their illegal payroll policies and practices to
14 deprive their non-exempt employees of wages earned and due, DEFENDANTS required, permitted
15 or otherwise suffered their employees to take less than the required 30-minute meal periods, take
16 their meal periods late, or to work through them, and failed to otherwise provide the required meal
17 periods to their employees as required under California Labor Code § 226.7 and IWC Order 5-
18 2001(11).

19 18. DEFENDANTS further violated California Labor Code § 226.7 and IWC Order 5
20 by failing to pay each of their employees who was not provided with a meal period as required an
21 additional one hour of compensation at each employees' regular rate of pay.

22 19. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194, 1197
23 and IWC Order 5 by failing to compensate the employees for all hours worked during their meal
24 periods.

25 20. As a proximate result of the aforementioned violations, PLAINTIFFS have been
26 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
27 penalties, attorneys' fees, expenses and costs of suit.

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1 **SECOND CAUSE OF ACTION**

2 **Failure to Provide Required Rest Periods**

3 **(All Defendants)**

4 21. PLAINTIFFS incorporate herein by specific reference as though fully set forth the
5 allegations in paragraphs 1 through 20.

6 22. At all times relevant herein, as part of their illegal payroll policies and
7 practices to deprive their non-exempt employees of wages earned and due, DEFENDANTS failed
8 to provide rest periods, on time or at all, to the non-exempt employees as required under California
9 Labor Code § 226.7 and IWC Order 5-2001(12).

10 23. DEFENDANTS further violated Labor Code § 226.7 and IWC Order 5 by failing to
11 pay each of their employees who was not provided with a rest period as required an additional one
12 hour of compensation at each employee's regular rate of pay.

13 24. As a proximate result of the aforementioned violations, PLAINTIFFS have been
14 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
15 penalties, attorneys' fees and expenses and costs of suit.

16 **THIRD CAUSE OF ACTION**

17 **Failure to Pay Overtime Compensation**

18 **(All Defendants)**

19 25. PLAINTIFFS incorporate herein by specific reference as though fully set forth the
20 allegations in paragraphs 1 through 24.

21 26. Pursuant to California Labor Code §§ 510 and 1194, for the four (4) years preceding
22 the filing of this lawsuit, DEFENDANTS were required to compensate PLAINTIFFS for all
23 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours
24 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
25 (8) hours on the seventh consecutive work day, with double time for any work in excess of eight
26 (8) hours on the seventh day of any work week, or after twelve (12) hours in any work day.

27 27. PLAINTIFFS were non-exempt employees entitled to the protections of
28 California Labor Code §§ 510 and 1194. During the course of PLAINTIFFS' employment,

1 DEFENDANTS failed to compensate PLAINTIFFS for overtime hours worked as required under
2 the foregoing provisions of the California Labor Code by: failing to pay overtime at one and one-
3 half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510 and 1194;
4 requiring, permitting or suffering the employees to work off the
5 clock; requiring, permitting or suffering the employees to work through breaks; illegally and
6 inaccurately recording time worked; failing to properly maintain records; failing to provide
7 accurate itemized statements for each pay period; failing to pay all wages due on regular paydays;
8 and other methods to be discovered.

9 28. In violation of state law, DEFENDANTS have knowingly and willfully refused to
10 perform their obligations to compensate PLAINTIFFS for all wages earned and all hours worked.
11 As a direct result, PLAINTIFFS have suffered, and continue to suffer, substantial losses related to
12 the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees
13 in seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their
14 respective damages in amounts according to proof at time of trial, and within the jurisdiction of this
15 Court.

16 29. DEFENDANTS committed the acts alleged herein knowingly and willfully, with
17 the wrongful and deliberate intention of injuring PLAINTIFFS, from improper motives amounting
18 to malice, and in conscious disregard of PLAINTIFFS' rights. PLAINTIFFS are thus entitled to
19 recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to
20 proof at time of trial, and within the jurisdiction of this Court.

