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SPACE NK RETAIL HOLDINGS LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

ECHO HALL, on behalf of herself and all others
similarly situated,

Plaintiffs,

v.

SPACE NK RETAIL HOLDINGS LLC and
DOES 1 through 50, inclusive,

Defendant.

Case No. 20STCV05059

CLASS ACTION

[Assigned for all purposes to the Hon. Daniel J.
Buckley, Dept. 1]

**CLASS ACTION SETTLEMENT
AGREEMENT**

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1 7. “Class Period” means the period from February 7, 2016 through the date the Court
2 grants preliminary approval of this Settlement.

3 8. “Class Representative Enhancement Awards” means the amounts that the Court
4 authorizes to be paid to Plaintiffs, in addition to their Individual Settlement Payments, in recognition
5 of their effort and risk in assisting with the prosecution of the Action.

6 9. “Complete and General Release” means an irrevocable and unconditional release given
7 only by Plaintiffs Echo Hall, Melissa Korff, and Mercedes Deguchy, releasing the Released Parties
8 from any and all charges, complaints, claims, causes of action, debts, sums of money, controversies,
9 agreements, promises, damages and liabilities of any kind or nature whatsoever, both at law and equity,
10 known or unknown, suspected or unsuspected, arising from conduct occurring on or before the date
11 Plaintiff sign this Settlement Agreement, including but not limited to a release of any and all rights
12 Plaintiffs have to sue or bring any type of claim under (a) California state law, (b) the Fair Labor
13 Standards Act; (c) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et. seq.,
14 (d) the Employment Act of 1967, (e) the Civil Rights Act of 1991, (f) the Civil Rights Act of 1866 and
15 1870, (g) 42 U.S.C. § 1981, as amended, (h) Executive Order 11246, (i) the Americans with Disabilities
16 Act 42 U.S.C. § 12101, et. seq, as amended, (j) the Family and Medical Leave Act, as amended, (k)
17 the Equal Pay Act of 1963, as amended, (l) the Immigration and Reform Control Act, as amended, (m)
18 the Occupational Safety and Health Act, as amended, (n) the Sarbanes-Oxley Act of 2002, as amended,
19 (o) the Employment Retirement Income Security Act of 1974, as amended (except vested benefits), (p)
20 the Worker Adjustment and Benefit Protection Act of 1990, as amended, (q) the Worker Adjustment
21 and Retraining Notification Act, as amended, (r) any federal, state or common law claim or cause of
22 action based on any alleged failure to pay wages, breach of contract, wrongful discharge, constructive
23 discharge, retaliation, defamation, slander, liable, intentional or negligent infliction of emotional
24 distress, misrepresentation, fraud, promissory estoppel, (s) any other tort or negligence claim or
25 obligations arising out of any of Defendant’s employment policies or practices, employee handbooks,
26 and/or any statements by any employee or agent of Defendant whether oral or written; and (t) for
27 reinstatement, back pay, bonus, attorneys’ fees, compensatory damages, costs, front pay, any form of
28 equitable or declaratory relief, liquidated damages, emotional distress, personal injury, punitive

1 damages, pain and suffering, medical expenses, damage to reputation, damage for personal, emotional
2 or economic injury or damage of any kind. This provision is intended by the Parties to be all-
3 encompassing and to act as a full and total release of any claim, whether specifically enumerated herein
4 or not, that Plaintiffs might have or have had, that exists or ever has existed on or prior to the date this
5 Settlement Agreement is signed. This release includes a 1542 Waiver. The Parties understand and agree
6 that the word “claims” includes all actions, group actions (including any pending or future collective,
7 class, private attorney general or representative actions for which Plaintiffs may otherwise qualify as a
8 putative class member or represented party), complaints and grievances that could potentially be
9 brought by Plaintiffs against the Released Parties.

10 10. “Court” means the Los Angeles Superior Court.

11 11. “Defendant” means Space NK Retail Holdings, LLC or any of its affiliated entities,
12 including, without limitation, Space NK New York, LLC and Space NK USA LLC.

13 12. “Defense Counsel” means Gordon Rees Scully Mansukhani, LLP.

14 13. “Effective Date” means either (a) the date sixty (60) days after the entry of the Final
15 Judgment and Order finally approving the Settlement, if no motion for reconsideration and no appeal
16 or other efforts to obtain review have been filed, or (b) in the event that a motion for reconsideration,
17 an appeal or other effort to obtain review of the Final Judgment and Order is filed, the day sixty (60)
18 days after such reconsideration, appeal or review has been finally concluded and is no longer subject
19 to review, whether by appeal, petition for rehearing, petition for review or otherwise and the Settlement
20 has not been materially modified. A “material modification” shall not include any change to the Class
21 Counsel Award, Class Representative Enhancement Awards, or amount awarded for Settlement
22 Administration Costs.

23 14. “Gross Settlement Amount” means Three Hundred Seventy-Two Thousand Five
24 Hundred Dollars (\$372,500).

25 15. “Individual Settlement Payment” means the amount payable from the Net Settlement
26 Amount to each Settlement Class Member who does not submit a valid Request for Exclusion from
27 this Settlement.
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1 16. “Mailed Notice Date” means the date of the initial mailing of the Class Notice to Class
2 Members.

3 17. “Net Settlement Amount” means the Gross Settlement Amount, less Class Counsel
4 Award, Class Representative Enhancement Awards, PAGA Payment, and Settlement Administrator
5 Costs.

6 18. “Notice of Estimated Individual Settlement Payment” and “Individual Notice” means a
7 notice entitled “Notice of Estimated Individual Settlement Payment.”

8 19. “Notice Packet” means the Notice of Pendency of Class action Settlement and Notice
9 of Estimated Individual Settlement Payment (substantially in the form attached as **Exhibit 1**).

10 20. “PAGA Payment” means the \$30,000 that the Parties have agreed to pay, with seventy-
11 five percent (75%) being paid to the Labor and Workforce Development Agency (“LWDA”) in
12 connection with the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§
13 2298, *et seq.*, “PAGA”), and twenty-five percent (25%) being paid as individual PAGA payments
14 allocated to each Aggrieved Employee.

15 21. “PAGA Period” is deemed to be any time during the period of February 7, 2019 to the
16 date of Preliminary Approval.

17 22. “PAGA Released Claims” by the Aggrieved Employees upon Final Approval of the
18 Settlement will include and mean any and all PAGA claims that Plaintiffs alleged against the Released
19 Parties, on behalf of Aggrieved Employees and State of California, based on the facts stated in the
20 Third Amended Complaint and in Plaintiffs’ LWDA notice letter, including all PAGA claims seeking
21 civil penalties that are premised upon: (a) failure to pay minimum wages; (b) failure to pay overtime
22 wages; (c) failure to provide compliant meal periods; (d) failure to provide compliant rest periods; (e)
23 failure to reimburse business expenses; (f) failure to timely pay wages each period and upon separation
24 of employment; (g) failure to provide accurate itemized wage statements; (h) failure to provide
25 adequate seating; (i) forced purchases of Defendants’ merchandise; and (j) all other claims for civil
26 penalties recoverable under the Private Attorneys General Act Labor Code § 2698 *et seq.*, based on the
27 fact or claims alleged in the Third Amended Complaint. The time period governing the PAGA
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Released Claims shall be any time during the PAGA Period. The PAGA Released Claims do not release any Aggrieved Employee's claims for wages or statutory penalties.

23. "Participating Class Member" means any Settlement Class Member who does not opt out of the Settlement by submitting a valid and timely Request for Exclusion.

24. "Parties" means Plaintiffs and Defendant, collectively, and "Party" means either Plaintiffs or Defendant.

25. "Payment Ratio" means the respective Total Hours Worked for each Settlement Class Member divided by the sum of Total Hours Worked for all Settlement Class Members.

26. "Plaintiffs" and "Class Representatives" means Echo Hall, Melissa Korff, and Mercedes Deguchy.

27. "Released Claims" for Participating Class Members other than Plaintiffs means any and all known and unknown claims, losses, damages, liquidated damages, penalties, interest, liabilities, causes of action, civil complaints, arbitration demands, or suits which arise or could have arisen from the facts asserted in the Action, including the Third Amended Complaint, including violations for meal periods, rest periods, failure to pay minimum wages, failure to pay overtime wages, timely payment of wages, wage statements, waiting time penalties, coerced purchases, failure to provide adequate seating, violations of California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et. seq.*), and all other statutory penalties or other remuneration whether sought under statute, tort, contract, or as an unfair business practice for the Class Period.

28. "Released Parties" means Defendant Space NK Retail Holdings, LLC or any of its affiliated entities, including, without limitation, Space NK New York, LLC and Space NK USA LLC, their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys.

29. "Request for Exclusion" means a Settlement Class Member's signed, written request to be excluded or "opt out" of the Settlement.

30. "Response Deadline" means the date forty-five (45) calendar days after the Settlement Administrator mails the Notice of Settlement to Settlement Class Members and the last date on which

1 Settlement Class Members may postmark written Requests for Exclusion, a Notice of Objection the
2 Settlement, or a dispute as to the estimated Individual Settlement Payment. For Settlement Class
3 Members who are sent re-mailed Class Notices, the “Extended Response Deadline” shall mean thirty
4 (30) calendar days from the date the Settlement Administrator re-mails the Notice of Settlement to
5 Class Members but not later than thirty (30) days from the Response Deadline. The Extended Response
6 Deadline is the last date on which Settlement Class Members who are sent re-mailed Class Notices
7 may postmark written Requests for Exclusion, a Notice of Objection to the Settlement, or a dispute as
8 to the estimated Individual Settlement Amount.

9 31. “Settlement” means the disposition of the Action pursuant to this Agreement.

10 32. “Settlement Administration Costs” means the amount to be paid to the Settlement
11 Administrator from the Gross Settlement Amount for administration of the Settlement.

12 33. “Settlement Administrator” means CPT Group.

13 34. “Settlement Class Members” means all current and former exempt and non-exempt
14 employees of Space NK Retail Holdings, LLC or any of its affiliated entities, including, without
15 limitation, Space NK New York, LLC and Space NK USA LLC who worked for Defendant in
16 California during the relevant PAGA and/or Class Period.

17 35. “Third Amended Complaint” means the Third Amended Complaint that Plaintiffs filed
18 to add Mercedes Deguchy as a Plaintiff and Class Representative in the Action.

19 36. “Total Hours Worked” means the number of hours worked by Settlement Class
20 Members during the Class Period.

21 37. “Void Date” means the date by which any checks issued to Participating Class Members
22 shall become void (i.e. the 181st day after mailing).

23 **TERMS OF SETTLEMENT**

24 38. Third Amended Complaint. In connection with this Settlement, and within fourteen
25 (14) calendar days of the execution of this Settlement, Plaintiffs agree to file, and Defendant stipulates
26 to the filing of, a Third Amended Complaint containing the same allegations and causes of action
27 asserted in the Second Amended Complaint, but adding Mercedes Deguchy as a named Plaintiff and
28 Class Representative; and adding John Lattin Ostergar Lattin Julander, LLP as Class Counsel. With

the exception of the adding of Mercedes Deguchy as a Plaintiff and Class Representative, the Third Amended Complaint shall be identical in substance to the Second Amended Complaint.

39. Dismissal of Related Case. Within five (5) calendar days of the Court accepting the filing of the Third Amended Complaint, counsel for Mercedes Deguchy agrees to file a Request for Dismissal without prejudice of her separate, related action entitled *Mercedes Deguchy v. Space NK Retail Holdings, LLC*, Orange County Superior Court Case No. 30-2020-01173236-CU-OE-CXC.

40. Class Certification. The Parties stipulate and agree to the certification of this Action for purposes of this Settlement only. The Parties further stipulate and agree to the appointment of Plaintiffs as Class Representatives and the appointment of Plaintiff's Counsel as Class Counsel, for purposes of this Settlement only. Should the Settlement not become final and effective as herein provided, class certification shall immediately be set aside and the Settlement Class immediately decertified. The Parties' willingness to stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be admissible in or considered in connection with, the issue of whether a class should be certified in a non-settlement context in this Action and shall have no bearing on, and shall not be admissible or considered in connection with, the issue of whether a class should be certified in any other lawsuit.

41. Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

42. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under no circumstances will any portion of the Maximum Settlement Amount revert to Defendants. Participating Class Members will not have to make a claim in order to receive an Individual Settlement Payment. Distributions, in the form of Individual Settlement Payments, will be made directly to each Participating Class Member. The Settlement Administrator shall be responsible for accurately and timely reporting and remittance obligations with respect to unclaimed funds as a result of a Participating Class Member not cashing an Individual Settlement Payment by the check cashing deadline, as set forth herein.

1 43. The Settlement is not intended to and may not be deemed to affect the enforceability of
2 any arbitration agreement between Defendant and Plaintiffs and/or between Defendant and any Class
3 Member.

4 44. Settlement Consideration.

5 a. Defendant's total monetary obligation under this Settlement is the Gross
6 Settlement Amount of \$372,500. This is an "all in" number that includes, without limitation, all
7 monetary benefits and payments for the Settlement Class Members, the Class Representative
8 Enhancement Awards, the Class Counsel Award, the PAGA Payment, the Settlement Administration
9 Costs, and all other claims for interest, fees and costs. Under no circumstances shall Defendant be
10 required to pay anything more than the Gross Settlement Amount, except that Defendant will separately
11 pay the employer payroll taxes due for the wage payments under this Settlement. In no event shall
12 Defendant be liable for making any payments under this Settlement, or for providing any relief to the
13 Settlement Class Members, before the Effective Date of this Agreement.

