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FRE 408 SETTLEMENT COMMUNICATION

March 18, 2024

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS (info@natlawreview.com,
jschaller@NatLawReview.com, jschaller@ameritech.net)

National Law Forum, LLC d/b/a National Law Review
 Attn: Jennifer Schaller, Esq
 3 Grant Square #141
 Hinsdale, IL 60521

RE: Prepared Food Photos, Inc. v. National Law Forum, LLC d/b/a National Law Review

Dear Ms. Schaller:

This law firm represents Prepared Food Photos, Inc. Our client recently discovered that one of its photographs, titled “PizzaDeluxeSlice001_ADL” (the “Work”), appeared on the National Law Review’s website, webpage, and/or social media at the following URL: <https://www.natlawreview.com/article/ohio-district-court-delivers-win-pizza-drivers>

The screenshot shows the National Law Review website interface. At the top, it displays the date "February 14, 2024" and "Volume XIV, Number 45". The main header reads "THE NATIONAL LAW REVIEW". Below this is a navigation bar with links for "PUBLISH / ADVERTISE WITH US", "TRENDING LEGAL NEWS", "ABOUT US", "CONTACT US", "QUICK LINKS", and "NEWS/BULLETINS". A "TRENDING NEWS" section highlights "The Corporate Transparency Act: Key Considerations for Health Systems and Practice Management Companies (MSOs)".

The featured article is titled "Ohio District Court Delivers Win For Pizza Drivers" by Peter J. Wozniak and Mark Wallin of Barnes & Thornburg LLP, dated Friday, November 8, 2019. The article includes a photo of a pizza and a sidebar with "RELATED PRACTICES & JURISDICTIONS" such as "Retail, Food, Drug", "Labor & Employment", and "Litigation / Trial Practice".

On the left side of the article, there are two author profiles: Peter J. Wozniak (312-214-2113) and Mark Wallin (312-214-4391), both with "Bio and Articles" links.

The article text discusses the DOL's anti-kickback regulation and the court's ruling in favor of pizza delivery drivers regarding reimbursement of vehicle expenses under the FLSA. It notes that the court ruled in favor of the delivery driver employees, stating that if they were effectively paid less than minimum wage according to the decision, the defendant employer operated 73 Papa John's locations, and paid the plaintiff delivery drivers at or near the minimum wage. The parties filed cross-motions for summary judgment, and the court ruled in favor of the delivery driver employees.

The DOL's anti-kickback regulation prohibits arrangements that "shift part of the Employer's business expense to the employees... to the extent that it reduce[s] an employee's wage below the statutory minimum." For example, as the DOL has explained, if the employer requires that an employee provide his or her own equipment or tools, the FLSA is violated "in any workweek when the cost of such tools purchased by the employee cuts into the minimum or overtime wages required to be paid." As the court explained, "[i]n the pizza delivery context, the cost associated with delivering food for an employer is a 'kickback' to the employer that must be fully reimbursed, lest a minimum wage violation be triggered."

The DOL recognizes that tracking delivery employee expenses is a potentially cumbersome task. Enter the Field Operations Handbook (FOH), which affords employers the option of either tracking and reimbursing delivery drivers for their actual delivery expenses (such as gasoline, oil and other fluids, vehicle parts, auto repair and maintenance,

Upon such discovery, a demand letter (attached hereto as **Exhibit "A"**) was sent to Barnes & Thornburg LLP on February 15, 2024.

On March 1, 2024, Barnes & Thornburg LLP informed us that the Work was added to the subject article by National Law Forum, LLC d/b/a National Law Review. Unless we are mistaken, it appears that National Law Forum, LLC d/b/a National Law Review utilized Prepared Food Photos, Inc's intellectual property for display on its website, webpage and/or social media in connection with the marketing of its business. If this is not true or if National Law Forum, LLC d/b/a National Law Review contends that factual circumstances justify its use of our client's intellectual property, please contact me *immediately* to discuss.

If we do not hear from you within seven (7) days from the date of this letter, we will assume the foregoing use was not authorized and will proceed accordingly.

You should give this matter your immediate attention.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Daniel DeSouza".

Daniel DeSouza, Esq.
For the Firm

Encl.



