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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

STEVEN BURNETT, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

PAGLIACCI PIZZA, INC., a Washington
corporation,

Defendant.

NO. 17-2-25978-1 SEA

AMENDED CLASS ACTION COMPLAINT

Plaintiff Steven Burnett, by his undersigned counsel, for his class action complaint
against Defendant Pagliacci Pizza, Inc., alleges as follows:

I. INTRODUCTION

1.1 Nature of Action. Defendant Pagliacci Pizza, Inc., (“Defendant” or “Pagliacci”) is a pizzeria
chain that employs hundreds of employees at dozens of locations in the greater Seattle area.
Despite touting itself as a “successful local company that knows how to take care of its
customers and its employees,” Pagliacci has engaged in a systematic scheme of wage and
hour abuses against its pizza delivery drivers. These abuses include: (1) failing to provide
delivery drivers with the rest breaks to which they are entitled; (2) failing to provide delivery
drivers with the meal breaks to which they are entitled; (3) failing to pay delivery drivers the
automatic “delivery charge” paid by customers; (4) failing to disclose to the customer that the

1 automatic “delivery charge” is retained by Defendant; (5) failing to pay delivery drivers all of
2 the wages to which they are entitled, including all tips and gratuities; (6) failing to fully
3 reimburse delivery drivers for their automobile expenses; and (7) unlawfully deducting from
4 delivery drivers’ wages, including but not limited to, deductions for credit card processing
5 fees, deductions for purported customer complaints, and deductions for automobile
6 expenses. Defendant’s deliberate failure to pay these driver employees their earned wages
7 violates Washington law.

8 1.2 Plaintiff and Class members are current and former Pagliacci delivery drivers
9 who have been victimized by Pagliacci’s unlawful compensation practices. This lawsuit is
10 brought as a class action under state law to recover unpaid wages owed to Plaintiff and those
11 similarly situated.

12 II. JURISDICTION AND VENUE

13 2.1 Jurisdiction. Defendant is within the jurisdiction of this Court. Defendant does business in the
14 State of Washington and has operations in King County. Defendant is registered in the State of
15 Washington. Defendant has obtained the benefits of the laws of the State of Washington and
16 the Washington retail and labor markets. This Court also has jurisdiction over this action
17 under the City of Seattle Wage Theft Ordinance, chapter 14.20 SMC. *See* SMC 14.20.090(A).

18 2.2 Venue. Venue is proper in King County because Defendant operates and
19 transacts business in King County, and Plaintiff performed work for Defendant in King County.

20 2.3 Governing Law. The claims asserted on behalf of Plaintiff and Class members in
21 this complaint are brought under state and municipal law causes of action and are governed
22 by Washington law and Seattle’s municipal ordinance.

23 2.4 Lack of CAFA Jurisdiction. Federal jurisdiction is inappropriate under the Class
24 Action Fairness Act, 28 U.S.C. § 1332(d)(4)(A), because more than two-thirds of the members
25 of the proposed plaintiff class in the aggregate are citizens of Washington; Defendant is a
26 defendant from whom significant relief is sought by members of the plaintiff class; the alleged

1 conduct of Defendant forms a significant basis for the claims asserted by the proposed
2 plaintiff class; Defendant is a citizen of Washington; the principal injuries resulting from the
3 alleged conduct were incurred in Washington; and during the three-year period preceding the
4 filing of this action, no other class action has been filed asserting same or similar factual
5 allegations against Defendant on behalf of the same or other persons. Alternatively, federal
6 jurisdiction is inappropriate under the Class Action Fairness Act, 28 U.S.C. § 1332 (d)(4)(B),
7 because two-thirds or more of the members of all proposed plaintiff classes in the aggregate,
8 and Defendant, are citizens of the state of Washington.

