SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York,

Petitioner,

-against-

DOMINO'S PIZZA, INC., DOMINO'S PIZZA, LLC, DOMINO'S PIZZA FRANCHISING, LLC; ANTHONY MAESTRI, HI-RISE PIZZA, INC., HUDSON RIVER PIZZA, LLC, UPPER WEST HARLEM PIZZA, INC., NORTH BEDFORD AVENUE PIZZA, INC., UPTOWN PIZZA, INC., NORTHERN WESTCHESTER PIZZA, LLC, SHUEB AHMED, NADER INC., SUPER DUPER PIZZA INC, MATTHEW J. DENMAN, and DENMAN ENTERPRISES, INC.,

Respondents.

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VERIFIED PETITION

Petitioner, the People of the State of New York, by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, as and for his Verified Petition, respectfully alleges:

INTRODUCTION

1. The Office of the Attorney General of the State of New York ("OAG") brings this case to seek redress for and to stop widespread and systematic violations of the New York Labor Law by Domino's Pizza Inc. ("Domino's"), the largest pizza delivery company in the country, and three of its franchisees ("Franchisee Respondents" or the "Three Franchisees") that currently collectively operate seven Domino's stores. Though Domino's directly operates some stores (i.e., "corporate stores"), Domino's receives the largest portion of its sales and profits — approximately $272.8 million in fiscal 2015 revenues — through its franchise stores. Domino's exercised significant authority and control over employee relations in its franchise stores, and at the Three Franchisees in particular. Yet, while the employees who deliver pizza from Domino's

franchise stores are the linchpin of Domino's business, Domino's and the Franchisee Respondents systematically failed to pay delivery workers all of their hard-earned and lawfully owed wages. Domino's encouraged franchisees to rely on its own software system that, among other things, generated payroll reports that Domino's knew systematically under-calculated wages.

2. The Franchisee Respondents repeatedly violated the New York Labor Law ("NYLL" or "Labor Law"). The violations varied by store, and they included failure to pay delivery workers the legal minimum wage and overtime rates, and failure to adequately reimburse workers for their delivery expenses. Based on the evidence developed by the OAG, including incomplete records provided by these Respondents, the OAG estimates the Three Franchisees owe at least $567,000 in back wages and underpayments to their workers, plus liquidated damages and interest.

3. Along with the Franchisee Respondents, Domino's is liable as a joint employer because it exercised a high level of control over employee conditions at its franchise stores and because of its role in causing the wage violations at issue. Among other things, Domino's played a significant role in key aspects of hiring, employee terminations and discipline, wage payments, and oversight and supervision of work operations. In addition, Domino's itself caused many of the wage violations because Domino's encouraged franchisees to use a "Payroll Report" function in the software system Domino's required franchisees to install and use in their stores (known as "PULSE"), even though Domino's knew since at least 2007 — yet failed to disclose to franchisees — that PULSE's "Payroll Report" systematically under-calculated the gross wages owed to workers. As a direct result of Domino's conduct, the Franchisee Respondents underpaid hundreds of workers by many thousands of dollars.

4. Domino's played a key role in many other aspects of their franchisee operations, exerting control over critical areas of operations and employee relations. For example, in addition to exercising control over key aspects of employee management, Domino's maintains payroll records for the Franchisee Respondents and other franchisees. Domino's has imposed its own anti-union policy on franchisees. And Domino's possessed and routinely used its power to issue warnings, or "defaults" — which sometimes led to termination of a franchise agreement — and, as a result, a franchisee's decision not to comply with Domino's instructions could and did have serious consequences.

5. In addition to the Three Franchisees, the OAG has also reached settlements in 2014 and 2015 with 12 additional franchisees (the "Settling Franchisees"), who, at the time, collectively owned 61 stores representing approximately 45% of the franchisee locations statewide. Evidence from these investigations and from Domino's itself, further illustrates the extent of Domino's control and how widespread wage violations were among Domino's franchise stores: not only did the Settling Franchisees all admit to widespread Labor Law violations, but the documentation that Domino's provided to the OAG from its PULSE system showed that an overwhelming majority of its New York franchisees were reporting instances of wage rates in PULSE that fell below the required minimum wage and overtime wage rates.

6. Domino's failure to advise its New York franchisees in any affirmative way — or to remedy — known flaws in the PULSE system also violates the anti-fraud provision of New York Executive Law Section 63(12). Domino's inaction deceived its franchisees about the PULSE software system that Domino's required that they purchase, install, and use. Moreover, such facts demonstrate that Domino's violated New York's Franchise Sales Act and its anti-fraud provision (General Business Law §687), as Domino's made material misstatements and

omitted material facts about the PULSE software system in the financial disclosure documents that Domino's was required by law to provide to prospective franchisees. Domino's failure to remedy the flaws in PULSE or to disclose them to franchisees directly harmed the underpaid workers in New York and its New York franchisees, some of whom faced lawsuits and government investigations into the resulting underpayments.

7. Accordingly, in this Special Proceeding, the OAG seeks an order for full relief including (a) requiring that Domino's remedy the PULSE flaws and notify franchisees in writing of PULSE's flaws and limitations; (b) enjoining all Respondents from continued violations of the law, including the NYLL and Franchise Sales Act; (c) finding Domino's and Franchisee Respondents jointly and severally liable for restitution and damages to their employees; (d) requiring all Respondents to implement comprehensive policies and practices to assure ongoing compliance, such as appointing an independent monitor; (e) requiring an accounting by Domino's of all franchise employees paid unlawfully low wages; (f) assessing liquidated damages and prejudgment interest, and awarding OAG attorneys' fees and costs; and (g) granting such other relief as the Court may deem just and proper.

JURISDICTION AND VENUE

8. The OAG brings this action pursuant to New York Executive Law Section 63(12) and General Business Law §689(1).

9. Venue properly lies here in the Supreme Court of the State of New York, New York County, because Franchisee Respondents Ahmed and Maestri own and operate Domino's stores in New York County, Domino's does business in New York County, the OAG is located in New York County, and many of the events and omissions giving rise to the claims took place in New York County.

PARTIES

10. Petitioner, Eric T. Schneiderman, the Attorney General of the State of New York, is empowered under New York Executive Law §63(12) to seek, on behalf of the People of the State of New York, injunctive relief, restitution and damages for repeated and persistent fraud and illegality in the transaction of business in the State of New York.

11. Respondent Domino's Pizza, Inc. ("DPI") is, upon information and belief, a Delaware corporation with its principal place of business at 30 Frank Lloyd Wright Drive, Ann Arbor, Michigan 48106, and its agent for service of process is CT Corporation System, 111 Eighth Avenue, New York, NY 10011. According to its 2015 Annual Report on Form 10-K filed with the United States Securities and Exchange Commission on or about February 25, 2016, DPI is "the second largest pizza company in the world" and is "the number one pizza delivery company in the United States with a 28% share of pizza delivery based on reported consumer spending." DPI operates through 100%-owned subsidiaries.

12. Respondent Domino's Pizza, LLC is, upon information and belief, a Michigan limited liability company with its principal place of business at 30 Frank Lloyd Wright Drive, Ann Arbor, Michigan 48106, and its agent for service of process is CT Corporation System, 111 Eighth Avenue, New York, NY 10011. Domino's Pizza LLC is a wholly owned subsidiary of DPI, and is the operating subsidiary of DPI.

13. Respondent Domino's Pizza Franchising, LLC is, upon information and belief, a Delaware limited liability company with its principal place of business at 24 Frank Lloyd Wright Drive, Ann Arbor, Michigan 48105, and its agent for service of process is CT Corporation System, 111 Eighth Avenue, New York, NY 10011. It was created in 2007 for the primary

purpose of franchising Domino's stores. Respondents DPI, Domino's Pizza LLC, and Domino's Pizza Franchising LLC are collectively referred to herein as "Domino's."

14. Domino's is one of the largest fast food companies in the world, and it is also a franchisor with a significant franchise network nationally. As of January 2016, of its 5,273 stores in the United States, the vast majority of them — 4,888 — were owned and operated directly by franchisees who paid a royalty fee of 5.5% of their sales, plus a comparable advertising fee, in exchange for the use of the Domino's trademark and products. For the fiscal year ending January 3, 2016, Domino's collected approximately $272.8 million in revenue from United States franchisees. As of January 3, 2016, Domino's does business throughout New York State, including in New York County, through 136 New York-based Domino's franchise stores and fifty-four corporate-owned stores.

15. Respondent Anthony Maestri ("Maestri") until November 25, 2013, was the owner and operator of six separately incorporated Domino's franchise stores.

16. He currently owns three of those franchise stores: (1) Respondent Hi-Rise Pizza, Inc., which, upon information and belief, is a New York corporation, whose principal place of business is a Domino's franchise located at 965 Amsterdam Avenue, New York County, and whose address for service of process on file with the New York Secretary of State ("NYSOS") is c/o Anthony Maestri, 46 West 91st Street, New York, NY 10024; (2) Respondent Upper West Harlem Pizza, Inc., which, upon information and belief, is a New York corporation, whose principal place of business is a Domino's franchise located at 2574 Adam Clayton Powell Jr. Boulevard, New York County, and whose address for service of process on file with the NYSOS is 8 Blackberry Hill Road, Katonah, New York, NY 10536; and (3) Respondent Uptown Pizza, Inc., which, upon information and belief, is a New York corporation, whose principal place of

business is a Domino's franchise located at 409 West 125th Street, New York County, and whose address for service of process on file with the NYSOS is 46 West 91st Street, New York, NY 10024.

17. Maestri previously owned three stores, which he sold on or about November 25, 2013: (1) Respondent Hudson River Pizza, LLC, which, upon information and belief, is a New York limited liability company, whose principal place of business was a Domino's franchise located at 189 South Highland Avenue, Ossining, in Westchester County, and whose address for service of process on file with the NYSOS is 8 Blackberry Hill Road, Katonah, NY 10536; (2) Respondent North Bedford Avenue Pizza, Inc., which, upon information and belief, is a New York corporation whose principal place of business was a Domino's franchise located at 130 North Bedford Road, Mount Kisco, in Westchester County, whose address for service of process on file with the NYSOS is 8 Blackberry Hill Road, Katonah, NY 10536; and (3) Respondent Northern Westchester Pizza, LLC, which, upon information and belief, was a New York limited liability company whose principal place of business was a Domino's franchise located at 2050 East Main Street, Cortlandt Manor, in Westchester County, whose address for service of process on file with the NYSOS is 8 Blackberry Hill Road, Katonah, NY 10536.

18. The six stores will be referred to collectively herein, along with Maestri, as the "Maestri Respondents." During the Relevant Period,[1] the Maestri Respondents are "employers" within the meaning of the Labor Law because, with respect to employees at the Maestri Respondents' stores, they were involved in setting pay rates, maintaining payroll and other

[1] The "Relevant Period" is defined herein as: (1) from July 17, 2008 to the present, as to the Franchisee Respondents with respect to their alleged wage-and-hour violations; and (2) from May 23, 2010 to the present as to Domino's for its liability as a joint employer of the workers at the franchisee stores and for PULSE-related claims, as articulated below. The Franchisee Respondents entered tolling agreements with the OAG, tolling the statute of limitations from July 17, 2014 to the termination of that agreement by either side. These Tolling Agreements were terminated by written notice from the OAG dated May 23, 2016.

employment records, and hiring and firing employees. Maestri personally operates his stores through his home office. He also personally inspects each of the stores at least once a week, reviewing store records and supervising employees. Maestri oversees the stores' bookkeeping personally or through his supervisor, personally approves all pay increases to employees, and, with his managers, sets store policies.