14 b. The Plaintiffs and the Settlement Class Members who receive a payment of any
15 kind from the Gross Settlement Amount (including, in the case of the Plaintiffs, Class Representative
16 Enhancement Awards) expressly agree to hold Plaintiffs, Class Counsel, Defendant, Defense Counsel,
17 and the Settlement Administrator harmless from any claim of liability for taxes, penalties, or interest
18 arising as a result of the payments under this Settlement.

19 c. Plaintiffs agree to pursue Class Representative Enhancement Awards not to
20 exceed the following:

- 21 • \$7,500 for Echo Hall
- 22 • \$5,000 for Melissa Korff
- 23 • \$5,000 for Mercedes Deguchy

24 Defendant agrees not to oppose Plaintiffs' application for such enhancement awards. Any Class
25 Representative Enhancement Awards awarded by the Court shall be paid from the Gross Settlement
26 Amount. If the Court awards less than the full Class Representative Enhancement Awards, then the
27 unawarded funds shall become part of the Net Settlement Amount to be distributed to Participating
28 Class Members.

d. Plaintiffs agree to seek Class Counsel Awards and costs from the Court not to exceed the following:

- \$151,666.67 for CollinsKim, LLP (up to \$116,666.67 in fees plus up to \$35,000 in costs)
- \$19,050 for Ostergar Lattin Julander, LLP (up to \$17,500 in fees plus up to \$1,550 in costs)

Defendant agrees not to oppose Plaintiffs' application for such a Class Counsel Award. Any Class Counsel Awards awarded by the Court shall be paid from the Gross Settlement Amount. If the Court awards less than the full Class Counsel Awards, then the unawarded funds shall become part of the Net Settlement Amount to be distributed to Participating Class Members.

e. Plaintiffs agree to seek a PAGA Payment of \$30,000. 75% of the PAGA Payment shall be paid to the Labor and Workforce Development Agency, and the remaining 25% shall be paid to the Aggrieved Employees on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as required on an IRS form 1099. Defendant agrees not to oppose Plaintiffs' request for the PAGA Payment or to oppose the 75%/25% allocation of the PAGA Payment. The PAGA Payment shall be paid from the Gross Settlement Amount. If the Court awards less than the full PAGA Payment, then the unawarded funds shall become part of the Net Settlement Amount to be distributed to Participating Class Members. Class Counsel shall give proper notice to the LWDA of the Settlement.

f. The Settlement Administrator agrees that its expenses to administer the Settlement shall not exceed \$10,500.00. The Settlement Administration Costs shall be paid from the Gross Settlement Amount. Any Settlement Administration Costs not actually incurred by the Settlement Administrator shall become part of the Net Settlement Amount to be distributed to Participating Class Members.

g. The Individual Settlement Payments from the Net Settlement Amount shall be calculated on a pro-rate, workweek basis. Specifically, the Net Settlement Amount shall be divided by all workweeks worked by the Settlement Class Members during the Class Period in order to establish the value of each workweek worked. The Individual Settlement Payment to be made to each

1 Participating Class Member shall be calculated by per/workweek value times the number of workweeks
2 worked by the Participating Class Member.

3 h. The Settlement Administrator shall calculate the Individual Settlement
4 Payments based on the Class Information provided to the Settlement Administrator by Defendant. The
5 Settlement Administrator shall allocate 30% of each Individual Settlement Payment to settlement of
6 wage claims, 40% of each Individual Settlement Payment to settlement of claims for statutory penalties,
7 and 30% of each Individual Settlement Payment to interest.

8 i. Amounts paid to Plaintiffs and Participating Class Members do not count as
9 earnings or compensation for purposes of any benefits (*e.g.*, 401(k) plans or retirement plans)
10 sponsored by Defendant or the Released Parties. Amounts paid will not result in any additional
11 employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus) and shall not have
12 any effect on the eligibility for, or calculation of, any employee benefit. Plaintiff and Class Members
13 will be deemed to have waived all such claims, whether known or unknown by them, as part of their
14 release of claims under this Settlement.

15 j. In exchange for the consideration provided by Defendants, Plaintiffs,
16 individually, and on behalf of their heirs, estates, trustees, executors, administrators, representatives,
17 agents, successors and assigns, and anyone claiming through them or acting or purporting to act on
18 their behalf, agree to provide a Complete and General Release to the Released Parties. Plaintiffs'
19 complete and General Release is subject to a 1542 Waiver.

20 k. In exchange for the consideration provided by Defendant, Participating Class
21 Members, individually and on behalf of their heirs, estates, trustees, executors, administrators,
22 representatives, agents, successors, and assigns, and anyone claiming through them or acting or
23 purporting to act on their behalf, agree to forever release, discharge, hold harmless, and covenant not
24 to sue each and all of the Released Parties for the Participating Class Members' Released Claims.

25 l. In exchange for the consideration provided by Defendants, Aggrieved
26 Employees and the State of California shall completely release and discharge the Released Parties from
27 the PAGA Released Claims for the PAGA Period.
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1 m. Plaintiff and Participating Class Members acknowledge that they may hereafter
2 discover claims presently unknown and unsuspected, or facts in addition to or different from those
3 which they now know or believe to be true with respect to claims released herein. Nevertheless,
4 Plaintiff and Settlement Class Members acknowledge that, with respect to the Participating Members'
5 Released Claims, a portion of the consideration received herein is for a release with respect to unknown
6 damages and complaints, whether resulting from known injuries and consequences or from unknown
7 injuries or unknown consequences, and agree that it is their intention to fully, finally, and forever to
8 settle and release all matters and all claims that exist, hereafter may exist, or might have existed.

9 45. Preliminary Approval.

10 a. Upon execution of this Settlement Agreement, Plaintiff shall submit a motion
11 for preliminary approval of the Settlement to the Court. Plaintiff's motion for preliminary approval
12 shall ask the Court to enter a Preliminary Approval Order substantially in the form attached hereto as
13 **Exhibit 2.** Plaintiff's motion shall also ask the Court to stay this action and to prohibit any Class
14 Member from pursuing a separate action regarding any of the claims at issue in this case pending the
15 Final Approval Hearing.

16 b. The Parties stipulate to the form of, and agree to submit to the Court for its
17 consideration, this Settlement Agreement and the following Exhibits to this Settlement Agreement:
18 Notice of Pendency of Class Action Settlement and Estimated Individual Settlement Payment (Exhibit
19 1); and [Proposed] Order Granting Preliminary Approval of Class Action Settlement (Exhibit 2).

20 c. The Proposed Order shall

- 21 • Conditionally certify the Class and the Class Claims;
- 22 • Conditionally appoint Plaintiffs and Class Counsel as representatives and of the
23 Settlement Class;
- 24 • Appoint CPT Group as the Settlement Administrator, and order the Settlement
25 Administrator to provide notice of the settlement as outlines below;
- 26 • Confirm that the procedure for distributing the Class Notice (discussed below)
27 (i) constituted the best practicable notice; (ii) constituted notice that was
28 reasonably calculated, under the circumstances, to apprise Class Members of the

pendency of the Action, and their right to exclude themselves from or object to the proposed settlement and to appear at the Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of due process, and any other applicable rules or law;

- Impose a stay on all litigation of the Action pending the Final Approval Hearing, or prohibit Plaintiff and Class Members from prosecuting any claims against Defendant or the Released Parties pending the Final Approval Hearing; and
- Order that the preliminary approval of the Settlement, certification of the Settlement Class Members and the Class Claims, and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated or disapproved in whole or in part by the Court, or any appellate court and/or other court of review in which event the Settlement Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or the certifiability of a litigation class or the appropriateness of maintaining a representative action.

d. The motion for preliminary approval shall request: that the Final Approval Hearing and any determination on the request for a Class Counsel Award and Class Representative Enhancement Awards be set no earlier than twenty-one (21) days after the Exclusion/Objection deadline; that Plaintiffs be permitted to file their motion for final approval no later than fourteen (14) days before the Final Approval Hearing. Plaintiffs will submit to Defendant's counsel, at least three (3) days before filing, the motion for preliminary approval and all supporting papers.

e. At the same time that Plaintiffs file their motion for preliminary approval, Class Counsel will notify the LWDA that the Parties have filed a motion for preliminary approval of settlement of a PAGA claim.

46. Procedure for Providing Notice of Settlement.

1 a. No more than thirty (30) calendar days after entry of the Preliminary Approval
2 Order, Defendant shall provide the Settlement Administrator with the Class Information for purposes
3 of sending the Class Notice to Class Members.

4 b. No more than forty-five (45) calendar days after entry of the Preliminary
5 Approval Order (i.e., the Mailed Notice Date), the Settlement Administrator shall send the Class Notice
6 to the Class Members via U.S. Mail.

7 c. The Class Notice will inform Class Members that, unless they request to be
8 excluded from the Settlement, they will become Participating Class Members; they will receive
9 Individual Settlement Payments under the Agreement; and they are bound by the release of the
10 Participating Class Members' Released Claims.

11 d. The Class Notice will inform Class Members of their right to request exclusion
12 from the Settlement and the procedure for doing so.

13 e. The Class Notice will inform Class Members of their right to object to the
14 Settlement and the procedure for doing so.

15 f. The Class Notice will inform Class Members of their right to dispute the amount
16 of the estimated Individual Settlement Payment.

17 g. The Class Notice shall include a statement as to the number of workweeks
18 attributable to each Class Member as well as an explanation for how the workweeks will be used to
19 calculate the Individual Settlement Payments.

20 h. If any Class Notice mailed to any California Class Member is returned, the
21 Settlement Administrator shall make a good-faith attempt to obtain the most current names and postal
22 mail addresses for those individuals, including skip tracing, cross-checking the names and/or postal
23 mail addresses it received from Defendant with other appropriate databases (e.g., the National Change
24 of Address) for more current names and/or postal mail addresses for those individuals. All Class
25 Members' names and postal mail addresses obtained through these sources shall be protected as
26 confidential and not used for purposes other than the notice and administration of this Settlement. The
27 address determined by the Settlement Administrator as the current mailing address shall be presumed
28 to be the best mailing address for each Class Member. The Settlement Administrator shall promptly

1 re-mail the Class Notice to any Class Member whose original notice was returned because of a wrong
2 address. Notices will be re-mailed to any Class Member for whom an updated address is located within
3 ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and
4 its receipt of the updated address. The Notice shall be identical to the original Notice, except that it
5 shall notify the Class Member that the exclusion (opt-out) request, objection, or dispute as to estimated
6 Individual Settlement Payment must be returned by the later of the Notice Response Deadline or fifteen
7 (15) days after the remailing of the Notice.

8 i. If any Class Notice to a Class Member is returned to the Settlement
9 Administrator with a forwarding address, the Settlement Administrator shall forward the postal mailing
10 to that address.

11 j. In the event that any Class Notice is returned as undeliverable a second time, no
12 further postal mailing shall be required. The Settlement Administrator shall maintain a log detailing
13 the instances Class Notices were returned as undeliverable, re-mailed, and where applicable, returned
14 again.

15 k. The Settlement Administrator will also provide Class Notice via a content-
16 neutral settlement website managed by the Settlement Administrator, and approved by counsel for the
17 Parties.

18 l. The Parties agree that the procedures set forth in this Section comply with all
19 due process requirements, constitutes reasonable and the best practicable notice under the
20 circumstances, and constitute an appropriate and sufficient effort to locate current addresses for Class
21 Members such that no additional efforts to do so shall be required. Any Class Members who fail to
22 receive the Notice of Settlement after these procedures have been followed will nonetheless be bound
23 by this Settlement.

24 m. At least twenty-eight (28) days before the Final Approval Hearing, the
25 Settlement Administrator shall provide a declaration of due diligence confirming: its dissemination of
26 the Class Notice in accordance with the notice procedures of this Agreement; all attempts by the
27 Settlement Administrator to locate Class Members; the number of delivered and undeliverable Class
28 Notices; the number of objections received (and copies of same); and the number of requests for

1 exclusion received (but not copies of same). Class Counsel shall be responsible for filing the due
2 diligence declaration with the Court.

3 47. Escalator. It is estimated that there are approximately 240 Class Members in the
4 proposed Settlement Class as of December 15, 2020. Defendant shall provide a final number on the
5 class size as of the date of preliminary approval. If the actual number of Class Members at the end of
6 the Class Period is five percent (5%) or more greater than the number of Class Member represented by
7 Defendant, the Gross Settlement Amount shall be increased on a pro-rata basis equal to the increase in
8 the number of Class Members (e.g., if the actual number of Class Members is 15% higher than the 240
9 Class Members previously identified, the Gross Settlement Amount would increase by 10%).

10 48. Defendant's Ability to Fund Settlement. Defendant represents that its business is
11 currently solvent, and it currently is and believes it will be able to pay the Gross Settlement Amount
12 within the timeframe set forth below. Specifically, Defendant has reviewed its financial status in
13 contemplation of this Settlement and believes it will be able to comply with the payment schedule set
14 forth below.

