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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Gil Santiago Cano, Hector Hernandez Zavala, Juan Hernandez Zavala, Omar Hernandez Zavala, Aristeo Basurto, and Carlos Rodriguez Herrera, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

DPNY, Inc. d/b/a Domino's Pizza, BMW Pizza, Inc. d/b/a Domino's Pizza, David L. Melton, Angelina M. Melton, Zia Shah, Shaik Shamin, John Doe Manager No. 1 a/k/a "Patwary," and John Doe Manager No. 2 a/k/a "Mocter,"

Defendants.

**No.**

**COLLECTIVE/CLASS  
ACTION COMPLAINT**

Plaintiffs Gil Santiago Cano, Hector Hernandez Zavala, Juan Hernandez Zavala, Omar Hernandez Zavala, Aristeo Basurto and Carlos Rodriguez Herrera (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, by their attorneys The Legal Aid Society and Shearman & Sterling LLP, upon personal knowledge as to themselves and upon information and belief as to other matters, allege as follows:

### **NATURE OF THE CASE**

1. This action seeks redress for violations of the federal Fair Labor Standards Act ("FLSA") and the New York Labor Law ("NYLL"). In a fundamental breach of their statutory obligations, DPNY, Inc. d/b/a Domino's Pizza, BMW Pizza, Inc. d/b/a Domino's Pizza, David L. Melton, Angelina M. Melton, Zia Shah, Shaik Shamin, John Doe Manager No. 1 a/k/a "Patwary," and John Doe Manager No. 2 a/k/a "Mocter" (collectively, "Defendants"), who operate a chain of franchise locations doing business as Domino's Pizza, willfully engaged in various unlawful employment policies, patterns and/or practices.

2. Defendants run several sites that prepare and sell pizzas for takeout and delivery.

3. Plaintiffs are or were employees of Defendants who at all relevant times performed a variety of duties at Defendants' Domino's Pizza locations, including food preparation, cleaning the facilities, and delivering pizzas and other food orders.

4. Defendants maintain an unlawful policy, pattern and/or practice of paying less than the full minimum wage rate as defined by the FLSA and NYLL, failing to pay the required overtime rate as defined by the FLSA and NYLL, and failing to pay for some hours altogether by refusing and/or failing to record all of the time that Plaintiffs and similarly situated employees employed in Defendants' Domino's Pizza locations work or worked, including time that they

work or worked in excess of forty hours per work week. Upon information and belief, pursuant to this unlawful policy, pattern and/or practice, Defendants shave time from time records.

5. Defendants maintain an unlawful policy, pattern and/or practice of paying less than the full minimum wage rate as defined by the FLSA and NYLL, failing to pay the required overtime rate as defined by the FLSA and NYLL, and failing to pay for some hours altogether by requiring Plaintiffs and similarly situated employees to work substantial periods of time “off the clock,” and prohibiting them from reporting all of their hours, in an apparent effort to reduce labor costs and limit payroll hours.

6. Defendants maintain an unlawful policy, pattern and/or practice of paying Plaintiffs and similarly situated employees less than the full minimum wage rate as defined by the FLSA and NYLL by paying the reduced hourly wage for tipped employees (hereafter, “tipped wage”) for all hours paid, even though Defendants require Plaintiffs to spend over twenty percent of their time performing work that is unrelated to performing deliveries, including general food preparation, cleaning, and/or maintenance work, from which they do not earn tips. Pursuant to this unlawful policy, pattern and/or practice, Defendants also fail to inform Plaintiffs and similarly situated employees of the requirements for an employers’ use of tipped wage as required by the FLSA and NYLL.

7. Defendants maintain an unlawful policy, pattern and/or practice of paying Plaintiffs and similarly situated employees less than the full minimum wage rate as defined by the FLSA and NYLL by requiring Plaintiffs and similarly situated employees to purchase company-issued uniforms, failing to and/or refusing to compensate Plaintiffs for the laundering of those uniforms, and at times taking illegal deductions from Plaintiffs’ wages for the cost of the

uniforms. These illegal deductions are also an independent violation of state law, regardless of their impact on the minimum wage rate.

8. Defendants maintain an unlawful policy, pattern and/or practice of paying Plaintiffs and similarly situated employees less than the full minimum wage rate as defined by the FLSA and NYLL by requiring Plaintiffs and similarly situated employees to purchase and utilize bicycles as transportation for making deliveries and failing to and/or refusing to compensate Plaintiffs for the purchase and maintenance costs of these bicycles, which are tools of the trade. These illegal deductions are also an independent violation of state law, regardless of their impact on the minimum wage rate.

9. Defendants maintain an unlawful policy, pattern and/or practice of failing to compensate Plaintiffs and similarly situated employees with an extra hour's pay at the minimum wage rate on days in which they work an interval of more than ten hours ("spread-of-hours pay") as required by the NYLL.

10. Defendants maintain an unlawful policy, pattern and/or practice of routinely denying Plaintiffs and similarly situated employees the right to take the meal and rest breaks required by the NYLL, that is, a thirty-minute break period for employees who work shifts of more than six hours that extend over the noonday meal period, nor the additional twenty minutes between 5 p.m. and 7 p.m. for those employed on a shift starting before 11 a.m. and continuing after 7 p.m.

11. Defendants maintain an unlawful policy, pattern and/or practice of failing to inform Plaintiffs and similarly situated employees of the requirements of the employment laws as required by the FLSA and NYLL by, *inter alia*, failing to post the notices required by the

FLSA and NYLL and failing to inform employees of the requirements for an employers' use of the tip credit.

12. Defendants maintain an unlawful policy, pattern and/or practice of retaliating against Plaintiffs who engaged in activities protected under the FLSA and/or the NYLL by selectively reducing schedules and/or terminating and/or constructively discharging those Plaintiffs, thereby chilling protected activity by similarly situated employees.

13. By the conduct described in this Complaint, Defendants willfully committed widespread violations of the FLSA, 29 U.S.C. §§ 201 *et seq.* and supporting regulations, and the NYLL §§ 190, 650 *et seq.* and supporting regulations.

14. Defendants' practices, described in this Complaint, are ongoing, and the policies, patterns and/or practices described herein have affected, and continue to affect, past and current employees.

#### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 28 U.S.C. §§ 1331 and 1337 and 29 U.S.C. § 216(b).

16. Pursuant to 29 U.S.C. § 216(b), Plaintiffs have consented in writing to become parties to this lawsuit. Plaintiffs' written consent forms are attached hereto as Exhibit A.

17. This Court has jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367, because these claims are so closely related to Plaintiffs' claims under the FLSA that they form part of the same case or controversy.

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

19. Venue is proper in the Southern 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.

## **PARTIES**

### **Owner/Operator Defendants**

20. Upon information and belief, Defendant David L. Melton and his wife, Angelina M. Melton (“the Melton Defendants”), are the owners and/or operators of several Domino’s Pizza franchise locations .

21. Upon information and belief, the Melton Defendants reside at 56 E. 87<sup>th</sup> Street, #2B, New York, NY.

22. Upon information and belief, four of the Domino’s Pizza franchise locations owned and/or operated by the Melton Defendants are located at: 200 E. 89<sup>th</sup> Street, New York, NY (cross-street Third Avenue), 464 Third Avenue, New York, NY (cross-street E. 32<sup>nd</sup> Street), 1396 First Avenue, New York, NY (cross-street 74<sup>th</sup> St.), and 592 Columbus Avenue, New York, NY (cross-street 89<sup>th</sup> Street) (“the Defendants’ Domino’s Pizza locations”).