19. Respondent Shueb Ahmed ("Ahmed") is the owner and operator of two separately incorporated Domino's franchise stores: (1) Respondent Nader Inc., which, upon information and belief, is a New York corporation whose principal place of business is a Domino's franchise located at 475 West Merrick Road, Valley Stream, in Nassau County, whose address for service of process on file with the NYSOS is c/o Tony Chang, 977 Avenue of the Americas, Suite 818, New York, NY 10018; and (2) Respondent Super Duper Pizza Inc., which, upon information and belief, is a New York corporation whose principal place of business is a Domino's franchise located at 181 Church Street, in New York County, whose address for service of process on file with the NYSOS is c/o Nicholas Pellegrini, 432 Park Avenue South, New York, NY 10013 (collectively with Ahmed, the "Ahmed Respondents"). During the Relevant Period, the Ahmed Respondents are "employers" within the meaning of the Labor Law, because with respect to employees at the Ahmed Respondents' stores, they were involved in setting pay rates, maintaining payroll and other employment records, and hiring and firing employees. Ahmed personally supervises both stores and sets store policies in accordance with guidelines issued by Domino's.

20. Respondent Matthew J. Denman ("Denman") is the owner and operator of two Domino's franchise stores, which he operates through his company, Respondent Denman Enterprises, Inc., which, upon information and belief, is a New York corporation whose principal

places of business are Domino's franchises located at: (1) 132 West Fulton Street, Gloversville, in Fulton County; and (2) 43 Market Street, Amsterdam, in Montgomery County, and whose address for service of process on file with the NYSOS is 43 Market Street, Amsterdam, NY 12010 (collectively with Denman, the "Denman Respondents"). During the Relevant Period the Denman Respondents are "employers" within the meaning of the New York Labor Law because, with respect to the employees at the Denman Respondents' stores, they were involved in setting pay rates, maintaining payroll and other employment records, and hiring and firing employees. Denman personally visits and inspects both stores regularly, sometimes as much as four times a week, and otherwise supervises the stores through regular communication with store managers. He personally approves employees' pay rates, oversees bookkeeping and reconciles accounts, sets store policies subject to Domino's rules and procedures, and informs store managers whether applicants the managers wish to hire have been approved by Domino's or not.

FACTUAL ALLEGATIONS

21. All facts set forth herein refer to the Relevant Period unless specifically stated otherwise. The OAG respectfully refers the Court to the Affirmation of Terri Gerstein in Support of the Verified Petition, dated May 23, 2016 for a full statement of the relevant facts, a summary of which is provided herein.

A. OAG Investigation of Domino's Pizza Stores

22. In 2012, the OAG received complaints that Domino's stores were not paying the required minimum and overtime wages, and as a result, the OAG began investigating a number of Domino's franchisees across New York State.[2] In those investigations, the OAG interviewed

[2] New York's minimum and overtime wag rates are set by statute, Labor Law Section 652(1), with more detailed requirements laid out in regulations known as Wage Orders. Restaurants such as Domino's are currently subject to the Hospitality Industry Wage Order, 12 N.Y.C.R.R. §146 et seq. ("Hospitality Wage Order"), which in January 2011 replaced the Minimum Wage Order for the Restaurant Industry ("Restaurant Wage Order"), 12 N.Y.C.R.R.

employees, including many who delivered food to Domino's customers ("delivery workers" or "delivery employees"); subpoenaed documents, including payroll records; and took sworn testimony from witnesses, including from franchise owners.

23. The documents and testimony revealed widespread and systemic Labor Law violations during the Relevant Period in stores owned by at least 15 different Domino's franchisees.

24. In 2014 and 2015, the OAG reached settlement with a number of these investigated franchisees (the "Settling Franchisees"), who admitted to significant labor law violations in Assurances of Discontinuance ("AODs") they entered into with the OAG pursuant to Executive Law section 63(15).

25. The Settling Franchisees collectively own or owned a total of 61 Domino's stores in fourteen counties which comprised approximately 45% of all franchisee stores then operating in New York State.

26. The OAG did not reach a settlement with the three Franchisee Respondents.

B. The Maestri Respondents' Violations

27. The Maestri Respondents violated the New York Labor Law by: (1) failing to pay the legal minimum wage; (2) failing to pay legal overtime wages; (3) failing to pay spread of hours pay; and (4) failing to reimburse for delivery expenses.

28. The Maestri Respondents claimed a tip credit of up to $1.60 per hour, paying a wage rate of $5.65 per hour for employees who worked in New York City and $6.00 per hour for employees who worked in Westchester County. The Maestri Respondents did not assess whether delivery workers earned enough in tips in order for the employer to claim the tip credit

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§137 et seq. (The Hospitality Wage Order and Restaurant Wage Order are hereinafter referred to as the "Wage Orders.")

and took no steps to ensure that store managers reviewed this information. Payroll records for the Maestri Respondents show instances in which the total tips received plus wages did not equal or exceed the required minimum wage.

29. Workers for the Maestri Respondents often spent over 20% of their work shifts performing in-store, non-tipped work (e.g., taking orders, preparing pizza, cleaning the stores, and opening and closing the stores), and were paid the lower tipped rate for all work performed.

30. The Maestri Respondents did not pay all required overtime pay.

31. From at least July 27, 2009 until January 2010, the Maestri Respondents paid employees 1.5 times their low (and illegal) regular wage rate for overtime hours. This calculation resulted in an unlawfully low overtime rate, both because the Maestri Respondents did not qualify for the tip credit, and also because employers must pay overtime for delivery employees at a rate that is 1.5 times the minimum wage rate, less the applicable tip credit.

32. The Maestri Respondents also assigned delivery workers to work in multiple locations during a single week, but the Maestri stores' pay and time records show that the Maestri Respondents did not combine the delivery workers' hours worked at the different establishments for purposes of calculating overtime pay. As a result, employees who worked in multiple locations for the Maestri Respondents for more than forty weekly hours were not paid overtime rates as required for all hours past forty.

33. At least until late 2012, the Maestri Respondents did not pay employees required "spread of hours" pay, as required by the Labor Law for shifts in which the spread of hours (the period between the start and end of the work day) exceeded ten hours.

34. Finally, throughout the Relevant Period until at least May 2015, the Maestri Respondents failed to consistently reimburse employees for the cost of purchasing and

maintaining bicycles (other than minor repairs, such as patching flat tires), or for related expenses like the cost of helmets or to replace bicycles stolen during deliveries.

35. Based on the OAG's conservative analysis of the data provided during this investigation, the Maestri Respondents' wage violations resulted in estimated underpayments of at least $178,000, plus liquidated damages and interest.

C. The Ahmed Respondents' Violations

36. The Ahmed Respondents violated the New York Labor Law by: (1) failing to pay the legal minimum wage; (2) failing to pay legal overtime wages; (3) failing to pay spread of hours pay; and (4) failing to reimburse for delivery expenses.

37. Through at least February 2013, the Ahmed Respondents paid their delivery workers as little as $5.00 per hour, which is less than the applicable $5.65 tipped rate allowed for fast food delivery workers from January 1, 2011 through December 31, 2015.

38. The Ahmed Respondents also paid employees 1.5 times their low (and illegal) regular wage rate for overtime hours, resulting in an unlawfully low overtime rate.

39. At least until January 2013, the Ahmed Respondents did not pay employees required "spread of hours" pay for shifts in which the spread of hours exceeded ten hours.

40. Finally, the Ahmed Respondents required delivery employees to own and operate bicycles to make deliveries in Ahmed's New York City store, but did not reimburse these workers for the cost of the bicycles.

41. Based on the conservative analysis done by the OAG of the data provided during this investigation, the Ahmed Respondents' wage violations resulted in estimated underpayments of at least $156,000 to the employees at his two stores, plus liquidated damages and interest.

D. The Denman Respondents' Violations

42. The Denman Respondents violated the New York Labor Law by: (1) failing to pay the legal minimum wage; and (2) failing to reimburse for delivery expenses.

43. By Denman's own admission, the Denman Respondents paid delivery employees $6.25 to $6.80 per regular hour. This amount was lower than any applicable non-tipped minimum wage rate during the Relevant Period, which started at a low of $7.25 per hour and increased several times.

44. The Denman Respondents did not track employee hours spent performing non-tipped work. The Denman Respondents' delivery workers routinely performed too much non-delivery work (above the 20% threshold) for Denman to claim a tip credit. The Denman Respondents were not entitled to claim a tip credit with regard to these workers.

45. The Denman Respondents required delivery employees to own and operate their own vehicles to deliver food and beverages to customers. However, the Denman Respondents failed to adequately reimburse their workers for these delivery-related expenses. The Denman Respondents' base rate of reimbursement for delivery employees was between 50 and 60 cents per delivery, a rate equivalent to only 22 to 23 cents per mile. This is lower than the employees' own estimates of actual delivery costs. It is also less than half of Domino's own estimate of the cost of driving a compact car for delivery work in New York State. The Denman Respondents' reimbursement rate failed to reimburse delivery employees for actual expenses, and fell below any reasonable estimate of necessary work-related costs of owning and operating an automobile, in violation of Labor Law Section 193 and 12 N.Y.C.R.R. §146-2.7(c).

46. Based on the OAG's conservative analysis of the data provided during this investigation, the Denman Respondents' wage violations resulted in estimated underpayments

totaling at least $233,000 owed to its employees in its two stores, plus liquidated damages and interest. [3]

E. The OAG's Investigation of Domino's

47. During its investigation of numerous Domino's franchisees, and because of the initial widespread violations found among them, the OAG issued subpoenas to Domino's.[4] The subpoenas sought sworn testimony from certain Domino's officials, documents concerning Domino's relationship with New York State franchisees, as well as a particular subset of payroll data extracted from Domino's proprietary software, PULSE: specifically, information about franchisee-reported delivery worker wage rates below New York's minimum and overtime wage requirements.

48. The documents produced by Domino's showed that from October 2011 to June 2013 (the period of data which Domino's provided), 33 of the 42 franchisees operating in New York State — over 78% — reported wage rates in PULSE below the state's minimum wage requirements for delivery workers. These documents also showed that 36 of the 42 Domino's franchisees at that time — over 85% — reported in PULSE instances in which they paid one or more employees less than the legal minimum overtime rate of $9.28 that any restaurant could pay a tipped delivery worker during the Relevant Period.

1. Domino's Proprietary Computer System, PULSE

49. The OAG's investigation revealed that beginning in 2001, Domino's began rolling out PULSE, its proprietary computer system, to its stores, and by mid-2008, Domino's required

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[3] The underpayment estimates for the Maestri, Ahmed and Denman Respondents are extremely conservative in several ways, and a full accounting is needed to determine the entire scope of violations.

[4] Executive Law Section 63(12) gives the OAG the authority "to take proof and make a determination of the relevant facts and to issue subpoenas" in connection with OAG investigations of fraudulent or illegal acts committed in the course of a business activity. N.Y. Exec. L. §63(12).

all stores, whether corporate-owned or franchisee, to purchase and install the PULSE system. PULSE consists of hardware (e.g., monitors, terminals) and software which performs a number of tasks, including doing point-of-sale (i.e., cash register) functions, tracking pizza delivery information, maintaining store-specific data (e.g., personnel data, store hours, product prices), timekeeping for employees using individual employee codes, tracking employee work tasks continuously, recording tips, and generating reports (e.g., sales, revenue, payroll).

50. Substantial costs and fees for the use of PULSE are incurred by New York franchisees for each store at the inception of the franchise and each year thereafter. Domino's own estimate of these expenses, as stated in Domino's Financial Disclosure Document, provided to all franchisees, is that the cost per store to acquire the hardware and software required to run PULSE is $15,000 to $25,000, and the estimated cost per store for required maintenance and support contracts, third party software license fees, and upgrades or updates to the PULSE software average up to $4,500.00 annually.

51. PULSE is more than simply a "point of sale" system, though it has that function. A worker at a franchise store cannot perform any work-related function (such as taking an order) without first logging in to PULSE. For example, to enter an order in PULSE, the software requires a store to assign the order a code for a particular "team member," Domino's term for an employee. From the moment the order is placed, a timer begins running, and PULSE tracks minute-by-minute all subsequent actions until the order is fulfilled, including which employee performs each task related to the order.