21 30. DEFENDANTS' conduct described herein violates Labor Code §§ 226, 510, 1194,
22 1197 and IWC Order 5. Therefore, pursuant to California Labor Code §§ 200, 203, 218.5, 226,
23 558, 1194, 1994.2, 1197.1, and other applicable provisions under the Labor Code and IWC Orders,
24 PLAINTIFFS are entitled to recover the unpaid balance of wages DEFENDANTS owe
25 PLAINTIFFS, plus interest, penalties, attorneys' fees, expenses and costs of suit.
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1 **FOURTH CAUSE OF ACTION**

2 **Failure to Pay Minimum Wages**

3 **(All Defendants)**

4 31. PLAINTIFFS incorporate herein by specific reference as though fully set forth the
5 allegations in paragraphs 1 through 30.

6 32. Pursuant to California Labor Code §1194 and §1197, payment of less than
7 minimum wage fixed by the Industrial Welfare Commission is unlawful.

8 33. DEFENDANTS failed to pay PLAINTIFFS minimum wages by failing to pay for
9 all hours worked by: requiring, permitting or suffering the employees to work off the clock;
10 requiring, permitting or suffering the employees to work through breaks; illegally and inaccurately
11 recording time worked; failing to properly maintain records; failing to provide accurate itemized
12 statements for each pay period; and other methods to be discovered.

13 34. DEFENDANTS' conduct described herein violates Labor Code §§ 226, 510, 1194,
14 1197 and IWC Order 5. As a proximate result of the aforementioned violations, PLAINTIFFS
15 have been damaged in an amount according to proof at trial. Therefore, pursuant to California
16 Labor Code §§ 200, 203, 218.5, 226, 558, 1194, 1994.2, 1197.1, and other applicable provisions
17 under the Labor Code and IWC Orders, PLAINTIFFS are entitled to recover the unpaid balance of
18 wages DEFENDANTS owe PLAINTIFFS, plus interest, penalties, attorneys' fees, expenses and
19 costs of suit.

20 **FIFTH CAUSE OF ACTION**

21 **Failure to Pay All Wages Due to Discharged or Quitting Employees**

22 **(All Defendants)**

23 35. PLAINTIFFS incorporate herein by specific reference as though fully set forth the
24 allegations in paragraphs 1 through 31.

25 36. Pursuant to California Labor Code § 201, 202, and 203, upon former employee
26 PLAINTIFFS' respective dates of discharge or quitting, DEFENDANTS were required to pay
27 PLAINTIFFS all earned wages. Pursuant to California Labor Code § 202, DEFENDANTS were
28 required to pay all wages due to a quitting employee who did not provide 72-hour notice no later

1 than 72 hours after an employee quits his or her employment. At the time of all former employee
2 PLAINTIFFS' respective termination and quitting dates, former employee PLAINTIFFS had
3 unpaid wages. In violation of Labor Code §§ 201, 202 and 203, DEFENDANTS failed to pay each
4 former employee PLAINTIFF any of the amount of wages due and owing him or her, in amounts
5 to be proven at the time of trial, but in excess of the jurisdiction of this Court.

6 37. DEFENDANTS' failure to pay former employee PLAINTIFFS the respective
7 wages due and owing them was willful, as DEFENDANTS were apprised of the wages due, and a
8 demand was made for payment of all wages due.

9 38. DEFENDANTS' failure to pay former employee PLAINTIFFS all wages due were
10 done with the wrongful and deliberate intention of injuring PLAINTIFFS, from improper motives
11 amounting to malice and in conscious disregard of PLAINTIFFS' rights.

12 39. DEFENDANTS' willful failure to pay PLAINTIFFS the wages due and owing each
13 of them constitutes violations of Labor Code §§ 201, 202 and 203, which provides that an
14 employee's wages will continue as a penalty for up to thirty (30) days from the time the wages
15 were due. Therefore, PLAINTIFFS are each entitled to penalties, attorneys' fees, expenses and
16 costs incurred in this action.

17 **SIXTH CAUSE OF ACTION**

18 **Failure to Maintain Required Records**

19 **(All Defendants)**

20 40. PLAINTIFFS incorporate herein by specific reference as though fully set forth the
21 allegations in paragraphs 1 through 39.

