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BROOKLYN OFFICE

**09 2941**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
BROOKLYN OFFICE**

**TOWNES, J.**

ERNESTO BODON, KEVIN CURRY & )  
DONNA ANNUNZIATO, individually and )  
on behalf of other similarly situated persons, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
DOMINO'S )  
PIZZA, LLC )  
 )  
Defendants. )

**CLASS AND COLLECTIVE  
ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs Ernesto Bodon, Kevin Curry and Donna Annunziato, individually and on behalf of other similarly situated persons, for their Complaint against defendant and Domino's Pizza, LLC hereby state and allege as follows:

1. Defendant touts itself as “the recognized world leader in pizza delivery” and “the #1 pizza delivery company in the U.S.” During times relevant, Defendant has operated numerous stores in New York, including within the Eastern District of New York. Defendant’s policy and practice is not to reimburse its delivery drivers for uniform purchase and maintenance, automobile costs and other job-related expenses, resulting in the delivery drivers being paid less than the federal and New York minimum wages. Further, Defendant’s policies and practices include failure to pay weekly uniform maintenance allowances, acceptance and retention of gratuities belonging to its employees, imposing excessive deductions from employees’ wages, and failure to keep records, all in violation of New York law.

2. Defendant’s deliberate failure to pay its employees their earned wages violates the Fair Labor Standards Act (“FLSA”) and the New York Labor Law (“NYLL”). Additionally, Defendant’s deliberate failure to pay employees their earned uniform maintenance allowances and gratuities violate the NYLL.

3. Plaintiffs, and all other similarly situated employees, work or previously worked as delivery drivers at various Domino’s Pizza stores in New York operated by Defendant. This lawsuit is brought as a collective action under the FLSA to recover unpaid wages owed to Plaintiffs and all other similarly situated workers employed by Defendant in New York and as a class action under the NYLL to recover unpaid wages, weekly uniform maintenance allowances, gratuities and excessive deductions owed to Plaintiffs and all other similarly situated workers employed by Defendant within New York.

### **JURISDICTION AND VENUE**

4. The FLSA authorizes court actions by private parties to recover damages for violation of the FLSA's wage and hour provisions. Jurisdiction over Plaintiffs' FLSA claims is based on 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

5. The NYLL authorizes court actions by private parties to recover damages for violation of the NYLL's wage and hour provisions. Jurisdiction over Plaintiffs' NYLL claims is based on 28 U.S.C. § 1367 and N.Y. Lab. Code § 663(1).

6. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) and (c), because Plaintiffs reside in this jurisdiction and a substantial part of the events giving rise to the claims occurred in this jurisdiction.

### **PARTIES**

7. Defendant Domino's Pizza, LLC is a Michigan limited liability company with its headquarters in Ann Arbor, Michigan.

8. During times relevant, Defendants have operated numerous stores in New York. Defendants, the self-professed "recognized world leader in pizza delivery," report total revenues of \$1,425,114,000.00 in 2008. <http://www.dominosbiz.com>.

9. Plaintiff Ernesto Bodon was formerly employed by Defendants as a delivery driver at their store located at 125<sup>th</sup> Street and Rockaway Boulevard in Queens, New York from about 2004 through about January 2008. Plaintiff Bodon's Consent to Become a Party Plaintiff pursuant to 29 U.S.C. § 216(b) is attached hereto as Exhibit A.

10. Plaintiff Kevin Curry was formerly employed by Defendants as a delivery driver at their store located at 125<sup>th</sup> Street and Rockaway Boulevard in Queens, New

York from approximately 2005 through December, 2007. Plaintiff Curry's Consent to Become a Party Plaintiff pursuant to 29 U.S.C. § 216(b) is attached hereto as Exhibit B.

11. Plaintiff Donna Annunziato was formerly employed by Defendants as a delivery driver at their store located at 125<sup>th</sup> Street and Rockaway Boulevard in Queens, New York from approximately 2006 through 2007. Plaintiff Annunziato's Consent to Become a Party Plaintiff pursuant to 29 U.S.C. § 216(b) is attached hereto as Exhibit C.

### FACTS

12. During times relevant, Defendants have operated numerous Domino's Pizza stores in numerous and diverse areas across the State of New York.