52. PULSE also generates reports for store management concerning payroll, sales, and other functions. The payroll report (referred to herein as the "Payroll Report") calculates gross

wages based on an employee's clock-in and clock-out times on PULSE and on the employee's wage rate entered by a store owner or manager.[5]

53. The Payroll Report is labeled "Payroll" at the top of each page and contains columns separately listing each employee's daily hours worked, pay rate, regular hours, "Overtime 1.5," "Tips," and "Total Pay," among other things. Once a store manager or owner runs the "Payroll Report" function, PULSE automatically calculates "Total Pay" for each employee for each pay period based on the hours recorded in PULSE, and shows this "Total Pay" in the Payroll Report.

54. Numerous Franchisee Respondents and Settling Franchisees routinely sent these Payroll Reports, using PULSE's "Total Pay" column for their gross wage amounts, to their accountants and payroll services for the discrete task of performing the final step of the payroll process: computing employees' net earnings by making applicable deductions.

55. Domino's is in regular contact with all of its franchisees about the evolving functions of PULSE, as Domino's updates PULSE software twice a year and sends franchisees summaries of the updates twice a year.

56. Moreover, because franchisees are contractually obligated to provide Domino's full access to their business information, Domino's has constant, real-time access to all information stored in PULSE in any franchise store nationwide, including in New York State, and reviews certain aspects of that information from all its stores daily.

57. Domino's was aware that some New York franchisees used PULSE to calculate their employees' gross wages.

[5] Generally, payment of wages necessarily is a two-step process: first, an employer must calculate the gross wages owed, then the employer must make appropriate deductions (e.g., for taxes and Social Security), and provide checks to employees.

58. Domino's created a reference guide for all corporate stores and franchisees, the "PULSE Management Reports Guide" (the "PULSE Reports Guide"), which sets forth the reports PULSE can generate. The PULSE Reports Guide identifies the "Payroll Report" among "frequently used reports," and describes the Payroll Report as a "listing of all team members and their total hours and pay" for any specified date range. The PULSE Reports Guide describes "typical uses" of the Payroll Report as "viewing payroll information, including clock-in and clock-out times . . . [and] generating payroll information to give to your accountant or payroll service." Domino's describes submission of the Payroll Report to a franchisee's payroll service as one of the "accepted uses" for such reports.

59. The Information Technology ("IT") official whom Domino's designated to testify about PULSE, Wayne Pederson, conceded in his testimony that PULSE served nearly all functions of a payroll service, including calculation of regular and overtime wages owed, tips received, and through a separate report, total reimbursements owed, on a per-employee, per-pay-period basis. The only functions Pederson could identify that PULSE could not perform — as compared to a payroll service — were calculation of tax deductions and handling multiple wage rates for employees working in tipped and non-tipped capacities during the same payroll period.

60. During the Relevant Period, Domino's never provided its franchisees any systematic disclaimer or warning about using PULSE to calculate gross wages, and the Payroll Report itself does not contain any such disclaimer or warning.

61. Upon information and belief, Domino's has only made one statement in mid-2015 discouraging franchisees' use of PULSE for payroll purposes. Specifically, in or about May 2015 (well after the start of the OAG investigation), Domino's, for the first time, included two sentences in its Manager's Reference Guide ("Manager's Guide") stating that PULSE is not

intended or able to be used as a payroll system. However, the Manager's Guide is a nearly 800-page manual of standards detailing all manner of operations that all Domino's stores must follow.

62. Upon information and belief, the PULSE Reports Guide still states that it is acceptable for a franchisee to provide PULSE payroll reports to an accountant or payroll provider. Upon information and belief, no update or written information has been sent to franchisees to alert them to any particular flaws in PULSE's calculations of gross wages. Upon information and belief, the Payroll Report produced by PULSE does not contain any disclaimer on its face regarding any problems a franchisee would encounter in relying on PULSE to calculate gross wages.

2. Flaws Discovered, but not Disclosed, in the PULSE System

63. Unbeknownst to its franchisees, Domino's knew of serious problems with PULSE that it never revealed or addressed.

64. For years Domino's has been aware of, but failed to inform franchisees about, four flaws in PULSE's calculation of gross employee earnings: (1) PULSE fails to aggregate hours worked in multiple stores for the same employer for purposes of overtime pay; (2) PULSE calculates overtime at an illegally low rate for tipped workers; (3) PULSE fails to limit the tip credit appropriately when an employee performs too much untipped work; and (4) PULSE fails to calculate "spread of hours" pay.

65. Domino's own emails and its sworn testimony show that it has known about two of these flaws since at least 2007 and the remaining two since at least 2010.

66. Despite this knowledge, Domino's failed to fix the flaws or inform franchisees about them in any systematic or comprehensive way.

a. First PULSE Flaw: Failing To Count Overtime Hours Accumulated at Multiple Stores

67. The first systemic flaw in PULSE is its inability to compute overtime properly when an employee works at more than one store owned by the same franchisee. The PULSE Payroll Report contains a column for "Overtime 1.5" — intended to capture when an employee works more than the "Regular Hours" of forty hours per week — but the PULSE software cannot capture and aggregate hours from more than one store location in the same Payroll Report.

68. This very problem occurred in stores owned by the Maestri Respondents and in stores operated by the Settling Franchisees, whose use of PULSE led to inaccurate calculations of overtime and employee underpayment at various times during the July 2007 to July 2012 time period.

69. These underpayments could have been avoided altogether, because Domino's knew about this flaw in PULSE at least as early as 2010.

70. In December 2010, Domino's IT and HR professionals discussed, by email, a proposed fix to properly calculate overtime pay. Domino's IT official, Vice President of Corporate Operations Wayne Pederson, confirmed in testimony in 2014 that he was aware of PULSE's inability to calculate overtime for employees who worked in more than one location for the same franchisee, and conceded that this flaw has yet to be addressed. Pederson did not deny that the problem could not be fixed; he explained, instead, that it had not been fixed because it was "nothing that we [can] do very easily." Domino's decision not to correct this flaw and not to notify franchisees about it resulted in underpayments to workers at the Maestri Respondents' and other stores.

71. In fact, Domino's avoided this problem at its corporate stores by using an additional software program, PeopleSoft, to properly calculate overtime for any employee who

worked at more than one Domino's-owned corporate store during a single pay period. But Domino's neither informed franchisees that a fix was needed nor that one was available.

b. Second PULSE Flaw: Improperly Under-Calculating Overtime for Tipped Employees

72. PULSE's second flaw is that it uses the wrong formula to calculate overtime wages owed to delivery employees who are paid a tipped rate. When an employee is paid a tipped rate, PULSE calculates overtime pay at 1.5 times the employee's tipped rate, expressly prohibited by the Hospitality Wage Order. For example, if a franchisee in 2015 paid a delivery employee a tipped rate of $5.65 per hour, that employee should have been paid $10.03 per overtime hour (the then-current New York State minimum wage of $8.75 per hour x 1.5 equals a $13.13 required overtime rate, minus the tip credit of $3.10 per hour, which equals a minimum tipped overtime rate of $10.03 per hour). However, PULSE calculates the employee's overtime rate at $8.48 per hour ($5.65 times 1.5), which is $1.55 per hour less than the then-current 2015 legal overtime rate for tipped delivery employees.[6] In this way, PULSE systematically under-calculates the gross overtime wages owed to franchise delivery workers who were paid tipped rates. (This PULSE flaw will be referred to herein as the "Tipped Rate Overtime Flaw.")

73. The Maestri and Ahmed Respondents, as well as nine of the Settling Franchisees, underpaid many delivery workers because they relied on PULSE and its "Total Pay" column, and they were unaware of PULSE's Tipped Rate Overtime Flaw. This under-calculation for overtime for tipped delivery employees continued throughout the Relevant Period.

74. These underpayments could have been avoided altogether, as Domino's knew about this flaw in PULSE at least as early as 2007. In a May 2007 email chain, five Domino's

[6] As of December 31, 2015, the minimum wage for workers at Domino's New York restaurants (because they qualify as "fast food employees" under the recent amendments to 12 N.Y.C.R.R. Part 146 (the "Fast Food Wage Order") increased to $10.50 in New York City and $9.75 in the rest of the state.

officials, including senior IT and HR professionals, discussed this flaw in detail. At that time, Senior IT official Pederson, who was in charge of PULSE, noted that because of this PULSE flaw, franchisees "could end up under-paying in most cases of overtime." Pederson walked the other Domino's officials through a specific example of miscalculation, ultimately concluding that Domino's "will need to address this with release 3.3" of the PULSE software.[7] Julie Wigley, Domino's Director of PeopleFirst, Shared Services, who was in charge of Domino's human-resource-related communications with franchisees, concurred, responding: "[W]e need to communicate how to pay the drivers differently in Pulse (is [sic] there instructions anywhere that I could direct franchisees to?) and then get the other fix for OT in release 3.3 (when is that due out?)." Pederson's testimony to the OAG confirmed the PULSE software's failure to compute overtime accurately for tipped employees, and that PeopleFirst, the Domino's human resources department, suggested fixing the flaw.

75. Despite these observations by Domino's officials, Domino's took no affirmative action to correct these flaws, year after year. Pederson testified that Domino's informed him that the issue was a "low priority," so neither he nor Domino's fixed the flaw. Nor did Domino's systematically alert all of its franchisees that this flaw existed and that they needed to take additional measures to properly pay overtime to tipped delivery workers, even when a number of franchisees who had discovered the problem themselves brought this flaw to Domino's attention in approximately 2011.

76. Despite consistent and extensive ongoing communication between Domino's and its New York franchisees — including twice annual written PULSE updates, multiple annual on-site visits by Domino's representatives, and communications from certain franchisees about the

[7] Upon information and belief, at least as of July 2015, Domino's PULSE, eight years later, is now Version 3.81, and this version still does not address the under-calculation of overtime issue.

problem — Domino's failed to disclose this material information in any systematic way to its franchisees, thereby knowingly causing and allowing wage underpayments to occur.

c. Third PULSE Flaw: Failing to Limit the Tip Credit Appropriately

77. The third flaw in the PULSE software relates to the recording of the proper wage rate — and application of the tip credit — for employees who perform a mix of tipped and non-tipped work within the same shift. To ensure that an employer does not inappropriately take a tip credit for time an employee is working without an opportunity to receive tips, state law prohibits an employer from claiming a tip credit for a given service employee on any day that the employee works at a non-tipped occupation for over 20% of her shift or for two hours or more during the shift, whichever is less. This prohibition applied to Domino's and Domino's franchisees during the Relevant Period, at least to December 31, 2015, when the Fast Food Wage Order went into effect.

78. Despite the fact that Domino's PULSE software tracks the time that employees perform delivery work, PULSE did not and does not alert franchisee stores when employees performed delivery work for less than 80% of their shift and, therefore, franchisee stores were ineligible to use a "tip credit" wage rate for such workers.

79. More importantly, PULSE does not permit entry of more than one wage rate for the same employee. As such, PULSE did not accurately compute or reflect wage rates for tipped employees — delivery drivers — who were also required to perform in-store tasks like cooking, boxing pizzas, or taking orders (i.e., non-tipped work) while they were between deliveries. This defect caused drivers to be underpaid at a lower, tip credit-adjusted wage when they performed non-tipped work for more than 20% of their shifts. (This PULSE flaw will be referred to herein as the "80/20 Flaw").

80. Two of the Franchisee Respondents systematically underpaid delivery workers as a result of the PULSE 80/20 Flaw. Specifically, the Maestri Respondents' delivery workers were paid a tipped rate for all hours worked, even though they often spent over 20% of their shifts performing in-store, non-tipped work (such as taking orders, preparing pizzas, cleaning, and opening and closing stores). Similarly, the Denman Respondents' delivery employees routinely performed far too much non-tipped work for their employer to claim a tip credit.

