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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

14 ANTHONY HERNANDEZ, on behalf of  
15 himself and all others similarly situated,

16 Plaintiff,

17 vs.

18 PJ LAS VEGAS, LLC; SERAZEN, LLC;  
19 BLD BRANDS, LLC; BLD VENTURES,  
20 LLC; PAPA JOHN'S INTERNATIONAL,  
21 INC.; DOUG PAK; and DOES 1 through 50,  
22 inclusive,

23 Defendant(s).

Case No.: A-17-762477-C

Dept. No.: 17

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**(EXEMPT FROM ARBITRATION  
PURSUANT TO NAR 5)**

- 1) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;
- 2) Failure to Pay Wages for All Hours Worked in Violation of NRS 608.016 and 608.140
- 3) Failure to Pay Overtime in Violation of NRS 608.018 and 608.140; and
- 4) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.020-050 and 608.140;

**LIEN REQUESTED PURSUANT TO NRS  
608.050**

**JURY TRIAL DEMANDED**

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1 COMES NOW Plaintiff ANTHONY HERNANDEZ, on behalf of himself and all others  
2 similarly situated and alleges the following:

3 All allegations in the Complaint are based upon information and belief except for those  
4 allegations that pertain to the Plaintiff named herein and his counsel. Each allegation in the  
5 Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable  
6 opportunity for further investigation and discovery.

7 **JURISDICTION AND VENUE**

8 1. This Court has original jurisdiction over the state law claims alleged herein  
9 because the amount in controversy exceeds \$10,000 and a party seeking to recover unpaid wages  
10 has a private right of action pursuant to the Nevada Constitution, Article 15 Section 16, and  
11 Nevada Revised Statute (“NRS”) sections 608.050 and 608.140. *See Lucatelli v. Texas De Brazil*  
12 *(Las Vegas) Corp.*, 2:11-CV-01829-RCJ, 2012 WL 1681394 (D. Nev. May 11, 2012) (“[T]he  
13 Nevada Supreme Court recently held that NRS § 608.040 contains a private cause of action  
14 because it is “illogical” that a plaintiff who can privately enforce a claim for attorneys' fees under  
15 NRS § 608.140 cannot privately enforce the underlying claim the fees arose from.”); *Busk v.*  
16 *Integrity Staffing Solutions, Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir. Nev. Apr. 12, 2013)  
17 (“Nevada Revised Statute § 608.140 does provide a private right of action to recoup unpaid  
18 wages.”); *Doolittle v. Eight Judicial Dist. Court*, 54 Nev. 319, 15 P.2d 684; 1932 Nev. LEXIS 34  
19 (Nev. 1932) (recognizing that former employees have a private cause of action to sue their  
20 employer (as well as third party property owners where the work was performed) for wages and  
21 waiting penalties under NRS 608.040 and NRS 608.050).

22 2. Plaintiff also claims a private cause of action to foreclose a lien against the  
23 property owner for wages due pursuant to NRS 608.050.

24 3. Plaintiff is seeking to recover unpaid wages pursuant to Nevada statutory authority  
25 and pursuant to an agreement (implied by law and fact) to pay for all hours worked and/or under  
26 the wage laws of the State of Nevada. Plaintiff therefore has a private right of action pursuant to  
27 Nevada Revised Statute (“NRS”) Sections 608.040 and 608.140 as well as a claim for at least  
28 minimum wages for all hours worked “off-the-clock” pursuant to Section 16 of Article 15 of the

1 Nevada State Constitution. Plaintiff made a proper demand for wages due pursuant to NRS  
2 608.140 on January 3, 2017.

3 4. Venue is proper in this Court because one or more of the Defendants named herein  
4 maintains a principal place of business or otherwise is found in this judicial district and many of  
5 the acts complained of herein occurred in Clark County, Nevada.

6 **PARTIES**

7 5. Plaintiff ANTHONY HERNANDEZ (hereinafter “Plaintiff” or “HERNANDEZ”)  
8 is a natural person who is and was a resident of the State of Nevada and has been employed by  
9 Defendant as a non-exempt hourly employee from May 2016 to on or about November 2, 2016.

10 6. Defendant PJ LAS VEGAS, LLC is a Nevada Limited Liability Company whose  
11 managing member is Doug Pak, located at 1 City Blvd. West Orange, California 92868.

12 7. Defendant SERAZEN, LLC is a foreign Limited Liability Company, formed in  
13 the state of Delaware, with its principle place of business located at 20377 SW Acacia Street, 2<sup>nd</sup>  
14 Floor, Newport Beach, California 92660.

15 8. Defendant BLD BRANDS, LLC is a California Limited Liability Company whose  
16 managing member is BLD VENTURES, LLC, located at 20377 SW Acacia Street, 2<sup>nd</sup> Floor,  
17 Newport Beach, California 92660.

18 9. Defendant BLD VENTURES, LLC is a California Limited Liability Company  
19 whose managing member is Doug Pak, LLC, located at 20377 SW Acacia Street, 2nd Floor,  
20 Newport Beach, California 92660.

21 10. Defendant PAPA JOHN’S INTERNATIONAL, INC. (“PJ’s International”) is a  
22 foreign corporation incorporated in the state of Delaware, with its principle place of business  
23 located at 2002 Papa John's Boulevard, Louisville, Kentucky 40299.

