

LAW OFFICES OF THOMAS W. FALVEY

THOMAS W. FALVEY (SBN 65744)
MICHAEL H. BOYAMIAN (SBN 256107)
ARMAND R. KIZIRIAN (SBN 293992)
550 North Brand Boulevard, Suite 1500
Glendale, California 91203

Telephone: (818) 547-5200
Facsimile: (818) 500-9307
E-mail(s): thomaswfalvey@gmail.com,
mike.falveylaw@gmail.com,
armand.falveylaw@gmail.com

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Superior Court of California
County of Los Angeles

DEC 02 2016

Sherri R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

MANCINI & ASSOCIATES

MARCUS A. MANCINI (SBN 146905)
15303 Ventura Boulevard, Suite 600
Sherman Oaks, California 91403
Telephone: (818) 783-5757
Facsimile: (818) 783-7710

Attorneys for Plaintiff Felipe Villaseñor,
Individually and on Behalf of All Similarly Situated Individuals

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

FELIPE VILLASEÑOR, Individually and
on Behalf of All Similarly Situated
Individuals,

Plaintiffs,

vs.

PIZZA LOCA, INC. D/b/a LA PIZZA
LOCA, a California corporation; and DOES
1 through 25, Inclusive,

Defendant.

CASE NO.

BC 6 42 6 55

[CLASS ACTION]

COMPLAINT FOR:

- 1. UNPAID WAGES (LABOR CODE § 1194)**
- 2. FAILURE TO PAY MINIMUM WAGE (LABOR CODE § 1194)**
- 3. FAILURE TO PAY OVERTIME COMPENSATION (LABOR CODE §§ 510 and 1194);**
- 4. FAILURE TO PROVIDE MEAL AND REST PERIODS (LABOR CODE §§ 512 and 226.7);**
- 5. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS (LABOR CODE § 226 *et seq.*);**
- 6. WAITING TIME PENALTIES (LABOR CODE § 203); and**
- 7. UNFAIR COMPETITION (LABOR CODE §§ 17200 *et seq.*); and**

JURY TRIAL DEMANDED

1 Plaintiff Felipe Villasenor ("Plaintiff"), individually and on behalf of all similarly situated
2 individuals, alleges as follows:

3 **GENERAL ALLEGATIONS**

4 1. This is a proposed class action brought against Defendant PIZZA LOCA, INC.
5 d/b/a LA PIZZA LOCA and DOES 1 through 25, inclusive (hereinafter "Defendant" or "PIZZA
6 LOCA"), on behalf of Plaintiff and all other hourly and non-exempt current and former restaurant
7 employees (hereinafter "Restaurant Employees") at PIZZA LOCA restaurants located in
8 California at any time during the four years preceding the filing of this action, and continuing
9 while this action is pending ("Class Period"), and were denied the benefits and protections
10 required under the California Labor Code and other statutes and regulations applicable to
11 California employees.

- 12 2. During the Class Period, PIZZA LOCA, in conjunction with other Defendant:
- 13 a. failed to pay wages for all hours worked by the Restaurant Employees;
 - 14 b. failed to pay Restaurant Employees the legal minimum wage of \$8.00/hour;
 - 15 c. failed to pay overtime wages due to Restaurant Employees;
 - 16 d. failed to provide meal and rest periods due to the Restaurant Employees;
 - 17 e. failed to provide the Restaurant Employees with timely and accurate wage
18 and hour statements;
 - 19 f. failed to pay the Restaurant Employees compensation in a timely manner
20 upon their termination or resignation;
 - 21 g. failed to maintain complete and accurate payroll records for the Restaurant
22 Employees;
 - 23 h. wrongfully withheld wages and compensation due to the Restaurant
24 Employees; and
 - 25 i. committed unfair business practices in an effort to increase profits and to
26 gain an unfair business advantage at the expense of the Restaurant
27 Employees and the public.

