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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

**AMIR SEDRAK, on behalf of himself and all others
similarly situated,**

Plaintiff,

-against-

**MSK MANAGEMENT, LLC, S.I. PIZZA, INC., XYZ
CORP., and MOHAMMAD S. KHAN a/k/a MIKE
KHAN,**

Defendants.

**CLASS ACTION
COMPLAINT**

Plaintiff Amir Sedrak (“Plaintiff” or “Sedrak”), individually and on behalf of all others similarly situated, as a class representative, upon personal knowledge as to himself, and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover minimum wage, overtime compensation, spread-of-hours pay, misappropriated gratuities, uniform-related expenses, and other statutory penalties for Plaintiff and any similarly situated co-workers – delivery drivers – who work or have worked at Domino’s franchise locations owned and/or operated by MSK Management, LLC (“MSK”) nationwide, including S.I. Pizza, Inc. (“SIP”) d/b/a Domino’s and XYZ Corp. (“XYZ”), whose name is unknown at this time, d/b/a Domino’s.

2. Plaintiff brings this action on behalf of himself and similarly situated current and former delivery drivers who elect to opt in to this action pursuant to the Fair Labor Standards Act,

29 U.S.C. §§ 201 *et seq.* (“FLSA”), and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage-and-hour provisions of the FLSA by Defendants that have deprived Plaintiff and others similarly situated of their lawfully earned wages.

3. Plaintiff also brings this action on behalf of himself and similarly situated current and former delivery drivers in New York pursuant to Federal Rule of Civil Procedure 23 (“Rule 23”) to remedy violations of the New York Labor Law (“NYLL”) Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

4. Founded in 1960, Domino’s is a publicly traded company and the recognized world leader in pizza delivery. *See* biz.dominos.com/web/public/franchise. Domino’s global footprint is largely made up of locally-owned and operated franchises. *Id.* In total, Domino’s operates a network of more than 12,100 franchised and company-owned stores in the United States and 85 international markets. *Id.*

5. With over 47 franchises in New York, New Jersey, and Pennsylvania, MSK is a large member of Domino’s franchise network. As a result, MSK, through its individual subsidiaries/franchises, jointly employs over 1,000 Domino’s “team members” (i.e., employees) throughout its various locations.

6. MSK’s individual subsidiaries and locations in New York include but are not limited to: SIP in Staten Island, New York; XYZ in Staten Island, New York; and Mashal Enterprises, Inc. in Suffern, New York.

7. Additionally, MSK’s individual subsidiaries in New Jersey and Pennsylvania include but are not limited to: 89 West Palisades Avenue, LLC; 183 First Avenue, LLC; 187 Bloomfield Ave, LLC; 250 S. Orange Ave, LLC; 329 Union Avenue, LLC; 335 Valley Road, LLC; 441-443 MLK Blvd, LLC; 504 Van Houten Avenue, LLC; 551 Bloomfield Avenue, LLC;

1046 Clinton Avenue, LLC; Adams Pizza, LLC; Boonton Pizza, Inc.; Caldwell Pizza, Inc.; Easton Pizza, Inc.; Elizabeth Pizza, Inc.; Haroon Pizza, Inc.; Jersey Pizza, Inc.; Kennedys Pizza, Inc.; Khan Enterprises; Leonia Pizza, Inc.; Mount Penn Pizza, Inc.; NEK Pizza Enterprises, Inc.; Norristown Pizza, Inc.; Palmer Pizza, Inc.; Passaic Pizza, Inc.; Penn Street Pizza, Inc.; Pikesville Pizza, Inc.; PK Trading Corp.; Plainfield Pizza, Inc.; Potts Pizza, Inc.; Randallstown Pizza, Inc.; Royersford Pizza, Inc.; and Shaan Enterprises.

8. MSK is owned, operated, and controlled by company President Mohammad S. Khan a/k/a Mike Khan (“Khan,” and collectively with MSK, SIP, and XYZ, “Defendants”). Khan has spent over 29 years at Domino’s and over 25 years as a franchisee. *See Exhibit (“Ex.”) A, Mike Khan Franchisee Interview, The Voice of Domino’s Pizza Franchisees (the Domino’s Franchise Association Magazine) (2014), <https://dominosdfa.com> (“Franchisee Interview”)*. Khan remains intimately involved with every franchise through face-to-face meetings, training, P&L reviews, and performance reviews, *see Ex. A Franchisee Interview at 23-24*.

9. Defendants maintain policies and practices in violation of the Fair Labor Standards Act (“FLSA”) and New York Labor Law (“NYLL”) whereby delivery drivers are improperly compensated to increase profitability.

10. In that regard, Defendants maintain a policy and practice whereby delivery drivers are unlawfully paid less than the full minimum wage rate for the hours they work. Defendants paid delivery drivers a reduced, tipped minimum wage rate, even though they did not satisfy the requirements under the FLSA or NYLL by which they could take advantage of a tip credit.

11. Specifically, Defendants: (a) failed to provide workers with notification of the reduced, tipped minimum wage rate or tip credit provisions of the FLSA or the NYLL, or of their intent to apply a tip credit to tipped workers’ wages; and (b) failed to furnish workers with accurate

wage statements with each payment of wages.

