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Attorneys for Plaintiff ALAHJAH BROWN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

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

Plaintiffs,

v.

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

Defendant.

Case No: CIVSB 2028407

**DECLARATION OF SHANI O. ZAKAY
IN SUPPORT OF MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Hearing Date: July 6, 2022

Hearing Time: 10:00am

Judge: Hon. David Cohn

Dept.: S26

1 I, SHANI O. ZAKAY, declare as follows:

2 1. I am the managing partner of the law firm of Zakay Law Group, APC, co-lead
3 counsel of record for Plaintiff Alahjah Brown (“Plaintiff”) in this matter. As such, I am fully
4 familiar with the facts, pleadings and history of the matter. The following facts are within my own
5 personal knowledge, and if called as a witness, I could testify competently to the matters stated
6 herein.

7 2. This declaration is being submitted in support of the motion by Plaintiff for an order:
8 approving the settlement in this Private Attorneys General Act (“PAGA”) action with Defendant
9 NRI USA, LLC (“Defendant”).

10 3. A true and correct copy of the fully executed Private Attorney General Act (Labor
11 Code Section 2698 *Et Seq.*) Settlement Agreement and Release of All Claims (“Settlement
12 Agreement”) is attached as Exhibit #1. A proposed order approving the PAGA settlement is
13 submitted herewith.

14 4. On July 31, 2020, Plaintiff served Defendant and the LWDA with a Notice of
15 Violations (“PAGA Notice”) and draft complaint memorializing claims against Defendant for
16 alleged violations of the California Labor Code, including causes of action for: failure to pay
17 minimum wages in violation of Labor Code sections 1194, 1197, and 1197.1; failure to pay overtime
18 wages in violation of Labor Code sections 510, 1194, and 1198; failure to provide required meal
19 periods in violation of Labor Code sections 226.7 and 512; failure to provide required rest periods
20 in violation of Labor Code sections 226.7 and 512; failure to provide accurate itemized wage
21 statements in violation of Labor Code section 226; and failure to provide wages when due in
22 violation of Labor Code sections 201, 202, 203, *et seq.*, and 210. (LWDA Case No. 800897-20).
23 On December 18, 2020, Plaintiff filed a complaint against Defendant in the Superior Court of San
24 Bernardino County, Case No. CIVSB2028402, alleging a single cause of action for violations of
25 PAGA based on the above Labor Code violations.

26 5. Plaintiff and Defendant agreed to mediate the action with Steve Rottman, Esq.
27 (“Mediator Rottman”), an experienced and reputable mediator. Prior to the mediation, in order to
28 evaluate the potential value of the claims, the Parties engaged in significant informal discovery in

1 an effort to obtain the facts regarding the claims asserted, including all of Defendant's relevant wage
2 and hour policies, the exchange of detailed statistical data regarding assignments performed by
3 Plaintiff and the Aggrieved Employees, the production of hundreds of pages of documents including
4 a large sample of time records and payroll records, and the exchange of detailed briefing and
5 analysis in connection with the mediation.

6 6. Thereafter, on July 12, 2021, the Parties participated in a full-day mediation with
7 Mediator Rottman. After extensive, arms-length negotiations and bargaining, the mediation
8 concluded without settlement. However, following the mediation, the Parties continued settlement
9 negotiations for several months, with the assistance of Mediator Rottman, until the Parties reached
10 an agreement to settle based on Mediator Rottman's proposal, which led to the signing of a PAGA
11 Settlement Agreement and Limited Release memorializing the settlement. The settlement was
12 negotiated in light of all known facts and circumstances and the uncertainty associated with
13 litigation – including the risk of Plaintiff not being able to maintain representative claims and
14 establishing manageability, the difficulty of proving Plaintiff's claims in a manageable trial, the
15 merits of Defendant's potential defenses, and the significant delay and potential appellate issues
16 inherent to litigation – and was reached after extensive arm's length negotiations, with the assistance
17 of Mediator Rottman.

18 7. The PAGA settlement is subject to Court approval consistent with Labor Code §
19 2699(1)(2) (Settlement Agreement at § IV(1)). The Settlement Agreement negotiated by the Parties
20 provides for a "Gross PAGA Settlement Fund" payment in the amount of \$200,000 to resolve the
21 PAGA Claim. The Gross PAGA Settlement Fund encompasses attorneys' fees in the amount of
22 \$66,666.67 (which is one-third of the PAGA Settlement), reimbursement of incurred costs in an
23 amount not to exceed \$16,000, a Representative Service Award of not more than \$10,000, and
24 Settlement Administration Costs, which will not exceed \$10,000. (Settlement Agreement at §§
25 III(6)(b)-(d)). Once the Attorney Fee/Cost Payment, Representative Service Award, and
26 Administration Costs have been deducted from the Gross PAGA Settlement Fund, the remaining
27 funds will be referred to as the "Net PAGA Settlement Fund."
28

8. The Net PAGA Settlement Fund, approximately \$97,333.33, shall be allocated as follows: a total of seventy-five percent (75%) shall be paid to the LWDA and the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees. (Settlement Agreement at § III(6)(a)).² This 75/25 allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

9. The Individual Settlement Share for each PAGA Employee shall be based on the number of payroll periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement Agreement at § III(5)). The PAGA Period is the time period from July 31, 2019 to November 30, 2021. (Settlement Agreement at § I(15)).

10. At the time of settlement, Defendant represented to Plaintiff's Counsel that there are approximately 1,775 Aggrieved Employees who worked approximately 36,387 pay periods during the PAGA Period. (Settlement Agreement at § III(3)).

11. Upon entry of Judgment and funding in full of the Settlement by Defendant, the Released Parties shall be entitled to a release from the State of California and Plaintiff as to the following claims: Any and all claims that were asserted in Plaintiff's July 31, 2020 PAGA Notice and the operative Complaint for PAGA penalties that occurred during the PAGA Period, including any potentially applicable claims for attorneys' fees. ("Released Claims") (Settlement Agreement at § III(7)). The Released Claims in the Settlement Agreement excludes all PAGA claims outside the PAGA Period, all PAGA claims not alleged in the operative complaint or LWDA Notice, and all non-PAGA claims but for Plaintiff's individual wage claims. (*Id.*)

12. Defendant shall (a) deposit \$200,000 as the Gross Settlement Amount in a Qualified Settlement Fund established by the Settlement Administrator, ILYM Group, and (b) provide the Settlement Administrator with a list of all Aggrieved Employees (the “Aggrieved Employee List”) within fourteen (14) business days after the Effective Date. (Settlement Agreement at § III(4)). Within ten (10) days of the Funding Date, the Settlement Administrator will mail settlement checks

² “Aggrieved Employees” means all individuals who were employed by NRI USA, LLC in a non-exempt position in California from July 31, 2019 to November 30, 2021 or the date the Court grants approval of the settlement, whichever is earlier. (Settlement Agreement at § I(2)).

1 and a letter explaining why the check is being sent (“Notice”), to the Aggrieved Employees
2 identified on the Aggrieved Employees List by postmarked First Class U.S. Mail. (Settlement
3 Agreement at § IV(4)). Should any of the Notices be returned as undeliverable, the Settlement
4 Administrator will promptly, via regular First-Class U.S. Mail, send the Notice to the forwarding
5 address affixed thereto. (Settlement Agreement at § IV(4)). If no forwarding address is provided,
6 for those settlement checks returned as undeliverable and those settlement checks remaining un-
7 cashed for more than 180 days after issuance, the Settlement Administrator shall escheat those
8 checks to the State Controller’s Office, Unclaimed Property Division in the name of the absent
9 employee. (Settlement Agreement at § IV(4)). The Individual PAGA Payments are 100% penalties
10 and shall be reported using IRS tax form 1099. (Settlement Agreement § III(6)(a)(3)).

11 13. Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of
12 the Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant
13 motion for settlement approval as set forth in the accompanying Zakay Dec. in compliance with
14 Labor Code section 2699(1).

15 14. The claim before this Court is the representative claim under the PAGA on behalf of
16 the State of California for civil penalties pursuant to the PAGA. The parties have agreed to settle
17 this PAGA claim in its entirety after significant informal discovery, and an arm’s length mediation.
18 The settlement is intended to fully and finally resolve the PAGA Released Claims asserted by
19 Plaintiff on behalf of the State of California. This is only a settlement of the PAGA claims for civil
20 penalties and is not a class settlement and does not release the individual claims other than Plaintiff
21 himself if any, of the Aggrieved Employees. This settlement does not release any claim that is not
22 a PAGA claim.³ Attorneys’ fees equal to one-third of the PAGA Settlement amount (\$66,666.67)
23 and litigation expenses in an amount not to exceed \$16,000 will also be paid to Plaintiff’s Counsel
24 as part of the settlement in accordance with California Labor Code § 2699(g)(1) as set forth in the
25 Settlement Agreement. Lastly, payment to the Settlement Administrator in an amount not to exceed
26 \$10,000 to perform the administrative duties to distribute the settlement money shall also be paid.