13. The primary function of these Domino's Pizza stores is to sell pizza and other food items to customers, whether they carry out the food or have it delivered.

14. Each of Defendants' stores employs delivery drivers who are primarily responsible for delivering pizzas and other food items to customers' homes and workplaces.

15. Plaintiffs, and all other similarly situated persons, are current and former delivery drivers employed by Defendants.

16. All delivery drivers employed by Defendants over the last six years had essentially the same job duties – to deliver pizza and other food items to customers' homes and workplaces.

17. Defendants require the delivery drivers to maintain and pay for operable, safe and legally-compliant automobiles to use in delivering Defendants' pizza and other food items.

18. In addition, Defendants require the delivery drivers to incur other job-related expenses in delivering Defendants' pizza and other food items including, but not limited to, uniform purchases, laundering, cleaning and maintenance.

19. Pursuant to such requirements, Plaintiffs purchased gasoline, vehicle parts, fluids, automobile repair and maintenance services, and automobile insurance, and suffered automobile depreciation ("automobile expenses"), all for the primary benefit of Defendants. Additionally, Plaintiffs purchased other items including, but not limited to, cellular telephone services, uniform items including pants and shoes, dry cleaning and laundering services, a map, a flashlight and batteries ("job-related expenses), again all for the primary benefit of Defendants.

20. Defendants paid Plaintiffs and others similarly situated an hourly wage at or around the New York minimum wage plus a set amount for each delivery as a partial reimbursement for their automobile expenses.

22. Defendants have not relied on any tip credit to satisfy federal or state minimum wage requirements.

23. The amount paid by Defendants to Plaintiffs and others similarly situated per delivery for automobile expenses was insufficient to reimburse them for their actual automobile expenses incurred in delivering Defendants' pizza and other food items. Further, Defendants wholly failed to reimburse Plaintiffs and others similarly situated for the other job-related expenses incurred by them for the purpose of delivering Defendants' pizza and other food items including, but not limited to, uniform purchase, laundering, cleaning and maintenance, cell phone charges, maps, flashlights and battery purchases.

24. Defendants wholly failed to provide Plaintiffs and others similarly situated employees uniform laundry, cleaning and maintenance services while also failing to provide such employees weekly uniform maintenance allowances.

25. Defendants accepted and retained gratuities belonging to Plaintiffs and other similarly situated employees.

26. Defendants imposed excessive deductions on the wages of Plaintiffs and other similarly situated employees.

27. As a result of the automobile and other job-related expenses incurred by Plaintiffs, they were deprived of the minimum wage guaranteed to them by the FLSA and NYLL.

28. As a result of Defendants' failure to provide Plaintiffs and others similarly situated uniform laundering, cleaning and maintenance services while failing to provide them a weekly uniform maintenance allowance, such employees were deprived of uniform maintenance allowances guaranteed to them by the NYLL.

29. As a result of Defendants' acceptance and retention of gratuities belonging to Plaintiffs and others similarly situated, those employees were deprived of gratuities guaranteed to them by the NYLL.

30. As a result of Defendants' excessive deductions from the wages of Plaintiffs and others similarly situated, those employees were deprived of wages guaranteed to them by the NYLL.

31. Plaintiffs were not required to record their automobile and other job-related expenses and Defendants failed to maintain accurate records of job-related expenses and

deductions from wages, as required by the FLSA and NYLL. Additionally, Defendants failed to record whether employees received employer-provided uniform laundering, cleaning and maintenance expenses as required by the NYLL.

32. On information and belief, Defendants are adhering to the same policies and practices with respect to all similarly situated employees at all of their other Domino's Pizza stores in the State of New York.

33. The net effect of Defendants' policies and practices, instituted and approved by company managers, is that Defendants willfully fail to pay New York and federal minimum wage, willfully fail to pay uniform maintenance allowances required by the NYLL, willfully accept and retain gratuities in violation of the NYLL, willfully impose excessive deductions from wages in violation of the NYLL, and willfully fail to keep accurate records in order to save payroll costs. Defendants thereby enjoy ill-gained profits at the expense of their employees.

#### **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

34. Plaintiffs bring Count I (the FLSA claim) as an "opt-in" collective action on behalf of similarly situated delivery drivers pursuant to 29 U.S.C. § 216(b).