81. Domino's knew about the PULSE 80/20 Flaw at least as early as 2007 — and about the resulting violations — but chose to do nothing. In the May 2007 email chain referred to above, see supra ¶74, Ms. Wigley stated: "I'm told the Pulse system does not currently function to pay a driver a different rate of pay in the same shift and therefore franchisees are just paying the tip wage for the entire shift which is not following the law." (Emphasis added). Two years later, nothing had changed. In an April 2009 email to a New York franchisee who was later sued by her employees for, among other things, failing to limit the tip credit when excessive untipped work was performed, Ms. Wigley noted, "[T]here are a lot of franchisees who are not doing tip credit correctly." Later, in a September 2009 email to Domino's officials and a number of other franchisees (none of whom were located in New York), a franchisee bluntly stated: "[W]e are probably not paying our drivers properly on tip credit due to the requirement that at least 80% of their time has to be spent on the tipped job in order to be paid less than the minimum wage." Domino's IT personnel responded to this email by stating, "We're pushing hard on a consensus approach here." But Domino's did not make any modifications to PULSE as a result of this exchange.

82. Despite its knowledge of the PULSE 80/20 flaw, Domino's did nothing to address the problem. In 2011, when a former Domino's New York Area Leader asked Mr. Pederson in

an email about "a few highly sought after [PULSE] enhancements," Mr. Pederson responded that Domino's would not configure PULSE to accommodate multiple wage rates. Instead, Mr. Pederson said that he "would recommend that the franchisees use a blended rate by . . . tak[ing] the gross pay divided by the number of hours over a few month period." However Mr. Pederson's recommended approach plainly violates the New York Labor Law.

83. In January 2014, Mr. Pederson testified before the OAG that seven years after learning of the PULSE 80/20 Flaw, "there is no way for Pulse to have one rate if you are in a tipped position and one if you are in a non-tipped position."

84. The PULSE 80/20 Flaw is especially harmful because, in its franchisee trainings, Domino's expressly directs franchisees to "cross-train" delivery employees to perform in-store (i.e., non-tipped) work such as cooking, boxing pizzas, or taking orders when they are not making deliveries. In this way, Domino's suggested, encouraged, and fostered the working arrangements that led to violations, but then knowingly failed to program PULSE in a way that enabled this "cross-training" work to be compensated lawfully.

d. Fourth PULSE Flaw: Failing to Calculate Required "Spread of Hours" Pay

85. PULSE's fourth flaw is that it is unable to account for New York's "spread of hours" requirement. When asked whether any field in PULSE allows a franchisee to calculate additional wages due when an employee works over ten hours in a day, Pederson testified that "there is no way for PULSE to calculate that."

86. The Franchisee Respondents systematically underpaid employees as a result of this PULSE deficiency too. The Maestri Respondents did not provide spread of hours pay to workers until at least 2012, when its payroll service happened to catch several problems with the PULSE Payroll Report. The Ahmed Respondents did not provide spread of hours pay until

approximately late 2012 or January 2013, when a Domino's official happened to inform Ahmed, and several other franchisees in a meeting about a commercially available software program called Wizard that was capable of correcting PULSE's inability to include spread of hours pay in the Payroll Reports. At the time the Domino's official mentioned this potential fix, the official did not mention any other PULSE flaws. There is no evidence that, beyond the small group of franchisees who happened to attend the meeting, Domino's ever advised all of the franchisees about this problem or the method of correcting this problem.

87. Though these Franchisee Respondents began paying spread of hours pay during the Relevant Period, they did not compensate employees for retroactively owed spread of hours payments.

88. Another New York franchisee who inadvertently discovered the spread of hours flaw in PULSE complained to a Domino's Area Leader, who responded by confirming that PULSE does not account for the requirement, leading this Area Leader to state in an email to another Area Leader: "I wonder how many people are actually doing it."

89. Nine of the twelve Settling Franchisees admitted that they failed to pay spread of hours prior to the OAG's investigation.

90. Domino's knew about the spread of hours requirement and knew that PULSE was unable to calculate this, but never advised franchisees systematically of the problem or of the fix. This silence occurred despite the fact that Domino's used its own workaround to comply with the requirement in corporate-owned New York stores through its PeopleSoft software.

3. Domino's Ongoing Failure To Notify Franchisees of PULSE's Known Flaws

91. Domino's never affirmatively informed all New York State franchisees about all of the PULSE flaws and shortcomings described above. Nor did Domino's proactively advise

franchisees in any meaningful way at any time during the Relevant Period not to use PULSE as a payroll system or for calculating gross wages. Domino's did not advise franchisees that they should not rely on the accuracy of the calculations underlying the "Total Pay" column in the PULSE Payroll Report. Domino's only informed some of the franchisees about the flaws described above on an ad hoc basis and typically only when contacted by a franchisee first.

92. Mr. Pederson testified that if a franchisee affirmatively called and asked about PULSE limitations, he would inform them of these problems. However, when pressed, he had no recollection of when or how many franchisees he informed about such flaws, claiming he spoke to at least one franchisee between 2000 and 2010 (though he could not recall the name of that franchisee). Nor did he have any knowledge of Domino's systematically informing franchisees of the PULSE flaws in writing or by any other means.

93. Except in the rare case when a franchisee specifically asked, Domino's never affirmatively communicated that there was any problem with PULSE.

94. Some franchisees only learned of flaws in their PULSE-generated Payroll Report — if at all — when a payroll service or accountant happened to catch a problem or when the franchisee was investigated by a law enforcement agency or was sued by an employee, often years after unlawful underpayments occurred.

95. For example, Settling Franchisee Sharma believed that paying his employees in accordance with PULSE wage-and-hour records was appropriate and legally compliant until his franchise was investigated by the U.S. Department of Labor.

96. Settling Franchisee Cookston relied upon PULSE to calculate employee wages until three of his stores were the subject of a lawsuit alleging, among other things, underpayment of overtime and failure to pay spread of hours pay.

97. The Maestri Respondents only learned about the flaws in PULSE (and its Payroll Report) because their payroll service discovered problems related to spread of hours and overtime for tipped employees years after the work had been completed and the employees were underpaid.

98. The Ahmed Respondents learned about the PULSE spread of hours flaw only after a discussion with former Area Leader Robert Machin in 2012 about the commercially available software program called "Wizard" mentioned above. The Ahmed Respondents learned about the PULSE overtime underpayment flaw from the OAG in November 2013.

99. As set forth above, when the Settling Franchisees and the Franchisee Respondents who relied on PULSE's Payroll Report learned of the PULSE flaws, they typically changed their practices to comply with the law. However, absent a lawsuit or enforcement action, this compliance was usually only prospective; employees were not paid any back wages owed.

100. Domino's failure to fix the flaws in PULSE resulted in underpayments of wages by the Franchisee Respondents of at least several hundred thousand dollars.

101. Domino's failure to address the PULSE flaws, and its failure to notify franchisees systematically about the deficiencies in PULSE, is especially egregious given that it knew that franchisees were violating the wage-and-hour laws. Though Domino's had and has a unique ability to ensure ongoing compliance of its franchisees with the wage-and-hour laws, Domino's has utterly failed to act to remedy these violations.

102. PULSE records for all New York franchisees that Domino's provided for a sample period from October 2011 through June 2013 show that over 78% of all New York franchisees reported instances of wage rates in PULSE that fell below the legally required minimum wage

rates and over 85% reported wage rates that fell below the legally required overtime wage rate for delivery workers during some portion of this time period.

103. In addition to Domino's continual access to this franchisee PULSE payroll data showing a majority of franchisees listing unlawfully low wage rates, since at least 2009, Domino's has been aware of systemic wage-and-hour law violations by its franchisees through multiple other means: (a) through a "Tip Credit Survey" which Domino's conducted in 2009, in which at least two responding franchisees (including Settling Franchisee Emir Lopez) reported paying wage rates of $4.60 per hour, lower than any then-permissible wage rate even with the maximum tip credit; (b) through tracking of complaints where, for example, in 2009 and 2011 pay issues were the most frequent complaints from employees; and (c) through compensation surveys that found that most surveyed franchisees claimed a tip credit, and those that did paid an average rate of $4.61 per hour, clearly lower than the lawful tip-adjusted minimum wage.

104. Domino's actions and knowing omissions concerning PULSE went beyond a programming glitch. Domino's knew about the software flaws, knew about the impact on franchisees and workers, made countless other fixes and changes to PULSE since 2007 and timely communicated those changes to franchisees.

105. But Domino's opted for silence regarding the PULSE flaws even as the company otherwise communicated to franchisees through, among other things, its semi-annual notifications to franchisees regarding PULSE updates. And although Domino's maintained in testimony before the OAG that PULSE was not a payroll service for franchisees, it was not until in or about May 2015, approximately eight years after discovering the PULSE flaws, that Domino's provided only a passing, easily missed, two-sentence advisement to franchisees

embedded in its approximately 800-page Manager's Guide that PULSE was not meant to be a payroll system.

106. Upon information and belief, Domino's still has not advised franchisees about any flaws or problems with PULSE's calculation of gross wages in the "Total Pay" column on PULSE's Payroll Reports.

4. Domino's Is Liable as a Joint Employer Since It Had Power To and Did Control Key Aspects of Employment Relations at the Franchisee Respondents' Stores

107. Domino's is a joint employer together with the Franchisee Respondents, responsible for the violations of the Labor Law committed by the Franchisee Respondents, because Domino's directly controls the employees at the Franchisee Respondents' stores. Under the "economic realities" test applied by courts in New York to determine liability as a joint employer for violations of the Labor Law, courts must evaluate whether the alleged joint employer exercised "formal" control over employment conditions. The four-factor joint-employer test to establish formal control considers whether an employer: (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records.

108. Domino's control is evidenced not only by the significant flaws in the PULSE system that Domino's imposed on its franchisees, but, also inter alia, by facts demonstrating that Domino's had the power to and, when it deemed it necessary, did: (a) control franchisee hiring; (b) control firing and discipline of franchisee employees; (c) supervise and/or control employee scheduling and other conditions of work; (d) control aspects of employee compensation; and (e) maintain employment records in PULSE for the Franchisee Respondents' workers.

a. Domino's Control over the Hiring Process

109. Domino's has the power to exercise control and does exercise control over hiring at franchisee stores.

110. In at least one instance, Domino's required a Franchisee Respondent to hire managerial staff using the threat of franchise termination. A Domino's official met with the franchisee and the newly hired supervisor to outline the supervisor's job duties.

111. Domino's was able to, and did, exercise control over hiring decisions of certain non-managerial employees at franchisee locations.

112. In the sale of several corporate-owned stores to a franchisee in Staten Island, Domino's required the franchisee "to offer substantially similar jobs with substantially similar wages and benefits in the same or similarly located stores to a substantial number of qualified persons employed in the Stores just prior to [the closing]." As required, the purchasing franchisee offered substantially the same staff their prior positions and at the same wage. He did so without conducting a single interview or background check.

113. Domino's also controls a key aspect of the hiring practices at the Franchisee Respondents — employee background checks.

114. Domino's required criminal background checks of all employees upon hire and at every third anniversary thereafter, regardless of whether an employee worked in a corporate or franchise store. Franchisees may not select a background check agency of their own choosing; instead, Domino's dictates that they must use one of four reporting agencies ("Reporting Agencies") designated by Domino's. Domino's mandates the process and determines the criteria used to run the background check. Franchisees have little or no knowledge of or input about

Domino's general adjudication guidelines or the specific standards or criteria used to evaluate their current and prospective employees.

115. The Domino's-approved Reporting Agencies present franchisees with a "meets/does not meet" answer for each job seeker. This approach precludes franchisees from considering, for example, an individual job applicant's rehabilitation. The Denman Respondents testified that consequently Domino's, not Denman, approved employee and manager hiring in this regard.