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Coral Springs, FL 33065

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FRE 408 SETTLEMENT COMMUNICATION

February 15, 2024

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL (steven.merkel@btlaw.com,
andy.detherage@btlaw.com)

Barnes & Thornburg LLP
Attn: Andrew Detherage
11 South Meridian Street
Indianapolis, IN 46204-3535

RE: *Prepared Food Photos, Inc. v. Barnes & Thornburg LLP*

Dear Mr. Detherage

This law firm represents Prepared Food Photos, Inc. Our client is in the business of licensing high-end, professional photographs for the food industry. Through its website (www.preparedfoodphotos.com), our client offers a monthly subscription service, which provides access to/license of tens of thousands of professional images. The rights associated with these images are exclusively owned by our client, and it has spent countless hours and substantial monies in building a business that relies on such exclusive subscription service. The unauthorized use of our client's work deprives it of much-needed income and forces our client to incur substantial costs (monetary and time) in identifying violators and enforcing its rights.

In 2006, our client created a photograph titled "PizzaDeluxeSlice001_ADL" (the "Work"). A copy of the Work is exhibited below:



The Work was registered by our client with the Register of Copyrights on March 3, 2017 and was assigned Registration No. VA 2-047-009. A true and correct copy of the Certificate of Registration pertaining to the Work is attached hereto as **Exhibit “A.”**

To our knowledge, our client *did not* authorize you or your company to use and/or display the foregoing photograph. Notwithstanding this lack of authorization, our client has identified the subject photograph appearing on the following URL: <https://www.natlawreview.com/article/ohio-district-court-delivers-win-pizza-drivers>



Peter J. Wozniak

Email
312-214-2113



Mark Wallin

Email
312-214-4591

Bio and Articles

Ohio District Court Delivers Win For Pizza Drivers

By: Peter J. Wozniak, Mark Wallin of Barnes & Thornburg LLP - Labor & Employment Law Alert
© Posted On Friday, November 8, 2019



RELATED PRACTICES & JURISDICTIONS

Work, Food, Drug
Labor & Employment
Litigation / Trial Practice
19th Circuit (incl. bankruptcy)
DWA



Following the guidance set forth in the U.S. Department of Labor (DOL)'s Field Operations Handbook, the U.S. District Court for the Southern District of Ohio recently ruled in favor of pizza delivery drivers and in the process confirmed the standard for reimbursement of vehicle expenses under the FLSA.

actual expenses or the IRS standard business mileage rate," they were effectively paid less than minimum wage. According to the decision, the defendant employer operated 73 Papa John's locations, and paid the plaintiff delivery drivers at or near the minimum wage. The parties filed cross-motions for summary judgment, and the court ruled in favor of the delivery driver employees.

The DOL's anti-kickback regulation prohibits arrangements that "shift part of the Employer's business expense to the employees . . . to the extent that it reduce[s] an employee's wage below the statutory minimum." For example, as the DOL has explained, if the employer requires that an employee provide his or her own equipment or tools, the FLSA is violated "in any workweek when the cost of such tools purchased by the employee cuts into the minimum or overtime wages required to be paid." As the court explained, "[i]n the pizza delivery context, the cost associated with delivering food for an employer is a 'kickback' to the employer that must be fully reimbursed, lest a minimum wage violation be triggered."

The DOL recognizes that tracking delivery employee expenses is a potentially cumbersome task. Enter the Field Operations Handbook (FOHB), which affords employers the option of either tracking and reimbursing delivery drivers for their actual delivery expenses (such as "gasoline, oil and other fluids, vehicle parts, auto repair and maintenance,

A true and correct copy of a screenshot of the website, webpage, and/or social media page, displaying the copyrighted Work, is attached hereto as **Exhibit "B."**

If our client is mistaken or if you believe the photograph was previously licensed through our client or some other party, please contact us immediately with evidence of the prior licensing. If we do not hear from you **within fourteen (14) days from the date of this letter**, we will be forced to assume that the photograph was **not** properly licensed and will take appropriate legal action to enforce our client's rights.

