

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

Derrick Thomas,

*On behalf of himself and those
similarly situated,*

Plaintiff,

v.

Papa John's International, Inc.; It's Only
Downtown Pizza, Inc.; It's Only Pizza, Inc.;
It's Only Downtown Pizza II Inc.; It's Only
Papa's Pizza LLC; and Michael Hutmier,

Defendants.

Case No. 1:17-CV-411

Judge Michael R. Barrett

**PAPA JOHN'S INTERNATIONAL, INC.'S ANSWER TO
PLAINTIFF'S CLASS AND COLLECTIVE ACTION COMPLAINT**

Defendant Papa John's International, Inc. ("PJI"), by and through its attorneys, Seyfarth
Shaw LLP, and for its Answer to Plaintiff's Class and Collective Action Complaint

("Complaint"), states as follows:¹

COMPLAINT ¶1:

Plaintiff Derrick Thomas, on behalf of himself and all similarly-situated individuals, brings this action against Defendants Papa John's International, Inc., It's Only Downtown Pizza, Inc., It's Only Pizza, Inc., It's Only Downtown Pizza II Inc., It's Only Papa's Pizza LLC, and Michael Hutmier (collectively "Defendants"). Plaintiff seeks appropriate monetary, declaratory, and equitable relief based on Defendants' willful failure to compensate Plaintiff and similarly-situated individuals with minimum wages as required by the Fair Labor Standards Act ("FLSA"),

¹ Plaintiff worked at a franchisee-owned Papa John's branded store and his claims are on behalf of delivery drivers who worked at one or more of the 47 Cincinnati Regional Stores, all of which are franchisee-owned. Plaintiff has not asserted any claims in the Complaint on behalf of any delivery drivers who worked at Papa John's branded stores owned by PJI. As such, no admission or denial herein is to be construed as an admission or denial concerning any PJI delivery driver, PJI-owned store, or any PJI employment policies or practices. PJI makes no representations with respect to its employment policies or practices as those policies relate to its corporate-owned stores.

the Ohio Constitution, Article II, Section 34a (“Section 34a”), O.R.C. § 4113.15 (Ohio’s “Prompt Pay Act”), and O.R.C. § 2307.60.

ANSWER:

PJI admits that Plaintiff brings claims as stated but denies that PJI engaged in any of the conduct or practices alleged. PJI denies the remaining allegations in Paragraph 1.

COMPLAINT ¶2:

Papa John’s International, Inc. (“PJI”) is the third largest pizza chain in the world.

ANSWER:

Due to the vague nature of the allegation, PJI is without knowledge or information sufficient to form a belief about the truth of the allegation in Paragraph 2.

COMPLAINT ¶3:

The majority of Papa John’s restaurants—approximately 85%—are operated by franchisees.

ANSWER:

PJI admits that, as of December 31, 2017, there were 5,199 Papa John’s restaurants in operation, consisting of 743 corporate-owned and 4,456 franchised restaurants. PJI denies the remaining allegations in Paragraph 3.

COMPLAINT ¶4:

It’s Only Downtown Pizza, Inc., It’s Only Pizza, Inc., It’s Only Papa’s Pizza LLC, and Michael Hutmier own and operate Papa John’s’ franchise locations in the Cincinnati, Ohio area (the “Cincinnati Regional Stores”).

ANSWER:

PJI admits the allegations in Paragraph 4.

COMPLAINT ¶5:

Plaintiff worked for Defendants as a delivery driver at their Papa John’s Pizza restaurant on Montgomery Road in Cincinnati, Ohio.

ANSWER:

PJI denies the allegations in Paragraph 5 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶6:

Defendants have repeatedly violated the FLSA, Section 34a, and the Prompt Pay Act by improperly applying a tip credit to delivery driver wages, by failing to adequately reimburse delivery drivers for their delivery expenses, and by taking unlawful deductions from delivery drivers' wages, and thereby failing to pay delivery drivers the legally mandated minimum wage for all hours worked, and minimum overtime rate for hours worked in excess of 40 per workweek.

ANSWER:

PJI denies the allegations in Paragraph 6 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶7:

Defendants maintain a policy and practice of failing to reimburse delivery drivers for costs and expenses essential to their employment, including but not limited to automobile costs, gasoline, insurance, and automobile maintenance expenses, causing Plaintiff's and similarly situated delivery drivers' wages to fall below minimum wage.

ANSWER:

PJI denies the allegations in Paragraph 7 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶8:

At all relevant times, Defendants have failed to take reasonable steps to ensure delivery drivers received adequate reimbursement for their automobile expenses.

ANSWER:

PJI denies the allegations in Paragraph 8 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶9:

Defendants have taken unlawful deductions from the wages of Plaintiff and similarly situated delivery drivers for “uniforms” and “insurance.”

ANSWER:

PJI denies the allegations in Paragraph 9 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶10:

All delivery drivers at the Cincinnati Regional Stores, including Plaintiff, are subject to the same or similar employment policies and practices, including policies and practices with respect to wages, out-of-pocket expenses, and deductions.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 10.

COMPLAINT ¶11:

Defendants maintain a policy and practice of underpaying their delivery drivers in violation of the FLSA, 29 U.S.C. § 201, *et seq.*, Section 34a, and the Prompt Pay Act, O.R.C. § 4113.15.

ANSWER:

PJI denies the allegations in Paragraph 11 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶12:

Plaintiff brings this action on behalf of himself and similarly situated current and former delivery drivers who elect to opt in pursuant to FLSA, 29 U.S.C. § 216(b) to remedy violations of the FLSA wage and hour provisions by Defendants.

ANSWER:

PJI admits that Plaintiff purports to bring his action on behalf of himself and similarly situated current and former delivery drivers who elect to opt in pursuant to FLSA, 29 U.S.C. §

216(b) to remedy alleged violations of the FLSA wage and hour provisions. PJI denies that collective action treatment is appropriate or that the collective action can be certified as alleged. PJI denies the remaining allegations in Paragraph 12 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint

COMPLAINT ¶13:

Plaintiff brings this action on behalf of himself and similarly situated current and former delivery drivers in Ohio, pursuant to Federal Rule of Civil Procedure 23, to remedy violations of Section 34a, the Prompt Pay Act, and O.R.C. § 2307.60.

ANSWER:

PJI admits that Plaintiff purports to bring his action on behalf of himself and similarly situated current and former delivery drivers in Ohio, pursuant to Federal Rule of Civil Procedure 23, to remedy alleged violations of Section 34a, the Prompt Pay Act, and O.R.C. § 2307.60. PJI denies that class action treatment is appropriate or that the alleged class can be certified. PJI denies the remaining allegations in Paragraph 13 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint

I. Jurisdiction and Venue

COMPLAINT ¶14:

Under 28 U.S.C. § 1331 and 29 U.S.C. § 216(b), this Court has jurisdiction over Plaintiff's FLSA claims.

ANSWER:

PJI admits the allegations in Paragraph 14.

COMPLAINT ¶15:

Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Plaintiff's Ohio law claims.

ANSWER:

PJI admits the allegations in Paragraph 15.

COMPLAINT ¶16:

Venue in this Court is proper under 28 U.S.C. § 1391(b) because the parties reside in this district, and a substantial part of the events giving rise to the claim herein occurred in this district.

ANSWER:

PJI denies the allegations in Paragraph 16.

II. Parties

Plaintiff

Derrick Thomas

COMPLAINT ¶17:

Plaintiff resides in the Southern District of Ohio. At all times relevant, Plaintiff worked within the boundaries of Southern District of Ohio.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 17.

COMPLAINT ¶18:

At all times relevant, Plaintiff was an “employee” of Defendants as defined in the FLSA and Section 34a.

ANSWER:

PJI denies the allegations in Paragraph 18 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶19:

Plaintiff has given written consent to join this action.

ANSWER:

PJI admits that Plaintiff attached as Exhibit 2 to the Complaint a document purporting to be a consent form signed by Plaintiff. PJI is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 19.

Defendants

COMPLAINT ¶20:

Defendants have jointly employed Plaintiff and similarly situated delivery drivers at all times relevant.

ANSWER:

PJI denies the allegations in Paragraph 20 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶21:

Each of the Defendants had control over Plaintiff and similarly situated delivery drivers' working conditions.

ANSWER:

PJI denies the allegations in Paragraph 21 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶22:

Defendants are part of a single integrated enterprise.

ANSWER:

PJI denies the allegations in Paragraph 22 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶23:

At all times relevant, the Cincinnati Regional Stores shared common management and were centrally controlled and/or owned all Defendants.

ANSWER:

PJI denies the allegations in Paragraph 23 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶24:

At all times relevant, Defendants maintained control over labor relations at the Cincinnati Regional Stores.

ANSWER:

PJI denies the allegations in Paragraph 24 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶25:

During all relevant times, Defendants permitted employees to transfer or be shared by and between the Cincinnati Regional Stores without retraining.

ANSWER:

PJI denies the allegations in Paragraph 25 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶26:

Defendants share or co-determine those matters governing the essential terms and conditions of employment for Plaintiff and similarly situated delivery drivers at the Cincinnati Regional Stores.

ANSWER:

PJI denies the allegations in Paragraph 26 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶27:

Defendants suffer or permit Plaintiff and other delivery drivers to work.

ANSWER:

PJI denies the allegations in Paragraph 27 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶28:

Defendants have direct or indirect control of the terms and conditions of Plaintiffs' work and the work of similarly situated delivery drivers.

ANSWER:

PJI denies the allegations in Paragraph 11 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶29:

PJI possesses authority to control employees' terms and conditions of employment at the Cincinnati Regional Stores, and also exercises that authority.

ANSWER:

PJI denies the allegations in Paragraph 29 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶30:

During all relevant times, Defendants exercised operational control over the delivery drivers at the Cincinnati Regional Stores, including, but not limited to, control over recruiting and training of delivery drivers, compensation of delivery drivers, job duties of delivery drivers, reimbursements to delivery drivers, recruiting and training managers, design and layout of the restaurants, sales and marketing programs, public relations programs, promotional services, appearance and conduct standards, inventory, and inventory controls.

ANSWER:

PJI denies the allegations in Paragraph 30 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

Papa John's International, Inc.

COMPLAINT ¶31:

Defendant PJI is a foreign corporation organized under the laws of the state of Delaware, with its principal place of business in Kentucky.

ANSWER:

PJI admits it is a Delaware corporation and that it maintains its principal place of business in Kentucky.

COMPLAINT ¶32:

PJI is an “employer” of Plaintiff and similarly situated delivery drivers as that term is defined by the FLSA, the OMFWSA, and Section 34a.

ANSWER:

PJI denies the allegations in Paragraph 32 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶33:

Upon information and belief, PJI applies or causes to be applied substantially the same employment policies, practices, and procedures to all delivery drivers at all of its locations, including policies, practices, and procedures relating to payment of minimum wages, overtime wages, and reimbursement of automobile expenses.