9 **III. PARTIES**

10 3.1 Plaintiff Steven Burnett. Plaintiff worked as a delivery driver for Pagliacci from approximately
11 October 2015 to July 2017. During the duration of his employment, Plaintiff was a resident of
12 Washington. Plaintiff performed his work for Pagliacci in King County, Washington, within the
13 geographical boundaries of the City of Seattle.

14 3.2 Defendant Pagliacci Pizza, Inc. Defendant Pagliacci is a Washington corporation
15 that employs hundreds of employees at more than 25 locations throughout King County,
16 Washington, including within the geographical boundaries of the City of Seattle.

17 **IV. CLASS ACTION ALLEGATIONS**

18 4.1 Class Definition. Pursuant to Washington Civil Rule 23, Plaintiff brings this case as a class
19 action on behalf of a Class defined as follows:

20 All individuals who are or have been employed as delivery drivers
21 by Pagliacci in the State of Washington from October 3, 2014
through the date of final disposition of this action.

22 Excluded from the Class are any entity in which Defendant has a controlling interest or which
23 has a controlling interest in Defendant, and Defendant's legal representatives, assignees, and
24 successors. Also excluded are the judge to whom this case is assigned and any member of the
25 judge's immediate family.

1 4.2 Numerosity. Plaintiff believes that more than one hundred persons have
2 worked as delivery drivers for Pagliacci in Washington during the relevant time period.

3 4.3 Commonality. There are numerous questions of law and fact common to
4 Plaintiff and Class members. These questions include, but are not limited to, the following:

5 a. Whether Pagliacci has engaged in a common course of failing to provide
6 Class members with a ten-minute rest break for every four hours of work;

7 b. Whether Pagliacci has engaged in a common course of requiring Class
8 members to work more than three consecutive hours without a rest break;

9 c. Whether Pagliacci has engaged in a common course of failing to ensure
10 that Class members take the rest breaks to which they are entitled;

11 d. Whether Pagliacci has engaged in a common course of failing to provide
12 Class members with a thirty-minute meal break for every five hours of work;

13 e. Whether Pagliacci has engaged in a common course of failing to ensure
14 that Class members take with the meal breaks to which they are entitled;

15 f. Whether Pagliacci has engaged in a common course of discouraging
16 Class members from taking the meal breaks to which they are entitled;

17 g. Whether Pagliacci has engaged in a common course of failing to disclose
18 to customers that all or part of the automatic “delivery charges” collected from customers are
19 retained by Pagliacci, not paid directly to the delivery drivers serving the customers;

20 h. Whether Pagliacci has engaged in a common course of retaining money
21 received as automatic “delivery charges” and not distributing that money to delivery drivers
22 but instead using it to cover costs of doing business;

23 i. Whether Pagliacci has engaged in a common course of failing to pay
24 Class members all of the wages to which they are entitled, include all tips and gratuities;

25 j. Whether Pagliacci made unlawful deductions to the wages of Plaintiff
26 and Class members;

1 k. Whether Pagliacci unlawfully reduced the wages of Plaintiff and Class
2 members for credit card processing fees;

3 l. Whether Pagliacci unlawfully reduced the wages of Plaintiff and Class
4 members as a penalty for mistakes or customer complaints;

5 m. Whether Pagliacci unlawfully reduced the wages of Plaintiff and Class
6 members by failing to pay them reimbursements for their automobile expenses for all miles
7 actually driven as a requirement of their employment;

8 n. Whether Pagliacci has engaged in a common course of requiring Class
9 members to over-report the amounts they received in cash tips;

10 o. Whether Pagliacci failed to keep true and accurate records of the rate
11 or rates of pay, gross wages, and all deductions for each pay period;

12 p. Whether Pagliacci failed to furnish itemized pay statements to Plaintiff
13 and Class members;

14 q. Whether Pagliacci willfully deprived Plaintiff and the Class of the wages
15 to which they were entitled;

16 r. Whether Pagliacci has violated RCW 49.12.020;

17 s. Whether Pagliacci has violated WAC 296-126-092;