27 ³ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: “Nonparty employees are
28 bound by the judgment in an action under the PAGA, but only with respect to recovery of civil
penalties.”

1 15. Plaintiff and her counsel believe that the Gross PAGA Settlement Fund amount is
2 fair and reasonable and therefore "shall" be reviewed and approved. The Labor and Workforce
3 Development Agency has released data on PAGA settlement amounts. After removing the outliers
4 at the low and high end, the average, total settlement amount of PAGA claims is approximately
5 \$10,000. Here, the Gross PAGA Settlement Fund of \$200,000 is significantly larger.

6 16. California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount
7 than the maximum civil penalty if, based on the facts and circumstances, to do otherwise would
8 result in an award that is "unjust, arbitrary and oppressive or confiscatory." Before and during the
9 mediation, Defendants argued, among other things, that it was unlikely that any Judge would award
10 more than the actual amounts owed on the claims, let alone the full \$100 or \$200 per violation. In
11 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a
12 judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at
13 trial, any PAGA penalties awarded in this case could be significantly less than Plaintiff's
14 calculation, even had Plaintiff prevailed on the PAGA claim. Here, multiplying the number of pay
15 periods (36,387) by \$5 results in a total potential liability of **\$181,935**. Therefore, even assuming
16 Plaintiff would have prevailed on all of her claims at trial, the result obtained by Plaintiff in the
17 Settlement exceeds the amount Plaintiff would have recovered had the Court relied on *Carrington*
18 in awarding the PAGA penalties.

19 17. Plaintiff's claims and corresponding PAGA penalties can be broken down as follows:

Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
203 (waiting time violations)	1,250 terminated employees	\$100	1,250	100% of pay periods when an employee was terminated	\$0 - \$125,000
226.2, 226.7, & 512 (rest break violations)	1,748 aggrieved employees	\$100	2,399	9.4% of total pay periods	\$239,900
226.7 (unpaid meal break violations)	683 aggrieved employees	\$100	2,399	9.4% of total pay periods	\$239,900

226 (wage statement violations)	1,748 aggrieved employees	\$100	25,655	100% of total pay periods	\$0 - \$2,565,500
510 (unpaid overtime and double time violations)	695 aggrieved employees	\$100	622	100% of total pay periods	\$62,200

18. Thus, at the time of mediation, Plaintiff's Counsel, with the assistance of the consultants at Berger Consulting Group, estimated Defendant's liability exposure at \$542,000-\$3,232,500. Consequently, the Total Settlement Amount of \$200,000 is 6%-37% of Defendant's liability exposure. The rationale behind the range of exposure is the California Supreme Court's pending decision in *Naranjo v. Spectrum Security Services, Inc.*, in which the Court will decide whether wage statement inaccuracies deriving from meal and rest period violations also constitute violations of Labor Code sections 203 and 226. The current state of the law does not entitle employees to derivative penalties under Labor Code section 203 or section 226. Because Plaintiff's claim for waiting time violations under Labor Code section 203 and wage statement violations under Labor Code section 226 derive from meal and rest period violations, Plaintiff is not currently entitled to penalties for those violations, until and unless the California Supreme Court reverses the Court of Appeals decision in *Naranjo, supra*, 40 Cal.App.5th 444.

19. In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each period the employee worked in relation to meal or rest period violations, failure to pay minimum or overtime wages, failure to provide accurate itemized wage statements, failure to pay wages when due, and/or failure to maintain required records.

20. Defendant maintains that Plaintiff and the Aggrieved Employees were properly compensated, and that they did not violate the Labor Code. Most importantly and relevant to this case, Defendant argued that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal.4th

1 1004 (2012), weakened, if not eliminated, Plaintiff's claims, on liability, value, and discretion with
2 respect to the PAGA penalties, as to the meal and rest period claims. A major component of the
3 penalties alleged to have been owed by Defendant are attributed to non-compliant meal and rest
4 breaks. Before and during the mediation, Defendant aggressively argued that Defendant's policies
5 and culture afforded the Aggrieved Employees an opportunity to take timely meal and rest breaks,
6 and that employees like Plaintiff *chose* not to take compliant breaks. Specifically, Defendant's
7 written policies encouraged Aggrieved Employees to take meal periods and rest breaks according
8 to schedules compliant with the California Labor Code. The policy further *required* employees who
9 believed they were unable to take a rest of meal period to speak with their supervisor who would
10 ensure that they got a rest or meal period. Defendant argued, therefore, that under the *Brinker*
11 decision it has no liability for the missed breaks whatsoever. Defendant argued that it adopted and
12 strictly enforced lawful policies and afforded Plaintiff and the Aggrieved Employees compliant
13 meal and rest breaks. Further, Plaintiff's expert's analysis based on the payroll and time records
14 provided by Defendant, indicated that Defendant had a 98.9% compliance rate for the first meal
15 period. Thus, Defendant's exposure for meal and rest period violations is predicated on a second
16 meal break violation and a third rest break violation. Plaintiff's expert determined that only 4.4%
17 of shifts (9,849 out of 224,945 total shifts) were greater than 10 hours, requiring a second meal
18 period. Even with a near 100% second meal break violation rate in shifts greater than 10 hours,
19 Plaintiff's expert identified unique meal break violations in only 2,399 pay periods, accounting for
20 9.4% of the 25,655 total pay periods. Because Plaintiff's claims were largely based on the missed
21 meal and rest breaks, Defendant's policies were, indeed, compliant, and Defendant's achieved
22 98.9% compliance for the first meal period, this presented a very real concern for Plaintiff. If
23 successful, this defense could eliminate or substantially reduce any recovery under PAGA. While
24 Plaintiff believes that this defense, and others, could be overcome, Defendant maintains that these
25 defenses have merit and therefore present a serious risk to recovery of penalties.

26 21. Accordingly, Defendant disputes and denies Plaintiff's allegations and claims
27 asserted in the operative complaint which are resolved by the Settlement Agreement. Defendant
28 asserted additional defenses to the PAGA claim, not only as to liability but also as to the amount of

1 the penalties. Defendant could argue that no penalties prior to the PAGA notification should be
2 awarded because the violations were not intentional, and at least one court has so ruled. These
3 defenses present a risk to the PAGA claim and the potential that some or all of the PAGA penalties
4 sought may not be awarded.

5 22. Given Defendant's potential defenses to the violations at issue, the risks and costs of
6 continued litigation, Plaintiff and her attorneys believe that the PAGA Settlement is fair and
7 reasonable. Plaintiff's Counsel have significant experience litigating wage and hour claims
8 including claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than
9 similar settlements that courts have approved. The PAGA Settlement, along with the other terms
10 of the proposed settlement, were negotiated by experienced counsel at arm's length with the
11 assistance of an experienced and reputable mediator, Steve Rottman.

12 23. As set forth in the accompanying Zakay Dec., the LWDA has been provided notice
13 of this motion and the PAGA settlement. The decision of the LWDA to accept the PAGA
14 Settlement and not oppose the motion should be given considerable weight. This is not a situation
15 where the Court needs to be concerned about the rights of absent employees as in a class settlement,
16 as this PAGA-only settlement does not release the individual claims of absent employees, and the
17 LWDA is a sophisticated government entity that is more than able to look out for its own rights.

18 24. Based on our investigation, analysis and discounts for risk factors, Plaintiff
19 adequately represented the interests of both the State and the public in resolving this action and
20 reaching the proposed PAGA settlement.

21 25. Notably, in the pending *Viking River Cruises, Inc. v. Moriana* case, the Supreme
22 Court will examine whether the Federal Arbitration Act requires enforcement of a bilateral
23 arbitration agreement providing that an employee cannot raise representative claims, including
24 under PAGA. Given the Supreme Court's pending decision, there is a strong possibility that this
25 action could be dismissed altogether if the Supreme Court finds that Plaintiff could waive his right
26 to bring a PAGA action. The proposed PAGA settlement allows Plaintiff to resolve the claims on
27 his behalf, on behalf of the Aggrieved Employees, and on behalf of the State of California before
28

1 *Viking River Cruises* is decided and potentially rids them of the opportunity to receive a settlement
2 at all.