35. The FLSA claim may be pursued by those who opt-in to this case, pursuant to 29 U.S.C. § 216(b).

36. Plaintiffs, individually and on behalf of other similarly situated employees, seek relief on a collective basis challenging, among other FLSA violations, Defendants' practice of failing to pay employees minimum wage and failing to accurately record all expenses incurred by their employees. The number and identity of other plaintiffs yet to

opt-in and consent to be party plaintiffs may be determined from the records of Defendants, and potential class members may easily and quickly be notified of the pendency of this action.

37. Plaintiffs bring Counts II through VII (the state law claims) as a class action pursuant to Fed. R. Civ. P. 23, on behalf of themselves and as the Class Representatives of the following persons (the "Class"):

All current and former delivery drivers employed by Defendants in the State of New York within the last six years.

38. The state law claims, if certified for class-wide treatment, are brought on behalf of all similarly situated persons who do not opt-out of the class.

39. Plaintiffs' state law claims satisfy the numerosity, commonality, typicality, adequacy and superiority requirements of a class action pursuant to Fed. R. Civ. P. 23.

40. The class satisfies the numerosity standards. The Class is believed to number in the hundreds or thousands of persons who are geographically dispersed. As a result, joinder of all Class members in a single action is impracticable. Class members may be informed of the pendency of this class action through direct mail.

41. Questions of fact and law common to the Class predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from Defendants' actions include, without imitation, the following:

- (i) Whether Defendants failed to pay Class members the minimum wage required under the NYLL.



- (ii) Whether Defendants assessed charges against Class members' wages and/ or required them to make payments by separate transaction when such charges or payments are not permitted as deductions from wages under the NYLL.
- (iii) Whether Defendants requested, demanded, or received a return, donation or contribution of any part or all of Class members' wages, salary, supplements, or other thing of value, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such employee from procuring or retaining employment.
- (iv) Whether Defendants failed to reimburse Class members for the purchase of uniform items as required under the NYLL.
- (v) Whether Defendants failed to pay Class members the weekly uniform maintenance allowance as required under the NYLL.
- (vi) Whether Defendants accepted or retained any part of gratuities belonging to Class members in violation of the NYLL.
- (vii) Whether Defendants imposed excessive deductions from Class members' wages in violation of the NYLL.
- (viii) Whether Defendants failed to keep accurate records of deductions from Class members' wages in violation of the NYLL.

- (ix) Whether Defendants failed to keep accurate records of whether Class members had uniforms laundered, cleaned or maintained by the employer in violation of the NYLL.

42. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the state law claims.

43. Plaintiffs' claims are typical of those of the Class in that Class members have been employed in the same delivery driver position as Plaintiffs and were subject to the same unlawful practices as Plaintiffs.

44. A class action is the appropriate method for the fair and efficient adjudication of this controversy. Defendants have acted or refused to act on grounds generally applicable to the Class. The presentation of separate actions by individual Class members creates a risk of inconsistent and varying adjudications, establishing incompatible standards of conduct for Defendants, and/or substantially impairing or impeding the ability of Class members to protect their interests.

45. Plaintiffs are adequate representatives of the Class because they are members of the Class and their interests do not conflict with the interest of the members of the Class they seek to represent. The interests of the members of the Class will be fairly and adequately protected by Plaintiffs and their undersigned counsel, who have extensive experience prosecuting complex wage and hour, employment, and class action litigation.

46. Maintenance of this action as a class action is a fair and efficient method for adjudicating this controversy. It would be impracticable and undesirable for each member of the Class who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members.

**COUNT I**  
**VIOLATION OF THE FAIR LABOR STANDARDS ACT OF 1938**

47. Plaintiffs reassert and re-allege the allegations set forth above.

48. At all relevant times herein, Plaintiffs have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

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

50. Defendants are subject to the minimum wage requirements of the FLSA because they are an enterprise engaged in interstate commerce and their employees are engaged in interstate commerce.

51. Pursuant to Section 6 of the FLSA, codified at 29 U.S.C. § 206, employees are entitled to be compensated at a rate of \$5.15 per hour before July 24, 2007, \$5.85 per hour from July 24, 2007 through July 24, 2008, and \$6.55 per hour since July 24, 2008.