18 t. Whether Pagliacci has violated RCW 49.46.090;

19 u. Whether Pagliacci has violated RCW 49.46.160;

20 v. Whether Pagliacci has violated RCW 49.48.010;

21 w. Whether Pagliacci has violated WAC 296-126-025;

22 x. Whether Pagliacci has violated WAC 296-126-028;

23 y. Whether Pagliacci has violated RCW 49.52.050;

24 z. Whether Pagliacci has violated SMC 14.20.020;

25 aa. Whether Pagliacci has violated SMC 14.20.025;

26 bb. Whether Pagliacci has violated SMC 14.20.030; and

1 cc. The nature and extent of class-wide injury and the measure of
2 compensation for such injury.

3 4.4 Typicality. Plaintiff's claims are typical of the claims of the members of the Class
4 because Plaintiff worked for Defendant in Washington as a delivery driver. The claims of
5 Plaintiff, like the claims of the Class, arise out of the same common course of conduct by
6 Defendant and are based on the same legal and remedial theories.

7 4.5 Adequacy. Plaintiff will fairly and adequately protect the interests of the Class.
8 Plaintiff has retained competent and capable attorneys who are experienced trial lawyers with
9 significant experience in complex and class action litigation, including employment law.
10 Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the
11 Class and have the financial resources to do so. Neither Plaintiff nor his counsel have interests
12 that are contrary to or that conflict with those of the proposed Class.

13 4.6 Predominance. Pagliacci has engaged in a common course of wage and hour
14 abuse toward Plaintiff and members of the Class. The common issues arising from this
15 conduct that affect Plaintiff and members of the Class predominate over any individual issues.

16 4.7 Superiority. Plaintiff and Class members have suffered and will continue to
17 suffer harm and damages as a result of Pagliacci's unlawful and wrongful conduct. Absent a
18 class action, however, most Class members likely would find the cost of litigating their claims
19 prohibitive. Class treatment is superior to multiple individual suits or piecemeal litigation
20 because it conserves judicial resources, promotes consistency and efficiency of adjudication,
21 provides a forum for small claimants, and deters illegal activities. There will be no significant
22 difficulty in the management of this case as a class action. The Class members are readily
23 identifiable from Pagliacci's records.

24 **V. SUMMARY OF FACTUAL ALLEGATIONS**

25 5.1 Pagliacci has engaged in and continues to engage in, a common course of wage and hour
26 abuse against its delivery driver employees in the state of Washington.

1 5.2 Failure to provide rest breaks. Pagliacci has engaged in a common course of
2 failing to provide Plaintiff and Class members with a paid ten-minute rest break for every four
3 hours of work.

4 5.3 Pagliacci has engaged in a common course of requiring or permitting Plaintiff
5 and Class members to work more than three consecutive hours without a rest break.

6 5.4 Pagliacci has engaged in a common course of failing to ensure Plaintiff and
7 Class members have taken the rest breaks to which they are entitled.

8 5.5 Pagliacci has engaged in a common course of failing to provide Plaintiff and
9 Class members with ten minutes of additional pay for each missed rest break.

10 5.6 Each time a delivery driver misses a rest break, Pagliacci receives the benefit of
11 10 minutes worked without paying for the time worked.

12 5.7 Failure to provide meal breaks. Pagliacci has engaged in a common course of
13 failing to provide Plaintiff and Class members with a thirty-minute meal break for every five
14 hours of work.

15 5.8 Pagliacci has engaged in a common course of requiring or permitting Plaintiff
16 and Class members to work more than five consecutive hours without a meal break.

17 5.9 Pagliacci has engaged in a common course of failing to ensure Plaintiff and
18 Class members have taken the meal breaks to which they are entitled.

19 5.10 Pagliacci has engaged in a common course of discouraging Plaintiff and Class
20 members from taking the meal breaks to which they are entitled.