If the above-described use of our client’s photograph was not properly licensed, please understand that such unauthorized use may constitute federal copyright infringement under 17 U.S.C. § 501. In such event, I encourage you to discuss the foregoing with your attorney and/or your insurance carrier as copyright infringement is a serious matter that potentially exposes you to substantial damages/attorneys’ fees if we are forced to file a lawsuit on behalf of our client. Keep in mind that attorneys’ fees include those you will be forced to incur to mount a defense (if any) **and** potentially the attorneys’ fees/costs we will incur to pursue the matter (which may be awarded) if our client prevails in court. It is important that you are cognizant of that exposure in deciding how to respond to this letter. Assuming our client prevails in court, 17 U.S.C. § 504(c)(1) provides our client the right to recover statutory damages (for **each work** that was infringed) “in a sum of not less than \$750 or more than \$30,000 as the court considers just.” Further, if the infringement was committed “willfully,” the court may increase the award of statutory damages (for **each work** that was infringed) “to a sum of not more than \$150,000.”

Courts have not hesitated (where appropriate) to impose substantial statutory damages against copyright infringers of Prepared Food Photos’ intellectual property. The below courts have each accepted Prepared Food Photos’ minimum \$11,988.00/year licensing fee as a measuring stick for actual damages and then proceeded to apply a 2x multiplier thereto in calculating statutory damages. See, e.g. Prepared Foods Photos, Inc. v. Patriot Fine Foods LLC, No. 21-82129-CV, 2022 U.S. Dist. LEXIS 205649, at *4 (S.D. Fla. Mar. 22, 2022) (awarding **\$23,976.00** in statutory damages, representing the \$11,988.00 annual license fee for a 1-year use with a 2x multiplier applied thereto); Prepared Food Photos, Inc. v. Fat Daddy Co., No. 22-61671-CIV-SINGHAL, 2022 U.S. Dist. LEXIS 216004 (S.D. Fla. Nov. 29, 2022) (awarding **\$23,976.00** in statutory damages, representing the \$11,988.00 annual license fee for a 1-year use with a 2x multiplier applied thereto); Prepared Food Photos, Inc. v. Perry Wings Plus, Inc., No. 22-CV-61883-RAR, 2022 U.S. Dist. LEXIS 227304, at *24 (S.D. Fla. Dec. 19, 2022) (awarding **\$71,928.00** in statutory damages, representing the \$11,988.00 annual license fee for a 3-year use with a 2x multiplier applied thereto); Prepared Food Photos, Inc. v. Silver Star of Brooklyn / Brooklyn's Best Inc., No. 1:22-cv-04196-WFK-CLP, 2023 U.S. Dist. LEXIS 22037 (E.D.N.Y. Jan. 23, 2023) (awarding **\$71,928.00** in statutory damages, representing the \$11,988.00 annual license fee for 3-year use with a 2x multiplier applied thereto); Prepared Food Photos, Inc. v. Trip Rest. LLC, No. 1:22-cv-07953-ER, 2023 U.S. Dist. LEXIS 68835, at *25 (S.D.N.Y. Apr. 14, 2023) (awarding **\$47,952.00** in statutory damages, representing the \$11,988.00 annual license fee for 2-year use with a 2x multiplier applied thereto).

Please keep in mind both that the facts of these cases may be different than those here (thus militating in favor of a higher or lower award here) and that the above amounts do not account for attorneys’ fees/taxable costs which are also recoverable under the Copyright Act. You should consult with an attorney to review the facts of **this** case, whether you have any defenses to the claims that Prepared Food Photos may bring, and what risk you may have in ignoring this letter.

Please note that Section 504 of the Copyright Act provides for the recovery of statutory damages (as explained above) or (at our client’s election) actual damages plus “any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages.” Of course, if forced to litigate this matter, we will fully explore the damages issue and make an election that is most beneficial to our client.

While this is a serious matter, it is not particularly complex. The subject photograph(s) was either properly licensed or it was not. If it was, you should notify us immediately of such licensing so that we may inform our client of such. If it was not properly licensed, then the utilization of our client's work without proper authorization constitutes copyright infringement. In that case, we will either resolve this issue in court (allowing a court to decide the matter) or privately between the parties. If the subject use was not authorized, our client hereby makes the following demand:

You shall pay Thirty Thousand Dollars (\$30,000.00) within twenty-one (21) days of the date first written above and shall immediately cease and desist from any further use of our client's work.

Please contact us within the above-stated period to either provide evidence of licensing or to discuss resolution of this matter. If confirmation of a license or payment is received as described above, we will forego the filing of a lawsuit. Otherwise, please be aware that our client does not shy away from enforcing its rights in court. It has done so many times before and (as demonstrated above) secured awards commensurate with the above examples.