12. Defendants maintain a policy and practice whereby delivery drivers were required to perform non-tip producing side work *unrelated* to the employee's tipped occupation. As a result, delivery drivers are engaged in a dual occupation while being compensated at a reduced, tipped minimum wage rate.

13. Defendants also maintain a policy and practice whereby delivery drivers were required to spend a substantial amount of time, more than 20%, performing non-tip producing side work *related* to the employee's tipped occupation.

14. In particular, Defendants maintain a policy and practice whereby delivery drivers are required to spend a substantial amount of time performing non-tip producing "side work" including, but not limited to: prepping dough, making pizzas, putting pizzas in the oven, taking pizzas out of the oven, boxing pizzas, making sauce, refilling sauce containers, filling toppings containers, working the assembly line, taking carry-out orders, working the cash register, answering phones, washing dishes, mopping, sweeping, wiping down walls, taking out the garbage, receiving deliveries, and stocking/organizing inventory.

15. Defendants required delivery drivers to perform "side work" throughout every shift at their respective franchise, while paying them less than the full minimum wage rate for this work.

16. Defendants maintain a policy and practice whereby delivery drivers are encouraged to work off-the-clock. Often, managers encourage delivery drivers to perform work-related tasks either prior to punching-in or after punching-out. During the period that delivery drivers are working off-the-clock, they are typically engaged in non-tip producing "side work". Defendants do not compensate delivery drivers for the periods of time that they are working off-the-clock.

17. As a result of Defendants' policy requiring delivery drivers to work off-the-clock,

Defendants denied delivery drivers spread-of-hours pay.

18. Defendants maintain a policy and practice whereby delivery drivers are unlawfully paid less than the full minimum wage rate for the hours they work. In that regard, Defendants required delivery drivers to use their own personal vehicles and cell phones when performing deliveries and did not provide any reimbursements for such use.

19. Specifically, Defendants did not reimburse delivery drivers for the mileage, fuel, maintenance, repairs, insurance, and depreciation resulting from the use of their own vehicles in violation of the FLSA, nor did they reimburse delivery drivers for the minutes, data, and/or text messages used on their own personal cell phones for work related issues in violation of the FLSA. Defendants only paid delivery drivers \$1.00 per delivery. This resulted in delivery drivers making less than the full minimum wage rate for all hours worked.

20. Additionally, Defendants used the incorrect minimum wage rate as a base to determine overtime wages. As a result, delivery drivers received overtime pay at the improper rate and are entitled to overtime at one and one half the full minimum wage rate for hours worked over 40 in a workweek.

21. Defendants maintained a policy and practice whereby they charged a delivery charge to customers placing phone orders without notifying customers that said delivery charges were not gratuities and retaining a portion of said charges.

22. Defendants also maintained a policy and practice whereby they failed to pay delivery drivers for uniform-related expenses.

23. Throughout Plaintiff's employment, Defendants did not make any efforts to monitor and/or record the actual hours worked by delivery drivers.

24. Delivery drivers for Defendants perform the same basic job duties and are subject to the same employment policies, practices and procedures.

25. Defendants apply the same employment policies, practices, and procedures to all delivery drivers.

THE PARTIES

Plaintiff

Amir Sedrak

26. Sedrak is an adult individual who is a resident of Staten Island, New York.

27. Sedrak has been employed by Defendants as a delivery driver, on and off, from in or around December 2014 through the present.

28. From in or around December 2014 to in or around January 2015, Sedrak worked as a delivery driver at XYZ.

29. From in or around October 2015 to the present, Sedrak worked as a delivery driver at SIP.

30. Sedrak is a covered employee within the meaning of the FLSA and the NYLL.

31. A written consent form for Sedrak is being filed with this Class Action Complaint.

Defendants

32. Defendants jointly employed Plaintiff and similarly situated employees at all times relevant.

33. Each Defendant has had substantial control over Plaintiff's and similarly situated employee's working conditions, and over the unlawful policies and practices alleged herein.

34. Defendants are part of a single integrated enterprise that jointly employed Plaintiff and similarly situated employees at all times relevant.

35. Defendants' operations are interrelated and unified.

36. During all relevant times, the individual franchises shared a common management and were centrally controlled and/or owned by Defendants.

37. During all relevant times, Defendants centrally controlled the labor relations of the individual franchises.

38. During all relevant times, Defendants comingled funds of the individual franchises and MSK.

MSK Management, LLC

39. Together with the other Defendants, MSK has owned and/or operated 47 individual Domino's franchises during the relevant time period, including the franchises where Plaintiff worked.

40. MSK is a domestic limited liability company organized and existing under the laws of New York.

41. According to manta.com, MSK's business address is 441 Main Street, East Orange, NJ 07018, the same business address as several of the individual franchises, including SIP. *See* www.manta.com/c/mmgmsv3/msk-management.

42. MSK is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, has employed Plaintiff and similarly situated employees.

43. At all relevant times, MSK has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.

44. MSK applies the same employment policies, practices, and procedures for all delivery drivers at its individual franchises, including policies, practices, and procedures with

respect to payment of minimum wage, overtime compensation, spread-of-hours, and customer tips.