23. Upon information and belief, at all relevant times, Defendants’ Domino’s Pizza locations have been engaged in commerce or in an industry or activity affecting commerce in an enterprise with annual gross volume sales made or business done of not less than \$500,000.

24. On his website: <http://www.hiretheamericandream.com/MeetDaveMelton.html>, David Melton states “My wife and I are the proud owners of six Domino’s Pizza stores. Our four New York City stores are among the top in the country, each exceeding \$1 million in annual sales in the world’s most competitive pizza market.”

### **Manager Defendants**

25. Upon information and belief, Defendant Zia Shah is a Manager of Defendants' Domino's Pizza 592 Columbus Avenue location.

26. Upon information and belief, Defendant Shaik Shamin is a Manager of Defendants' Domino's Pizza 200 E. 89th Street location and is a former Manager of Defendants' Domino's Pizza 464 Third Avenue location.

27. Upon information and belief, Defendant John Doe Manager No. 1 a/k/a "Patwary" is a Manager of Defendants' Domino's Pizza 1396 First Avenue location and is a former Manager of Defendants' Domino's Pizza 200 E. 89th Street location.

28. Upon information and belief, Defendant John Doe Manager No. 2 a/k/a "Mocter" is a Manager of Defendants' Domino's Pizza 464 Third Avenue location.

29. Defendants Zia Shah, Shaik Shamin, John Doe Manager No. 1 a/k/a "Patwary," and John Doe Manager No. 2 a/k/a "Mocter," are hereafter referred to as the "Manager Defendants."

### **Corporate Defendants**

30. DPNY, Inc. is a domestic business corporation registered as doing business in New York with its official office listed as 56 East 87th Street, Apt. 2B, New York, NY.

31. Upon information and belief, David L. Melton is the President of DPNY, Inc.

32. Upon information and belief, Angelina M. Melton is the Franchise Administrator of DPNY, Inc.

33. Upon information and belief, DPNY, Inc. is doing business as Domino's Pizza at a number of or all of the Defendants' Domino's Pizza locations.

34. DPNY, Inc. is listed on Plaintiffs' paystubs and other documents from the Defendants' Domino's Pizza locations.

35. Upon information and belief, DPNY, Inc., at all relevant times, has been engaged in commerce or in an industry or activity affecting commerce in an enterprise with annual gross volume sales made or business done of not less than \$500,000.

36. Upon information and belief, DPNY, Inc., at all relevant times, has been engaged in commerce within the meaning of 29 U.S.C. § 203(b).

37. Upon information and belief, BMW Pizza, Inc. was a domestic business corporation registered as doing business in New York with its official office listed as 56 East 87th Street, Apt. 2B, New York, NY until February 19, 2002, at which time BMW Pizza, Inc. merged with DPNY, Inc. Though the corporation was inactive as of 2002, the BMW Pizza name still appears on documents Plaintiffs have received and/or observed.

38. Upon information and belief, David L. Melton ("Defendant Dave Melton") was the President of BMW Pizza, Inc.

39. Upon information and belief, Angelina M. Melton ("Defendant Angie Melton") was the Franchise Administrator of BMW Pizza, Inc.

40. Upon information and belief, prior to February 2002, BMW Pizza, Inc. was doing business as Domino's Pizza at a number of or all of the Defendants' Domino's Pizza locations.

41. Upon information and belief, DPNY, Inc. and BMW Pizza, Inc. ("Corporate Defendants") perform related activities for a common business purpose and therefore together constitute an enterprise as defined by the FLSA. 29 U.S.C. § 203(r)(1).

42. For example, upon information and belief, Defendants' Domino's Pizza locations have common policies and procedures, interchange personnel, are operationally interdependent, and use a centralized and/or joint administrative structure.

**Role of Defendants as Employers**

43. At relevant times, Defendants were employers of Plaintiffs within the meaning of the FLSA and the NYLL.

44. At relevant times, Plaintiffs were employees of Defendants within the meaning of the FLSA and the NYLL.

45. The Corporate Defendants, Manager Defendants, and Melton Defendants jointly employed Plaintiffs and similarly situated employees within the meaning of the FLSA and NYLL.

46. Upon information and belief, the Melton Defendants and Manager Defendants acted directly or indirectly in the interest of the Corporate Defendants in relation to Plaintiffs and similarly situated employees.

47. Upon information and belief, the Melton Defendants directed the operation of Corporate Defendants and exercised operational and financial control of all Defendants' Domino's Pizza locations.

48. Upon information and belief, the Melton Defendants and Corporate Defendants promulgated the employment policies, including compensation policies, for Defendants' Domino's Pizza locations.

49. Upon information and belief, the Melton Defendants and Manager Defendants implemented the employment policies of the Corporate Defendants, including compensation policies for Defendants' Domino's Pizza locations.

50. Upon information and belief, the Melton Defendants exercised direct control of Plaintiffs and similarly situated employees at each of Defendants' Domino's Pizza locations and had the power to hire and fire Plaintiffs and similarly situated employees, control the terms and conditions of their employment, determine rates and methods of compensation provided to Plaintiffs and similarly situated employees, withhold Plaintiffs' and similarly situated employees' compensation, maintain employment records, and comply with regulations of governmental agencies.

51. For example, Defendant Dave Melton and Defendant Angie Melton had direct interaction with employees of the Defendants' Domino's Pizza locations. Upon information and belief, the Melton Defendants, *inter alia*, gave out bonuses, held meetings and gave trainings to both managers and hourly employees. Upon information and belief, *inter alia*, Defendant Dave Melton pointed out standards violations when he visited the locations and hired and trained Managers, who then hired and trained his employees.

52. Upon information and belief, under the supervision of the Melton Defendants, the Manager Defendants exercised direct control of Plaintiffs and similarly situated employees at Defendants' Domino's Pizza locations and had the power to hire and fire Plaintiffs and similarly situated employees, control the terms and conditions of their employment, determine rates and methods of compensation provided to Plaintiffs and similarly situated employees, withhold Plaintiffs' and similarly situated employees' compensation, maintain employment records, and comply with regulations of governmental agencies.

**Plaintiffs**

53. Gil Santiago Cano is an adult individual residing in New York, NY, and has been employed by Defendants at Defendants' 200 E. 89th Street Domino's Pizza location from approximately October 2006 to present.

54. Hector Hernandez Zavala is an adult individual residing in Bronx, NY, and has been employed by Defendants at Defendants' 200 E. 89th Street Domino's Pizza location from approximately September 2008 to present.

55. Juan Hernandez Zavala is an adult individual residing in Bronx, NY, and has been employed by Defendants at Defendants' 200 E. 89th Street Domino's Pizza location from approximately June 2006 to February 2010, and has also worked for short periods at Defendants' 592 Columbus Avenue Domino's Pizza location.

56. Omar Hernandez Zavala is an adult individual residing in Bronx, NY, and has been employed by Defendants at Defendants' 200 E. 89th Street Domino's Pizza location from approximately November 2007 to July 2010.

57. Aristeo Basurto is an adult individual residing in New York, NY, and has been employed by Defendants at Defendants' 200 E. 89th Street Domino's Pizza location from approximately February 2007 to present.