52. Defendants were not allowed to avail themselves of the federal tipped minimum wage rate under the FLSA, nor did Defendants attempt to do so.

53. Defendants, pursuant to their policy and practice, willfully violated the FLSA by refusing and failing to pay Plaintiffs and the Class the minimum wage. In the course of perpetrating these unlawful practices, Defendants have also willfully failed to keep accurate records of all expenses incurred by Class members.

54. Section 13 of the FLSA, codified at 29 U.S.C. § 213, exempts certain categories of employees from minimum wage obligations. None of the FLSA exemptions apply to Plaintiffs or the Class.

55. Plaintiffs and the Class are victims of a uniform and employer-based compensation policy. On information and belief, this uniform policy, in violation of the FLSA, has been applied, and continues to be applied, to all delivery driver employees in Defendants' other Domino's Pizza stores in New York.

56. Plaintiffs and the Class are entitled to damages equal to the difference between the minimum wage and actual wages received after deduction for job-related expenses within the three years preceding the filing of this Complaint, plus periods of equitable tolling, because Defendants acted willfully and knew, or showed reckless disregard of whether, their conduct was prohibited by the FLSA.

57. Defendants have acted neither in good faith nor with reasonable grounds to believe that their actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiffs and the Class are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid minimum wages described pursuant to Section

16(b) of the FLSA, codified at 29 U.S.C. § 216(b). Alternatively, should the Court find Defendants did not act willfully in failing to pay minimum wage, Plaintiffs and the Class are entitled to an award of prejudgment interest at the applicable legal rate.

58. As a result of the aforesaid willful violations of the FLSA's minimum wage provisions, minimum wage compensation has been unlawfully withheld by Defendants from Plaintiffs and the Class. Accordingly, Defendants are liable pursuant to 29 U.S.C. § 216(b), together with an additional amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

WHEREFORE, on Count I of this Complaint, Plaintiffs and the Class demand judgment against Defendants and pray for: (1) compensatory damages; (2) liquidated damages; (3) attorneys' fees and costs as allowed by Section 16(b) of the FLSA; (4) pre-judgment and post-judgment interest as provided by law; and (5) such other relief as the Court deems fair and equitable.

**COUNT II**  
**FAILURE TO PAY MINIMUM WAGE IN VIOLATION**  
**OF THE NEW YORK LABOR LAW**

59. Plaintiffs reassert and re-allege the allegations set forth above.

60. At all relevant times herein, Plaintiffs and the Class have been entitled to the rights, protections, and benefits provided under the NYLL, N.Y. Lab. Code § 190, *et seq.*, and the wage orders incorporated therein, 12 NYCRR § 137-1, *et seq.*

61. The NYLL regulates, among other things, the payment of minimum wage by employers who employ any individual in any occupation, industry, trade, business or

service. N.Y. Lab. Code §§ 190(3) & 651(6). The NYLL further provides that the minimum wage shall not be reduced by expenses incurred by an employee in carrying out duties assigned by his or her employer. 12 NYCRR § 137-2.5(b).

62. During all times relevant to this action, Defendants were the “employers” of Plaintiffs and the Class within the meaning of the NYLL. N.Y. Lab. Code §§ 190(3) & 651(6).

63. During all times relevant to this action, Plaintiffs and the Class were Defendants’ “employees” within the meaning of the NYLL. N.Y. Lab. Code §§ 190(2) & 651(5).

64. Pursuant to the NYLL, employees are entitled to be compensated at a rate of \$5.15 per hour from March 31, 2000 through December 31, 2004, \$6.00 per hour from January 1, 2005 through December 31, 2005, \$6.75 per hour from January 1, 2006 through December 31, 2006, and \$7.15 per hour since January 1, 2007. N.Y. Lab. Code § 652, 12 NYCRR §§ 137-1.2; see also N.Y. Lab. Code. § 673.

65. Defendants were not allowed to avail themselves of the tipped minimum wage rate under the NYLL, nor did Defendants attempt to do so.

66. Defendants, pursuant to their policy and practice, violated the NYLL by refusing and failing to pay Plaintiffs and the Class the minimum wage. In the course of perpetrating these unlawful practices, Defendants have also willfully failed to keep accurate records of all expenses incurred by their employees.