As stated above, the facts and circumstances of each case are different. However, you should know that “[s]tatutory damages serve the dual purposes of compensation and deterrence: they compensate the plaintiff for the infringement of its copyrights; and they deter future infringements by punishing the defendant for its actions.” Broad. Music, Inc. v. George Moore Enters., Inc., 184 F. Supp. 3d 166, 171-72 (W.D. Pa. Apr. 25, 2016). To further the punitive/deterrent nature of statutory damages, courts generally award plaintiffs “statutory damages of *between three and five times the cost of the licensing fees* the defendant would have paid.” See Broad. Music, Inc. v. Prana Hosp'y, Inc., 158 F. Supp. 3d 184, 199 (S.D.N.Y. 2016); see also Joe Hand Promotions, Inc. v. Albur, No. 5:18-cv-1935-LCB, 2020 U.S. Dist. LEXIS 29309, at *16-17 (N.D. Ala. Feb. 20, 2020) (“Courts have generally upheld awards of three times the amount of the proper licensing fee as an appropriate sanction to ensure that the cost of violating the copyright laws is substantially greater than the cost of complying with them.”); Broad. Music, Inc. v. N. Lights, Inc., 555 F. Supp. 2d 328, 332 (N.D.N.Y. 2008) (“[T]o put infringers on notice that it costs less to obey the copyright laws than to violate them, a statutory damage award should significantly exceed the amount of unpaid license fees. As such, courts often impose statutory damages in an amount more than double unpaid licensing fees where the infringement was not innocent.”).

Using the above cases as a guide, please keep in mind that our client exclusively operates on a subscription basis. This means that access to one (1) photograph costs the same as access to the entire library of photographs. Our client makes its library available for a minimum of \$999.00 per month (<https://www.preparedfoodphotos.com/stock-photo-subscription/>) (with the price ultimately depending on the number of ‘end-users’ a subscriber caters to) with a minimum subscription of twelve (12) months <https://www.preparedfoodphotos.com/wp-content/uploads/PFP-Terms-of-Use-3-2023.pdf>. Thus, irrespective of how long you utilized the subject photograph, the *minimum* license fee that would have been owed is \$11,988.00 (\$999.00 x 12 months).

You should provide a copy of this letter to your general liability insurance carrier (if one exists), notify them of our client's demand, disclose the identity of such insurer to us, and provide a copy of the subject insurance policy to us. If you believe we are mistaken as to the allegations of copyright infringement made herein, then we encourage you to provide us with copies of any license or other evidence supporting your authorized use of the subject work.

This letter further constitutes a demand that you immediately suspend any document destruction policy and preserve any and all documents (such as e-mails, text messages, social media pages/postings, copies of the work at issue, etc.) that may be relevant to the claims or defenses in a forthcoming lawsuit. Please be aware that a federal court may impose significant sanctions if you fail to preserve relevant documents upon reasonable anticipation of litigation.

Finally, while removing the unlicensed photograph from display is required, please understand that *removal alone is insufficient to end this matter*. If your use of the subject photograph is unauthorized and you do not contact us to discuss payment for your existing/past use of the photograph, a lawsuit *will* be filed and our client *will* pursue the above-described damages against you.

You should give this matter your immediate attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel DeSouza". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Daniel DeSouza, Esq.
For the Firm

Encl.

Certificate of Registration

"Exhibit A"



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Handwritten signature of Kaye Leigh Claythorn in black ink.

Acting United States Register of Copyrights and Director

Registration Number

VA 2-047-009

Effective Date of Registration:

March 03, 2017

Title

Title of Work: ADLIFE-COLLECTION-020817

Previous or Alternate Title: Group registration of photos published JAN 8, 2006 through DEC. 5, 2006; about 250 photos total.