58. Carlos Rodriguez Herrera is an adult individual residing in Bronx, NY, and was employed by Defendants at Defendants' 200 E. 89th Street Domino's Pizza location from approximately August 2005 to approximately February 2007.

#### **PLAINTIFFS' WORK**

59. Defendants require Plaintiffs to perform various duties, including but not limited to cleaning the store; sweeping; mopping; washing ceilings and walls; washing windows, both the inside and outside glass; washing other glass surfaces; making repairs; fixing plumbing stoppages; replacing lightbulbs; cleaning ovens; cleaning the bathroom; taking the pizza-makers' uniforms to the laundromat and picking those uniforms up from the laundromat; handing food such as dough and toppings to workers who prepare pizzas; preparing salad by, for example,

cutting tomatoes and other vegetables; preparing sauces and cheeses; arranging sodas in refrigerators; organizing ingredients in refrigerators; unloading deliveries of food and other supplies; checking expiration dates on food; disposing of expired food or giving expired food to workers who prepare pizzas for immediate use; sorting and/or arranging food according to expiration date; washing dishes; taking out trash; sweeping sidewalks; cleaning computers; folding boxes; delivering food orders by bicycle or by foot; distributing flyers; preparing boxes of chicken wings for both delivery and takeout; removing pizzas from ovens for both delivery and takeout; cutting pizzas for both delivery and takeout; putting pizza in boxes for both delivery and takeout and putting other food orders in boxes for both delivery and takeout.

60. Aside from delivering food, most of the other work Defendants require Plaintiffs to perform is general food preparation, cleaning, and/or maintenance work.

61. Aside from delivering food, most of the other work Defendants require Plaintiffs to perform is either unrelated to their tipped duty of delivering food or not solely incidental to that duty.

62. Plaintiffs regularly receive tips from customers for delivering food.

63. Plaintiffs do not receive tips for any of the other work they perform (“non-tipped work”).

64. Defendants refer to Plaintiffs as “delivery employees” or “delivery team members.”

65. Plaintiffs spend a substantial amount of their shift time, generally, over twenty percent, performing non-tipped work.

### PLAINTIFFS' HOURS

66. Defendants assign Plaintiffs to a particular shift by directing them to arrive at a particular time to begin work.

67. Defendants do not specify the exact time each shift will end, but instead, require Plaintiffs to continue to work until a Manager Defendant has determined each Plaintiff is no longer needed for the day.

68. As a result, Plaintiffs have often worked over ten hours per day for five or six days a week.

69. Generally, Plaintiffs work between eight and twelve hours per day.

70. Each night, at least two Plaintiffs or other similarly situated employees are required to stay after the store closes to customers in order to clean the facility.

71. Cleaning the facility often requires working until 4 a.m.

### COLLECTIVE ACTION ALLEGATIONS

72. Plaintiffs bring their FLSA claims on behalf of themselves and all similarly situated persons who have worked for, or currently work for, Defendants at their Domino's Pizza locations between August 2005 and the date of final judgment in this action, and who, *inter alia*, have delivered pizzas (the "FLSA Collective").

73. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs. Upon information and belief, there are over fifty (50) similarly situated current and former employees of Defendants who have been underpaid in violation of the FLSA and who would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join the present lawsuit. Those similarly situated employees are known to Defendants, are readily identifiable, and can be located through Defendants' records. These

similarly situated employees should be notified and allowed to opt in to this action pursuant to 29 U.S.C. § 216(b).

### **CLASS ACTION ALLEGATIONS**

74. Plaintiffs bring their NYLL claims under Federal Rule of Civil Procedure 23 on behalf of themselves and the same class of persons in the FLSA Collective, consisting of

all persons who have worked for, or currently work for, Defendants at their Domino's Pizza locations between August 2005 and the date of final judgment in this action, and who, *inter alia*, have delivered pizzas (the "Rule 23 Class").

75. 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 Corporate 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.

76. The persons in the Rule 23 Class identified above are so numerous that joinder of all members is impracticable.

77. Upon information and belief, the size of the Rule 23 Class is at least fifty (50) individuals, although the precise number of such persons is unknown, and facts on which the calculation of that number depends are presently within the sole control of the Defendant.

78. Defendants have acted or refused to act on grounds generally applicable to the Rule 23 Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Rule 23 Class as a whole.

79. There are common questions of law and fact common to the Rule 23 Class that predominate over any questions solely affecting individual members of the Class, including, but not limited to, the following:

(a) whether Defendants maintained a policy, pattern and/or practice of failing to keep true and accurate time and pay records for all hours worked by Plaintiffs and the Rule 23 Class;

(b) whether Defendants maintained a policy, pattern and/or practice of failing to compensate Plaintiffs and the Rule 23 Class for all of the work that they required, suffered, and permitted them to perform;

(c) whether Defendants maintained a policy, pattern and/or practice of failing to compensate Plaintiffs and the Rule 23 Class for hours worked in excess of forty hours per work week with appropriate overtime premium wages;

(d) whether Defendants engaged in a policy, pattern and/or practice of permitting, encouraging, or forcing Plaintiffs and the Rule 23 Class to work “off the clock” and/or failing to compensate Plaintiffs and the Rule 23 Class for all hours worked in excess of 40 hours per work week;

(e) whether Defendants engaged in a policy, pattern and/or practice of unlawfully altering and/or shaving time from the hours that Plaintiffs and the members of the Rule 23 Class worked each work week;

(f) whether Defendants maintained a policy, pattern and/or practice of failing to maintain and/or preserve records of the tipped and non-tipped work of Plaintiffs and the Rule 23 Class, along with the corresponding wages received, for the purposes of determining pay, as required to take a tip credit or tip allowance;

(g) whether Defendants maintained a policy, pattern and/or practice of paying Plaintiffs and the Rule 23 Class the same tipped wage despite their substantial work unrelated to a tipped occupation;

(h) whether Defendants maintained a policy, pattern and/or practice of failing to pay Plaintiffs and the Rule 23 Class the minimum wage rate, by, for example, taking illegal deductions from the wages of Plaintiffs and the Rule 23 Class, and/or by paying Plaintiffs and the Rule 23 Class a tipped wage for non-tipped work;

(i) whether Defendants maintained a policy, pattern and/or practice of requiring Plaintiffs and the Rule 23 Class to purchase company-issued uniforms, failing to compensate them for the laundering of those uniforms, and taking illegal deductions from their wages for the cost of the uniforms;

(j) whether Defendants maintained a policy, pattern and/or practice of requiring Plaintiffs and the Rule 23 Class to purchase and utilize bicycles for making deliveries, whether those bicycles were tools of the trade, and whether Defendants maintained a policy, pattern and/or practice of failing to compensate them for the purchase and/or maintenance of those bicycles;

(k) whether Defendants maintained a policy, pattern and/or practice of failing to pay Plaintiffs and the Rule 23 Class spread-of-hours pay as required by the NYLL;

(l) whether Defendants maintained a policy, pattern and/or practice of failing to provide the requisite meal periods;

(m) whether Defendants maintained a policy, pattern and/or practice of retaliating against Plaintiffs and the Rule 23 Class because of activity protected under the NYLL;

(n) whether Defendants maintained a policy, pattern and/or practice of failing to inform employees of the requirements of the employment laws by, *inter alia*, failing to post the notices required by the NYLL and failing to inform Plaintiffs of the requirements for an employers' use of the tip credit;

(o) whether Defendants' above-mentioned policies, patterns and/or practices were instituted willfully; and

(p) the nature and extent of class-wide injury and the measure of damages for those injuries.

