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County of Los Angeles

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and all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

WILLIAM BABER, an individual, on behalf
of himself and all others similarly situated and
aggrieved,

Plaintiff,

vs.

NESPRESSO USA, INC., a Delaware
corporation; NESTLE USA, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: **20STCV21410**

**CLASS ACTION & PAGA REPRESENTATIVE
ACTION COMPLAINT**

- (1) FAILURE TO PROVIDE MEAL PERIODS;**
- (2) FAILURE TO PROVIDE REST BREAKS;**
- (3) FAILURE TO PAY MINIMUM WAGES;**
- (4) FAILURE TO PAY OVERTIME WAGES;**
- (5) FAILURE TO FURNISH TIMELY AND
ACCURATE WAGE STATEMENTS;**
- (6) FAILURE TO PAY ALL WAGES OWED
EVERY PAY PERIOD;**
- (7) FAILURE TO PAY ALL WAGES UPON
SEPARATION;**
- (8) VIOLATION OF CALIFORNIA'S UNFAIR
COMPETITION LAW ("UCL"), CAL. BUS.
& PROF. CODE § 17200, ET SEQ.; AND**
- (9) CIVIL PENALTIES FOR VIOLATIONS
OF LABOR CODE, PURSUANT TO
CALIFORNIA'S PRIVATE ATTORNEYS
GENERAL ACT ("PAGA"), §§ 2698, ET
SEQ.**

DEMAND FOR JURY TRIAL

1 **CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**

2 Plaintiff WILLIAM BABER (“Plaintiff” or “BABER”), on behalf of himself and all others
3 similarly situated and aggrieved, by and through his attorneys, Shegerian & Associates, Inc., hereby files
4 this Class Action and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Complaint
5 against Defendants NESPRESSO USA, INC., a Delaware corporation (“NESPRESSO”); NESTLE USA,
6 INC., a Delaware corporation (“NESTLE”); and DOES 1 through 100 inclusive, (collectively,
7 “Defendants”), and states as follows:

8
9 **I. INTRODUCTION**

10 1. Plaintiff brings this class and representative action on behalf of himself, on behalf of a
11 class defined as all hourly, nonexempt retail store employees of NESPRESSO USA, INC. and/or
12 NESTLE USA, INC. in California at any time during the period beginning four years prior to the filing
13 of this Complaint through the present (“Class Period”), and on behalf of all Aggrieved Persons who
14 worked for NESPRESSO USA, INC. as hourly, nonexempt retail store employees in California at any
15 time during the period beginning one year prior to the PAGA letter (defined below) through the present
16 (“PAGA Period”).

17 2. Defendants operate a chain of retail stores across the State of California and the United
18 States. Defendants sell a variety of merchandise (coffee and espresso machines, coffee and espresso
19 pods, etc.) to customers, both at its brick-and-mortar stores in California as well as online.

20 3. Defendants’ policy and practice is to deny earned wages, including premium and overtime
21 pay, to their hourly, nonexempt retail store employees at Defendants’ locations in California. Defendants
22 do not provide their employees with legally compliant meal periods and rest breaks or premium pay in
23 lieu thereof. Additionally, Defendants require their employees to be present and to perform work in
24 excess of eight (8) hours per day and/or forty (40) hours per work week by mandating that these
25 employees perform work off-the-clock including, but not limited to, performing work during meal
26 periods and rest breaks and after their shifts end. Additionally, Defendants do not provide minimum
27 wages and overtime pay for the time employees spend submitting to bag searches and waiting for a
28 keyholder to unlock the door so employees can exit the premises to leave after their shift ends. Plaintiff

1 estimates employees' waiting time in these instances was several minutes. These off-the-clock waiting
2 periods exist for the sole benefit of Defendants and occurred frequently and regularly at Defendants'
3 location in California. This illegal practice has been in effect by Defendants for years, but Defendants
4 continue to require their hourly, nonexempt retail store employees to endure these off-the-clock waiting
5 periods.

6 4. Moreover, Defendants fail to timely compensate employees for all wages earned upon
7 separation and fail to properly and accurately calculate minimum wages and overtime wages and report
8 wages earned, hours worked, and wage rates. For these reasons, Plaintiff brings this action on behalf of
9 himself and other hourly, nonexempt retail store employees of Defendants to recover unpaid wages,
10 overtime compensation, penalties, interest, injunctive relief, damages, and reasonable attorneys' fees and
11 costs.

12 5. Defendants' deliberate failure to pay their hourly, nonexempt retail store employees their
13 earned wages and overtime compensation violates the California Labor Code and California's Unfair
14 Competition Law, codified under California's Business & Professions Code.

15 6. Plaintiff brings a class action under the California Code of Civil Procedure section 382
16 against all Defendants on behalf of all hourly, nonexempt retail store employees of Defendants in
17 California for failing to provide compliant meal periods and rest breaks or premium pay in lieu thereof,
18 for unpaid minimum wages, unpaid overtime wages, failing to provide timely and accurate wage
19 statements, waiting time penalties, and other related penalties and damages under the California Labor
20 Code and California Business & Professions Code.

21 **II. JURISDICTION AND VENUE**

22 7. Venue lies properly with this Court, as it is the place where at least one defendant resides,
23 is incorporated or has its principal place of business, or a substantial amount of the events which gave
24 rise to this suit occurred and/or a cause of action arose.

25 8. This Court has jurisdiction over this matter because Defendants are licensed to do
26 business in California, regularly conduct business in California, and committed and continue to commit
27 the unlawful acts alleged herein in California.
28

9. Venue is proper in this Court pursuant to California Code of Civil Procedure section 395.5. Defendants own and operate NESPRESSO USA, INC. located in several cities throughout Los Angeles County, State of California, including Los Angeles, which is where Plaintiff worked and Class Members continue to work for Defendants. Defendants' obligation to comply with the California Labor Code and California Business & Professions Code and their liability for failing to do so therefore arise in, among other counties, the County of Los Angeles.

III. PARTIES

10. Plaintiff WILLIAM BABER is a resident of Gardena, California. Defendants employed Plaintiff as an hourly-paid, nonexempt retail sales specialist from approximately August 20, 2017 through approximately January 31, 2020. During his employment, Plaintiff worked primarily at one of Defendants' locations, which was in Beverly Hills, California on North Beverly Drive. Plaintiff temporarily worked at Defendants' location in Santa Monica on Wilshire Boulevard as well. Plaintiff typically worked five (5) days per week for four (4) or more hours per day. At the time Plaintiff's employment ended, he was earning \$16.00 per hour. His job duties included stocking merchandise; selling merchandise; inventorying, organizing, packing and unpacking merchandise; cashiering; answering phones; assisting customers; janitorial tasks for the store and restrooms; providing food and drinks to customers; washing dishes; setting up deliveries of merchandise to customers; fulfilling orders to be shipped to customers who placed orders online or else picked up in-store; and performing general opening/closing duties.

11. Defendant NESPRESSO USA, INC. is, on information and belief, a Delaware corporation doing business in California, with its principal place of business in Arlington, Virginia, located at 1812 North Moore Street, Arlington, Virginia 22209, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, and/or the various states of the United States of America.

12. Defendant NESTLE USA, INC. is, on information and belief, a Delaware corporation doing business in California, with its principal place of business in Arlington, Virginia, located at 1812 North Moore Street, Arlington, Virginia 22209, and at all times hereinafter mentioned, an employer

1 whose employees are engaged throughout this county, the State of California, and/or the various states
2 of the United States of America.

3 13. Defendants created the policies and procedures described herein and, at all times during
4 the Class Period, participated in, endorsed, implemented, and performed the conduct alleged herein.

5 14. The practices and policies which are complained of by way of this Complaint are
6 enforced throughout the State of California, including Los Angeles County.

7 15. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
8 participation in the conduct alleged herein, of the Defendants sued as Does 1-100, inclusive, but is
9 informed and believes that said Defendants are legally responsible for the conduct alleged herein and
10 therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege
11 both the true names and capacities of the Doe Defendants when ascertained. Plaintiff is informed and
12 believes, and thereon alleges, that at all times mentioned herein, all Defendants, including Doe
13 Defendants, and each of them, were agents, servants, employees, successors in interest, and/or joint
14 venturers of their co-Defendants and were, as such, acting within the course, scope, and authority of said
15 agency, employment, and/or venture, and with the consent of their co-Defendants, and/or said acts were
16 ratified by their co-Defendants, and that each and every Defendant, as aforesaid, when acting as a
17 principal, was negligent in the selection and hiring, training, and supervision of each and every other
18 Defendant as an agent, servant, employee, successor in interest, and/or joint venturer. Plaintiff is
19 informed and believes that each Defendant acted in all respects pertinent to this action as the agent of
20 the other Defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto,
21 and that the acts of each Defendant are legally attributable to each of the other Defendant.