1 3. The foregoing acts and other acts by Defendant - committed throughout California
2 and Los Angeles County - violated provisions of the California Labor Code, including but not
3 limited to sections 201, 202, 203, 226, 226.7, 510, 512, 515, 551, 552, 1194, and 1198
4 (collectively, "Employment Laws"), violated the applicable Wage Orders issued by California's
5 Industrial Welfare Commission, including Wage Orders 4-2001 during the Class Period
6 ("Regulations"), violated California's Unfair Business Practices Act, California Business &
7 Professions Code sections 17200 et seq., and violated Plaintiff's rights.

8 **JURISDICTION AND VENUE**

9 4. Venue is proper in this Judicial District and the County of Los Angeles because
10 work was performed by Plaintiff and other members of the Class for Defendant in the County of
11 Los Angeles, California, and Defendant's obligations under the Employment Laws and
12 Regulations to pay overtime wages, to provide meal and rest periods and accurate wage
13 statements to Plaintiff and other members of the Class arose and were breached in the County of
14 Los Angeles.

15 5. The California Superior Court has jurisdiction in this matter because Plaintiff
16 Felipe Villasenor is a resident of California, PIZZA LOCA, INC. is a California corporation and is
17 qualified to do business in California and regularly conducts business in California. Further, no
18 federal question is at issue as the claims are based solely on California law.

19 **THE PARTIES**

20 6. Plaintiff Felipe Villasenor is, and at all relevant times was, a competent adult
21 residing in California. Mr. Villasenor brings suit on behalf of himself and all similarly situated
22 individuals pursuant to California Code of Civil Procedure section 382, and California Business &
23 Professions Code sections 17200 et seq.

24 7. Defendant PIZZA LOCA, INC. is, and at all relevant times was, a California
25 corporation registered with the State of California's Secretary of State. PIZZA LOCA conducts
26 business in Los Angeles County, California. PIZZA LOCA has engaged in numerous unlawful
27 employment practices addressed in this Complaint in Los Angeles County.

8. Plaintiff is informed and believes and based thereon alleges that PIZZA LOCA's restaurants are substantially similar in size, sales volume, and number of employees required to work at each location. Plaintiff is also informed and believes and thereon alleges that PIZZA LOCA uniformly applies its pay and time keeping practices and overtime policies to all of PIZZA LOCA's restaurants, and that they are all centrally managed by and under the control of Defendant.

9. Plaintiff is currently unaware of the true names and capacities of the Defendant sued in this action by the fictitious names DOES 1 through 25, inclusive, and therefore sue those Defendant by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of such fictitiously named Defendant when they are ascertained.

10. Plaintiff is informed and believes and based thereon alleges that each defendant sued in this action, including each defendant sued by the fictitious names DOES 1 through 25, inclusive, is responsible in some manner for the occurrences, controversies and damages alleged below.

11. Plaintiff is informed and believes and based thereon alleges that DOES 1 through 25, inclusive were the agents, servants, and/or employees of Defendant and, in doing the things hereinafter alleged and at all times, was acting within the scope of their authority as such agents, servants and employees, and with the permission and consent of Defendant.

12. Plaintiff is informed and believes and based thereon alleges that Defendant ratified, authorized, and consented to each and all of the acts and conduct of each other as alleged herein.

FACTS

13. During part of the four years preceding the filing of this action, Plaintiff Felipe Villasenor was employed by Defendant at PIZZA LOCA's restaurant in Los Angeles County, California, and was a non-exempt, hourly employee under the Employment Laws and Regulations. He commenced his employment in 2007 at PIZZA LOCA's restaurant located in Paramount, California before separating from his employment with PIZZA LOCA in or around 2015.

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1 14. Restaurant Employees and other similarly situated employees such as Mr.
2 Villasenor, are responsible for, among other things, food preparation, taking food orders from
3 PIZZA LOCA's customers, cash-handling and cashier responsibilities, assisting customers,
4 maintaining quality control, and delivering food to customers. Restaurant Employees, just like
5 Mr. Villasenor, are non-exempt and hourly employees of Defendant.