ANSWER:

PJI denies the allegations in Paragraph 33 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶34:

At all relevant times, PJI maintained control, oversight, and direction over Plaintiff and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, expense reimbursements, and other practices.

ANSWER:

PJI denies the allegations in Paragraph 34 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶35:

At all relevant times, PJI has been and continues to be an enterprise engaged in “the production of goods for commerce” within the meaning of the phrase as used in the FLSA.

ANSWER:

PJI admits the allegations in Paragraph 35.

COMPLAINT ¶36:

PJI’s gross revenue exceeds \$500,000 per year.

ANSWER:

PJI admits the allegations in Paragraph 36.

It’s Only Downtown Pizza, Inc.

COMPLAINT ¶37:

It’s Only Downtown Pizza, Inc. is a domestic corporation.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 37.

COMPLAINT ¶38:

It’s Only Downtown Pizza, Inc.’s owner and Chief Executive Officer is Michael Hutmier.

ANSWER:

PJI admits the allegations in Paragraph 38.

COMPLAINT ¶39:

“It’s Only Downtown Pizza, Inc.” is the corporate entity that appears on the paystubs Plaintiff received for work he completed for Defendants.

ANSWER:

PJI denies that it was the employer of Plaintiff or any of the putative members of the collective or class action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 39.

COMPLAINT ¶40:

It's Only Downtown Pizza, Inc. is an "employer" of Plaintiff and similarly situated delivery drivers as that term is defined by the FLSA and Section 34a.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 40.

COMPLAINT ¶41:

Upon information and belief, It's Only Downtown Pizza, Inc. applies or causes to be applied substantially the same employment policies, practices, and procedures to all delivery drivers at all of its locations, including policies, practices, and procedures relating to payment of minimum wages, overtime wages, clock in/out procedures, and reimbursement of automobile expenses.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 41.

COMPLAINT ¶42:

It's Only Downtown Pizza, Inc. maintained control, oversight, and direction over Plaintiff and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, expense reimbursements, and other practices.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 42.

COMPLAINT ¶43:

It's Only Downtown Pizza, Inc. has been and continues to be an enterprise engaged in "the production of goods for commerce" within the meaning of the phrase as used in the FLSA.

ANSWER:

PJI admits the allegations in Paragraph 43.

COMPLAINT ¶44:

It's Only Downtown Pizza, Inc.'s gross revenue exceeds \$500,000 per year.

ANSWER:

Upon information and belief, PJI admits the allegations in Paragraph 44.

It's Only Pizza, Inc.

COMPLAINT ¶45:

It's Only Pizza, Inc. is a domestic corporation.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 45.

COMPLAINT ¶46:

It's Only Pizza, Inc.'s owner and Chief Executive Officer is Michael Hutmier.

ANSWER:

PJI admits that Michael Hutmier is listed in its records as one of the owners of It's Only Pizza, Inc. PJI is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 46.

COMPLAINT ¶47:

It's Only Pizza, Inc. is an "employer" of Plaintiff and similarly situated delivery drivers as that term is defined by the FLSA and Section 34a.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 47.

COMPLAINT ¶48:

Upon information and belief, It's Only Pizza, Inc. applies or causes to be applied substantially the same employment policies, practices, and procedures to all delivery drivers at all of its locations, including policies, practices, and procedures relating to payment of minimum wages, overtime wages, clock in/out procedures, and reimbursement of automobile expenses.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 48.

COMPLAINT ¶49:

It's Only Pizza, Inc. maintained control, oversight, and direction over Plaintiff and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, expense reimbursements, and other practices.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 49.

COMPLAINT ¶50:

It's Only Pizza, Inc. has been and continues to be an enterprise engaged in "the production of goods for commerce" within the meaning of the phrase as used in the FLSA.

ANSWER:

PJI admits the allegations in Paragraph 50.

COMPLAINT ¶51:

It's Only Pizza, Inc.'s gross revenue exceeds \$500,000 per year.

ANSWER:

Upon information and belief, PJI admits the allegations in Paragraph 51.

It's Only Downtown Pizza II Inc.

COMPLAINT ¶52:

It's Only Downtown Pizza II Inc. is a domestic corporation.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 52.

COMPLAINT ¶53:

It's Only Downtown Pizza II Inc.'s owner and Chief Executive Officer is Michael Hutmier.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 53.

COMPLAINT ¶54:

It's Only Downtown Pizza II Inc. is an "employer" of Plaintiff and similarly situated delivery drivers as that term is defined by the FLSA and Section 34a.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 54.

COMPLAINT ¶55:

Upon information and belief, It's Only Downtown Pizza II Inc. applies or causes to be applied substantially the same employment policies, practices, and procedures to all delivery drivers at all of its locations, including policies, practices, and procedures relating to payment of minimum wages, overtime wages, clock in/out procedures, and reimbursement of automobile expenses.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 55.

COMPLAINT ¶56:

It's Only Downtown Pizza II Inc. maintained control, oversight, and direction over Plaintiff and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, expense reimbursements, and other practices.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 56.

COMPLAINT ¶57:

It's Only Downtown Pizza II Inc. has been and continues to be an enterprise engaged in "the production of goods for commerce" within the meaning of the phrase as used in the FLSA.

ANSWER:

PJI admits the allegations in Paragraph 57.

COMPLAINT ¶58:

It's Only Downtown Pizza II Inc.'s gross revenue exceeds \$500,000 per year.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 58.

It's Only Papa's Pizza LLC

COMPLAINT ¶59:

It's Only Papa's Pizza LLC is a domestic limited liability company.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 59.

COMPLAINT ¶60:

It's Only Papa's Pizza LLC's owner and Chief Executive Officer is Michael Hutmier.

ANSWER:

PJI admits that Michael Hutmier is listed in its records as one of the owners of It's Only Pizza, Inc. PJI is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 60.

COMPLAINT ¶61:

It's Only Papa's Pizza LLC is an "employer" of Plaintiff and similarly situated delivery drivers as that term is defined by the FLSA and Section 34a.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 61.

COMPLAINT ¶62:

Upon information and belief, It's Only Papa's Pizza LLC applies or causes to be applied substantially the same employment policies, practices, and procedures to all delivery drivers at all of its locations, including policies, practices, and procedures relating to payment of minimum wages, overtime wages, clock in/out procedures, and reimbursement of automobile expenses.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 62.

COMPLAINT ¶63:

It's Only Papa's Pizza LLC maintained control, oversight, and direction over Plaintiff and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, expense reimbursements, and other practices.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 63.

COMPLAINT ¶64:

It's Only Papa's Pizza LLC has been and continues to be an enterprise engaged in "the production of goods for commerce" within the meaning of the phrase as used in the FLSA.

ANSWER:

PJI admits the allegations in Paragraph 64.

COMPLAINT ¶165:

It's Only Papa's Pizza LLC's gross revenue exceeds \$500,000 per year.

ANSWER:

Upon information and belief, PJI admits the allegations in Paragraph 65.

Michael Hutmier

COMPLAINT ¶166:

Michael Hutmier is the founder, owner, and operator of all of the Defendant entities.

ANSWER:

PJI denies the allegations in Paragraph 66.

COMPLAINT ¶167:

Michael Hutmier is the owner and CEO of It's Only Downtown Pizza, Inc.

ANSWER:

PJI admits that Michael Hutmier is listed in its records as one of the owners of It's Only Downtown Pizza, Inc. PJI is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 67.

COMPLAINT ¶168:

Michael Hutmier is the owner and CEO of It's Only Pizza, Inc.

ANSWER:

PJI admits that Michael Hutmier is listed in its records as one of the owners of It's Only Pizza, Inc. PJI is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 68.

COMPLAINT ¶69:

Michael Hutmier is the owner and CEO of It's Only Downtown Pizza II Inc.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 69.

COMPLAINT ¶70:

Michael Hutmier is the owner and CEO of It's Only Papa's Pizza LLC.

ANSWER:

PJI admits that Michael Hutmier is listed in its records as one of the owners of It's Only Pizza, Inc. PJI is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 70.

COMPLAINT ¶71:

According to his LinkedIn profile, Michael Hutmier is the "czar" at It's Only Pizza, Inc.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 71.

COMPLAINT ¶72:

Upon information and belief, Michael Hutmier resides in Cincinnati, Ohio.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 72.

COMPLAINT ¶73:

At all relevant times, Michael Hutmier has been an "employer" of Plaintiff and similarly situated delivery drivers as that term is defined by the FLSA and Section 34a.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 73.

COMPLAINT ¶74:

At all relevant times, Michael Hutmier has been actively involved in managing the operations of the Cincinnati Regional Stores.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 74.

COMPLAINT ¶75:

At all relevant times, Michael Hutmier has had control over Defendants' pay policies.

ANSWER:

PJI denies the allegations in Paragraph 75.

COMPLAINT ¶76:

At all relevant times, Michael Hutmier has had power over personnel and payroll decisions at the Cincinnati Regional Stores.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 76.

COMPLAINT ¶77:

At all relevant times, Michael Hutmier has had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 77.

COMPLAINT ¶78:

At all times relevant, Michael Hutmier has had the power to transfer the assets and liabilities of each of the named corporate defendants.

ANSWER:

PJI denies the allegations in Paragraph 78.

COMPLAINT ¶79:

At all relevant times, Michael Hutmier has had the power to declare bankruptcy on behalf of each of the named corporate defendants.

ANSWER:

PJI denies the allegations in Paragraph 79.

COMPLAINT ¶80:

At all relevant times, Michael Hutmier has had the power to enter into contracts on behalf of each of the named corporate defendants.

ANSWER:

PJI denies the allegations in Paragraph 80.

COMPLAINT ¶81:

At all relevant times, Michael Hutmier has had the power to close, shut down, and/or sell each of the named corporate defendants.

ANSWER:

PJI denies the allegations in Paragraph 81.

III. Facts

Classwide Factual Allegations

COMPLAINT ¶82:

During all relevant times, Defendants have operated approximately twenty-seven Cincinnati Regional Stores in the Cincinnati, Ohio area.

ANSWER:

PJI denies the allegations in Paragraph 82 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶83:

The primary function of the Cincinnati Regional Stores is to sell pizza and other food items to customers, whether they carry out or have their food delivered.

ANSWER:

PJI admits that the Cincinnati Regional Stores are Papa John's branded franchise pizza delivery and carryout restaurants. PJI is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 83.

COMPLAINT ¶84:

Each of the Cincinnati Regional Stores employs delivery drivers who are primarily responsible for delivering pizzas and other food items to customers' homes and workplaces.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 84.

COMPLAINT ¶85:

Plaintiff and the similarly situated persons Plaintiff seeks to represent are current and former delivery drivers employed by Defendants at the Cincinnati Regional Stores.