22 23 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

24 16. At all times relevant herein, Defendants operate a chain of retail stores across the State
25 of California and the United States. Defendants sell a variety of merchandise (coffee and espresso
26 machines, coffee and espresso pods, etc.) to customers, both at its brick-and-mortar stores in
27 California and online. Defendants' California locations in operation during the Class Period include,
28 but are not limited to Canoga Park, Costa Mesa, Glendale, Los Angeles, Newport Beach, Palo Alto,

1 San Diego, San Francisco, San Jose, Santa Monica, Sherman Oaks, and Walnut Creek.

2 17. According to Defendants' website, Defendants maintain their corporate operations
3 headquarters, including their Human Resources, Training Center, and Customer Support Center in
4 Arlington, Virginia and/or New York, New York. Upon information and belief, Defendants maintain
5 a single, centralized Human Resources ("HR") department at their operations headquarters in New
6 York, New York, which is responsible for conducting Defendants' recruiting and hiring of new
7 employees, as well as communicating and implementing Defendants' company-wide policies,
8 including timekeeping policies, to employees throughout California. In particular, Plaintiff and other
9 non-party Aggrieved Employees, on information and belief, received the same standardized
10 documents and/or written policies upon hire. Upon information and belief, the use of standardized
11 documents and/or written policies, including new hire documents, indicate that Defendants dictated
12 policies at the corporate-level and implemented them company-wide, regardless of their employees'
13 assigned locations or positions. On information and belief, all transactions regarding hiring,
14 terminations, promotions, pay increases, and employee transfers, etc., relating to Defendants'
15 California employees were submitted to and processed by Defendants' HR department in New York,
16 New York.

17 18. Upon information and belief, Defendants' corporate records, business records, data, and
18 other information related to NESPRESSO USA, INC., including, in particular, HR records pertaining
19 to Defendants' California employees, are also maintained at NESPRESSO USA, INC.'S operations
20 headquarters in New York, New York.

21 19. At all relevant times, Defendants have been, and continue to be, a "person" as that term
22 is defined under California Business & Professions Code section 17021 and California Labor Code
23 sections 1-29.5.

24 20. At all times relevant herein, Plaintiff was employed by Defendants as an hourly
25 nonexempt employee in the position of retail sales specialist in California during the Class Period.

26 21. At all times relevant herein, Plaintiff and Class Members were assigned to and required
27 and permitted to work without pay while performing tasks including, but not limited to: stocking
28 merchandise; selling merchandise; inventorying, organizing, packing and unpacking merchandise;

1 cashiering; answering phones; assisting customers; janitorial tasks for the store and restrooms; providing
2 food and drinks to customers; washing dishes; setting up deliveries of merchandise to customers;
3 fulfilling orders to be shipped to customers who placed orders online or else picked up in-store; and
4 performing general opening/closing duties. Plaintiff and Class Members were not properly compensated
5 for this work.

6 22. At all times relevant herein, Plaintiff and Class Members were assigned to and required
7 to work for periods lasting in excess of five (5) hours and were not provided nor allowed to take thirty
8 (30) minute, uninterrupted, off-duty meal periods. Due to understaffing combined with high volumes
9 of customers, Plaintiff and Class Members worked through their meal periods, took them after the end
10 of the fifth hour, or were interrupted during their meal period such that Defendants did not authorize and
11 permit a full thirty (30) minutes. Accordingly, these meal periods were on duty for which Defendants
12 should have but did not compensate Plaintiff and Class Members with premium pay for missed meal
13 periods. Moreover, Plaintiff and Class Members often worked in excess of ten (10) hours without a
14 second thirty (30) minute meal period, despite not signing meal period waivers.

15 23. At all times relevant herein, Plaintiff and Class Members were assigned to and required
16 and permitted to work shifts lasting over four (4) hours and were not authorized nor permitted to take a
17 ten (10) minute rest breaks during each shift or four (4) hour work period.

18 24. At all times relevant herein, Defendants failed to authorize and permit rest breaks during
19 the Class Period. Plaintiff and Class Members were routinely required to work through rest breaks at
20 the direction of Defendants and/or Defendants' knowledge and acquiescence. Furthermore, due to
21 understaffing and large volumes of customers, Plaintiff and Class Members did not take their rest breaks
22 at all; accordingly, these rest breaks were on duty for which Defendants should have but did not
23 compensate Plaintiff and Class Members with premium pay for missed rest breaks.

24 25. At all times relevant herein, Plaintiff and Class Members worked in excess of eight (8)
25 hours per work day or forty (40) hours per work week. Defendants failed to pay for all hours worked in
26 excess of eight (8) hours per day, and when compensated for overtime, failed to pay the correct amount
27 of overtime by miscalculating the regular rate. Defendants failed to pay current and former hourly,
28 nonexempt retail store employees one and one-half times (1½) their regular rate of pay for hours worked

1 in excess of eight (8) hours per day or forty (40) hours per workweek. Defendants also failed to pay
2 their employees at a rate no less than twice the regular rate of pay for work in excess of twelve (12)
3 hours in one day or for all hours worked in excess of eight (8) hours on the seventh consecutive day of
4 work in a workweek.

5 26. During the Class Period, Defendants continue to require their hourly, nonexempt retail
6 store employees to work for period during which they are off-the-clock, effectively unrecorded, without
7 compensation. Accordingly, during the Class Period, Defendants did not provide minimum wages and
8 overtime pay for this time worked off-the-clock that Plaintiff and the Class endured.

9 27. Defendants regularly failed to pay their hourly, nonexempt retail store employees the
10 correct amount of and rate for overtime wages. Defendants have failed and continue to fail to include
11 all amounts in the regular rate of pay for purposes of calculating overtime. Unrelatedly, Defendants fail
12 to record all hours as overtime by failing to record all hours worked in a workday. This off-the-clock
13 work primarily takes the form of employees submitting to bag searches and/or waiting for a keyholder
14 to unlock the door so employees can exit the premises to leave after their shift ends. This work, done
15 primarily for the employer's benefit, is time that hourly, nonexempt retail store employees should be,
16 but were not compensated for, both straight hours and overtime hours worked in excess of forty (40)
17 hours in a week, hours worked in excess of eight (8) hours in a day, and for the first eight (8) hours
18 worked on the seventh consecutive day of work in a workweek.

19 28. Supervisors employed at Defendants' location(s), including Plaintiff's location, had
20 knowledge of and required Plaintiff to perform work during meal periods and rest breaks. Supervisors
21 throughout California were aware that Plaintiff and others similarly situated were performing work
22 during these times without proper wages or overtime compensation.

23 29. In light of Defendants' failure to record employees' off-the-clock time that employees
24 worked and Defendants' failure to acknowledge the noncompliant meal periods and rest breaks,
25 Defendants failed to properly calculate the hourly, nonexempt retail store employees' hours and
26 therefore, employees' premium pay, minimum wages, and overtime wages due. Accordingly,
27 Defendants failed to provide accurate wage statements to their hourly, nonexempt retail store employees
28 identifying all hours worked and all rates in effect during the pay period.

30. At all times relevant herein, the same unlawful practices and procedures described above affect hourly, nonexempt retail store workers of Defendants employed in California.

31. At all times relevant herein, Defendants failed to pay Plaintiff and Class Members for all hours worked. Thus, Defendants did not pay Plaintiff and Class Members minimum wages in accordance with law and, because Class Members worked shifts over eight (8) hours in duration, Defendants also did not pay them all overtime wages in accordance with law.

32. Defendants' conduct, as alleged herein, has caused Plaintiff and Class Members damages including, but not limited to, loss of wages and compensation. Defendants are liable to Plaintiff and the Class for failing to pay minimum wages, failing to pay overtime wages, failing to pay all wages owed every pay period, failing to provide timely and accurate wage statements, failing to pay all wages owed upon separation, and unfair competition.

33. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code section 2699.3. By letter dated March 6, 2020, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA"), and Defendants, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

V. CLASS ACTION AND REPRESENTATIVE ACTION ALLEGATIONS

34. Plaintiff is a member of and seeks to be the representative for the Class of similarly situated employees who all have been exposed to, have suffered, and/or were permitted to work under Defendants' unlawful employment practices as alleged herein.