116. Domino's also uses the Reporting Agencies to maintain control over franchisees. Domino's regularly solicits information directly from the Reporting Agencies to monitor franchisee compliance with its background check and motor vehicle requirements.

117. While the OAG is not suggesting that background checks are unwarranted, the background check process that Domino's imposes upon franchisees, and its involvement in the process, usurps a key aspect of the hiring process and determines which applicants may even be considered. Domino's plays a critical role in the hiring process at franchisee stores because Domino's sets the applicable criteria, and requires the Reporting Agencies — not the franchisee — to provide a final decision about which applicants may be considered, free from individualized consideration of factors such as rehabilitation.

b. Domino's Control over Firing and Discipline

118. Domino's also has the power to exercise control, and does exert control, over the firing and discipline of franchisee employees.

119. Despite numerous, self-serving disclaimers in its Franchise Agreement of any employment relationship between Domino's and the franchisees stores, in practice, Domino's

reserves for itself the authority to compel the termination and/or discipline of workers at its franchisees, and Domino's has exercised this authority on multiple occasions.

120. Franchisee Respondent Denman, for example, testified that Domino's forced him to terminate an employee. If he did not, Domino's threatened to terminate his franchise. For a year and a half, Denman had employed an employee he described in sworn testimony before the OAG as "very good," who "worked hard" and came into work "extra if somebody called in sick." However, the employee had a prior criminal conviction and was hired before Domino's current background check requirements were in place. When Domino's learned about the prior conviction, Domino's officials pressured Denman, requiring him to fire this employee. Denman testified that Domino's "straight out told me they would terminate my contract if I did not terminate this employee . . . . What other choice was there?"

121. Domino's also instructed the Maestri Respondents to discipline an employee in response to a complaint Domino's received about a manager at one of the Maestri Respondents' stores using foul language. Domino's Franchise Operations Director Rudd instructed Maestri, that he resolve this complaint, telling Maestri, "Please copy me on closing notes and hold someone accountable." In sworn testimony before the OAG, Rudd characterized this instruction as "a suggestion, not a request," but when asked to explain the distinction between a suggestion and a request, his response was that the difference was "manners," which he described as saying "please" as opposed to "go do."

122. When a Settling Franchisee determined that a manager was not, as an employee had complained, letting the manager's relatives work off the clock, Rudd advised the franchisee in an email that its investigation had been inadequate and that the franchisee should meet with

the manager with "written documentation of those conversations outlining what steps you are taking . . . . It would be good to have [your supervisors] sit in."

123. In another example, Domino's required that Settling Franchisee Cookston fire an employee. Cookston, who owned a store in midtown Manhattan, was asked to arrange an early morning delivery to Fox Business News as part of a live interview with Domino's Chairman and Chief Executive Officer, David Brandon. Domino's was displeased with the appearance of a pizza that was delivered, and Brandon and VP of Franchise Operations, Kimberly Ridge, required Cookston to discipline the responsible employees, ultimately placing Cookston in default of the Franchise Agreement solely based on this "incident" in a default letter dated October 20, 2009. Cookston disciplined the employee (who eventually resigned), even though he stated that he felt it was unfair, because he felt he had no choice.

c. Domino's Supervision and Control of Schedules and Working Conditions

124. Domino's also has the power to control, and has exerted control, over the scheduling of franchisee employees. Section 12 of the Manager's Guide sets mandatory minimum scheduling and staffing rules for all franchise stores which, effectively, play a significant role in determining scheduling of those stores' employees. One court described the approximately 800-page Manager's Guide as a "veritable bible for overseeing a Domino's operation . . . that literally leaves nothing to chance." Parker v. Domino's Pizza, Inc., 629 So. 2d 1026, 1028-29 (Fla. App. 4th Dist. 1993).

125. To deviate from anything in the Manager's Guide, such as these scheduling rules, uniform rules, or other requirements described below, franchisees must apply to Domino's for a "variance." Franchisees' testimony taken by the OAG, including the Franchisee Respondents,

confirmed both that Domino's mandates franchisee store scheduling and rarely grants variances allowing scheduling changes.

126. Respondent Denman testified that he "fought tooth and nail" — to no avail — for approval of a variance to open on weekdays at 4:00 p.m. rather than 11:00 a.m. since his stores were "a dinner business, predominantly" and, therefore, "it [was] a waste of labor hours" to open prior to 4:00 p.m. In response, Denman "was told straight out they would not grant a variance to close for lunches, unless you could prove that there was no sales at all."

127. Denman testified that "all variances were shot down after a certain period," with requests approved only if Domino's was testing a new market.

128. Further, Domino's officials have repeatedly provided written instructions to franchisees, including the Franchisee Respondents, concerning employee scheduling and staffing levels. For example, in a July 20, 2011 email with the subject line "How to schedule," then-Area Leader Rudd instructed all franchisees in his area, including Respondents Ahmed and Maestri, to adjust employee scheduling each week based on PULSE reports of the previous days' delivery times; to "cross train" delivery employees to make it possible to schedule more people on the road and less people inside; to schedule enough delivery staff to eliminate "triples" (i.e., deliveries of three different orders during a single delivery run); and to schedule employees in regular 15-minute increments.

129. Domino's Area Leader Edward DuPont oversaw franchisees in upstate New York, including the Denman Respondents. DuPont instructed two franchisees in an email that despite their general managers' belief that "they can't afford to schedule" employees for marketing, "the team at the stores must be involved"; DuPont directed that two marketing activities "every week

. . . need to be on the schedule," and "you must schedule more team members to accomplish this."

130. Domino's exercises control over other conditions of employment at the Franchisee Respondents' stores in five significant ways: (i) the setting of various employee standards and enforcement of the standards via Domino's in-person inspections throughout the year; (ii) supervision through on-site visits and instructions provided by Domino's Franchise Operations personnel; (iii) employee monitoring via PULSE; (iv) promotion of an anti-union policy; and (v) Domino's direct involvement with customer complaints.

i. Setting and Enforcement of Employee Standards

131. Domino's exerts supervision and control over franchisee employees from their first day on the job. Domino's mandates that franchisees use its training materials to orient franchise employees. These materials cover franchisee personnel matters, including, for example, a "labor scheduler" function in PULSE designed to lower franchisee labor expenses.

132. As with scheduling, Domino's also used its Manager's Guide's to supervise and control franchisee employees. Among other things, the Manager's Guide prescribes exacting requirements for franchisee employee appearance and grooming, going far beyond a mere uniform requirement — mandating, for example, daily shaving, hair length, allowable piercings, the type and number of earrings, the location and covering of tattoos (specifying also which types of tattoos, i.e., only military-related, may be left uncovered), and sock and undershirt colors in addition to the required uniform. The Manager's Guide also specifies other rules, e.g., that delivery employees, including those at franchise stores, may not carry more than $20 with them during deliveries.

133. Domino's rigorously enforces these employee conditions. Domino's once placed a franchisee in default because a Domino's inspector found that a delivery employee had more than $20 with him. Domino's enforces these standards through its Area Leaders and the application of a wide-ranging inspection program. At least three times a year, Domino's conducts site inspections of franchise stores, called Operations Evaluations Reports ("Evaluations"). A Domino's Evaluation inspector makes an unannounced visit to each store, awarding it a score from 0 to 100 for compliance with Domino's standards.

134. Domino's often conducts these inspections, and interacts extensively with franchise store employees, when the franchisee store's owner is not even physically present or available. Domino's evaluations assess franchisees on nearly every aspect of store operations.

135. While the most common large deductions from a perfect Evaluation score of 100 are for infractions such as improper food temperature or slow order completion, points are deducted for non-compliance with other rules and standards related to employee management, such as the attire, grooming and conduct rules.

136. Domino's sends franchisees who receive low Evaluation scores a Notice of Default detailing specific steps the franchisee must take to prevent Domino's from terminating the Franchise Agreement. Three Notices of Default resulting from Evaluations within a 12-month period can mean termination of a franchise, as the Franchise Agreement expressly states, "whether or not such failure to comply is corrected." Those franchisees who receive a Notice of Default must submit an "action plan" to Area Leaders indicating how they intend to cure the default, and the Area Leaders follow up with one or more subsequent Evaluation visits to check that any violations have been corrected.

137. Domino's issued almost 800 Notices of Default to New York franchisees from May 2007 to May 2012, including multiple Notices of Default to each of the three Franchisee Respondents. At least 30 default notices related to criminal background check standards, at least 75 dealt with employee uniform standards, at least 45 related to grooming standards, and at least 20 related to employees having more than $20 in their possession. Domino's also produced approximately fifty Notices of Termination that it issued to New York franchisees from June 2007 to September 2011, which included at least 10 that related to violations of the uniform, grooming and minimum cash standards. These notices confirm that Domino's could, and frequently did, enforce its standards and rules.

ii. Domino's Supervision Through On-Site Visits and Instructions

138. In addition to the scheduled Evaluation visits, Area Leaders regularly make unannounced visits to franchisees' stores. Domino's was extensively and constantly involved in assessing on-site conditions and speaking directly with employees at franchise stores and in implementing a comprehensive inspection regime.

139. Domino's went beyond the supervision of food quality, engaging in what ultimately amounted to co-supervision or co-management of everyday store operations and employee activities.

140. Area Leader DuPont typified Domino's in-person supervision by visiting at least two Settling Franchisees' stores unannounced and outside of the franchisees' presence. In one case, he spoke with employees and followed up with text messages directly to the franchisee's employees (specifically, to the supervisors and managers) to make sure they addressed operational problems that DuPont had previously identified.

141. In another instance, according to a Settling Franchisee's sworn affidavit provided to the OAG, DuPont spoke directly with franchisee employees, threatened to close the store down "because I can," warned the employees that if they did not heed his directive, they would lose their jobs, and told them, "I'm your boss."

142. DuPont's visits to two Settling Franchisees — which were governed by the same Franchise Agreement as Denman — make clear the type of control DuPont retained over Denman and other franchisees.

143. DuPont and other Domino's personnel sent the Denman Respondents daily emails and/or text messages about operations, promotions, sales, and other matters at their stores.

144. Other Franchisee Owners also received some combination of emails, texts, telephone calls, and/or visits from Domino's officials numerous times a week. For example, Area Director, Bob Machin, contacted the Maestri Respondents three to four times a week, and, in addition to those contacts, Machin's superiors (i.e., Franchise Operations Director Rudd, Vice President Ridge) and other Domino's officials often contacted the Maestri Respondents about store operations.

145. Domino's Franchise Operations personnel's written instructions to all three Respondent Franchisees, DuPont's "I am the boss" daily supervision of franchisees in his area (including Denman), Machin's daily communications with franchisees in his area (including Maestri), and other aspects of operational control exerted by Domino's, go far beyond mere "run-of-the-mill" supervision, and demonstrate a considerable degree of control over employees, operations, and working conditions at the Franchisee Respondents' stores.

iii. Employee Monitoring via PULSE

146. Through PULSE, Domino's exerts constant supervision and control over its franchisees' working conditions. Domino's does not merely collect and store data about the Franchisee Respondents' employees and their work. Domino's actively uses this employee data when evaluating the Franchisee Respondents' stores during the Evaluations. Through PULSE, Domino's representatives know on precise days how long each employee task took within a franchisee's store (e.g., taking orders, making pizzas, dispatching, delivering), and they use this information to evaluate the franchisee, including employees at the store.

147. Denman testified before the OAG that Domino's inspectors access a store's Service Time Reports generated by PULSE for the past 28 days and "look through our service times, which is speed of service between how long it takes to load products, [and] how long it takes for them to go out the door."