67. N.Y. Lab. Code § 651(5) exempts certain categories of employees from minimum wage obligations under the NYLL, none of which apply to Plaintiffs or the Class.

68. Plaintiffs and the Class are victims of a uniform and employer-based compensation policy. Upon information and belief, this uniform policy, in violation of the NYLL, has been applied, and continues to be applied, to all Class members in Defendants' other Domino's Pizza stores in the State of New York.

69. Plaintiffs and the Class are entitled to damages equal to the difference between the minimum wage and actual wages received after deduction for job-related expenses within the six years preceding the filing of this Complaint, plus periods of equitable tolling.

70. Plaintiffs and the Class are entitled to an award of prejudgment interest at the applicable legal rate.

71. Defendants acted willfully and therefore Plaintiffs and the Class are entitled to an additional amount of penalties equal to 25% of the total of such underpayments found to be due them.

72. As a result of the aforesaid willful violations of the NYLL's minimum wage provisions, minimum wage compensation has been unlawfully withheld by Defendants from Plaintiffs and the Class. Accordingly, Defendants are liable under N.Y. Lab. Code § 663(1) for all unpaid minimum wages, penalties, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

WHEREFORE, on Count II of this Complaint, Plaintiffs and the Class demand judgment against Defendants and pray for: (1) compensatory damages; (2) penalties; (3) attorneys' fees and costs as allowed by N.Y. Lab. Code § 663(1); (4) pre-judgment and post judgment interest as provided by law; and (5) such other relief as the Court deems fair and equitable.

**COUNT III  
UNLAWFUL DEDUCTIONS IN VIOLATION  
OF THE NEW YORK LABOR LAW**

73. Plaintiffs reassert and re-allege the allegations set forth above.

74. The NYLL regulates, among other things, reimbursement of job-related expenses. The NYLL prohibits employers from charging against wages, or requiring an employee to make payments by separate transaction, unless such charge or payment is permitted as a deduction from wages under the NYLL. N.Y. Lab. Code §§ 193(1)(a) & (b)(2).

75. The NYLL prohibits, among other things, persons from requesting, demanding, or receiving, either before or after such employee is engaged, a return, donation or contribution of any part or all of said employee's wages, salary, supplements, or other thing of value, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such employee from procuring or retaining employment. N.Y. Lab. Code § 198-b(2).

76. During times relevant, Defendants maintained a policy and practice of requiring Plaintiffs and the Class to maintain and pay for operable, safe and legally-compliant automobiles to use in delivering Defendants' pizza and other food items.



Pursuant to such requirements, Plaintiffs and the Class purchased automobiles, gasoline, vehicle parts and fluids, automobile repair and maintenance services, and automobile insurance, and suffered automobile depreciation.

77. Additionally, during times relevant, Defendants maintained a policy and practice of requiring Plaintiffs and the Class to purchase other items including, but not limited to, cellular telephone services, maps, flashlights and batteries, again to use in delivering Defendants' pizza and other food items.

78. Defendants, pursuant to their policy and practice, violated the NYLL by (a) failing to reimburse Plaintiffs and the Class for job-related expenses (N.Y. Lab. Code §§ 193(1)(a) & (b)(2)), (b) requiring them to make payments by separate transaction for charges not permitted as deductions from wages under the NYLL (N.Y. Lab. Code § 198-b(2)), and (c) requesting, demanding, or receiving, either before or after such employees were engaged, returns, donations or contributions of any part or all of said employees' wages, salary, supplements, or other thing of value, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such employee from procuring or retaining employment. (Id.). In the course of perpetrating these unlawful practices, Defendants have also willfully failed to keep accurate records of all uniform items purchases by their employees

79. Plaintiffs and the Class are victims of a uniform and employer-based reimbursement policy. On information and belief, this uniform policy, in violation of the NYLL, has been applied, and continues to be applied, to all delivery driver employees in Defendants' other Domino's Pizza stores in the State of New York.

80. Plaintiffs and the Class are entitled to recover the value of all their job-related expenses within the six years preceding the filing of this Complaint, plus periods of equitable tolling.

81. Plaintiffs and the Class are entitled to an award of prejudgment interest at the applicable legal rate.

82. Defendants acted willfully and therefore Plaintiffs and others similarly situated are entitled to an additional amount of penalties equal to 25% of the total of such unreimbursed job-related expenses.