35. Plaintiff brings his first through ninth causes of action on behalf of himself and on behalf of the following Class¹ of persons:

All current and former hourly, nonexempt retail store employees who have worked in California for NESPRESSO USA, INC. and/or NESTLE USA, INC. at any time during the period beginning four years prior to the filing of this Complaint through the present.

¹ Plaintiff reserves the right under California Rules of Court, Rule 3.765, to amend or modify the Class description with greater particularity or further division into subclasses or limitation to particular issues.

1 36. This action is appropriately suited for a class action pursuant to Code of Civil Procedure
2 section 382 because there exists an ascertainable and sufficiently numerous Class, a well-defined
3 community of interest, and substantial benefits from certification that render proceeding as a class
4 superior to the alternatives.

5 37. Numerosity and Ascertainability. The size of the Class makes a class action both
6 necessary and efficient. On information and belief, the proposed Class includes hundreds of current and
7 former employees at Defendants' locations in California. Members of the Class are ascertainable through
8 Defendants' records but are so numerous that joinder of all individual Class Members would be
9 impractical.

10 38. Predominant Common Questions of Law and Fact. Pursuant to section 382, common
11 questions of law and fact exist as to all Class Members. These questions predominate over any
12 individualized issues. These common questions include but are not limited to:

- 13 a. Whether Defendants' policies and practices described in this Complaint were and are illegal;
- 14 b. Whether Plaintiff and each member of the Class were not paid minimum wage for each hour
15 worked or part thereof during which they were required to perform acts at the direction and
16 for the benefit of Defendants;
- 17 c. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and the
18 members of the Class who worked as hourly, nonexempt retail store employees in California
19 for the total hours worked during the Class Period;
- 20 d. Whether Defendants violated Labor Code section 226.7 and/or section 512 and engaged in a
21 pattern or practice of failing to provide timely, off-duty, thirty (30) minute meal periods to
22 Plaintiff and members of the Class who worked as hourly, nonexempt retail store employees
23 in California during the Class Period;
- 24 e. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the members
25 of the Class who worked as hourly, nonexempt retail store employees in California during the
26 Class Period from taking off-duty, thirty (30) minute meal periods on a timely basis;
- 27 f. Whether Defendants engaged in a pattern or practice of failing to properly compensate
28 Plaintiff and the members of the Class who worked as hourly, nonexempt retail store

- 1 employees in California during the Class Period for missed, untimely, or on-duty meal periods
2 as required by California law;
- 3 g. Whether Defendants violated section 11 of the applicable California Industrial Welfare
4 Commission's ("IWC") Wage Order(s) by failing to provide Plaintiff and the members of the
5 Class who worked as hourly, nonexempt retail store employees in California during the Class
6 Period with timely, off-duty, thirty (30) minute meal periods;
- 7 h. Whether Defendants engaged in an unfair practice and violated California Business and
8 Professions Code, section 17200, *et seq.* by failing to provide Plaintiff and the members of
9 the Class who worked as hourly, nonexempt retail store employees in California during the
10 Class Period with their statutory, off-duty, meal periods on a timely basis;
- 11 i. Whether Defendants maintained accurate time records of off-duty, thirty (30) minute meal
12 periods taken by Plaintiff and members of the Class during the Class Period in accordance
13 with section 7 of the applicable IWC Wage Order(s);
- 14 j. Whether Defendants have engaged in a common course of requiring or permitting their
15 hourly, nonexempt retail store employees to not report all hours worked during the Class
16 Period;
- 17 k. Whether Defendants engaged in a pattern or practice of failing to properly compensate
18 Plaintiff and the members of the Class who worked as hourly, nonexempt retail store
19 employees in California during the Class Period for all time spent submitting to bag searches
20 before being permitted to exit the store for rest breaks, meal periods, and/or the end of their
21 shift;
- 22 l. Whether Defendants engaged in a pattern or practice of failing to properly compensate
23 Plaintiff and the members of the Class who worked as hourly, nonexempt retail store
24 employees in California during the Class Period for all time spent waiting for keyholders to
25 permit them to exit the store during closing shifts;
- 26 m. Whether Defendants have engaged in a common course of failing to maintain true and
27 accurate time records for all hours worked by their nonexempt employees;
- 28

- 1 n. Whether Defendants violated Labor Code section 226(a) by issuing inaccurate wage
2 statements to Plaintiff and members of the Class that failed to include payments for missed,
3 untimely, and/or on-duty meal periods among wages earned throughout the Class Period;
- 4 o. Whether Defendants violated Labor Code section 226 by issuing inaccurate wage statements
5 to Plaintiff and members of the Class that failed to accurately state the total hours worked and
6 therefore, the total gross and net wages owed, to the detriment of Plaintiff and the Class;
- 7 p. Whether Defendants failed to compensate, and therefore violated section 12 of the applicable
8 IWC Wage Order(s) and Labor Code section 226.7 by failing to provide ten (10) minute,
9 uninterrupted rest breaks as contemplated by California law for work periods in excess of four
10 (4) hours;
- 11 q. Whether Defendants engaged in a pattern or practice of failing to properly compensate
12 Plaintiff and the members of the Class who worked as hourly, nonexempt retail store
13 employees in California during the Class Period for failing to provide ten (10) minute,
14 uninterrupted rest breaks as contemplated by California law for work periods in excess of four
15 (4) hours;
- 16 r. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
17 overtime pay to Plaintiff and the Class for hours worked in excess of eight (8) hours in a day;
- 18 s. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
19 double time for hours worked in excess of twelve (12) hours in a day;
- 20 t. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable
21 IWC Wage Order(s) by failing to pay overtime pay to Plaintiff and the Class for hours worked
22 in excess of eight (8) hours in a day;
- 23 u. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable
24 IWC Wage Order(s) by failing to pay overtime pay to Plaintiff and the Class for the first eight
25 (8) hours worked in a day on the seventh consecutive day in a workweek and double time for
26 all hours worked in excess of eight (8) hours on such days;
- 27
28

- 1 v. Whether Defendants violated Labor Code sections 218.5, 204, 1197, and 1198 due to failure
2 to compensate Plaintiff and the Class for those acts Defendants required Plaintiff and
3 members of the Class to perform for the benefit of Defendants;
- 4 w. Whether Defendants have engaged in a common course of failing to pay nonexempt
5 employees all wages due upon termination;
- 6 x. Whether Defendants have engaged in unfair competition by the above-listed conduct; and
7 y. The nature and extent of class-wide injury and the measure of damages for the injury.

8 39. Typicality. Plaintiff's claims are typical of the members of the Class. Plaintiff, like other
9 members of the Class working for Defendants in California, was subjected to Defendants' policy and
10 practice of refusing to properly and fully pay overtime in violation of California wage and hour laws.
11 Plaintiff's job duties were and are typical of those of other class members who worked for Defendants in
12 California.

13 40. Adequacy of Representation. Plaintiff will fairly and adequately represent the interests of
14 the Class because his individual interests are consistent with and not antagonistic to the interests of the
15 Class, and because Plaintiff has selected counsel who has the requisite resources and ability to prosecute
16 this case as a class action and are experienced labor and employment attorneys who have successfully
17 litigated other cases involving similar issues.

18 41. Superiority of Class Mechanism. The class action mechanism is superior to any
19 alternatives that might exist for the fair and efficient adjudication of these claims. Proceeding as a class
20 action would permit the large number of injured parties to prosecute their common claims in a single
21 forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort and judicial
22 resources. A class action is the only practical way to avoid the potentially inconsistent results that
23 numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means
24 by which Plaintiff can effectively litigate against a large, well-represented corporate defendant like
25 Defendants. In the absence of a class action, Defendants would be unjustly enriched because they would
26 be able to retain the benefits and fruits of the many wrongful violations of the California state laws.
27 Numerous repetitive individual actions would also place an enormous burden on the courts as they are
28

1 forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and
2 over again.

3 4 **VI. FIRST CAUSE OF ACTION**

5 **Failure to Provide Meal Periods**

6 **in Violation of Cal. Labor Code §§ 512 and 226.7; IWC Wage Order No. 7-2001, § 11**

7 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

8 42. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
9 as if fully set forth herein.

10 43. California Labor Code section 226.7(a) provides, "No employer shall require any
11 employee to work during any meal or rest period mandated by an applicable order of the Industrial
12 Welfare Commission."