80. The claims of the Plaintiffs are typical of the claims of the Rule 23 Class they seek to represent. Plaintiffs and the Rule 23 Class work, or have worked, for Defendants doing deliveries and a variety of other tasks in Defendants' Domino's Pizza locations. Plaintiffs and the Rule 23 Class members enjoy the same statutory rights under the NYLL including the right to be paid for all hours worked, to be paid overtime compensation, minimum wage, and spread-of-hours pay. Plaintiffs and the Rule 23 Class members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL. Plaintiffs 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.

81. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Rule 23 Class. There is no conflict between the Plaintiffs and the Rule 23 Class.

82. A class action is superior to other available methods for the fair and efficient adjudication of this action. The members of the Rule 23 Class have been damaged and are entitled to recovery as a result of Defendants' violation of the NYLL as well as their common and uniform policies, practices, and procedures. A class action is a particularly superior method of adjudication in the context of wage and hour litigation where, as here, individual Plaintiffs lack the financial resources to conduct a thorough analysis of Defendants' payroll and compensation practices and to vigorously prosecute a lawsuit in federal court against a corporate defendant. Although the relative damages suffered by individual Rule 23 Class members are not

*de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

83. Plaintiffs have retained counsel competent and experienced in complex class actions and in labor and employment litigation.

### **COLLECTIVE AND CLASSWIDE FACTUAL ALLEGATIONS**

84. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

85. At all times during their employment, Plaintiffs and the members of the Rule 23 Class and the FLSA Collective (collectively "Class Members") were Defendants' "employees" as defined in Section 3(e)(1) of the FLSA, 29 U.S.C. § 203(e)(1), and under NYLL § 651(5), and Defendants were "employers" within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d), and NYLL § 651(6).

86. Class Members were paid at hourly rates.

87. Upon information and belief, all of the work that Class Members performed was assigned, required, and/or permitted by Defendants and/or Defendants were aware of all of the work that Class Members performed.

88. Upon information and belief, Defendants' unlawful conduct described herein is pursuant to a policy or practice of attempting to minimize labor costs by violating the FLSA and the NYLL.

89. Upon information and belief, Defendants' conduct has been widespread, repeated, and willful, and has caused significant damages to Class Members.

**Altered Records Resulting in Unpaid Hours and Unpaid Overtime Pay**

90. The FLSA and the NYLL require employers to pay at least the statutory minimum wage rate for every hour worked by an employee. 29 U.S.C. § 206; NYLL § 652.

91. The FLSA and the NYLL require employers to pay time-and-a-half of the regular rate for each hour worked over forty hours per week. 29 U.S.C. § 207(a); 29 C.F.R. § 778.109; 12 N.Y.C.R.R. § 142-2.2.

92. The NYLL requires employers to pay the promised wage for each hour worked by an employee. NYLL § 190, *et seq.*

93. Each of Defendants' Domino's Pizza locations is open to the public from 10 a.m. to 2 a.m.

94. Plaintiffs and similarly situated employees work as many as 60 hours per week.

95. Defendants use a computerized system for tracking hours worked.

96. Plaintiffs and similarly situated employees "clock-in" and a Manager "clocks-out" Plaintiffs and similarly situated employees, using the computerized system for tracking hours.

97. Defendants generate computerized records to reflect hours worked per day for each employee.

98. Upon information and belief, Defendants' records do not accurately reflect all time Plaintiffs and similarly situated employees work.

99. Upon information and belief, Defendants routinely alter the time records reflecting the hours of work of Plaintiffs and similarly situated employees .

100. Upon information and belief, Defendants relied on these omissions and alterations to pay Plaintiffs and similarly situated employees lower wages, less or no overtime pay, and in some cases, fail to pay altogether for the hours worked.

101. At times, Plaintiffs have noticed that although they clocked in at a specific time, later in the shift, the “time-in” entry reflected on the computer or a print-out generated by the computer, was different from the time they clocked in.

102. At times, Plaintiffs have noticed that the hours reflected on their paystubs do not reflect the actual hours worked in the corresponding time period.

103. A sample of Defendants’ time records from August 2007 to June 2008, provided by Defendants to the New York State Department of Labor, reflects irregular clock-in and clock-out times that do not correspond to the hours Plaintiffs and similarly situated employees worked during that time period.

104. Defendants’ policy, pattern and/or practice of refusing and/or failing to record all of the time that Plaintiffs and similarly situated employees worked and shaving time from time records is a violation of the FLSA and the NYLL.

**Off-the-Clock Work Resulting in Unpaid Hours and Unpaid Overtime Pay**

105. Defendants regularly require some Plaintiffs and similarly situated employees to continue working after a Manager has clocked them out for the day.

106. Often, Plaintiffs and similarly situated employees who work the late shift are clocked out by management but are directed to continue working.

107. On a regular basis, Plaintiffs and similarly situated employees assigned to the late shift, during which they are required to clean the store, perform as many as two hours of cleaning work, after a Manager has clocked them out.

108. Plaintiffs and similarly situated employees sometimes return to the store after doing a delivery to find that a Manager has already clocked them out.

109. Plaintiffs and similarly situated employees are sometimes required to wait for a Manager to “cash out,” that is, to turn in and reconcile the money they receive from customers for deliveries, after a Manager has clocked them out.

110. As a result of Defendants’ practices, on a regular basis, Plaintiffs and similarly situated employees have performed work for which Defendants did not pay them.

111. At times, Plaintiffs and similarly situated employees have received only tips from customers for certain hours worked; and at other times, nothing at all.

112. Defendants’ policy, pattern and/or practice of requiring Plaintiffs and similarly situated employees to work “off-the-clock” is a violation of the FLSA and the NYLL.

**Illegal Use of Tip Credit**

113. The FLSA allows an employer to pay tipped employees less than the minimum wage rate and take a tip credit when an employee works in a tipped occupation if, among other requirements, the employer keeps records of the “Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; [and the] Hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.” 29 U.S.C. § 203(m) and (t); 29 C.F.R. § 516.28; 29 C.F.R. §§ 531.50-531.60.

114. The NYLL allows employers to take a “tip allowance” and pay an employee less than the minimum wage rate under particular circumstances, including when “(i) the particular occupation in which the employee is engaged is one in which tips have customarily and usually constituted a part of the employee’s remuneration; (ii) substantial evidence is provided that the employee received in tips at least the amount of the allowance claimed . . . ; and (iii) the

allowance claimed by the employer is recorded on a weekly basis as a separate item in the wage record,” among other requirements. 12 N.Y.C.R.R. § 142-2.5(b)(1).

115. Both the FLSA and the NYLL also require employers to notify employees of their intent to apply a tip credit and post a notice conspicuously explaining the employment laws’ requirements. 29 U.S.C. § 203(m); 29 C.F.R. § 516.4; 12 N.Y.C.R.R. § 142-2.8.

116. By paying a reduced rate, a “tipped wage,” for all hours paid, Defendants paid Plaintiffs and similarly situated employees less than the full minimum wage rate for the hours for which Defendants paid them.

117. Plaintiffs and similarly situated employees are not properly considered “tipped employees” because Defendants have failed to follow the necessary prerequisites to benefit from the tip credit, *inter alia*, Defendants have failed to maintain and/or preserve records of the hours Plaintiffs and similarly situated employees perform tipped work and/or non-tipped work, along with the corresponding wages received, for the purposes of determining pay. *E.g.*, 29 U.S.C. § 203(m).