83. As a result of the aforesaid willful violations of the NYLL's minimum wage provisions, reimbursement for job-related expenses has been unlawfully withheld by Defendants from Plaintiffs and the Class. Accordingly, Defendants are liable pursuant N.Y. Lab. Code § 663(1) for all unpaid minimum wages, penalties, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

WHEREFORE, on Count III of this Complaint, Plaintiffs and the Class demand judgment against Defendants and pray for: (1) compensatory damages; (2) penalties; (3) attorneys' fees and costs as allowed by N.Y. Lab. Code § 663(1); (4) pre-judgment and post-judgment interest as provided by law; and (5) such other relief as the Court deems fair and equitable.

**COUNT IV  
FAILURE TO REIMBURSE FOR UNIFORM PURCHASES  
IN VIOLATION OF THE NEW YORK LABOR LAW**

84. Plaintiffs reassert and re-allege the allegations set forth above.

85. The NYLL regulates, among other things, employers' duty to reimburse employees for uniform purchases. 12 NYCRR § 137-1.8.

86. Defendants required Plaintiffs and the Class to purchase uniform items including black dress pants and black restaurant-quality non-slip shoes.

87. During times relevant, Defendants maintained a policy and practice of failing and refusing to reimburse Plaintiffs and other similarly situated employees for the cost of such uniform items.

88. The expenditures of Plaintiffs and the Class for purchase of uniform items reduced their wages to below New York's minimum wage.

89. Defendants, pursuant to their policy and practice, violated the NYLL by refusing and failing to pay Plaintiffs and the Class the minimum wage and by failing to reimburse such employees for uniform purchases. 12 NYCRR § 137-1.8. In the course of perpetrating these unlawful practices, Defendants have also willfully failed to keep accurate records of all uniform items purchased by Class members.

90. Plaintiffs and the Class are victims of a uniform and employer-based reimbursement policy. Upon information and belief, this consistent policy, in violation of the NYLL, has been applied, and continues to be applied, to all delivery driver employees in Defendants' other Domino's Pizza stores in the State of New York.

91. Plaintiffs and the Class are entitled to damages equal to the amount of their uniform item purchases within the six years preceding the filing of this Complaint, plus periods of equitable tolling.

92. Plaintiffs and the Class are entitled to an award of prejudgment interest at the applicable legal rate.

93. Defendants acted willfully and therefore Plaintiffs and the Class are entitled to an additional amount as penalties equal to 25% of the total of the amount of uniform item purchases.

94. As a result of the aforesaid willful violations of the NYLL's uniform purchase reimbursement provisions, required reimbursements have been unlawfully withheld by Defendants from Plaintiffs and the Class. Accordingly, Defendants are liable pursuant N.Y. Lab. Code § 663(1) for all unreimbursed uniform item purchases, together with an additional amount as penalties, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

WHEREFORE, on Count IV of this Complaint, Plaintiffs and the Class demand judgment against Defendants and pray for: (1) compensatory damages; (2) penalties; (3) attorneys' fees and costs as allowed by N.Y. Lab. Code § 663(1); (4) pre-judgment and post-judgment interest as provided by law; and (5) such other relief as the Court deems fair and equitable.

**COUNT V**  
**FAILURE TO PROVIDE WEEKLY UNIFORM MAINTENANCE**  
**ALLOWANCE IN VIOLATION OF THE NEW YORK LABOR LAW**

95. Plaintiffs reassert and re-allege the allegations set forth above.

96. The NYLL regulates, among other things, employers' duties to provide laundry, cleaning and maintenance services for employees or provide a weekly uniform maintenance allowance to their employees. 12 NYCRR § 137-1.8.

97. Defendants required Plaintiffs and the Class to frequently launder, clean and maintain their uniforms.

98. Defendants simultaneously maintained a policy and practice of (a) failing and refusing to provide Plaintiffs and the Class uniform laundering, cleaning and maintenance services or reimbursement for such services and (b) failing to provide Plaintiffs and the Class a weekly uniform maintenance allowance.

99. The expenditures of Plaintiffs and the Class for laundering, cleaning and maintaining uniforms reduced their wages to below New York's minimum wage.