21 5.11 Pagliacci had and continues to have a policy and practice of requiring delivery
22 drivers to sign its Employment Registration form. Pagliacci's Employment Registration form
23 requires employees to select one of two options for their "Meal Benefits." One of the
24 options—the "Food and Beverage (FAB) Package," which is touted as "Designed by
25 Pagliacci"—informs the employee that in exchange for free food, the employee may choose to
26 take his meal breaks (a) "during [his] paid rest breaks, (b) just before or after [his] shift or (c)

1 with [his] manager’s permission on an unpaid break.” The other option—the “Basic
2 Package”—provides that the employee can take an unpaid 30-minute meal break, but the
3 employee must “get in line, order and pay for [the] food and beverage like any other
4 customer.”

5 5.12 Pagliacci’s required Employment Registration form asks (and, indeed,
6 incentivizes) employees to agree to a meal-break system that violates the law. Specifically,
7 Pagliacci’s asks employees to agree to take their meal breaks outside of the parameters
8 established by law or to displace their required rest breaks with meal breaks. This is contrary
9 to Pagliacci’s affirmative duty to ensure employees are provided with and take the rest and
10 meal breaks to which they are entitled.

11 5.13 Collecting and keeping automatic “Delivery Charges.” Pagliacci has engaged in a
12 common course of retaining customers’ money received as automatic delivery charges and
13 not distributing those funds to its delivery drivers. Instead Pagliacci retains the “delivery
14 charges” collected from customers for its own financial profit or benefit.

15 5.14 Pagliacci has engaged in a common course of collecting a “delivery charge”
16 from its customers, which are imposed automatically on each customer’s receipt.

17 5.15 Pagliacci has engaged in a common course of failing to disclose in itemized
18 receipts or in menus provided to customers that all or part of the automatic “delivery charge”
19 collected from customers is retained by Pagliacci and not paid directly to the delivery drivers
20 serving the customers.

21 5.16 Pagliacci has engaged in a common course of failing to disclose in its itemized
22 receipts or in menus provided to customers the amount of the automatic service charges, if
23 any, paid to the employee or employees serving the customer.

24 5.17 Failing to pay delivery drivers all tips and gratuities. Pagliacci has engaged in a
25 common course of failing to pay delivery drivers all of the wages to which they are entitled,
26 including the full amount of tips and gratuities given to drivers by customers.

1 5.18 Pagliacci has a practice of operating mandatory “tip-pools,” a procedure
2 whereby Pagliacci requires delivery drivers to give to non-delivery employees (such as kitchen
3 staff) a percentage of the tips the drivers received from customers for delivery services.

4 5.19 Failure to reimburse drivers for necessary business expenses. Pagliacci has
5 engaged in a common course of depriving Plaintiffs and Class members full reimbursement for
6 all of their necessary business expenditures.

7 5.20 Pagliacci requires their delivery drivers to maintain and pay for safe, legally-
8 operable, and insured automobiles when delivering pizza and other food items.

9 5.21 Pagliacci delivery drivers incur costs for gasoline, vehicle parts and fluids,
10 automobile repair and maintenance services, automobile insurance, and depreciation while
11 delivering pizzas for the primary benefit of Pagliacci.

12 5.22 Pagliacci’s Driver Agreement form states that “Pagliacci will pay me
13 Washington State’s current minimum wage per hour plus, for each properly completed
14 delivery in my vehicle, a reimbursement for automobile expenses.”

15 5.23 “Properly completed delivery” does not include cancelled deliveries, where the
16 customer fails to answer the door or cancels the delivery after the driver is already en route.

17 5.24 Pagliacci does not track the actual miles driven by its delivery drivers. Instead,
18 Pagliacci reimburses drivers a set amount for each delivery, regardless of distance. This
19 method underestimates the automobile expenses per mile incurred by Plaintiff and Class
20 members.

