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Los Angeles Superior Court

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John A. Clarke, Executive Officer/Clerk
By *D.M. Swain* Deputy
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7 **Attorneys for PLAINTIFF**

10 **SUPERIOR COURT OF CALIFORNIA**
11 **CITY AND COUNTY OF LOS ANGELES**

13 **BORIS GNEZDILOV,**

14 **Plaintiff,**

15 **vs.**

16 **PIZZA HUT, INC. and DOES 1-50, inclusive**

17 **Defendants,**

Case No.

BC374942

COMPLAINT FOR VIOLATION OF

1. **CALIFORNIA LABOR CODE;**
2. **CALIFORNIA BUSINESS &
PROFESSIONS CODE**

CLASS ACTION

DEMAND FOR JURY TRIAL

21 COMES NOW, Plaintiff, Boris Gnezdilov an individual over the age of eighteen (18)
22 and files this lawsuit against Defendants for himself and all others similarly situated, for legal
23 relief challenging Defendants' lucrative, repressive and unlawful business practices.
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1 3. Plaintiff does not know the true names or capacities, whether individual, partner or
2 corporate, of the DEFENDANTS sued herein as DOES 1 through 50, inclusive, and for that
3 reason, said DEFENDANTS are sued under such fictitious names, and Plaintiff prays leave to
4 amend this complaint when the true names and capacities are known. Plaintiff is informed and
5 believes and thereon alleges that each of said fictitious DEFENDANTS was responsible in some
6 way for the matters alleged herein and proximately caused Plaintiff and members of the general
7 public and class to be subject to the illegal employment practices, wrongs and injuries
8 complained of herein.
9

10
11 4. At all times herein mentioned, each of said DEFENDANTS participated in the doing of
12 the acts hereinafter alleged to have been done by the named DEFENDANTS; and furthermore,
13 the DEFENDANTS, and each of them, were the agents, servants and employees of each of the
14 other DEFENDANTS, as well as the agents of all DEFENDANTS, and at all times herein
15 mentioned, were acting within the course and scope of said agency and employment.
16

17 5. At all times herein mentioned, DEFENDANTS, and each of them, were members of, and
18 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
19 scope of, and in pursuance of, said joint venture, partnership and common enterprise.
20

21 6. At all times herein mentioned, the acts and omissions of various DEFENDANTS, and
22 each of them, concurred and contributed to the various acts and omissions of each and all of the
23 other DEFENDANTS in proximately causing the injuries and damages as herein alleged.

24 7. At all times herein mentioned, DEFENDANTS, and each of them, ratified each and every
25 act or omission complained of herein. At all times herein mentioned, the DEFENDANTS, and
26 each of them, aided and abetted the acts and omissions of each and all of the other
27 DEFENDANTS in proximately causing the damages as herein alleged.
28

1 8. Plaintiff and the class in the State of California regularly, and as a matter of practice, did
2 not receive statutory meal periods and/or rest breaks as required by California law.
3 DEFENDANTS did not provide meal periods where Plaintiff and the class were relieved of all
4 duties nor did DEFENDANTS permit and authorize Plaintiff and the class to take rest breaks
5 where they were relieved of all duties as required under California law. Defendant has failed to
6 pay these persons the compensation to which they are entitled due to the failure to provide
7 uninterrupted and off duty meal periods and rest breaks in violation of California law.
8

9
10 9. Plaintiff and the class regularly, and as a matter of practice, did not receive
11 indemnification for expenditures and/or losses as required by the California Labor Code.
12 Plaintiff and the class are required to use their personal vehicles and maintain the physical
13 appearance and upkeep of their vehicles in performing their work duties, yet DEFENDANTS do
14 not pay the required compensation for the costs associated with maintaining and using the
15 vehicle. Nor do DEFENDANTS pay for losses incurred by Plaintiff and the class incurred
16 during the performance of their work. Plaintiff has been injured by the illegal practices and
17 conduct alleged in this Complaint. Plaintiff's claims under California law are similar to and
18 typical of the claims of the alleged California Class.
19

20
21 10. This complaint is brought by Plaintiff pursuant to California Code of Civil Procedure
22 section 382 on behalf of a class. All claims alleged herein arise under California law for which
23 Plaintiff seeks relief authorized under California law. The class is comprised of, and defined as,
24 all current and former California based delivery driver employees who worked and/or are
25 working overtime for DEFENDANTS within the last four (4) years. The members of the class
26 are so numerous that joinder of all members would be impractical, if not impossible. The
27 identity of the members of the class are readily ascertainable by review of DEFENDANTS
28

1 records. Further, the subject matter of this action both as to factual matters and as to matters of
2 law, are such that there are significant questions of law and fact common to the class which
3 predominate over questions affecting only individual members including, among other things,
4 the following:
5

6 a. DEFENDANTS uniformly administered a corporate policy whereby delivery
7 drivers were not paid, or underpaid, for the cost of maintenance and use of their vehicles in
8 discharging their job duties.