118. In addition, Plaintiffs and similarly situated employees are not properly considered “tipped employees” because Defendants require them to spend a substantial amount of time, in excess of twenty percent, doing work unrelated and/or not solely incidental to a tipped occupation. Defendants improperly pay Plaintiffs and similarly situated employees the tipped wage for all hours for which Defendants pay them. *E.g.*, 29 C.F.R. § 531.56(e); U.S. Department of Labor, Field Operations Handbook, Chapter 30, Section 30d00(e).

119. Defendants have paid Plaintiffs and similarly situated employees as if the tip credit were applicable to all of the hours for which Defendants have paid them.

120. Currently, Defendants pay Plaintiffs and similarly situated employees between \$4.65 and \$5.00 per hour for the hours for which Defendants pay them.

121. Generally, Defendants paid Plaintiffs and similarly situated employees approximately \$4.00 per hour in 2005, \$4.40 per hour in 2006, \$4.60 per hour in 2007, and \$4.65 per hour in 2008 and 2009, for the hours for which Defendants paid them.

122. Defendants paid Plaintiffs and similarly situated employees the same hourly pay, a “tipped wage,” regardless of the kind of work they performed in any given hour and regardless of whether they received any tips in any given hour.

123. Upon information and belief, Defendants have not maintained and/or preserved records of the hours Plaintiffs and similarly situated employees perform tipped work and/or non-tipped work, along with the corresponding wages received, for the purposes of determining pay, as federal and state regulations require to allow an employer to take a tip credit or tip allowance.

124. Furthermore, Defendants have not provided Plaintiffs and similarly situated employees with notice of Defendants’ use of the tip credit.

125. Defendants have not posted the notices required by the FLSA and NYLL informing Plaintiffs and similarly situated employees of the requirements of the tip credit.

126. Defendants have not provided information about the tip credit, or the employment laws generally, to Plaintiffs and similarly situated employees in Spanish, even though other rules and guidelines for the workplace are posted in Spanish.

127. Defendants have not otherwise informed Plaintiffs and similarly situated employees of the employment laws’ requirements for employers’ use of the tip credit.

128. Defendants' policy, pattern and/or practice of failing to inform Plaintiffs and similarly situated employees of the requirements of for employers' use of the tip credit is a violation of the FLSA and NYLL.

129. Defendants' policy, pattern and/or practice of paying Plaintiffs and similarly situated employees a tipped wage despite their substantial work unrelated to a tipped occupation and failing to maintain and/or preserve records of the hours Plaintiffs perform tipped work and/or non-tipped work, along with the corresponding wages received, for the purposes of determining pay, is a violation of the requirements of the FLSA and the NYLL.

### **Illegal Deductions and Kick-Backs - Uniforms**

130. Under certain circumstances, the FLSA and the NYLL prohibit employers from requiring employees to purchase the tools of the trade or give any money back to an employer, such as a "kick-back." 29 C.F.R. § 531.35; NYLL § 198-b.

131. Under the FLSA, deductions for tools of the trade must not bring an employee's wage below the minimum wage rate, and if taken, the amount of such deductions must be included for the purpose of calculating the employee's overtime rate. 29 C.F.R. § 531.36-37.

132. The NYLL prohibits employers from making any deductions from any employee's wages except for those permitted by law, prohibits "kick-backs," and also specifies that "the minimum wage shall not be reduced by expenses incurred by an employee in carrying out duties assigned by an employer." NYLL §§ 193, 198-b; 12 N.Y.C.R.R. § 142-2.10.

133. The NYLL requires an employer to reimburse an employee for purchase of a required uniform, and pay a specified amount to reimburse the employee for cleaning the uniform. 12 N.Y.C.R.R. §§ 142.2.22, 142-2.5(c).

134. The FLSA specifies that costs related to purchase and cleaning of a “uniform” cannot be credited toward the minimum wage rate. 29 C.F.R. §§ 531.3(d)(2); 531.32(c).

135. Defendants require Plaintiffs and similarly situated employees to wear a Domino’s shirt, black pants, Domino’s hat, and/or Domino’s jacket, and to carry a Domino’s bag.

136. Plaintiffs and similarly situated employees do not wear these articles of clothing as part of their ordinary wardrobe.

137. The clothing items the Defendants require Plaintiffs and similarly situated employees to wear constitute a “required uniform” within the meaning of New York State labor regulations, 12 N.Y.C.R.R. § 142.2.22, and also constitute a “uniform” for the purpose of federal law, 29 C.F.R. §§ 531.3(d)(2); 531.32(c).

138. Plaintiffs and similarly situated employees usually purchase these clothing items and usually bear the costs of cleaning these clothing items.

139. Defendants’ policy, pattern and/or practice of requiring that Plaintiffs and similarly situated employees bear the costs of uniform laundering and charging Plaintiffs and similarly situated employees for the purchase of uniforms, which brings Plaintiffs’ and similarly situated employees’ wages below the minimum wage rate, is a violation of the FLSA and the NYLL.

#### **Illegal Deductions and Kick-Backs - Bicycles**

140. Defendants require Plaintiffs and similarly situated employees to obtain or use their own bicycles in making deliveries for Defendants.

141. All costs associated with the purchase and maintenance of the bicycles are borne by the Plaintiffs and similarly situated employees.

142. Plaintiffs and similarly situated employees generally leave the bicycles at the Domino's Pizza location in which they work and do not use the bicycles for personal use.

143. The bicycles used by Plaintiffs and similarly situated employees are tools of the trade that are specifically required for the performance of their duties.

144. Defendants' policy, pattern and/or practice of requiring that Plaintiffs and similarly situated employees bear the cost of bicycle purchase and maintenance, which brings Plaintiffs' and similarly situated employees' wages below the minimum wage rate, is a violation of the FLSA and the NYLL.

#### **No Spread-of-Hours Pay**

145. The NYLL requires that employers pay an extra hour's pay at the minimum wage rate if an employee's shift extends more than ten hours between start and finish. 12 N.Y.C.R.R. §§ 142-2.4, 2.18.

146. Plaintiffs and similarly situated employees regularly work an interval over ten hours a day between start and finish.

147. Defendants do not pay an additional hour at the minimum wage rate when Plaintiffs and similarly situated employees work an interval over ten hours a day.

148. Defendants' policy, pattern and/or practice of failing to pay spread-of-hours pay is a violation of the NYLL.

#### **Defendants Do Not Provide Statutorily-Required Breaks**

149. The NYLL requires that employers provide: a noon day meal period of at least thirty (30) minutes for employees who work a shift of more than six hours extending over the noon day meal period from 11 a.m. to 2 p.m.; an additional meal period between 5 p.m. and 7 p.m. of at least twenty (20) minutes for employees whose shift started before 11 a.m. and

continues later than 7 p.m.; and/or a forty-five minute (45) meal period at a time midway between the beginning and end of the shift for employees whose shift lasts more than six hours and starts between 1 p.m. and 6 a.m. NYLL § 162.

150. Defendants maintain a policy, pattern and/or practice of denying Plaintiffs and similarly situated employees time off for meals in violation of NYLL § 162.

151. Instead of receiving set break and meal times, usually Plaintiffs and similarly situated employees are only able to take a short rest between deliveries and when no other work is required. Defendants require Plaintiffs and similarly situated employees to return to work if there are deliveries to be made, or other work required.