45. Upon information and belief, at all relevant times MSK has an annual gross volume of sales in excess of \$500,000.

S.I. Pizza, Inc. d/b/a Domino's

46. Together with the other Defendants, SIP has owned and/or operated the Domino's franchise located at 3902 Richmond Avenue, Staten Island, New York 10312, during the relevant period.

47. SIP is a domestic business corporation organized and existing under the laws of New York.

48. According to the Entity Information provided by the New York State Department of State, Division of Corporations, SIP's address for service of process is, Mohammad Khan, 441 Main Street, Suite 200, East Orange, New Jersey 07018, the address of MSK.

49. SIP is the corporate identity that has appeared on delivery drivers' paystubs for worked performed at the Domino's franchise located at 3902 Richmond Avenue, Staten Island, New York 10312.

50. SIP is a wholly owned subsidiary of MSK.

51. SIP is a covered employer within the meaning of the FLSA and the NYLL, and, at all time relevant, has employed Plaintiff and similarly situated employees.

52. At all relevant times, SIP has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including timekeeping, payroll, and other employment practices that applied to them.

53. SIP has applied the same employment policies, practices, and procedures to all delivery drivers, including policies, practices, and procedures with respect to payment of minimum

wage, overtime compensation, spread-of-hours, and customer tips.

54. Upon information and belief, at all relevant times, SIP's annual gross volume of sales made or business done was not less than \$500,000.00.

XYZ Corp. d/b/a Domino's

55. XYZ is a fictitious entity whose precise identity is not presently known, but which, together with the other Defendants owned and/or operated the Domino's franchise located at 3902 Richmond Avenue, Staten Island, New York 10312, during the relevant period.

56. Upon information and belief, XYZ is a domestic business organized and existing under the laws of New York.

57. XYZ is a wholly owned subsidiary of MSK.

58. XYZ is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, has employed Plaintiff and similarly situated employees.

59. At all relevant times, XYZ has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including timekeeping, payroll, and other employment practices that applied to them.

60. XYZ has applied the same employment policies, practices, and procedures to all delivery drivers, including policies, practices, and procedures with respect to payment of minimum wage, overtime compensation, spread-of-hours, and customer tips.

61. Upon information and belief, at all relevant times, XYZ's annual gross volume of sales made or business done was not less than \$500,000.00.

Mohammad S. Khan a/k/a Mike Khan

62. Upon information and belief, Khan is a resident of the State of New Jersey.

63. Upon information and belief, Khan has been an owner and operator of MSK, SIP,

and XYZ at all relevant times.

64. According to manta.com, Khan is listed as the owner for MSK at 441 Main Street, East Orange, NJ 07018, the same business address as several of the individual franchises, including SIP. *See* www.manta.com/c/mmgmsv3/msk-management.

65. According to the Entity Information provided by the New York State Department of State, Division of Corporations, Khan is listed as the recipient of service of process for SIP at 441 Main Street, Suite 200, East Orange, New Jersey 07018, the address of MSK.

66. At all relevant times, Khan has had power over personnel decisions at MSK and the individual Domino's franchises, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

67. At all relevant times, Khan has had power over payroll decisions at MSK and the individual Domino's franchises, including the power to retain time and/or wage records.

68. At all relevant times, Khan has been actively involved in managing the day to day operations of MSK and the individual Domino's franchises.

69. At all relevant times, Khan has had the power to stop any illegal pay practices that harmed Plaintiff and similarly situated employees.

70. At all relevant times, Khan has had the power to transfer the assets and/or liabilities of MSK and the individual Domino's franchises.

71. At all relevant times, Khan has had the power to declare bankruptcy on behalf of MSK and the individual Domino's franchises.

72. At all relevant times, Khan has had the power to enter into contracts on behalf of MSK and the individual Domino's franchises.

73. At all relevant times, Khan has had the power to close, shut down, and/or sell MSK

and the individual Domino's franchises.

74. Khan is a covered employer within the meaning of the FLSA and the NYLL, and at all relevant times, has employed and/or jointly employed Plaintiff and similarly situated employees.

JURISDICTION AND VENUE

75. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332 and 1337, and jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

76. This Court also has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

77. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

78. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

COLLECTIVE ACTION ALLEGATIONS

79. Plaintiff brings the First and Second Causes of Action, the FLSA claims, on behalf of himself and all similarly situated current and former delivery drivers employed at Domino's franchises nationwide owned, operated, and/or controlled by Defendants, for a period of three years prior to the filing of this Class Action Complaint and the date of final judgment in this matter, and who elect to opt-in to this action (the "FLSA Collective Members").

80. At all relevant times, Plaintiff and the FLSA Collective Members are and have been similarly situated, have had substantially similar job requirements and pay provisions, and are and have been subject to Defendants' decisions, policies, plans, and common programs, practices, procedures, protocols, routines, and rules of willfully failing and refusing to pay Plaintiff and the

FLSA Collective Members at the legally required minimum wage for all hours worked. Plaintiff's claims stated herein are essentially the same as those of the other FLSA Collective Members.

81. Defendants are aware or should have been aware that federal law required them to pay employees minimum wage and overtime compensation for all of the hours they work.