22 41. At all times relevant herein, as part of their illegal payroll policies and practices to
23 deprive their non-exempt employees all wages earned and due, DEFENDANTS failed to maintain
24 records as required under California Labor Code § 1174, 1174.5 and IWC Order 5-2001(7),
25 including but not limited to failing to maintain accurate records as to all hours worked by an
26 employee and applicable rates of pay, all deductions, records of meal periods and accurate itemized
27 statements.

1 42. As a proximate result of the aforementioned violations, PLAINTIFFS have been
2 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
3 penalties, attorneys' fees, and expenses and costs of suit.

4 SEVENTH CAUSE OF ACTION

5 **Failure to Indemnify Employees for All Necessary Expenditures or Losses Incurred**

6 **(All Defendants)**

7 43. PLAINTIFFS incorporate herein by specific reference as though fully set forth the
8 allegations in paragraphs 1 through 42.

9 44. DEFENDANTS failed to reimburse its employees for necessary expenses incurred
10 in buying uniforms.

11 45. DEFENDANTS also failed to reimburse its driver employees for costs associated
12 with the use of personal vehicles in furtherance of DEFENDANTS' business. DEFENDANTS'
13 driver employees were required to incur travel costs, which typically consisted of automobile
14 travel, and were not reimbursed for these travel expenses.

15 46. Labor Code § 2802 states that:

16 (a) An employer shall indemnify his or her employee for all
17 necessary expenditures or losses incurred by the employee in direct
18 consequence of the discharge of his or her duties, or his or her
19 obedience to the directions of the employer, even though unlawful,
unless the employee, at the time of obeying the directions, believed
them to be unlawful.

20 Subsection (c) of Labor Code § 2802 further states that “[f]or purposes to this section, the term
21 ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to
22 attorney’s fees incurred by the employee enforcing the rights granted by this section.”

23 47. In this case, PLAINTIFFS and the Class were required to incur costs for uniforms
24 and maintenance required by DEFENDANTS. As such, PLAINTIFFS, individually and on behalf
25 of the Class, may bring this action for reimbursement for the uniforms and travel expenses,
26 including interest, costs of suit and attorney’s fees pursuant to § 2802(c).

27 48. In this case, PLAINTIFFS BEHAEIN and BORIS GNEZDILOV and the Driver
28 Subclass were required by DEFENDANTS to incur travel costs, which typically consisted of

1 automobile travel, and were not reimbursed for these travel expenses. As such, PLAINTIFFS
2 BEHAEIN and BORIS GNEZDILOV, individually and on behalf the Driver Subclass, may bring
3 this action for reimbursement for travel expenses, including interest, costs of suit and attorney's
4 fees pursuant to § 2802(c).

5 49. Wherefore, PLAINTIFFS and the Class are entitled to reimbursement for necessary
6 expenditures and losses incurred by PLAINTIFFS and the Class Members in direct consequence of
7 the discharge of their duties, or of their obedience to the directions of DEFENDANT, and as a
8 result, incurred interest thereon, costs of suit and attorney's fees pursuant to § 2802(c).

9 **EIGHTH CAUSE OF ACTION**

10 **Failure to Pay Reporting Time Wages**

11 **California Labor Code §§ 1197, 1194(a), 1194.2**

12 **(All Defendants)**

13 50. PLAINTIFFS incorporate herein by specific reference as though fully set forth the
14 allegations in paragraphs 1 through 49.

15 51. DEFENDANTS failed to pay reporting time wages. PLAINTIFFS and Class
16 Members were forced to comply with a work schedule that required them to report to work for
17 shifts of less than two hours on certain workdays that were established by DEFENDANTS under
18 an hourly quota system.

19 52. Wherefore, PLAINTIFFS and the class are entitled to recover the unpaid reporting
20 time wages plus interest, liquidated damages, in an amount equal to the wages unlawfully unpaid,
21 interest thereon, reasonable attorney's fees, and costs of suit pursuant to California Labor Code §
22 1194(a).