21 5.25 In 2015, the IRS business mileage reimbursement rate was \$0.575 cents; in
22 2016, the rate was \$0.54; and in 2017, the rate was \$0.535 cents per mile. Likewise, reputable
23 companies that study the cost of owning and operating a motor vehicle and/or reasonable
24 reimbursement rates, including AAA, have determined that the average cost of owning and
25 operating a vehicle ranged between \$0.449 and \$0.736 during the same period. These figures
26

1 represent a reasonable approximation of the average cost of owning and operating a vehicle
2 for use in delivering pizzas.

3 5.26 The driving conditions associated with the pizza delivery business cause more
4 frequent maintenance costs, higher costs due to repairs associated with driving, and more
5 rapid depreciation from driving as much as, and in the manner of, a delivery driver. Pagliacci's
6 delivery drivers further experience lower gas mileage and higher repair costs than the average
7 driver used to determine the average cost of owning and operating a vehicle described above
8 due to the nature of the delivery business, including frequent starting and stopping of the
9 engine, frequent braking, short routes as opposed to highway driving, and driving under time
10 pressures.

11 5.27 Pagliacci's per-delivery reimbursement rate has resulted in an unreasonable
12 underestimation of delivery drivers' automobile expenses, causing systematic violations of
13 Washington law as to Plaintiff and Class members.

14 5.28 Plaintiff was paid \$11 per hour in 2015, \$13 per hour in 2016, and \$15 per hour
15 in 2017. During Plaintiff's period of employment, the per-delivery reimbursement rate ranged
16 from \$0.93 and \$0.95 cents per delivery before any deductions for mistakes or customer
17 complaints.

18 5.29 Plaintiff estimates he made approximately three deliveries per hour of
19 approximately four miles per roundtrip. In addition, Plaintiff estimates that he did not receive
20 any reimbursements for at least two "cancelled" deliveries per month.

21 5.30 Thus, since at least 2015, Pagliacci's average effective reimbursement rate for
22 Plaintiff was approximately \$0.234 per mile (\$0.95 per delivery / 4 miles per delivery) at most,
23 or \$0.117 per mile (\$0.465 per delivery / 4 miles per delivery) when Pagliacci cut Plaintiff's
24 reimbursement rate in half as a penalty for purported mistakes or customer complaints.

25 5.31 Using the IRS rate of \$0.575 for 2015 as a reasonable approximation of the
26 automobile expenses Plaintiff incurred delivering pizzas during that time period, every mile

1 driven on the job decreased Plaintiff's net wages anywhere from approximately \$0.341
2 (\$0.575 - \$.234) to \$0.458 (\$0.575 - \$0.117).

3 5.32 Class members were all subject to the same reimbursement policy under which
4 they did not receive full reimbursements for their necessary business expenses.

5 5.33 Pagliacci's reimbursement policy did not reimburse Plaintiff or Class members
6 for even their out-of-pocket expenses, much less the other costs they incur to own and
7 operate their vehicles, and thus Pagliacci uniformly fails to reimburse delivery drivers at any
8 reasonable approximation of the cost of owning and operating their vehicles for Pagliacci's
9 benefit.

10 5.34 Deductions for credit card processing fees. Pagliacci has made unlawful
11 deductions from the wages of Plaintiff and Class members for tips that customers pay to
12 delivery drivers by credit card.

13 5.35 When a driver delivers to a Pagliacci customer, the customer is given the option
14 of paying a tip to the delivery driver. If the customer pays by credit card and writes in a tip on
15 the receipt, the tip for the delivery driver is added to the customer's credit card charge.

16 5.36 When the shift ends, the driver enters his tips into Pagliacci's "Luigi" system. If
17 a customer paid a tip by credit card, the Luigi system automatically deducts a "credit card
18 charge" from the tip. As a result, Pagliacci pays the driver less than the actual amount paid by
19 the customer.

20 5.37 Pagliacci has engaged in a common course of failing to disclose or itemize on
21 delivery drivers' paystubs the amount it deducts from tips paid by credit card.

