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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

14 ALAHJAH BROWN, on behalf of the State
15 of California, as a private attorney general,

16 Plaintiff,

17 vs.

18 NRI USA, LLC, a California Limited
19 Liability Company, and DOES 1 through
20 50, inclusive,

21 Defendants.

Case No. CIVSB 2028407

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B).

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 18 2020

BY Felix Garza
FELIX GARZA, DEPUTY

1 Plaintiff Alahjah Brown (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant NRI USA, LLC
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf of
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
10 **not seek to recover anything other than penalties as permitted by California Labor Code**
11 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the
13 civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant NRI USA, LLC (“DEFENDANT”) is a California limited liability
24 company that at all relevant times mentioned herein conducted and continues to conduct
25 substantial business in the state of California.

26 5. DEFENDANT specializes in e-commerce & wholesale fulfillment of premium
27 apparel, footwear, accessories and select goods.
28

1 6. PLAINTIFF has been employed by DEFENDANT since October of 2018 and has
2 been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
3 basis, and entitled to the legally required meal and rest periods and payment of minimum and
4 overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 himself and all individuals who are or previously were employed by DEFENDANT in
9 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
10 the time period of July 31, 2019 until a date as determined by the Court (the "PAGA PERIOD").

11 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
12 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
13 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
14 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
15 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
16 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
17 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
18 the meaning of Labor Code § 2699, *et seq.*

19 9. The true names and capacities, whether individual, corporate, subsidiary,
20 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
21 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
22 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
23 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
24 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
25 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
26 responsible in some manner for one or more of the events and happenings that proximately
27 caused the injuries and damages hereinafter alleged.

28 10. The agents, servants and/or employees of the Defendants and each of them acting

1 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
2 agent, servant and/or employee of the Defendants, and personally participated in the conduct
3 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
4 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
5 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
6 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
7 agents, servants and/or employees.

8 9 THE CONDUCT

10 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
11 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
12 meaning the time during which an employee is subject to the control of an employer, including
13 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
14 and AGGRIEVED EMPLOYEES to work without paying them for all the time they are under
15 DEFENDANT's control. DEFENDANT requires PLAINTIFF and the AGGRIEVED
16 EMPLOYEES to work off the clock without paying them for all the time they performed post-
17 shift duties, specifically by failing to provide enough labor hours to accomplish all the job tasks
18 that DEFENDANT expected PLAINTIFF and AGGRIEVED EMPLOYEES to complete on a
19 daily and/or weekly basis. Specifically, DEFENDANT requires PLAINTIFF and AGGRIEVED
20 EMPLOYEES to clock out of DEFENDANT's timekeeping system and then travel to other
21 locations owned and operated by DEFENDANT to then perform more work for DEFENDANT.
22 DEFENDANT failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for this
23 required travel to different work sites designated by DEFENDANT in the same work shift.
24 Also, PLAINTIFF and other AGGRIEVED EMPLOYEES were required from time to time to
25 clock out of Defendant's timekeeping system and submit to defendant's loss prevention
26 inspections in accordance with DEFENDANT's company handbooks and policies all while off
27 the clock and not being paid. Additionally, from time to time, DEFENDANT requires
28 PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty

1 meal break. PLAINTIFF is from time to time interrupted by work assignments. As a result,
2 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit minimum wage and overtime
3 compensation by from time to time working without their time being accurately recorded and
4 without compensation at the applicable minimum wage and overtime rates. DEFENDANT's
5 uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for
6 all time worked is evidenced by DEFENDANT's business records.

7 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
8 EMPLOYEES are also from time to time unable to take off duty meal breaks and are not fully
9 relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES are
10 from time to time required to perform work as ordered by DEFENDANT for more than five (5)
11 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT fails to
12 provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period from
13 time to time in which these employees are required by DEFENDANT to work ten (10) hours
14 of work from time to time. PLAINTIFF and the other AGGRIEVED EMPLOYEES therefore
15 forfeit meal breaks without additional compensation and in accordance with DEFENDANT's
16 corporate policy and practice.

17 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
18 are also required from time to time to work in excess of four (4) hours without being provided
19 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
20 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
21 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
22 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
23 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
24 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not provided with one hour wages
25 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
26 AGGRIEVED EMPLOYEES are from time to time denied their proper rest periods by
27 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
28 Order requires employers to provide employees with off-duty rest periods, which the California

1 Supreme Court defined as time during which an employee is relieved from all work related
2 duties and free from employer control. In so doing, the Court held that the requirement under
3 California law that employers authorize and permit all employees to take rest period means that
4 employers must relieve employees of all duties and relinquish control over how employees
5 spend their time which includes control over the locations where employees may take their rest
6 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
7 five minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and
8 other AGGRIEVED EMPLOYEES from unconstrained walks and requires these employees to
9 remain on DEFENDANT's premises under DEFENDANT's control during what should be their
10 paid, off duty rest periods.