13 44. IWC Wage Order No. 7-2001 (11)(A) provides, in pertinent part: "No employer shall
14 employ any person for a work period of more than five (5) hours without a meal period of not less than
15 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work
16 the meal period may be waived by mutual consent of the employer and the employee."

17 45. Section 512(k) of the California Labor Code provides, in pertinent part, that: "An
18 employer may not employ an employee for a work period of more than five hours per day without
19 providing the employee with a meal period of not less than 30 minutes, except that if the total work period
20 per day of the employee is no more than six hours, the meal period may be waived by mutual consent of
21 both the employer and employee. An employer may not employ an employee for a work period of more
22 than 10 hours per day without providing the employee with a second meal period of not less than 30
23 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be
24 waived by mutual consent of the employer and the employee only if the first meal period was not waived."

25 46. As alleged herein, Defendants failed to authorize and permit timely, uninterrupted meal
26 periods during the Class Period. Plaintiff and members of the Class were routinely required to work
27 without a timely, uninterrupted meal period at the direction of Defendants and/or with Defendants'
28 knowledge and acquiescence. Defendants' uniform adoption of a chronically understaffed staffing model

1 at their retail stores also prevented Plaintiff and Class Members from being relieved of all duties to take
2 meal periods. The combination of Defendants' failure to schedule meal periods and their adoption of a
3 chronically understaffed staffing model impeded and prevented Plaintiff and other Class Members from
4 taking timely, uninterrupted meal periods. As a result, Plaintiff and Class Members were not relieved of
5 their duties such that they could take duty-free meal periods, and thus had to work through some or all of
6 their meal periods, have their meal periods interrupted to return to work, and/or wait extended periods of
7 time before taking meal periods. For example, Plaintiff frequently worked a majority of his eight (8)-
8 hour shift with no one to relieve him for a meal period, at least not until after having worked over five
9 (5) consecutive hours into his shift. Because too few employees were staffed to handle the demands of
10 and large volumes of customers, Plaintiff had to perform his duties throughout the majority of his shift
11 and therefore was not relieved of his duties to take compliant meal periods.

12 47. Defendants also did not schedule second meal periods and had no policy for permitting
13 and authorizing Plaintiff and other employees to take second 30-minute meal periods on days they
14 worked in excess of 10 hours in one day. For example, during his employment, Plaintiff occasionally
15 worked over 10 hours in a day but did not receive a second complaint meal period on those days nor did
16 he consent to waiving them. Because of Defendants' companywide chronic understaffed staffing model,
17 Plaintiff and other Class Members were not relieved of all duties such that they could take second 30-
18 minute meal periods and instead had to work through them. Accordingly, Defendants failed to provide
19 all meal periods in violation of California Labor Code sections 226.7 and 512. Defendants knew or
20 should have known that their companywide adoption of a chronically understaffed staffing model and
21 scheduling policies combined with an overly demanding workload for the time allotted in Plaintiff and
22 the Class's shifts would result in a failure to provide Plaintiff and other Class Members with full and
23 timely meal periods as required by the applicable IWC Wage Order(s) and Labor Code sections 226.7
24 and 512(a). Furthermore, Plaintiff and other Class Members did not sign valid meal period waivers on
25 days that they were entitled to meal periods but were not relieved of all duties.

26 48. Moreover, Defendants engaged in a systematic, companywide policy to not pay meal
27 period premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members
28 one (1) additional hour of premium pay for missed meal periods, Defendants did not pay Plaintiff and

1 other Class Members at the correct rate of pay for premium wages because Defendants failed to include
2 all forms of compensation, such as incentive pay, and/or nondiscretionary bonuses, in the regular rate of
3 pay. As a result, to the extent Defendants paid Plaintiff and other Class Members premium pay for missed
4 meal periods, it did so at a lower rate than required by law. As a result, Defendants failed to provide
5 Plaintiff and other Class Members compliant meal periods and failed to pay the full meal period
6 premiums due, in accordance with California Labor Code sections 204, 210, 226.7, and 512.

7 49. By their actions in requiring their employees to work through meal periods and/or their
8 failure to relieve nonexempt, hourly, nonexempt retail store employees of their duties for their off-duty
9 meal periods, Defendants have violated California Labor Code section 226.7 and section 11 of IWC
10 Wage Order No. 7-2001 and is liable to Plaintiff and the Class.

11 50. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived
12 of timely off-duty meal periods and are entitled to recovery under Labor Code section 226.7(b) and
13 section 11 of IWC Wage Order No. 7-2001, in the amount of one additional hour of pay at the employee's
14 regular rate of pay for each work period during each day in which Defendants failed to provide their
15 hourly, nonexempt retail store employees with timely, statutory, off-duty meal periods.

17 **VII. SECOND CAUSE OF ACTION**

18 **Failure to Provide Rest Breaks**

19 **in Violation of Cal. Labor Code §§ 226.7, 512, and 1194;**

20 **IWC Wage Order No. 7-2001, § 12**

21 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

22 51. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
23 as if fully set forth herein.

24 52. California Labor Code section 226.7(a) provides, "No employer shall require any
25 employee to work during any meal or rest period mandated by an applicable order of the Industrial
26 Welfare Commission."

27 53. IWC Wage Order No. 7-2001, section (12)(A) provides, in pertinent part: "Every
28 employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall

1 be in the middle of each work period. The authorized rest period time shall be based on the total hours
2 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
3 However, a rest period need not be authorized for employees whose total daily work times is less than
4 three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
5 there shall be no deduction from wages.”

6 54. IWC Wage Order No. 7-2001, section (12)(B) provides, “If an employer fails to provide
7 an employee with a rest period in accordance with the applicable provisions of this order, the employer
8 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
9 workday that the rest period is not provided.”

10 55. As alleged herein, Defendants failed to authorize and permit rest breaks during the Class
11 Period. Plaintiff and members of the Class were routinely required to work through rest breaks at the
12 direction of Defendants and/or with Defendants’ knowledge and acquiescence.

13 56. Furthermore, as with meal periods, Defendants’ scheduling policies, chronically
14 understaffed staffing model, and resultant lack of break coverage prevented Plaintiff and Class Members
15 and continue to prevent Class Members from being relieved of all duty in order to take compliant rest
16 breaks and forced Plaintiff and other Class Members to forego rest breaks and/or remain on duty during
17 their rest breaks. As a result, Plaintiff and Class Members would work shifts in excess of 3.5 hours
18 without 10-minute rest breaks to which they were entitled. For example, throughout his employment,
19 during 8-hour or longer shifts, Plaintiff regularly worked without receiving at least one of his 10-minute
20 rest breaks, continuing to perform his duties such as stocking merchandise; selling merchandise;
21 inventorying, organizing, packing and unpacking merchandise; cashiering; answering phones; assisting
22 customers; janitorial tasks for the store and restrooms; providing food and drinks to customers; washing
23 dishes; setting up deliveries of merchandise to customers; and fulfilling orders to be shipped to customers
24 who placed orders online or else picked up in-store, without taking 10-minute rest breaks because there
25 were too few employees staffed to cover Plaintiff’s responsibilities that required attention at all times.

26 57. At the same time, Defendants implemented a companywide policy to not pay rest break
27 premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members one
28 (1) additional hour of premium pay for missed rest breaks, Defendants did not pay Plaintiff and other

1 Class Members at the correct rate of pay for premium wages because Defendants failed to include all
2 forms of compensation, such as incentive pay, and/or nondiscretionary bonuses, in the regular rate of
3 pay. As a result, to the extent Defendants paid Plaintiff and other Class Members premium pay for missed
4 rest breaks, it did so at a lower rate than required by law. As a result, Plaintiff and other Class Members
5 were denied rest breaks and Defendants failed to pay the full rest break premiums due, in violation of
6 Labor Code section 226.7 and the applicable IWC Wage Order(s).

7 58. Defendants' unlawful conduct alleged herein occurred in the course of employment of
8 Plaintiff and all others similarly situated and such conduct has continued through the filing of the initial
9 Complaint.

10 59. As a direct and proximate result of Defendants' unlawful action, Plaintiff and the Class
11 have been deprived of timely rest breaks and/or were not paid for rest breaks taken during the Class
12 Period and are entitled to recovery under Labor Code section 226.7(b) in the amount of one (1) additional
13 hour of pay at the employee's regular rate of compensation for each work period during each day in
14 which Defendants failed to provide employees with timely and/or paid rest breaks.