3 26. Finally, Plaintiff's diligent and efficient litigation of this action resulted in the
4 creation of an ascertainable common fund of \$200,000 that will substantially benefit the State of
5 California and the Aggrieved Employees. PAGA Counsel's efforts also resulted in significant non-
6 monetary relief for the State of California and the Aggrieved Employees by catalyzing Defendant
7 to change its meal break policy and practices to pay premiums for meal break violations *at the*
8 *regular rate of pay* retroactively and on a forward-going basis. Thus, PAGA Counsel obtained
9 greater Labor Code compliance and a change to Defendant's policies that accomplishes the primary
10 objective of PAGA as set for by the Labor Commissioner in *Price v. Uber Technologies*, Los
11 Angeles Superior Court Case No. BC544512.

12 27. First, the requested fees are justified by the result achieved. Plaintiff's Counsel
13 negotiated a recovery of \$200,000, and this result justifies the requested fees equal to one third of
14 this recovery. This percentage is within the standard contingent recovery percentage of one-third,
15 and this percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half*
16 *Int'l Inc.*, 1 Cal.5th 480, 504, (2016). At the time this case was brought, the result was far from
17 certain. Defendant's defenses to the merits of the case created difficulties with proof and complex
18 legal issues for Counsel to overcome. Here, a number of defenses asserted by Defendant present
19 serious threats to the claims of the Plaintiff and the PAGA Employees. Defendant asserted that its
20 employment practices complied with all applicable Labor laws. If successful, Defendant's defenses
21 would eliminate *any recovery* to the Aggrieved Employees. While Plaintiff believes that these
22 defenses could be overcome, Defendant maintains that these defenses have merit and therefore
23 present a serious risk to recovery. The Settlement was possible because Counsel was able to
24 persuade Defendant that there was an appreciable risk that Plaintiff would prevail on the factual and
25 legal issues underlying liability and overcome difficulties in proof as to monetary relief.

26 28. Second, the fee award is justified by the work performed. The fee award represents
27 Plaintiff's Counsels current combined lodestar of \$91,997.75 with a multiplier of 0.72 with
28 additional work to be performed such that the multiplier will ultimately be even lower. Generally,

1 the Ninth Circuit and California Courts award multipliers between 2 to 4 times the lodestar to reward
2 counsel for accepting the contingent risks of the litigation or obtaining good results. See, e.g.,
3 *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier between 2.03 and 2.13);
4 *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers
5 of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91
6 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort*
7 *v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund,
8 which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D.
9 Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker*
10 *Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving
11 fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk
12 multipliers).

13 29. As of April 19, 2022, Zakay Law Group, APLC incurred lodestar totaling
14 \$19,322.50 in this matter. I have reviewed my firm's loadstar in this matter and believe the charges
15 are reasonable and were reasonably necessary to the conduct of the case. From June 2021 through
16 April 19, 2022, my firm has worked more than 47.6 hours prosecuting these claims with the
17 attorneys' hourly rate fees for attorneys at \$165-550, resulting in current lodestar equaling
18 \$19,322.50. A detailed breakdown of the total fees and the services performed by the firm on this
19 case is attached hereto as Exhibit #2.

20 30. Finally, based on Plaintiff's Counsel's lodestar, Plaintiff's Counsel's requested fee
21 award reflects a request for a reasonable hourly rate of \$376.12. Specifically, dividing \$66,666.67
22 by the number of hours spent by Plaintiff's Counsel on the case (177.25 hours), results in an average
23 hourly rate of \$376.12, which is reasonable and should be awarded.

24 31. Finally, as to litigation expenses, Plaintiff's Counsel will be recovering litigation
25 expenses in the total amount of \$12,975.58 which is less than the \$16,000 allocation for costs in the
26 Settlement Agreement, so the difference of \$3,024.42 will be added to the PAGA Payment amount.
27 A detailed breakdown of the costs incurred by the firm on this case is attached hereto as Exhibit #3.

1 Experience and Qualifications

2 32. I have represented thousands of employees in a variety of legal matters, including
3 PAGA lawsuits, class actions and complex litigation cases. Zakay Law Group APC's practice is
4 devoted almost entirely to the prosecution of wage and hour class action and PAGA action matters.
5 I have successfully prosecuted and obtained significant recoveries in numerous class action lawsuits
6 and other lawsuits involving complex issues of law and fact. A true and correct copy of the resume
7 of Zakay Law Group, APC is attached hereto as Exhibit #4.

8 33. My credentials are reflected in the Zakay Law Group, APC firm resume, a true and
9 correct copy of which is attached hereto as Exhibit #4. Some of the major cases my firm has
10 undertaken are also set forth in Exhibit #4. I have had extensive representative and class litigation
11 experience, much of it in the area of representative PAGA actions, employment class actions, unfair
12 business practices and other complex litigation. I have litigated similar wage and hour class action
13 cases against other employers on behalf of employees. It is this level of experience which enabled
14 the firm to undertake the instant matter and to successfully combat the resources of the defendant
15 and its capable and experienced counsel. On account of the concerted and dedicated effort this case
16 required in order to properly handle and prosecute, I was precluded from taking other cases, and in
17 fact, had to turn away other potential fee generating cases.

18 34. My hourly rate for this case is \$550 per hour. My rate is in line with the prevailing
19 rates of attorneys in the local legal community for similar work and, if this were a commercial
20 matter, these are the charges that would be made and presented to the client. The rates charged by
21 my firm are in line with the prevailing rates of attorneys in the local legal community for similar
22 work and, if this were a commercial matter, these are the charges that would be made and presented
23 to the client. These hourly rates have been approved by Court's throughout California, including
24 the Courts in the Superior Court of California. Finally, the reasonableness of my hourly rates is
25 further confirmed by comparing this rate with the rates of comparable counsel practicing complex
26 and class litigation as detailed in the National Law Journal Billing Survey. See e.g. *Zest IP*
27 *Holdings, LLC v. Implant Direct MFG., LLC*, 2014 U.S. Dist. LEXIS 167563 (S.D. Cal. 2014)
28 (finding that "Mayer Brown's \$775 average billing rate for partners" and "Mayer Brown's \$543

average associate billing rate” are reasonable rates when compared within 21 other firms practicing in the Southern District of California.) This survey is useful to show that Class Counsel’s rates are in line with the comparable rates of the defense counsel that opposes these types of class claims, such as Mayer Brown. In another example, Sheppard Mullin Richter & Hampton, who is opposing counsel in many cases prosecuted by Class Counsel charges rates as high as \$875 for partners and \$535 for associates. Similarly, Paul Hastings, another opposing counsel in these types of cases, charges between \$900 and \$750 for partners and \$755 and \$335 for associates. Thus, the rates charged by Plaintiff’s Counsel for comparable work are less than these examples, and are therefore undoubtedly reasonable.

Additional Issues

35. **National Change of Address** – The Settlement Administrator is required to perform a National Change of Address search on any check returned by the U.S. Postal Service as non-deliverable, and re-mail the check to the Aggrieved Employee’s new address under paragraph 5.03(a)(2) of the Settlement Agreement.

36. **Information Received** – In this case, Plaintiff received all of the information needed to evaluate the claims being settled. The following is a summary of the relevant documents received, reviewed and analyzed by Plaintiff in order to evaluate the claims:

- a. Significant sample data showing the employees, their employment dates, their time sheets, hourly rates, and their wages.
- b. Significant sample data concerning recorded meal periods.
- c. Defendant’s Employee Handbook for the relevant time period, which outlined the wage and hour policies of Defendant.
- d. Employee file of Plaintiff.
- e. Samples of wage statements provided by Defendant to employees.
- f. Significant sample payroll data.
- g. Hiring and termination forms used by Defendant for employees.

37. **PAGA Penalties Valuation.** PAGA penalty calculations are highly variable. Plaintiff’s Counsel is unaware of any PAGA judgment in which substantial PAGA penalties were

awarded at the full statutory rate, rather, the PAGA judgments have typically decreased the amount of the per violation penalty to a fraction of the statutory amount. Here, some of the PAGA penalty amounts were likely not awardable at the maximum rate given the defenses presented by Defendant. In addition to the defenses presented by Defendant, as detailed above, there is another basis for concluding that the settlement in this case is reasonable even with PAGA penalties in this amount. Specifically, PAGA penalty claims are routinely settled at a small fraction of the potential penalties. For example, Judge Nelson in *Price v. Uber Technologies*, (Los Angeles Superior Court case no. BC554512), recently approved a PAGA settlement of \$7.75 million for 1.5 million drivers where the maximum PAGA liability was \$151 billion. Thus, the PAGA penalties were settled for 0.005% of the PAGA liability. Notably, this was the largest PAGA settlement in the 15-year history of PAGA. So while PAGA penalty figures may be inflated to significant numbers, realistic settlements of PAGA claims result in a settlement amount of less than 1% of the PAGA liability. Here, the settlement represents more than 2.3% of the maximum PAGA liability.