15 49. Disputes Regarding Information on Notices. Class Members are deemed to participate
16 in the Settlement, unless they opt-out. The Notice will inform Class Members of his/her estimated
17 Individual Settlement Payment and the number of Weeks Worked during the Class Period. Class
18 Members may dispute their Weeks Worked if they feel they should be credited with more Work Weeks
19 than Defendants' records show by timely submitting evidence to the Settlement Administrator.
20 Defendants' records will be presumed determinative absent reliable evidence to rebut Defendants'
21 records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member
22 and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and
23 confer in good faith about the evidence to determine the Class Member's actual number of Work Weeks
24 and estimated Individual Settlement Payment. If Class Counsel and Defense Counsel are unable to
25 agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Class
26 Members will have until the Notice Response Deadline to dispute Weeks Worked, object or opt out,
27 unless extended by the Court. In the event that the Settlement Administrator increases the number of
28 Weeks Worked for any Settlement Class Member, then the Settlement Administrator will recalculate

the Individual Settlement Payments; accordingly, in no event will Defendants be required to increase the Maximum Settlement Amount.

50. Procedure for Requesting Exclusion.

a. Class Members who wish to exclude themselves from (or “opt out” of) the Settlement must submit timely, written requests for exclusion. To be effective, the request for exclusion must include: the Class Member’s name, address, and telephone number; the name and case number of this case; a clear and unequivocal statement that the individual wishes to be excluded from the Settlement; and the Class Member’s signature.

b. The request for exclusion must be mailed to the Settlement Administrator at the address provided in the Class Notice and must be postmarked no later than thirty (30) days after the Mailed Notice Date. The date of the postmark on the envelope containing the request for exclusion shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Requests for exclusion must be exercised individually by a Class Member. Attempted collective group, class, or subclass requests for exclusions shall be ineffective and disregarded by the Settlement Administrator.

c. The Settlement Administrator shall automatically notify Class Counsel and counsel for Defendant if and when the number of timely-submitted requests for exclusion reaches 5% of all Class Members. If more than 10% of Class Members opt out of the Settlement, Defendant at its sole and absolute discretion may elect to rescind and revoke the entire Settlement Agreement by sending written notice to Class Counsel that it revokes the Settlement within 30 days after expiration of the opt out period.

d. All Class Members who do not opt out shall be bound by this Agreement, and all of their claims shall be dismissed with prejudice and released as provided for herein, even if they never received the Class Notice or other actual notice of this Settlement.

e. Plaintiffs agree not to request exclusion from the Settlement Class.

f. Notwithstanding the submission of a timely request for exclusion, Class Members will still be bound by the settlement and release of the PAGA Claims or remedies under the

Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Requests for exclusion do not apply to the PAGA Claims, and will not be effective to preclude the release of the PAGA Claims.

51. Procedure for Objecting.

a. Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement may provide to the Settlement Administrator (who shall forward it to Class Counsel and counsel for Defendant), a timely statement of the objection. However, written objections are not required, and a Class Member may also appear at the Final Approval Hearing to make any objections to the Court, in person.

b. All written objections and supporting papers must be postmarked no later than the thirty (30) days after the Mailed Notice Date. The filing date or the date of the postmark on the envelope containing the objection shall be the exclusive means used to determine whether the written objection has been timely submitted.

c. A written objection must contain at least the following: (i) the objector's full name, address, telephone, and signature; (ii) a clear reference to the name and case number of the Action; (iii) a statement of the specific legal and factual basis for each objection argument; and (iv) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number.

d. Class Members who object to the proposed Settlement shall remain Settlement Class Members and shall be deemed to have voluntarily waived their right to pursue an independent remedy against Defendant and the Released Parties. To the extent any Class Member objects to the Settlement, and such objection is overruled in whole or in part, those Class Members will be forever bound by the Final Approval order and Judgment.

52. Motion for Final Approval

a. Promptly after the Exclusion/Objection Deadline, Plaintiffs shall file a motion requesting final approval of the Settlement, the entry of which is a material condition of this Settlement. Plaintiff shall submit to Defendant's counsel, at least three (3) days before filing, the motion requesting final approval and the [Proposed] Final Approval Order.

- 1 b. The Final Approval Order shall adjudge that, among other things:
- 2 • The Settlement Administrator has fulfilled its initial notice and reporting duties
- 3 under the Settlement and that the Class Notice: (i) constituted the best
- 4 practicable notice; (ii) constituted notice that was reasonably calculated, under
- 5 the circumstances, to apprise Settlement Class Members of the pendency of the
- 6 Action, and their right to exclude themselves from or object to the proposed
- 7 settlement and to appear at the Final Approval Hearing; (iii) was reasonable and
- 8 constituted due, adequate, and sufficient notice to all persons entitled to receive
- 9 notice; and (iv) met all applicable requirements of due process, and any other
- 10 applicable rules or law.
- 11 • The Settlement as fair, reasonable, and adequate;
- 12 • Plaintiffs and Class Counsel may adequately represent the Class Members for
- 13 the purpose of entering into and implementing the Settlement;
- 14 • The Settlement Administrator is to execute the distribution of proceeds pursuant
- 15 to the terms of this Settlement;
- 16 • The Final Approval Order and Judgment of dismissal shall be final and entered
- 17 forthwith;
- 18 • Without affecting the finality of the Final Approval Order and Judgment, the
- 19 Court retains continuing jurisdiction over Plaintiffs, Defendant, and the Class
- 20 Members as to all matters concerning the administration, consummation, and
- 21 enforcement of this Settlement Agreement;
- 22 • As of the Payment Date, the Plaintiffs, Participating Class Members, and their
- 23 legally authorized representatives, heirs, estates, trustees, executors,
- 24 administrators, principals, beneficiaries, representatives, agents, assigns, and
- 25 successors, and/or anyone claiming through them or acting or purporting to act
- 26 for them or on their behalf, regardless of whether they have received actual
- 27 notice of the proposed Settlement, have conclusively compromised, settled,
- 28 discharged, and provided: the Complete and General Release (in the case of

1 Plaintiffs); and the release of Released Claims (in the case of the Participating
2 Class Members) against Defendant and the Released Parties, and are bound by
3 the provisions of the Settlement;

- 4 • Notwithstanding the submission of a timely request for exclusion, Class
5 Members are still bound by the settlement and release of the PAGA Claims or
6 remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th
7 969 (2009), as requests for exclusion do not apply to the PAGA Claims, and
8 further affirms that the State's claims for civil penalties pursuant to PAGA are
9 also extinguished;
- 10 • This Settlement Agreement and the Final Approval order and Judgment to be
11 binding on, and have *res judicata* and preclusive effect in, all pending and future
12 lawsuits or other proceedings that encompass Plaintiffs' and Settlement Class
13 Members' claims released herein, and that are maintained by or on behalf of
14 Plaintiffs and the Settlement Class Members and/or their heirs, estates, trustees,
15 executors, administrators, principals, beneficiaries, representatives, agents,
16 assigns, and successors, and/or anyone claiming through them or acting or
17 purporting to act for them or on their behalf;
- 18 • Plaintiffs and the Settlement Class Members are permanently barred from filing,
19 commencing, prosecuting, intervening in, or participating (as class members or
20 otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other
21 proceeding in any jurisdiction based on the claims released herein;
- 22 • The Settlement provided for herein, and any proceedings undertaken pursuant
23 thereto, are not, and should not in any event be offered, received, or construed
24 as evidence of, a presumption, concession, or an admission by any Party of
25 liability or non-liability or of the certifiability or non-certifiability of a litigation
26 class or collective, or that PAGA representative claims may validly be pursued;
27 provided, however, that reference may be made to this Settlement in such
28 proceedings as may be necessary to effectuate the provisions of this Settlement;

- The Action is dismissed with prejudice;
- The Parties, without further approval from the Court, are authorized to agree to and adopt such amendments, modifications, and expansions of this Agreement, including all Exhibits hereto, as (i) shall be consistent in all material respects with the Final Approval order; (ii) do not limit the rights of Participating Class Members; and (iii) contains such other and further provisions consistent with the terms of this Settlement Agreement to which the Parties expressly consent in writing.

c. At the Final Approval Hearing, Class Counsel may also request entry of an Order approving the Class Counsel Award and the Class Representative Enhancement Awards to Plaintiffs. Any such Class Counsel Award or Service Award shall be paid exclusively from the Gross Settlement Amount. In no event shall any Released Party otherwise be obligated to pay for any attorneys' fees and expenses or Class Representative Enhancement Awards. The disposition of Class Counsel's application for a Class Counsel Award, and for Class Representative Enhancement Awards, is within the sound discretion of the Court and is not a material term of this Settlement Agreement, and it is not a condition of this Settlement Agreement that such application be granted. Any disapproval or modification of such application by the Court shall not (i) affect the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to terminate the Settlement Agreement, or (iii) increase the consideration any Released Party pays in connection with the Settlement. Released Parties shall have no liability to Plaintiffs or Class Counsel arising from any claim regarding the division of any attorneys' fee/litigation cost award between and among Class Counsel.

53. Procedure for Performance of Settlement If/When It Becomes Effective.

a. Final Judgment. Class Counsel shall provide the Settlement Administrator with a copy of the Final Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Judgment to its website within three (3) business days of receipt.

1 b. By no later than May 31, 2021, Defendant will provide the Settlement
2 Administrator with the Gross Settlement Amount (\$372,500).

3 c. Within fifteen (15) business days following the Effective Date, the Settlement
4 Administrator shall distribute the Gross Settlement Amount (“Payment Date”) as follows:

- 5 • Pay the costs and expenses incurred in connection with administering this
6 Settlement, which shall not be more than \$10,500;
- 7 • Subject to the approval and further order(s) of the Court, pay the Class
8 Representative Enhancement Awards to Plaintiffs, which shall not exceed
9 \$7,500 for Echo Hall and shall not exceed \$5,000 each for Melissa Korff and
10 Mercedes Deguchy.
- 11 • Subject to the approval and further order(s) of the Court, pay the Class Counsel
12 Award, which shall not exceed \$151,666.67 for CollinsKim, LLP and not to
13 exceed \$17,500 for Ostergar Lattin Julander, LLP.
- 14 • Subject to the approval and further order(s) of the Court, distribute 75% of the
15 PAGA Payment to the LWDA and the remaining 25% to the Aggrieved
16 Employees on a per work week basis;
- 17 • Collect pay, and prepare all tax forms related to any and all employer taxes
18 incurred by Defendant as a result of this Settlement;
- 19 • Subject to the approval and further order(s) of the Court, distribute the Individual
20 Settlement Payments from the Gross Settlement Amount for the benefit of the
21 Settlement Class Members.

22 d. If any the Individual Settlement Payments are not cashed after the Void Date,
23 then within thirty (30) days after the Void Date, the Settlement Administrator shall void the checks and
24 shall pay such unallocated and unclaimed funds to the California State Controller’s Office in the name
25 of the Class Member.

26 e. Upon completion of administration of the Settlement, the Settlement
27 Administrator will provide a written declaration under oath to certify such completion to the Court and
28

counsel for all Parties. Class Counsel shall file the declaration with the Court to confirm full satisfaction of the Settlement.

f. Participating Class Members are not eligible to receive any compensation other than the Individual Settlement Payment.

g. The Individual Settlement Payments cashed by Participating Class Member shall be reported by the Settlement Administrator to the applicable governmental authorities on IRS Forms W-9 and/or 1099 (if required). The Parties agree all Individual Settlement Payments will be allocated as follows: 30% to settlement of wage claims; 40% to settlement of claims for statutory penalties; and 30% to settlement of claims for interest. The portions allocated to the Class Representative Enhancement Awards shall be reported on IRS Form 1099s by the Settlement Administrator. The Settlement Administrator shall be responsible for issuing copies of all IRS Forms for the Plaintiffs and Participating Class Members.

h. The Parties make no representation as to the tax treatment or legal effect of the payments called for hereunder, and the Plaintiffs and Class Members are not relying on any statement, representation, or calculation by any of the Parties or by the Settlement Administrator in this regard. Plaintiffs and the Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein and will hold Plaintiffs, Class Counsel, Defendant, Defendant's counsel and the Released Parties free and harmless from and against any claims resulting from the tax treatment of payments under this Agreement. Plaintiffs and the Participating Class Members acknowledge and agree that no provision of this Settlement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor will any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

47. Effect of Disapproval, Cancellation or Termination of Settlement Agreement.

a. If the Court does not approve the Settlement as set forth in this Settlement Agreement, or if the Court enters the Judgment and appellate review is sought, and on such review, the entry of Judgment is vacated, modified in any way, or reversed, or if the Final Approval order does not

1 otherwise become Final, then this Settlement Agreement shall be cancelled and terminated, unless all
2 Parties, in their sole discretion within thirty (30) days from the date such ruling becomes final, provide
3 written notice to all other Parties hereto of their intent to proceed with the Settlement under the terms
4 of the Judgment as it may be modified by the Court or any appellate court.