23 **NINTH CAUSE OF ACTION**

24 **Civil Penalties -- California Labor Code § 2699**

25 **(All Defendants)**

26 53. PLAINTIFFS incorporate herein by specific reference as though fully set forth the
27 allegations in paragraphs 1 through 52.

1 54. Pursuant to California Labor Code § 2699, PLAINTIFFS are entitled to collect civil
2 penalties from DEFENDANTS for the California Labor Code violations set forth above. The
3 violations of the Labor Code were caused by the willful conduct of the DEFENDANTS.

4 55. PLAINTIFFS have given written notice by certified mail to the Labor and
5 Workforce Development Agency and Defendant employer of the specific Labor Code provisions
6 alleged to have been violated, and the Labor and Workforce Development Agency notified
7 PLAINTIFFS by certified mail that it does not intend to investigate the alleged violations.

8 56. PLAINTIFFS have complied with the requirements set forth in California Labor Code
9 § 2699.3.

10 **TENTH CAUSE OF ACTION**

11 **Unfair Business Practices**

12 **(All Defendants)**

13 57. PLAINTIFFS incorporate herein by specific reference as though fully set forth the
14 allegations in paragraphs 1 through 56.

15 58. By violating the foregoing statutes and regulations, DEFENDANTS' acts constitute
16 unfair and unlawful business practices under Business and Professions Code §§ 17200, et seq.

17 59. DEFENDANTS' violations of California wage and hour laws constitute a business
18 practice because they were done repeatedly over a significant period of time, and in a systematic
19 manner to the detriment of PLAINTIFFS.

20 60. For the four (4) years preceding the filing of this action, PLAINTIFFS have suffered
21 damages and request damages and/or restitution of all monies to be disgorged from
22 DEFENDANTS in an amount according to proof at time of trial, but in excess of the jurisdiction of
23 this Court.

1 **ELEVENTH CAUSE OF ACTION**

2 **Fair Labor Standards Act, 29 U.S.C. §201 *et seq.***

3 **(On behalf of PLAINTIFFS BRIAN BEHAIEN and BORIS GNEZDILOV and the Driver**
4 **Subclass Against All Defendants)**

5 61. PLAINTIFFS incorporate herein by specific reference as though fully set forth the
6 allegations in paragraphs 1 through 60.

7 62. At all relevant times, PLAINTIFFS BRIAN BEHAIEN and BORIS GNEZDILOV
8 and all others similarly situated have been entitled to the rights, protections, and benefits provided
9 under the FLSA, 29 U.S.C. §§201, *et seq.*

10 63. The FLSA regulates, among other things, the payment of minimum wages by
11 employers whose employees are engaged in interstate commerce, engaged in the production of
12 goods for commerce, or employed in an enterprise engaged in commerce or in the production of
13 goods for commerce. 29 U.S.C. §206(a); 29 U.S.C. §207(a)(1).

14 64. DEFENDANTS are subject to the minimum wage requirements of the FLSA
15 because they constitute an enterprise engaged in interstate commerce during all relevant times
16 hereto, and their employees have been engaged in commerce during all such times.

17 65. Pursuant to Section 6 of the FLSA, 29 U.S.C. §206, employees were entitled to be
18 compensated at a rate of \$5.15 per hour before July 24, 2007; \$5.85 per hour from July 24, 2007
19 through July 23, 2008; \$6.55 per hour from July 24, 2008 through July 23, 2009; and \$7.25 per
20 hour since July 24, 2009.

21 66. DEFENDANTS knew or should have known that their reimbursement policy for
22 delivery drivers did not adequately reimburse those employees for their business-related vehicle
23 expenses, and therefore resulted in DEFENDANTS' failure to compensate those employees at the
24 federal minimum wage.

25 67. Pursuant to this policy, DEFENDANTS willfully violated the FLSA by refusing and
26 failing to pay PLAINTIFFS BEHAIEN and GNEZDILOV and the members of the Driver Subclass
27 the federal minimum wage. In the course of perpetrating these unlawful practices, DEFENDANTS
28 willfully failed to keep accurate records of all expenses incurred by their employees.