15 16 **VIII. THIRD CAUSE OF ACTION**

17 **Failure to Pay Minimum Wages**

18 **Upon Payment of Wages in Violation of Cal. Labor Code §§ 510, 1194, 1194.2,**

19 **and 1197; IWC Wage Order No. 7-2001, § 4**

20 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

21 60. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
22 as if fully set forth herein.

23 61. Labor Code section 510 provides in relevant part: "[e]ight hours of labor constitutes a
24 day's work. Any work in excess of eight hours in one work day and any work in excess of 40 hours in
25 any one workweek and the first eight hours worked on the seventh day of work in any one workweek
26 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
27 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than
28 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any

seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

62. Labor Code section 1197 provides: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

63. Labor Code section 1182.12 establishes the right of employees to be paid minimum wages for all hours worked in amounts set by state law.

64. Labor Code section 1194, subdivision (a) provides: “Notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

65. Labor Code section 1194.2 provides in pertinent part: “In any action under Section 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

66. Pursuant to IWC Wage Order No. 7-2001, section (2)(H), at all times material hereto, “hours worked” includes “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

67. At all times relevant during the liability period, under the provisions of IWC Wage Order No. 7-2001, Plaintiff and each Class Member should have received not less than the minimum wage in a sum according to proof for the time worked, but not compensated. Defendants, however, do not provide minimum wages for the time employees spend submitting to bag searches and waiting for a keyholder to unlock the door so employees can exit the premises to leave after their shifts end.

68. For all hours that Plaintiff and Class Members worked, they are entitled to not less than the California minimum wage and, pursuant to Labor Code section 1194.2(a) liquidated damages in an amount equal to the unpaid minimum wages and interest thereon.

69. Pursuant to Labor Code section 1194, Plaintiff and Class Members are also entitled to their attorneys' fees, costs, and interest according to proof.

70. At all times relevant during the liability period, Defendants willfully failed and refused, and continue to willfully fail and refuse, to pay Plaintiff and Class Members the amounts owed.

71. As described above, Defendants required Plaintiff and other Class Members to work, such as stocking merchandise; selling merchandise; inventorying, organizing, packing and unpacking merchandise; cashiering; answering phones; assisting customers; janitorial tasks for the store and restrooms; providing food and drinks to customers; washing dishes; setting up deliveries of merchandise to customers; and fulfilling orders to be shipped to customers who placed orders online or else picked up in-store at Defendants' location(s) in California, during their meal periods due to Defendants' lack of coverage for their employees and decision to staff too few employees at a given time to handle the demands of and large volumes of customers. Also, during the Class Period, Defendants implemented and continue to implement an unwritten rounding policy that is not fair and neutral and has resulted, over a period of time, in Defendants failing to compensate its employees properly for all time worked. Defendants did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium pay, Defendants did not pay at least minimum wages for those hours worked off-the-clock.

72. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiff and all other similarly situated nonexempt, hourly, nonexempt retail store employees, and Defendants have done so continuously throughout the filing of this complaint.

73. As a direct and proximate result of Defendants' violation of Labor Code sections 510 and 1197, Plaintiff and other Class Members have suffered irreparable harm and money damages entitling them to damages, injunctive relief or restitution. Plaintiff, on behalf of himself and on behalf of the Class, seeks damages and all other relief allowable including all wages due while working as Defendants' hourly, nonexempt retail store employees, attorneys' fees, liquidated damages, prejudgment interest, and as to those employees no longer employed by Defendants, waiting time penalties pursuant to Labor Code sections 200, *et seq.*

74. Plaintiff and Class Members are entitled to the unpaid amount of minimum wages, pre-

1 judgment interest, liquidated damages, statutory penalties, attorneys' fees, and costs according to Labor
2 Code sections 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure 1021.5.

3
4 **IX. FOURTH CAUSE OF ACTION**

5 **Failure to Pay Overtime Wages**

6 **in Violation of Cal. Labor Code §§ 510 and 1194, IWC Wage Order No. 7-2001, § 3**

7 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

8 75. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
9 as if fully set forth herein.

10 76. Pursuant to section 3 of IWC Wage Order No. 7-2001; California Code of Regulations,
11 Title 8, Chapter 5, section 11040, section 12; and Labor Code sections 200, 204, 226, 500, 510, 512,
12 1194, and 1198, Defendants were required to compensate Plaintiff and members of the Class for all
13 overtime hours worked, which is calculated at one and one-half (1½) times the regular rate of pay for
14 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
15 (8) hours on the seventh consecutive work day, with double time after eight (8) hours on the seventh day
16 of any work week, or after twelve (12) hours in any work day.

17 77. Plaintiff and members of the Class were and are nonexempt employees entitled to the
18 protections of IWC Wage Order No. 7-2001; California Code of Regulations, Title 8, section 11040,
19 section 12; and Labor Code sections 200, 226, 500, 510, 512, 1194, and 1198. In addition, during the
20 Class Period, Plaintiff and other members of the Class consistently worked five (5) days per week for
21 shifts of eight (8) hours or more. During the course of Plaintiff's employment, and during the course of
22 the employment of the members of the Class, Defendants failed to compensate Plaintiff and the Class for
23 overtime hours worked as required under the aforementioned Labor Codes and Regulations.

24 78. Under the aforementioned Wage Orders, statutes, and regulations, Plaintiff and members
25 of the Class are entitled to one and one-half (1½) times and/or double their regular rate of pay for overtime
26 work performed during the four (4) years preceding the filing of this Complaint, based on appropriate
27 calculations of the "total remuneration" for each workweek.

28 79. In violation of state law, Defendants have knowingly and willfully refused to perform

1 their obligations to compensate Plaintiff and the Class for all wages earned and all hours worked. As a
2 direct result, Plaintiff and the Class have suffered, and continue to suffer, substantial losses related to the
3 use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking
4 to compel Defendants to fully perform their obligations under state law, all to their respective damage in
5 amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this
6 Court.

7 80. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful
8 and deliberate intention of injuring Plaintiff and the Class, from improper motives amounting to malice,
9 and in conscious disregard of Plaintiff's rights and the rights of the Class. Plaintiff and the Class are thus
10 entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts
11 according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

12 81. Defendants' conduct described herein violates IWC Wage Order No. 7-2001; California
13 Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510,
14 512, and 1198. Therefore, pursuant to Labor Code sections 200, 203, 204, 226, 226.7, 512, 558, and
15 1194, Plaintiff and the Class are entitled to recover the unpaid balance of overtime compensation
16 Defendants owes Plaintiff and the Class, plus interest, penalties, attorneys' fees, expenses, and costs of
17 suit.

18
19 **X. FIFTH CAUSE OF ACTION**

20 **Failure to Furnish Timely and Accurate Wage Statements**

21 **Upon Payment of Wages in Violation of Cal. Labor Code § 227.3**

22 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

23 82. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
24 as if fully set forth herein.

25 83. Labor Code section 226(a) sets forth reporting requirements for employers when they pay
26 wages, as follows: "Every employer shall . . . at the time of each payment of wages, furnish his or her
27 employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked
28 by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the

1 employee is paid on a piece-rate basis” Section (e) provides: “An employee suffering injury as a
2 result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled
3 to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
4 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
5 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an
6 award of costs and reasonable attorney’s fees.”

7 84. Defendants failed to accurately record the overtime hours worked by Plaintiff and Class
8 Members.

9 85. Additionally, Defendants failed to accurately record all rates of pay in effect during the
10 pay period.

11 86. Plaintiff and Class Members were damaged by these failures because, among other things,
12 the failures hindered Plaintiff and the Class from determining the amounts of wages actually owed to
13 them.

14 87. Plaintiff and Class Members request recovery of Labor Code section 226(e) penalties
15 according to proof, as well as interest, attorneys’ fees and costs pursuant to Labor Code section 226(e),
16 in a sum as provided by the Labor Code and/or other statutes.

17
18 **XI. SIXTH CAUSE OF ACTION**

19 **Failure to Pay All Wages Owed Every Pay Period**

20 **in Violation of Cal. Labor Code § 204**

21 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

22 88. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
23 as if fully set forth herein.