5 b. In the event that: (i) the Settlement is not approved, is overturned, or is materially
6 modified by the Court or on appeal, (ii) the Judgment does not become Final, or (iii) this Settlement
7 Agreement is terminated, cancelled, or fails to become effective for any reason, then: (a) the Parties
8 stipulate and agree the Settlement, the Class Information, and all documents exchanged and filed in
9 connection with the Settlement shall be treated as inadmissible mediation communications under Cal.
10 Evid. Code §§ 1115 et seq., (b) the Settlement shall be without force and effect upon the rights of the
11 Parties hereto, and none of its terms shall be effective or enforceable, with the exception of this
12 Paragraph, which shall remain effective and enforceable; (c) the Parties shall be deemed to have
13 reverted to their respective status prior to execution of this Agreement; (d) all Orders entered in
14 connection with the Settlement, including the certification of the California Settlement Class Members
15 and the California Class Claims, FLSA Settlement Collective Members and FLSA Collective Claims,
16 shall be vacated without prejudice to any Party's position on the issue of class certification, the issue
17 of amending the complaint, or any other issue, in this Action or any other action, and the Parties shall
18 be restored to their litigation positions existing on the date of execution of this Agreement; and (e) the
19 Parties shall proceed in all respects as if the Settlement Agreement and related documentation and
20 orders had not been executed, and without prejudice in any way from the negotiation or fact of the
21 Settlement or the terms of the Settlement Agreement. The Settlement, all documents, orders, and
22 evidence relating to the Settlement, the fact of their existence, any of their terms, any statement or
23 report concerning the Settlement Agreement, its existence, or their terms, any negotiations,
24 proceedings, acts performed, or documents executed pursuant to or in furtherance of the Settlement
25 Agreement shall not be admissible in any proceeding, and shall not be offered, received, or construed
26 as evidence of a presumption, concession, or an admission of liability, of unenforceability of any
27 arbitration agreement, of the certifiability of a litigation class, or otherwise used by any Person for any
28 purpose whatsoever, in any trial of this Action or any other action or proceedings.

1 48. Additional Provisions

2 a. All of the Exhibits to this Agreement are an integral part of the Settlement and
3 are incorporated by reference as though fully set forth herein.

4 b. Unless otherwise noted, all references to “days” in this Agreement shall be to
5 calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal
6 legal holiday, such date or deadline shall be on the first business day thereafter.

7 c. This Agreement supersedes all prior negotiations and agreements and may be
8 amended or modified only by a written instrument signed by counsel for all Parties or the Parties’
9 successors-in-interest.

10 d. The Parties reserve the right, subject to the Court’s approval, to make any
11 reasonable extensions of time that might be necessary to carry out any of the provisions of this
12 Agreement. Such extensions must be in writing to be enforceable.

13 e. The Released Parties shall have the right to file the Settlement Agreement, the
14 Final Approval Order and Judgment, and any other documents or evidence relating to the Settlement
15 in any action that may be brought against them in order to support a defense or counterclaim based on
16 principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar, reduction,
17 or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18 f. The Parties to the Settlement Agreement agree that the terms of the Settlement
19 were negotiated at arm’s length and in good faith by the Parties, resulted from an arm’s-length
20 mediation session facilitated by Mariam Zadeh, and reflect a settlement that was reached voluntarily
21 based upon adequate information and sufficient discovery and after consultation with experienced legal
22 counsel.

23 g. Plaintiffs, Class Counsel and Defendant have concluded that the Settlement set
24 forth herein constitutes a fair, reasonable, and adequate resolution of the claims that the Plaintiff
25 asserted against Defendant, including the claims on behalf of the Class Members, and that it promotes
26 the best interests of the Class Members.

1 h. To the extent permitted by law, all agreements made and orders entered during
2 the course of the Action relating to the confidentiality of information shall survive this Settlement
3 Agreement

4 i. Within sixty (60) days following the Effective Date, Class Counsel shall return
5 to Defendant all documents produced in the Action, or confirm in writing that all such documents have
6 been destroyed.

7 j. The waiver by one Party of any breach of this Settlement Agreement by any
8 other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
9 Agreement.

10 k. This Settlement Agreement, including its Exhibits, constitutes the entire
11 agreement among the Parties, and no representations, warranties, or inducements have been made to
12 any Party concerning this Settlement Agreement or its Exhibits, other than the representations,
13 warranties, and covenants contained and memorialized in this Settlement Agreement and its Exhibits.

14 l. This Settlement Agreement may be executed in one or more counterparts. All
15 executed counterparts and each of them shall be deemed to be one and the same instrument provided
16 that counsel for the Parties to this Settlement Agreement shall exchange among themselves original
17 signed counterparts.

18 m. The Parties hereto and their respective counsel agree that they will use their best
19 efforts to obtain all necessary approvals of the Court required by this Settlement Agreement.

20 n. This Settlement Agreement shall be binding upon and shall inure to the benefit
21 of the successors and assigns of the Parties hereto, including any and all Released Parties and any
22 corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate,
23 or reorganize.

24 o. This Settlement Agreement shall not be construed more strictly against one Party
25 than another merely because of the fact that it may have been prepared by counsel for one of the Parties,
26 it being recognized that because of the arm's-length negotiations resulting in the Settlement Agreement,
27 all Parties hereto have contributed substantially and materially to the preparation of the Settlement
28 Agreement.

1 p. Except where this Settlement Agreement itself provides otherwise, all terms,
2 conditions, and Exhibits are material and necessary to this Settlement Agreement and have been relied
3 upon by the Parties in entering into this Settlement Agreement.

4 q. This Settlement Agreement shall be governed by California law. Any action
5 based on this Settlement Agreement, or to enforce any of its terms, shall be venued in the Los Angeles
6 County Superior Court, which shall retain jurisdiction over all such disputes. All Parties to this
7 Settlement Agreement shall be subject to the jurisdiction of said Court for all purposes related to this
8 Settlement Agreement. This Paragraph relates solely to the law governing this Settlement Agreement
9 and any action based thereon, and nothing in this Paragraph shall be construed as an admission or
10 finding that California law applies to the Released Claims of any Plaintiff or Class Member who resides
11 outside the State of California.

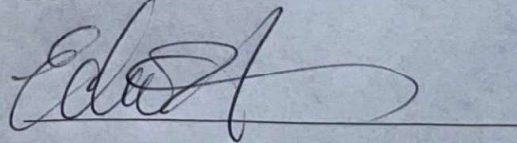
12 r. The Court shall retain continuing and exclusive jurisdiction over the Parties to
13 this Settlement Agreement for the purpose of the administration and enforcement of this Settlement
14 Agreement.

15 s. The headings used in this Settlement Agreement are for the convenience of the
16 reader only, and shall not affect the meaning or interpretation of this Settlement Agreement.

17 t. In construing this Settlement Agreement, the use of the singular includes the
18 plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).
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20
21

22 Dated: June 24, 2021

ECHO HALL



26 Dated: June __, 2021

MERCEDES DEGUCHY



1 p. Except where this Settlement Agreement itself provides otherwise, all terms,
2 conditions, and Exhibits are material and necessary to this Settlement Agreement and have been relied
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9 and any action based thereon, and nothing in this Paragraph shall be construed as an admission or
10 finding that California law applies to the Released Claims of any Plaintiff or Class Member who resides
11 outside the State of California.

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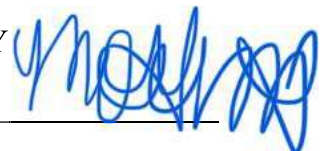
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22 Dated: June __, 2021

ECHO HALL

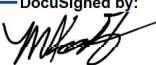
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26 Dated: June 30, 2021

MERCEDES DEGUCHY



Dated: June 24, 2021

MELISSA KORFF

DocuSigned by:

8693AF5EB40240C...

Dated: June __, 2021

SPACE NK RETAIL HOLDINGS, LLC

By: _____
Name:
Title:

APPROVED AS TO FORM

Dated: June __, 2021

GORDON REES SCULLY MANSUKHANI, LLP

By: _____
DEBRA ELLWOOD MEPPEN
DINA GLUCKSMAN
GENE WILLIAMS
Attorneys for Defendant SPACE NK
RETAIL HOLDINDS, LLC.

Dated: June __, 2021

COLLINS KIM, LLP

By: _____
DAWN COLLINS
TAE KIM
Attorneys for Plaintiffs
ECHO HALL and MELISSA KORFF

Dated: June __, 2021

OSTERGAR LATTIN JULANDER, LLP

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Dated: June __, 2021

MELISSA KORFF

Dated: June 28, 2021

SPACE NK RETAIL HOLDINGS, LLC

By: Noah Rosenblatt
Name: NOAH ROSENBLATT
Title: PRESIDENT

APPROVED AS TO FORM

Dated: June __, 2021

GORDON REES SCULLY MANSUKHANI, LLP

By: _____
DEBRA ELLWOOD MEPPEN
DINA GLUCKSMAN
GENE WILLIAMS
Attorneys for Defendant SPACE NK
RETAIL HOLDINGS, LLC.

Dated: June __, 2021

COLLINS KIM, LLP

By: _____
DAWN COLLINS
TAE KIM
Attorneys for Plaintiffs
ECHO HALL and MELISSA KORFF

Dated: June __, 2021

OSTERGAR LATTIN JULANDER, LLP

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2 Dated: June __, 2021

MELISSA KORFF

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7 Dated: June __, 2021

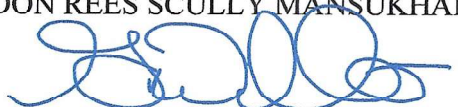
SPACE NK RETAIL HOLDINGS, LLC

8 By: _____
9 Name: _____
10 Title: _____

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14 **APPROVED AS TO FORM**

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16 Dated: June 25, 2021

GORDON REES SCULLY MANSUKHANI, LLP

17 By: 
18 DEBRA ELLWOOD MEPPEN
19 DINA GLUCKSMAN
20 GENE WILLIAMS
Attorneys for Defendant SPACE NK
RETAIL HOLDINDS, LLC.

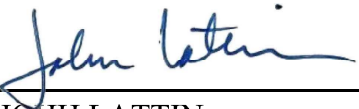
21 Dated: June 25, 2021

COLLINS KIM, LLP

22
23 By: 
24 DAWN COLLINS
25 TAE KIM
26 Attorneys for Plaintiffs
ECHO HALL and MELISSA KORFF

27 Dated: June __, 2021

OSTERGAR LATTIN JULANDER, LLP

By: 
JOHH LATTIN
Attorneys for Plaintiff MERCEDES DEGUCHY

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EXHIBIT 1

NOTICE OF SETTLEMENT OF CLASS ACTION

Echo Hall, et. al v. Space NK Retail Holdings, LLC, et. al
Superior Court of the State of California, County of Los Angeles
Case No. 20STCV05059

To: all current and former non-exempt employees of Defendants Space NK Retail Holdings, LLL or any of its affiliated entities, including without limitation, Space NK New York LLC and Space NK USA LLC, (collectively, “Space NK”) who worked in the State of California at any time between February 7, 2016 and [REDACTED], 2021 (the “Class”):

THIS NOTICE is of a proposed settlement of a class action lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [REDACTED], 2021 to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member in the above lawsuit. Under the terms of the proposed settlement you are estimated to receive approximately **\$INSERT AMOUNT** as your share of the Net Settlement Amount should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share of the Net Settlement Amount may be more or less than this estimate. Your estimate is based on the number of eligible weeks you worked at Space NK in California between February 7, 2016 and [REDACTED], 2021 (the “Class Period”) while performing retail sales duties. Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Claims described in Section IV.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement, you may “opt-out” of the settlement. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2021 (see Section V for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment, but you will preserve your right to pursue the Released Claims described in Section IV subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement.
OBJECT	If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by [REDACTED], 2021 (see Section V for more details on how to object).
DISPUTE YOUR NUMBER OF WORK WEEKS	If you believe that your number of Work Weeks listed above is incorrect, you may contact the Settlement Administrator to dispute your Work Week calculation (see Section IV for more details on how to dispute your Work Weeks). Defendants’ records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that your Work Week calculation is inaccurate.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Hall v. Space NK Retail Holdings, LLC, et al.*, Los Angeles County Superior Court Case No. 20STCV05059(the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Space NK's records show that you were employed in California as either an exempt or a non-exempt employee at some point between February 7, 2016 and [REDACTED], 2021 ("Class Period"). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Space NK as an exempt or non-exempt employee in California at any time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On February 7, 2020, Plaintiff and Class Representative Echo Hall, through her attorneys ("Class Counsel"), filed a class and representative action complaint against Space NK for alleged wage and hour violations on behalf of all current and former exempt and non-exempt employees who were employed by Space NK in California at any time since February 7, 2016. Plaintiff alleges that Space NK violated various Labor Code sections by failing to pay wages for all hours worked, provide all required meal and rest breaks, timely pay final wages, provide accurate and complete wage statements, and other related claims. Plaintiff later amended her Complaint to add claims for forced purchases and inadequate seating.

Space NK has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiffs' claims. By agreeing to settle, Space NK is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Space NK has agreed to settle the case as part of a compromise with Plaintiffs and the Class Members.

The Court has not ruled on the merits of Plaintiffs' claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Space NK and Plaintiffs have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm's length mediation. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representatives and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Space NK, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Space NK, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, Space NK will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member's participation or decision not to participate in this Settlement. If a Class Member does not participate, his/her share will be paid to those who do participate.

III. Who are the Class Members' attorneys?

Attorneys for the Class Members:

Dawn Collins
Tae Kim
COLLINSKIM LLP
525 Flower Street, 18th Floor
Los Angeles, California 90071
Telephone: (213) 341-0238
Facsimile: (213) 341-0239

John E. Lattin
OSTERGAR LATTIN JULANDER, LLP
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Telephone: (949) 357-2544
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IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all exempt and non-exempt employees employed by Space NK in California while performing retail sales duties at any time between February 7, 2016 and [REDACTED], 2021 (the "Settlement Class"). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, ("Participating Class Members") will be mailed Settlement checks and in exchange be bound by the Settlement and release of certain wage and penalty claims against Space NK. This is a non-reversionary settlement, meaning that under no circumstances will any portion of the settlement amount be returned to Space NK.