Content Title: AmaranthHerb001_ADL, 07-10-2006;
Appetizer001, 01-24-2006;
Appetizer002, 01-24-2006;
AppleAsst001_ADL, 11-26-2006;
AppleAsst004_ADL, 03-26-2006;

AppleAsst005_ADL, 03-26-2006;
AppleAsst006_ADL, 09-05-2006;
AppleAsst007_ADL, 03-26-2006;
AppleAsst008_ADL, 03-26-2006;
AppleAsst009_ADL, 11-05-2006;

AppleAsst010_ADL, 03-26-2006;
AppleAsst011_ADL, 11-05-2006;
AppleAsst012_ADL, 11-05-2006;
AppleAsstBasket001_ADL, 09-14-2006;
AppleAsstBasket002_ADL, 12-05-2006;

AppleAsstBasket003_ADL, 03-26-2006;
AppleAsstBowl001_ADL, 07-16-2006;
AppleAsstBowl002_ADL, 09-05-2006;
AppleAsstBowl003_ADL, 12-05-2006;
AppleBag001_ADL, 09-05-2006;

AppleBraeburn001_ADL, 03-26-2006;
AppleBraeburn002_ADL, 09-25-2006;
AppleBraeburn003_ADL, 03-26-2006;
AppleCaramel002_ADL, 08-05-2006;
AppleCaramel003_ADL, 08-23-2006;

AppleCaramel004_ADL, 07-09-2006;

AppleCaramelNut001_ADL, 07-09-2006;
AppleChips001_ADL, 08-05-2006;
AppleCinnamonStick001_ADL, 08-13-2006;
AppleCortlandBasket001_ADL, 10-05-2006;

AppleCut001_ADL, 05-20-2006;

AppleEmpire001_ADL, 03-26-2006;
AppleEmpireBasket001_ADL, 03-26-2006;
AppleFarmerBasket001_ADL, 09-24-2006;

AppleFarmerBasket002_ADL, 09-24-2006;
AppleFuji001_ADL, 03-26-2006;
AppleFuji002_ADL, 03-26-2006;
AppleFuji003_ADL, 03-26-2006;
AppleFujiBasket001_ADL, 11-23-2006;

AppleGala001_ADL, 05-19-2006;
AppleGingerGold001_ADL, 03-26-2006;
AppleGoldenDelicious001_ADL, 10-05-2006;
AppleGoldenDelicious002_ADL, 10-05-2006;
AppleGoldenDelicious003_ADL, 01-19-2006;

AppleGoldenDelicious004_ADL, 03-26-2006;
AppleGoldenDelicious005_ADL, 03-26-2006;
AppleGoldenDelicious006_ADL, 03-26-2006;
AppleGoldenDelicious007_ADL, 11-26-2006;
AppleGoldenDelicious008_ADL, 11-26-2006;

AppleGrannySmith001_ADL, 10-26-2006;
AppleGrannySmith002_ADL, 03-26-2006;
AppleGrannySmith003_ADL, 03-26-2006;
AppleGrannySmith004_ADL, 11-26-2006;
AppleGrannySmith005_ADL, 03-26-2006;

AsparagusMushroom001_ADL, 09-05-2006;
BakedBean001_ADL, 06-05-06;
BakedBean003_ADL, 05-20-2006;
BakedBean004_ADL, 07-14-2006;
BakedBean005_ADL, 08-09-2006;

BakedBean006_ADL, 05-20-2006;
BakedBean007_ADL, 05-20-2006;
BakedBeanCheese001_ADL, 07-14-2006;
BakedBeanFrank001_ADL, 07-14-2006;
BroccoliCauliflower001_ADL, 11-13-2006;

BroccoliCauliflower002_ADL, 03-26-2006;
BroccoliCauliflower003_ADL, 04-25-2006;
BroccoliGarlicRoasted001_ADL, 12-05-2006;
CalzoneBroccoli001_ADL, 08-10-2006;
CalzoneBroccoliChicken001_ADL, 01-15-2006;

CalzoneBroccoliChicken001_ADL, 04-05-2006;
CalzoneCheese001_ADL, 01-19-2006;
CalzoneCheese002_ADL, 01-19-2006;
CalzoneHamCheese001_ADL, 08-14-2006;
CalzoneHamCheese002_ADL, 04-22-2006;

CalzoneHamCheese003_ADL, 04-22-2006;
CalzoneItalianColdCut001_ADL, 11-27-2006;
CalzoneItalianColdCut002_ADL, 08-26-2006;
CalzoneItalianColdCut003_ADL, 09-26-2006;
CalzoneItalianColdCut004_ADL, 02-05-2006;