ANSWER:

PJI admits that Plaintiff purports to bring his action on behalf of himself and similarly situated current and former delivery drivers who elect to opt in pursuant to FLSA, 29 U.S.C. § 216(b). PJI admits that Plaintiff purports to bring his action on behalf of himself and similarly situated current and former delivery drivers in Ohio, pursuant to Federal Rule of Civil Procedure 23. PJI denies that class or collective action treatment is appropriate or that the alleged class or collective action can be certified. PJI denies the remaining allegations in Paragraph 85 and

denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶86:

All delivery drivers employed at the Cincinnati Regional Stores over the last three years have had essentially the same job duties—deliver pizza and other food items to customers.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 86.

COMPLAINT ¶87:

When there are no deliveries to make, Defendants' delivery drivers are required to work inside the Cincinnati Regional Stores building pizza boxes, making pizzas, cleaning, preparing food items, taking orders, and completing other duties inside the restaurant as necessary.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint, and is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 87.

COMPLAINT ¶88:

Defendants' delivery drivers are paid minimum wage while working inside the store.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint, and is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 88.

COMPLAINT ¶89:

Defendants' delivery drivers are paid minimum wage minus a tip credit while they are out on the road making deliveries.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint, and is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 89.

COMPLAINT ¶90:

Defendants take deductions from delivery drivers' wages for uniforms bearing the Papa John's logo.

ANSWER:

PJI denies the allegations in Paragraph 90 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶91:

Defendants take deductions from delivery drivers' wages for "insurance."

ANSWER:

PJI denies the allegations in Paragraph 91 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶92:

Defendants did not properly claim a tip credit from delivery drivers' wages because they did not provide notice pursuant to 29 U.S.C. § 203(m), and because they did not actually pay the tip credit minimum wage amount.

ANSWER:

PJI denies the allegations in Paragraph 92 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶93:

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

ANSWER:

PJI denies the allegations in Paragraph 93 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶94:

Defendants require delivery drivers to incur and/or pay job-related expenses, including but not limited to automobile costs and depreciation, gasoline expenses, automobile maintenance and parts, and other equipment necessary for delivery drivers to complete their job duties.

ANSWER:

PJI denies the allegations in Paragraph 94 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶95:

Pursuant to such requirements, Plaintiff and other similarly situated employees purchase gasoline, vehicle parts and fluids, automobile repair and maintenance services, automobile insurance, and suffered automobile depreciation all for the primary benefit of Defendants.

ANSWER:

PJI denies the allegations in Paragraph 95 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶96:

At all relevant times, Plaintiff and other similarly situated delivery drivers were reimbursed a flat per delivery amount, no matter how many miles the delivery driver travelled to complete the delivery.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 96.

COMPLAINT ¶97:

At all relevant times, Defendants have failed to pay Plaintiff and similarly situated delivery drivers the legally required minimum wage and overtime wages because they failed to adequately reimburse them for their automobile expenses.

ANSWER:

PJI denies the allegations in Paragraph 97 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶98:

Plaintiff and similarly situated delivery drivers typically average four to five miles per delivery.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 98.

COMPLAINT ¶99:

Plaintiff and similarly situated delivery drivers typically make approximately 2-5 deliveries per hour.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 99.

COMPLAINT ¶100:

According to the Internal Revenue Service, the standard mileage rate for the use of a car during the relevant time periods have been:

- a. 2014: 56 cents/mile
- b. 2015: 57.5 cents/mile
- c. 2016: 54 cents/mile
- d. 2017: 53.5 cents/mile

ANSWER:

PJI admits that the IRS published optional standard mileage rates used to calculate the allowable business deduction for the cost of operating an automobile for business, medical or moving purposes, and that those amounts are reflected in Paragraph 100 for those respective years. PJI denies the remaining allegations in Paragraph 100.

COMPLAINT ¶101:

As a result of the automobile expenses incurred by Plaintiff and other similarly situated delivery drivers, they were deprived of minimum wage and overtime wages guaranteed to them by the FLSA and Ohio law.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint, and is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 101.

COMPLAINT ¶102:

Defendants' managers at times also clock delivery drivers out onto their lower, "delivery pay rate" before a delivery order is ready to go out the door and while the delivery drivers are still completing tasks inside the store. This is done in an effort to improve the store's Customer Service Score, a metric created by PJI to evaluate performance based on, among other things, how long it takes for an order to go out for delivery. As a result, delivery drivers were regularly required to work in a non-tipped capacity while being paid at a tipped wage rate.

ANSWER:

PJI denies the allegations in Paragraph 102 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶103:

Defendants have failed to maintain records of delivery drivers' compensation.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI avers that it therefore is not obligated to maintain records of the compensation of the delivery drivers that are the subject of this litigation.

COMPLAINT ¶104:

At all relevant times, Defendants apply the same pay policies, practices, and procedures to all delivery drivers at the Cincinnati Regional Stores.

ANSWER:

PJI denies the allegations in Paragraph 104 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶105:

All of Defendants' delivery drivers had similar experiences to those of Plaintiffs. They were subject to the same reimbursement policy; received similar reimbursements; incurred similar automobile expenses; completed deliveries of similar distances and at similar frequencies; were subject to the same or similar deductions for the benefits of Defendants; and were paid at or near the applicable minimum wage rate before deducting unreimbursed vehicle costs.

ANSWER:

PJI denies the allegations in Paragraph 105 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶106:

Regardless of the precise amount of the per-delivery reimbursement at any given point in time, Defendants' reimbursement formula has resulted in an unreasonable underestimation of delivery drivers' automobile expenses throughout the recovery period, causing systematic violations of the federal minimum wage.

ANSWER:

PJI denies the allegations in Paragraph 106 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶107:

Because Defendants paid their drivers a gross hourly wage at precisely, or at least very close to, the applicable minimum wage, and because the delivery drivers incurred unreimbursed automobile expenses and had deductions taken from their wages for the benefit of Defendants, the delivery drivers “kicked back” to Defendants an amount sufficient to cause minimum wage violations.

ANSWER:

PJI denies the allegations in Paragraph 107 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶108:

While the amount of Defendants’ actual reimbursements per delivery may vary somewhat over time, Defendants are relying on the same flawed policy and methodology with respect to all delivery drivers at all of their other Papa John’s stores. Thus, although reimbursement amounts may differ somewhat by time or region, the amounts of under-reimbursements relative to automobile costs incurred are relatively consistent between time and region.

ANSWER:

PJI denies the allegations in Paragraph 108 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶109:

Defendants’ low reimbursement rates were a frequent complaint of at least some of Defendants’ delivery drivers, yet Defendants continued to reimburse at a rate much less than any reasonable approximation of delivery drivers’ automobile expenses.

ANSWER:

PJI denies the allegations in Paragraph 109 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶110:

Defendants have willfully failed to pay federal and Ohio state minimum wage and overtime to Plaintiff and similarly situated delivery drivers at the Cincinnati Regional Stores.

ANSWER:

PJI denies the allegations in Paragraph 110 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

Plaintiff's Individual Factual Allegations

COMPLAINT ¶111:

Defendants harmed Plaintiff in a manner consistent with their policies, patterns, and practices as described herein.

ANSWER:

PJI denies the allegations in Paragraph 111 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶112:

Plaintiff worked at the Papa John's Pizza restaurant located on Hamilton Road in Cincinnati, Ohio from February to May 2017.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the collective or class action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 112.

COMPLAINT ¶113:

Plaintiff typically worked approximately 15-30 hours per week for Defendants.

ANSWER:

PJI denies the allegations in Paragraph 113 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶114:

As a delivery driver, Plaintiff delivered pizza and other food items to Defendants' customers' homes and businesses.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the collective or class action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 114.

COMPLAINT ¶115:

When he was not making deliveries, Plaintiff worked inside the restaurant, completing tasks such as taking orders, making pizza, building pizza boxes, taking out trash, sweeping up the food line, mopping and sweeping, and completing other general tasks within the store.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the collective or class action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 115.

COMPLAINT ¶116:

At all times during his employment, Plaintiff was qualified to perform the essential functions of his job and performed his duties competently.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the collective or class action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 116.

COMPLAINT ¶117:

Defendants paid Plaintiff minimum wage minus a tip credit for all hours worked while he was making deliveries, specifically \$4.08 per hour.

ANSWER:

PJI denies the allegations in Paragraph 117 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶118:

Defendants paid Plaintiff minimum wage—\$8.15 per hour—for hours worked inside the store.

ANSWER:

PJI denies the allegations in Paragraph 118 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶119:

Defendants took unlawful deductions from Plaintiff's wages for uniform expenses and insurance costs that caused his pay rate to drop below minimum wage.

ANSWER:

PJI denies the allegations in Paragraph 119 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶120:

Plaintiff regularly made approximately two to four deliveries per hour during the hours he works as a delivery driver.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 120.

COMPLAINT ¶121:

During Plaintiff's employment with Defendants, Defendants failed to adequately reimburse Plaintiff for automobile and other job-related expenses.

ANSWER:

PJI denies the allegations in Paragraph 121 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶122:

Plaintiff was reimbursed approximately \$1.20 for each delivery he completed for Defendants.

ANSWER:

PJI denies the allegations in Paragraph 122 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶123:

Plaintiff regularly drove between 4 and 5 miles round trip per delivery.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 123.

COMPLAINT ¶124:

Thus, Defendants' average effective reimbursement rate for Plaintiff was approximately \$.267 per mile (\$1.20 per delivery / 4.5 average miles per delivery).

ANSWER:

PJI denies the allegations in Paragraph 123 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶125:

During this same time period, the IRS business mileage reimbursement has been \$.535 per mile, which reasonably approximated the automobile expenses incurred delivering pizzas. <http://www.irs.gov/Tax-Professionals/Standard-Mileage-Rates>. Using that IRS rate as a reasonable approximation of Plaintiff's automobile expenses, every mile driven on the job decreased his net wages by approximately \$.268 (\$.535 - \$.267) per mile. Considering Plaintiff's estimate of about 4.5 average miles per delivery, Defendants under-reimbursed her about \$1.206 per delivery (\$.268 x 4.5 average miles).

ANSWER:

PJI admits that the IRS published optional standard mileage rate used to calculate the allowable business deduction for the cost of operating an automobile for business, medical or moving purposes. PJI denies the remaining allegations in Paragraph 125 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶126:

Thus, Plaintiff consistently “kicked back” to Defendants approximately \$3.618 per hour (\$1.206 per delivery x 3 deliveries per hour).

ANSWER:

PJI denies the allegations in Paragraph 126 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶127:

Plaintiff was regularly required to work inside the restaurant while being paid at his delivery pay rate because he would be clocked out early onto his delivery pay rate by managers who were concerned with meeting certain metrics about timely delivery.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 127.