Without admitting any wrongdoing, Space NK has agreed to pay \$372,500 (the "Gross Settlement Amount") to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved CPT to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$10,500 will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act ("PAGA") authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$30,000 of the Gross Settlement Amount will be allocated to Plaintiff's claim under the Private Attorneys General Act of 2004 ("PAGA"). Of this amount, \$22,500 will be paid to the LWDA in satisfaction of the claims for penalties under PAGA, and the remaining \$7,500 will be divided between all Aggrieved Employees on a Workweek basis. Aggrieved Employees includes "all current and former exempt and non-exempt employees of Space NK who worked in the State of California at any time during the period of February 7, 2019 through [REDACTED], 2021. Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$7,500 allocation:

Aggrieved Employee?	Weeks Worked as Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	INSERT

Service Payment to Class Representatives. Class Counsel will ask the Court to award Class Representatives Service Payments in the amount of \$7,500 to Echo Hall, \$5,000 to Melissa Korff, and \$5,000 to Mercedes Deguchy, for a total of \$17,500 in Class Representative Service Payments, to compensate them for their service and extra work provided on behalf of the Class Members and in exchange for a general release of claims. The Class Representatives also may receive a share of the Settlement as Class Members.

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask for fees of no more than \$134,166.67 (\$116,666.67 to CollinsKim and \$17,500 to Ostergar Lattin Julander) of the Gross Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$36,500 (\$35,000 to CollinsKim and \$1,500 to Ostergar Lattin Julander) for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$ [REDACTED]. Compensable work weeks will be all Work Weeks that a Settlement Class Member worked in California during the Class Period. A Work Week includes any week in which a Class Member worked at least one shift/day during the week. To calculate each Individual Settlement Payment, the Settlement Administrator will divide the total Work Weeks of all Settlement Class Members into the Net Settlement Amount to determine a per “Work Week Value”. The Workweek Value will be multiplied by the number of Work Weeks worked by each Settlement Class Member during the Class Period to determine the Individual Settlement Payment, prior to legal deductions, for each Settlement Class Member. If any Settlement Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out).

For each Settlement Class Member, the Weeks Worked at Space NK during the Class Period will be calculated from Space NK’s records. Space NK’s records indicate that you worked for [TOTAL WORK WEEKS] Work Weeks in California during the Class Period of February, 2016, through [REDACTED], 2021. If you disagree with this number, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2021, with documentation to establish the number of weeks you claim to have actually worked for Space NK in California between February 7, 2016 and [REDACTED], 2021 (excluding any leaves of absence). **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will render a final decision.

Payments to Class Members. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. Participating Class Members will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller’s Office in the name of the Participating Class Member, so that the Participating Class Member can attempt to collect the funds at a later date.

Allocation and Taxes. Thirty Percent (30%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining Seventy Percent (70%) will be considered and reported as interest and penalties, (Form 1099 reporting), with Forty Percent (40%) allocated to penalties, and Thirty Percent (30%) allocated to interest. The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, it will be reported on IRS Form 1099 as income. Participating Class Members are responsible for the proper income tax treatment of the Individual Settlement Payments. The Settlement Administrator, Space NK and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments. Participating Class Members will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments. Accordingly, Participating Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. Once the Court approves the proposed Settlement and enters Judgment, and Space NK funds the Settlement, then the Settlement Agreement will bind all Class Members who have not opted out of the Settlement, and will bar them from bringing certain claims against Space NK. Specifically, the Participating Class Members will fully release and discharge the Defendants and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, of any and all known and unknown claims, losses, damages, liquidated damages, penalties, interest, liabilities, causes of action, civil complaints, arbitration demands, or suits which arise or could have arisen from the facts asserted in the Action, including the Third Amended Complaint, including violations for meal periods, rest periods, failure to pay minimum wages, failure to pay overtime wages, timely payment of wages, wage statements, waiting time penalties, coerced purchases, failure to provide adequate seating, penalties under the Private Attorneys General Act sections 2698, et seq., and violations of California’s Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, et. seq.) or other remuneration whether sought under statute, tort, contract, or as an unfair business practice for the Class Period.

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged

and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure set forth below. If you disagree with the number of Weeks Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Payment.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by the Defendants and the Defendants will not take any adverse employment action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Settlement.** If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2021 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should make clear that you wish to be excluded from the settlement class in the Hall v. Space NK Retail Holding lawsuit and that you understand that by requesting exclusion, you will not receive any money from the settlement of the lawsuit.

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2021. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any payments under this Settlement; and (3) will not be bound by this Settlement, or the Judgment.

Whether you choose to remain in the Settlement or exclude yourself from the Settlement, you will be bound by the terms of the settlement of the PAGA claims (if the Court approves the Settlement) and your claims under PAGA will be released.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object in writing, you must submit a written objection stating your full name, address, telephone number, dates of employment at Space NK, the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection, and any legal support for each objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2021. Objections that do not include all required information, or that are not submitted timely, will not be considered. **You need not object to the Settlement if you only dispute the number of Weeks Worked.**

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2021, at _____ a.m. in Department 1 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. You have the right to appear either in person or through your own attorney at this hearing, and may do so whether or not you submitted a written objection. The Court will hear from any class member who appears at the Final Approval Hearing and wishes to speak regarding his or her objection. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of

appearance with the Court and serve counsel for all parties on or before [REDACTED], 2021. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court. If you choose to attend the Final Approval Hearing, you must comply with the current Los Angeles Superior Court Courthouse Covid protocols, which include wearing a face mask over your nose and mouth and maintaining at least six feet of physical distance from others (except those within your household.)

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Space NK in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims, effective the date that the settlement payments are made to class members. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented litigation costs and the Service Payment to the Class Representative on [REDACTED], 2021 at _____ a.m. in Department 1 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement (the Settlement Agreement) at Office of the Clerk, Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012, during regular court hours. If you choose to review the information at the Office of the Clerk, you must comply with the current Los Angeles Superior Court Courthouse Covid protocols, which include wearing a face mask over your nose and mouth and maintaining at least six feet of physical distance from others (except those within your household.) You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information.

IX. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion is [REDACTED], 2021. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2021. These deadlines will be strictly enforced.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT 2

1 Dawn Collins (SBN 193447)
2 *dcollins@collinskim.com*
3 Tae Kim (SBN 210465)
4 *tkim@collinskim.com*
5 **COLLINSKIM LLP**
6 515 S. Flower Street, 18th Floor
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7 John E. Lattin (SBN 167876)
8 *jlattin@oster.com*
9 **OSTERFAR LATTIN JULANDER, LLP**
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Facsimile: (949) 305-4591

11 Attorneys for Plaintiffs
12 ECHO HALL, MELLISA KORFF,
13 And MERCEDES DEGUCHY

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

16 ECHO HALL, on behalf of herself and all others
17 similarly situated,

18 Plaintiffs,

19 v.

20 SPACE NK RETAIL HOLDINGS LLC and
21 DOES 1 through 50, inclusive,

22 Defendants.

Case No. 20STCV05059

[Assigned for all purposes to Hon. Daniel J.
Buckley, Dept. 1]

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: June 11, 2021
Time: 10:30am
Dept.: 1

[Filed concurrently with Notice of Motion and
Motion for Preliminary Approval of Class Action
Settlement; and Declaration of Dawn T. Collins
In Support of Motion for Preliminary Approval of
Class Action Settlement]

1 5. At the Final Fairness and Approval Hearing, the Court will consider: (1) whether the
2 settlement should be approved as fair, reasonable, and adequate for the class; (2) whether a judgment
3 granting approval of the settlement should be entered; and (3) whether Class Counsel's application
4 for awards should be granted for: (a) attorneys' fees to Class Counsel, (b) reimbursement of litigation
5 costs to Class Counsel, (c) Enhancement Payment to the Plaintiffs, and (d) settlement administration
6 costs to the Settlement Administrator.

7 6. Plaintiff shall file a Motion and Memoranda for Final Approval and awards of
8 attorneys' fees, reimbursement of litigation expenses, Class Representative's Enhancement Payment,
9 and the Settlement Administrator's Declaration of Compliance concurrently with all supporting
10 declarations, and other statements and materials in support of their request for final approval and
11 awards no later than _____, 2021.

12 7. The Court approves, as to form and content, the Notice of Pendency of Class Action
13 Settlement and Notice of Estimated Individual Settlement Payment filed in this action in conjunction
14 with the Plaintiff's Motion for Preliminary Approval.

15 8. Within thirty (30) calendar days of the entry of this Order, Defendant shall provide the
16 Settlement Administrator with Class List for purposes of sending the Class Notice to Class Members.

17 9. No more than forty-five (45) calendar days after entry of this Order, the Settlement
18 Administrator shall send the Class Notice to the Class Members via U.S. Mail.

19 10. The Class Notice shall provide Class Members at least thirty (30) calendar days from
20 the date of mailing ("Mail Date") to dispute their number of weeks worked credited, to opt out of the
21 settlement, and to object to the settlement ("the Objection/Exclusion Deadline Date"). The
22 Objection/Exclusion Deadline Date shall be thirty (30) days after the date the Notice Packet is first
23 mailed (or first re-mailed) by the Settlement Administrator to the Class Member. Accordingly, the
24 Objection/Exclusion Deadline Date for all Class Members to postmark Requests for Exclusion,
25 disputes of weeks work, and Objections is _____, 2021.

26 11. The Court finds that the forms of notice to the Settlement Class regarding the
27 pendency of the action and of this Settlement and the methods of giving notice to members of the
28 Settlement Class, constitute the best notice practicable under the circumstances and constitute valid,

1 due, and sufficient notice to all members of the Settlement Class. The notice adequately and properly
2 provides notice to the Settlement Class members of the nature of the lawsuit, the terms of the
3 Settlement, Settlement Class members' right to request exclusion, Settlement Class members' right to
4 object to the Settlement and to request to appear at the fairness hearing in support of said objection
5 (either on their own behalf or through counsel of their own selection at their own expense).

6 12. The Court further approves the procedures for Class Members to participate in, opt out
7 of, or object to the Settlement, as set forth in the Settlement Agreement and Notice Packet.

8 13. To opt out of the Settlement, the Request for Exclusion must be both timely and
9 complete. To be timely, a Request for Exclusion must be mailed to the Settlement Administrator on
10 or before the Objection/Exclusion Deadline Date. The Objection/Exclusion Deadline Date shall be
11 thirty (30) days after the date the Notice Packet is mailed by the Settlement Administrator to the
12 Class Member. The date of the postmark on the return mailing envelope shall be the exclusive means
13 used to determine whether a Request for Exclusion has been timely submitted. To be complete, the
14 Request for Exclusion must include: (i) The Class Member's name, address, and telephone number;
15 (ii) the name and case number of this case; (iii) a clear and unequivocal statement that the individual
16 wishes to be excluded from the Settlement; and (iv) the Class Member's signature. To be timely, the
17 Request for Exclusion must be mailed to the Settlement Administrator, and postmarked no later than
18 the Objection/Exclusion Deadline.

19 14. To validly object to the Settlement Agreement, any Class Member who wishes to
20 object to the Settlement must mail a written objection to the Settlement Administrator by First-Class
21 U.S. Mail no later than thirty (30) days after the date the Notice Packet is mailed (or re-mailed) by the
22 Settlement Administrator to that Class Member. The date of delivery of the written objection is
23 deemed to be the date the objection is deposited in the U.S. mail, postage prepaid, as evidenced by
24 the postmark. Upon receipt of a Class Member's written objection, valid or otherwise, the Settlement
25 Administrator shall promptly email and U.S. mail a copy of the Class Member's written objection
26 (including the envelope evidencing the postmark) to each Class Counsel and to Defense Counsel no
27 later than the next business day. The objection must do all of the following: (i) include the objector's
28 full name, address, telephone, and signature; (ii) provide a clear reference to the name and case

number of the Action; (iii) include a statement of the specific legal and factual basis for each objection argument; and (iv) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number. Unless otherwise ordered by the Court, Class Members shall not be entitled to speak at the Final Fairness and Approval Hearing unless they have submitted a timely written objection that gives notice of his or her intention to appear pursuant to this Section. Class Members who have properly and timely submitted objections may appear at the Final Fairness and Approval Hearing, either in person or through a lawyer retained at their own expense. Any Class Member who participates in the settlement but who fails to submit timely written objections in the manner specified above will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

15. The procedures and requirements for filing objections in connection with the Final Fairness and Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of Class Members' objections to the Settlement Agreement, in accordance with the due process rights of all Class Members.

16. Pending the Final Fairness and Approval Hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement and this Order, are stayed.

17. To facilitate administration of the Settlement pending final approval, the Court hereby enjoins all Class Members from filing or prosecuting any claims, suits, or administrative proceedings regarding claims released by the Settlement unless and until such Class Members have submitted valid Requests for Exclusion with the Settlement Administrator and the time for submitting rescissions of valid Requests for Exclusion with the Settlement Administrator has elapsed.

18. The Court orders the following Implementation Schedule for further proceedings:

EVENT	DEADLINE (timing)
Deadline for Defendant to supply Class List to Settlement Administrator.	_____, 2021 (30 days from grant of preliminary approval)
Deadline for Settlement Administrator to Mail Notice Packets to the Class ("Notice Date").	_____, 2021 (30 days from grant of preliminary approval)

1 2	Deadline for Class Members to postmark Requests for Exclusion, Objections, and Disputes of Qualifying Work Weeks.	_____, 2021 (45 days from Notice Date – date Notice Packets are mailed (i.e. Response Deadline))
3 4 5	Deadline for Settlement Administrator to provide Declaration to Class Counsel regarding compliance with settlement administration procedures and costs.	_____, 2021 (10 days prior to deadline for Class Counsel to file Motion for Final Approval)
6 7 8 9	Deadline for Class Counsel to file (1) Responses to Class Members’ Objections, if any, and (2) Motion for Final Approval; Awards of Attorneys’ Fees, Request for Reimbursement of Costs; Class Representatives’ Enhancements; and Settlement Administrator’s Costs.	_____, 2021
10 11	Fairness Hearing and Final Approval	_____, 2021 at _____

12 19. The Final Fairness and Approval Hearing and related prior deadlines set forth above
13 may without further notice to the Class (except those who have filed timely and valid objections), be
14 continued or vacated by Order of the Court.