82. Defendants' unlawful conduct has been widespread, repeated, and consistent.

83. The First and Second Causes of Action are properly brought under and maintained as an opt-in collective action pursuant to 29 U.S.C. 216(b).

84. As part of its regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff and the other FLSA Collective Members. This policy and pattern or practice includes, but is not limited to:

(a) willfully failing to pay its employees, including Plaintiff and the FLSA Collective Members, minimum wages for all hours worked and premium overtime wages for all hours worked in excess of 40 hours per workweek.

85. The FLSA Collective Members are readily ascertainable.

86. For the purpose of notice and other purposes related to this action, the FLSA Collective Members' names and addresses are readily available from Defendants' records.

CLASS ACTION ALLEGATIONS

87. Plaintiff brings the Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Causes of Action, NYLL claims, under Rule 23, on behalf of himself and a class of persons consisting of:

All persons who work or have worked as delivery drivers and similar employees at the Domino's franchises, owned and/or operated by MSK Management, LLC and/or Mohammad S. Khan, in New York, between February 1, 2010 and the date of final judgment in this matter (the "Rule 23 Class").

88. Excluded from the Rule 23 Class are Defendants, Defendants' legal representatives,

officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Rule 23 Class.

89. The members of the Rule 23 Class ("Rule 23 Class Members") are readily ascertainable. The number and identity of the Rule 23 Class Members are determinable from the Defendants' records. The hours assigned and worked, the positions held, and the rates of pay for each Rule 23 Class Member are also determinable from Defendants' records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under Federal Rule of Civil Procedure 23.

90. The Rule 23 Class Members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

91. There are more than 50 Rule 23 Class Members.

92. Plaintiff's claims are typical of those claims which could be alleged by any Rule 23 Class Member, and the relief sought is typical of the relief which would be sought by each Rule 23 Class Member in separate actions.

93. All the Rule 23 Class Members were subject to the same corporate practices of Defendants, as alleged herein, of failing to pay minimum wage, failing to provide overtime compensation, failing to provide spread-of-hours pay, failing to be reimbursed for uniform-related expenses, unlawfully retaining gratuities earned by the Rule 23 Class Members, failing to provide proper wage and hour notices, and failing to provide proper wage statements.

94. Plaintiff and the Rule 23 Class Members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL.

95. Plaintiff and the Rule 23 Class Members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct. Defendants' corporate-wide policies and practices affected all Rule 23 Class Members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the Rule 23 Class Members.

96. Plaintiff and other Rule 23 Class Members sustained similar losses, injuries, and damages arising from the same unlawful policies, practices, and procedures.

97. Plaintiff is able to fairly and adequately protect the interests of the Rule 23 Class Members and has no interests antagonistic to the Rule 23 Class Members.

98. Plaintiff is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiffs and classes in wage and hour cases.

99. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries, and damages suffered by each of the individual Rule 23 Class Members are small in the sense pertinent to a class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual Rule 23

Class Members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual Rule 23 Class Members would create a risk of inconsistent and/or varying adjudications with respect to the individual Rule 23 Class Members, establishing incompatible standards of conduct for Defendants and resulting in the impairment of the Rule 23 Class Members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

100. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

101. Common questions of law and fact exist as to the Rule 23 Class that predominate over any questions only affecting Plaintiff and the Rule 23 Class Members, individually, and include, but are not limited to, the following:

- (a) whether Defendants violated NYLL Articles 6 and 19, and the supporting New York State Department of Labor Regulations;
- (b) whether Defendants employed Plaintiff and the Rule 23 Class Members within the meaning of the NYLL;
- (c) whether Defendants paid Plaintiff and the Rule 23 Class Members at the proper minimum wage rate for all hours worked;
- (d) whether Defendants correctly compensated Plaintiff and the Rule 23 Class Members for hours worked in excess of 40 per workweek;
- (e) whether Defendants had a policy or practice of failing to provide adequate notice of their payment of a reduced minimum wage to Plaintiff and the Rule 23 Class

Members;

- (f) whether Defendants failed to provide Plaintiff and the Rule 23 Class Members with spread-of-hours pay when the length of their workday was greater than 10 hours;
- (g) whether Defendants misappropriated tips from Plaintiff and the Rule 23 Class Members by accepting, and/or retaining tips paid by customers that were intended for Plaintiff and the Rule 23 Class Members, and which customers reasonably believed to be gratuities for Plaintiff and the Rule 23 Class Members;
- (h) whether Defendants failed to pay Plaintiff and the Rule 23 Class Members for uniform-related expenses;
- (i) whether Defendants failed to keep true and accurate time and pay records for all hours worked by Plaintiff and the Rule 23 Class Members, and other records required by the NYLL;
- (j) whether Defendants failed to furnish Plaintiff and the Rule 23 Class Members with proper annual wage notices, as required by the NYLL;
- (k) whether Defendants failed to furnish Plaintiff and the Rule 23 Class Members with an accurate statement of wages listing the rates paid, gross wages, and the claimed tip allowance, as required by the Wage Theft Prevention Act;
- (l) whether Defendants' policy of failing to pay delivery drivers was instituted willfully or with reckless disregard of the law; and
- (m) the nature and extent of class-wide injury and the measure of damages for those injuries.