COMPLAINT ¶128:

As a result of unreimbursed automobile expenses, unlawful deductions, and clock in/out procedures, Defendants have failed to pay Plaintiff minimum wage as required by law.

ANSWER:

PJI denies the allegations in Paragraph 128 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

Joint Employer Allegations

COMPLAINT ¶129:

At all relevant times, Defendants jointly employed Plaintiff and similarly situated employees at the Cincinnati Regional Stores.

ANSWER:

PJI denies the allegations in Paragraph 129 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶130:

PJI exercises substantial control over Plaintiff and similarly situated delivery drivers, both directly and indirectly.

ANSWER:

PJI denies the allegations in Paragraph 130 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶131:

PJI has the power to curtail the unlawful policies, patterns and/or practices alleged herein, but has refrained from doing so in order to continue to reap the profits from the franchise relationship.

ANSWER:

PJI denies the allegations in Paragraph 131 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶132:

PJI has a clear and direct interest in franchise stores minimizing labor costs to increase profitability—even if it means minimizing labor costs below state and federal minimums—particularly if they are permitted to collect profits while also being insulated from legal liability.

ANSWER:

PJI denies the allegations in Paragraph 132 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶133:

In 2016, Papa John's did \$3.7 billion in global system-wide sales.

ANSWER:

PJI admits the allegations in Paragraph 133 as set forth in its 2016 Annual Report, Form 10-K.

COMPLAINT ¶134:

In 2016, PJI's adjusted earnings per share was \$2.55, a 22% increase over 2015.

ANSWER:

PJI admits the allegations in Paragraph 134 as set forth in its 2016 Annual Report, Form 10-K.

COMPLAINT ¶135:

PJI opened its 5,000th store in December 2016.

ANSWER:

PJI admits the allegations in Paragraph 135.

COMPLAINT ¶136:

In their 2016 Annual Report, PJI states: "With our rapid growth and expansion poised to continue in 2017 and beyond, *it's important to stay true to our approach of operating one store 5,000 times.*"

ANSWER:

PJI admits the allegations in Paragraph 136.

COMPLAINT ¶137:

As of December 25, 2016, there were 5,097 Papa John's Pizza restaurants in operations worldwide.

ANSWER:

PJI admits the allegations in Paragraph 137.

COMPLAINT ¶138:

Of those 5,097 restaurants, 4,353 were franchise stores.

ANSWER:

PJI admits the allegations in Paragraph 138 as set forth in its 2016 Annual Report, Form 10-K.

COMPLAINT ¶139:

PJI devotes significant resources to providing franchisees with assistance in restaurant operations, training, marketing, site selection and restaurant design, and requires their franchisees to closely adhere to PJI's operating standards and procedures. These actions directly and indirectly control the work of delivery drivers at the Cincinnati Regional Stores.

ANSWER:

PJI admits that that in its 2016 Annual Report, Form 10-K it states that PJI devotes significant resources to providing franchisees with assistance in restaurant operations, training, marketing, site selection and restaurant design. PJI admits that it requires franchises to adhere to PJI's brand standards. PJI denies the remaining allegations in Paragraph 139 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶140:

Franchisees pay 5% of net sales as a royalty fee to PJI.

ANSWER:

PJI admits that some franchisees pay 5% of net sales as a royalty fee, and denies the remaining allegations in Paragraph 140.

COMPLAINT ¶141:

In 2016, PJI earned \$102,980,000.00 in royalty fees from its franchise stores.

ANSWER:

PJI admits that it earned \$102,980,000.00 in royalty fees from its North American franchise stores as set forth in its 2016 Annual Report, Form 10-K, and denies the remaining allegations in Paragraph 141.

COMPLAINT ¶142:

Franchisees' "net sales" are determined not by the franchisee but by PJI, through PJI's Information System, which franchisees are required to use.

ANSWER:

PJI admits that pursuant to the Franchise Agreement - Standard Restaurant, PJI determines the Net Sales, as that term is defined in the Franchise Agreement - Standard Restaurant, via the Information System, which most domestic franchisees contractually agree to use under the terms of the agreement. PJI denies the remaining allegations in Paragraph 142.

COMPLAINT ¶143:

PJI's franchisees must get approval from PJI for restaurant design and location from a member of the PJI development team. PJI assists its franchisees in selecting sites, developing restaurants, and evaluating physical locations. PJI provides layout and design services for subcontractors, signage installers and telephone systems. Franchisees may purchase complete new store equipment packages but only through an approved third-party supplier.

ANSWER:

PJI admits that each franchisee is responsible for selecting the location for its restaurants but must obtain PJI approval of the restaurant design and location. PJI admits that it assists its franchisees in selecting sites, developing restaurants, and evaluating physical locations. PJI admits that it provides layout and design services and recommendations for subcontractors, signage installers and telephone systems to Papa John's franchisees. PJI admits that franchisees can purchase complete new store equipment packages through an approved third-party supplier. PJI denies the remaining allegations in Paragraph 143.

COMPLAINT ¶144:

According to PJI, with few exceptions, domestic restaurants do not offer a dine-in area. As such, franchisees operating Papa John's restaurants are restricted from offering anything but delivery or carryout services to their customers.

ANSWER:

PJI admits that most domestic restaurants do not offer a dine-in area. PJI denies the remaining allegations in Paragraph 144.

COMPLAINT ¶145:

PJI provides franchisees with specifics for fixtures, furnishings, décor, communications, and computer hardware and software, signs and equipment.

ANSWER:

PJI admits that pursuant to the Franchise Agreement - Standard Restaurant, PJI may provide franchisees with specifications for fixtures, furnishings, decor, communications and computer hardware and software, signs and equipment. PJI denies the remaining allegations in Paragraph 145.

COMPLAINT ¶146:

When a franchisee opens a new restaurant, PJI corporate employees come to the restaurant to assist with the opening, and focuses on on-site training of team members, and training management on staffing.

ANSWER:

PJI denies the allegations in Paragraph 146. PJI admits that in some instances, a PJI employee is present at a franchise store opening to assist with the opening of the store. PJI denies the remaining allegations in Paragraph 146.

COMPLAINT ¶147:

PJI's franchisees are contractually obligated to adhere to PJI's proprietary system for operations, which includes special recipes and menu items; distinctive design, décor, color scheme and furnishings; software and programs; standards, specifications and procedures for operations; systems for communicating with PJI, suppliers, and customers; procedures for

quality control; training assistance; and advertising and promotional programs. PJI refers to these dictates, taken together, as the “System.”

ANSWER:

PJI admits that it requires franchisees to adhere to PJI’s brand standards and a franchisee’s obligation to adhere to these brand standards is set forth in the franchise agreement entered into between PJI and the franchisee. PJI admits that, from time to time, depending on the unique circumstances of the franchisee, it may improve, amend, and further develop the “System” as that term is defined in the Franchise Agreement - Standard Restaurant. PJI denies the remaining allegations in Paragraph 147.

COMPLAINT ¶148:

PJI provides franchisees with operating manuals (“Manuals”) that contain the mandatory and suggested specifications, standards and operating procedures prescribed by PJI.

ANSWER:

PJI admits that it lends to franchisees “Manuals,” as that term is defined in the Franchise Agreement - Standard Restaurant, and that the Manuals, among other things, contain the mandatory and suggested specifications, standards and operating procedures prescribed from time to time by PJI. PJI denies that franchisees are bound by any human resources standards and guidelines therein. PJI denies the remaining allegations in Paragraph 148.

COMPLAINT ¶149:

If and when PJI amends or modifies their Manuals, franchisees must promptly adopt and use the formulas, methods, procedures, policies, menus, recipes, food products, and other standards and specifications contained in the Manuals, policy and procedure statements and other written notices as issued and/or as modified from time to time by PJI.

ANSWER:

PJI admits the allegations in Paragraph 149 as they relate to the Franchise Agreement - Standard Restaurant. PJI denies that franchisees are bound by any human resources standards or guidelines therein.

COMPLAINT ¶150:

Franchisees also receive a Papa John's Franchise Team Member Handbook, which is drafted and provided by PJI, and explains job responsibilities of franchisees' employees and operations of Papa John's restaurants.

ANSWER:

PJI denies the allegations of Paragraph 150.

COMPLAINT ¶151:

Franchisees are not permitted to implement any change in the System without PJI's prior consent.

ANSWER:

PJI admits the allegations in Paragraph 151 as they relate to the Franchise Agreement - Standard Restaurant.

COMPLAINT ¶152:

However, PJI, in its sole discretion, may modify the System, including specific standards, policies, and/or procedures, with respect to any franchisee based on PJI's assessment of the franchisee's particular situation.

ANSWER:

PJI admits that, pursuant to the Franchise Agreement - Standard Restaurant, PJI reserves the right, in its sole discretion and as it may deem in the best interests of the franchisee or the Chain, to vary the System, including specific standards, policies and/or procedures, within the Restaurant or any other restaurant(s) in the Chain based upon peculiarities of a particular location or circumstances, including: density of population and other demographic factors; size of the Territory; business practices or customs; and any other condition that PJI deems to be of importance to the operation of such restaurant(s) or the Chain. PJI denies the remaining allegation in Paragraph 152.

COMPLAINT ¶153:

PJI periodically inspects and evaluates each franchisee's operations at such times and in such manner as PJI reasonably determines.

ANSWER:

PJI admits that, pursuant to the Franchise Agreement - Standard Restaurant, PJI has the right to periodically inspect and evaluate each franchisee's operations at such times and in such manner as PJI reasonably determines. PJI denies the remaining allegations in Paragraph 153.

COMPLAINT ¶154:

PJI inspects franchisees to ensure compliance with all required standards, specifications and procedures of the System, the franchise agreement, and the Manuals. Those inspections may include review sales and order forms, observing all employees, interviewing all employees, interviewing customers, and conducting any type of audit or review necessary to evaluate the franchisee's compliance with all required standards, specifications, or procedures.

ANSWER:

PJI admits that, pursuant to the Franchise Agreement - Standard Restaurant, PJI has the right to inspect franchisees to ensure compliance with all required standards, specifications and procedures of the System, the franchise agreement, and the Manuals, and that such inspections vary depending on the unique circumstances of the franchisee. PJI admits that pursuant to the Franchise Agreement - Standard Restaurant, those inspections may include (i) reviewing sales and order forms; (ii) observing the Principal Operator, managers and all your other employees; (iii) interviewing any such persons; (iv) interviewing customers of the Restaurant; and (v) conducting any type of audit or review necessary to evaluate your compliance with all required standards, specifications or procedures. PJI denies the remaining allegations in Paragraph 154.

COMPLAINT ¶155:

PJI retains the right to make suggestions and give mandatory instructions to franchisees with respect to their operation of the restaurants, as PJI considers necessary or appropriate to ensure compliance with the then-current quality standards and other requirements of the System and to protect the goodwill and image of PJI.