100. Defendants, pursuant to their policy and practice, violated the NYLL by refusing and failing to provide Plaintiffs and the Class a weekly uniform maintenance allowance. 12 NYCRR § 137-1.8. In the course of perpetrating these unlawful practices, Defendants have also willfully failed to keep accurate records of all uniform laundering, cleaning and maintenance expenses incurred by Plaintiffs and the Class.

101. Plaintiffs and the Class are victims of a uniform and employer-based reimbursement policy. On information and belief, this consistent policy, in violation of the NYLL, has been applied, and continues to be applied, to all delivery driver employees in Defendants' other Domino's Pizza stores in the State of New York.

102. Plaintiffs and the Class are entitled to damages equal to the amount of the applicable unpaid weekly uniform maintenance allowances required under 12 NYCRR §

137-1.8 for the period of six years preceding the filing of this Complaint, plus periods of equitable tolling.

103. Plaintiffs and the Class are entitled to an award of prejudgment interest at the applicable legal rate.

104. Defendants acted willfully and therefore Plaintiffs and the Class are entitled to an additional amount as penalties equal to 25% of the total of the weekly uniform maintenance allowances due.

105. As a result of the aforesaid willful violations of the NYLL's weekly uniform maintenance allowance provisions, required allowances have been unlawfully withheld by Defendants from Plaintiffs and the Class. Accordingly, Defendants are liable pursuant N.Y. Lab. Code § 663(1) for all unpaid weekly uniform maintenance allowances, together with an additional amount as penalties, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

WHEREFORE, on Count V of this Complaint, Plaintiffs and the Class demand judgment against Defendants and pray for: (1) compensatory damages; (2) penalties; (3) attorneys' fees and costs as allowed by N.Y. Lab. Code § 663(1); (4) pre-judgment and post-judgment interest as provided by law; and (5) such other relief as the Court deems fair and equitable.

**COUNT VI**  
**DEFENDANTS' ACCEPTANCE AND RETENTION OF**  
**GRATUITIES IN VIOLATION OF THE NEW YORK LABOR LAW**

106. Plaintiffs reassert and re-allege the allegations set forth above.

107. The NYLL requires, among other things, employers to permit their employees to accept and retain all gratuities. N.Y. Lab. Code § 196-d.

108. During times relevant, Defendants added a delivery charge to their customer's receipts in addition to, and separate from, the charge for the pizzas and other food items sold to customers.

109. Defendants accepted and retained all such delivery charges.

110. Customers of Defendants reasonably believed the delivery charges constituted the delivery drivers' gratuities and therefore the customers often failed and refused to provide gratuities to Plaintiffs and the Class.

111. Defendants' policy and practice of accepting and retaining charges reasonably believed by their customers to constitute gratuities violated the NYLL. 12 NYCRR § 196-d.

112. Plaintiffs and all the Class are victims of a uniform and employer-based compensation policy. On information and belief, this uniform policy, in violation of the NYLL, has been applied, and continues to be applied, to all delivery driver employees in Defendants' other Domino's Pizza stores in the State of New York.

113. Plaintiffs and the Class are entitled to damages equal to the amount of the delivery charges retained by Defendants for the period of six years preceding the filing of this Complaint, plus periods of equitable tolling.

114. Plaintiffs and the Class are entitled to an award of prejudgment interest at the applicable legal rate.

115. Defendants acted willfully and therefore Plaintiffs and the Class are entitled to an additional amount as penalties equal to 25% of the total of the delivery charges accepted and retained by Defendants.

116. As a result of the aforesaid willful violations of the NYLL's prohibitions on employer acceptance and retention of gratuities, Defendants have unlawfully denied gratuities to Plaintiffs and the Class. Accordingly, Defendants are liable pursuant N.Y. Lab. Code § 663(1) for all unremitted gratuities, together with an additional amount as penalties, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

WHEREFORE, on Count VI of this Complaint, Plaintiffs and the Class demand judgment against Defendants and pray for: (1) compensatory damages; (2) penalties; (3) attorneys' fees and costs as allowed by N.Y. Lab. Code § 663(1); (4) pre-judgment and post-judgment interest as provided by law; and (5) such other relief as the Court deems fair and equitable.