PLAINTIFF'S FACTUAL ALLEGATIONS

102. Consistent with their policies and patterns or practices as described herein, Defendants harmed Plaintiff, individually, as follows:

Amir Sedrak

103. Defendants did not pay Sedrak the proper minimum wages and overtime compensation for all of the time that he suffered or was permitted to work each workweek.

104. Throughout the duration of his employment, Defendants have not kept accurate records of wages earned, or of the hours worked by Sedrak. As such, Sedrak was not compensated for all of the hours he suffered or was permitted to work.

105. Throughout the duration of his employment, Sedrak received weekly paychecks from Defendants that did not properly record or compensate him for all the hours that he worked.

106. During his employment, Sedrak's schedule would vary. However, Sedrak's base schedule, unless he missed time for vacation, sick days, and/or holidays was: 4 shifts per week (Mondays, Fridays, Saturdays, and Sundays), from 9:00AM to 4:00 PM for an average of approximately 28 hours per week.

107. However, Sedrak would regularly be asked to come in 1 to 2 hours earlier than his scheduled shifts, stay 1 to 2 hours later than his scheduled shift, and/or work 4 to 7 hour shifts on his days off. As a result, Sedrak would usually work between 40 – 50 hours per week

108. Defendants paid Sedrak either at or below the full minimum wage rate.

109. Defendants failed to notify Sedrak verbally or in writing of the tip credit provisions of the FLSA, or of their intent to apply a tip credit to his wages.

110. Defendants failed to notify Sedrak in writing of the tip credit provisions of the NYLL, or of their intent to apply a tip credit to his wages.

111. As a result of the above two paragraphs, Defendants did not satisfy the requirements under the FLSA, and NYLL by which they could apply a tip credit to Sedrak's wages. As such, Sedrak should have been paid the full statutory minimum wage rate not a reduced tipped minimum wage rate.

112. Defendants required Sedrak to perform a substantial amount of non-tipped "side work" in excess of twenty percent (20%) and/or two hours of his time at work. During these periods, Sedrak was engaged in a dual job, namely that of a counterperson or in-store employee, however, Defendants did not compensate Sedrak at the full statutory minimum wage rate.

113. Defendants charged customers a delivery charge to all phone orders without notifying its customers ahead of time that the delivery charge was not a gratuity. Defendants only provided Plaintiff with \$1.00 from the delivery charge per delivery. Customers reasonably believed that said delivery charges were a gratuity. As such, Defendants unlawfully confiscated and retained a portion of the gratuities Sedrak earned during the course of his employment.

114. Defendants frequently required Sedrak to perform work off-the-clock. In that regard, Sedrak would often be required to perform work-related tasks prior to punching-in for the start of his shift and/or after punching-out at the end of his shift. During the periods of time that Sedrak worked off-the-clock, he was typically engaged in non-tip producing “side work,” and he was not compensated by Defendants.

115. As a result of Defendants off-the-clock policy, Defendants suffered or permitted Sedrak to work over 10 hours per day. Defendants did not pay Sedrak one additional hour of pay at the full statutory minimum wage rate for all of the times that the length of the interval between the beginning and end of his workday – including working time plus time off for meals plus intervals off duty – was greater than 10 hours.

116. Defendants required Sedrak to use his own personal vehicle and cell phone to perform deliveries for Defendants. However, Defendants did not reimburse Sedrak for any expenses incurred as a result of such use, including but not limited to: mileage, fuel, maintenance, repairs, insurance, and depreciation costs related to his vehicle as well as call time, data, and text message costs related to his personal cell phone in violation of the FLSA.

117. Defendants required Sedrak to wear a uniform consisting of a t-shirt and hat with the Domino’s logo and/or name. Defendants failed to provide Sedrak with sufficient uniforms despite frequently working 4 days per week. Defendants only provided Sedrak with one t-shirt and one hat.

In addition, during cold weather days, if Sedrak wanted to wear a coat or jacket, Defendants required Sedrak to wear a coat or jacket containing the Domino's logo and/or name. Defendants did not provide Sedrak with a coat or jacket. As a result, during his employment with Defendants, Sedrak purchased two coats/jackets from Defendants at thirty dollars (\$30.00) per coat/jacket. Furthermore, Defendants did not: launder and/or maintain Sedrak's mandatory uniform, reimburse Sedrak for his uniform-related expenses, and/or pay Sedrak the required weekly uniform-maintenance amount in addition to the required minimum wage.

118. Defendants failed to furnish Sedrak with proper annual wage notices, as required by the NYLL.

119. Defendants failed to furnish Sedrak with a proper statement with every payment of wages, as required by the NYLL.

FIRST CAUSE OF ACTION
Fair Labor Standards Act – Minimum Wage
(Brought on behalf of Plaintiff and the FLSA Collective Members)

120. Plaintiff, on behalf of himself and the FLSA Collective Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

121. Defendants have engaged in a widespread pattern, policy, and practice of violating the FLSA, as detailed in this Class Action Complaint.