24 11. Upon information and belief, individual Defendant DOUG PAK is the sole officer,  
25 owner, and managing member of Defendants PJ LAS VEGAS, LLC and SERAZEN, LLC.  
26 Defendant Pak is also the sole officer, owner, and managing member of BLD VENTURES, LLC,  
27 which is in turn the sole officer, owner, and managing member of BLD BRANDS, LLC. At all  
28 relevant times, Defendant Pak exercised direct and indirect control over all operational decisions,

1 company policies, wages, and working conditions of Plaintiff and other similarly situated  
2 employees. Defendant Pak is a person acting directly or indirectly in the interest of an employer  
3 in relation to Plaintiff and other drivers, and is therefore a proper Defendant for purposes of  
4 Plaintiff's claims. Defendant Pak exerts sufficient control over the other defendants' pay and  
5 employment policies to be held individually liable under Nevada law.

6 12. To the extent Defendants PJ LAS VEGAS, LLC, SERAZEN, LLC, BLD  
7 VENTURES, LLC, and BLD BRANDS, LLC (collectively, "the Pak Entities") are business  
8 entities separate from Defendant Pak, there exists such a unity of interest and commonality of  
9 control, including commingling of funds, lack of adequate capitalization, failure to maintain  
10 proper books and records, and additional omissions, that there truly is no separation or distinction  
11 between Defendant Pak and the Pak entities. As such, the Pak entities are and were mere  
12 instrumentalities, shells, and alter egos of Defendant Pak such that adherence to the fiction of a  
13 separate business entity should be ignored and the entities treated as though they were one and  
14 the same as Defendant Pak and vice versa.

15 13. At all relevant times, each Defendant was an agent, employee, joint-venturer,  
16 shareholder, director, member, co-conspirator, alter ego, master, or partner of each of the other  
17 Defendants, and at all times mentioned herein were acting within the scope and course and in  
18 pursuance of his, her, or its agency, joint venture, partnership, employment, common enterprise,  
19 or actual or apparent authority in concert with each other and the other Defendants.

20 14. At all relevant times, the acts and omissions of Defendants concurred and  
21 contributed to the various acts and omissions of each and every one of the other Defendants in  
22 proximately causing the complaints, injuries, and damages alleged herein. At all relevant times  
23 herein, Defendants approved of, condoned and/or otherwise ratified each and every one of the  
24 acts or omissions complained of herein. At all relevant times herein, Defendants aided and abetted  
25 the acts and omissions of each and every one of the other Defendants thereby proximately causing  
26 the damages as herein alleged.

27 15. The Defendants named herein are the employers of the Plaintiff and all Class  
28 Members alleged herein. The Defendants are employers engaged in commerce under the

1 provisions of NRS 608.011. The identity of DOES 1-50 is unknown at the time and the Complaint  
2 will be amended at such time when the identities are known to Plaintiff. Plaintiff is informed and  
3 believes that each Defendants sued herein as DOE is responsible in some manner for the acts,  
4 omissions, or representations alleged herein and any reference to “Defendant,” “Defendants,” or  
5 “Papa Johns” herein shall mean “Defendants and each of them.”

6 **FACTUAL ALLEGATIONS**

7 16. Defendant PJ’s International is an American restaurant franchise company. It runs  
8 the third largest take-out and pizza delivery restaurant chain in the United States and franchises  
9 over 4,900 establishments worldwide.

10 17. PJ’s International is both a direct employer of employees at their various company-  
11 owned locations and is a joint-employer with individual franchisees. PJ’s International  
12 employees, whether direct hires by PJ’s International or by individual franchisees, are provided  
13 orientation and training designed by the corporate offices of PJ’s International. For example, PJ’s  
14 International trains employees on how to make pizzas, answer phones, and interact with the  
15 customers, and also instructs employees regarding company-wide standards for employee  
16 conduct and appearance, such as proper uniform attire. These programs are designed to train  
17 management and employees regarding standards, compliance and other topics to enable its  
18 franchisees to meet PJ’s International’s expectations at all restaurant locations, whether owned  
19 solely by PJ’s International or by a franchisee. All employees of PJ’s International, whether  
20 owned solely by PJ’s International or by a franchisee, are required to comply with these policies  
21 and meet the expectations set by PJ’s International. PJ’s International corporate employees  
22 regularly visit corporate and franchised restaurant locations to inspect the restaurants and, upon  
23 information and belief, to oversee the employee management of each restaurant. These corporate  
24 inspections include what PJ’s International refers to as “Mission Critical Evaluations” (MCEs),  
25 which determine whether a restaurant may continue to operate as a franchise based on, among  
26 other things, whether employees are upholding and complying with PJ’s International’s corporate  
27 policies and standards. Ultimately, upon information and belief, PJ’s International exercises  
28

1 control over the hours and other working conditions of Plaintiff and all similarly-situated hourly  
2 employees.

3 18. Defendant Pak owns and operates Papa John's restaurants in the United States  
4 through at least four shell companies: PJ LAS VEGAS, LLC, SERAZEN, LLC, BLD  
5 VENTURES, LLC, and BLD BRANDS, LLC. Through his management of BLD VENTURES,  
6 LLC, Defendant Pak used BLD BRANDS, LLC to provide "infrastructure" support to the Papa  
7 John's restaurants owned and operated by PJ LAS VEGAS, LLC and SERAZEN, LLC.  
8 According to BLD BRANDS, LLC's company website:<sup>1</sup>

9 BLD Brands currently functions as a shared support, administrative  
10 company for Spaghetti Warehouse, Serazen's Papa John's and  
11 Hardee's businesses. The company has built a scalable corporate  
12 infrastructure built around its proprietary technology designed to  
13 operate multi-unit restaurant companies. The following table  
14 describes overall capabilities of BLD Brands.