6 15. PIZZA LOCA does not pay the minimum wage and/or the overtime rate of pay for
7 all hours worked by Plaintiff and Restaurant Employees. During Plaintiff's employment with
8 PIZZA LOCA, and continuing to date, Plaintiff and Restaurant Employees were regularly
9 required to work off-the-clock to meet the daily demands of their jobs. Defendant requires
10 Restaurant Employees, including Plaintiff, to clock out before the end of shifts and to continue to
11 work off-the-clock - even after the restaurant location is closed for business. Upon information
12 and belief, each restaurant location is undercapitalized with a set weekly and/or monthly payroll
13 budget that does not account for and ultimately compensate the actual work performed by Plaintiff
14 and Restaurant Employees. Consequently, Plaintiff and Restaurant Employees, performed work
15 before or after their scheduled hours while under the control and direction of Defendant. As a
16 result, PIZZA LOCA failed to pay Plaintiffs and Restaurant Employees for all hours worked, in
17 violation of the Employment Laws and Regulations. In addition, Plaintiff and Restaurant
18 Employees were not fully compensated for all hours worked, including overtime compensation.
19 This "Off the Clock" work is in violation of the Employment Laws and Regulations.

20 16. Because PIZZA LOCA did not pay the minimum wage and/or the overtime rate for
21 all hours worked, PIZZA LOCA also failed to provide Plaintiff and Restaurant Employees with
22 accurate wage statements in violation of Labor Code Section 226, *et seq.*

23 17. During the time Plaintiffs were employed, Defendant failed to provide Plaintiffs
24 and Restaurant Employees with rest periods during work shifts over four hours. Defendant also
25 routinely failed to provide Plaintiffs and Restaurant Employees a 30-minute meal period in which
26 they were relieved of all duties when they worked over five hours and routinely failed to provide
27 Plaintiffs and Restaurant Employees a second such meal period when they worked more than ten
28 hours. These practices are in violation of the Employment Laws and Regulations.

1 18. Restaurant Employees, including Plaintiff, were required to clock-in and out for
2 work and for supposed meal periods through the use of a computer-based timekeeping software.
3 Restaurant employees, including Plaintiff, are required to clock-out for supposed meal breaks but
4 are directed to continue working during purported breaks. Restaurant Employees, including
5 Plaintiff, are even instructed to sign and/or acknowledge a document on a daily basis falsely
6 claiming that they received their so-called meal break.

7 19. Even after Defendant's modified work schedules in an effort to show on their face
8 work being scheduled for six hours or less, Restaurant Employees and Plaintiff, in reality,
9 continued working well beyond six hours each day and are still not being provided with their
10 mandated meal breaks. Store managers are also able to adjust time entries on the timekeeping
11 software in an effort to show compliant meal breaks being taken when in fact no such meal breaks
12 are being provided in the first place. Rest breaks are not and were not provided to Plaintiff and
13 Restaurant Employees either. There simply is no mechanism or schedule in place at Pizza Loca
14 for Restaurant Employees to take their statutory breaks. Furthermore, Defendant does not pay one
15 additional hour of pay at the regular rate of compensation for such missed meal and rest breaks.

16 20. During Plaintiff's employment with PIZZA LOCA, Defendant failed to provide
17 Plaintiff and Restaurant Employees with timely and accurate wage and hour statements showing,
18 among other things, gross hours earned, total hours worked, all deductions made, net wages
19 earned, the inclusive dates of the period for which the employee is paid, the name and address of
20 Defendant that is the employer, accrued vacation, and all applicable hourly rates in effect during
21 each pay period, as well as the corresponding number of hours worked at each hourly rate.

22 21. Furthermore, Restaurant Employees, including Plaintiff, are paid only one dollar
23 for completing a pizza delivery. Restaurant Employees are required to travel unreasonable
24 distances to fulfill delivery orders and the paltry payment of one dollar does not adequately
25 reimburse Restaurant Employees, including Plaintiff, for all work-related expenses. Those
26 work-related expenses include, but are not limited to, gasoline and mileage for effectuating such
27 deliveries at the direction and control of the Company.

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22. During Plaintiffs' employment with PIZZA LOCA, Defendant wrongfully withheld from Plaintiffs and failed to pay their wages and other compensation which was due them for all of their hours worked, for overtime work, for missed meal and rest periods, and as otherwise required pursuant to the Employment Laws and Regulations.