122. At all relevant times, each of the Defendants have been, and continue to be, an employer engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of FLSA, 29 U.S.C. § 203. At all relevant times, each Defendant has employed "employee[s]," including Plaintiff and the FLSA Collective Members within the meaning of 29 U.S.C. §§ 201 *et seq.*

123. Defendants were required to pay directly to Plaintiff and the FLSA Collective Members the minimum wage rate to which they are entitled under the FLSA for all hours worked.

124. Defendants failed to pay Plaintiff and the FLSA Collective Members the minimum wages to which they are entitled under the FLSA.

125. Defendants were not eligible to avail themselves of a reduced, tipped minimum wage rate under the FLSA, 29 U.S.C. §§ 201 *et seq.*, because Defendants failed to inform Plaintiff and the FLSA Collective Members of the provisions of subsection 203(m) of the FLSA.

126. Defendants were not eligible to avail themselves of a reduced, tipped minimum wage rate under the FLSA, 29 U.S.C. §§ 201 *et seq.*, because Defendants required Plaintiff and the FLSA Collective Members to perform side work *related* to the tipped profession in excess of twenty percent of their work time. During these periods, Defendants compensated Plaintiff and the FLSA Collective Members at a reduced, tipped minimum wage rate rather than at the full hourly minimum wage rate as required by 29 U.S.C. §§ 201 *et seq.*

127. Defendants also regularly required Plaintiff and the FLSA Collective Members to perform non-tipped side work *unrelated* to their tipped occupation. During these periods, Defendants compensated Plaintiff and the FLSA Collective Members at a reduced, tipped minimum wage rate rather than at the full hourly minimum wage rate as required by 29 U.S.C. §§ 201 *et seq.*

128. Defendants were required to pay Plaintiff and the FLSA Collective Members the minimum wage rate to which they are entitled under the FLSA for all hours worked, free and clear of any reductions as per 29 C.F.R. § 531.35. As such, Defendants were required to pay Plaintiff and the FLSA Collective Members at least the following IRS Standard Mileage Rates in addition to the full statutory minimum wage rate they were entitled to under the FLSA: (a) 56.5¢ per mile

for all miles driven per delivery from January 1, 2013 through December 31, 2013; (b) 56¢ per mile for all miles driven per delivery from January 1, 2014 through December 31, 2014; (c) 57.5¢ per mile for all miles driven per delivery from January 1, 2015 through December 31, 2015, and (d) 54¢ per mile for all miles driven per delivery from January 1, 2016 to the present under the FLSA.

129. Defendants' unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Class Action Complaint were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff and the FLSA Collective Members.

130. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. §§ 201 *et seq.*

131. As a result of Defendants' willful violations of the FLSA, Plaintiff and the FLSA Collective Members have suffered damages by being denied minimum wages in accordance with the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

SECOND CAUSE OF ACTION
Fair Labor Standards Act – Overtime Wages
(Brought on behalf of Plaintiff and the FLSA Collective Members)

132. Plaintiff, on behalf of himself and the FLSA Collective Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

133. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Defendants and protect Plaintiff and the FLSA Collective Members.

134. Defendants have failed to pay Plaintiff and the FLSA Collective Members overtime wages to which they have been entitled under the FLSA – at a rate of 1.5 times the full minimum hourly wage rate – for all hours worked in excess of 40 per workweek.

135. Defendants’ unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Class Action Complaint were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff and the FLSA Collective Members.

136. Because Defendants’ violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

137. As a result of Defendants’ violations of the FLSA, Plaintiff and the FLSA Collective Members have been deprived of overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys’ fees, costs, and other compensation pursuant to 29 U.S.C. § 216(b).

THIRD CAUSE OF ACTION
New York Labor Law – Minimum Wage
(Brought on behalf of Plaintiff and the Rule 23 Class Members)

138. Plaintiff, on behalf of himself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

139. Defendants have engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Class Action Complaint.

140. At all times relevant, Plaintiff and the Rule 23 Class Members have been employees of Defendants, and Defendants have been employers of Plaintiff and the Rule 23 Class Members within the meaning of the NYLL §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

141. At all times relevant, Plaintiff and the Rule 23 Class Members have been covered by the NYLL.

142. The wage provisions of Article 19 of the NYLL and the supporting New York State Department of Labor Regulations apply to Defendants, and protect Plaintiff and the Rule 23 Class Members.

143. Defendants failed to pay Plaintiff and the Rule 23 Class Members the minimum hourly wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations.

144. Defendants failed to provide Plaintiff and the Rule 23 Class Members with the statutorily required language that they would be paying Plaintiff and the Rule 23 Class members a reduced, tipped minimum wage rate.

145. Defendants required Plaintiff and the Rule 23 Class Members to perform a substantial amount of non-tipped side work in excess of two hours or more, or twenty percent of their work time. During these periods, Plaintiff and the Rule 23 Class Members were engaged in a non-tipped occupation, yet they were compensated by Defendants at a reduced, tipped minimum wage rate, rather than the full hourly minimum wage rate as required by the NYLL and the supporting New York State Department of Labor Regulations.