9 b. The duties and responsibilities of the class members and the pay policies of
10 DEFENDANTS were virtually identical from region to region, area to area, store to store, and,
11 employee to employee. Further, any variations in job activities between the different individuals
12 in these positions are legally insignificant to the issues presented by this action.
13

14 11. Some members of the class identified herein were discharged by DEFENDANTS or
15 voluntarily quit, and did not have a written contract for employment. The DEFENDANTS, in
16 violation of California Labor Code Sections 201, and 202, *et seq.*, respectively, had a consistent
17 and uniform policy, practice and procedure of willfully failing to pay the earned and unpaid
18 wages of all such former employees. The DEFENDANTS have willfully failed to pay the earned
19 and unpaid wages earned and remaining uncompensated according to amendment, or prof.
20 Plaintiff and other members of the class did not secret or absent themselves from
21 DEFENDANTS nor refuse to accept the earned and unpaid wages from DEFENDANTS.
22 Accordingly, DEFENDANTS are liable for waiting time penalties for the unpaid wages pursuant
23 to California Labor Code § 203.
24

25 12. There are predominant common questions of law and fact and a community of interest
26 amongst Plaintiff and the claims of the class concerning whether DEFENDANTS' regular
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28

1 business custom and practice of requiring employees to use their own vehicles and then not
2 paying for either the cost of use and maintenance or losses occasioned by the use of the vehicles
3 is, and at all times herein mentioned was, in violation of California law, including California
4 Labor Code Section 2802 and California Industrial Welfare Commission wage orders.
5

6 13. The claims of Plaintiff are typical of the claims of all members of the class. Plaintiff, as a
7 representative party, will fairly and adequately protect the interests of the class by vigorously
8 pursuing this suit through attorneys who are skilled and experienced in handling civil litigation
9 of this type.
10

11 14. The California Labor Code and wage order provisions upon which Plaintiff bases his
12 claims are broadly remedial in nature. These laws and labor standards serve an important public
13 interest in establishing minimum working conditions and standards in California. These laws
14 and labor standards protect the average working employee from exploitation by employers who
15 may seek to take advantage of superior economic and bargaining power in setting onerous terms
16 and conditions of employment. The nature of this action and the format of laws available to
17 Plaintiff and members of the class identified herein make the class action format a particularly
18 efficient and appropriate procedure to redress the wrongs alleged herein. Further, this case
19 involves large corporate employers and a large number of individual employees with many
20 relatively small claims. If each employee were required to file an individual lawsuit, the
21 corporate defendants would necessarily gain an unconscionable advantage since they would be
22 able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
23 superior financial and legal resources. Requiring each class member to pursue an individual
24 remedy would also discourage the assertion of lawful claims by employees who would be
25 disinclined to file an action against their former and/or current employer for real and justifiable
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27
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1 fear of retaliation and permanent damage to their careers at subsequent employment. The
2 California's Supreme Court declared in *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831:
3 "Public policy has long favored the full and prompt payment of wages due an employee. . . .
4 [W]ages are not ordinary debts [B]ecause of the economic position of the average worker
5 and, in particular, his dependence on wages for the necessities of life for himself and his family,
6 it is essential to the public welfare that he receive his pay promptly." (*Id.*, p. 837, internal
7 quotation marks and citations omitted.) (Accord: *Gould v. Maryland Sound Industries, Inc.*
8 (1995) 31 Cal.App.4th 1137, 1147-48 ["[T]he prompt payment of wages due an employee is a
9 fundamental public policy of this state. . . . [W]age and hours laws' concern not only the health
10 and welfare of the workers themselves, but also the public health and general welfare."]; also
11 see, *Phillips v. Gemini Moving Specialists* (1998) 63 Cal.App.4th 563, 574.).

14 15. The prosecution of separate actions by the individual class members, even if possible,
15 would create a substantial risk of (1) inconsistent or varying adjudications with respect to
16 individual class members against the DEFENDANTS and which would establish potentially
17 incompatible standards of conduct for the DEFENDANTS, and/or (2) adjudications with respect
18 to individual class members which would, as a practical matter, be dispositive of the interests of
19 the other class members not parties to the adjudications or which would substantially impair or
20 impede the ability of the class members to protect their interests. Further, the claims of the
21 individual members of the class are not sufficiently large to warrant vigorous individual
22 prosecution considering all of the concomitant costs and expenses.