23. Plaintiffs seek restitution and disgorgement of all sums wrongfully obtained by Defendant through unfair business practices in violation of California's Business & Professions Code sections 17200, *et seq.*, to prevent the Defendant from benefitting from their violations of law and/or unfair acts. Such sums recovered under the Unfair Competition Act and Unfair Businesses Act are equitable in nature and are not to be considered damages. Plaintiffs are also entitled to costs, attorney's fees, interest and penalties as provided for by statute.

24. To the extent that any Class Member, including Plaintiffs, entered into any arbitration agreement with any Defendant and such agreement purports to require arbitration, such agreement is void and unenforceable. Any such agreement was one of adhesion, executed under duress, lacked consideration and mutuality, and was otherwise void under both California Labor Code section 229 and the California Supreme Court case of *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83.

CLASS ACTION ALLEGATIONS

25. Plaintiff brings these claims as a class action pursuant to Code of Civil Procedure § 382 and Business and Professions Code §§ 17203 & 17204. Plaintiff brings this action on her own behalf and on behalf of the following class of individuals (the "Class" or "Class Members"):

All non-exempt, hourly Restaurant Employees employed by, or formerly employed by, Defendant in the State of California at any time from four years prior to the date of the filing of this complaint, and continuing while this action is pending.

26. All Restaurant Employees, including Plaintiffs, are putative class members.

27. During the Class Period, Defendant failed to pay Plaintiff and all Restaurant Employees for all hours worked, in violation of the Employment Laws and Regulations.

28. During the Class Period, Defendant have failed to provide Restaurant Employees with accurate wage and hour statements showing the gross hours earned, total hours worked, all deductions made, net wages earned, the inclusive dates of the period for which the employee is

1 paid, the name and address of Defendant that is the employer, accrued vacation, and all applicable
2 hourly rates in effect during each pay period, as well as the corresponding number of hours
3 worked at each hourly rate.

4 29. During the Class Period, Plaintiffs and Restaurant Employees have been required
5 to work more than eight hours per day and more than forty hours per workweek. Defendant have
6 failed to compensate Restaurant Employees all of the wages they are due, including overtime
7 premium pay.

8 30. During the Class Period, Defendant have failed to provide Plaintiffs and Restaurant
9 Employees with meal and rest periods, and have failed to provide meal and rest period premium
10 wages to compensate for missed meal and rest periods..

11 31. During the Class Period, Defendant have failed to pay wages and other
12 compensation due immediately to Restaurant Employees who were terminated, and Defendant
13 have failed to pay wages and other compensation due within seventy-two hours to Restaurant
14 Employees who voluntarily ended their employment.

15 32. The proposed class is ascertainable in that its members can be identified using
16 information contained in Defendants' payroll and personnel records.

17 33. Numerosity. The Restaurant Employees are so numerous, conservatively
18 estimated to include over 50 Restaurant Employees, that joinder of each individual Restaurant
19 employee would be impracticable, and the disposition of their claims in a class action, rather than
20 numerous individual actions, will benefit the parties, the Court and the interests of justice.

21 34. Commonality. There is a well-defined community of interest in the questions of
22 law and fact involved in this action, because Defendant's failure to pay Restaurant Employees
23 their wages or afford them the protections required under the Employment Laws and Regulations
24 affects all Restaurant Employees. Common questions of law and fact predominate over questions
25 that affect only individual Restaurant Employees, because all Restaurant Employees were subject
26 to uniform, unlawful pay practices and policies. The predominate questions of law and fact
27 include, but are not limited to:

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1 a. Did Defendant devise a scheme and plan to circumvent California wage
2 and hour laws?;

3 b. Was/is Defendant's conduct fraudulent and deceitful?;

4 c. Did/does Defendant's conduct violate the Employment Laws and
5 Regulations by, among other things,

6 (i) failing to compensate Plaintiff and the Class Members for all
7 hours worked;

8 (ii) failing to compensate Plaintiff and the Class Members at the
9 applicable and legally-mandated minimum hourly rate;

10 (iii) failing to provide Plaintiff and the Class Members with timely and
11 accurate wage and hour statements;

12 (iv) failing to maintain complete and accurate payroll records for
13 Plaintiffs and the Class Members; and

14 (v) failing to provide meal and rest periods to Plaintiffs and the Class
15 Members, or premium pay in lieu thereof?