15 **BLD Brands Corporate Functions:**

- 16 – Accounting / Payroll
- 17 – Finance
- 18 – HR Administration
- 19 – Risk Management
- 20 – Strategic Operations
- 21 – Corporate IT / Restaurant IT
- 22 – Business Innovation & Technology
- 23 – R&D / Purchasing
- 24 – Facilities
- 25 – Marketing
- 26 – Real Estate / Development
- 27 – Legal

28 19. BLD Brands, LLC, in conjunction with the remaining Pak Entities and Defendant  
Pak individually, worked together and acted in unison to control the hours and other working  
conditions of Plaintiff and all similarly-situated hourly employees and manage employee  
complaints regarding alleged wage and hour violations.<sup>2</sup>

<sup>1</sup> See [http://bldbrands.com/?page\\_id=68](http://bldbrands.com/?page_id=68) (last visited Oct. 2, 2017).

<sup>2</sup> See Letter in Response to Employee Complaint, dated September 26, 2017, attached as Exhibit B (showing BLD Brands responding to a complaint regarding wage and hour violations by PJ Las Vegas).

***Defendants' Flawed Reimbursement Policy For Delivery Drivers***

1  
2       20.    The primary function of Defendants' Papa John's restaurants is to sell pizza and  
3 other food items to customers, whether they carry out the food or have it delivered.

4       21.    Plaintiff has been employed by Defendants as a delivery driver at the Papa Johns  
5 located at 3205 W. Tompkins Ave., Las Vegas, Nevada.

6       22.    Plaintiff was paid an hourly rate of \$8.25 per hour for all hours he worked. He  
7 was not offered, and did not receive, health insurance benefits.

8       23.    Plaintiff was compensated for overtime at 1 ½ times his base hourly wage when  
9 he worked over 40 hours in a workweek. He was not paid overtime when he worked over 8 hours  
10 in a workday.<sup>3</sup>

11       24.    Defendants require their delivery drivers to maintain and pay for safe, legally-  
12 operable, and insured automobiles when delivering pizza and other food items.

13       25.    Defendants' delivery drivers incur costs for gasoline, vehicle parts and fluids,  
14 automobile repair and maintenance services, automobile insurance, and depreciation  
15 ("automobile expenses") while delivering pizzas for the primary benefit of Defendants.

16       26.    Despite the relative ease of tracking actual miles driven by its drivers, Defendants  
17 do not do so. Instead, Defendants reimburse delivery drivers using a set amount for each delivery,  
18 regardless of length. Defendants' delivery driver reimbursement policy applies to Plaintiff and all  
19 of Defendants' delivery drivers. Defendants set their reimbursement rate at \$1.00 for a single  
20 delivery. This method underestimates not only the automobile expenses per mile incurred by  
21 Defendants' delivery drivers, but also the number of miles driven by delivery drivers, thereby  
22 causing drivers to receive a lower reimbursement rate than even that contemplated by Defendants'  
23 flawed reimbursement formula.

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27       <sup>3</sup> In Nevada, employees who make less than 1 ½ times the applicable minimum wage must  
28 be paid overtime when they work over 8 hours in a workday. A "workday" in Nevada is defined  
as "a period of 24 consecutive hours which begins when the employee begins work."

1           27. The net result of Defendants’ delivery driver reimbursement policy is a  
2 reimbursement of much less than the reasonably approximated automobile expenses of  
3 Defendants’ delivery drivers.

4           28. During the applicable limitations period, the IRS business mileage reimbursement  
5 rate ranged between \$.565 and \$.54 per mile.<sup>4</sup> Likewise, reputable companies that study the cost  
6 of owning and operating a motor vehicle and/or reasonable reimbursement rates, including the  
7 AAA, have determined that the average cost of owning and operating a vehicle ranged between  
8 \$.608 and \$.5705 per mile during the same period.<sup>5</sup> These figures represent a reasonable  
9 approximation of the average cost of owning and operating a vehicle for use in delivering pizzas.

10           29. The driving conditions associated with the pizza delivery business cause more  
11 frequent maintenance costs, higher costs due to repairs associated with driving, and more rapid  
12 depreciation from driving as much as, and in the manner of, a delivery driver. Defendants’  
13 delivery drivers further experience lower gas mileage and higher repair costs than the average  
14 driver used to determine the average cost of owning and operating a vehicle described above due  
15 to the nature of the delivery business, including frequent starting and stopping of the engine,  
16 frequent braking, short routes as opposed to highway driving, and driving under time pressures.