CalzoneItalianColdCut005_ADL, 05-20-2006;
CalzoneItalianColdCut006_ADL, 08-10-2006;
CalzoneItalianColdCut007_ADL, 05-27-2006;
CalzonePepperoni001_ADL, 01-19-2006;
CalzonePepperoni002_ADL, 01-19-2006;

CalzoneWhole001_ADL, 04-22-2006;
CalzoneWhole002_ADL, 04-22-2006;
Car001, 01-12-2006;
Car002, 10-21-2006;
CinnamonStick001_ADL, 11-15-2006;
CranberryCousCousSalad001_ADL, 04-23-2006;

CranberrySauce001_ADL, 11-05-2006;
CranberrySauce002_ADL, 11-21-2006;
CranberrySauce003_ADL, 11-05-2006;
Dog001, 04-05-2006;

Dog004, 09-05-2006;
Dog005, 09-05-2006;
GirlHoldingCatHC0605, 09-05-2006;
GravyTurkey001_ADL, 11-17-2006;
HiwaKaiHawaiianSeaSalPkg_ADL, 04-20-2006;

HushPuppies001_ADL, 05-24-2006;
Kitten001, 11-23-2006;
Kitten002, 11-23-2006;
PeaCarrot001_ADL, 02-22-2006;
PeanutButterJelly001_ADL, 07-05-2006;

PeanutButterJelly002_ADL, 07-05-2006;
PeanutButterJelly003_ADL, 07-05-2006;
PeanutButterJelly004_ADL, 08-21-2006;
PeanutButterJellyJuice001_ADL, 08-27-2006;
PeaOnion001_ADL, 03-26-2006;

Peppercorn001_ADL, 07-20-2006;
Peppercorn002_ADL, 09-09-2006;
PeppercornPurpleFlower001_ADL, 08-05-2006;
PeppercornYellowFlower001_ADL, 08-05-2006;
PepperMillSpilling001_ADL, 11-23-2006;

PizzaBakery001_ADL, 02-05-2006;
PizzaBites001_ADL, 07-05-2006;
PizzaBites003_ADL, 04-05-2006;
PizzaBuffaloChicken001_ADL, 08-09-2006;
PizzaBuffaloChicken002_ADL, 08-09-2006;

PizzaCaprese001_ADL, 04-24-2006;
PizzaCaprese002_ADL, 04-24-2006;
PizzaCheese001_ADL, 01-15-2006;
PizzaCheese003_ADL, 02-05-2006;
PizzaCheese004_ADL, 02-18-2006;

PizzaCheese005_ADL, 10-05-2006;
PizzaCheese006_ADL, 02-22-2006;
PizzaCheese007_ADL, 09-10-2006;
PizzaCheese009_ADL, 04-14-2006;

PizzaCheese010_ADL, 07-05-2006;

PizzaCheese011_ADL, 02-05-2006;

PizzaCheese012_ADL, 11-05-2006;

PizzaCheese013_ADL, 05-20-2006;

PizzaCheese014_ADL, 05-20-2006;

PizzaCheese015_ADL, 12-05-2006;

PizzaCheese016_ADL, 12-05-2006;

PizzaCheese017_ADL, 06-05-2006;

PizzaCheese018_ADL, 02-05-2006;

PizzaCheese019_ADL, 02-05-2006;

PizzaCheeseSausage001_ADL, 12-05-2006;

PizzaCheeseSlice001_ADL, 09-15-2006;

PizzaCheeseSlice002_ADL, 09-20-2006;

PizzaCheeseSliced001_ADL, 02-18-2006;

PizzaCheeseSliced001_ADL, 06-11-2006;

PizzaDeluxe001_ADL, 08-05-2006;

PizzaDeluxe002_ADL, 09-10-2006;

PizzaDeluxe003_ADL, 12-05-2006;

PizzaDeluxe004_ADL, 01-08-2006;

PizzaDeluxe005_ADL, 03-05-2006;

PizzaDeluxe006_ADL, 04-05-2006;

PizzaDeluxe007_ADL, 05-19-2006;

PizzaDeluxeSlice001_ADL, 01-08-2006;

PizzaDough001_ADL, 01-12-2006;

PizzaDough002_ADL, 05-05-2006;

PizzaDough003_ADL, 12-05-2006;

PizzaDough004_ADL, 12-05-2006;

PizzaDoughBall001_ADL, 02-05-2006;

PizzaFrenchBread001_ADL, 06-22-2006;