24 89. California Labor Code section 204 establishes the fundamental right of all employees in
25 the State of California to be paid wages in a timely fashion for their work. At all times relevant during
26 the liability period, Defendant failed to pay Plaintiff and the Class the full amount of all owed wages
27 when due as required by California Labor Code section 204. At all relevant times herein, Labor Code
28 section 204 provides that all wages earned by any person in any employment between the 1st and the

1 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee,
2 are due and payable between the 16th and the 26th day of the month during which the labor was
3 performed. Labor Code section 204 further provides that all wages earned by any person in any
4 employment between the 16th and the last day, inclusive, of any calendar month, other than those wages
5 due upon termination of an employee, are due and payable between the 1st and the 10th day of the
6 following month.

7 90. At all relevant times herein, Labor Code section 204 provides that all wages earned for
8 labor in excess of the normal work period shall be paid no later than the payday for the next regular
9 payroll period. Alternatively, at all relevant times herein, Labor Code section 204 provides that the
10 requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or
11 semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of
12 the payroll period.

13 91. During the relevant time period, Defendants willfully failed to pay Plaintiff and other
14 similarly situated employees all wages earned each pay period. For example, Plaintiff is informed,
15 believes, and thereon alleges, that at all times relevant during the liability period, Defendant maintained
16 a policy or practice of not paying Plaintiff and other similarly situated employees: (i) minimum wages
17 for all hours worked; (ii) overtime wages for all overtime hours worked; and (iii) premium wages for all
18 missed meal periods and rest breaks.

19 92. As a result of Defendant's unlawful conduct, Plaintiff and members of the Class have
20 suffered damages in an amount, subject to proof, to the extent they were not paid all wages each pay
21 period. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined
22 directly from Defendant's records or indirectly based on information from Defendant's records.

23 24 **XII. SEVENTH CAUSE OF ACTION**

25 **Failure to Pay All Wages Owed Upon Separation**

26 **in Violation of Cal. Labor Code §§ 201–203**

27 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

28 93. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint

1 as if fully set forth herein.

2 94. Labor Code section 201 provides, in relevant part, “[I]f an employer discharges an
3 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

4 95. Labor Code section 202 provides, in relevant part, “[I]f an employee not having a written
5 contract for a definite period quits his or her employment, his or her wages shall become due and payable
6 not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her
7 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

8 96. Section 203 of the California Labor Code provides that if an employer willfully fails to
9 pay compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the
10 employer is liable for penalties in the form of continued compensation up to thirty (30) work days.

11 97. At all times relevant during the liability period, Plaintiff and the other members of the
12 Class were employees of Defendants covered by Labor Code section 203. Pursuant to Labor Code
13 section 201, upon Plaintiff’s and the Class Members’ separation dates, Defendants were required to pay
14 Plaintiff and the Class Members all wages earned.

15 98. At the time of Plaintiff’s and the Class Members’ respective separation dates, Plaintiff and
16 Class Members had unpaid wages. Defendants willfully failed to pay Plaintiff and other members of the
17 Class who are no longer employed by Defendants for their uncompensated hours, uncompensated
18 overtime, and missed, untimely, or on-duty meal periods and rest breaks upon their termination or
19 separation from employment with Defendants as required by California Labor Code sections 201 and
20 202. Thus, in violation of Labor Code section 201, Defendants failed to pay Plaintiff and the Class
21 Members the full amount of wages due and owing them, in amounts to be proven at the time of trial, but
22 in excess of the jurisdictional minimum of this Court.

23 99. Defendants’ failure to pay Plaintiff and the Class respective wages due and owed to them
24 was willful, and done with the wrongful and deliberate intention of injuring Plaintiff and the Class
25 Members and in conscious disregard of their rights.

26 100. Defendants’ willful failure to pay former employee Plaintiff and the Class all of the wages
27 due and owing them constitutes violations of Labor Code sections 201 and 203, which provide that an
28 employee’s wages will continue as a penalty up to thirty (30) days from the time the wages were due.

1 Therefore, former employee Plaintiff and the Class Members are each entitled to penalties pursuant to
2 Labor Code section 203.

3
4 **XIII. EIGHTH CAUSE OF ACTION**

5 **Violations of California's Unfair Competition Law ("UCL"),**

6 **California Business and Professions Code §§ 17200, *et seq.***

7 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

8 101. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
9 as if fully set forth herein.

10 102. Section 17200 of the California Business and Professions Code (the "UCL") prohibits any
11 unlawful, unfair, or fraudulent business practices.

12 103. Through their actions alleged herein, Defendants have engaged in unfair competition
13 within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair,
14 and/or fraudulent business practices under the UCL.

15 104. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the
16 statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to, failure
17 to pay Class Members wages and compensation they earned through labor provided, and failing to
18 otherwise compensate Class Members, as alleged herein. Defendants' fraudulent conduct includes, but
19 is not limited to, issuing wage statements containing false and/or misleading information about the time
20 the Class Members worked and the amount of wages or compensation due.

21 105. Defendants' violations of California wage and hour laws and illegal payroll practices or
22 payment policies constitute a business practice because they were done repeatedly over a significant
23 period of time, and in a systematic manner to the detriment of Plaintiff and Class Members.

24 106. Plaintiff has standing to assert this claim because he has suffered injury in fact and has
25 lost money as a result of Defendants' conduct.

26 107. For the four (4) years preceding the filing of this action, Plaintiff and Class Members have
27 suffered damages and request restitutionary disgorgement of all monies and profits to be disgorged from
28 Defendants in an amount according to proof at the time of trial and an injunction prohibiting them from

engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

XIV. NINTH CAUSE OF ACTION

**For Civil Penalties Pursuant to California’s Private Attorneys General Act of 2004 (“PAGA”),
§§ 2698, *et seq.*, for Violations of California Labor Code Sections
(Brought by Plaintiff on Behalf of Himself and the General Public Against All Defendants)**

108. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

109. PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order(s) that provides for a civil penalty to be assessed and collected by California’s Labor and Workforce Development Agency (“LWDA”) for violations of the California Labor Code and applicable IWC Wage Order(s) may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

110. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

111. Plaintiff and other current and former employees of Defendants are “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former employees and one or more of the alleged violations were committed against them.

112. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees, including Plaintiff, may pursue a civil action arising under PAGA, alleging violations of any provision listed in section 2699.5, after the following requirements have been met:

- a. The aggrieved employee shall give written notice (“Employee’s Notice”) by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The Employee’s Notice filed with the LWDA is accompanied by a seventy-five-dollar

1 (\$75) filing fee; and

- 2 c. The LWDA shall provide notice (“LWDA Notice”) to the employer and the aggrieved
3 employee by certified mail that it does not intend to investigate the alleged violation within
4 sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of
5 the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar
6 days of the postmark date of the Employee’s Notice, the aggrieved employee may
7 commence a civil action pursuant to California Labor Code section 2699 to recover civil
8 penalties in addition to any other penalties to which the employee may be entitled.

9 113. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, including
10 Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those
11 listed in section 2699.5 after the following requirements have been met:

- 12 a. The aggrieved employee shall give written notice by online filing (“Employee’s Notice”)
13 to the LWDA and by certified mail to the employer of the specific provisions of the
14 California Labor Code alleged to have been violated, including the facts and theories to
15 support the alleged violations;
- 16 b. The Employee’s Notice filed with the LWDA is accompanied by a seventy-five-dollar
17 (\$75) filing fee; and
- 18 c. The employer may cure the alleged violation within thirty-three (33) calendar days of the
19 postmark date of the Employee’s Notice. The employer shall give written notice by
20 certified mail within that period of time to the aggrieved employee or representative and
21 the agency if the alleged violation is cured, including a description of actions taken, and
22 no civil action pursuant to Section 2699 may commence. If the alleged violation is not
23 cured within the 33-day period, the employee may commence a civil action pursuant to
24 Section 2699.

25 114. On March 6, 2020, Plaintiff provided written notice by online filing to the LWDA and by
26 certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been
27 violated, including facts and theories to support the alleged violations, in accordance with California
28 Labor Code section 2699.3. Plaintiff’s notice to the LWDA was accompanied by the \$75 filing fee. A

1 true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated March 6, 2020 is
2 attached hereto as "**Exhibit 1.**"

3 115. As of the filing date of the initial complaint, over sixty-five (65) days have passed since
4 Plaintiff sent the LWDA Notice described above, and the LWDA has not responded that it intends to
5 investigate Plaintiff's claims. Defendants have not given notice that it has cured the alleged violations
6 set forth in this Complaint. Thus, Plaintiff has satisfied the administrative prerequisites under California
7 Labor Code section 2699.3(a) and (c) to recover civil penalties Against All Defendants, in addition to
8 other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510,
9 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

10 116. Labor Code section 558(a) provides that "[a]ny employer or other person acting on behalf
11 of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating
12 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
13 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
14 pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid
15 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
16 each pay period for which the employee was underpaid in addition to an amount sufficient to recover
17 underpaid wages." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this
18 section are in addition to any other civil or criminal penalty provided by law."