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19           <sup>4</sup> The reimbursement rates during the relevant time period are as follows:

20	2016	\$.54
21	2015	\$.575
22	2014	\$.56
	2013	\$.565

23 See <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last visited Dec. 8, 2016).

24           <sup>5</sup>See <http://newsroom.aaa.com/auto/your-driving-costs/> (average rate of \$.5705 for sedan  
25 vehicle in 2016) (last visited Dec. 8, 2016); [http://newsroom.aaa.com/2015/04/annual-cost-  
26 operate-vehicle-falls-8698-finds-aaa-archive/](http://newsroom.aaa.com/2015/04/annual-cost-operate-vehicle-falls-8698-finds-aaa-archive/) (average rate of \$.580 for sedan vehicle in 2015)  
27 (last visited Dec. 8, 2016); <http://newsroom.aaa.com/tag/aaa-cost-per-mile/> (average rate of  
28 \$.592 for sedan vehicle in 2014) (last visited Dec. 8, 2016);  
[http://newsroom.aaa.com/2013/04/cost-of-owning-and-operating-vehicle-in-u-s-increases-  
nearly-two-percent-according-to-aas-2013-your-driving-costs-study-archive/](http://newsroom.aaa.com/2013/04/cost-of-owning-and-operating-vehicle-in-u-s-increases-nearly-two-percent-according-to-aas-2013-your-driving-costs-study-archive/) (average rate of  
\$.608 for sedan vehicle in 2013) (last visited Dec. 8, 2016).



1           30. Defendants’ reimbursement policy does not reimburse delivery drivers for even  
2 their out-of-pocket expenses, much less other costs they incur to own and operate their vehicle,  
3 and thus Defendants uniformly fail to reimburse their delivery drivers at any reasonable  
4 approximation of the cost of owning and operating their vehicles for Defendants’ benefit.

5           31. Defendants’ systematic failure to adequately reimburse automobile expenses  
6 constitutes a “kickback” to Defendants such that the hourly wages they pay to Plaintiff and  
7 Defendants’ other delivery drivers are not paid free and clear of all outstanding obligations to  
8 Defendants.

9           32. Defendants fail to reasonably approximate the amount of their drivers’ automobile  
10 expenses to such an extent that their drivers’ net wages are diminished beneath both the federal  
11 and state minimum wage requirements.

12           33. In sum, Defendants’ reimbursement policy and methodology fail to reflect the  
13 realities of delivery drivers’ automobile expenses.

14           ***Defendants’ Failure to Reimburse Automobile Expenses Causes Minimum Wage Violations***

15           34. Regardless of the precise amount of the per-delivery reimbursement, Defendants’  
16 reimbursement formula resulted in an unreasonable underestimation of delivery drivers’  
17 automobile expenses, causing systematic violations of the federal minimum wage, and also  
18 various state minimum wage requirements where Defendants employ delivery drivers.

19           35. Plaintiff was paid \$8.25 per hour during his employment with Defendants.

20           36. During that time period, the federal minimum wage rate was \$7.25 per hour and  
21 the state minimum wage was \$8.25 for employees who were not offered qualified health benefits.

22           37. Plaintiff drove a 2003 Mercury Sable while delivering pizzas for Defendants.

23           38. During Plaintiff’s employment by Defendants, the per delivery reimbursement rate  
24 at the store where Plaintiff worked was \$1.00.

25           39. Throughout his employment with Defendants, Plaintiff has experienced an  
26 average delivery distance of approximately 3.75 miles.

27           40. Thus, Defendants’ average effective reimbursement rate for Plaintiff was at most  
28 approximately \$0.27 per mile (\$1.00 per delivery / 3.75 miles per delivery).

1           41. Attached hereto as Exhibit A is an example of the effective reimbursement rate for  
2 Plaintiff in the month of October 2016. As demonstrated by Plaintiff’s accounting of the  
3 deliveries made and miles driven, Plaintiff was only reimbursed \$135.00.

4           42. During this same time period, the IRS business mileage reimbursement rate was  
5 \$.54 per mile, which was a reasonable approximation of the automobile expenses incurred in  
6 delivering pizzas. Using the IRS rate as a reasonable approximation of Plaintiff’s automobile  
7 expenses, every mile driven on the job decreased Plaintiff’s net wages by approximately \$0.27  
8 (\$.54 - \$0.27), or \$1.00 per delivery (\$0.27 x 5,131). Thus, Plaintiff “kicked back” to Defendants  
9 \$1,354.34.

10           43. Upon information and belief, all of Defendants’ delivery drivers had similar  
11 experiences to those of Plaintiff. They were subject to the same reimbursement policy; received  
12 similar reimbursements; incurred similar automobile expenses; completed deliveries of similar  
13 distances and at similar frequencies; and were paid hourly wages at or very near the applicable  
14 state or federal minimum wage.

15           44. Based on the allegations set forth above, Defendants’ average under-  
16 reimbursement of automobile expenses over the prior three years has exceeded the difference  
17 between hourly wages in each state in which Defendants operate and the federal and state  
18 minimum wage during part or all of the limitations period, thereby resulting in company-wide  
19 minimum wage violations.

20           45. Defendants’ low reimbursement rates were a frequent complaint of Defendants’  
21 delivery drivers, including Plaintiff, yet Defendants continued to reimburse at a rate much less  
22 than any reasonable approximation of delivery drivers’ automobile expenses.

23           46. The net effect of Defendants’ flawed reimbursement policy, instituted and  
24 approved by company managers, is that they willfully fail to pay the federal minimum wage to  
25 their delivery drivers. Further, Defendants willfully fail to pay minimum wages required by state  
26 law in the time periods during which individual states’ minimum wage laws. Defendants thereby  
27 enjoy ill-gained profits at the expense of their employees.