16 d. Do/did Defendant's systematic acts and practices violate, *inter alia*,
17 California Business & Professions Code section 17200, *et seq.*?

18 35. Typicality. Plaintiff's claims are typical of those of the other Restaurant
19 Employees because all Restaurant Employees share the same or similar employment duties and
20 activities, all are automatically classified as non-exempt employees, and all have been denied the
21 benefits and protections of the Employment Laws and Regulations in the same manner. Since
22 Defendant has uniformly applied the same pay practices and policies to each restaurant, Plaintiff's
23 claims are typical of the claims of all Restaurant Employees. Plaintiff's claims are also typical
24 because they have suffered the same damages as those suffered by all Restaurant Employees.

25 36. Adequacy of Representation. Plaintiff can fairly and adequately represent and
26 protect the interests of all Restaurant Employees because Plaintiff has no disabling conflict of
27 interest which is antagonistic to those of all other Restaurant Employees. Plaintiff seeks no relief
28 which is antagonistic or adverse to the other Restaurant Employees, and the infringement of her

1 rights and the damages she has suffered is typical of all other Restaurant Employees. Plaintiff's
2 counsel is competent and experienced in litigating class actions in California based on large
3 employers' violations of the Employment Laws and Regulations.

4 37. As mentioned above, to the extent that any Restaurant Employee entered into any
5 arbitration agreement with any Defendant and such agreement purports to require arbitration, such
6 agreement is void and unenforceable. Even if such agreement is deemed enforceable, however,
7 classwide arbitration is appropriate and should be utilized to obtain classwide relief.

8 38. Superiority of Class Action. The nature of this action and the nature of laws
9 available to Plaintiffs and the other Restaurant Employees in the putative Class make use of the
10 class action a particularly efficient and effective procedure because:

11 a. For many of the Restaurant Employees, individual actions or other
12 individual remedies would be impracticable and litigating individual actions would be too costly;

13 b. The action involves a corporate employer (Pizza Loca, Inc.) and a large
14 number of individual employees (Plaintiffs and the other Restaurant Employees), many with
15 relatively small claims and all with common issues of law and fact;

16 c. If employees are forced to bring individual lawsuits, the corporate
17 defendant would necessarily gain an unfair advantage by the ability to exploit and overwhelm the
18 limited resources of individual plaintiffs through superior financial and legal resources;

19 d. The costs of individual suits would likely consume the amounts recovered;

20 e. Requiring each employee to pursue an individual remedy would also
21 discourage the assertion of lawful claims by current employees of Defendant, who would be
22 disinclined to pursue an action against their present and/or former employer due to an appreciable
23 and justified fear of retaliation and permanent damage to their immediate and/or future
24 employment; and

25 f. The common business practices Plaintiff experienced are representative of
26 those experienced by all Restaurant Employees and can establish the right of all Restaurant
27 Employees to recover on the alleged claims.

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1 **FIRST CAUSE OF ACTION**

2 **(Failure to Pay Compensation For All Hours Worked - Labor Code § 1194**

3 **By Plaintiff Individually and on Behalf of All Restaurant Employees)**

4 39. As a separate and distinct cause of action, Plaintiff complains and realleges all the
5 allegations contained in this complaint, and incorporates them by reference into this cause of
6 action as though fully set forth herein, excepting those allegations which are inconsistent with this
7 cause of action.

8 40. Plaintiff brings this action to recover their unpaid compensation for all hours
9 worked as defined by the applicable Industrial Welfare Commission wage order as the time during
10 which an employee is subject to the control of an employer, and includes all the time the
11 employee is engaged, suffered or permitted to work, whether or not required to do so.

12 41. Plaintiff is entitled to recover the unpaid balance of compensation Defendant owes
13 Plaintiff, plus interest, associated statutory penalties, and reasonable attorney fees and costs
14 pursuant to Labor Code section 1194.