1 68. DEFENDANTS are not allowed to avail themselves of the federal tipped minimum
2 wage rate under the FLSA with respect to PLAINTIFFS BEHAIEN and GNEZDILOV and
3 members of the Driver Subclass, nor did DEFENDANTS attempt to avail themselves of the federal
4 tipped minimum wage rate with respect to PLAINTIFFS BEHAIEN and GNEZDILOV and
5 members of the Driver Subclass.

6 69. At all times relevant hereto, PLAINTIFFS BEHAIEN and GNEZDILOV and
7 members of the Driver Subclass were not subject to any exemptions from federal minimum wage
8 requirements.

9 70. PLAINTIFFS BEHAIEN and GNEZDILOV and members of the Driver Subclass
10 are entitled to damages equal to the difference between the federal minimum wage and actual
11 wages received after deduction for business-related vehicle expenses within the three years
12 preceding the filing of the complaint in this case, plus periods of equitable tolling, because
13 DEFENDANTS acted willfully and knew, or showed reckless disregard as to whether their conduct
14 was prohibited by the FLSA.

15 71. DEFENDANTS have acted neither in good faith nor with reasonable grounds to
16 believe that their actions and omissions were not a violation of the FLSA, and as a result,
17 PLAINTIFFS BEHAIEN and GNEZDILOV and members of the Driver Subclass are entitled to
18 recover an award of liquidated damages in an amount equal to the unpaid minimum wages under
19 Section 16(b) of the FLSA, 29 U.S.C. §216(b).

20 72. As a result of DEFENDANTS' willful violations of the FLSA's minimum wage
21 requirements, minimum wage compensation has been unlawfully withheld by DEFENDANTS
22 from PLAINTIFFS BEHAEIN and GNEZDILOV and members of the Driver Subclass.
23 Accordingly, DEFENDANTS are liable under 29 U.S.C. §216(b), for compensatory damages,
24 liquidated damages, pre-judgment interest, and reasonable attorneys' fees and costs.

25 Wherefore, PLAINTIFFS pray for relief as follows:

- 26 1. For nominal damages;
- 27 2. For compensatory damages;
- 28 3. For restitution of all monies due to PLAINTIFFS;

- 1 4. For all applicable penalties and civil penalties under the California Labor Code and
2 IWC Orders and for violations alleged herein;
3 5. For interest accrued to date;
4 6. For costs of suit and expenses;
5 7. For reasonable attorney's fees;
6 8. For punitive and exemplary damages;
7 9. For injunctive relief;
8 10. For liquidated damages pursuant to 29 U.S.C. §216(b); and
9 11. For all such other and further relief that the Court may deem just and proper.

10 Dated: July 28, 2016

Respectfully submitted,

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12 _____
Eileen B. Goldsmith

13 Matthew J. Matern
14 RASTEGAR & MATERN, ATTORNEYS AT
15 LAW, A.P.C.

16 James M. Finberg
17 Eve H. Cervantez
18 Eileen B. Goldsmith
19 ALTSHULER BERZON LLP

20 Matthew Righetti
21 John Glugoski
22 RIGHETTI GLUGOSKI

23
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Class Counsel

PROOF OF SERVICE

1 CASE: *Brian Behaein, et al. v. Pizza Hut, Inc., et al.*
2 CASE NO: Los Angeles Superior Court, Case No. BC 384563

3 I am employed in the City and County of San Francisco, California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 177 Post Street, Suite
5 300, San Francisco, California 94108. On July 28, 2016, I served the following documents:

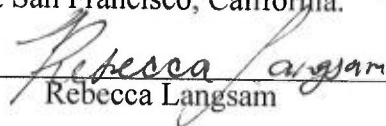
Fifth Amended Complaint

6 I served the documents on the persons below, as follows:

7 By Electronic Transmission: Based on an agreement of the parties to accept service by e-mail or
8 electronic transmission, I electronically delivered the documents via Case Anywhere.

ADDRESSEE	PARTY
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20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed July 28, 2016, at San Francisco, California.

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Rebecca Langsam