152. Defendants' policy, pattern and/or practice of routinely denying Plaintiffs and similarly situated employees the right to take the statutorily required meal and rest breaks is a violation of the NYLL.

### **Retaliation**

153. Both the FLSA and the NYLL prohibit employers from discriminating, or taking other adverse actions, against an employee because he or she has engaged in activity protected under those statutes such as making a complaint to the New York State Department of Labor about employment law violations. 29 U.S.C. § 215; NYLL § 215.

154. Several Plaintiffs engaged in protected activity under the FLSA and/or the NYLL by registering verbal complaints about Defendants' violations of the FLSA and/or the NYLL with supervisory employees and/or the New York State Department of Labor.

155. Upon information and belief, Defendants maintain an unlawful policy, pattern and/or practice of retaliating against Plaintiffs who engaged in protected activity, by selectively

reducing schedules and/or terminating and/or constructively discharging those Plaintiffs involved in protected activity.

156. Plaintiff Carlos Rodriguez Herrera and Juan Hernandez Zavala discussed Defendants' wage-and-hour practices with a supervisory employee at various times throughout their employment, registered verbal complaints about those practices, and insisted on changes in Defendants' practices.

157. Defendants constructively discharged Carlos Rodriguez Herrera in February 2007, shortly after a dispute with a supervisory employee about not receiving pay for hours he had worked.

158. In or around 2007, shortly after a conversation with a supervisory employee about not receiving pay for hours he had worked, Defendants reduced Juan Hernandez Zavala's scheduled hours for about two weeks.

159. Defendants later terminated Juan Hernandez Zavala in February 2010, shortly after a dispute with a supervisory employee about receiving a tipped wage for all hours worked despite being required to do substantial non-tipped work.

160. In or around mid-2008, Plaintiff Gil Santiago Cano spoke to a New York State Department of Labor investigator when the investigator visited the Defendants' 200 E. 89<sup>th</sup> Street Domino's Pizza location.

161. Shortly thereafter, Defendants significantly reduced Plaintiff Gil Santiago Cano's scheduled hours.

162. In or around Fall 2009, Plaintiff Omar Hernandez Zavala complained to a supervisory employee when he was directed to work after having been clocked-out.

163. Shortly thereafter, Defendants reduced Plaintiff Omar Hernandez Zavala's scheduled hours.

164. In or around July 2010, Defendants terminated Omar Hernandez Zavala after a dispute with a supervisory employee about taking a short break of less than five minutes to eat a meal.

165. Termination, constructive discharge, and selective reduction of hours because of complaints to an employer and/or to the New York State Department of Labor violate the FLSA and/or the NYLL prohibition on retaliation.

166. Defendants' policy, pattern and/or practice of retaliating against Plaintiffs who engaged in protected activity is a violation of the FLSA and/or the NYLL.

#### **EACH PLAINTIFF'S EXPERIENCE OF DEFENDANTS' VIOLATIONS**

##### **Gil Santiago Cano**

167. At all relevant times, Gil Santiago Cano ("Cano"), frequently worked more than forty hours per week, but was not paid for all hours he worked each week and was not paid overtime pay or the minimum wage rate as state and federal law require.

168. Cano regularly spent over twenty percent of each shift performing non-tipped work but was always paid less than the full minimum wage rate for those hours for which he was paid.

169. Cano paid for parts of his uniform, usually paid for laundering, and paid for all costs of purchase and maintenance of his bicycle.

170. At times, Cano worked an interval of over ten hours a day and did not receive spread-of-hours pay.

171. Cano was not provided with regular meal breaks and on those occasions when he was able to take a short rest between deliveries and when no other work was required, Defendants required him to return to work if there were deliveries to be made, or other work required.

**Hector Hernandez Zavala**

172. At all relevant times, Hector Hernandez Zavala (“H. Zavala”) frequently worked more than forty hours per week, but was not paid for all hours he worked each week and was not paid overtime pay or the minimum wage rate as state and federal law require.

173. H. Zavala regularly spent over twenty percent of each shift performing non-tipped work but was always paid less than the full minimum wage rate for those hours for which he was paid.

174. H. Zavala paid for parts of his uniform, usually paid for laundering, and paid for all costs of purchase and maintenance of his bicycle.

175. At times, H. Zavala worked an interval of over ten hours a day and did not receive spread-of-hours pay.

176. H. Zavala was not provided with regular meal breaks and on those occasions when he was able to take a short rest between deliveries and when no other work was required, Defendants required him to return to work if there were deliveries to be made, or other work required.

**Juan Hernandez Zavala**

177. At all relevant times, Juan Hernandez Zavala (“J. Zavala”) frequently worked more than forty hours per week, but was not paid for all hours he worked each week and was not paid overtime pay or the minimum wage rate as state and federal law require.

178. J. Zavala regularly spent over twenty percent of each shift performing non-tipped work but was always paid less than the full minimum wage rate for those hours for which he was paid.

179. J. Zavala paid for parts of his uniform, usually paid for laundering, and paid for all costs of purchase and maintenance of his bicycle.

180. At times, J. Zavala worked an interval of over ten hours a day and did not receive spread-of-hours pay.

181. J. Zavala was not provided with regular meal breaks and on those occasions when he was able to take a short rest between deliveries and when no other work was required, Defendants required him to return to work if there were deliveries to be made, or other work required.

**Omar Hernandez Zavala**

182. At all relevant times, Omar Hernandez Zavala ("O. Zavala") frequently worked more than forty hours per week, but was not paid for all hours he worked each week and was not paid overtime pay or the minimum wage rate as state and federal law require.

183. O. Zavala regularly spent over twenty percent of each shift performing non-tipped work but was always paid less than the full minimum wage rate for those hours for which he was paid.

184. O. Zavala paid for parts of his uniform, usually paid for laundering, and paid for all costs of purchase and maintenance of his bicycle.

185. At times, O. Zavala worked an interval of over ten hours a day and did not receive spread-of-hours pay.

186. O. Zavala was not provided with regular meal breaks and on those occasions when he was able to take a short rest between deliveries and when no other work was required, Defendants required him to return to work if there were deliveries to be made, or other work required.

**Aristeo Basurto**

187. At all relevant times, Aristeo Basurto (“Basurto”) frequently worked more than forty hours per week, but was not paid for all hours he worked each week and was not paid overtime pay or minimum wage rate as state and federal law require.

188. Basurto regularly spent over twenty percent of each shift performing non-tipped work but was always paid less than the full minimum wage rate for those hours for which he was paid.

189. Basurto paid for parts of his uniform, usually paid for laundering, and paid for all costs of purchase and maintenance of his bicycle.

190. At times, Basurto worked an interval of over ten hours a day and did not receive spread-of-hours pay.

191. Basurto was not provided with regular meal breaks and on those occasions when he was able to take a short rest between deliveries and when no other work was required, Defendants required him to return to work if there were deliveries to be made, or other work required.

**Carlos Rodriguez Herrera**

192. At all relevant times, Carlos Rodriguez Herrera (“Herrera”) frequently worked more than forty hours per week, but was not paid for all hours he worked each week and was not paid overtime pay or the minimum wage rate as state and federal law require.

193. Herrera regularly spent over twenty percent of each shift performing non-tipped work but was always paid less than the full minimum wage rate for those hours for which he was paid.

194. Herrera paid for parts of his uniform, usually paid for laundering, and paid for all costs of purchase and maintenance of his bicycle.