15 **SECOND CAUSE OF ACTION**

16 **(Failure to Pay Minimum Wages - Labor Code § 1194**

17 **By Plaintiff Individually and on Behalf of All Restaurant Employees)**

18 42. As a separate and distinct cause of action, Plaintiff complains and realleges all of
19 the allegations contained in this complaint, and incorporates them by reference into this cause of
20 action as though fully set forth herein, excepting those allegations which are inconsistent with this
21 cause of action.

22 43. At all relevant times, the IWC Wage Orders applied to Plaintiff in Plaintiff's
23 capacity as an employee of Defendant. The Wage Orders and California law provided, among
24 other things, that Plaintiff must receive minimum wage earnings for all hours worked.

25 44. During the Class Period, Defendant has routinely failed to pay Restaurant
26 Employees, including Plaintiff, the minimum wage required by the Employment Laws and
27 Regulations for all hours worked.

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1 45. Restaurant Employees, including Plaintiff, have been deprived of their rightfully
2 earned minimum wages as a direct and proximate result of Defendant's policies and practices and
3 Defendant's failure and refusal to pay said wages for all hours worked. Restaurant Employees,
4 including Plaintiff, are entitled to recover the past wages owed to them, under the minimum wage
5 laws, plus an additional equal amount as liquidated damages as permitted under the Wage Orders
6 and California law, including Labor Code § 1194.2, plus interest thereon and attorneys' fees, and
7 costs, pursuant to Labor Code § 1194, in an amount according to proof at the time of trial.

8 **THIRD CAUSE OF ACTION**

9 **(Failure to Pay Overtime Compensation - California Labor Code §§ 510 and 1194**

10 **By Plaintiff Individually and on Behalf of All Restaurant Employees)**

11 46. As a separate and distinct cause of action, Plaintiff complains and realleges all the
12 allegations contained in this complaint, and incorporates them by reference into this cause of
13 action as though fully set forth herein, excepting those allegations which are inconsistent with this
14 cause of action.

15 47. During the Class Period, Defendant has routinely required Restaurant Employees,
16 including Plaintiff, to work over eight hours in a day and over forty hours in a workweek.
17 However, Defendant has failed and refused to pay the Restaurant Employees, including Plaintiff,
18 the overtime compensation required by the Employment Laws and Regulations.

19 48. The Restaurant Employees, including Plaintiff, have been deprived of their
20 rightfully earned overtime compensation as a direct and proximate result of Defendant's policies
21 and practices and Defendant's failure and refusal to pay that compensation. The Restaurant
22 Employees, including Plaintiff, are entitled to recover such amounts, plus interest, attorney's fees,
23 and costs.

24 **FOURTH CAUSE OF ACTION**

25 **(Failure to Provide Meal and Rest Periods - California Labor Code §§ 226.7 and 512**

26 **By Plaintiff Individually and on Behalf of All Restaurant Employees)**

27 49. As a separate and distinct cause of action, Plaintiff complains and realleges all the
28 allegations contained in this complaint, and incorporates them by reference into this cause of

1 action as though fully set forth herein, excepting those allegations which are inconsistent with this
2 cause of action.

3 50. During the Class Period, Defendant has routinely failed to provide Restaurant
4 Employees, including Plaintiff, with meal and rest periods during their work shifts, and has failed
5 to compensate these Restaurant Employees, including Plaintiff, for those meal and rest periods, as
6 required by California Labor Code section 226.7 and the other applicable sections of the
7 Employment Laws and Regulations.

8 51. Restaurant Employees, including Plaintiff, have been deprived of their rightfully
9 earned compensation for meal and rest periods as a direct and proximate result of Defendant's
10 policies and practices and Defendant's failure and refusal to pay that compensation. Restaurant
11 Employees, including Plaintiff, are entitled to recover such amounts pursuant to California Labor
12 Code section 226.7(b), plus interest, attorney's fees, and costs.