148. Franchisee Respondent Maestri testified before the OAG that PULSE "keeps data of all of our employees," including tracking how long an employee takes to input a customer's telephone order, as well as delivery departure and return times. Relying on this information, Domino's placed the Maestri Respondents in default of the Franchise Agreement due, in part, to the Service Time Report data a Domino's inspector obtained from PULSE during an Evaluation inspection on April 21, 2012. At that time, a store owned by the Maestri Respondents received an Evaluation score of 53, in part because of PULSE data showing that only 68% of orders were delivered "on time" (meaning within a half-hour), resulting in zero points for that section. Because of this score, Maestri received a default notice on April 24, 2012, advising him that "in our [Domino's] judgment operating assistance has been made necessary," requiring him and his managers to attend a training on how to meet Domino's operational guidelines.

iv. Domino's Promotion of an Anti-union Policy at Franchisee Stores

149. Domino's also exerts control over employee conditions through its active opposition to unionization at franchise stores. Domino's achieves this in several ways.

150. Domino's HR Director Julie Wigley testified that between 2004 and 2011 she was responsible for, among other things, "union avoidance" in Domino's corporate stores and for responding to franchisee inquiries about union efforts in franchise stores. Wigley was responsible for ensuring that any franchisee who contacted her about union activity knew about and was supplied with "union avoidance" materials Domino's prepared — materials identical to those distributed to corporate-owned stores. Wigley also provided written advice that she and Domino's lawyers had drafted about what to look for and how to prevent union activity.

151. Wigley did not supply inquiring franchisees with neutral informational material outlining laws regarding unions nor did she refer franchisees to neutral sources like the National Labor Relations Board ("NLRB"), the federal agency responsible for administering laws related to unions. Instead, her "union avoidance" materials offered information and advice intended to quash union activity, including, for example, "things to look for to suspect union activity."

152. Further, Wigley did not simply answer questions or offer help to franchisees regarding unionization. She communicated Domino's clear desire that franchisees comply with its corporate policy, not franchisees' own independently determined choices (whatever they may have been). When franchise stores contacted her, Wigley recommended Hagood Tighe, a labor attorney who specialized in opposing union campaigns. After hearing that union organizers might be contacting franchise stores in New York City, Domino's sent union avoidance literature to Domino's Franchise Operations personnel responsible for franchisees in the city and asked them to inform Domino's of any union activity. Such literature included "Questions A Store

Manager May Receive About Unions." In this document, in response to the question "How does the company feel about the union organizing drive?" Domino's answers that "There is no union at Domino's, and the company does not want a union here. We will do everything legally possible to keep a union out."

153. Domino's also took much more extensive actions to avoid unionization at franchise stores. For example, when one new franchisee in New York State received papers from the NLRB and contacted a Domino's Area Leader, the latter contacted Domino's Vice President Ridge. Initially, Ridge arranged for a Domino's HR representative to explain the meaning of the papers. But Domino's then went beyond that measure, and sent John Martinez — "PeopleFirst Director for Team USA," that is, Domino's own director of human resources — to meet in person with the franchisee, together with the labor attorney, Hagood Tighe, that Domino's recommended to franchisees. Martinez instructed the franchisee on how to defeat the union drive.

154. In emails, Martinez demonstrated his direction to the franchisee to "push" an anti-union position "openly and blatantly." An email sent by Martinez to the franchisee shows his strong anti-union intervention in this workplace: "Let's play up the fact that this union could care less about [the workers'] desires . . . . However we play it, we need drivers pissed and mad at the union . . . . GET EM!!!!"

155. Domino's effort proved successful and, Domino's Vice President Ridge testified before the OAG, "A union never happened." In subsequent emails, Ridge credited Domino's Martinez ("or should I say 'bulldog' Martinez") and urged continuing "efforts to educate and inform our franchisees and their GMs [general managers] about unions."

156. Both Respondent Denman and Respondent Maestri testified to either meeting with Domino's or receiving communications warning against union infiltration or requesting that Domino's personnel be alerted of any union recruitment activity.

157. As with the background check requirement, the OAG is not suggesting it was unlawful for Domino's to oppose unionization in franchisees' stores. The point is that it was Domino's, not the franchisees, who made and executed this policy decision concerning unionization, which goes to the core of the employer/employee relationship, since the presence of a union affects many key aspects of employees' working conditions, such as wages, work schedules, job security, and benefits.

v. Domino's Direct Involvement in Customer and Employee Complaints

158. Domino's also controlled workplace conditions through its resolution of customer and employee complaints from franchise stores. Domino's Customer Care Center allows customers and also employees of stores (franchisee and corporate-owned) to report complaints directly to Domino's. Upon receiving a complaint about a franchise store, Domino's gives the franchisee five days to resolve it, with Franchise Operations personnel monitoring the time and adequacy of the franchisee's response. Employee complaints often concerned matters touching on personnel, pay and discipline issues.

d. Domino's Role in the Determination of Rate and Method of Payment

159. While Domino's did not directly determine employees' hourly wage rates, Domino's did influence the rates which tipped delivery workers were paid in various ways, including most notably, through the miscalculations and flaws of the PULSE Payroll Report that it allowed to stand undisclosed and uncorrected.

160. In addition, Section 12 of the Manager's Guide standards directly impacts franchisee employees' compensation by prohibiting tip jars in franchise stores; Domino's stated reason for imposing this policy upon franchisees is that "[o]ur system and pricing is established with margins to provide adequate wages to our team members." Domino's Area Leader DuPont ordered at least one Settling Franchisee to remove a tip jar from his store and the franchisee felt he "had to comply immediately."

e. Domino's Maintenance of Employment Records

161. Control is also established through an employer's maintenance of employment records. Here, PULSE data maintained by Domino's of its franchisees constitutes employment records. Through PULSE, Domino's maintains franchisee store records containing all franchisee employees' clock-in/clock-out information, first and last names, descriptions of and time spent on various job tasks and other timekeeping data for employees. PULSE also stores wage rates for employees, tips reported by drivers, and mileage calculations used to reimburse drivers for delivery expenses. Domino's has unfettered access to PULSE data and accesses it daily for various purposes. In addition, Domino's requires that franchisees maintain, in either hard copy or electronic format, all business records of each franchisee's store, including payroll documents, W-2 forms, and I-9 forms, to be kept by the franchisee in accordance with Domino's own record retention policies; Domino's further requires unrestricted 24/7 access, either remotely or on-site, to all such franchisee records and information.

162. When the OAG subpoenaed records reflecting wage rates paid by franchise stores that fell below stated dollar amounts, Domino's extracted that information from PULSE.

5. Domino's Is Also a Joint Employer in Light of Its Functional Control over Workers at the Franchisee Respondents' Stores

163. In addition to the "formal" control factors courts use to determine joint employer status, courts, in applying the "economic realities" test, also apply a number of so-called "functional" factors to determine whether a putative joint employer had functional control over a worker's employment sufficient to be held liable as a joint employer. These factors are: (1) whether the putative joint employer's premises and equipment were used for the employees' work; (2) whether the front-line employer had a business that could or did shift as a unit from one putative joint employer to another; (3) the extent to which employees performed a discrete line-job that was integral to the putative joint employer's process of production; (4) whether responsibility under the contracts between the direct and putative joint employer could pass from one entity to another without material changes; (5) the degree to which the putative joint employer or its agents supervised employees' work; and (6) whether employees worked exclusively or predominately for the putative joint employer. Such factors are present here in Domino's relations with the employees of the Franchisee Respondents' stores, demonstrating that Domino's also exercises "functional" control of these workers and is therefore a joint employer with the franchisees.

164. Domino's requires that franchisees purchase equipment (including PULSE hardware and software) from Domino's or an approved vendor.

165. Pursuant to the Franchise Agreement, Domino's must approve all franchisee leases. Franchisees, including the Franchisee Respondents, were precluded from entering into store leases not approved by Domino's, and leases had to conform with Domino's requirements for its own locations.

166. There is nothing unique in the relationship between Domino's and the franchisee owners. The same employees of the Franchisee Respondents could continue to do the same work in the same location if the franchisee ownership changed, and thus the essential operation of the franchisee's business would not change if there was a change in ownership. In fact, Domino's routinely required new franchisees to retain a substantial number of employees at previously owned corporate stores, including maintaining substantially the same job responsibilities and wages.

167. Employees at Domino's franchisee stores, whether delivering pizzas or performing job tasks inside the store, performed integral tasks in Domino's process of production.

168. Domino's has significant power and ability to dictate scheduling, staffing, hours of operation, standards of conduct, and conditions of employment, as well as to monitor the Franchisee Respondents' compliance with these standards through (i) PULSE records, to which Domino's had unfettered, 24 hour access; (ii) Domino's inspection regime; and (iii) the frequent, intensive daily and weekly supervision that Domino's exerts over the conditions of employment at the Franchisee Respondents stores.

169. Domino's, pursuant to its Franchise Agreement, also requires that franchisees cannot own any other business; as a result, the owners of the Franchisee Respondents work exclusively for Domino's, depending entirely upon Domino's for work, and the employees who worked at Franchisee Respondents' stores were generally similarly dependent on Domino's for their economic livelihood.

6. Domino's Misrepresentations and Omissions Concerning PULSE in Its FDD

170. New York's Franchise Sales Act ("Franchise Act") requires a franchisor to provide a prospective franchisee with a detailed offering prospectus, its "Franchise Disclosure

Document" or "FDD," before the offer and sale of a franchise to a franchisee prospect. These disclosure requirements apply not just to franchise offerings, agreements and fees themselves, but to "all written or oral arrangements . . . in connection with" a franchising offer, "including, but not limited to . . . sales of goods or services . . . and all other arrangements in which the franchisor or subfranchisor has an interest." A franchisor is liable under the Franchise Act for material misstatements or omissions made in the FDD.

171. Domino's made a number of statements about PULSE in its FDD during the Relevant Period, including:

- That PULSE's "functions" include the "[c]apability to interface with a payroll company or a commercial accounting package";
- That Domino's would provide "operating assistance" that would include "accounting . . . and general operating procedures";
- That PULSE "will perform in all material respects in accordance with the then current applicable user documentation delivered by [Domino's]" and that Domino's would "replace or correct the Software so that it will perform in substantial conformance with the applicable user documentation";
- That Domino's would "correct any Software error, and will provide to [Franchisee] any error corrections, enhancements and updates to the Software . . . [that] will remedy any documented failure of the Software to perform in substantial conformance with the then-applicable user documentation."

172. Given the four flaws in PULSE which resulted in systematic under-calculation of gross wages for employees, these representations about PULSE by Domino's were materially misleading and omitted to disclose material information: "accounting assistance" Domino's ostensibly provided to its franchisees (through the PULSE software) was fundamentally flawed; PULSE was unable "to perform in all material respects in accordance with the then current applicable user documentation"; and PULSE was incapable of providing a legitimate "interface" with a payroll service or accountant. Moreover, despite its representations that it would correct

all software errors, Domino's failed to fix PULSE's flaws, despite the company's knowledge of certain flaws since 2007 and Domino's made no effort, much less a "reasonable effort," to alert its franchisees about PULSE's problems or limitations.

173. Domino's FDD also provided disclosures of projected franchisee earnings projections, based on EBITDA calculations (earnings before interest, taxes, depreciation and amortization). Using selected franchisee profit and loss statements, Domino's EBITDA calculation in its FDD subtracts the "Total Variable Costs" and "Total Fixed Costs" of franchisees from their total earnings to project how much a franchisee can expect to earn before taking into account interest, taxes, depreciation and amortization. Total variable costs include franchisee labor costs and payroll taxes.

174. Because of the uncorrected and undisclosed PULSE flaws, PULSE facilitated the under-calculation of employees' pay and the underreporting of labor costs by the franchisees, and Domino's did not correct these software errors. As a result of the high rate of wage violations among franchisees, the labor costs incorporated into Domino's EBITDA from such franchisees, whose labor costs were unlawfully low, rendered projected EBITDA in Domino's FDD inaccurate and misleading. Accordingly, Domino's disclosures related to PULSE in Domino's FDD were materially misleading or failed to disclose information that would have made the statements not misleading.