ANSWER:

PJI admits that, pursuant to the Franchise Agreement - Standard Restaurant, PJI retains the right to make suggestions and give mandatory instructions to franchisees with respect to their operation of the restaurants, as PJI considers necessary or appropriate to ensure compliance with the then-current quality standards and other requirements of the System and to protect the goodwill and image of PJI. PJI denies that it provides mandatory instructions to franchisees regarding employment practices and denies the remaining allegations in Paragraph 155.

COMPLAINT ¶156:

PJI requires that each franchisee have a Principal Operator, and that the Principal operator be responsible for, among other things, supervising employees to ensure that the highest standard of service, as defined by PJI, is maintained.

ANSWER:

PJI admits that, pursuant to the Franchise Agreement - Standard Restaurant, a franchisee is required to designate a Principal Operator, as that term is defined in the agreement, and that the Principal Operator is responsible for the management and operation of the restaurant, which includes, among other things, maintaining the highest standards of product quality and consistency; maintaining the Restaurant in the highest condition of sanitation, cleanliness and appearance; and supervising employees to ensure that the highest standard of service is maintained. PJI denies the remaining allegations in Paragraph 156.

COMPLAINT ¶157:

Principals and managers at franchise restaurants are required to complete Papa John's University, which teaches them every aspect of the proper operation of a Papa John's restaurant, and was created by PJI. Papa John's University involves a minimum of ten weeks of training on everything from making a pizza to managing a multi-unit Papa John's operation.

ANSWER:

PJI admits that it requires new Principal Operators to attend Papa John's University but denies that all Principal Operators do in fact attend it. PJI denies the remaining allegations in Paragraph 157.

COMPLAINT ¶158:

All managers, including shift managers, must be certified in PJI's operational standards.

ANSWER:

PJI admits that managers are supposed to complete a certain level of training. PJI denies the remaining allegations in Paragraph 158.

COMPLAINT ¶159:

PJI requires franchisees to conduct training using materials, equipment and supplies provided by PJI.

ANSWER:

PJI admits that it provides franchisees with access to some training materials. PJI denies the remaining allegations in Paragraph 159.

COMPLAINT ¶160:

PJI has an online training system called Cornerstone that franchise employees are required to complete.

ANSWER:

PJI admits that a third-party Learning Management System called Cornerstone provides franchisees with access to PJI online courses for training purposes. PJI denies the remaining allegations in Paragraph 160.

COMPLAINT ¶161:

PJI training includes time dedicated to specific categories that directly affect delivery drivers: establishing an opening and closing routine, taking an order, making a pizza, delivering a pizza, customer care, food prep, food safety, cleaning and sanitation, shift management, safety and security, inventory management, dough management, organization of storage areas, cash

management, labor management, retention, training, workplace harassment, labor scheduling, performance management, recruiting, marketing, and coaching, among others. Each of these categories is specifically addressed in the training materials created by PJI.

ANSWER:

PJI admits that a third-party Learning Management System called Cornerstone provides franchisees with access to PJI online courses for training purposes. PJI denies the remaining allegations in Paragraph 161.

COMPLAINT ¶162:

All team members must complete a new team member orientation training and be certified in three of the seven work stations (work stations are defined by PJI). New team member orientation and at least one station training certification must be completed in the first five shifts of employment, and the second and third station training certifications must be completed by the employee's twentieth shift.

ANSWER:

COMPLAINT ¶163: PJI admits that a third-party Learning Management System called Cornerstone provides franchisees with access to PJI online courses for training purposes but PJI denies the remaining allegations in Paragraph 162.

PJI reserves the right to require any of the franchisees' employees to go through the training certification process.

ANSWER:

PJI admits that, pursuant to the Franchise Agreement - Standard Restaurant, a franchisee must conduct the training of the franchise employee and any additional training required under the agreement. PJI denies the remaining allegations in Paragraph 163.

COMPLAINT ¶164:

Each franchisee is assigned a franchise business director from PJI, who communicate PJI's operating and marketing information and new initiatives to the franchisees.

ANSWER:

PJI admits the allegations in Paragraph 164.

COMPLAINT ¶165:

Ongoing compliance with franchisee training requirements is monitored by the PJI's Global Operations Support and Training Team.

ANSWER:

PJI denies the allegations in Paragraph 165.

COMPLAINT ¶166:

The PJI Franchise Advisory Council consists of company and franchisee representatives who hold regular meetings to discuss operations, growth, and other business issues.

ANSWER:

PJI admits the allegations in Paragraph 166.

COMPLAINT ¶167:

PJI acknowledges that labor costs and labor-related benefits are primary components in the cost of operation of Papa John's restaurants.

ANSWER:

PJI admits the allegations in Paragraph 167 as set forth in PJI's 2016 10-K.

COMPLAINT ¶168:

PJI states that in order to ensure compliance with the quality standards and other requirements of the System, franchisees must operate their restaurant through strict adherence to the standards, specifications, and policies of the System as they exist at the time, and as they may from time to time be modified. Such standards and policies include: specifications and preparation methods for food and beverages, days and hours of operation, menu items and services offered, requirements and specifications for uniforms and/or attire of restaurant personnel, use of specified emblems and Marks on containers, bags, boxes, napkins, and other products, methods of payment accepted from customers, and data privacy and security.

ANSWER:

PJI avers that the allegations in Paragraph 168 are paraphrasing language from PJI's Franchise Agreement - Standard Restaurant. PJI denies the allegations in Paragraph 168 to the extent they differ from language in PJI's Franchise Agreement - Standard Restaurant.

COMPLAINT ¶169:

PJI advertises job openings that exist at franchise locations.

ANSWER:

PJI admits that job applicants can access a public database of job postings via its website, including positions that franchisees may post for their franchise stores. PJI avers that these positions are marked as franchise positions and not integrated into PJI's corporate recruiting function because each franchise is independently operated and is responsible for its own hiring needs. PJI denies the remaining allegations in Paragraph 169.

COMPLAINT ¶170:

Upon information and belief, PJI created the job descriptions and job postings describing the pizza delivery driver role at the franchise locations.

ANSWER:

PJI denies the allegations in Paragraph 170.

COMPLAINT ¶171:

On the same page as an advertisement for a franchise delivery driver position on jobs.papajohns.com (specifically, e.g., <http://jobs.papajohns.com/us/en-US/Job-Details/Delivery-Driver-Job/Cleveland-OH/XjdP-jf755-ct103513-jid70203210>), PJI has posted a three-minute video that describes PJI's operations with the caption: "Learn what it's like to work at a Papa John's Restaurant." The video makes no distinction between the operations of a corporate store compared to a franchise store, and describes the job duties of in store employees and delivery drivers at Papa John's.

ANSWER:

PJI admits that it has posted a video with the caption: "Learn what it's like to work at a Papa John's Restaurant." PJI denies the remaining allegations in Paragraph 171.

COMPLAINT ¶172:

On job postings for job vacancies at Papa John's franchise stores, PJI describes itself as an "employer."

ANSWER:

PJI denies that it holds itself out as, or otherwise describes itself as an “employer” with respect to job vacancies at its franchisee stores, and denies the allegations in Paragraph 172.

COMPLAINT ¶173:

PJI requires that the delivery drivers at their franchise stores have a clean driving record.

ANSWER:

PJI denies the allegations in Paragraph 173.

COMPLAINT ¶174:

PJI restricts franchisees from making or collecting any delivery charge or other separate charge for delivered products, regardless of how named or characterized, without PJI’s approval.

ANSWER:

PJI admits that, pursuant to the Franchise Agreement - Standard Restaurant, a franchisee may not make or collect any delivery charge or other separate charge for delivered products, regardless of how named or characterized, without PJI’s reasonable approval. PJI denies the remaining allegations in Paragraph 174.

COMPLAINT ¶175:

PJI dictates the geographic area within which any franchisee may open a store or deliver pizza. This directly affects the amount of miles driven by delivery drivers to make deliveries. Franchisees are not permitted to modify the geographic area without PJI’s approval.

ANSWER:

PJI denies the allegation in the second sentence of Paragraph 175. PJI admits the remaining allegations in Paragraph 175.

COMPLAINT ¶176:

PJI’s Information System evaluates franchisees by, among other ways, giving them a Customer Service Score based on the deliveries they complete. One of the factors in the Customer Service Score is how much time elapses between an order being received by the restaurant and the order going out on the road for delivery. Bonuses for store managers are closely tied to Customer Service Scores.

ANSWER:

PJI denies the allegations in Paragraph 176.

COMPLAINT ¶177:

As a result of the Customer Service Score metric, delivery drivers around the country are clocked out onto their lower hourly rate early—before the pizza is ready to go out for delivery—so that the computer system indicates that the order went out for delivery earlier than it actually did. As a result, delivery drivers are regularly being paid at their delivery pay rate while still working inside the store, completing non-tipped duties.

ANSWER:

PJI denies the allegations in Paragraph 177.

COMPLAINT ¶178:

PJI boasts that it has received the number one customer satisfaction rating for quick service pizza restaurants for fifteen of the last seventeen years. By claiming credit for this metric, they are necessarily claiming credit for the service provided by thousands of franchisee employees.

ANSWER:

PJI admits that the allegations in the first sentence of Paragraph 178 are paraphrasing language from PJI's 2016 Annual Report, Form 10-K. PJI denies these allegations to the extent they differ from PJI's 2016 Annual Report, Form 10-K. PJI denies the allegations in the second sentence of Paragraph 178.

COMPLAINT ¶179:

PJI has internally developed a proprietary point of sale system called FOCUS. FOCUS is integrated with PJI's online ordering system.

ANSWER:

PJI admits the allegation in the first sentence of Paragraph 179 and that FOCUS receives domestic orders from PJI's online order system. PJI denies the remaining allegations in Paragraph 179.

COMPLAINT ¶180:

All Papa John's franchisees in the United States are required to use FOCUS.

ANSWER:

PJI admits the allegations in Paragraph 180 with respect to traditional restaurants only.

PJI denies the allegations in Paragraph 179 with respect to non-traditional restaurants.

COMPLAINT ¶181:

In 2015, PJI made \$9.8 million selling licenses to FOCUS to its franchisees, and requires franchisees to pay for FOCUS on an ongoing basis.

ANSWER:

PJI denies the allegations in Paragraph 181.

COMPLAINT ¶182:

FOCUS "allows the restaurant manager to better monitor and control food and labor costs."

ANSWER:

PJI admits that in its 2016 Annual Report, Form 10-K, PJI stated that "we believe this technology [FOCUS] facilitates fast and accurate order-taking and pricing, and allows the restaurant manager to better monitor and control food and labor costs" PJI denies the remaining allegations in Paragraph 182.

COMPLAINT ¶183:

FOCUS is the system on which delivery drivers clock in and out for work completed for franchisees.