19 117. Defendants, at all times relevant herein, were employers or persons acting on behalf of an
20 employer(s) who violated Plaintiff's and other non-party aggrieved employees' rights by violating
21 various sections of the California Labor Code as set forth above.

22 118. As set forth below, Defendants have violated numerous provisions of both the Labor Code
23 sections regulating hours and days of work as well as the applicable IWC Wage Order(s), including:

- 24 a. Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage
25 Order(s) for Defendants' failure to provide Plaintiff and other Class Members with meal
26 periods and/or rest breaks, as set forth above;
- 27 b. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable
28 IWC Wage Order(s) for Defendants' failure to compensate Plaintiff and other Class

- 1 Members with at least minimum wages for all hours worked as set forth above;
- 2 c. Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order(s) for
- 3 Defendants' failure to compensate Plaintiff and other Class Members with overtime wages
- 4 for all hours worked in excess of eight (8) in one day or forty (40) in one week and double
- 5 time for all hours worked in excess of twelve (12) hours, as set forth above;
- 6 d. Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order(s)
- 7 for failure to provide accurate and complete wage statements to Plaintiff and other Class
- 8 Members as set forth above;
- 9 e. Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order(s)
- 10 for failure to maintain payroll records. California Labor Code section 1198 provides that
- 11 the maximum hours of work and the standard conditions of labor shall be those fixed by
- 12 the Labor Commissioner and as set forth in the applicable IWC Wage Order(s). Section
- 13 1198 further provides that "[t]he employment of any employees for longer hours than
- 14 those fixed by the order or under conditions of labor prohibited by the order is unlawful."
- 15 Pursuant to the applicable IWC Wage Order(s), employers are required to keep accurate
- 16 time records showing when the employee begins and ends each work period and meal
- 17 period. During the relevant time period, Defendants failed, on a companywide basis, to
- 18 keep records of meal period start and stop times for Plaintiff and other non-party aggrieved
- 19 employees in violation of section 1198. California Labor Code section 1174(d) provides
- 20 that "[e]very person employing labor in this state shall . . . [k]eep a record showing the
- 21 names and addresses of all employees employed and the ages of all minors" and "[k]eep,
- 22 at a central location in the state or at the plants or establishments at which employees are
- 23 employed, payroll records showing the hours worked daily by and the wages paid to, and
- 24 the number of piece-rate units earned by and any applicable piece rate paid to, employees
- 25 employed at the respective plants or establishments" During the relevant time period,
- 26 and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain
- 27 accurate payroll records for Plaintiff and other non-party aggrieved employees showing
- 28 the daily hours they actually worked and the wages paid thereto as a result of failing to

1 record the off-the-clock hours that they worked;

2 f. Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages
3 upon termination as set forth above;

4 g. Violations of Labor Code section 204 for failure to pay all earned wages during
5 employment as set forth above;

6 h. Plaintiff and other non-party aggrieved employees are therefore entitled to recover
7 penalties, attorneys' fees, costs, and interest thereupon, pursuant to Labor Code section
8 2699(f)-(g); and

9 i. Any and all additional applicable civil penalties and sums as provided by the California
10 Labor Code and/or other relevant statutes.

11 119. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558,
12 Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of
13 civil penalties for himself, all other non-party aggrieved employees, and the State of California Against
14 All Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202,
15 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

16 120. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties
17 obtained under California Labor Code section 2699 to be allocated to the LWDA, for education of
18 employers and employees about their rights and responsibilities under the California Labor Code, and
19 twenty-five percent (25%) to all aggrieved employees.

20 121. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to
21 California Labor Code sections 2699(g)(1), 218.5, 1194(a) and any other applicable statute.

22 23 **XV. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated and also on behalf
25 of the general public, respectfully requests that this Court find Against All Defendants as follows:

- 26 1. An order that this action may proceed and may be maintained as a class action;
27 2. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member
28 on their minimum wage claims;

3. All unpaid overtime wages due to Plaintiff and each Class Member;
4. One hour of wages due to Plaintiff and each Class Member for each work period of more than four (4) hours when they did not receive an uninterrupted ten (10) minute rest break;
5. One hour of wages due to Plaintiff and each Class Member for each work period of more than five (5) hours when they did not receive an uninterrupted thirty (30) minute meal period;
6. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member on their minimum wage claim;
7. For restitution of all monies due to Plaintiff and members of the Class and disgorged profits from the unlawful business practices of Defendants;
8. For waiting time penalties pursuant to Labor Code section 203;
9. Statutory penalties under Labor Code section 226(e);
10. For penalties pursuant to Labor Code sections 204, 206, 210, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1194.2, 1197.1, and 1198;
11. For injunctive relief enjoining Defendants from engaging in the unlawful and unfair business practices complained of herein;
12. For all civil penalties permitted by California's Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, based on all the alleged statutory violations set forth in this Complaint;
13. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;
14. Prejudgment interest at the maximum legal rate on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;
15. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, 1194, 2699(g), and Code of Civil Procedure section 1021.5;
16. Accounting of Defendants' records for the liability period;
17. General, special, and consequential damages, to the extent allowed by law; and
18. All such other and further relief that the Court may deem just and proper.

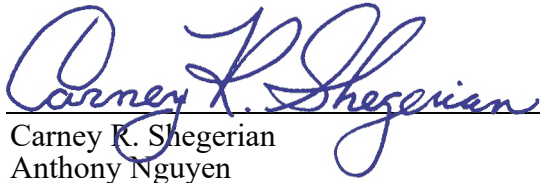
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1 Dated: June 2, 2020

SHEGERIAN & ASSOCIATES, INC.

2
3 By: 
4 Carney R. Shegerian
5 Anthony Nguyen
6 Cheryl A. Kenner

7 Attorneys for Plaintiff, WILLIAM BABER, and all
8 others similarly situated and aggrieved
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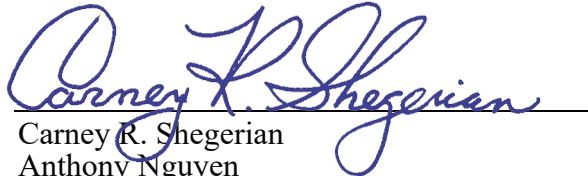
1 **DEMAND FOR JURY TRIAL**

2 Plaintiff WILLIAM BABER, on behalf of himself and all others similarly situated and aggrieved,
3 hereby demands a jury trial with respect to all issues triable of right by jury.
4

5 Dated: June 2, 2020

SHEGERIAN & ASSOCIATES, INC.

6
7 By:



8 Carney R. Shegerian
9 Anthony Nguyen
Cheryl A. Kenner

10 Attorneys for Plaintiff, WILLIAM BABER, and all
11 others similarly situated and aggrieved
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EXHIBIT 1

SHEGERIAN & ASSOCIATES, INC.

March 6, 2020

VIA ONLINE SUBMISSION

David M. Lanier, Secretary
California Labor & Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Nespresso USA, Inc.
320 N. Beverly Drive
Beverly Hills, CA 90210

Nespresso USA, Inc.
C/O Nestle USA, Inc.
1812 North Moore Street
Arlington, VA 22209

Nestle USA, Inc.
1812 North Moore Street
Arlington, VA 22209

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTION 2698, ET SEQ.

To: The California Labor and Workforce Development Agency; Nespresso USA, Inc.; Nestle USA, Inc.