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***Defendants’ Policy Of Not Paying Daily Overtime***

47. In addition to Defendants’ unlawful minimum wage practices, Defendants also maintained an unlawful policy of not paying daily overtime to non-exempt hourly employees who earned 1 ½ times less than the applicable minimum wage.

48. Plaintiff frequently worked over 8 hours in any given workday. On many occasions, Plaintiff would work a night shift until the early morning hours and then return to work a day shift. The number of hours he worked in a workday under Nevada law was over 8 hours in a 24 hour period of time. But despite having worked more than 8 hours in a 24 hour period of time, Defendants failed to compensate Plaintiff at 1 ½ times his regular rate of pay for the overtime hours he worked.

49. Upon information and belief, Defendants maintained a company-wide policy and practice of refusing to pay daily overtime wages to Nevada employees who worked over 8 hours in a workday. This “no daily overtime” policy has always been common to all non-exempt hourly paid employees at Defendants’ locations in the state of Nevada.

***Defendants’ Policy Of Improperly Discounting Wages***

50. Defendants paid Plaintiff and other similarly situated employees their final paycheck by depositing their wages onto a pre-paid cash card. Plaintiff and other employees who were paid through the cash cards could not withdraw or spend their wages without incurring a fee for each transaction.

51. Nevada Revised Statute 608.130 mandates that “A person engaged in any business or enterprise of any kind in this State shall not issue, in payment of, or as evidence of, any indebtedness for wages due an employee, any order, check, memorandum or other acknowledgment of indebtedness unless it is a negotiable instrument payable without discount, in cash on demand...”

52. Defendants did not pay final wages due to Plaintiff and similarly situated individuals in the form of a negotiable instrument, payable in cash, on demand, without discount as required by the above statutes. Instead, Defendants paid Plaintiff and similarly situated

1 individuals by depositing payment for their wages onto prepaid cash cards that discounted  
2 employees' wages by charging fees for withdrawal or use of the funds.

3 53. By discounting Plaintiff and similarly situated employees' wages, Defendants  
4 failed to pay their employees the required minimum, regular rate, and overtime wages for all  
5 hours worked.

6 54. The policies and practices of Defendants at all relevant times have been  
7 substantially similar, if not identical, for all former employees.

8 **CLASS ACTION ALLEGATIONS**

9 55. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
10 this Complaint as though fully set forth herein.

11 56. Plaintiff brings this action on behalf of himself and all other similarly situated  
12 employees as a class action under Rule 23 of the Nevada Rules of Civil Procedure.

13 57. The **Nevada Minimum Wage Class** is defined as "All hourly paid delivery  
14 drivers employed by Defendants in the state of Nevada at any time within 2 years from January  
15 3, 2017 until judgment.

16 58. The **Nevada Wage Deduction Class** is defined as "All hourly paid non-exempt  
17 persons employed by Defendants in the state of Nevada within 3 years from the filing of this  
18 complaint until judgment who were paid using a cash card."

19 59. The **Nevada Overtime Class** is defined as "All hourly paid non-exempt persons  
20 employed by Defendants in the state of Nevada who earned less than 1 ½ times the applicable  
21 minimum wage and who worked over eight (8) hours in a workday at any time within 3 years  
22 from January 3, 2017 until judgment."

23 60. The **Waiting Time Penalty Class** is defined as "All Nevada Minimum Wage  
24 Class, Nevada Wage Deduction Class, and Nevada Overtime Class Members who are former  
25 employees."

26 61. Class treatment is appropriate under Rule 23's class certification mechanism  
27 because:  
28

1 a. The Classes are Sufficiently Numerous: Upon information and belief,  
2 Defendants employ, and have employed, in excess of 1,900 Nevada Minimum Wage,  
3 Nevada Wage Deduction, Nevada Overtime, and Waiting Time Penalty Class Members  
4 within the applicable time period. Because Defendants are legally obligated to keep  
5 accurate payroll records, Plaintiff alleges that Defendants' records will establish the  
6 members of these Classes as well as their numerosity.

7 b. Plaintiff's Claims is Typical to Those of Fellow Class Members: Each  
8 Class Member is and was subject to the same practices, plans, or policies as Plaintiff: (1)  
9 Whether Defendants' inadequate reimbursement policy deprived Plaintiff and members  
10 of the Nevada Minimum Wage Class minimum wages according to Nevada law; (2)  
11 Whether Defendants failed to pay Plaintiff and putative class members in the form of a  
12 negotiable instrument, payable in cash, on demand, without discount; (3) Whether  
13 Defendants compensated Plaintiff and members of the Nevada Overtime Class daily  
14 overtime wages when they worked over 8 hours in a workday; (4) Whether Plaintiff and  
15 members of the Waiting Time Penalty Class are entitled to waiting time penalties for the  
16 failure to pay them minimum, regular, and overtime wages owed.

17 c. Common Questions of Law and Fact Exist: Common questions of law and  
18 and fact exist and predominate as to Plaintiff and the Class Members, including, without  
19 limitation: Whether Defendants' reimbursement policy deprived Plaintiff and Nevada  
20 Minimum Wage Class Members the minimum wage guaranteed by Nevada law; Whether  
21 Defendants failed to Plaintiff and putative class members in the form of a negotiable  
22 instrument, payable in cash, on demand, without discount; Whether Defendants failed to  
23 pay Plaintiff and the Nevada Minimum Wage Class Members one and one half times their  
24 regular rate for all hours worked in excess of 8 hours a workday; and Whether Defendants  
25 failed to pay Plaintiff and the Waiting Time Penalty Class Members all their wages due  
26 and owing in violation of NRS 608.020-050.