38. **Scope of the Release.** The release is limited to PAGA penalties predicated on the claims actually asserted in the operative complaint and/or in the notice to the LWDA. A copy of the notice to the LWDA is attached hereto as Exhibit #5.

39. **Compliance with Labor Code §§2689.** On April 19, 2022, the LWDA has been provided notice of this motion and the PAGA settlement. (See Exhibit 6).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 19th day of April 2022, at San Diego, California.

By: 
Shani O. Zakay

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (“Settlement Agreement”) is made and entered into between plaintiff Alahjah Brown acting in a private attorney general capacity on behalf of the State of California (“Plaintiff” or “Representative”) and NRI USA, a California limited liability company. (“Defendant” or “NRI”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the action entitled *Brown v. NRI USA, LLC.*, San Bernardino County Superior Court Case No. CIVSB2028407, filed on December 18, 2020.
2. “Aggrieved Employees” means all individuals who were employed by *NRI USA, LLC.* in a non-exempt position in California from July 31, 2019, to November 30, 2021 or the date the Court grants approval of the settlement, whichever is earlier (“PAGA Period”).
3. “Court” means the Superior Court of California, County of San Bernardino.
4. “NRI’s Counsel” means the law firm of Jackson Lewis P.C.
5. “Effective Date” of this settlement is the date on which the Court’s order approving the settlement of the PAGA Action and judgment thereon (“Judgment”) becomes final. For purposes of this Settlement Agreement, the Court’s Judgment “becomes final” upon the later of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court’s Judgment (i.e., 60 calendar days after the Court’s Judgment is entered); (ii) if an appeal is filed, the date affirmance of an appeal of the Judgment becomes final; or (iii) if an appeal is filed, the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment.
7. “Funding date” means the date that is 14 days after the Effective Date of this settlement.
8. “Individual PAGA Payment” means the amount to be paid to each of the Aggrieved Employees out of 25% of the PAGA Payment. Such individual shares are to be apportioned and based solely on the number of pay periods attributed to each Aggrieved Employee during the PAGA Period. These shares will be calculated by the Settlement Administrator based on the data NRI submits to the Settlement Administrator ten (10) days following the Effective Date.
9. “LWDA” means the California Labor Workforce Development Agency.
10. “Gross Settlement Amount” means the total sum of Two Hundred Thousand Dollars (\$200,000) for payment of the Administration Costs, Attorneys’ Fees, Attorneys’

Expenses, and the PAGA Payment. The Gross Settlement Amount shall be the total amount paid by NRI in connection with this matter. The Gross Settlement Amount cannot be increased for any reason, except as provided for herein at Paragraph III (3).

11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

12. “PAGA Action” means the First Cause of Action asserted in the Complaint in the Action.

13. “PAGA Approval Date” means the date that the Court signs the Judgment approving the settlement of the PAGA Action.

14. “PAGA Payment” means the total amount remaining in the Gross Settlement Amount after payment of the Attorneys’ Fees, Attorneys’ Expenses, and the Administration Costs. Of the PAGA Payment, 75% shall go to the LWDA and 25% to the Aggrieved Employees. The Aggrieved Employees will be issued a form 1099 for their Individual PAGA Payments.

15. “PAGA Period” means the time period from July 31, 2019, to November 30, 2021 or the PAGA Approval Date, whichever is earlier.

16. “Parties” means Plaintiff and NRI.

17. “Plaintiff’s Counsel” and “PAGA Counsel” means the law firms Zakay Law Group, APLC and JCL Law Firm, APC.

18. “Settlement Administrator” means ILYM Group, Inc.

II. RECITALS

1. On December 18, 2020, Plaintiff filed a Complaint in the Action in the Court. The Complaint asserted a single violation under PAGA.

2. The Parties engaged in an investigation and discussions in an effort to resolve the Action. NRI provided to Plaintiff’s Counsel with documents and data points related to his PAGA claim pursuant to the mediation privilege.

3. NRI denies all of the allegations made by Plaintiff in the Action and denies that it is liable or owes damages or other compensation or remedies to anyone with respect to the Action.

4. The Parties engaged in a virtual mediation session presided over by a third-party mediator, Steve Rottman, Esq., on July 12, 2021.

5. The mediation concluded without settlement. However, following the mediation, each side, represented by its respective counsel, continued settlement negotiations for several

months, with the assistance of Mediator Rottman, until they agreed to settle the Action based on the Mediator's proposal. Without admitting or conceding any liability or damages whatsoever, the Parties have agreed to fully and finally resolve the Action pursuant to the terms and conditions of this Settlement Agreement.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. Non-Admission. NRI contends that it has complied with all federal, state, and local laws that Plaintiff alleges were violated. NRI has denied, and continues to deny, each of the claims and contentions alleged in the Action. NRI has asserted and continues to assert defenses to the Complaint, and has expressly denied and continue to deny any wrongdoing or liability arising out of any of the facts or conduct alleged in the Action. Neither this Settlement Agreement, nor any action taken to carry out the terms of this Settlement Agreement, shall ever be construed as, offered, admitted, received or deemed to be evidence in any civil, criminal, administrative, or other proceeding against NRI, or may be used as an admission, concession, or indication by or against NRI of any fault, wrongdoing, or liability whatsoever.

Nothing in this Settlement Agreement shall be construed to be an admission by NRI of any liability or wrongdoing as to Plaintiff, the Aggrieved Employees, or any other person, or entity, including the state of California. NRI specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

Nothing in this Settlement Agreement, nor any action taken in implementation of it, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Settlement Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, by NRI or any other Released Party.

Neither this Settlement Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or any of the Aggrieved Employees, in the Action or in any other action or proceeding; provided, however, this shall not prevent this Settlement Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Settlement Agreement.

2. Qualified Stipulation to Representative Treatment. The Parties stipulate to representative treatment for purposes of settlement only. NRI contends that the facts do not justify representative treatment and would contest that matter in the Action but for the Settlement Agreement. The trial court has not ruled on manageability in the underlying litigation. This is not intended to be, and it should not be construed as, any admission of fact or law in this matter or any other matter that representative treatment is appropriate. If the Court does not grant approval of this settlement, then the Parties revert to their previous positions and NRI will not stipulate to representative treatment.

3. Escalator Clause. It is estimated that there are approximately 1,775 Aggrieved Employees who worked an aggregate total of 36,387 Pay Periods during the PAGA Period. Defendant and the Settlement Administrator will confirm the number of applicable Aggrieved Employees and Pay Periods worked during the PAGA Period in support of Plaintiff's motion for approval, and will provide a declaration under oath, if necessary or requested by the Court. The Gross Settlement Amount will increase proportionally with added Pay Periods if the number exceeds more than 10% of the estimate stated herein.

4. Timing of Payment. Within fourteen (14) calendar days after the Effective Date of this settlement, NRI shall (a) deposit Two Hundred Thousand Dollars (\$200,000) as the Gross Settlement Amount in a Qualified Settlement Fund ("QSF") established by the Settlement Administrator ("Funding Date") and (b) provide the Settlement Administrator with a list of all Aggrieved Employees including each Aggrieved Employee's full name; last known address; Social Security number; and data on the total number of pay periods attributable to each of the Aggrieved Employees during the PAGA Period. Based upon this data, the Settlement Administrator will determine, and thereafter inform NRI and Plaintiff of, the Individual PAGA Payments it will pay each of the Aggrieved Employee. The information provided by NRI to the Settlement Administrator is considered by the Parties to be confidential information and will not be shared with Plaintiff or Plaintiff's Counsel.

5. Distribution of Individual PAGA Payments. The Individual PAGA Payments are to be apportioned by the Settlement Administrator based on the number of pay periods attributed to each Aggrieved Employee during the PAGA Period divided by the total number of pay periods attributed to all Aggrieved Employees during the PAGA Period. The Settlement Administrator shall determine the Individual PAGA Payments to each of the Aggrieved Employees based on the data provided to it by NRI. NRI shall have no additional obligations to search or review any records to determine the number of Aggrieved Employees or pay periods. No Aggrieved Employee shall have the right to object to, or contest, the calculation of his/her/their Individual PAGA Payment.