FIRST CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW §63(12)
(Against All Respondents, for Minimum Wage Violations Under New York Labor Law)

175. Petitioner re-alleges and incorporates by reference all allegations in all preceding paragraphs.

176. During the Relevant Period, employees at the Maestri Respondents' stores have been employees of Domino's and of the Maestri Respondents within the meaning of NYLL §651(5).

177. During the Relevant Period, employees at the Ahmed Respondents' stores have been employees of Domino's and of the Ahmed Respondents within the meaning of NYLL §651(5).

178. During the Relevant Period, employees at the Denman Respondents' stores have been employees of Domino's and of the Denman Respondents within the meaning of NYLL §651(5).

179. During the Relevant Period, the Maestri Respondents and Domino's have been employers within the meaning of NYLL §651(6) of the employees who performed work at stores owned by the Maestri Respondents.

180. During the Relevant Period, the Ahmed Respondents and Domino's have been employers within the meaning of NYLL §651(6) of the employees who performed work at stores owned by the Ahmed Respondents.

181. During the Relevant Period, the Denman Respondents and Domino's have been employers within the meaning of NYLL §651(6) of the employees who performed work at stores owned by the Denman Respondents.

182. The provisions of Article 19 of the NYLL apply to Respondents and protect Respondents' employees.

183. Pursuant to NYLL §652, the statutory minimum wage has been (a) $7.25 per hour for all hours worked from July 24, 2009 through December 30, 2013; (b) $8.00 per hour for all hours worked from December 31, 2013 to December 30, 2014; and (c) $8.75 per hour for all hours worked from December 31, 2014 to December 30, 2015.[8] See 12 N.Y.C.R.R. §146-1.2 (Hospitality Wage Order); §137-1.3 (Restaurant Wage Order).

184. Respondents failed to pay delivery employees at least the minimum hourly wage for all hours worked.

185. Respondents' violations of the Labor Law and rules and regulations promulgated thereunder during the Relevant Period constitute repeated illegal acts and illegality in the carrying on, conducting, or transaction of business as defined by New York Executive Law §63(12).

186. As a joint employer of Franchisee Respondents' employees, Domino's is jointly and severally liable for Franchisee Respondents' failure to pay their respective delivery employees at least the minimum hourly wage for all hours worked during the Relevant Period.

187. Respondents had no good faith basis for believing the underpayment of wages was in compliance with the law.

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[8] As of December 31, 2015, the Fast Food Wage Order applicable to all Domino's workers increased the minimum wage to $10.50 in New York City and $9.75 in the rest of the state. See supra n. 4.

<u>SECOND CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW §63(12)</u>
(Against Domino's and the Maestri and Ahmed Respondents, for Failure to Pay Minimum Tipped Wage Under New York Labor Law)

188. Petitioner re-alleges and incorporates by reference all allegations in all preceding paragraphs.

189. From July 24, 2009 through December 31, 2010, the maximum tip credit that employers could claim for service employees was (a) $1.60 or $2.35 per hour from July 24, 2009 through December 31, 2010, depending on average of tips received. 12 N.Y.C.R.R. §137-1.4, §137-3.3 (Restaurant Wage Order); §146-1.3 (Hospitality Wage Order).

190. Starting on January 1, 2011, pursuant to the Hospitality Wage Order, the maximum tip credit that employers could claim for service employees has been (a) $1.60 per hour from January 1, 2011 to December 30, 2013; (b) $2.35 per hour from December 31, 2013 to December 30, 2014; and (c) $3.10 per hour from December 31, 2014 to December 30, 2015. 12 N.Y.C.R.R. §146-1.3, §146-3.3, §146-3.4. Thus, from January 1, 2011 to December 30, 2015, the lowest possible rate that employers who claimed the tip credit could pay tipped delivery employees was $5.65 per hour.

191. Respondent Domino's and the Maestri and Ahmed Respondents violated the New York Labor Law during the Hospitality Wage Order Period by paying delivery employees less than $5.65 per hour for regular (non-overtime) hours, a rate that was lower than permissible even assuming the maximum tip credit.

192. Maestri and Ahmed Respondents' violations of the Labor Law and rules and regulations promulgated thereunder during the Relevant Period constitute repeated illegal acts and illegality in the carrying on, conducting, or transaction of business as defined by New York Executive Law §63(12).

193. As a joint employer of Franchisee Respondents' employees, Domino's is jointly and severally liable for the Maestri and Ahmed Respondents failure to pay their respective delivery employees at least the minimum hourly tipped wage for all hours worked during the Relevant Period.

194. Respondent Domino's and the Maestri and Ahmed Respondents had no good faith basis for believing the underpayment of wages was in compliance with the law.

THIRD CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW §63(12)
(Against All Respondents, for Unlawful Claim of Tip Credit Under New York Labor Law)

195. Petitioner re-alleges and incorporates by reference all allegations in all preceding paragraphs.

196. Respondents were ineligible to claim the tip credit or tip allowance for work that delivery workers performed throughout the Relevant Period because Respondents did not maintain payroll records showing for each employee tip credits or tip allowances claimed as part of the minimum wage, pursuant to the procedures set forth in the Wage Orders (12 N.Y.C.R.R. §146-2.1(a)(9) or §137-2.1).

197. Respondents were ineligible, and remain ineligible, to claim the tip credit because delivery employees routinely worked in non-tipped occupations, such as food preparation and janitorial work, for more than two hours or more than 20% of their shifts in a work day.

198. Respondents' violations of the Labor Law and rules and regulations promulgated thereunder during the Relevant Period constitute repeated illegal acts and illegality in the carrying on, conducting, or transaction of business as defined by New York Executive Law §63(12).

199. As a joint employer of Franchisee Respondents' employees, Domino's is jointly and severally liable for Franchisee Respondents' failure to pay their respective delivery employees at least the minimum hourly wage for all hours worked during the Relevant Period.

200. Respondents had no good faith basis for believing the underpayment of wages was in compliance with the law.

FOURTH CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW §63(12)
(Against All Respondents, for Minimum Wage Violations Under New York Labor Law Resulting from Unreimbursed Required Expenses)

201. Petitioner re-alleges and incorporates by reference all allegations in all preceding paragraphs.

202. The Maestri and Ahmed Respondents required employees who performed deliveries to purchase bicycles and pay for all bicycle maintenance and necessary safety equipment, and did not reimburse employees for these expenses. To the extent that an employee's expenses brought the employee's wage below the required minimum wage, such unreimbursed expenses constitute a violation of 12 N.Y.C.R.R. §§146-2.7(c).

203. The Denman Respondents required employees who performed deliveries to purchase and maintain automobiles, and reimbursed them between 40 to 60 cents per delivery (unless employees used a car top sign, and they received an additional 40 cents per delivery), which yielded a reimbursement rate between 22 and 23 cents per mile, an amount that did not reimburse delivery employees for the cost of operating and maintaining their automobiles to perform deliveries, and an amount that the Denman Respondents used without attempting to ascertain the reasonable cost of gas, insurance, maintenance, and depreciation, among other costs. To the extent that an employee's expenses brought the employee's wage below the

required minimum wage, such unreimbursed required expenses constitute a violation of 12 N.Y.C.R.R. §146-2.7(c).

204. Respondents' violations of the Labor Law and rules and regulations promulgated thereunder during the Relevant Period constitute repeated illegal acts and illegality in the carrying on, conducting, or transaction of business as defined by New York Executive Law §63(12).

205. As a joint employer of Franchisee Respondents' employees, Domino's is jointly and severally liable for Franchisee Respondents' failure to pay their respective delivery employees at least the minimum hourly wage for all hours worked during the Relevant Period.

206. Respondents had no good faith basis for believing the underpayment of wages was in compliance with the law.

FIFTH CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW §63(12)
(Against Domino's and the Maestri and Ahmed Respondents, for Overtime Violations Under New York Labor Law)

207. Petitioner re-alleges and incorporates by reference all allegations in all preceding paragraphs.

208. Domino's and the Maestri and Ahmed Respondents' practice of calculating overtime wages for delivery workers by multiplying a sub-minimum wage by one-and-a-half, instead of multiplying the statutory minimum wage by one and one half, violated the overtime provisions of 12 N.Y.C.R.R. §146-1.4 and §137-1.3, because the Maestri and Ahmed Respondents' delivery employees were paid less than the permissible minimum overtime rates.

209. Because employees at the Franchisee Respondents' stores often worked more than 20% of their workday performing non-tipped tasks, and Respondents did not maintain payroll records showing for each employee tip credits or tip allowances claimed as part of the minimum

wage, Respondents were not eligible for the tip credit during some or all of the Relevant Period, and as a result failed to pay all owed overtime earned during this period.

210. The Maestri Respondents assigned delivery employees to work in multiple establishments owned by them during a single pay period, but did not aggregate hours worked at the multiple establishments. As a result, employees who worked at multiple establishments for over 40 hours were not paid one-and-one-half times their regular rates of pay for all hours over 40 in a week, in violation of 12 N.Y.C.R.R. §146-1.4.

211. Respondents' violations of the Labor Law and rules and regulations promulgated thereunder during the Relevant Period constitute repeated illegal acts and illegality in the carrying on, conducting, or transaction of business as defined by New York Executive Law §63(12).

212. As a joint employer of Franchisee Respondents' employees, Domino's is jointly and severally liable for the Maestri and Ahmed Respondents' failure to pay owed overtime earned during the Relevant Period.

213. Respondents had and have no good faith basis for believing the underpayment of wages was in compliance with the law.

SIXTH CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW §63(12)
(Against Domino's and the Maestri and Ahmed Respondents, for Spread of Hours Violations Under New York Labor Law)

214. Petitioner re-alleges and incorporates by reference all allegations in all preceding paragraphs.

215. Pursuant to 12 N.Y.C.R.R. §146-1.6 (Hospitality Wage Order) and §137-1.7 (Restaurant Wage Order), employers must pay their employees an additional hour's pay at the

basic minimum hourly wage rate for each day in which the interval between the beginning and end of an employee's workday (the "spread of hours") exceeds ten hours.

216. During the Relevant Period, the Maestri and Ahmed Respondents regularly assigned employees to shifts in which the beginning and ending of the workday exceeded ten hours but the Maestri and Ahmed Respondents did not pay spread of hours pay.

217. Respondents' violations of the Labor Law and rules and regulations promulgated thereunder during the Relevant Period constitute repeated illegal acts and illegality in the carrying on, conducting, or transaction of business as defined by New York Executive Law §63(12).

218. As a joint employer of Franchisee Respondents' employees, Domino's is jointly and severally liable for the Maestri and Ahmed Respondents' failure to pay owed spread of hours during the Relevant Period.

219. Respondents had and have no good faith basis for believing the underpayment of wages was in compliance with the law.

SEVENTH CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW §63(12)
(Against All Respondents, for Unlawful Deduction Violations Under New York Labor Law)

220. Petitioner re-alleges and incorporates by reference all allegations in all preceding paragraphs.

221. During the Relevant Period, employees at the Maestri Respondents' stores have been employees of Domino's and of the Maestri Respondents within the meaning of NYLL §190(2).

222. During the Relevant Period, employees at the Ahmed Respondents' stores have been employees of Domino's and of the Ahmed Respondents within the meaning of NYLL §190(2).

223. During the Relevant Period, employees at the Denman Respondents' stores have been employees of Domino's and of the Denman Respondents within the meaning of NYLL §190(2).

224. During the Relevant Period, the Maestri Respondents and Domino's have been employers within the meaning of NYLL §190(3) of the employees who performed work at stores owned by the Maestri Respondents.

225. During the Relevant Period, the Ahmed Respondents and Domino's have been employers within the meaning of NYLL §190(3) of the employees who performed work at stores owned by the Ahmed Respondents.