**COUNT VII**  
**DEDUCTIONS IN EXCESS OF THE WEEKLY MAXIMUM**  
**IN VIOLATION OF THE NEW YORK LABOR LAW**

117. Plaintiffs reassert and re-allege the allegations set forth above.

118. The NYLL regulates, among other things, employers' duty to maintain payroll and deduction records and records of whether employers provide laundering, cleaning and maintaining of uniforms. N.Y. Lab. Code § 661 & 12 NYCRR §§ 137-2.1.



119. During times relevant, Defendants maintained a policy and practice of failing to maintain records of payroll and deduction records and failed to maintain records of whether they provided uniform laundering, cleaning and maintenance services.

120. Defendants, pursuant to their policy and practice, violated the NYLL by failing to maintain records of payroll and deduction records and records of whether they provided uniform laundering, cleaning and maintenance services.

121. Plaintiffs and the Class are victims of a uniform and employer-based compensation policy. On information and belief, this uniform policy, in violation of the NYLL, has been applied, and continues to be applied, to all delivery driver employees in Defendants' other Domino's Pizza stores in the State of New York.

122. Plaintiffs and the Class are entitled to all damages sought in the above Counts II through VII due to Defendants' failures, refusals and violations.

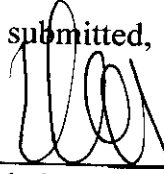
WHEREFORE, on Count VII of this Complaint, Plaintiffs and the Class demand judgment against Defendants for all damages prayed for in Counts II through VII above, (2) attorneys' fees and costs as allowed by N.Y. Lab. Code § 663(1); and (3) such other relief as the Court deems fair and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby request a trial by jury of all issues triable by jury.

Dated: July 8, 2009

Respectfully submitted,



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Donald H. Nichols (DN 0689)  
Paul Lukas (MN Bar #22084X)  
(admission to E.D.N.Y. pending)  
E. Michelle Drake (MN Bar #0387366)  
(*pro hac vice* motion forthcoming)  
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**STUEVE SIEGEL HANSON LLP**  
George A. Hanson (MO Bar #43450)  
(*pro hac vice* motion forthcoming)  
Richard M. Paul III (MO Bar # 44233)  
(*pro hac vice* motion forthcoming)  
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**WEINHAUS & POTASHNICK**  
Mark A. Potashnick (MO Bar # 41315)  
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Ilya I. Ruvinskiy (MO Bar # 60900)  
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St. Louis, Missouri 63141  
Telephone: (314) 997-9150  
Facsimile: (314) 997-9170

**ATTORNEYS FOR PLAINTIFFS**

# Exhibit A

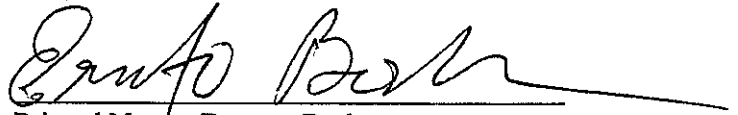
**CONSENT TO BECOME A PARTY PLAINTIFF**

Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b)

**I HEREBY CONSENT** to be a party plaintiff in the foregoing action seeking unpaid wages against Domino's Pizza, Inc. and Domino's Pizza, LLC.

Date:

5/24/09



Printed Name: Ernesto Bodon

# Exhibit B

**CONSENT TO BECOME A PARTY PLAINTIFF**

Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b)

**I HEREBY CONSENT** to be a party plaintiff in the foregoing action seeking unpaid wages against Domino's Pizza, Inc. and Domino's Pizza, LLC.

Date: 5-23-09

Kevin Curry  
Printed Name: Kevin Curry

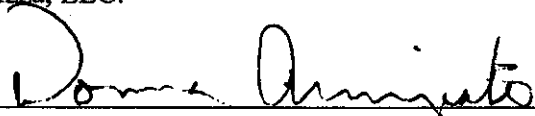
# Exhibit C

**CONSENT TO BECOME A PARTY PLAINTIFF**

Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b)

**I HEREBY CONSENT** to be a party plaintiff in the foregoing action seeking unpaid wages against Domino's Pizza, Inc. and Domino's Pizza, LLC.

Date: 5/31/09

  
Printed Name: Donna Annunziato