6. Payments From the Gross Settlement Amount. The Parties agree to the following allocations to be paid from the Gross Settlement Amount:

a. PAGA Payment: The PAGA Payment is the total of the Gross Settlement Amount, less the Attorneys' Fees, Attorneys' Expenses, and the Administration Costs, as approved by the Court. The PAGA Payment will be subject to Court approval consistent with Labor Code section 2699. Upon approval, the PAGA Payment shall be distributed as follows:

- (1) 75% of the PAGA payment being paid to the LWDA;
- (2) 25% of the PAGA payment being paid to the Aggrieved Employees per Sections 5 and 6 of the Settlement Agreement.
- (3) The payments set forth in section 4(a)(2) will be reported on IRS Form 1099s. The Parties acknowledge and agree that all payments under this Settlement Agreement are for the settlement of contested claims for penalties. Accordingly, the Parties acknowledge and agree that NRI is not responsible for any employer-side taxes in connection with any payments under this Settlement Agreement. Plaintiff and Plaintiff's Counsel will each provide NRI with a completed W-9 form before the payments set forth in section 4(a)(2) are made.

b. Attorneys' Fees: Plaintiff's Counsel shall request that the Court approve an award of attorney's fees in an amount not to exceed one-third (currently \$66,666.67) of the Gross Settlement Amount (currently \$200,000) pursuant to Declarations by Plaintiff's Counsel in connection with the prosecution of this Action. In addition, Plaintiff's Counsel shall also request up to \$16,000 in Attorneys' Expenses. The Attorneys' Fees and Attorneys' Expenses requests shall be subject to the Court's review and approval. NRI agrees that it will not oppose Plaintiff's request for Attorneys' Fees or Expenses in the amounts above. In the event that the Court approves a payment of less than one-third of the Gross Settlement Amount in Attorneys' Fees, and/or less than \$16,000 in Attorneys' Expenses, to Plaintiff's Counsel, the unawarded difference will be added to the PAGA Payment. Payment of Attorneys' Fees and Expenses will be reported on IRS Form 1099 issued to Plaintiff's Counsel. Except as set forth in this Settlement Agreement, each party shall bear their own costs and fees of this Action. The payment of Attorneys' Fees and Expenses shall be made by the Settlement Administrator to Plaintiff's Counsel. Approval of Attorneys' Fees and/or Expenses by the Court in an amount(s) less than the amount(s) requested is not a material term of this Settlement Agreement and the award of any Attorneys' Fees and/or Expenses at less than requested by Plaintiff's Counsel does not give rise to a basis to abrogate this Agreement. Plaintiff's Counsel will each provide NRI with a completed W-9 form before the payment of any Attorneys' Fees and Expenses awarded by the Court is made to Plaintiff's Counsel.

c. Representative Service Award. In addition to his individual share of the PAGA Settlement, Plaintiff will apply to the Court for an award of not more than \$10,000, as the Representative Service Award. Defendant does not presently intend to oppose a Representative Service Award of not more than \$10,000 for Plaintiff. The Settlement Administrator shall pay the Representative Service Award, either in the amount stated herein if approved by the Court or some other amount as approved by the Court, to Plaintiff from the Gross Settlement Amount no later than ten (10) calendar days after the Funding Date. Any portion of the requested Representative Service Award that is not awarded to the Representative shall be part of the Net Settlement Amount and shall be distributed to Aggrieved Employees as provided in this Agreement. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for his Class Representative Service Award. Plaintiff shall be solely and legally responsible to

pay any and all applicable taxes on his Representative Service Award and shall hold harmless the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Representative Service Award. The Representative Service Award shall be in addition to Plaintiff's Individual PAGA Payment. Approval of this Settlement shall not be conditioned on Court approval of the requested amount of the Representative Service Award. If the Court reduces or does not approve the requested Representative Service Award, Plaintiff shall not have the right to revoke the Settlement, and it will remain binding

d. **Administration Costs:** The Settlement Administrator was selected by Plaintiff and was approved by NRI. Subject to Court approval, Administration Costs shall include the cost of the Settlement Administrator to administer the settlement in the amount not to exceed \$10,000. If payment of less than \$10,000 is approved, or if the actual cost to administer the settlement is less than \$10,000, the difference will be added to the PAGA Payment. In the event that the Settlement Administrator incurs documented expenses in excess of \$10,000, the Settlement Administrator may request that the Court approve payment of those expenses from the Gross Settlement Amount. Approval of Administration Costs by the Court in an amount less than the amounts requested is not a material term of this Settlement Agreement and the award of an amount less than requested does not give rise to a basis to abrogate this Agreement. The amount of Administration Expenses requested for allocation from the Settlement Payment shall not exceed \$16,000, based upon the bid submitted by the Settlement Administrator to administrate the settlement. Except as otherwise provided herein, if the Court does not grant approval of the settlement, PAGA Counsel and Defendant shall each pay one-half of any Administration Expenses incurred.

7. **PAGA Released Claims.** In his capacity as a private attorney general "aggrieved employee" acting on behalf of himself, the State of California, and the Aggrieved Employees, and in consideration of the PAGA Payment, upon entry of the Judgment and funding of the Gross Settlement Amount in full, Plaintiff will release NRI from any and all claims that were asserted in Plaintiff's July 31, 2020 PAGA Notice and the operative Complaint for PAGA penalties that occurred during the PAGA Period, including any potentially applicable claims for attorneys' fees (the "PAGA Released Claims"). The Release Period shall be the PAGA Period. The release as to the State of California and Aggrieved Employees only covers claims that arise under the Private Attorneys General Act, and does not cover an Aggrieved Employee's individual Labor Code claims. The release expressly excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, class claims, and PAGA claims outside of the PAGA Period. **In no event shall this release of the PAGA Released Claims in this Agreement release any individual claims of any individual other than the Plaintiff.**

Upon entry of the Judgment, the State of California and Aggrieved Employees, including Plaintiff, fully release and forever discharge NRI from the PAGA Released Claims as defined above.

8. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that he has not assigned nor transferred nor purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. The Parties acknowledge that they have read this Settlement Agreement, that they fully understand their rights, privileges and duties under the Settlement Agreement, and enter into this Settlement Agreement freely and voluntarily. The Parties further acknowledge that they have had the opportunity to consult with their attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

9. No Tax Advice or Liability. Except as otherwise stated within this Agreement, all payments from the Settlement Amount shall be characterized as payments subject to Form 1099 reporting. The Parties have had an opportunity to consult with independent tax counsel. The Parties are not giving any tax advice in connection with the settlement or any payments to be made pursuant to this Agreement. The Parties do not intend anything contained in this Agreement to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall anything in this Agreement be relied upon as such. Each recipient of a settlement payment shall be solely and legally responsible for paying all applicable taxes on their respective settlement payments and shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

10. No Publicity. The Parties agree this settlement is confidential, except for purposes of enforcement. Plaintiff and Plaintiff's Counsel shall not publicize the settlement on their websites, in advertising/marketing materials or on social media, other than filing documents with the Court. The Parties and their counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the settlement. If counsel for any party receives an inquiry about the settlement from the media, counsel may respond only after the motion for approval of the settlement has been filed and only by confirming the accurate terms of the settlement. Nothing in this provision shall prevent NRI from making any required disclosure.

11. Court Approval of the PAGA Payment. Plaintiff will prepare a Motion Requesting Approval of PAGA Settlement with the proposed Judgment ("Approval Motion") within thirty (30) days after complete execution of this agreement, and will provide NRI with at least five (5) days to review this Approval Motion before it is filed. This Agreement shall also be served by Plaintiff on the LWDA (through its website) at the time it is filed with the Court as part of the Approval Motion.

12. Court Approval of the PAGA Settlement. The Settlement Agreement is contingent upon the approval by the Court. If the Court should fail to approve this Settlement Agreement in the form agreed to by the Parties, the Parties agree to coordinate efforts to address the Court's questions or concerns. If, after a good faith attempt to address the Court's questions or comments, the Court does not make a final determination to approve this Settlement Agreement, or if appellate review is sought and on such review the Court's decision is materially modified or reversed, or if one or more of the material terms of the Settlement Agreement are not approved or is materially modified or reversed or found to be invalid and the Parties in good

faith do not believe that it would be possible to make non-material modifications that would address any concerns raised by the Court, then each of the Parties by and through Counsel shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement Agreement, in which event it shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement. Any change in the amount of Attorneys' Fees, or Settlement Administration Costs shall not be material terms that allow either party to seek to void the Settlement Agreement.

IV. ADMINISTRATION OF SETTLEMENT

1. After the execution of this Settlement Agreement, Plaintiff shall file the Approval Motion and will submit this Settlement Agreement on the LWDA consistent with Labor Code § 2699(1)(2).

2. Settlement Administrator will administer the settlement and, subject to Court approval, shall be paid for Administration Costs, which are estimated to be no more than \$10,000. NRI will provide the necessary information about the Aggrieved Employees to the Settlement Administrator consistent with Section III, paragraphs 4 and 5.