27 d. Plaintiff is Adequate Representative of the Class: Plaintiff will fairly and  
28 adequately represent the interests of the Class because Plaintiff is a member of all the

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Classes, he has issues of law and fact in common with all members of the Classes, and his interests are not antagonistic to Class members. Plaintiff and his counsel are aware of their fiduciary responsibilities to Class Members and are determined to discharge those duties diligently by vigorously seeking the maximum possible recovery for Class Members.

e. Predominance/Superior Mechanism: Class claims predominate and a class action is superior to other available means for the fair and efficient adjudication of this controversy. Each Class Member has been damaged and is entitled to recovery by reason of Defendants’ illegal policy and/or practice of failing to compensate its employees in accordance with Nevada wage and hour law. The prosecution of individual remedies by each Class Member will tend to establish inconsistent standards of conduct for Defendants and result in the impairment of Class Members’ rights and the disposition of their interest through actions to which they were not parties.

**FIRST CAUSE OF ACTION**

**Failure to Pay Minimum Wages in Violation of the Nevada Constitution  
(On Behalf of Plaintiff, the Nevada Minimum Wage Class, and Nevada Wage Deduction Class)**

62. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

63. Article 15 Section 16 of the Nevada Constitution sets forth the requirements the minimum wage requirements in the State of Nevada and further provides that “[t]he provisions of this section may not be waived by agreement between an individual employee and an employer. . . . An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney’s fees and costs.”

1           64. As alleged herein, Defendants have and continue to uniformly reimburse delivery  
2 drivers less than the reasonably approximate amount of their automobile expenses to such an  
3 extent that it diminishes these employees' wages beneath Nevada's minimum wage provisions.

4           65. Defendants knew or should have known that their reimbursement policy and  
5 methodology fails to compensate delivery drivers at the federal minimum wage.

6           66. Plaintiff and all similarly situated delivery drivers are victims of a uniform and  
7 employer-based compensation policy. This uniform policy, in violation of the Nevada  
8 Constitution, has been applied, and continues to be applied, to all delivery driver employees in  
9 Defendants' Nevada restaurants.

10           67. Plaintiff and all similarly situated employees are entitled to damages equal to the  
11 minimum wage minus actual wages received after deducting reasonably approximated  
12 automobile expenses within two years from the date of filing this action.

13           68. By improperly discounting employees' final wages (i.e., paying Plaintiff and  
14 Nevada Wage Deduction Class Members through prepaid cash cards that charged fees for  
15 withdrawal or use of the funds), Defendants failed to pay Plaintiff and Nevada Class Members  
16 their minimum wages pursuant to the Nevada Constitution.

17           69. Wherefore, Plaintiff demands for himself and for all other Nevada Minimum  
18 Wage Class Members and Nevada Wage Deduction Class Members that Defendants pay Plaintiff  
19 and Nevada Minimum Wage Class Members and Nevada Wage Deduction Class Members their  
20 unpaid minimum wages for all hours worked during the relevant time period alleged herein  
21 together with attorneys' fees, costs, interest, and punitive damages, as provided by law.

22                                   **SECOND CAUSE OF ACTION**

23           **Failure to Pay Wages for All Hours Worked in Violation of NRS 608.016 and 608.140**  
24                                   **(On Behalf of Plaintiff and the Nevada Wage Deduction Class)**

25           70. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
26 this Complaint as though fully set forth herein.

27           71. NRS 608.140 provides that an employee has a private right of action for unpaid  
28 wages.

1 72. NRS 608.016 states that “An employer shall pay to the employee wages for each  
2 hour the employee works.” “Wages” means: “The amount which an employer agrees to pay an  
3 employee for the time the employee has worked, computed in proportion to time.” NRS 608.012.

4 73. By improperly discounting employees’ final wages (i.e., paying Plaintiff and  
5 Nevada Wage Deduction Class Members through prepaid cash cards that charged fees for  
6 withdrawal or use of the funds), Defendants failed to pay Plaintiff and Nevada Wage Deduction  
7 Class Members the agreed upon amount for all hours worked in violation of NRS 608.140 and  
8 608.016.

9 74. Wherefore, Plaintiff demands for himself and for all Nevada Wage Deduction  
10 Class Members payment by Defendants at the regular hourly rate of pay for all hours worked  
11 during the during the relevant time period alleged herein together with attorneys’ fees, costs, and  
12 interest as provided by law.

13 **THIRD CAUSE OF ACTION**

14 **Failure to Pay Overtime Wages in Violation of NRS 608.018 and 608.140**

15 **(On Behalf of Plaintiff, the Nevada Wage Deduction Class, and the Nevada Overtime**  
16 **Class)**

17 75. Plaintiff realleges and incorporate by this reference all the paragraphs above in this  
18 Complaint as though fully set forth herein.

19 76. NRS 608.140 provides that an employee has a private right of action for unpaid  
20 wages.