226. During the Relevant Period, the Denman Respondents and Domino's have been employers within the meaning of NYLL §190(3) of the employees who performed work at stores owned by the Denman Respondents.

227. The provisions of Article 6 of the NYLL apply to Respondents and protect Respondents' employees.

228. Under NYLL §193, an employer cannot require an employee to make payments by separate transaction unless they are for the employee's benefit, expressly authorized in writing by the employee, and are on the list of deductions permitted by NYLL §193(1).

229. The Maestri and Ahmed Respondents required employees who performed deliveries to purchase bicycles and to pay for bicycle maintenance and necessary safety equipment, and did not reimburse employees for all of these expenses. These expenses were not

for the benefit of employees at Ahmed's and Maestri's stores, were not authorized in writing, and were not on the list of permissible deductions under NYLL §193(1).

230. Domino's and the Maestri and Ahmed Respondents violated NYLL §193 by failing to pay for or reimburse employees for these bicycle-related expenses.

231. The Denman Respondents required employees who performed deliveries to purchase and maintain automobiles, and generally reimbursed them at 50 to 60 cents per delivery, an amount that did not reimburse delivery employees for the cost of operating and maintaining their automobiles to perform deliveries, and an amount that Denman Respondents used without attempting to ascertain the reasonable cost of gas, insurance, maintenance, and depreciation, among other costs. These expenses were not for the Denman Respondents' employees' benefit, were not authorized in writing, and were not on the list of permissible deductions under NYLL §193(1).

232. Domino's and the Denman Respondents violated NYLL §193 by failing to reimburse employees for these automobile-related expenses.

233. Respondents' violations of the Labor Law and rules and regulations promulgated thereunder during the Relevant Period constitute repeated illegal acts and illegality in the carrying on, conducting, or transaction of business as defined by New York Executive Law §63(12).

234. As a joint employer of Franchisee Respondents' employees, Domino's is jointly and severally liable for the Respondents' failure to reimburse employees for delivery expenses during the Relevant Period.

235. Respondents had and have no good faith basis for believing the underpayment of wages was in compliance with the law.

EIGHTH CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW §63(12)
(Against Domino's, for PULSE-Related Fraud)

236. Petitioner re-alleges and incorporates by reference all allegations in all preceding paragraphs.

237. New York Executive Law §63(12) gives the Attorney General the power to bring an action in the name of the People of the State of New York whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business. In such an action, the Attorney General is empowered to apply to the court for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, and directing restitution and damages.

238. Domino's carries on, conducts, and transacts business in New York State in connection with its sale and use of a proprietary software product, PULSE, which it licenses to its franchisees.

239. Domino's has a captive set of consumers for its proprietary software product, PULSE, as its franchisees were compelled to purchase the product as a condition of purchasing a franchise from Domino's and operating that franchise.

240. Domino's derives substantial revenue from the PULSE-related costs it imposes on its New York franchisees, with each franchisee having to pay between $15,000 to $25,000 per store to initially acquire the hardware and software required to run PULSE, and each franchisee having to pay an average cost of up to $4,500.00 annually per store for required maintenance and support contracts, third party software license fees, and upgrades or updates to the PULSE software.

241. Domino's has been aware during the entire Relevant Period that its PULSE software had defects, namely that it failed to compute owed minimum and overtime wages

accurately, leading to an under-calculation of "Total Pay"; that it could not accommodate New York's spread of hours requirement; and that it generated a Payroll Report that understates the wages due to employees at its franchisees' stores.

242. Domino's encouraged franchisees to use the Payroll Report function within PULSE and knew that franchisees were using the software to generate calculations of gross wages owed.

243. Domino's has been aware during the entire Relevant Period that PULSE was defective and could not comply — and could not generate a Payroll Report that was compliant — with the New York Labor Law, and created a Payroll Report that under-calculated the legally required wages owed to employees in Domino's franchise stores.

244. During the Relevant Period, Domino's failed to inform or disclose to all purchasers of its PULSE software in New York State the defects with the software product, either at the time of initial purchase or at any time thereafter. Domino's further failed to disclose these defects to all purchasers of its PULSE software in New York State even as it sent those purchasers bi-annual updates and upgrades to the software product.

245. Domino's failure to disclose defects in its PULSE software product had the potential to mislead and deceive, and did mislead and deceive, franchisees who purchased the product in New York State.

246. Through this deception, Domino's franchisees, including the Maestri and Ahmed Respondents, relied on the PULSE Payroll Report, resulting in underpayments of employees in New York State throughout the Relevant Period. Upon information and belief, Domino's franchisees continue to underpay many employees because PULSE underreports the amount of gross wages due.

247. By reason of the conduct alleged above, Domino's repeatedly engaged in fraudulent acts and practices in connection with the transactions in violation of New York Executive Law §63(12).

NINTH CAUSE OF ACTION PURSUANT TO FRANCHISE SALES ACT §687
(Against Domino's, for PULSE-Related Misrepresentations and Omissions)

248. Petitioner re-alleges and incorporates by reference all allegations in all preceding paragraphs.

249. The New York Franchise Sales Act ("Franchise Act") requires a franchisor such as Domino's to provide a prospective franchisee with a detailed offering prospectus, also known as a "Franchise Disclosure Document" or "FDD." Gen. Bus. L. §683(8); see also 16 C.F.R §436.2. The franchise disclosure regulations itemize 23 separate disclosures that must be contained in the FDD. See 13 N.Y.C.R.R. §200.2.

250. These disclosure requirements apply not just to franchise offerings, agreements and fees themselves, but to "all written or oral arrangements . . . in connection with" a franchising offer, "including, but not limited to . . . sales of goods or services . . . and all other arrangements in which the franchisor or subfranchisor has an interest." Gen. Bus. L. §682.

251. Pursuant to Franchise Act Section 687(2)(b), it is "unlawful for a person, in connection with the offer, sale or purchase of any franchise, to directly or indirectly . . . [m]ake any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." Gen. Bus. L. §687(2)(b).

252. The OAG is specifically authorized by the Franchise Act to bring an action in the name of and on behalf of the People of the State of New York "[w]henever the [OAG] shall

believe from evidence satisfactory to it that any person has engaged in or is engaged in or is about to engage in any practice or transaction heretofore referred to as and declared to be an unlawful or a fraudulent practice." Gen. Bus. L. §689(1).

253. As set forth above, see supra ¶¶ 170-174, Domino's made a number of material misstatements or omitted to disclose material information about PULSE in its FDD during the Relevant Period. Because of the uncorrected and undisclosed PULSE flaws, and because PULSE facilitated the under-calculation of employees' pay and the underreporting of labor costs by the franchisees, Domino's disclosures related to PULSE in Domino's FDD were materially misleading or failed to disclose information that would have made the statements not misleading.

WHEREFORE, Petitioner, the Attorney General of the State of New York, on behalf of the People of the State of New York, requests that this Court issue an Order for the following relief:

(a) a finding that Domino's repeatedly and persistently engaged in fraudulent and illegal activity in violation of New York Executive Law §63(12) through its sale of PULSE, a known defective proprietary software product, to its franchisees in New York State;

(b) a permanent injunction barring Respondents from using Domino's defective PULSE software system at all Domino's stores in New York State, until and unless the following actions have been completed:

i. Domino's takes steps to fix the wage-and-hour-related PULSE flaws; and

ii. Domino's notifies all New York franchisees about all wage-and-hour-related flaws in PULSE, about the limitations of the use of the PULSE Payroll Report, and about the means for franchisees to address the limitations in PULSE;

(c) an accounting by Domino's to the Attorney General of all underpayments to employees of franchisees in New York State during the Relevant Period as reflected in its own PULSE records;

(d) restitution in an amount to be determined against Domino's for underpayments to employees of Domino's franchisees because of PULSE defects;

(e) disgorgement of monies New York franchisees paid to Domino's for its defective PULSE software;

(f) a finding that Domino's representations about PULSE in its FDD were materially misleading or failed to disclose information that would have made the statements not misleading in violation of the New York Franchise Sales Act anti-fraud provision, and an order:

i. requiring corrective disclosure of the PULSE flaws;
ii. enjoining Domino's from issuing its FDD to prospective New York franchisees until such corrective disclosures are made; and
iii. awarding appropriate damages under the Franchise Act;

(g) a finding that Respondents repeatedly and persistently violated (1) NYLL §§191, 193, 195, 652(1) and (2); 12 N.Y.C.R.R. §§146-1.3(a), -1.4, -1.5, -1.6, -2.9; §137-1.2, -1.3, -1.6, -1.7, by failing to pay employees wages required by law, and making unlawful deductions, including failing to reimburse employees for all necessary work expenses;

(h) an injunction barring Respondents, their employees, agents, and successors from continued violations of NYLL §§191, 193, 195, 652(1) and (2); 12 N.Y.C.R.R. §§146-1.3(a), -1.4, -1.5, -1.6, -2.9; §§137-1.2, -1.3, -1.6,-1.7;

(i) an accounting and restitution in an amount to be determined against Franchisee Respondents Denman, Ahmed, and Maestri, and as against Domino's, as a joint employer,

jointly and severally for underpayments of minimum and regular wages, overtime, spread of hours pay, and for unpaid reimbursement for necessary work expenses during the Relevant Period, and assessing liquidated damages, pursuant to NYLL §§191, 193, 195, 198, 652(1) and 663; and 12 N.Y.C.R.R. §§146-1.3(a), -1.4, -1.5, -1.6, -2.9; §§137-1.2, -1.3; -1.6, -1.7;

(j) an order that Domino's must retain an independent monitor to address any ongoing Labor Law violations and assure ongoing compliance;

(k) prejudgment interest;

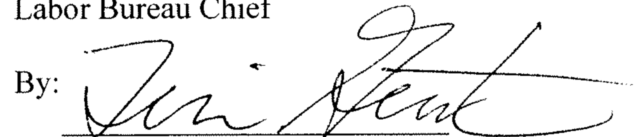
(l) attorneys' fees and costs associated with this action pursuant to NYLL §198 and §663 in an amount to be determined; and

(m) such other and further relief as the Court may deem just and proper.

Dated: New York, New York
May 23, 2016

Respectfully submitted,
ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York
Attorney for Petitioner
120 Broadway, 26th Floor
New York, New York 10271

TERRI GERSTEIN
Labor Bureau Chief

By: 

Verification

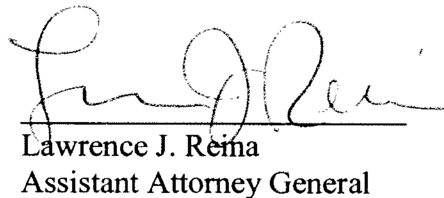
STATE OF NEW YORK)
) ss.:
NEW YORK COUNTY)

LAWRENCE REINA, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of Eric T. Schneiderman, Attorney General of the State of New York, and am duly authorized to make this verification.

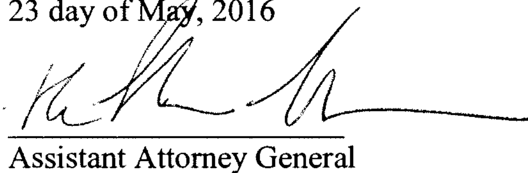
I have read the foregoing Petition and know the contents thereof, which is to my knowledge true, except as to matters stated to be alleged on information and belief, and as to those matters, I believe them to be true. The grounds of my belief as to all matters stated upon information and belief are investigative materials contained in the files of the Attorney General's office.

The reason this verification is not made by petitioner is that petitioner is a body politic and the Attorney General is its duly authorized representative.



Lawrence J. Reina
Assistant Attorney General

Sworn to before me this
23 day of May, 2016



Assistant Attorney General

ReNIKA CHERAUN MOORE
Notary Public, State of New York
No. 02MO6302326
Qualified in Kings County
Commission Expires May 5, 2018