3. The Settlement Administrator will report payment of the Individual PAGA Payments to all required taxing and other authorities, and issue Internal Revenue Service Forms 1099s. The Settlement Administrator will establish a QSF, pursuant to Section 468B(g) of the Internal Revenue Service for the purposes of administering the Settlement.

4. Within ten (10) days of the Funding Date, the Settlement Administrator will issue to each Aggrieved Employee a check for their Individual PAGA Payment at their last known home address along with an explanatory letter, attached as Exhibit A. Nothing herein shall prohibit the Settlement Administrator from paying the attorneys' fees and costs and/or incentive payment earlier than ten (10) following the Funding Date. Checks will remain negotiable for 180 days. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, for those settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than 180 days after issuance, the Settlement Administrator shall escheat those checks to the State Controller's Office, Unclaimed Property Division in the name of the absent employee.

5. Within ten (10) days of the Funding Date, the Settlement Administrator will pay the amount allocated to the LWDA, Attorneys' Fees, and Administration Costs as approved by the Court from the Gross Settlement Amount.

6. The Settlement Administrator will provide an accounting, by means of a declaration under oath, to the parties of the amounts paid out. This declaration, which will also include the amount of un-cashed checks, and undeliverable funds, will be provided to the Court once the 180 days set forth in Section IV, paragraph 4 expires.

7. NRI makes no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. Drafting. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

2. No Impact on Benefit Plans. Neither the Settlement Agreement nor any amounts paid to Plaintiff or any Aggrieved Employee under the Settlement Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by NRI. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under NRI's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of NRI's benefit plans, policy, or bonus program. NRI retains the right, if necessary, to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

3. Successors. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

4. Costs and Fees. The Parties shall each bear their own costs, attorneys' fees, and other fees incurred in connection with this Settlement Agreement and in connection with the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

5. Authority. NRI represents and warrants that the undersigned has the authority to act on behalf of NRI and bind NRI to the terms of this Settlement Agreement. Plaintiff represents and warrants that he has the capacity to act on his own behalf and on behalf of the State of California (as a private attorney general under PAGA for the purposes of this Action) and all who might claim through him to bind him to the terms of this Settlement Agreement.

6. Governing Law. All terms and conditions of this Settlement Agreement will be governed by and interpreted according to the laws of the State of California. If any legal or equitable action is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the Superior Court of California, County of San Bernardino.

7. Complete Agreement. The Parties acknowledge and represent that upon full execution, except as otherwise stated herein, this Settlement Agreement contains the entire

understanding between them with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings between them, written and oral, with respect to the subject matter hereof. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto or their successors-in-interest.

8. Disputes. Any dispute between the parties as to the remaining terms of the Settlement Agreement may be presented to the mediator, Steve Rottman, Esq., for resolution. The Parties will split the costs of the mediator and all Parties will bear their own attorneys' fees and other costs incurred.

9. Continued Jurisdiction. The Court shall retain continuing jurisdiction over the Lawsuit to ensure the continuing implementation of the provisions of the Agreement. The Parties agree to adopt and apply Rule 3.769(h) of the California Rules of Court requiring entry of judgment.

10. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their Counsel will cooperate with each other and use their best efforts to effect the implementation of the settlement of the PAGA Action. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement of the PAGA Action, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the mediator to resolve such disagreement.

11. Execution and Counterparts. This Settlement Agreement may be executed in one or more counterparts by facsimile, electronic signature, or email which for purposes of this Settlement Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement. The Parties agree the litigation will be stayed for all purposes upon signing, including with respect to California Code of Civil Procedure section 583.310, except such proceedings necessary to implement and complete the settlement, pending the Approval Hearing to be conducted by the Court.

12. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement Agreement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement Agreement.

13. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered

to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

14. Severability. If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

15. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement and receive approval from the Court.

16. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any confidentiality provisions that otherwise might apply under federal or state law.

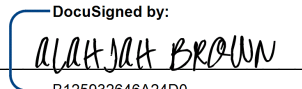
17. Waiver of Right to Appeal. Provided that the Judgment is consistent with the terms and conditions of the Settlement Agreement, Plaintiff, Aggrieved Employees, the State of California, and NRI and the Released Parties, hereby waive any and all rights to appeal in connection with any issue in the Judgment (separate from the right to appeal the award of Attorneys' Fees, and Attorneys' Expenses, as provided in this Agreement).

18. Judgment To Be Entered On The PAGA Action. The entry of judgment pursuant to this Settlement Agreement shall be the final judgment and resolution of the PAGA Action and the Court will then dismiss the PAGA cause of action with prejudice.

[Signature Page Follows]

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained in this Settlement Agreement and hereby execute it voluntarily and with full understanding of its consequences.

Dated: February 10, 2022

By: 
Alahjah Brown
Plaintiff and PAGA Representative

Dated: February____, 2022

By: _____

Print Name:
As agent for NRI USA, LLC

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained in this Settlement Agreement and hereby execute it voluntarily and with full understanding of its consequences.

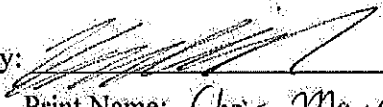
Dated: January ____, 2022

By: _____

Alahjah Brown
Plaintiff and PAGA Representative

Dated: ~~January~~ ____, 2022

Feb. 11, 2022

By:  _____

Print Name: Chris Magdennik, President
As agent for NRI USA, LLC

EXHIBIT A

[Administrator Notice]

You are receiving this payment because of a lawsuit brought by a former California employee, Alahjah Brown (“Plaintiff”) against NRI USA, a California limited liability company (“Company”), for civil penalties pursuant to the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”). Plaintiff claimed that she and other employees were not provided legally compliant meal and rest periods, not compensated for all time worked, not properly paid overtime, not provided with accurate wage statements, not timely paid final wages, and not fully paid for expenses.

The Company denies these claims and denies that it owes any penalties, but to avoid further time and expense in litigation, the Company and Plaintiff have agreed to settle the case. The settlement resolves the claims asserted in the lawsuit on behalf of all Company non-exempt employees who worked in California between July 31, 2019 to November 30, 2021. (“PAGA Employees”).

According to Company records, you are a PAGA Employee and are therefore entitled to a share of the settlement. This settlement check shall remain valid until [insert date].

This check is issued pursuant to the terms of the PAGA settlement in the case entitled *Brown v. NRI USA, LLC*, Superior Court State of California, County of San Bernardino, Case No. CIVSB2028407.

This payment is taxable income for federal, state, and local tax purposes and may be reported to the appropriate taxing authorities. You may be required to make additional tax payments. Please consult a tax advisor to determine your individual tax payment and reporting situation. You will be mailed appropriate tax forms in January 2023. Please notify us of any address changes so that any necessary tax forms can be mailed to your most current address.

If you have any questions about your award, please contact the [insert administrator information].

EXHIBIT 2

Activities Export

04/19/2022

7:25 AM

Date ▲	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
06/13/2021		Review the file and set up in Clio ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	2.00	550.00	-	1,100.00
07/05/2021		Emails regarding mediation. ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	0.10	550.00	-	55.00
07/06/2021		Emails with co-counsel and Attorney Hoang regarding mediation brief and mediation. ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	0.20	550.00	-	110.00
07/06/2021		Call with co-counsel regarding mediation. ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	0.20	550.00	-	110.00
07/06/2021		Call with co-counsel regarding mediation brief. ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	0.30	550.00	-	165.00
07/06/2021		Call with co-counsel regarding mediation brief ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Jackland Hoang	0.30	350.00	-	105.00
07/08/2021		Review file and draft mediation brief ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Jackland Hoang	6.00	350.00	-	2,100.00
07/08/2021		Review and revise mediation brief. ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	1.00	550.00	-	550.00
07/09/2021		Call with client to obtain additional	38701-Brown	Jackland	0.30	350.00	-	105.00
					47.60h		\$0.00 0.0h	\$19,322.50 47.6h

Activities Export

04/19/2022

7:25 AM

Date	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
		facts for mediation brief ● Unbilled	Alahjah Brown v. NRI USA, Inc.	Ho				
07/09/2021		Revise mediation brief ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Jackland Ho	0.50	350.00	-	175.00
07/09/2021		Emails with Attorney Zakay and co-counsel regarding revisions to mediation brief ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Jackland Ho	0.10	350.00	-	35.00
07/09/2021		More work on the mediation brief. ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	0.40	550.00	-	220.00
07/09/2021		Further call with client to discuss facts for mediation brief ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Jackland Ho	0.10	350.00	-	35.00
07/09/2021		Finalize and submit mediation brief ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Jackland Ho	0.80	350.00	-	280.00
07/12/2021		Attend mediation ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	8.00	550.00	-	4,400.00
07/12/2021		Attend mediation ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Jackland Ho	8.00	350.00	-	2,800.00
07/15/2021		Calls with co-counsel regarding status of proposal and email response to mediator.	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	0.30	550.00	-	165.00
					47.60h		\$0.00	\$19,322.50
							0.0h	47.6h