ANSWER:

PJI admits that franchise employees need to login into FOCUS in order to use the system.

PJI denies the remaining allegations in Paragraph 183.

COMPLAINT ¶184:

FOCUS closely monitors employee activity.

ANSWER:

PJI denies the allegations in Paragraph 184.

COMPLAINT ¶185:

FOCUS tracks all activities by employees after an order is received.

ANSWER:

PJI denies the allegations in Paragraph 185.

COMPLAINT ¶186:

PJI requires its franchisees to license all PJI ordering applications and to accept orders through PJI's online ordering systems.

ANSWER:

PJI admits that, pursuant to the Franchise Agreement - Standard Restaurant, PJI provides services to domestic franchises, which may include the operation of the online and digital ordering system, which enables customers to place orders online via internet.

COMPLAINT ¶187:

PJI requires its franchisees to pay a percentage of sales obtained through PJI's online ordering systems to PJI.

ANSWER:

PJI admits that it receives a percentage-based fee from domestic franchisees for online sales. PJI denies the remaining allegations in Paragraph 187.

COMPLAINT ¶188:

In 2016, 56% of orders to Papa John's domestic restaurants were made online, compared to just 25% of orders in 2009. This impacts franchisees because a higher portion of their profits go directly to PJI when orders are made online, in the form of a percentage based fee on the order, giving them even thinner profit margins. It also affects employees in the franchise stores, as they spend less time taking orders by phone and more time completing other tasks in the store or on the road making deliveries.

ANSWER:

PJI admits the allegations in the first sentence of Paragraph 188. PJI denies the remaining allegations in Paragraph 188.

COMPLAINT ¶189:

PJI requires franchisees to purchase all food products, ingredients, cooking materials, beverages, containers, boxes, cups, packaging, menus, uniforms, and other products from either a Papa John's Quality Control Center or a supplier who is pre-approved by PJI.

ANSWER:

PJI admits the allegations in Paragraph 189 with respect to domestic franchisees.

COMPLAINT ¶190:

Nearly all of the ingredients and toppings used and sold in franchise stores must be purchased from Papa John's Quality Control Center, which delivers to individual restaurants, or other suppliers approved by PJI.

ANSWER:

PJI admits the allegations in Paragraph 190 with respect to domestic franchisees.

COMPLAINT ¶191:

In 2016, PJI earned \$681,606,000.00 from its commissary and related sales.

ANSWER:

PJI admits that PJI reported in its 2016 Annual Report, Form 10-K \$681,606,000 in North American commissary and other sales for the FY2016. PJI denies the allegations in Paragraph 191.

COMPLAINT ¶192:

Papa John's franchise stores are required to join advertising cooperatives where they contribute a percentage of their sales for PJI-approved marketing campaigns. The contribution to the cooperative cannot be less than 2% of sales without approval from PJI.

ANSWER:

PJI denies the allegations in Paragraph 192.

COMPLAINT ¶193:

Restaurant level and cooperative marketing efforts are supported by media, print, digital, and electronic advertising materials that are produced by Papa John's Marketing Fund, Inc. Papa John's franchise stores are required to contribute a certain minimum percentage of sales to Papa John's Marketing Fund, Inc. Currently, domestic franchises contribute 4.25% of sales to Papa John's Marketing Fund, Inc.

ANSWER:

PJI admits the allegations in the first sentence of Paragraph 193 and admits that domestic franchises contribute a percentage of net sales to Papa John's Marketing Fund, Inc. PJI denies the remaining allegations in Paragraph 193.

COMPLAINT ¶194:

Franchisees are not permitted to conduct their own marketing campaigns without the prior approval of PJI.

ANSWER:

PJI admits that franchisees are required to get pre-approval for marketing activities. PJI denies remaining allegations in Paragraph 194.

COMPLAINT ¶195:

PJI requires franchisees to adhere to strict accounting and recordkeeping standards, and require franchisees to make their financial information available to PJI upon request.

ANSWER:

PJI admits that the allegations in Paragraph 195 are paraphrasing language from PJI's Franchise Agreement - Standard Restaurant. PJI denies these allegations to the extent they differ from PJI's Franchise Agreement - Standard Restaurant.

COMPLAINT ¶196:

PJI has a right to terminate a franchise agreement if a franchisee fails to make payments or fails to adhere to our operational policies and standards.

ANSWER:

PJI admits the allegations in Paragraph 196.

COMPLAINT ¶197:

At all times relevant, Papa John's franchisees acted as agents of PJI. Franchisees employed Plaintiff and other delivery drivers for the mutual benefit of PJI and those franchisees.

ANSWER:

PJI denies the allegations in Paragraph 197.

COMPLAINT ¶198:

PJI's actions indicated to franchisee employees that they were PJI employees.

ANSWER:

PJI denies the allegations in Paragraph 198.

COMPLAINT ¶199:

While working, Plaintiff and similarly situated delivery drivers were required to affix Papa John's signs to their vehicles, to wear uniforms prominently featuring the Papa John's logo and use delivery bags featuring the Papa John's logo.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 199.

COMPLAINT ¶200:

Prospective employees complete applications that feature the Papa John's logo and reference working at Papa John's.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 200.

COMPLAINT ¶201:

Plaintiff and similarly situated delivery drivers were required to watch training videos provided by PJI.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 201.

COMPLAINT ¶202:

Plaintiff and similarly situated delivery drivers reasonably relied on representations by franchisees and by PJI that they were Papa John's team members and employees.

ANSWER:

PJI denies the allegations in Paragraph 202.

COMPLAINT ¶203:

The control PJI has exerted over its franchisees exceeds any control necessary to protect Papa John's trademark or good will.

ANSWER:

PJI denies the allegations in Paragraph 203.

COMPLAINT ¶204:

PJI authorized and condoned the violations alleged herein, and franchisees acted within the course and scope of their agency in implementing the policies in question.

ANSWER:

PJI denies the allegations in Paragraph 204.

COMPLAINT ¶205:

PJI has been aware and/or should have been aware of the wage and hour violations alleged herein, and had the authority to stop them from happening.

ANSWER:

PJI denies the allegations in Paragraph 205.

COMPLAINT ¶206:

Along with the other Defendants, PJI jointly employed Plaintiff and similarly situated delivery drivers at the Cincinnati Regional Stores.

ANSWER:

PJI denies the allegations in Paragraph 206.

COMPLAINT ¶207:

Papa John’s franchisees are facing unpaid wage litigation across the country based on delivery driver under-reimbursement, while PJI’s valuation continues to increase.

ANSWER:

PJI denies the allegations in Paragraph 207.

COMPLAINT ¶208:

New York Attorney General Eric Schneiderman has called on PJI “to step up and stop the widespread lawlessness plaguing [its] businesses and harming the workers who make and deliver [its] food.”

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. Upon information and belief, PJI admits that the above quoted language was issued in a press release by the New York Attorney General but PJI is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 208.

IV. Collective Action Allegations

COMPLAINT ¶209:

Plaintiff brings the First Count on behalf of himself and all similarly situated current and former delivery drivers employed at the Cincinnati Regional Stores owned, operated, and controlled by Defendants nationwide, during the three years prior to the filing of this Class Action Complaint and the date of final judgment in this matter, who elect to opt-in to this action (the “FLSA Collective”).

ANSWER:

PJI admits that Plaintiff purports to bring the First Count on behalf of the FLSA Collective. PJI denies that collective treatment is appropriate or that the alleged collective action can be certified. PJI denies the remaining allegations in Paragraph 209 and denies that it is the

employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶210:

At all relevant times, Plaintiff and the FLSA Collective have been similarly situated, have had substantially similar job duties, requirements, and pay provisions, and have all been subject to Defendants' decision, policy, plan, practices, procedures, protocols, and rules of willfully refusing to pay Plaintiff and the FLSA Collective minimum wage for all hours worked, failing to reimburse delivery drivers for automobile expenses and other job-related expenses, and for Defendants' clock in/out policies. Plaintiff's claims are essentially the same as those of the FLSA Collective.

ANSWER:

PJI denies the allegations in Paragraph 210 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶211:

Defendants' unlawful conduct is pursuant to a corporate policy or practice of minimizing labor costs by failing to properly pay Plaintiff and the FLSA Collective.

ANSWER:

PJI denies the allegations in Paragraph 211 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶212:

Defendants are aware or should have been aware that federal law required them to pay employees at least full minimum wage for all hours worked in a non-tipped capacity.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint, admits that it is aware of federal minimum wage laws, and denies the remaining allegations in Paragraph 212.

COMPLAINT ¶213:

Defendants are aware or should have been aware that federal law required them to reimburse delivery workers for expenses relating to “tools of the trade,” such as, among other things, automobile costs and gasoline for delivery drivers.

ANSWER:

PJI denies the allegations in Paragraph 213 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶214:

Defendants are aware or should have been aware that federal law prohibited them from taking deductions from Plaintiff’s wages for their own benefit, such as deductions for uniform expenses and insurance.

ANSWER:

PJI denies the allegations in Paragraph 214 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶215:

Defendants’ unlawful conduct has been widespread, repeated, and consistent.

ANSWER:

PJI denies the allegations in Paragraph 215 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶216:

The First Count is properly brought under and maintained as an opt-in collective action under 29 U.S.C. § 216(b).

ANSWER:

PJI denies the allegations in Paragraph 216 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶217:

The FLSA Collective members are readily identifiable and ascertainable.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 217.

COMPLAINT ¶218:

For the purpose of notice and other purposes related to this action, the FLSA Collective members' names and contact information are readily available from Defendants' records.

ANSWER:

PJI denies the allegations in Paragraph 218 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶219:

In recognition of the services Plaintiff has rendered and will continue to render to the FLSA Collective, Plaintiff will request payment of a service award upon resolution of this action.

ANSWER:

PJI denies that collective action treatment is appropriate, that the alleged collective can be certified, and that Plaintiff is entitled to a service award. PJI is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 219.

V. Class Action Allegations

COMPLAINT ¶220:

Plaintiff brings the Second, Third, Fourth, and Fifth Counts under Federal Rule of Civil Procedure 23, on behalf of himself and a class of persons consisting of:

All persons who work or worked as Delivery Drivers and similar employees for Papa John's International, Inc., It's Only Downtown Pizza, Inc., It's Only Pizza, Inc., It's Only Papa's Pizza LLC, and/or Michael Hutmier at the Cincinnati Regional Stores in Ohio between June 16, 2014 and the date of final judgment in this matter ("Rule 23 Class").

ANSWER:

PJI admits that Plaintiff purports to bring the Second, Third, Fourth, and Fifth Counts under Federal Rule of Civil Procedure 23, on behalf of himself and an alleged class. PJI denies that class treatment is appropriate or that the alleged class can be certified. PJI denies the remaining allegations in Paragraph 220 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶221:

Excluded from the Rule 23 Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Rule 23 Class.