195. Herrera worked an interval of over ten hours a day and did not receive spread-of-hours pay.

196. Herrera was not provided with regular meal breaks and on those occasions when he was able to take a short rest between deliveries and when no other work was required, Defendants required him to return to work if there were deliveries to be made, or other work required.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF:**

#### **VIOLATION OF FLSA – MINIMUM WAGE (BROUGHT ON BEHALF OF PLAINTIFFS AND THE FLSA COLLECTIVE)**

197. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

198. The FLSA provides that employers engaged in commerce shall pay employees the applicable minimum hourly wage. 29 U.S.C § 206(a).

199. The FLSA provides that any employer who violates the provisions of 29 U.S.C. § 207 shall be liable to the employee or employees affected in the amount of their unpaid overtime compensation, and in an additional equal amount as liquidated damages. 29 U.S.C. § 216(b).

200. Defendants' failure to pay Plaintiffs and the FLSA Collective the minimum wage rate violated the FLSA.

201. The FLSA requires employers to maintain adequate and accurate written records of the actual hours worked and the true wages earned by employees. 29 U.S.C. § 211(c); 29 C.F.R. §§ 516.2, 516.28.

202. Defendants willfully failed to maintain adequate and accurate written records in order to facilitate their exploitation of Plaintiffs' and Class Members' labor.

203. The FLSA and supporting regulations requires employers to notify employees of the employment laws' requirements. 29 C.F.R. § 516.4.

204. Defendants willfully failed to notify Plaintiffs and the Class Members of the requirements of the employment laws in order to facilitate their exploitation of Plaintiffs' and Class Members' labor.

205. Defendants' failure to pay Plaintiffs and the FLSA Collective the minimum wage rate was willful.

**SECOND CLAIM FOR RELIEF:**

**VIOLATION OF NYLL – MINIMUM WAGE  
(BROUGHT ON BEHALF OF PLAINTIFFS AND THE RULE 23 CLASS)**

206. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

207. Pursuant to NYLL §§ 198.1-a and 663, an employer who fails to pay the minimum wage rate as required by the Minimum Wage Act shall be liable, in addition to the amount of any under-payments, for liquidated damages equal to twenty-five percent of the total of such under-payments found to be due the employee.

208. Defendants' failure to pay Plaintiffs and the Rule 23 Class the minimum wage rate violated the NYLL.

209. Defendants' failure to pay Plaintiffs and the Rule 23 Class the minimum wage rate was not in good faith.

**THIRD CLAIM FOR RELIEF:**

**VIOLATION OF FLSA – OVERTIME PAY**  
**(BROUGHT ON BEHALF OF PLAINTIFFS AND THE FLSA COLLECTIVE)**

210. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

211. The FLSA provides that no employer engaged in commerce shall employ a covered employee for a work week longer than forty (40) hours unless such employee receives compensation for employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which he or she is employed. 29 U.S.C § 207(a).

212. The FLSA provides that any employer who violates the provisions of 29 U.S.C. § 207 shall be liable to the employee or employees affected in the amount of their unpaid overtime compensation, and in an additional equal amount as liquidated damages. 29 U.S.C. § 216(b).

213. Defendants' failure to pay Plaintiffs and the FLSA Collective their overtime pay violated the FLSA.

214. The FLSA requires employers to maintain adequate and accurate written records of the actual hours worked and the true wages earned by employees. 29 U.S.C. § 211(c); 29 C.F.R. §§ 516.2, 516.28.

215. Defendants willfully failed to maintain adequate and accurate written records in order to facilitate their exploitation of Plaintiffs' and Class Members' labor.

216. The FLSA and supporting regulations requires employers to notify employees of the employment laws' requirements. 29 C.F.R. § 516.4.

217. Defendants willfully failed to notify Plaintiffs and the Class Members of the requirements of the employment laws in order to facilitate their exploitation of Plaintiffs' and Class Members' labor.

218. Defendants' failure to pay Plaintiffs and the FLSA Collective their overtime pay was willful.

**FOURTH CLAIM FOR RELIEF:**

**VIOLATION OF NYLL – OVERTIME PAY  
(BROUGHT ON BEHALF OF PLAINTIFFS AND THE RULE 23 CLASS)**

219. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

220. Pursuant to NYLL §§ 198.1-a and 663, an employer who fails to pay overtime required by the Minimum Wage Act shall be liable, in addition to the amount of any under-payments, for liquidated damages equal to twenty-five percent of the total of such under-payments found to be due the employee. 12 N.Y.C.R.R. § 142-2.2.

221. Defendants' failure to pay Plaintiffs and the Rule 23 Class their overtime pay violated the NYLL.

222. Defendants' failure to pay Plaintiffs and the Rule 23 Class their overtime pay was not in good faith.

**FIFTH CLAIM FOR RELIEF:**

**VIOLATION OF NYLL – UNPAID WAGES  
(BROUGHT ON BEHALF OF PLAINTIFFS AND THE RULE 23 CLASS)**

223. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

224. The NYLL requires employers to pay promised wages for every hour worked.  
NYLL §§ 190(1), *et seq.*

225. Defendants failed to pay Plaintiffs and the Rule 23 Class the promised wage for every hour worked.

226. Defendants' failure to pay Plaintiffs and the Rule 23 Class the promised wage for every hour worked was not in good faith.

**SIXTH CLAIM FOR RELIEF:**

**VIOLATION OF NYLL - ILLEGAL DEDUCTIONS**  
**(BROUGHT ON BEHALF OF PLAINTIFFS AND THE RULE 23 CLASS)**

227. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

228. The NYLL prohibits deductions other than those allowed by law. NYLL §§ 193 and 198-b.

229. In violation of the NYLL, Defendants improperly made deductions from the wages of Plaintiffs and the Rule 23 Class for the cost of uniforms, uniform laundering, purchase and cost of bicycle maintenance, and/or other expenses they incurred as employees in carrying out assigned duties.

230. Defendants' violation of taking improper deductions was not in good faith.

**SEVENTH CLAIM FOR RELIEF:**

**VIOLATION OF NYLL – UNPAID UNIFORM LAUNDERING ALLOWANCE**  
**(BROUGHT ON BEHALF OF PLAINTIFFS AND THE RULE 23 CLASS)**

231. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

232. The NYLL requires employers to compensate employees, beyond that specified by the minimum wage, for laundering and maintenance of required uniforms in violation of New York State labor regulations. 12 N.Y.C.R.R. §§ 142.2.22, 142-2.5(c).

233. Defendants failed to pay Plaintiffs and the Rule 23 Class additional pay, beyond that specified by the minimum wage, for laundering and maintenance of required uniforms.

234. Defendants' failure to pay Plaintiffs and the Rule 23 Class additional pay, beyond that specified by the minimum wage, for laundering and maintenance of required uniforms in violation of New York State labor regulations was not in good faith.

**EIGHTH CLAIM FOR RELIEF:**

**VIOLATION OF NYLL - SPREAD-OF-HOURS PAY**  
**(BROUGHT ON BEHALF OF PLAINTIFFS AND THE RULE 23 CLASS)**

235. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

236. The NYLL requires employers to pay an extra hour's pay for every day that an employee works an interval in excess of ten hours pursuant to NYLL §§ 190, *et seq.*, and §§ 650, *et seq.*, and New York State Department of Labor regulations, 12 N.Y.C.R.R. §§ 142-2.4, 2.18.