13 **FIFTH CAUSE OF ACTION**

14 **(Failure to Accurate Furnish Wage and Hour Statements - California Labor Code § 226**

15 **By Plaintiff Individually and on Behalf of All Restaurant Employees)**

16 52. As a separate and distinct cause of action, Plaintiff complains and realleges all the
17 allegations contained in this complaint, and incorporates them by reference into this cause of
18 action as though fully set forth herein, excepting those allegations which are inconsistent with this
19 cause of action.

20 53. Under California Labor Code § 226, Defendant was required to provide wage
21 statements that accurately reflect all the information required under § 226. During the Class
22 Period, Defendant has routinely failed to provide Restaurant Employees, including Plaintiff, with
23 timely and accurate wage-and-hour statements containing all information required under Labor
24 Code section 226, including but not limited to gross hours earned, total hours worked, net wages
25 earned, and all applicable hours rates in effect during each pay period and the corresponding
26 number of hours worked at each hourly rate.

27 54. Plaintiff, and the Restaurant Employees, were harmed by, among other things, not
28 being alerted to the fact that Defendant was violating California's wage-and-hour laws or that they

1 were being underpaid and thereby suffered repeated violations of their rights; not having accurate
2 documentation to allow them to make precise calculations of their wages owed or to easily prove
3 their wage claims with certainty; being deprived of accurate wages statements despite having the
4 legal right to receive them; all of which contributed to, furthered, and resulted in Defendant
5 underpaying Plaintiff, and the Restaurant Employees. Plaintiff, and the Restaurant Employees ,
6 furthermore suffered injury as defined under Labor Code § 226(e)(2)(b).

7 55. Defendant's conduct was a substantial factor in causing Plaintiff, and the
8 Restaurant Employees, harm.

9 56. Defendant is liable for actual damages caused subject to proof at trial, or statutory
10 damages under section 226(e), whichever is greater, plus interest thereon and attorney's fees and
11 costs under California Labor Code section 226(e), plus costs, and reasonable attorney's fees, as
12 well as all other available remedies.

13 **SIXTH CAUSE OF ACTION**

14 **(For Waiting Time Penalties - Labor Code §§ 201-203**

15 **By Plaintiff Individually and on Behalf of All Restaurant Employees)**

16 57. As a separate and distinct cause of action, Plaintiff complains and realleges all of
17 the allegations contained in this complaint, and incorporates them by reference into this cause of
18 action as though fully set forth herein, excepting those allegations which are inconsistent with this
19 cause of action.

20 58. During the Class Period, Defendant failed to pay accrued wages and other
21 compensation due immediately to each Proposed Class Member who was terminated, and failed to
22 pay accrued wages and other compensation due within seventy-two hours to each proposed Class
23 Member, including Plaintiff, who ended his or her employment.

24 59. Labor Code § 201 requires an employer who discharges an employee to pay
25 compensation due and owing to said employee immediately upon discharge. Labor Code § 203
26 provides that if an employer willfully fails to pay compensation promptly upon discharge, as
27 required by § 201, the employer is liable for waiting time penalties in the form of continued
28 compensation for up to 30 work days.

1 60. Defendants, and each of them, willfully failed and refused, and continue to
2 willfully fail and refuse, to timely pay compensation due to proposed Class Members upon
3 termination or resignation, as required by Labor Code § 201. As a result, Defendants, and each of
4 them, are liable to Plaintiff and all Proposed Class Members similarly situated for waiting time
5 penalties, together with interest thereon and attorneys' fees and costs, pursuant to California Labor
6 Code § 203, as well as all other available remedies, in an amount according to proof at the time of
7 trial.

8 **SEVENTH CAUSE OF ACTION**

9 **(For Indemnification - Labor Code § 2802**

10 **By Plaintiff Individually and on Behalf of All Restaurant Employees)**

11 61. As a separate and distinct cause of action, Plaintiff complains and realleges all of
12 the allegations contained in this complaint, and incorporate them by reference into this cause of
13 action as though fully set forth herein, excepting those allegations which are inconsistent with this
14 cause of action.

15 62. Pursuant to Labor Code § 2802(a), an employer shall indemnify its employees for
16 all necessary expenditures or losses incurred by the employees in direct consequence of the
17 discharge of their duties, or of their obedience to the directions of the employer, even though
18 unlawful, unless the employee, at the time of obeying the directions, believed them to be
19 unlawful.