From: William Baber, on behalf of himself and all other current and former nonexempt, hourly retail store employees for violations of the California Labor Code

To Whom It May Concern:

Shegerian & Associates, Inc. has been retained by former employee William Baber ("Mr. Baber") to seek compensation and all other available relief, including civil penalties on their behalves and on the behalf of all those similarly aggrieved who have been injured by violations of the California Labor Code. Mr. Baber, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt retail store employees of

Nespresso USA, Inc.; Nestle USA, Inc. (collectively, “Nespresso”), intends to seek civil penalties, attorneys’ fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Factual Statement:

Nespresso operates a chain of retail stores across the State of California and the United States. Nespresso sells a variety of merchandise (coffee and espresso machines, coffee and espresso pods, etc.) to customers, both at its brick-and-mortar stores and online. Claimant Mr. Baber worked for Nespresso as an hourly, nonexempt employee, in the position of Sales Associate. Mr. Baber was earning \$16.00 per hour at the time of his separation. Mr. Baber, on behalf of himself and all other similarly aggrieved current and former retail store employees of Nespresso are or were nonexempt, hourly retail store employees in California who are or were engaged in effecting Nespresso’s objectives of selling merchandise to customers. As part of their employment with Nespresso, Claimants and other nonexempt, hourly retail store employees, collectively, “nonexempt, hourly retail store employees,” are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to: stocking merchandise; selling merchandise; inventorying, organizing, packing and unpacking merchandise; cashiering; answering phones; assisting customers; janitorial tasks for the store and restrooms; providing food and drinks to customers; washing dishes; setting up deliveries of merchandise to customers; fulfilling orders to be shipped to customers who placed orders online or else picked up in-store; and performing general opening/closing duties.

Mr. Baber regularly worked five (5) days per week for four (4) or more hours per day at Nespresso’s location in Beverly Hills, California and temporarily at Nespresso’s Santa Monica, California location. During the entire course of his employment, Nespresso has failed to provide Mr. Baber and continues to fail to provide all others similarly situated with all overtime pay and compliant meal periods and rest breaks. As a consequence, Nespresso has failed to comply with Labor Code sections 226.7, 510, and 512 and Industrial Welfare Commission (“IWC”) Wage Order 7-2001, sections 3, 11, and 12. Nespresso has also failed to pay minimum wages to Claimants in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and IWC Wage Order No. 7-2001, section 4. Not all reporting pay owed under Wage Order No. 7-2001, section 5 was paid to Claimants either. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Nespresso has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Nespresso has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Nespresso has failed to provide Mr. Baber and continues to fail to provide timely, accurate wage statements to other aggrieved retail store employees in violation of Labor Code section 226(a). With regard to those no longer employed by Nespresso, including Mr. Baber, Nespresso violated Labor Code section 203 by failing to pay all wages due upon separation. Mr. Baber is informed and believes that such violations are ongoing, systematic, and continuous. He intends to bring an action against Nespresso under the Private Attorneys General Act (“PAGA”) to recover wages and penalties as provided by California law.¹

Theories of Labor Code Violations and Remedies:

For a period of at least four (4) years prior to March 2020, but for our purposes here, one (1) year, Nespresso has violated the California Labor Code and all applicable IWC Wage Orders. Claimant Mr. Baber was employed continuously from approximately August 20, 2017 to March 3, 2018 and then again from August 2019 through January 31, 2020 by Nespresso as a Sales Associate.

First, Claimants were at all times entitled to off-duty, uninterrupted but unpaid meal periods. Nespresso, however, failed to authorize and permit Mr. Baber and all other similarly aggrieved retail store employees to take compliant meal periods as required by Labor Code sections 226.7 and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 11. Mr. Baber and all similarly aggrieved retail store employees took their meal periods late, had their meal periods interrupted, and remained on-duty as they were required to perform work during their meal periods. This

¹ Without limitation, Mr. Baber, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

was largely due to too few staff per shift to be able to serve all the customers, especially during the holiday season, for which Nespresso reasonably could have corrected with adequate staffing. And Nespresso did not compensate Claimants with an extra hour of pay at their regular rate for noncompliant meal periods for each workday on which they occurred. Accordingly, since Nespresso required Mr. Baber and others similarly situated to work during their meal periods and did not subsequently compensate them for all noncompliant meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code section 558, all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 20 and 2699(f).

Claimants were at all times entitled to take paid, off-duty rest breaks. However, Nespresso failed to authorize and permit Mr. Baber and continues to fail to provide all other similarly aggrieved retail store employees to take off-duty rest breaks as required by Labor Code sections 226.7 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 12. This was largely due to understaffing in light of the demands of the customers for which Nespresso could have reasonably anticipated. Mr. Baber and all similarly aggrieved retail store employees were required to perform work during their rest breaks by either taking no break or else having their break interrupted to return to work before a net-ten-minute break was taken, which means they were on-duty during their rest breaks. Nespresso did not compensate Claimants with an extra hour of pay at their regular rate for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 20. Furthermore, since Nespresso required its nonexempt retail store employees to work during rest periods in violation of Labor Code section 226.7(b) without premium pay, Claimants seek all available penalties as set forth in Labor Code sections 558 and 2699.

Claimants also were at all times entitled to the payment of minimum wages. Nespresso has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 4. For instance, Nespresso did not authorize and permit Claimants to take compliant meal periods and rest breaks on eligible shifts. Nespresso's corresponding failure to provide premium pay at the regular rate in lieu of authorizing and permitting compliant meal periods and rest breaks constitutes Nespresso's failure to pay minimum wages for all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. In essence, Nespresso's failure to pay Claimants their premium pay constitutes Nespresso's failure to pay minimum wages to Claimants. As a result, Claimants did not receive minimum wages for all hours worked, which also

means they didn't receive all overtime wages nor all wages owed every pay period nor upon separation.

Additionally, Claimants didn't receive minimum wages for all hours worked in that Claimants performed work prior to clocking in as well as after clocking out. For example, Claimants spent time uncompensated submitting to bag searches while off the clock. Likewise, Claimants, including Mr. Baber, were locked in the store during closing shifts, which required them to wait several minutes to be let out of the store by a keyholder who could unlock the door for them. Having workers submit to bag checks, locking the doors to keep out customers during closing, and providing immediate customer assistance are all for Nespresso's benefit. Claimants' time was never adjusted to account for this work performed for the benefit of Nespresso at the beginning, during, and at the end of their shifts. Accordingly, not all hours that Claimants worked were recorded, adjusted, nor subsequently compensated. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 20.

At all times relevant herein, Claimants were entitled to the payment of overtime. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Nespresso was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Nespresso has failed to and continues to fail to pay Claimants all overtime wages owed, yet regularly required them to work in excess of eight (8) hours per day and/or forty (40) hours per week without premium pay under Labor Code section 1194. Claimant Mr. Baber regularly worked five (5) days per week for four (4) hours or more per day but when he worked overtime, he did not receive all overtime wages owed. In short, during the entire course of his employment, Nespresso failed to provide Mr. Baber and continues to fail to provide all other similarly aggrieved retail store employees with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 3.

Pursuant to Labor Code section 204, Claimants were entitled to be paid all wages owed every pay period. As explained above, by failing to pay Claimants all meal period and rest period premiums for every instance of noncompliance and by failing to pay all minimum wages and overtime wages every pay period, Nespresso has failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204.

Likewise, pursuant to Labor Code sections 201–203, Claimants who have since separated from Nespresso, including Mr. Baber, were entitled to be paid all wages owed

upon separation within the statutorily allotted time—immediately (resignation with notice and termination) or within seventy-two (72) hours (resignation without notice). Claimants did not receive all wages owed upon separation based on Nespresso prior failings to pay all wages owed every pay period, as explained in the preceding paragraph.

Claimants were at all times entitled to be provided timely and accurate wage statements by Nespresso pursuant to Labor Code section 226. Because Nespresso failed to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, and failed to pay Claimants minimum wages for all hours worked and for all overtime wages owed as well as the correct rate for overtime hours, Claimants' wage statements were inaccurate in reflecting meal period and rest break premium compensation owed, all overtime and minimum wages owed, and all hours worked every pay period. As a consequence, Claimants' wage statements also do not reflect the accurate amount of gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Nespresso's uniform failure to authorize and permit off-duty rest breaks and meal periods or pay Claimants premium compensation in lieu thereof, failure to pay all minimum and overtime wages owed, failure to pay all wages owed every pay period and upon separation, and failure to furnish timely and accurate wage statements violates Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1182.12, 1194, and 1197, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys' fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former retail store employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for himself, the State of California, and all other aggrieved retail store employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Baber, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Nespresso for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

Should you require any additional information, please feel free to contact me.

Very truly yours,

LABOR AND WORKFORCE DEVELOPMENT AGENCY
NESPRESSO USA, INC./NESTLE USA, INC.
March 6, 2020
Page 7

SHEGERIAN & ASSOCIATES, INC.

A handwritten signature in black ink, reading "Carney R. Shegerian". The signature is written in a cursive style with a large, stylized "C" and "S".

Carney R. Shegerian

CRS/ck