15
16
17 Dated: _____

The Hon. Daniel J. Buckley
Superior Court Judge

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**

2. My business address is 515 S. Flower St., 18th Floor, Los Angeles, CA 90071.

3. I served copies of the following documents:

➤ **[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

4. I served the documents listed above in item 3 on the following persons:

Attorneys for Defendant

Dina Glucksman
Gene F. Williams
GORDON REES SCULLY MANSUKHANI, LLP
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071
Telephone: 213-270-7831

Attorneys for Plaintiffs

John E. Lattin (SBN 167876)
jlattin@oster.com
OSTERFAR LATTIN JULANDER, LLP
9110 Irvine Center Drive
Irvine, CA 92618
Telephone: 949-357-2544

5. ☐ **By mail.** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California addressed as set forth in Item 4.

☒ **Via Case Anywhere.** I caused such documents described in item 4 to be uploaded electronically onto the website www.caseanywhere.com per a mutual agreement between the parties. I uploaded the above entitled document(s) with the understanding that all parties will have access and be able to download said documents.

☐ **By personal service.** By personally delivering a true copy thereof, enclosed in a sealed envelope, to the addresses shown in Item 4.

6. I served the documents by the means described in item 5 on: May 19, 2021

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/19/2021

Date

Dawn T. Collins

(Type or Print Name)

(Signature of Declarant)

EXHIBIT B

Dawn Collins (SBN 193447)
dcollins@collinskim.com
Tae Kim (SBN 210465)
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Telephone: (949) 305-4591

Attorneys for Plaintiffs
ECHO HALL, MELISSA KORFF,
and MERCEDES DEGUCHY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

ECHO HALL, on behalf of herself and all others
similarly situated; MELISSA KORFF, on behalf
of herself and all others similarly situated;
MERCEDES DEGUCHY, on behalf of herself
and all others similarly situated.

Plaintiffs,

v.

SPACE NK RETAIL HOLDINGS LLC and
DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV05059

[Assigned for all purposes to the Hon. Daniel J.
Buckley, Dept. 1]

**THIRD AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PROVIDE MEAL PERIODS
(Labor Code Sections 226.7 and 512)
2. FAILURE TO PROVIDE REST BREAKS
(California Labor Code Section 226.7)
3. FAILURE TO PAY MINIMUM WAGES
(Labor Code Sections 1194, 1197, and
1197.1)
4. FAILURE TO PAY OVERTIME (Labor
Code Sections 510 and 1198)
5. FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS (Labor Code
Section 226)
6. WAITING TIME PENALTIES (Labor Code
Section 203)
7. UNLAWFUL BUSINESS PRACTICES
(Bus. & Prof. Code Section 17200, *et seq.*)
8. FAILURE TO REIMBURSE BUSINESS
EXPENSES (Labor Code Section 2802)
9. COERCED PURCHASES (Labor Code

Section 450)
10. FAILURE TO PROVIDE SUITABLE
SEATING
11. PRIVATE ATTORNEYS GENERAL ACT
PENALTIES (Labor Code Sections 2698 *et*
seq.)

DEMAND FOR JURY TRIAL

1 Plaintiffs ECHO HALL (“Ms. Hall”), MELISSA KORFF (“Ms. Korff”), and MERCEDES
2 DEGUCHY (Ms. Hall, Ms. Korff and Ms. Deguchy are collectively referred to herein as “Plaintiffs”)
3 allege based on information and belief as follows:

4 **PRELIMINARY STATEMENT**

5 1. This action involves Defendant SPACE NK RETAIL HOLDINGS, LLC’s
6 (“Defendant” or “Space NK”) scheme to misclassify its California store managers as exempt
7 employees in an attempt to deprive them of their entitlements to the protections of California’s wage
8 and hour laws. This action also involves Space NK’s efforts to deprive its non-exempt employees of
9 the same protections. Plaintiffs, on behalf of themselves and similarly situated individuals, seek
10 unpaid overtime and minimum wages, unpaid wages for Defendant’s failure to provide meal and rest
11 breaks, waiting time penalties, penalties for failure to provide itemized wage statements, restitution
12 for unpaid wages, penalties for Labor Code violations, interest, equitable relief, and reasonable
13 attorney’s fees and costs pursuant to California Labor Code §§ 201, 202, 203, 218.5, 218.6, 226,
14 226.7, 450, 510, 512, 1174, 1194, 2699, and 2802, Cal. Bus. & Prof. Code §§17200 et seq., and
15 California Industrial Welfare Commission (“IWC”) Wage Order No. 4. Ms. Hall and Ms. Deguchy
16 bring this action on behalf of themselves and all other persons who have been employed by
17 Defendant in California in the job position titled “Store Manager” to work at its California stores
18 during the appropriate statute of limitations periods (“Class Period”). Ms. Korff brings this action on
19 behalf of herself and all other persons who have been employed by Defendant in California in a non-
20 exempt position during the Class Period.

21 2. Throughout the Class Period, Defendant maintained a policy and practice of
22 classifying non-exempt employees as exempt Store Managers. Defendant engaged in a scheme to
23 understaff the stores, forcing Store Managers to engage in non-exempt duties in order to adequately
24 operate the store. These activities included but are not limited to, cashiering, unpacking and stocking
25 inventory, cleaning store shelves, clocking in/out for shifts, and general, non-managerial customer
26 service duties. Defendant also maintained a policy and practice of failing to provide exempt
27 employees with meal and rest breaks in accordance with California law.
28

1 3. Throughout the Class Period, Defendant maintained a policy and practice of refusing
2 to reimburse employees for business expenses incurred in the discharge of their duties on behalf of
3 Defendant, which include mileage traveling between stores and mobile phone usage on behalf of
4 Defendant.

5 4. Plaintiffs are informed and believe, and based thereon allege, that Defendants engaged
6 in a pattern and practice of wage abuse against their employees within the State of California,
7 involving, inter alia, failing to pay them for all regular and/or overtime wages earned, missed meal
8 periods and rest breaks in violation of California law.

9 5. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
10 should have known that Plaintiffs and the other class members were entitled to receive certain wages
11 for overtime compensation and that they were not receiving wages for overtime compensation.

12 6. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to
13 provide Plaintiffs and the other class members the required rest and meal periods during the relevant
14 time period as required under the Industrial Welfare Commission Wage Orders and thus they are
15 entitled to any and all applicable penalties.

16 7. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
17 should have known that Plaintiffs and the other class members were entitled to receive all meal
18 periods or payment of one additional hour of pay at Plaintiffs' and the other class members'
19 regular rate of pay when a meal period was missed, and they did not receive all meal periods or
20 payment of one additional hour of pay at Plaintiffs' and the other class members' regular rate of pay
21 when a meal period was missed.

22 8. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
23 should have known that Plaintiffs and the other class members were entitled to receive all rest
24 periods or payment of one additional hour of pay at Plaintiffs' and the other class members'
25 regular rate of pay when a rest period was missed, and they did not receive all rest periods or
26 payment of one additional hour of pay at Plaintiffs' and the other class members' regular rate of pay
27 when a rest period was missed.
28

1 9. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
2 should have known that Plaintiffs and the other class members were entitled to receive at least
3 minimum wages for compensation and that they were not receiving at least minimum wages for all
4 hours worked.

5 10. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
6 should have known that Plaintiffs and the other class members were entitled to receive all wages
7 owed to them upon discharge or resignation, including overtime and minimum wages and meal and
8 rest period premiums, and they did not, in fact, receive all such wages owed to them at the time of
9 their discharge or resignation.

10 11. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
11 should have known that Plaintiffs and the other class members were entitled to receive complete and
12 accurate wage statements in accordance with California law, but, in fact, they did not receive
13 complete and accurate wage statements from Defendants. The deficiencies included, inter alia, the
14 failure to include the total number of hours worked by Plaintiffs and the other class members.

15 12. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
16 should have known that Plaintiffs and the other class members were entitled to receive
17 reimbursement for reasonable business expenses, but in fact, did not reimburse them.

18 13. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
19 should have known that Plaintiffs and the other class members had the right to work without being
20 compelled or coerced to patronize Space NK, but in fact Space NK compelled its employees to
21 purchase Space NK products in order to meet sales goals.

22 14. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
23 should have known that Plaintiffs and the other class members were entitled to suitable seating, but in
24 fact, did not provide suitable seats even when use of such seats would not interfere with Plaintiffs' or
25 other class members' job duties.

26 15. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
27 should have known that they had a duty to compensate Plaintiffs and the other class members
28 pursuant to California law, and that Defendants had the financial ability to pay such compensation

1 and reimburse business expenses, but willfully, knowingly, and intentionally failed to do so, and
2 falsely represented to Plaintiffs and the other class members that they were properly denied wages, all
3 in order to increase Defendants' profits.

4 16. During the relevant times set forth herein, Defendants failed to properly calculate and
5 pay overtime wages to Plaintiffs and the other class members for all hours worked. Plaintiffs and the
6 other class members were required to work more than eight (8) hours per day and/or forty (40) hours
7 per week without overtime compensation.

8 17. During the relevant times set forth herein, Defendants failed to provide the requisite
9 uninterrupted meal and rest periods to Plaintiffs and the other class members.

10 18. During the relevant times set forth herein, Defendants failed to pay Plaintiffs and the
11 other class members at least minimum wages for all hours worked.

12 19. During the relevant times set forth herein, Defendants failed to provide complete or
13 accurate wage statements to Plaintiffs and the other class members.

14 20. During the relevant times set forth herein, Defendants failed to properly compensate
15 Plaintiffs and the other class members pursuant to California law in order to increase Defendants'
16 profits.

17 21. During the relevant time period, Plaintiffs and the other class members worked in
18 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

19 22. During the relevant time period, Plaintiffs and the other class members were not
20 reimbursed for reasonable business expenses incurred in order to perform their job duties.

21 23. During the relevant time period, Defendants intentionally and willfully failed to pay
22 overtime wages owed to Plaintiffs and the other class members.

23 24. Defendants' failure to pay Plaintiffs and the other class members the unpaid balance of
24 overtime compensation, as required by California laws, violates the provisions of California Labor
25 Code sections 510 and 1198, and is therefore unlawful.

26 25. Pursuant to California Labor Code section 1194, Plaintiff and the other class members
27 are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.
28

26. During the relevant time period, Defendants compelled or otherwise coerced class members to purchase Space NK products in violation of California Labor Code section 450.

27. During the relevant time period, Defendants denied Plaintiffs and other class members suitable seating in violation of Section 14 of the applicable Wage Order.

THE PARTIES

28. Plaintiff ECHO HALL is an individual residing in the County of Los Angeles, State of California. She commenced her employment with Defendant in or around October 2015 and was employed through on or around June 21, 2019.

29. Plaintiff MELISSA KORFF is an individual residing in the County of Riverside, State of California. She commenced her employment with Defendant in or around August 2016 and was employed through on around July 2018.

30. Plaintiff MERCEDES DEGUCHY is an individual residing in the County of San Bernardino, State of California. She commenced her employment with Defendant on or around February 2020 and was employed through on or around June 2020.

31. Defendant SPACE NK, at all times herein mentioned, was and is, upon information and belief, a corporation authorized to do business in the State of California, with retail locations throughout the State of California, including the County of Los Angeles. During the relevant time period, Ms. Hall worked at Defendant's Santa Monica, California and Brentwood, California locations. She also worked at Defendant's leased locations within certain Bloomingdales stores. During the relevant time period, Ms. Korff worked at Defendant's leased location within the Bloomingdales store at Fashion Island Mall in Newport Beach, California. During the relevant time period, Ms. Deguchy worked at Defendant's leased location within the Bloomingdales at South Coast Plaza.

32. At all relevant times, Defendant Space NK was the "employer" of Plaintiffs within the meaning of all applicable California laws and statutes.

33. At all relevant times, Defendants Space NK, and DOES 1 through 50, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant

1 hereto were acting within the course and scope of their authority as such agents, partners, joint
2 venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or
3 assigns, and all acts or omissions alleged herein were duly committed with the ratification,
4 knowledge, permission, encouragement, authorization and/or consent of each defendant designated as
5 a DOE herein. Defendants Space NK and DOES 1 through 50 are collectively referred to herein as
6 Space NK or Defendants.

7 34. The true names and capacities, whether corporate, associate, individual or otherwise,
8 of defendants DOES 1 through 50, inclusive, are unknown to Plaintiffs who sue said defendants by
9 such fictitious names. Plaintiffs are informed and believe, and based on that information and belief
10 allege, that each of the defendants designated as a DOE is legally responsible for the events and
11 happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiffs
12 and the other class members as alleged in this Complaint. Plaintiffs will seek leave of court to amend
13 this Complaint to show the true names and capacities when the same have been ascertained.

14 35. Defendant and Does 1 through 25 exercised sufficient authority over the terms and
15 conditions of Plaintiff's and the other class members' employment for them to be joint employers of
16 Plaintiffs and the other class members.