ANSWER:

PJI admits that Plaintiff purports to bring the Second, Third, Fourth, and Fifth Counts under Federal Rule of Civil Procedure 23, on behalf of himself and an alleged Rule 23 Class, and admits that Plaintiff purports to exclude certain individuals from the class. PJI denies that class treatment is appropriate or that the alleged class can be certified. PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶222:

The number and identity of the Rule 23 Class members are ascertainable from Defendants' records. The hours assigned and worked, the positions held, and the rates of pay and reimbursement for each Rule 23 Class Member are also determinable from Defendants' records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under Federal Rule of Civil Procedure 23.

ANSWER:

PJI denies the allegations in Paragraph 222 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶223:

The Rule 23 Class member are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

ANSWER:

PJI denies the allegations in Paragraph 223 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶224:

There are more than 50 Rule 23 Class members.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 224.

COMPLAINT ¶225:

Plaintiff's claims are typical of those claims which could be alleged by any Rule 23 Class member, and the relief sought is typical of the relief which would be sought by each Rule 23 Class member in separate actions.

ANSWER:

PJI denies the allegations in Paragraph 225 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶226:

Plaintiff and the Rule 23 Class members were subject to the same corporate practices of Defendants, as alleged herein, of failing to pay minimum wage, failing to reimburse for expenses, and failing to pay Plaintiff in a timely manner.

ANSWER:

PJI denies the allegations in Paragraph 226 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶227:

Plaintiff and the Rule 23 Class members have all sustained similar types of damages as a result of Defendants' failure to comply with Section 34a and the Prompt Pay Act.

ANSWER:

PJI denies the allegations in Paragraph 227 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶228:

Plaintiff and the Rule 23 Class members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct. Defendants' corporate-wide policies and practices affected all Rule 23 Class members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the Rule 23 Class members.

ANSWER:

PJI denies the allegations in Paragraph 228 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶229:

Plaintiff and the Rule 23 Class members sustained similar losses, injuries, and damages arising from the same unlawful practices, policies, and procedures.

ANSWER:

PJI denies the allegations in Paragraph 229 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶230:

By seeking to represent the interests of the Rule 23 Class members, Plaintiff is exercising and intends to exercise his right to engage in concerted activity for the mutual aid or benefit of himself and his co-workers.

ANSWER:

PJI denies the allegations in Paragraph 230.

COMPLAINT ¶231:

Plaintiff is able to fairly and adequately protect the interests of the Rule 23 Class and have no interests antagonistic to the Rule 23 Class.

ANSWER:

PJI denies the allegations in Paragraph 231.

COMPLAINT ¶232:

Plaintiff is represented by attorneys who are experienced and competent in both class action litigation and employment litigation.

ANSWER:

PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 232.

COMPLAINT ¶233:

A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation on behalf of minimum wage employees where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries, and damages suffered by each of the individual Rule 23 Class members are small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual Rule 23 Class members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in significant saving of these costs. The prosecution of separate actions by individual class members would create a risk of inconsistent and/or varying adjudications with respect to the individual Rule 23 Class members, establishing incompatible standards of conduct for Defendants and resulting in the impairment of the Rule 23 Class members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

ANSWER:

PJI denies the allegations in Paragraph 233 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶234:

Upon information and belief, Defendants and other employers throughout the state violate Section 34a and the Prompt Pay Act. Current employees are often afraid to assert their rights out of fear of direct and indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity, which allows for the vindication of their rights while eliminating or reducing these risks.

ANSWER:

PJI denies the allegations in Paragraph 234 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶235:

This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

ANSWER:

PJI denies the allegations in Paragraph 235.

COMPLAINT ¶236:

Common questions of law and fact exist as to the Rule 23 Class that predominate over any questions only affecting Plaintiff and the Rule 23 Class members individually and include, but are not limited to:

- a. Whether Defendants paid Plaintiff and the Rule 23 Class members at the proper minimum wage rate for all hours worked;
- b. Whether Defendants are permitted to take a tip credit from the wages of Plaintiff and the Rule 23 Class members;
- c. Whether Defendants failed to reimburse automobile expenses, as described herein, causing Plaintiff and the Rule 23 Class members' wages to drop below legally allowable minimum wage and overtime;

- d. Whether Defendants failed to properly compensate Plaintiff and the Rule 23 Class members by taking unlawful deductions from their wages;
- e. Whether Defendants failed to pay Plaintiff and the Rule 23 Class in a timely manner as described by O.R.C. § 4113.15;
- f. Whether Defendants' policy of failing to pay Plaintiff and the Rule 23 Class was instituted willfully or with reckless disregard of the law; and
- g. The nature and extent of class-wide injury and the measure of damages for those injuries.

ANSWER:

PJI denies the allegations in Paragraph 234 and subparts a-g and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

VI. Causes of Action

Count 1
Failure to Pay Minimum Wages - Fair Labor Standards Act
(On Behalf of Plaintiff and the FLSA Collective)

COMPLAINT ¶237:

Plaintiff restates and incorporates the foregoing allegations as if fully rewritten herein.

ANSWER:

PJI restates its answers to the preceding paragraphs and incorporates its answers, as relevant, as if fully set out herein.

COMPLAINT ¶238:

Plaintiff and the FLSA Collective are or were non-exempt, hourly employees entitled to receive no less than minimum wage for all hours worked.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 228.

COMPLAINT ¶239:

Defendants required Plaintiffs and the FLSA Collective to pay for automobile expenses out of pocket, failed to reasonably calculate the value of said expenses, and failed to adequately reimburse Plaintiff and the FLSA Collective for said expenses.

ANSWER:

PJI denies the allegations in Paragraph 239 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶240:

Defendants took deductions from the wages of Plaintiff and the FLSA Collective for uniforms and insurance.

ANSWER:

PJI denies the allegations in Paragraph 240 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶241:

Defendants' clock in/out practices resulted in Plaintiff and the FLSA Collective being required to complete non-tipped work while being paid a tipped wage rate.

ANSWER:

PJI denies the allegations in Paragraph 241 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶242:

Because Defendants failed to pay Plaintiff and the FLSA Collective the proper tipped minimum wage rate, they are not permitted to take a tip credit from the wages of Plaintiff and the FLSA Collective.

ANSWER:

PJI denies the allegations in Paragraph 242 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶243:

By the acts and conduct described above, Defendants willfully violated the provisions of the FLSA and disregarded the rights of Plaintiff and the FLSA Collective.

ANSWER:

PJI denies the allegations in Paragraph 243 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶244:

Plaintiff and the FLSA Collective have been damaged by Defendants' willful failure to pay minimum wage as required by law.

ANSWER:

PJI denies the allegations in Paragraph 244 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶245:

As a result of Defendants' willful violations, Plaintiff and the FLSA Collective are entitled to damages, including, but not limited to, unpaid wages, unreimbursed expenses, liquidated damages, costs, and attorneys' fees.

ANSWER:

PJI denies the allegations in Paragraph 245 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

Count 2

**Failure to Pay Minimum Wages - Ohio Constitution, Article II, § 34a
(On Behalf of Plaintiff and the Rule 23 Class)**

COMPLAINT ¶246:

Plaintiff restates and incorporates the foregoing allegations as if fully rewritten herein.

ANSWER:

PJI restates its answers to the preceding paragraphs and incorporates its answers, as relevant, as if fully set out herein.

COMPLAINT ¶247:

Defendants paid Plaintiff and the Rule 23 Class below minimum wage for the hours they worked by requiring them to cover automobile expenses.

ANSWER:

PJI denies the allegations in Paragraph 247 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶248:

Section 34a requires that employees be paid not less than minimum wage as determined by an inflation index (currently \$8.15/hour) for all hours worked, and not less than \$4.08 per hour for certain employees who receive tips.

ANSWER:

Paragraph 248 states a conclusion of law to which no response is required. To the extent a response is required, PJI denies the allegations in Paragraph 248.

COMPLAINT ¶249:

Because Defendants required Plaintiff and the Rule 23 Class to pay for automobile expenses out of pocket, Defendants failed pay Plaintiff and the Rule 23 Class minimum wage.

ANSWER:

PJI denies the allegations in Paragraph 249 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶250:

Defendants took deductions from the wages of Plaintiff and the Rule 23 Class for uniforms and insurance.

ANSWER:

PJI denies the allegations in Paragraph 250 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶251:

Defendants' clock in/out practices resulted in Plaintiff and the Rule 23 Class being required to complete non-tipped work while being paid a tipped wage rate.

ANSWER:

PJI denies the allegations in Paragraph 251 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶252:

Because Defendants failed to pay Plaintiff and the Rule 23 Class the proper tipped minimum wage rate, they are not permitted to take a tip credit from the wages of Plaintiff and the Rule 23 Class.

ANSWER:

PJI denies the allegations in Paragraph 252 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶253:

By not paying Plaintiff and the Rule 23 Class at least minimum wage for each hour worked, Defendants have violated the Ohio Constitution, Article II, § 34a.

ANSWER:

PJI denies the allegations in Paragraph 253 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶254:

As a result of Defendants' violations, Plaintiff and the Rule 23 Class are entitled to damages, including, but not limited to, unpaid wages, unreimbursed expenses, an additional two times unpaid wages/unreimbursed expenses in damages under Section 34a, costs, and attorneys' fees.

ANSWER:

PJI denies the allegations in Paragraph 254 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

Count 3
Untimely Payment of Wages – O.R.C. § 4113.15
(On Behalf of Plaintiff and the Rule 23 Class against the business entity Defendants)

COMPLAINT ¶255:

Plaintiff restates and incorporates the foregoing allegations as if fully rewritten herein.

ANSWER:

PJI restates its answers to the preceding paragraphs and incorporates its answers, as relevant, as if fully set out herein.

COMPLAINT ¶256:

During all relevant times, Defendants were entities covered by O.R.C. § 4113.15, and Plaintiff and the Rule 23 Class were employees within the meaning of O.R.C. § 4113.15 and were not exempt from its protections.

ANSWER:

PJI denies the allegations in Paragraph 256 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶257:

O.R.C. § 4113.15(A) requires that Defendants pay Plaintiff and the Rule 23 Class all wages, on or before the first day of each month, for wages earned during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month, for wages earned during the last half of the preceding calendar month.

ANSWER:

PJI denies the allegations in Paragraph 257 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶258:

Plaintiff and the Rule 23 Class's unpaid wages and unreimbursed expenses have remained unpaid for more than thirty (30) days beyond their regularly scheduled payday.

ANSWER:

PJI denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint. PJI is without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 258.

COMPLAINT ¶259:

In violating Ohio law, Defendants acted willfully, without a good faith basis and with reckless disregard to Ohio law.