Activities Export

04/19/2022

7:25 AM

Date	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
		● Unbilled						
07/16/2021	🕒	ork on a ended PA A letter ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	0.10	550.00	-	55.00
07/28/2021	🕒	Review and revise joint report. ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	0.30	550.00	-	165.00
08/09/2021	🕒	Prepare for and attend CMC. ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Jackland Ho	1.50	350.00	-	525.00
08/09/2021	🕒	Email to Attorney Zakay, co-counsel and staff re CMC ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Jackland Ho	0.20	350.00	-	70.00
08/20/2021	🕒	Drafting SI for Attorneys, circulating for approval, and preparing to send to OC. ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	1.00	165.00	-	165.00
08/23/2021	🕒	Review and approve special interrogatory. ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	0.30	550.00	-	165.00
09/02/2021	🕒	Call with OPC ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	0.30	550.00	-	165.00
09/13/2021	🕒	Review Defendant's Answer ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	0.70	550.00	-	385.00
					47.60h		\$0.00	\$19,322.50
							0.0h	47.6h

Activities Export

04/19/2022

7:25 AM

Date	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
10/14/2021	 Unbilled	Drafting, finalizing, filing COA	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	0.50	165.00	-	82.50
10/18/2021	 Unbilled	Review and revise the PAA settleent agreeent.	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	1.00	550.00	-	550.00
01/27/2022	 Unbilled	drafting stip to continue and circulating to OC, finalizing, and sending to Knox to file.	38701-Brown Alahjah Brown v. NRI USA, Inc.	Natalia Michele	1.00	165.00	-	165.00
02/10/2022	 Unbilled	Call w/ client to schedule call to discuss settleent agreeent	38701-Brown Alahjah Brown v. NRI USA, Inc.	Jackland Ho	0.20	375.00	-	75.00
02/10/2022	 Unbilled	Call w/ client to discuss details of settleent and settleent agreeent	38701-Brown Alahjah Brown v. NRI USA, Inc.	Jackland Ho	0.50	350.00	-	175.00
03/07/2022	 Unbilled	Draft MPA	38701-Brown Alahjah Brown v. NRI USA, Inc.	Julieann Alvarado	6.00	350.00	-	2,100.00
03/08/2022	 Unbilled	ork on MPA	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	0.40	550.00	-	220.00
03/25/2022	 Unbilled	Additional work on MPA and draft proposed order	38701-Brown Alahjah Brown v. NRI USA, Inc.	Julieann Alvarado	3.00	350.00	-	1,050.00
					47.60h		\$0.00 0.0h	\$19,322.50 47.6h

Activities Export

04/19/2022
7:25 AM

Date	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
03/30/2022	 	Finalize MPA and draft declaration	38701-Brown Alahjah Brown v. NRI USA, Inc.	Julieann Alvarado	2.00	350.00	-	700.00
					47.60h		\$0.00 0.0h	\$19,322.50 47.6h

EXHIBIT 3

Activities Export

04/19/2022

7:26 AM

Date ▲	Type	Description	Matter	User	Hours	Rate (\$/hr)	Non-billable (\$)	Billable (\$)
07/13/2021	\$	Meals for Mediation ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	-	110.00	-	110.00
08/04/2021	\$	CourtCall Fee - CMC with Judge Cohn ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	-	94.00	-	94.00
08/11/2021	\$	Expert Cost - Berger ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	-	813.75	-	813.75
10/14/2021	\$	Mail Filing Postage Fee ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	-	1.26	-	1.26
10/14/2021	\$	Printing Paper Fee - Mail Filing ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Shani Zakay	-	2.50	-	2.50
02/07/2022	\$	Knox Invoice Fee - Proposed Order ● Unbilled	38701-Brown Alahjah Brown v. NRI USA, Inc.	Natalia Michele	-	97.50	-	97.50
					0.00h		\$0.00 0.0h	\$1,119.01 0.0h

EXHIBIT 4

Zakay Law Group, APC
3990 Old Town Ave. Suite C204
San Diego, California 92110
Telephone: (619) 255-9047
Fax: (858) 404-9203

1. Firm Practice Areas:

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation, Business Litigation, Corporate/Business General Counsel Advice.

2. Attorney Shani O. Zakay Biography:

• **PRACITCE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation, Business Litigation, Corporate/Business General Counsel Advice.

• **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)
United States District Court of California (all courts)
United States District Court of Indiana for the Northern District
United States Court of Appeals for the 9th Circuit

• **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Founder, April 2018

SILLDORF LAW, LLP, San Diego, CA (now known as Berding & Weil)
Partner, January 2012 – March 2018

• **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA

Juris Doctor, *magna cum laude*, April 2011

Honors: Dean's List: Spring 2009, Fall 2009, Spring 2010, Fall 2010, Spring 2011.

Academic Achievement Awards: Advanced Legal Research, Constitutional Law II, Criminal Procedure, Insurance Law & Litigation, Law Office Technologies, Property II, Products Liability, Trusts & Estates.

Activities: Associate Editor, *California Western Law Review*
Legal Skills Honor Instructor for Professor Leslie Culver
Vice President, Jewish Student Union

SAN DIEGO STATE UNIVERSITY, San Diego, CA

Bachelor of Science, Business Administration, Management, *cum laude*, May 2008

Honors: Dean's List: Spring 2007 and Fall 2007

- **COMMUNITY SERVICE**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Spring 2016, 2018
Moot Court Judge

COMMUNITY LAW PROJECT, San Diego, CA
October 2018 – Present
Volunteer Attorney on Employment Matters

3. **Attorney Jackland K. Hom Biography:**

- **PRACTICE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation.

- **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)
United States District Courts of California (all courts)

- **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Associate, January 2021 - present

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP, San Diego, CA
Associate, November 2019 – September 2020

- **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Juris Doctor, April 2019

Honors: Dean's List: Fall 2017, Spring 2018.

Academic Achievement Awards: Advanced Prosecution Function.

Activities: Senior Editor, *California Western Law Review*
President, Asian Pacific American Law Students Association

UNIVERSITY OF CALIFORNIA, RIVERSIDE, Riverside, CA
Bachelor of Arts: Political Science, English Literature, June 2015
Honors: Dean's List

4. Class Action & Representative Cases:

1. Hubscher v. Bodyspirit, LLC

Court	San Diego
Case No.	37-2016-00021261-CU-OE-CTL
Nature	Independent Contractor Misclassification
Status	Settled

2. Henry v. InMotion Entertainment Group, LLC

Court	San Francisco
Case No.	CGC-18-565643
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

3. Moore v. Zirx Transportation

Court	San Francisco
Case No.	CGC-18-566655
Nature	Independent Contractor Misclassification
Status	Settled

4. Pasallo v. GSG Protective Services

Court	San Diego
Case No.	37-2018-00037611-CU-OE-CTL
Nature	Meal/Rest Break claims
Status	Settled

5. Villaroman v. C.C.H.C.

Court	Orange County
Case No.	30-2018-01013128-CU-OE-CXC
Nature	Meal/Rest Break claims
Status	Settled

6. Flores v. Plastic Express

Court	Los Angeles
Case No.	BC719071
Nature	Meal/Rest Break and minimum wage claims
Status	Settled

7. Tressler v. Spoonful Management

Court	Los Angeles
Case No.	BC719405
Nature	Meal/Rest Break claims
Status	Settled

8. Leymaster v. Toms Sierra Company, Inc.

Court	Placer
Case No.	SCV0041735
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

9. Murphy v. Rockler Retailer Group, Inc.

Court	Sacramento
Case No.	34-2018-00241374
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

10. Bruemmer v. Tempur Retail Stores, LLC.

Court	Marin
Case No.	CIV1803646
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

11. Christina Cummings v. G6 Hospitality, LLC

Court	San Diego
Case No.	37-2018-00056207-CU-OE-CTL 19CV122 GPC LL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

12. Nicolai Laguatan v. Prevent LSS

Court	San Diego
Case No.	37-2018-00057434-CU-OE-CTL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