22 5.38 Deductions from wages for mistakes or customer complaints. Pagliacci has
23 made unlawful deductions from the wages of Plaintiff and Class members as a penalty for
24 mistakes or customer complaints.

1 sovereign power declares that inadequate wages and unsanitary conditions of labor exert
2 such pernicious effect.”

3 6.3 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in
4 any industry or occupation within the state of Washington under conditions of labor
5 detrimental to their health.”

6 6.4 Pursuant to RCW 49.12.005 and WAC 296-126-002, conditions of labor “means
7 and includes the conditions of rest and meal periods” for employees.

8 6.5 WAC 296-126-092 provides that employees shall be allowed certain paid rest
9 periods during their shifts.

10 6.6 Under Washington law, Pagliacci has an obligation to provide employees with
11 the rest breaks to which they are entitled.

12 6.7 Under Washington law, Pagliacci has an obligation to ensure that employees
13 take the rest breaks to which they are entitled.

14 6.8 Under Washington law, Pagliacci has an obligation to provide employees with
15 ten minutes of additional pay for each missed rest break.

16 6.9 By the actions alleged above, Pagliacci has violated the provisions of RCW
17 49.12.020 and WAC 296-126-092.

18 6.10 As a result of the unlawful acts of Defendant, Plaintiff and the Class have been
19 deprived of compensation in amounts to be determined at trial and pursuant to RCW
20 49.48.030, Plaintiff and the Class are entitled to recovery of such damages, including interest
21 thereon, as well as attorneys’ fees and costs.

22 **VII. SECOND CLAIM FOR RELIEF**
23 **(Violations of RCW 49.12.020 and WAC 296-126-092 —**
24 **Failure to Provide Meal Periods)**

25 7.1 Plaintiff and the Class reallege and incorporate by reference each and every allegation set
26 forth in the preceding paragraphs.

1 7.2 RCW 49.12.010 provides that “[t]he welfare of the state of Washington
2 demands that all employees be protected from conditions of labor which have a pernicious
3 effect on their health. The state of Washington, therefore, exercising herein its police and
4 sovereign power declares that inadequate wages and unsanitary conditions of labor exert
5 such pernicious effect.”

6 7.3 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in
7 any industry or occupation within the state of Washington under conditions of labor
8 detrimental to their health.”

9 7.4 Pursuant to RCW 49.12.005 and WAC 296-126-002, conditions of labor “means
10 and includes the conditions of rest and meal periods” for employees.

11 7.5 WAC 296-126-092 provides that employees shall be allowed certain meal
12 periods during their shifts.

13 7.6 Under Washington law, Pagliacci has an obligation to provide employees with
14 the meal breaks to which they are entitled.

15 7.7 Under Washington law, Pagliacci has an obligation to ensure that employees
16 take the meal breaks to which they are entitled.

17 7.8 Under Washington law, Pagliacci has an obligation to provide employees with
18 thirty minutes of additional pay for each missed meal break.

19 7.9 By the actions alleged above, Pagliacci has violated the provisions of RCW
20 49.12.020 and WAC 296-126-092.

21 7.10 As a result of the unlawful acts of Defendant, Plaintiff and the Class have been
22 deprived of compensation in amounts to be determined at trial and pursuant to RCW
23 49.48.030, Plaintiff and the Class are entitled to recovery of such damages, including interest
24 thereon, as well as attorneys’ fees and costs.

VIII. THIRD CLAIM FOR RELIEF
(Violation of RCW 49.46.090 — Payment of Wages Less Than Entitled)

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3 8.1 Plaintiff and the Class reallege and incorporate by reference each and every allegation set
4 forth in the preceding paragraphs.

5 8.2 Under RCW 49.46.090, employers must pay employees all wages to which they
6 are entitled under the Washington Minimum Wage Act (WMWA).