ANSWER:

PJI denies the allegations in Paragraph 259 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶260:

As a result of Defendants' willful violation, Plaintiff and the Rule 23 Class are entitled to unpaid wages and liquidated damages, as stated in O.R.C. § 4113.15.

ANSWER:

PJI denies the allegations in Paragraph 260 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

Count 4
Damages Pursuant to O.R.C. § 2307.60
(On Behalf of Plaintiff and the Rule 23 Class)

COMPLAINT ¶261:

Plaintiff restates and incorporates the foregoing allegations as if fully rewritten herein.

ANSWER:

PJI restates its answers to the preceding paragraphs and incorporates its answers, as relevant, as if fully set out herein.

COMPLAINT ¶262:

The Fair Labor Standards Act, 29 U.S.C. § 216(a), imposes criminal penalties for willful violations of the FLSA.

ANSWER:

Paragraph 262 states a legal conclusion to which no response is required. To the extent a response is required, PJI denies that Plaintiff or members of the putative class or collective can recover criminal penalties under the FLSA.

COMPLAINT ¶263:

By their acts and omissions described herein, Defendants have willfully violated the FLSA, and Plaintiff and the Rule 23 Class have been injured as a result.

ANSWER:

PJI denies the allegations in Paragraph 263 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶264:

O.R.C. § 2307.60 permits anyone injured in person or property by a criminal act to recover damages in a civil action, including exemplary and punitive damages.

ANSWER:

Paragraph 264 states a legal conclusion to which no response is required. To the extent a response is required, PJI denies that Plaintiff or members of the putative class or collective can recover exemplary and punitive damages.

COMPLAINT ¶265:

As a result of Defendants' willful violations of the FLSA, Plaintiff and the Rule 23 Class are entitled to compensatory and punitive damages pursuant to O.R.C. § 2307.60.

ANSWER:

PJI denies the allegations in Paragraph 265 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

Count 5
Failure to Maintain Wage and Hour Records – Ohio Constitution, Article II, § 34a
(On Behalf of Plaintiff)

COMPLAINT ¶266:

Plaintiff restates and incorporates the foregoing allegations as if fully rewritten herein.

ANSWER:

PJI restates its answers to the preceding paragraphs and incorporates its answers, as relevant, as if fully set out herein.

COMPLAINT ¶267:

Defendants failed and continue to fail to create, maintain, or provide upon Plaintiff's request records of Plaintiff's name, address, occupation, pay rate, hours worked for each day worked, and each amount paid to Plaintiff, as required by Section 34a.

ANSWER:

PJI denies the allegations in Paragraph 267 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

COMPLAINT ¶268:

By failing to create, keep, and preserve proper wage and hour records, Defendants have violated Section 34a.

ANSWER:

PJI denies the allegations in Paragraph 268 and denies that it is the employer of Plaintiff or any of the putative members of the class or collective action alleged in the Complaint.

ANSWER TO REMAINDER OF COMPLAINT

The remaining unnumbered paragraphs of the Complaint contain Plaintiff's prayer for relief. PJI denies that Plaintiff and the members of the putative collective and class are entitled to any relief. PJI denies every remaining allegation in the Complaint that has not been separately and specifically admitted.

JURY DEMAND

PJI denies the Plaintiff's right to a trial by jury on all issues, and specifically object to the extent that Plaintiff, or any member of the putative class or collective action, are not entitled to a trial by jury on any claims for equitable relief and/or on any other issues as to which a jury trial is not permitted as of right.

AFFIRMATIVE AND OTHER DEFENSES

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, PJI asserts the following affirmative and other defenses without assuming any burden of production or proof that, pursuant to law, belong to Plaintiff. PJI reserves the right to amend its answer and to assert any additional defenses and affirmative defenses as may become available or apparent during the course of this litigation.

AFFIRMATIVE DEFENSE NO. 1

This case may not be maintained as a collective action because Plaintiff cannot establish the existence of each of the requirements under 29 U.S.C. § 216(b) and other relevant legal authority. PJI specifically maintains that Plaintiff's pleadings fail to meet the requirements necessary to justify a collective action or issuance of notice to putative collective action members.

AFFIRMATIVE DEFENSE NO. 2

This case may not be maintained as a class action because Plaintiff cannot establish the existence of each of the requirements under Federal Rule of Civil Procedure 23 and other relevant legal authority. PJI specifically maintains that Plaintiff's pleadings fail to meet the requirements necessary to justify a class action.

AFFIRMATIVE DEFENSE NO. 3

Any actions by PJI with respect to Plaintiff and any other purported similarly situated employees and/or putative collective action members and/or class members, were taken in good faith with reasonable grounds to believe such conduct comported with applicable laws and/or interpretations of same.

AFFIRMATIVE DEFENSE NO. 4

Subject to proof through discovery, some or all of Plaintiff's and/or the putative collective action members' and/or class members' claims are barred in whole or in part by the applicable statute of limitations.

AFFIRMATIVE DEFENSE NO. 5

Plaintiff, and the putative class and collective action members they purport to represent, are barred from relief to the extent they failed to mitigate their damages.

AFFIRMATIVE DEFENSE NO. 6

Plaintiff's claims and claims of the putative class and collective action are barred, in whole or in part, by the *de minimis* doctrine. If, in fact, PJI failed (or is liable for the franchisee defendants' failure) to pay any non-exempt employee below the minimum wage, the uncompensated time is *de minimis* and is therefore not recoverable.

AFFIRMATIVE DEFENSE NO. 7

Plaintiff's claims, and claims of the putative collective action, for liquidated damages are barred, in whole or in part, by statutory exclusions, exceptions, setoffs, or credits under the FLSA and/or state law.

AFFIRMATIVE DEFENSE NO. 8

The Complaint, and each purported claim for relief alleged therein, is barred to the extent that Plaintiff and the members of the putative class and collective action class failed to report or give notice of the allegations upon which Plaintiff bases the Complaint to their employer and/or failed to avail themselves of their employer's internal procedures, means, or methods relating to violations, grievances, complaints, or disputes.

AFFIRMATIVE DEFENSE NO. 9

Subject to proof through discovery, some or all of Plaintiff's and/or the putative collective action members' and/or class members' claims are barred by the doctrines of waiver and/or laches, or barred in whole or in part because such claims have been discharged and/or abandoned.

AFFIRMATIVE DEFENSE NO. 10

Subject to proof through discovery, some or all of Plaintiff's and/or the putative collective action members' and/or class members' claims are barred by the doctrines of estoppel, *res judicata*, collateral estoppel, quasi-estoppel, and/or equitable estoppel.

AFFIRMATIVE DEFENSE NO. 11

PJI denies there is any basis for Plaintiff or any alleged similarly situated individual to seek any relief against PJI under the FLSA because Plaintiff and the putative collective action members who were employed by PJI's franchisees were not employees of PJI (or any affiliate of PJI) within the meaning of the FLSA or the applicable state minimum wage laws.

AFFIRMATIVE DEFENSE NO. 12

PJI denies there is any basis for Plaintiff or any alleged similarly situated individual to seek any relief against PJI under the applicable state minimum wage laws because Plaintiff and the putative class action members were not employees of PJI (or any affiliate of PJI) within the meaning of the applicable state minimum wage laws.

AFFIRMATIVE DEFENSE NO. 13

PJI's actions or the actions of the franchisee defendants with respect to Plaintiff and/or any other allegedly similarly situated individuals were taken in good faith in conformity with and in reliance on a written administrative regulation, order, ruling, approval, interpretation, and/or administrative practice or policy, pursuant to 29 U.S.C. § 259.

AFFIRMATIVE DEFENSE NO. 14

PJI's actions or the actions of the franchisee defendants with respect to Plaintiff and/or any other allegedly similarly situated individuals were taken in good faith with reasonable grounds to believe such conduct comported with the FLSA or interpretations of the FLSA pursuant to 29 U.S.C. § 260.

AFFIRMATIVE DEFENSE NO. 15

PJI's actions or the actions of the franchisee defendants with respect to Plaintiff and/or any other putative class members were taken in good faith with reasonable grounds to believe such conduct comported with the applicable state minimum wage laws.

AFFIRMATIVE DEFENSE NO. 16

Plaintiff lacks standing to bring claims against PJI because PJI was not Plaintiff's "employer" as defined by applicable law.

AFFIRMATIVE DEFENSE NO. 17

Even if Plaintiff and the persons Plaintiff purports to represent prevail, their damage claims, including their claims for liquidated damages, penalties, and pre- and post-judgment interest, are barred to the extent that the forms of relief are duplicative of each other.

AFFIRMATIVE DEFENSE NO. 18

Subject to proof through discovery, Plaintiff and/or some or all of the putative collective action members and/or class members are not entitled to some or all of the relief sought under the doctrine of consent or because they otherwise fall within a classification of individuals who may not recover under the causes of action alleged.

AFFIRMATIVE DEFENSE NO. 19

The Complaint, and each and every purported claim for relief alleged therein, is barred because any recovery from PJI would result in the unjust enrichment of Plaintiff and the persons Plaintiff purport to represent.

AFFIRMATIVE DEFENSE NO. 21

Plaintiff's claims are barred to the extent Plaintiff failed to exhaust administrative remedies or to comply with the statutory prerequisites for bringing suit.

AFFIRMATIVE DEFENSE NO. 22

Although PJI denies that it has committed or has responsibility for any act that could support the recovery of criminal or civil penalties or exemplary or punitive damages in this lawsuit, if and to the extent any such act or responsibility is found, recovery of criminal or civil penalties or exemplary or punitive against PJI is unconstitutional under numerous provisions of

the United States Constitution, including the excessive fines clause of the Eighth Amendment, the due process clauses of the Fifth Amendment and Section 1 of the Fourteenth Amendment, the self-incrimination clause of the Fifth Amendment, and other provisions of the United States Constitution.

ADDITIONAL RESPONSE

PJI currently has insufficient information upon which to form a belief as to whether there may exist additional, as yet unstated, defenses beyond those listed above. PJI reserves the right to assert additional defenses in the event that discovery indicates additional defenses are appropriate.

WHEREFORE, PJI denies that Plaintiff and the class of persons Plaintiff purports to represent are entitled to any relief. PJI prays:

1. That Plaintiff's Complaint be dismissed in its entirety with prejudice;
2. That Plaintiff takes nothing by reason thereof;
3. That judgment be entered in favor of PJI;
4. That PJI be awarded its costs and attorneys' fees; and
5. For such other and further relief that the Court deems just and proper.

DATED: October 15, 2018

Respectfully submitted,

PAPA JOHN'S INTERNATIONAL, INC.

By: /s/ Gerald L. Maatman, Jr.

*One of The Attorneys for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th of October, 2018, I electronically filed the foregoing **PAPA JOHN'S INTERNATIONAL, INC.'S ANSWER TO PLAINTIFF'S CLASS AND COLLECTIVE ACTION COMPLAINT** with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record, including the following:

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