146. Defendants were required to pay the New York Plaintiff and the Rule 23 Class Members the full minimum wage at a rate of; (a) \$7.25 per hour for all hours worked from January

15, 2010 through December 30, 2013; (b) \$8.00 per hour for all hours worked from December 31, 2013 to December 30, 2014; (c) \$8.75 per hour for all hours worked from December 31, 2014 to December 30, 2015, and (d) \$9.00 per hour for all hours worked from December 31, 2015 to the present under the NYLL §§ 650 *et seq.* and the supporting New York State Department of Labor Regulations.

147. Prior to January 1, 2011, Defendants failed to furnish with every payment of wages to Plaintiff and the Rule 23 Class Members a statement listing hours worked, rates paid, gross wages, and tip allowance claimed as part of their minimum hourly wage rate, as required by the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiff and the Rule 23 Class Members were entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate during this time period.

148. Prior to January 1, 2011, Defendants failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiff and the Rule 23 Class Members as required by the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiff and the Rule 23 Class Members were entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate during this time period.

149. Since January 1, 2011, Defendants have failed to notify Plaintiff and the Rule 23 Class Members of any tip credit in writing as required by the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiff and the Rule 23 Class Members have been entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate during this time period.

150. Through their knowing or intentional failure to pay minimum hourly wages to Plaintiff and the Rule 23 Class Members, Defendants have willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

151. Due to Defendants' willful violations of the NYLL, Plaintiff and the Rule 23 Class Members are entitled to recover from Defendants their unpaid minimum wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

FOURTH CAUSE OF ACTION
New York Labor Law – Overtime Wages
(Brought on behalf of Plaintiff and the Rule 23 Class Members)

152. Plaintiff, on behalf of himself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

153. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendants, and protect Plaintiff and the Rule 23 Class Members.

154. Defendants have failed to pay Plaintiff and the Rule 23 Class Members overtime wages to which they have been entitled under the NYLL and the supporting New York State Department of Labor Regulations.

155. Defendants have failed to pay Plaintiff the Rule 23 Class Members overtime at a rate of time and one-half the full statutory minimum wage rate for all hours worked in excess of 40 per workweek.

156. Defendants have failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiff and the Rule 23 Class Members.

157. Through their knowing or intentional failure to pay Plaintiff and the Rule 23 Class Members overtime wages for hours worked in excess of 40 hours per week, Defendants have

willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

158. Due to Defendants' violations of the NYLL, Plaintiff and the Rule 23 Class members are entitled to recover from Defendants their unpaid overtime wages, liquidated damages, as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

FIFTH CAUSE OF ACTION
New York Labor Law – Spread-of-Hours Pay
(Brought on behalf of Plaintiff and the Rule 23 Class Members)

159. Plaintiff, on behalf of himself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

160. Defendants have willfully failed to pay Plaintiff and the Rule 23 Class Members additional compensation of one hour's pay at the basic minimum hourly wage rate for each day that the length of the interval between the beginning and end of their workday – including working time plus time off for meals plus intervals off duty – has been greater than 10 hours.

161. Through their knowing or intentional failure to pay Plaintiff and the Rule 23 Class Members spread-of-hours pay, Defendants have willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

162. Due to Defendants' violations of the NYLL, Plaintiff and the Rule 23 Class Members are entitled to recover from Defendants their unpaid spread-of-hours wages, liquidated damages, as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

SIXTH CAUSE OF ACTION
New York Labor Law – Uniform Violations
(Brought on behalf of Plaintiff and the Rule 23 Class Members)

163. Plaintiff, on behalf of himself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

164. Defendants have required Plaintiff and the Rule 23 Class Members to wear a uniform consisting of clothing that is not ordinary basic street clothing selected by Plaintiff and the Rule 23 Class Members, and that may not be worn as part of Plaintiff's and the Rule 23 Class Members' ordinary wardrobes.

165. Defendants have required Plaintiff and the Rule 23 Class Members to purchase their required uniforms from Defendants.

166. Defendants have failed to: launder and/or maintain the required uniforms for Plaintiff and the Rule 23 Class Members, reimburse Plaintiff and the Rule 23 Class Members for uniform-related expenses, and/or pay them the required weekly amount in addition to the required minimum wage.

167. Through their knowing or intentional failure to pay and/or reimburse Plaintiff and the Rule 23 Class Members for the cost and maintenance of required uniforms, Defendants have willfully violated the NYLL, and the supporting New York State Department of Labor Regulations.

168. Due to Defendants' willful violations of the NYLL, Plaintiff and the Rule 23 Class Members are entitled to recover from Defendants the costs of purchasing and/or maintaining their uniforms, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

SEVENTH CAUSE OF ACTION
New York Labor Law – Tip Misappropriation
(Brought on behalf of Plaintiff and the Rule 23 Class Members)

169. Plaintiff, on behalf of himself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

170. Defendants have unlawfully retained part of the gratuities earned by Plaintiff and the Rule 23 Class Members in violation of NYLL, Article 6, § 196-d and the supporting New York State Department of Labor Regulations.