20 63. During the Class Period, Restaurant Employees, including Plaintiff, incurred
21 necessary business-related expenses and costs that were not fully reimbursed by Defendants,
22 including and without limitations, gasoline and mileage for effectuating such food deliveries at the
23 direction and control of Defendant.

24 64. During the Class Period, Defendant failed to reimburse the Restaurant Employees,
25 including Plaintiff, for necessary business-related expenses and costs.

26 65. Restaurant Employees, including Plaintiff, are entitled to recover from Defendant
27 their business-related expenses and costs incurred during the course and scope of their
28 employment, plus attorneys' fees, costs and interest accrued from the date on which the employee

1 incurred the necessary expenditures.

2 **EIGHTH CAUSE OF ACTION**

3 **(For Unfair Competition - California Business & Professions Code § 17200 et seq.**

4 **By Plaintiff Individually and on Behalf of All Restaurant Employees)**

5 66. As a separate and distinct cause of action, Plaintiff complains and realleges all the
6 allegations contained in this complaint, and incorporates them by reference into this cause of
7 action as though fully set forth herein, excepting those allegations which are inconsistent with this
8 cause of action.

9 67. Defendant's violations of the Employment Laws and Regulations as alleged in this
10 Complaint, including but not limited to Defendant's:

11 a. Failure and refusal to pay Restaurant Employees, including Plaintiff, wages
12 for all hours worked;

13 b. Failure and refusal to pay Restaurant Employees, including Plaintiff, the
14 legal minimum wage;

15 c. Failure and refusal to pay Restaurant Employees, including Plaintiff,
16 overtime wages;

17 d. Failure and refusal to provide Restaurant Employees, including Plaintiff,
18 with meal and rest periods;

19 e. Failure and refusal to provide Restaurant Employees, including Plaintiff,
20 with timely and accurate wage and hour statements; and

21 f. Failure to maintain complete and accurate payroll records for Restaurant
22 Employees, including Plaintiff;
23 constitute unfair business practices in violation of the California Business & Professions Code
24 section 17200 et seq.

25 68. Defendant has avoided payment of wages, overtime wages and other benefits as
26 required by the California Labor Code, the California Code of Regulations, and applicable
27 Industrial Welfare Commission Wage Orders.

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69. As a result of Defendant's unfair business practices, Defendant has reaped unfair benefits and illegal profits at the expense of Restaurant Employees, including Plaintiff, and members of the public. Defendant should be made to disgorge their ill-gotten gains and to restore them to Restaurant Employees, including Plaintiff.

70. Defendant's unfair business practices entitle Plaintiff to an order that Defendant accounts for, disgorges and restores to the Restaurant Employees, including Plaintiff, the wages and other compensation unlawfully withheld from them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all Restaurant Employees, prays that the Court enter judgment in her favor and against Defendant as follows:

1. For an Order requiring and certifying this action as a class action for the First through the Eighth Causes of Action;
2. For an Order appointing Plaintiff's counsel as Class Counsel;
3. For compensatory damages in an amount to be ascertained at trial;
4. For restitution in an amount to be ascertained at trial;
5. For penalties as required by the applicable Wage Order or otherwise by law;
6. For prejudgment interest at the legal rate pursuant to California Labor Code section 218.6 and other applicable sections;
7. For reasonable attorney's fees pursuant to California Labor Code §§ 1021.5, 1194;
8. For cost of suit incurred herein;
9. For disgorgement of profits garnered as a result of Defendant's unlawful failure to pay overtime premium compensation and meal and rest period compensation; and
10. For such further relief as the Court may deem appropriate.

DATED: December 2, 2016

LAW OFFICES OF THOMAS W. FALVEY
MANCINI & ASSOCIATES

By: 
Michael H. Boyamian, Esq.

Attorneys for Plaintiff Felipe Villasenor, Individually
and on Behalf of All Similarly Situated Individuals

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Attorneys for Plaintiff Felipe Villasenor, Individually
and on Behalf of All Similarly Situated Individuals