21 77. NRS 608.018(1) provides as follows:

22 An employer shall pay 1 1/2 times an employee’s regular wage rate  
23 whenever an employee who receives compensation for  
24 employment at a rate less than 1 1/2 times the minimum rate  
25 prescribed pursuant to NRS 608.250 works: (a) More than 40  
26 hours in any scheduled week of work; or (b) More than 8 hours in  
27 any workday unless by mutual agreement the employee works a  
28 scheduled 10 hours per day for 4 calendar days within any  
scheduled week of work.

78. NRS 608.018(2) provides as follows:



1 An employer shall pay 1 1/2 times an employee’s regular wage rate  
2 whenever an employee who receives compensation for  
3 employment at a rate not less than 1 1/2 times the minimum rate  
4 prescribed pursuant to NRS 608.250 works more than 40 hours  
5 in any scheduled week of work.

6 79. As described above, Defendants maintained a policy and/or practice of illegal shift  
7 jamming (i.e., refusing to pay daily overtime when Plaintiff and members of the Nevada Overtime  
8 Class worked over 8 hours in a workday). As a result, Plaintiff and Nevada Overtime Class  
9 Members have been denied overtime compensation according to Nevada law.

10 80. By improperly discounting employees’ final wages (i.e., paying Plaintiff and  
11 Nevada Wage Deduction Class Members through prepaid cash cards that charged fees for  
12 withdrawal or use of the funds), Defendants also failed to pay Plaintiff and Nevada Wage  
13 Deduction Class Members overtime for all overtime hours worked in violation of NRS 608.140  
14 and 608.018.

15 81. Wherefore, Plaintiff demands for himself and all Nevada Overtime Class Members  
16 that Defendants pay Plaintiff and Nevada Overtime Class Members one and one half times their  
17 “regular rate” of pay for all hours worked in excess of eight (8) hours in a workday during the  
18 relevant time period together with attorneys’ fees, costs, interest, and punitive damages, as  
19 provided by law.

**FOURTH CAUSE OF ACTION**

**Waiting Time Penalties Pursuant to NRS 608.020-.050 and 608.140**

**(On Behalf of Plaintiff and the Waiting Time Penalty Class)**

20 82. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
21 this Complaint as though fully set forth herein.

22 83. NRS 608.140 provides that an employee has a private right of action for unpaid  
23 wages.

24 84. NRS 608.020 provides that “[w]henver an employer discharges an employee, the  
25 wages and compensation earned and unpaid at the time of such discharge shall become due and  
26 payable immediately.”  
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1 85. NRS 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who fails  
2 to pay a discharged or quitting employee: “Within 3 days after the wages or compensation of a  
3 discharged employee becomes due; or on the day the wages or compensation is due to an  
4 employee who resigns or quits, the wages or compensation of the employee continues at the same  
5 rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever  
6 is less.”

7 86. NRS 608.050 grants an “employee lien” to each discharged or laid-off employee  
8 for the purpose of collecting the wages or compensation owed to them “in the sum agreed upon  
9 in the contract of employment for each day the employer is in default, until the employee is paid  
10 in full, without rendering any service therefore; but the employee shall cease to draw such wages  
11 or salary 30 days after such default.”

12 87. By failing to pay Plaintiff and the Waiting Time Penalty Class Members their  
13 minimum, regular, and overtime wages in violation of state and federal law, Defendants have  
14 failed to timely remit all wages due and owing to Plaintiff and the Waiting Time Penalty Class  
15 Members.

16 88. Despite demand, Defendants willfully refuse and continue to refuse to pay Plaintiff  
17 and Waiting Time Penalty Class Members all the wages that were due and owing upon the  
18 termination of their employment.

19 89. Wherefore, Plaintiff and the Waiting Time Penalty Class Members demand thirty  
20 (30) days of pay as waiting penalties under NRS 608.040 and 608.140, and thirty (30) days of  
21 pay as waiting penalties under NRS 608.050 and 608.140, together with attorneys’ fees, costs,  
22 interest, and punitive damages, as provided by law.

23 **PRAYER FOR RELIEF**

24 Wherefore Plaintiff, by himself and on behalf of Class Members, pray for relief as follows  
25 relating to their class action allegations:

- 26 1. For an order certifying this action as a class action on behalf the proposed Classes  
27 and providing notice to all Class Members so they may participate in this lawsuit;

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2. For an order appointing Plaintiff as the Representative of the Classes and his counsel as Class Counsel;
3. For damages according to proof for minimum rate pay under the Nevada Constitution for all hours worked;
4. For damages according to proof for overtime compensation under NRS 608.018 and 608.140 for all hours worked over 8 hours per day;
5. For waiting time penalties pursuant to NRS 608.040-.050 and 608.140;
6. For a lien on the property where Plaintiff and all Nevada Class Members labored pursuant to NRS 608.050;
7. For interest as provided by law at the maximum legal rate;
8. For punitive damages;
9. For reasonable attorneys' fees authorized by statute;
10. For costs of suit incurred herein;
11. For pre-judgment and post-judgment interest, as provided by law; and
12. For such other and further relief as the Court may deem just and proper.