17 36. Defendants continue to employ hourly-paid or non-exempt employees within the State
18 of California.

19 **CLASS ACTION ALLEGATIONS**

20 37. Plaintiffs bring this action on their own behalf and on behalf of all other members of
21 the general public similarly situated, and, thus, seeks class certification under California Code of
22 Civil Procedure section 382. The proposed classes are defined as follows:

23 38. **Exempt Store Manager Class**: All current and former employees who worked as a
24 Store Manager for Defendant within the State of California at any time during the period from four
25 years preceding the filing of this Complaint to final judgment.

26 39. With respect to the Labor Code § 203 claim, Ms. Hall and Ms. Deguchy bring this
27 action on behalf of the following proposed subclass of exempt store managers:
28

1 All Exempt Store Manager Class Members whose employment with Defendant
2 terminated on or after the date that is three years and three days before the date
3 on which the original complaint in this action is filed.

4 40. Ms. Hall and Ms. Deguchy reserve the right to establish further subclasses as
5 appropriate.

6 41. **Non-Exempt Employee Class:** All current and former employees who worked as
7 non-exempt, hourly employees for Defendant within the State of California at any time during the
8 period from four years preceding the filing of this Complaint to final judgment, including without
9 limitation, non-exempt employees in the position of sales associate, key holder, and/or assistant store
10 manager.

11 42. With respect to the Labor Code § 203 claim, Ms. Korff brings this action on behalf of
12 the following proposed subclass of non-exempt employees:

13 All Non-Exempt Employee Class Members whose employment with Defendant
14 terminated on or after the date that is three years and three days before the date
15 on which the original complaint in this action is filed.

16 43. Ms. Korff reserves the right to establish further subclasses as appropriate.

17 44. The Exempt Store Manager Class and the Non-Exempt Employee Class are
18 ascertainable and there is a well-defined community of interest in the litigation:

19 45. Numerosity: The class members of both the Exempt Store Manager Class and the
20 Non-Exempt Employee Class are so numerous that joinder of members from each class is
21 impracticable. The membership of the entire class is unknown to Plaintiffs at this time; however, each
22 class is estimated to be greater than fifty (50) individuals and the identity of such membership is
23 readily ascertainable by inspection of Defendants' employment records.

24 46. Typicality: Plaintiffs' claims are typical of all other members of their respective
25 classes as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other
26 members of their class with whom they have a well-defined community of interest.

27 47. Adequacy: Plaintiffs will fairly and adequately protect the interests of each of their
28 respective class members, with whom she has a well-defined community of interest and typicality of
claims, as demonstrated herein. Plaintiffs have no interest that is antagonistic to the other members of
her class. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class
action discovery, certification, and settlement. Plaintiffs have incurred, and during the pendency of

1 this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily
2 expended for the prosecution of this action for the substantial benefit of each member of each class.

3 48. Superiority: A class action is superior to other available methods for the fair and
4 efficient adjudication of this litigation because individual joinder of all class members is impractical.

5 49. Public Policy Considerations: Certification of this lawsuit as a class action will
6 advance public policy objectives. Employers of this great state violate employment and labor laws
7 every day. Current employees are often afraid to assert their rights out of fear of direct or indirect
8 retaliation. However, class actions provide the class members who are not named in the complaint
9 anonymity that allows for the vindication of their rights.

10 50. There are common questions of law and fact as to the class members that predominate
11 over questions affecting only individual members. The following common questions of law or fact,
12 among others, exist as to the members of the Exempt Store Manager Class, and as to the members of
13 the Non-Exempt Employee Class (hereinafter, collectively "Class Members"):

- 14 a. Whether Defendant misclassified its non-exempt employees as exempt Sales
15 Managers;
- 16 b. Whether Defendant failed to pay overtime compensation to Class Members when
17 they worked overtime hours;
- 18 c. Whether Defendant failed to pay minimum wages to Class Members for all hours
19 worked;
- 20 d. Whether Defendant deprived Class Members of meal and/or rest periods or
21 required Plaintiffs and the other class members to work during meal and/or rest
22 periods without compensation;
- 23 e. Whether Defendants had a pattern and practice of failing to pay Class Members for
24 all hours worked, and for an additional hour of pay for missed (short, late,
25 interrupted, and/or missed altogether) meal periods and rest breaks in violation of
26 California law;

- 1 f. Whether Defendant maintained a policy and/or practice of failing to pay all wages
2 owed to Class Members within the time limits prescribed by Labor Code §§ 201,
3 202, and/or 204;
- 4 g. Whether Defendants complied with wage reporting as required by the California
5 Labor Code; including, *inter alia*, section 226;
- 6 h. Whether Defendant failed to timely pay all wages due upon termination to the
7 Waiting Time Subclasses;
- 8 i. Whether Defendants' conduct was willful or reckless;
- 9 j. Whether Defendants engaged in unfair business practices in violation of California
10 Business & Professions Code section 17200, *et seq.*;
- 11 k. Whether Defendants failed to pay Class Members for expenses and losses incurred
12 by them in discharging their duties;
- 13 l. Whether Defendants failed to provide Class Members with suitable seating;
- 14 m. Whether Defendants coerced Class Members to patronize Defendants' products in
15 order to increase Defendants' sales and/or meet Defendants' sales goals.
- 16 n. The appropriate amount of damages, restitution, and/or monetary penalties
17 resulting from Defendant's violation of California law; and
- 18 o. Whether Plaintiff and the other class members are entitled to compensatory
19 damages pursuant to the California Labor Code.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS (LABOR CODE §§ 226.7 AND 512)**

22 **(Against Defendants Space NK and DOES 1 through 50)**

23 51. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
24 49, and each and every part thereof with the same force and effect as though fully set forth herein.

25 52. At all relevant times, the IWC Order and California Labor Code sections 226.7 and
26 512(a) were applicable to Plaintiffs' and their respective class members' employment by Defendants.

1 53. At all relevant times, California Labor Code section 226.7 provides that no employer
2 shall require an employee to work during any meal or rest period mandated by an applicable order of
3 the California IWC.

4 54. At all relevant times, the applicable IWC Wage Order and California Labor Code
5 section 512(a) provide that an employer may not require, cause or permit an employee to work for a
6 work period of more than five (5) hours per day without providing the employee with a meal period
7 of not less than thirty (30) minutes, except that if the total work period per day of the employee is no
8 more than six (6) hours, the meal period may be waived by mutual consent of both the employer and
9 employee.

10 55. At all relevant times, the applicable IWC Wage Order and California Labor Code
11 section 512(a) further provide that an employer may not require, cause or permit an employee to
12 work for a work period of more than ten (10) hours per day without providing the employee with a
13 second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours
14 worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent
15 of the employer and the employee only if the first meal period was not waived.

16 56. During the relevant time period, Plaintiffs and their respective class members who
17 were scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
18 legally-mandated meal periods by mutual consent, were required to work for periods longer than five
19 (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

20 57. During the relevant time period, Plaintiffs and their respective class members who
21 were scheduled to work for a period of time in excess of six (6) hours were required to work for
22 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
23 minutes and/or rest period.

24 58. During the relevant time period, Defendants intentionally and willfully required
25 Plaintiff and the other class members to work during meal periods and failed to compensate Plaintiffs
26 and their respective class members the full meal period premium for work performed during meal
27 periods.
28

59. During the relevant time period, Defendants failed to pay Plaintiffs and their respective class members the full meal period premium due pursuant to California Labor Code section 226.7.

60. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

61. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiffs and their respective class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS (LABOR CODE § 226.7)

(Against Space NK and DOES 1 through 50)

62. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 60, and each and every part thereof with the same force and effect as though fully set forth herein.

63. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiffs' and their respective class members' employment by Defendants.

64. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

65. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3) hours.

66. During the relevant time period, Defendants required Plaintiffs and their respective class members to work four (4) or more hours without authorizing or permitting a duty-free ten (10)

1 minute rest period per each four (4) hour period worked, for which they were relieved of all work and
2 permitted to leave the work premises.

3 67. During the relevant time period, Defendants willfully required Plaintiffs and their
4 respective class members to work during rest periods and failed to pay Plaintiff and the other class
5 members the full rest period premium for work performed during rest periods.

6 68. During the relevant time period, Defendants failed to pay Plaintiffs and their
7 respective class members the full rest period premium due pursuant to California Labor Code section
8 226.7

9 69. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code
10 section 226.7.

11 70. Pursuant to the applicable IWC Wage Orders and California Labor Code section
12 226.7(b), Plaintiffs and their respective class members are entitled to recover from Defendants one
13 additional hour of pay at the employees' regular hourly rate of compensation for each work day that
14 the rest period was not provided.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES (LABOR CODE §§ 1194, 1197, AND 1197.1)**

17 **(Against Space NK and DOES 1 through 50)**

18 71. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
19 69, and each and every part thereof with the same force and effect as though fully set forth herein.

20 72. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide
21 that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum
22 so fixed is unlawful.

23 73. During the relevant time period, Defendants failed to pay minimum wage to Plaintiffs
24 their respective class members as required, pursuant to California Labor Code sections 1194, 1197,
25 and 1197.1.

26 74. Defendants' failure to pay Plaintiffs and their respective class members the minimum
27 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those
28 sections Plaintiffs and their respective class members are entitled to recover the unpaid balance of

1 their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated
2 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

3 75. Pursuant to California Labor Code section 1197.1, Plaintiffs and their respective class
4 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
5 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum
6 wages.

7 76. Pursuant to California Labor Code section 1194.2, Plaintiffs and their respective class
8 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
9 unpaid and interest thereon.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME (LABOR CODE §§ 510 AND 1198)**

12 **(Against Defendant Space NK and DOES 1 through 50)**

13 77. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
14 75, and each and every part thereof with the same force and effect as though fully set forth herein.

15 78. California Labor Code section 1198 and the applicable Industrial Welfare Commission
16 ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a
17 rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the
18 number of hours worked by the person on a daily or weekly basis.

19 79. Specifically, the applicable IWC Wage Order provides that Defendants are and were
20 required to pay Plaintiffs and their respective class members employed by Defendants, and working
21 more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-
22 and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours
23 in a workweek.

24 80. The applicable IWC Wage Order further provides that Defendants are and were
25 required to pay Plaintiffs and their respective class members overtime compensation at a rate of two
26 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

27 81. California Labor Code section 510 codifies the right to overtime compensation at one-
28 and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or

forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

82. During the relevant time period, Plaintiffs and their respective class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

83. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiffs and their respective class members.

84. Defendants' failure to pay Plaintiffs and their respective class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

85. Pursuant to California Labor Code section 1194, Plaintiffs and their respective class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS (LABOR CODE § 226)

(Against Defendant Space NK and DOES 1 through 50)

86. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 84, and each and every part thereof with the same force and effect as though fully set forth herein.

87. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of her or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and her or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible

1 form, properly dated, showing the month, day, and year, and a copy of the statement or a record of
2 the deductions shall be kept on file by the employer for at least three years at the place of
3 employment or at a central location within the State of California.

4 88. Defendants have intentionally and willfully failed to provide Plaintiffs and their
5 respective class members with complete and accurate wage statements. The deficiencies include but
6 are not limited to: the failure to include the total number of hours worked by Plaintiff and the other
7 class members.

8 89. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiffs
9 their respective class members have suffered injury and damage to their statutorily-protected rights.

10 90. More specifically, Plaintiffs and their respective class members have been injured by
11 Defendants' intentional and willful violation of California Labor Code section 226(a) because they
12 were denied both their legal right to receive, and their protected interest in receiving, accurate and
13 itemized wage statements pursuant to California Labor Code section 226(a).

14 91. Plaintiffs and their respective class members are entitled to recover from Defendants
15 the greater of their actual damages caused by Defendants' failure to comply with California Labor
16 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

17 92. Plaintiffs and their respective class members are also entitled to injunctive relief to
18 ensure compliance with this section, pursuant to California Labor Code section 226(g).

19 **SIXTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES (LABOR CODE §§ 201-203)**

21 **(Plaintiff and Waiting Time Subclass Against Space NK and DOES 1 through 50)**

22 93. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
23 91, and each and every part thereof with the same force and effect as though fully set forth herein.

24 94. California Labor Code sections 201-203 require Defendant to pay its employees all
25 wages due upon termination and either immediately upon discharge, or within seventy-two hours of
26 quitting without notice. Where an employer willfully fails to timely pay wages upon termination, the
27 employer must, as a penalty, continue to pay the subject employees' wages until they are paid in full
28 or an action is commenced, up to a maximum of thirty days wages.

95. Plaintiffs and their respective Waiting Time Subclass members have separated from employment and Defendant has willfully withheld payment of all wages due within the time required by Labor Code sections 201 and 202.

96. As a result of Defendant's conduct, Plaintiffs and each Waiting Time Subclass member is entitled to waiting time penalties of up to thirty days wages under Labor Code section 203, together with interest and reasonable attorney's fees and costs.

SEVENTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *ET SEQ.*

(Against Space NK and DOES 1 through 50)

97. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 95, and each and every part thereof with the same force and effect as though fully set forth herein.

98. Defendant's conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiffs seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

99. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

100. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' policies and practices of requiring employees, including Plaintiffs their respective class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiffs their respective class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiffs

1 their respective class members violate California Labor Code section 204. Defendants also violated
2 California Labor Code sections 226(a), 2800 and 2802.