7 8.3 By the actions alleged above, Pagliacci has violated the provisions of RCW
8 49.46.090 by failing to pay any wage whatsoever to Plaintiff and Class members for their
9 missed rest and meal breaks.

10 8.4 Pagliacci has also violated the provisions of RCW 49.46.090 by failing to pay
11 Plaintiff and Class members all their tips and gratuities.

12 8.5 RCW 49.46.010 defines “wage” as “compensation due to an employee by
13 reason of employment, payable in legal tender of the United States or checks on banks
14 convertible into cash on demand at full face value, subject to such deductions, charges, or
15 allowances as may be permitted by rules of the director.”

16 8.6 RCW 49.46.010’s broad definition of “wage” includes tips and gratuities.

17 8.7 Under Washington law, tips are wages that belong to the employee to whom
18 they are given.

19 8.8 RCW 49.46.020(3)(a) requires employers to pay to employees “all tips and
20 gratuities.”

21 8.9 Pagliacci’s mandatory tip pooling policies, “credit card charges” for tips paid by
22 credit card, and over-taxation of cash tips deprive delivery drivers of all the wages to which
23 they are entitled in violation of RCW 49.46.090.

24 8.10 As a result of the unlawful acts of Pagliacci, Plaintiff and the Class have been
25 deprived of compensation in amounts to be determined at trial and pursuant to RCW
26 49.46.090(1), Plaintiff and the Class are entitled to recovery of such damages, including
interest thereon, as well as attorneys’ fees and costs.

IX. FOURTH CLAIM FOR RELIEF
(Violations of RCW 49.46.020, 49.46.090, and 49.46.160 —
Washington Service Charge Collection and Payment Requirements)

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3 9.1 Plaintiff and the Class reallege and incorporate by reference each and every allegation set
4 forth in the preceding paragraphs.

5 9.2 RCW 49.46.160 defines a “service charge” as a “a separately designated
6 amount collected by employers from customers that is for services provided by employees, or
7 is described in such a way that customers might reasonably believe that the amounts are for
8 such services.” RCW 49.46.160 requires “[a]n employer that imposes an automatic service
9 charge related to food, beverages, entertainment, or portorage provided to a customer must
10 disclose in an itemized receipt and in any menu provided to the customer the percentage of
11 the automatic service charge that is paid or is payable directly to the employee or employees
12 serving the customer.”

13 9.3 If employers fail to warn customers—via “an itemized receipt and in any menu
14 provided to the customer”—that an automatic service charge is not payable to the employees
15 servicing the customer, then, under and by virtue of RCW 49.46.020(3) and RCW 49.46.090(1),
16 the money collected from the automatic service charge must be paid to the employees
17 servicing the customer.

18 9.4 RCW 49.46.020(3) provides that “[a]n employer must pay to its employees . . .
19 all service charges as defined under RCW 49.46.160 except those that, pursuant to RCW
20 49.46.160, are itemized as not being payable to the employee or employees servicing the
21 customer.”

22 9.5 RCW 49.46.090(1) provides that “[a]ny employer who pays any employee less
23 than wages to which such employee is entitled under or by virtue of this chapter, shall be
24 liable to such employee affected for the full amount of such wage rate, less any amount
25 actually paid to such employee by the employer, and for costs and such reasonable attorney’s
26 fees as may be allowed by the court.”

1 and WAC 296-126-028, Plaintiff and the Class are entitled to recovery of such damages,
2 including interest thereon, as well as attorneys' fees under RCW 49.48.030 and costs.

3 **XI. SIXTH CLAIM FOR RELIEF**
4 **(RCW 49.52.050 – Willful Refusal to Pay Wages)**

5 11.1 Plaintiff and the Class reallege and incorporate by reference each and every allegation set
6 forth in the preceding paragraphs.

7 11.2 RCW 49.52.070 provides that any employer who “willfully and with intent to
8 deprive the employee of any part of his wages, pays any employee a lower wage than the
9 wage such employer is obligated to pay such employee by any statute, ordinance, or contract”
10 is guilty of a misdemeanor.