DATED: April 20, 2018

Respectfully Submitted,  
**THIERMAN BUCK LLP**

/s/Joshua D. Buck  
Joshua D. Buck  
Mark R. Thierman  
Leah L. Jones

# **EXHIBIT A**

# **EXHIBIT A**

# September

# October 2016

# November

Sunday

Monday

Tuesday

Wednesday

Thursday

Friday

Saturday

2

Number of Deliveries:  
4  
MR Paid:  
4.00  
Daily Miles:  
28  
Mileage Due:  
11.12

3

Number of Deliveries:  
10  
MR Paid:  
10.00  
Daily Miles:  
48  
Mileage Due:  
15.92

4

Number of Deliveries:  
4  
MR Paid:  
4.00  
Daily Miles:  
29  
Mileage Due:  
11.66

5

Day Off

6

Day Off

7

Number of Deliveries:  
8  
MR Paid:  
8.00  
Daily Miles:  
38  
Mileage Due:  
12.52

8

Number of Deliveries:  
11  
MR Paid:  
11.00  
Daily Miles:  
51  
Mileage Due:  
16.54

Number of Deliveries:  
9  
MR Paid:  
9.00  
Daily Miles:  
55  
Mileage Due:  
20.7

9

Number of Deliveries:  
5  
MR Paid:  
5.00  
Daily Miles:  
30  
Mileage Due:  
11.2

10

Number of Deliveries:  
5  
MR Paid:  
5.00  
Daily Miles:  
38  
Mileage Due:  
15.52

11

Number of Deliveries:  
9  
MR Paid:  
9.00  
Daily Miles:  
39  
Mileage Due:  
12.06

12

Day Off

13

Day Off

14

Number of Deliveries:  
8  
MR Paid:  
8.00  
Daily Miles:  
35  
Mileage Due:  
10.9

15

Number of Deliveries:  
10  
MR Paid:  
10.00  
Daily Miles:  
49  
Mileage Due:  
16.46

16

Number of Deliveries:  
3  
MR Paid:  
3.00  
Daily Miles:  
14  
Mileage Due:  
4.56

17

Number of Deliveries:  
4  
MR Paid:  
4.00  
Daily Miles:  
31  
Mileage Due:  
12.74

18

Number of Deliveries:  
2  
MR Paid:  
2.00  
Daily Miles:  
16  
Mileage Due:  
6.64

19

Day Off

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Day Off

21

Number of Deliveries:  
6  
MR Paid:  
6.00  
Daily Miles:  
30  
Mileage Due:  
10.2

22

Number of Deliveries:  
13  
MR Paid:  
13.00  
Daily Miles:  
91  
Mileage Due:  
36.14

23

Number of Deliveries:  
6  
MR Paid:  
6.00  
Daily Miles:  
43  
Mileage Due:  
17.22

24

Day Off

25

Number of Deliveries:  
5  
MR Paid:  
5.00  
Daily Miles:  
21  
Mileage Due:  
6.34

26

Day Off

27

Day Off

28

Number of Deliveries:  
8  
MR Paid:  
8.00  
Daily Miles:  
34  
Mileage Due:  
10.36

29

Number of Deliveries:  
5  
MR Paid:  
5.00  
Daily Miles:  
42  
Mileage Due:  
17.68

30

Day Off

31

Day Off

# **EXHIBIT B**

# **EXHIBIT B**



BLD Brands, LLC  
20377 SW Acacia St., 2<sup>nd</sup> Fl.  
Newport Beach, CA 92660  
Tel: 714.450.7660  
<http://www.bldbrands.com>

September 26, 2016

Ms. Malia Ervin  
Compliance/Audit Investigator  
Office of the Labor Commissioner  
State of Nevada  
555 E. Washington Ave., Ste. 4100  
Las Vegas, NV 89101

Dear Ms. Ervin:

I am in receipt of your letter dated September 15, 2016 regarding a complaint that PJ Las Vegas is in violation of certain wage and hour laws. PJ Las Vegas LLC is one of several companies under the BLD Brand with a total of 150 locations throughout the US. We pride ourselves in providing a great place to work, as well as ensuring our employees are treated fairly and paid in accordance with the various state and federal laws.

Below is a response to each complaint as respects our general policies and procedures:

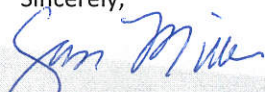
Payment for all hours worked and overtime: It is expected that all employees clock in and out of our POS for all hours worked, regardless of whether overtime is incurred or not. We emphasize the importance of accurate time records in our Handbook and specifically state that any requests to work 'off the clock' should be reported to their District Manager immediately. I'm not certain if the complaint about overtime has to do with working off the clock or the calculation of overtime, but we do process payroll through ADP so do know for certainty that it is being calculated correctly in accordance with the daily overtime regulations in the State of NV and California.

Employee Uniforms: All employees are provided with at least 1-2 Papa John's shirts at no cost, depending upon whether they are part or full time. If they ask for additional shirts, we generally do provide them without cost, and we do replace any worn out shirts as necessary. If they would like to order additional shirts or colors, they can go on line and order them through the Papa John's store.

Additionally, we conduct HR and wage and hour training at least once per year to ensure our General Managers understand the law and our standards. The Human Resources phone number is posted throughout the restaurant and in the Handbook should employees have a complaint or concern. Complaints that are received in this office are immediately investigated and if it happens to involve a wage and hour complaint, we immediately resolve the issue, get the employee paid, and take appropriate action against the General Manager or Shift Leader.

I hope this answers any questions you may have regarding the complaint. If I can answer any other questions or if you do have the name of a specific employee, I will be more than happy to assist. I can be reached at 714-450-7652.

Sincerely,

  
Jan Miller  
VP, Human Resources

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