3 101. As a result of the herein described violations of California law, Defendants unlawfully
4 gained an unfair advantage over other businesses.

5 102. Plaintiffs their respective class members have been personally injured by Defendants'
6 unlawful business acts and practices as alleged herein, including but not necessarily limited
7 to the loss of money and/or property.

8 103. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiffs
9 their respective class members are entitled to restitution of the wages withheld and retained by
10 Defendants during a period that commences four years prior to the filing of this Complaint; an award
11 of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable
12 laws; and an award of costs.

13 **EIGHTH CAUSE OF ACTION**

14 **VIOLATION OF CALIFORNIA LABOR CODE § 2802**

15 **(Against Space NK and DOES 1 through 50)**

16 104. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
17 102, and each and every part thereof with the same force and effect as though fully set forth herein.

18 105. California Labor Code § 2802 provides "An employer shall indemnify his or her
19 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
20 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
21 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
22 unlawful." During the applicable statutory period, Plaintiffs and their respective class members
23 incurred necessary expenditures and losses in direct consequence of the discharge of their
24 employment duties and their obedience to the directions of Defendants. Defendants did not reimburse
25 these expenditures or losses to Plaintiffs or their respective class members.

26 106. Defendants have failed to fully reimburse Plaintiffs and their respective class members
27 for necessary business-related expenses and losses.
28

107. Plaintiffs and their respective class members are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code § 2802.

NINTH CAUSE OF ACTION
FAILURE TO PROVIDE SUITABLE SEATING
(Against Space NK and DOES 1 through 50)

108. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 106, and each and every part thereof with the same force and effect as though fully set forth herein.

109. California Labor Code §1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable Wage Order. Section 14 of the applicable IWC Wage Order provides:

- a. All working employees shall be provided with suitable seats when the nature of the work reasonably permits use of seats; and
- b. When employees are not engaged in active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

110. Plaintiffs allege that they and their respective class members were harmed by Defendants' failure to provide suitable seating. While Plaintiffs and other current and former employees were required to stand for extended periods of time, the nature of their work did not require that they remain standing at all times, and Defendants willfully refused to provide Plaintiffs and their respective class members with suitable seating during the times when the nature of the work reasonably permitted the use of seats, and when such use would not interfere with the performance of their duties.

111. Pursuant to Labor Code § 2699(a) Plaintiffs and their respective class members are entitled to recover civil penalties for which Defendant is liable for Defendants' willful refusal to provide suitable seating pursuant to section 14 of the applicable Wage Order.

1 **TENTH CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA LABOR CODE § 450**

3 **(Against Space NK and DOES 1 through 50)**

4 112. Plaintiffs incorporates by reference the allegations contained in paragraphs 1 through
5 110, and each and every part thereof with the same force and effect as though fully set forth herein.

6 113. In violation of California Labor Code §450, Defendants coerced and/or compelled
7 exempt store managers and non-exempt employee class members to purchase Space NK products in
8 order to increase sales of Space NK products and specifically, to meet store-specific sales goals.

9 114. Plaintiffs and their respective class members are entitled to recover penalties,
10 attorneys' fees, and costs pursuant to California Labor Code § 2699 for Defendants' violation of
11 Labor Code § 450.

12 **ELEVENTH CAUSE OF ACTION**

13 **VIOLATION OF CALIFORNIA LABOR CODE § 2698 *ET SEQ***

14 **(Against Space NK and DOES 1 through 50)**

15 115. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
16 113, and each and every part thereof with the same force and effect as though fully set forth herein.

17 116. Plaintiffs and their respective class members who were employed by Defendants
18 during the applicable statutory period and suffered one or more of the Labor Code violations set forth
19 herein are "aggrieved employees" under Labor Code § 2699 *et seq.* ("PAGA"). Accordingly, they
20 seek to recover on behalf of themselves and all other current and former aggrieved employees of
21 Defendants, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

22 117. On February 7, 2020, Ms. Hall gave written notice to the Labor and Workforce
23 Development Agency ("LWDA") by online submission regarding Defendant's violations of various
24 provisions of the California Labor Code as alleged in this Complaint, and assigned case number
25 LWDA-CM-771461-20. The LWDA did not provide notice of its intention to investigate
26 Defendants' alleged violations within the requisite period.

27 118. On December 8, 2020, Ms. Korff gave written notice to the LWDA by online
28 submission regarding Defendant's violations of various provisions of the California Labor Code as

1 alleged herein and assigned case number: LWDA-CM-814736-20. To date, the LWDA has not
2 provided notice of its intention to investigate Defendants' alleged violations.

3 119. Plaintiffs, on behalf of their respective classes, seek civil penalties pursuant to PAGA
4 for violations of the following Labor Code provisions:

5 (1) Failure to pay minimum wages and overtime for all hours worked in violation of Labor
6 Code sections 510, 1194, 1197, 1197.1, and 1198;

7 (2) Failure to provide meal and rest breaks and pay missed meal/rest break premiums in
8 violation of Labor Code section 226.7 and 512;

9 (3) Failure to timely pay wages in violation of Labor Code section 204;

10 (4) Failure to maintain and provide itemized wage statements in violation of Labor Code
11 sections 226 and 1174;

12 (5) Coerced and/or compelled purchases in violation of Labor Code section 450;

13 (6) Misclassification of employees as exempt in violation of Labor Code section 515;

14 (7) Waiting time penalties pursuant to Labor Code sections 201-203; and

15 (8) Failure to reimburse reasonable business expenses in violation of Labor Code section
16 2802.

17 (9) Failure to provide suitable seating in violation of Section 14 of the applicable LWDA
18 Wage Order.

19 120. Plaintiffs seeks a civil penalty in addition to any other penalty provided by law of two
20 hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars
21 (\$1,000) per aggrieved employee for each subsequent violation of Labor Code§ 226(a).

22 121. With respect to violations of Labor Code§§ 510, 512, Labor Code§ 558 imposes a
23 civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial
24 violations for each underpaid employee for each pay period for which the employee was underpaid in
25 addition to an amount sufficient to recover underpaid wages, and one hundred dollars (\$100) for
26 subsequent violations for each underpaid employee for each pay period for which the employee was
27 underpaid in addition to an amount sufficient to recover underpaid wages. Plaintiff also seeks civil
28

1 penalties in the amount of unpaid wages owed to aggrieved employees pursuant to Labor Code §
2 558(a)(3).

3 122. With respect to violations of Labor Code§ 1174, Labor Code§ 1174.5 imposes a civil
4 penalty of \$500.

5 123. Labor Code§ 2699 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
6 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) pay period,
7 per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil
8 penalty is not specifically provided, including Labor Code§§ 226.7, 226.8, 450, 1174, 1182.12, 1194,
9 1197, 1198, 2802, and violation of Section 14 of the applicable LWDA Wage Order.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff, individually, and on behalf of other members of the general public similarly situated,
12 requests a trial by jury.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
15 public similarly situated and on behalf of other aggrieved employees pursuant to the California
16 Private Attorney General Act, prays for relief and judgment against Defendants, jointly and severally,
17 as follows:

18 **Class Certification**

19 1. That this action be certified as a class action and/or as a representative action under
20 Bus. & Prof. Code § 17200 *et seq.* and Labor Code § 2698 *et seq.*;

21 2. That Ms. Hall and Ms. Deguchy be appointed as the representatives of the Exempt
22 Store Manager Class;

23 3. That Ms. Korff be appointed as the representative of the Non-Exempt Employee
24 Class;

25 3. That counsel for Plaintiff be appointed as Class Counsel; and

26 4. That Defendants provide to Class Counsel immediately the names and most current
27 last known contact information (address, e-mail and telephone numbers) of all class members.
28

As to the First Cause of Action

1. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

2. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

3. For all actual, consequential, and incidental losses and damages, according to

4. For premium wages pursuant to California Labor Code section 226.7(b);

5. For pre-judgment interest on any unpaid wages from the date such amounts

6. For reasonable attorneys' fees and costs of suit incurred herein; and

7. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

1. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

2. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

3. For all actual, consequential, and incidental losses and damages, according to proof;

4. For premium wages pursuant to California Labor Code section 226.7(b);

5. For pre-judgment interest on any unpaid wages from the date such amounts

6. For reasonable attorneys' fees and costs of suit incurred herein; and

7. For such other and further relief as the Court may deem just and proper

As to the Third Cause of Action

1. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

2. For general unpaid wages and such general and special damages as may be appropriate;
3. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;
4. For pre-judgment interest on any unpaid compensation from the date such amounts were due;
5. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code sections 218.5 and 1194(a);
6. For liquidated damages pursuant to California Labor Code section 1194.2; and
7. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

1. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;
2. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
3. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code sections 218.5 and 1194; and
5. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

1. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;
2. For actual, consequential and incidental losses and damages, according to proof;
3. For statutory penalties pursuant to California Labor Code section 226(e);

1 4. For injunctive relief to ensure compliance with this section, pursuant to California
2 Labor Code section 226(g); and

3 5. For such other and further relief as the Court may deem just and proper.

4 **As to the Sixth Cause of Action**

5 1. That the Court declare, adjudge and decree that Defendants violated the California
6 Labor Code sections 201 through 203 for willful failure to pay all compensation owed at the time of
7 termination of employment to Plaintiff and Waiting Time Subclass Members;

8 2. For actual, consequential and incidental losses and damages, according to proof;

9 3. For such other and further relief as the Court may deem just and proper.

10 **As to the Seventh Cause of Action**

11 1. That the Court decree, adjudge and decree that Defendants violated California
12 Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and the other
13 class members all overtime compensation due to them, failing to provide all meal and
14 rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to
15 Plaintiff and the other class members, failing to pay Plaintiffs and the other class members' wages
16 timely as required by California Labor Code sections 201-204 and by violating California Labor
17 Code sections 226(a), 2800 and 2802;

18 2. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-
19 judgment interest from the day such amounts were due and payable;

20 3. For the appointment of a receiver to receive, manage and distribute any and all funds
21 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
22 result of violation of California Business and Professions Code sections 17200, *et seq.*;

23 4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
24 Code of Civil Procedure section 1021.5;

25 5. For injunctive relief to ensure compliance with this section, pursuant to California
26 Business and Professions Code sections 17200, *et seq.*; and

27 6. For such other and further relief as the Court may deem just and proper.
28

1 **As to the Eighth Cause of Action**

- 2 1. For reimbursement of business expenses under Labor Code section 2802.

3 **As to the Ninth Cause of Action**

4 1. That the Court declare, adjudge and decree that Defendants violated California Labor
5 Code section 450 by coercing and/or compelling class members to buy Space NK products to increase
6 sales;

7 2. For general and special damages as may be appropriate;

8 3. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
9 Labor Code sections 218.5 and 1194; and

10 4. For such other and further relief as the Court may deem just and proper.

11 **As to the Tenth Cause of Action**

12 1. That the Court declare, adjudge and decree that Defendants violated section 14 of the
13 applicable LWDA Wage Order by failing to provide class members with suitable seating;

14 2. For general and special damages as may be appropriate.

15 3. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
16 Labor Code sections 218.5 and 1194; and

17 4. For such other and further relief as the Court may deem just and proper.

18 **As to the Eleventh Cause of Action**

19 1. An award of civil penalties pursuant to PAGA;

20 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code
21 section 2699(g) and/or other applicable law;

22 3. Pre-judgment and post-judgment interest as provided by law; and

23 4. Such other and further relief that the Court may deem just and proper.

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3 Dated: April 7, 2021

COLLINSKIM LLP

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5 By: 

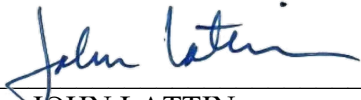
DAWN COLLINS

6 TAE KIM

7 Attorneys for Plaintiffs

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9 Dated: April 7, 2021

OSTERGAR LATTIN JULANDER, LLP

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11 By: 

JOHN LATTIN

12 Attorneys for Plaintiffs

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands trial by jury in this action.

3
4 Dated: April 7, 2021

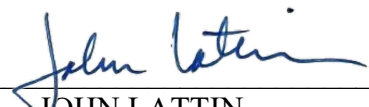
COLLINS KIM, LLP

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6 By:  _____

7 TAE KIM
8 Attorneys for Plaintiff
9 Echo Hall

10 Dated: April 7, 2021

OSTERGAR LATTIN JULANDER, LLP

11
12 By:  _____

13 JOHN LATTIN
14 Attorneys for Plaintiffs
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**

2. My business address is 515 S. Flower St., 18th Floor, Los Angeles, CA 90071.

3. I served copies of the following documents:

➤ **Third Amended Class Action Complaint**

4. I served the documents listed above in item 3 on the following persons:

Dina Glucksman Gene F. Williams GORDON REES SCULLY MANSUKHANI, LLP 633 West Fifth Street, 52nd Floor Los Angeles, CA 90071	<i>Attorneys for Defendant</i> Telephone: 213-270-7831
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5. ☐ **By mail.** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California addressed as set forth in Item 4.

☒ **Via Case Anywhere.** I caused such documents described in item 4 to be uploaded electronically onto the website www.caseanywhere.com per a mutual agreement between the parties. I uploaded the above entitled document(s) with the understanding that all parties will have access and be able to download said documents.

☐ **By personal service.** By personally delivering a true copy thereof, enclosed in a sealed envelope, to the addresses shown in Item 4.

6. I served the documents by the means described in item 5 on: January 5, 2021

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4/12/2021
Date

Dawn T. Collins
(Type or Print Name)

Dawn T. Collins
(Signature of Declarant)