237. Defendants failed to pay Plaintiffs and the Rule 23 Class an extra hour's pay at the minimum wage rate for every day that Plaintiffs and the Rule 23 Class worked an interval in excess of ten hours.

238. Defendants' failure to pay Plaintiffs and the Rule 23 Class spread-of-hours pay was not in good faith.

**NINTH CLAIM FOR RELIEF**

**VIOLATION OF NYLL: FAILURE TO PROVIDE MEAL PERIODS**  
**(BROUGHT ON BEHALF OF PLAINTIFFS AND THE RULE 23 CLASS)**

239. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

240. The NYLL requires that employers provide: a noon day meal period of at least thirty (30) minutes for employees who work a shift of more than six hours extending over the noon day meal period from 11 am.. to 2 p.m.; an additional meal period between 5 p.m. and 7 p.m. of at least twenty (20) minutes for employees whose shift started before 11 a.m. and continues later than 7 p.m.; and/or a forty-five (45) minute meal period at a time midway between the beginning and end of the shift for employees whose shift lasts more than six hours and starts between 1 p.m. and 6 a.m. NYLL § 162.

241. Defendants failed to provide the meal periods required by NYLL § 162.

242. Defendants' failure to provide the meal periods require by NYLL § 162 was not in good faith.

**TENTH CLAIM FOR RELIEF:**

**VIOLATION OF NYLL: MAINTENANCE OF EMPLOYMENT RECORDS**  
**(BROUGHT ON BEHALF OF PLAINTIFFS AND THE RULE 23 CLASS)**

243. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

244. The NYLL requires employers to maintain adequate and accurate written records of the actual hours worked and the true wages earned by employees. NYLL § 195(4); 12 N.Y.C.R.R. § 142-2.6.

245. Upon information and belief, Defendants failed to maintain adequate and accurate written records of the actual hours worked and true wages earned by Plaintiffs and the Rule 23 Class in order to facilitate their exploitation of Plaintiffs' and Class Members' labor.

246. Defendants' failure to maintain adequate and accurate written records of the actual hours worked and true wages earned by Plaintiffs and the Rule 23 Class was not in good faith.

**ELEVENTH CLAIM FOR RELIEF:**

**VIOLATION OF NYLL: FAILURE TO PROVIDE NOTICE AND INFORMATION  
ABOUT EMPLOYMENT LAWS  
(BROUGHT ON BEHALF OF PLAINTIFFS AND THE RULE 23 CLASS)**

247. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

248. The NYLL and supporting regulations require employers to notify employees of their intent to apply a tip credit and post a notice conspicuously explaining the employment laws' requirements. 12 N.Y.C.R.R. § 142-2.8.

249. Defendants have not posted the notices required by the NYLL informing Plaintiffs of the requirements of the employment laws, or provided information about the employment laws' requirements in other forms to Plaintiffs or the Rule 23 Class.

250. Defendants' failure to post the required notices and/or otherwise inform Plaintiffs and the Rule 23 Class of the requirements of the employment laws was not in good faith.

**TWELFTH CLAIM FOR RELIEF:**

**VIOLATION OF FLSA - RETALIATION  
(BROUGHT ON BEHALF OF PLAINTIFFS AND THE FLSA COLLECTIVE)**

251. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

252. The FLSA prohibits employers from discriminating, or taking other adverse actions, against an employee because he or she has engaged in protected activity such as making a complaint to the New York State Department of Labor about employment law violations. 29 U.S.C. § 215.

253. Some of the Plaintiffs have engaged in protected activity as defined by 29 U.S.C. § 215(a)(3).

254. Defendants have engaged in a policy, pattern and/or practice of retaliating against Plaintiffs who engaged in protected activity by selectively reducing schedules and/or terminating and/or constructively discharging those Plaintiffs involved in protected activity, in violation of 29 U.S.C. § 215.

255. Defendants' policy, pattern and/or practice of retaliation adversely affects the FLSA Collective by chilling other employees' participation in protected activity.

256. Defendants' policy, pattern and/or practice of retaliation was willful.

**THIRTEENTH CLAIM FOR RELIEF:**

**VIOLATION OF NYLL - RETALIATION**  
**(BROUGHT ON BEHALF OF PLAINTIFFS AND THE RULE 23 CLASS)**

257. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

258. The NYLL prohibits employers from discriminating, or taking other adverse actions, against an employee because he or she has engaged in protected activity such as making a complaint to an employer, or other entity, about employment law violations. NYLL § 215.

259. Some of the Plaintiffs have engaged in protected activity as defined by NYLL § 215.

260. Defendants have engaged in a policy, pattern and/or practice of retaliating against Plaintiffs who engaged in protected activity by selectively reducing schedules and/or terminating and/or constructively discharging those Plaintiffs involved in protected activity, in violation of NYLL § 215.

261. Defendants' policy, pattern and/or practice of retaliation adversely affects the Rule 23 Class by chilling other employees' participation in protected activity.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs on behalf of themselves, the FLSA Collective and the Rule 23 Class, respectfully request that this Court enter a judgment providing the following relief:

(a) Authorizing Plaintiffs at the earliest possible time to give notice of this collective action, or that the Court issue such notice, to all persons who are presently, or have been at any time from August 2005 up through and including the date of the issuance of court-supervised notice, been employed by Defendants in Defendants' Domino's Pizza locations and who, *inter alia*, have delivered pizzas. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper hourly compensation and premium overtime wages;

(b) Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(c) Designation of Plaintiffs as representatives of the Rule 23 Class, and counsel of record as Class Counsel;

(d) Certification of this case as a collective action pursuant to FLSA;

(e) Issuance of a declaratory judgment that the practices complained of in this Complaint are unlawful;

(f) An Order requiring Defendants to pay all unpaid minimum wages, overtime wages, all unauthorized deductions and kick-backs and an equal amount as liquidated damages pursuant to 29 U.S.C. § 201 *et seq.* and the United States Department of Labor regulations;

(g) An Order requiring Defendants to pay unpaid wages, minimum wages, overtime pay, spread-of-hours pay, pay illegally deducted, compensation for uniform laundering, all other unauthorized deductions and kick-backs and liquidated damages in the amount of twenty-five percent under NYLL §§ 190, *et seq.*, 650, *et seq.*, and the supporting New York State Department of Labor regulations;

(h) An Order pursuant to the NYLL requiring Defendants to immediately comply with the employment laws, including providing meal breaks; paying appropriate minimum wage rates and overtime pay, spread-of-hours pay, compensation for uniform purchase and laundering, compensation for bicycle maintenance; maintaining the required records of, *inter alia*, the hours, pay, deductions, time worked doing deliveries, time worked doing other work; and informing employees of the requirements of the employment law.

(i) Legal and equitable relief as a remedy for Defendants' retaliation against Plaintiffs including but not limited to declaratory relief declaring Defendants actions as retaliatory; prohibiting future retaliation; payment of lost wages resulting from retaliatory termination, constructive discharge, or reduction of hours; other compensatory or punitive damages.

(j) Pre-judgment interest; and post-judgment interest as allowed by law;

(k) Attorneys' fees pursuant to 29 U.S.C. § 216(b) and NYLL §§ 198 and 663;

(l) The costs and disbursements of this action;

(m) Such other relief as this Court shall deem just and proper.

Dated: New York, New York  
September 15, 2010

Respectfully submitted,

THE LEGAL AID SOCIETY

By 

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