25 16. Such a pattern, practice and uniform administration of corporate policy regarding illegal
26 employee compensation as described herein is unlawful and creates an entitlement to recovery
27 by the Plaintiff and the class identified herein, in a civil action, for the unpaid balance of the full
28

1 amount of the straight time compensation and overtime premiums owing, including interest
2 thereon, willful penalties, reasonable attorneys fees, and costs of suit.

3
4 17. Proof of a common business practice or factual pattern, of which the named Plaintiff's
5 experiences are representative, will establish the right of each of the members of the class to
6 recovery on the causes of action alleged herein.

7
8 18. The plaintiff class is entitled in common to a specific fund with respect to the monies
9 illegally and unfairly retained by DEFENDANTS. The plaintiff class is entitled in common to
10 restitution and disgorgement of those funds being improperly withheld by DEFENDANTS. This
11 action is brought for the benefit of the entire class and will result in the creation of a common
12 fund.

13
14 19. Plaintiff contemplates providing a notice or notices to the class, as approved by the Court,
15 to be delivered through the United State mail. The notice or notices shall, among other things,
16 advise the class that they shall be entitled to "opt out" of the class if they so request by a date
17 specified within the notice, and that any judgment on the action, whether favorable or not,
18 entered in this case will bind all class members except those who affirmatively exclude
19 themselves by timely opting out.

20
21 20. Pursuant to Labor Code §2698 (SB 796 codified in the Labor Code as of January 1,
22 2004), Plaintiff brings this action on behalf of himself and other current and former employees
23 and seeks recovery of applicable civil penalties as follows:

24 a. Where civil penalties are specifically provided in the code for each of the
25 violations alleged herein, Plaintiff seeks recovery of such penalties; and
26
27
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1 b. Where civil penalties are not established in the code for each of the
2 violations alleged herein, Plaintiff seeks recovery of the penalties established in Labor Code §
3 2699(e).
4

5 WHEREFORE, Plaintiff on his own behalf and on behalf of the members of the class,
6 prays for judgment as hereinafter set forth.

7 **SECOND CLAIM FOR RELIEF FOR VIOLATION OF**
8 **BUSINESS AND PROFESSIONS CODE SECTION 17200**
9

10
11 20. Plaintiff reasserts and re-alleges the allegations set forth in Paragraphs 1 through 19,
12 above excepting those paragraphs which are inconsistent with this cause of action for violations
13 of the California Business and Professions Code § 17200.

14 21. Section 17200 of the California Business and Professions Code prohibits any unlawful,
15 unfair or fraudulent business act or practice.
16

17 22. DEFENDANTS have engaged in, and continue to engage in the unlawful, unfair and
18 fraudulent business practices allege herein all in violation of Section 17200 of the California
19 Business and Professions Code.

20 23. The policies and practices being challenged herein have harmed the named Plaintiff, the
21 members of the California class and the general public.
22

23 24. As a result of these unlawful policies and practices, Plaintiff is entitled to an injunction
24 issue against DEFENDANTS, pursuant to Section 17203 of the California Business and
25 Professions Code, to prevent them from engaging in such future unlawful, unfair and fraudulent
26 business practices. Plaintiff also is entitled to an order requiring DEFENDANTS to provide
27
28

1 restitution to all persons entitled thereto as a result of these unlawful business practices during
2 the applicable limitations period.

3 25. Plaintiff is entitled to an award of reasonable attorneys' fees pursuant to California Code
4 of Civil Procedure § 1021.5.
5

6 WHEREFORE, Plaintiff on his own behalf and on behalf of the members of the class,
7 prays for judgment as hereinafter set forth.
8

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment as follows:

12 **As to the First Cause of Action:**

- 13 1. That the Court determine that this action may be maintained as a class action;
14 2. For damages according to proof for wages, expenses and losses due and owing;
15 3. For penalties and remedies authorized by Labor Code §2698, et seq.;;
16 4. For waiting-time penalties as to former employee class members as authorized by
17 California Labor Code §203;
18
19 5. For pre-judgment interest, reasonable attorneys' fees, expenses, and costs as
20 allowed under California law.; and
21

22 **As to the Second Cause of Action:**

- 23 6. For an accounting to determine the amount of restitution to be returned by
24 DEFENDANTS to Plaintiff and the class;
25
26 7. For the creation of an administrative process wherein each injured class member
27 may submit a claim in order to receive his/her money;
28