171. Through their knowing or intentional demand for, acceptance of, and/or retention of gratuities earned by Plaintiff and the Rule 23 Class Members, Defendants have willfully violated the NYLL, Article 6, § 196-d, and the supporting New York State Department of Labor Regulations, including, but not limited to, the regulations in 12 N.Y.C.R.R. Part 137 and Part 146.

172. Due to Defendants' willful violations of the NYLL, Plaintiff and the Rule 23 Class Members are entitled to recover from Defendants the value of the misappropriated gratuities, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

EIGHTH CAUSE OF ACTION
New York Labor Law – Failure to Provide Wage Notices
(Brought on behalf of Plaintiff and the Rule 23 Class Members)

173. Plaintiff, on behalf of himself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

174. Defendants have willfully failed to supply Plaintiff and the Rule 23 Class Members with wage notices, as required by NYLL, Article 6, § 195(1), in English or in the language identified by Plaintiff and the Rule 23 Class Members as their primary language, containing Plaintiff's and the Rule 23 Class Members' rate or rates of pay and basis thereof, whether paid by

the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any “doing business as” names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

175. Through their knowing or intentional failure to provide Plaintiff and the Rule 23 Class Members with the wage notices required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

176. Due to Defendants’ willful violations of NYLL, Article 6, § 195(1) prior to December 31, 2014, Plaintiff and the Rule 23 Class Members are entitled to statutory penalties of fifty dollars each week that Defendants failed to provide Plaintiff and the Rule 23 Class Members with wage notices, or a total of two thousand five hundred dollars each, reasonable attorneys’ fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-b).

177. Due to Defendants’ willful violations of NYLL, Article 6, § 195(1) since December 31, 2014, Plaintiff and the Rule 23 Class Members are entitled to statutory penalties of fifty dollars each day that Defendants failed to provide Plaintiff and the Rule 23 Class Members with wage notices, or a total of five thousand dollars each, reasonable attorneys’ fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-b).

NINTH CAUSE OF ACTION
New York Labor Law – Failure to Provide Wage Statements
(Brought on behalf of Plaintiff and the Rule 23 Class Members)

178. Plaintiff, on behalf of himself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

179. Defendants have willfully failed to supply Plaintiff and the Rule 23 Class Members with accurate statements of wages as required by NYLL, Article 6, § 195(3), containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

180. Through their knowing or intentional failure to provide Plaintiff and the Rule 23 Class Members with the accurate wage statements required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

181. Due to Defendants' willful violations of NYLL, Article 6, § 195(3) prior to December 31, 2014, Plaintiff and the Rule 23 Class Members are entitled to statutory penalties of one hundred dollars for each workweek that Defendants failed to provide Plaintiff and the Rule 23 Class Members with accurate wage statements, or a total of two thousand five hundred dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-d).

182. Due to Defendants' willful violations of NYLL, Article 6, § 195(3), Plaintiff and the Rule 23 Class Members are entitled to statutory penalties of two hundred fifty dollars for each

workweek that Defendants failed to provide Plaintiff and the Rule 23 Class Members with accurate wage statements, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated persons, respectfully request that this Court grant the following relief:

A. Designation of this action as a collective action on behalf of the FLSA Collective Members (asserting FLSA claims and state claims) and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims and state claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);

B. Unpaid minimum wages, overtime compensation, and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor Regulations;

C. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

D. Designation of Plaintiff as a representative of the Rule 23 Class and counsel of record as Class Counsel;

E. Issuance of a declaratory judgment that the practices complained of in this Class Action Complaint are unlawful under the NYLL, Article 6, §§ 190 *et seq.*, NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations;

F. Unpaid minimum wages, overtime compensation, spread-of-hours pay, uniform-related expenses, misappropriated gratuities, and liquidated damages permitted by law pursuant to the NYLL and the supporting New York State Department of Labor Regulations;

G. Statutory penalties of fifty dollars for each workweek, prior to December 31, 2014, that Defendants failed to provide Plaintiff and the Rule 23 Class Members with proper wage notices, or a total of twenty-five hundred dollars each, as provided for by NYLL, Article 6 § 198;

H. Statutory penalties of one hundred dollars for each workweek, prior to December 31, 2014, that Defendants failed to provide Plaintiff and the Rule 23 Class Members with proper wage statements, or a total of twenty-five hundred dollars each, as provided for by NYLL, Article 6 § 198;

I. Statutory penalties of fifty dollars for each day, since December 31, 2014, that Defendants failed to provide Plaintiff and the Rule 23 Class Members with wage notices, or a total of five thousand dollars each, as provided for by NYLL, Article 6 § 198;

J. Statutory penalties of two hundred fifty dollars for each workweek, since December 31, 2014, that Defendants failed to provide Plaintiff and the Rule 23 Class Members with accurate wage statements, or a total of five thousand dollars each, as provided for by NYLL, Article 6 § 198;

K. Prejudgment and post-judgment interest;

L. An injunction requiring Defendants to pay all statutorily required wages and cease the unlawful activity described herein pursuant to the NYLL;

M. Reasonable attorneys' fees and costs of the action; and

N. Such other relief as this Court shall deem just and proper.

Dated: New York, New York
February 5, 2016

Respectfully submitted,

/s/Brian S. Schaffer
Brian S. Schaffer

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