11 14. During the PAGA PERIOD, DEFENDANT systematically fails to record and pay
12 PLAINTIFF and AGGRIEVED EMPLOYEES the correct amount of wages due for split-shift
13 premiums. The applicable Industrial Welfare Commission Wage Orders define a "split-shift"
14 as a "work schedule, which is interrupted by non-paid, non-working, periods established by the
15 employer, other than bona fide rest or meal periods." The Industrial Welfare Commission Wage
16 Orders further provide, "When an employee works a split shift, one (1) hour's pay at the
17 minimum wage shall be paid in addition to the minimum wage for that workday, except when
18 the employee resides at the place of employment." DEFENDANT requires PLAINTIFF and
19 AGGRIEVED EMPLOYEES to work split-shifts throughout the PAGA PERIOD, but
20 intentionally and unlawfully fails to pay PLAINTIFF and the AGGRIEVED EMPLOYEES split-
21 shift premium wages.

22 15. DEFENDANT also fails to provide PLAINTIFF and the other AGGRIEVED
23 EMPLOYEES with complete and accurate wage statements which failed to show, among other
24 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
25 employer shall furnish each of his or her employees with an accurate itemized wage statement
26 in writing showing, among other things, gross wages earned and all applicable hourly rates in
27 effect during the pay period and the corresponding amount of time worked at each hourly rate.
28 Aside, from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an

1 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
2 As a result, DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
3 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

4 16. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
5 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
6 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
7 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
8 2802, employers are required to indemnify employees for all expenses incurred in the course
9 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
10 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
11 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
12 directions of the employer, even though unlawful, unless the employee, at the time of obeying
13 the directions, believed them to be unlawful."

14 17. In the course of their employment PLAINTIFF and other AGGRIEVED
15 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
16 cellular phones and personal vehicles to inter-location travel as a result of and in furtherance
17 of their job duties as employees for DEFENDANT but are not reimbursed or indemnified by
18 DEFENDANT for the cost associated with the use of their personal cellular phones and
19 personal vehicles, including but not limited to gas money, for DEFENDANT's benefit.
20 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES are required by
21 DEFENDANT to use their personal cellular phones to respond to managers while off the clock
22 (which also results in minimum wage and overtime violations). As a result, in the course of their
23 employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred
24 unreimbursed business expenses which included, but were not limited to, costs related to the use
25 of their personal cellular phones and personal vehicles all on behalf of and for the benefit of
26 DEFENDANT.

27 18. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as

1 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
2 failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal
3 and rest periods. This uniform policy and practice of DEFENDANT is intended to purposefully
4 avoid the payment for all time worked as required by California law which allows
5 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
6 with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
7 EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

8 19. By reason of this uniform conduct applicable to PLAINTIFF and all
9 AGGRIEVED EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure
10 which fails to accurately calculate and record all missed meal and rest periods and failed to pay
11 all minimum and overtime wages due to PLAINTIFF and other AGGRIEVED EMPLOYEES.
12 The proper recording of these employees' missed meal and rest breaks is the DEFENDANT's
13 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
14 burden, DEFENDANT fails to properly calculate and/or pay all required compensation for work
15 performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and
16 regulations promulgated thereunder as herein alleged.

17 20. All of the conduct and violations alleged herein occurred during the PAGA
18 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
19 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
20 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
21 AJDAR 12157 (Certified for Publication 12/19/18).

22 23 **JURISDICTION AND VENUE**

24 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure, Section 410.10.

26 22. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
28 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained

1 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
2 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
3 AGGRIEVED EMPLOYEES.

4 **FIRST CAUSE OF ACTION**

5 **For Violation of the Private Attorneys General Act**

6 **[Cal. Lab. Code §§ 2698, *et seq.*]**

7 **(By PLAINTIFF and Against All Defendants)**

8 23. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior
9 paragraphs of this Complaint.

10 24. PAGA is a mechanism by which the State of California itself can enforce state
11 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
12 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
13 fundamentally a law enforcement action designed to protect the public and not to benefit private
14 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
15 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
16 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
17 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
18 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
19 subject to arbitration.

20 25. PLAINTIFF, and such persons that may be added from time to time who satisfy
21 the requirements and exhaust the administrative procedures under the Private Attorney General
22 Act, brings this Representative Action on behalf of the State of California with respect to
23 himself and all individuals who are or previously were employed by DEFENDANT in
24 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
25 the time period of July 31, 2019 until a date as determined by the Court (the "PAGA PERIOD").

26 26. On July 31, 2020, PLAINTIFF gave written notice by electronic mail to the Labor
27 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
28 the specific provisions of this code alleged to have been violated as required by Labor Code §

1 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
2 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
3 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
4 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

5 27. The policies, acts and practices heretofore described were and are an unlawful
6 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
7 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
8 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
9 to pay minimum wages, and (e) failed to reimburse for required business expenses, all in
10 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et*
11 *seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
12 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
13 applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such
14 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor
15 Code Private Attorney General Act of 2004 as the representative of the State of California for
16 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 **PRAYER FOR RELIEF**

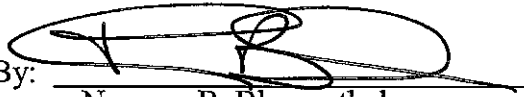
2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:

6 A) Recovery of civil penalties as prescribed by the Labor Code Private
7 Attorneys General Act of 2004; and,

8 B) An award of attorneys' fees and cost of suit, as allowable under the
9 law, including, but not limited to, pursuant to Labor Code §2699.

10
11 Dated: December 18, 2020 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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13
14 By: 

15 Norman B. Blumenthal
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