11 11.3 RCW 49.52.070 provides that any employer who violates the foregoing statute
12 shall be liable in a civil action for twice the amount of wages withheld, together with costs of
13 suit and reasonable attorneys' fees.

14 11.4 The alleged unlawful actions by Defendant against Plaintiff and the Class, as set
15 forth above, were committed willfully and with intent to deprive Plaintiff and the Class of part
16 of their wages.

17 11.5 As such, based on the above allegations, Defendant violated the provisions of
18 RCW 49.52.050.

19 11.6 As a result of the unlawful acts of Defendant, Plaintiff and the Class have been
20 deprived of compensation in amounts to be determined at trial, and pursuant to RCW
21 49.52.070 are entitled to recovery of twice such amounts, including interest thereon,
22 attorneys' fees and costs.

23 **XII. SEVENTH CLAIM FOR RELIEF**
24 **(Violations of SMC 14.20.020 – Failure to Pay All Compensation Owed)**

25 12.1 Plaintiff and the Class reallege and incorporate by reference each and every allegation set
26 forth in the preceding paragraphs.

1 12.2 SMC 14.20.020 provides that “[a]n employer shall pay all compensation owed
2 to an employee by reason of employment on an established regular pay day at no longer than
3 monthly payment intervals.”

4 12.3 SMC 14.20.025 provides that each time compensation is paid, an employer
5 shall give written notice to the employee of all hours worked and all deductions taken by the
6 employer for that pay period.

7 12.4 SMC 14.20.30 provides that the employer must also retain payroll records that
8 document all hours worked by each employee, including straight-time and overtime hours,
9 and records of all deductions taken from the employee’s wages each pay period.

10 12.5 SMC 14.20.045 provides that the failure of an employer to comply with any
11 requirement imposed upon it under Chapter 14.20 (“Wage Theft Ordinance”) constitutes a
12 violation of the ordinance.

13 12.6 SMC 14.20.090(A) provides that “any person or class of persons that suffers
14 financial injury as a result of a violation of [the Wage Theft Ordinance] . . . may be awarded
15 reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to
16 remedy the violation including, without limitation, the payment of any unpaid compensation
17 plus interest due to the person and liquidated damages in an additional amount of up to twice
18 the unpaid compensation”

19 12.7 By the actions alleged above, Defendant has violated the provisions of SMC
20 14.20.020 by failing to pay all compensation owed to Plaintiff and Class members by reason of
21 their employment, including compensation for missed rest and meal breaks; compensation for
22 all hours of work; full payment of all wages and tips; reimbursement for expenses; and
23 compensation for unlawful deductions from wages owed.

24 12.8 As a result of the unlawful acts of Defendant, Plaintiff and members of the
25 Class have been deprived of compensation in amounts to be determined at trial, and Plaintiff
26 and members of the Class are entitled to the recovery of such damages, including interest

1 thereon, an additional amount of twice the unpaid compensation, and attorneys' fees and
2 costs under SMC 14.20.090.

3 **XIII. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on his own behalf and on behalf of the members of the Class,
5 pray for a judgment against Pagliacci Pizza, Inc., as follows:

- 6 A. Certify the proposed Class;
7 B. Appoint Plaintiff as Class representative;
8 C. Appoint the undersigned attorneys as Class counsel;
9 D. Declare that the actions complained of herein violate Washington law;
10 E. Award Plaintiff and Class members compensatory and exemplary damages;
11 F. Award attorneys' fees and costs to Plaintiff's attorneys, as allowed by law;
12 G. Award pre-judgment and post-judgment interest to Plaintiff and Class

13 members, as provided by law; and

- 14 H. Grant such other and further relief as this Court deems necessary.

15 RESPECTFULLY SUBMITTED AND DATED this 20th day of October, 2017.

16 TERRELL MARSHALL LAW GROUP PLLC

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