PizzaFrenchBread002_ADL, 07-24-2006;

PizzaFrenchBread003_ADL, 11-23-2006;

PizzaFreshMozzarella001_ADL, 10-11-2006;

PizzaFreshMozzarella002_ADL, 10-11-2006;

PizzaFreshMozzarella003_ADL, 10-11-2006;

PizzaMeat001_ADL, 07-23-2006;

PizzaMeatball001_ADL, 07-23-2006;

PizzaMushroomSpinach001_ADL, 06-13-2006;

PizzaPepperoni001_ADL, 10-05-2006;

PizzaPepperoni002_ADL, 10-05-2006;

PizzaPepperoni003_ADL, 08-05-2006;

PizzaPepperoni004_ADL, 08-05-2006;

PizzaPepperoni006_ADL, 04-05-2006;

PizzaPepperoni007_ADL, 07-12-2006;

PizzaPepperoni008_ADL, 04-19-2006;

PizzaPepperoni009_ADL, 07-05-2006;

PizzaPepperoni010_ADL, 04-05-2006;

PizzaPepperoniCalzone001_ADL, 09-10-2006;

PizzaPepperoniSquare001_ADL, 01-13-2006;



PizzaPepperoniVeggie001_ADL, 05-20-2006;
PizzaPersonal001_ADL, 08-20-2006;
PizzaPopper001_ADL, 07-05-2006;

PizzaSausageMini001_ADL, 04-05-2006;
PizzaSausageSlice001_ADL, 10-05-2006;
PizzaSliced001_ADL, 09-10-2006;
PizzaSliced002_ADL, 01-08-2006;
PizzaSliced003_ADL, 07-05-2006;

PizzaSlicePepperoni001_ADL, 05-12-2006;
PizzaSpinach001_ADL, 09-15-2006;
PizzaStrips001_ADL, 05-05-2006;
PizzaStrips002_ADL, 02-05-2006;
PizzaStrips003_ADL, 04-14-2006;

PizzaTaco001_ADL, 07-11-2006;
PizzaThickCrust001_ADL, 04-20-2006;
PizzaUncooked001_ADL, 11-10-2006;
PizzaVeggie002_ADL, 05-19-2006;
PizzaVeggieSlice001_ADL, 11-27-2006;

PizzaVeggieSlice002_ADL, 09-20-2006;
PuppyChewToy001, 07-05-2006;
QuinoaChickenVegetable001_ADL, 11-24-2006;
QuinoaVegetable001_ADL, 11-24-2006;
QuinoaVegetable002_ADL, 11-24-2006;

Rice001_ADL, 06-13-2006;
Rice002_ADL, 11-05-2006;
RiceBean001_ADL, 08-05-2006;
RiceBean002_ADL, 11-14-2006;
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Following the guidance set forth in the U.S. Department of Labor (DOL)'s Field Operations Handbook, the U.S. District Court for the Southern District of Ohio recently ruled in favor of pizza delivery drivers and in the process confirmed the standard for reimbursement of vehicle expenses under the FLSA.

actual expenses or the IRS standard business mileage rate," they were effectively paid less than minimum wage. According to the decision, the defendant employer operated 73 Papa John's locations, and paid the plaintiff delivery drivers at or near the minimum wage. The parties filed cross-motions for summary judgment, and the court ruled in favor of the delivery driver employees.

The DOL's anti-kickback regulation prohibits arrangements that "shift part of the Employer's business expense to the employees . . . to the extent that it reduce[s] an employee's wage below the statutory minimum." For example, as the DOL has explained, if the employer requires that an employee provide his or her own equipment or tools, the FLSA is violated "in any workweek when the cost of such tools purchased by the employee cuts into the minimum or overtime wages required to be paid." As the court explained, "[i]n the pizza delivery context, the cost associated with delivering food for an employer is a 'kickback' to the employer that must be fully reimbursed, lest a minimum wage violation be triggered."

The DOL recognizes that tracking delivery employee expenses is a potentially cumbersome task. Enter the Field Operations Handbook (FOH), which affords employers the option of either tracking and reimbursing delivery drivers for their actual delivery expenses (such as "gasoline, oil and other fluids, vehicle parts, auto repair and maintenance, registration costs, licensing and taxes") or simply reimbursing delivery drivers at the IRS standard business mileage rate.

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