13. Lisa Ramirez v. Carefusion Resources, LLC

Court	San Diego
Case No.	37-2018-00058078-CU-OE-CTL 3:18-CV-02852-BEN-MSB
Nature	Overtime and Meal and Rest Breaks
Status	Settled

14. Charles Ornelas v. C&A Transportation Services

Court	San Diego
Case No.	37-2018-00061289-CU-OE-CTL
Nature	Minimum Wage and Meal/Rest Break claims
Status	Settled

15. Luz Marin v. California Marine Cleaning

Court	San Diego
Case No.	37-2018-00063483-CU-OE-CTL
Nature	Meal Break claims
Status	Settled

16. Christian Van Cleave v. Sunrise Senior Living Management

Court	San Diego
Case No.	37-2018-00061960-CU-OE-CTL 19CV0044BEN NLS
Nature	Regular rate and meal premium miscalculation
Status	Settled

17. Heather McIntyre v. JRR Enterprises

Court	Sacramento
Case No.	34-2019-00251220
Nature	Overtime and Meal and Rest Periods
Status	Settled

18. Lori Phipps v. Soapy Joe's

Court	San Diego
Case No.	37-2019-00017673-CU-OE-CTL
Nature	Tip Polling and Meal and Rest Periods
Status	Settled

19. Heather Broughton v. NFG San Francisco, LLC

Court	San Francisco
Case No.	CGC-19-574657
Nature	Meal and Rest Breaks
Status	Settled

20. Marcos Antonios v. Interface Rehab, LLC

Court	Orange County
Case No.	30-2019-01067547-CU-OE-CXC
Nature	Meal and Rest Breaks and Reporting Time Violations
Status	Settled

21. Tiffany Rodriguez v. Circle K

Court	Riverside
Case No.	RIC 1901407 5:19-cv-00469
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

22. Derik Scott et al. v. Ultimate Performance

Court	Los Angeles
Case No.	19STCV22823
Nature	Piece Rate Pay violations
Status	Settled

23. Raymond Frazier v. Asa Carlton

Court	San Diego
Case No.	37-2019-00036147-CU-OE-CTL
Nature	Overtime Wages
Status	Settled

24. John Moreno v. Da Kitchen

Court	San Diego
Case No.	37-2019-00024885-CU-OE-CTL
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

25. Penny Lane v. International Aero Clubs, LLC

Court	San Diego
Case No.	37-2019-00021793-CU-OE-CTL
Nature	Meal and Rest Breaks and Regular Rate Miscalculation
Status	Settled

26. Amber Price v. DMSD Restaurants

Court	San Diego
Case No.	37-2019-00024062-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

27. Jamaal Johnson v. Volt Management Corp

Court	Los Angeles
Case No.	19STCV16466
Nature	On Duty Meal Break violations
Status	Settled

28. Ezzat Menias v. All American Private Security

Court	Orange County
Case No.	30-2019-01085120-CU-OE-CXC
Nature	On Duty Meal Break violations
Status	Settled

29. Mark Connor v. Ascendant Marketing

Court	San Diego
Case No.	37-2019-00026864-CU-OE-CTL
Nature	Minimum Wage violations
Status	Settled

30. Niki Nunez v. Home Depot

Court	San Joaquin
Case No.	STK-CV-406-2019-6656
Nature	Overtime Wages violations
Status	Settled

31. Alma Salazar v. Frontier Toyota

Court	Los Angeles
Case No.	19STCV20382
Nature	Rest Break violations
Status	Settled

32. Josefina Garces v. Kar Auction Services

Court	Los Angeles
Case No.	19STCV28489
Nature	Rest Break violations
Status	Settled

33. Madison Weiss v. Niznik Behavior

Court	San Diego
Case No.	37-2019-00039441-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

34. Jimmy Mack v. ERM Enterprises

Court	Sacramento
Case No.	2019-00262259
Nature	Meal and Rest Break violations
Status	Settled

35. Josefina Garces v. DriverDo

Court	Los Angeles
Case No.	19STCV32773
Nature	Independent Contractor Misclassification
Status	In Litigation

36. Perseus Porras v. Tantalum Restaurant

Court	Los Angeles
Case No.	19STCV31015
Nature	Unpaid Wages + Missed Meal/Rest Breaks
Status	Settled

37. Dorcena Deutsch v. Scripps

Court	San Diego
Case No.	37-2019-00036333-CU-OE-CTL
Nature	Regular Rate Miscalculation for Nurses
Status	Settled

38. Josalyn O'Quinn v. Laugh Factory

Court	Los Angeles
Case No.	19STCV28155
Nature	Regular Rate Miscalculation, Wage Theft
Status	In Litigation

39. Nicholas Leon v. Miller Event Management

Court	San Luis Obispo
Case No.	19CV-0435
Nature	Meal/Rest Breaks, Reporting Time, 2802
Status	Settled

40. Aaris Watts v. TRL Systems

Court	Orange County
Case No.	30-2019-01102457-CU-OE-CXC
Nature	Meal/Rest Breaks, Reporting Time
Status	In Litigation

41. Faith Smith v. Island Pizza

Court	Contra Costa
Case No.	MSC19-01654
Nature	Meal/Rest Breaks, 226, 2802
Status	Settled

42. Johnathan Roa v. Otay Mesa Sales

Court	San Diego
Case No.	37-2019-00057735-CU-OE-CTL
Nature	Meal/Rest Breaks, 226
Status	In Litigation

43. Sabrina Iyon v. Sinclair Television of California

Court	Humboldt
Case No.	DR190699
Nature	Vaquero
Status	In Litigation

44. Jonathan Mitchell v. Mack Trucking

Court	San Bernardino
Case No.	CIVDS1928334
Nature	Independent Contractor Misclassification
Status	In Litigation

45. Curtis Edwards v. Resolve Group

Court	San Francisco
Case No.	CGC-19-579095
Nature	Meal & Rest Breaks + 2802
Status	In Litigation

46. Elena Kiseleva v. TotalMed Staffing, Inc

Court	Santa Clara
Case No.	19CV354635
Nature	Overtime + Meal and Rest Breaks
Status	Settled

47. Richard Jer Vang v. Bridge Property Management

Court	Alameda
Judge	Winfred Smith
Nature	Off the clock work, regular rate miscalc.
Status	Settled

48. Madison Marrero v. Stat Med

Court	Alameda
Case No.	HG19043214
Nature	Unpaid Overtime + Meal/Rest Breaks
Status	In Litigation

49. Brian Reyes v. Stowasser Buick-GMC

Court	Santa Barbara
Case No.	19CV06183
Nature	Vaquero
Status	Settled

50. Erik Foss v. Anderson Hospitality, Inc.

Court	Shasta
Case No.	195317
OPC	Wood Smith – Andrew Kleiner
Nature	Meal and Rest Breaks, Regular Rate
Status	In Litigation

51. Griselda Duran v. EmployBridge

Court	Kern
Case No.	BCV-20-101583
Nature	Regular Rate, 226
Status	In Litigation

52. Luis Rendon v. Healthcare Investments, Inc.

Court	Los Angeles
Case No.	20STCV39775
Nature	Meal and Rest Breaks
Status	In Litigation

53. Richard Melead v. TVI, Inc.

Court	Orange
Case No.	30-2020-01140887-CU-OE-CXC
Nature	Regular Rate, 226 (Magadia)
Status	In Litigation

54. David Spencer v. Asset Gas, Inc.

Court	San Diego
Case No.	37-2020-00024642-CU-OE-CTL
Nature	Meal and Rest Breaks
Status	Settled

55. Thomas Haven v. California Vocations, Inc.

Court	Butte
Case No.	20CV01514
Nature	Regular Rate + Meal and Rest Breaks
Status	In Litigation

56. Estefania Renteria v. Love's Country

Court	Kern
Case No.	BCV-20-101260
Nature	226
Status	In Litigation

57. Rachel Latin v. OneMain General Services Corp.

Court	Stanislaus
Case No.	CV-20-002498
Nature	Dart + Magadia
Status	In Litigation

58. Kalaina Dula v. 2 Kings Gaming, Inc.

Court	Merced
Case No.	#20CV-02289
Nature	Meal and Rest Breaks
Status	In Litigation

59. Jie Xu v. HT Multinational

Court	San Bernardino
Case No.	CIV-DS2015679
Nature	Exempt Misclassification
Status	In Litigation

60. Yvette Molina v. Hawaiian Airlines

Court	Los Angeles
Case No.	20STCV28079
Nature	Meal and Rest + Magadia
Status	In Litigation

61. Reinald Pillsbury v. T & T Restaurants CA

Court	Del Norte
Case No.	CVUJ-2020-1214
Nature	Meal/Rest Breaks + Regular Rate
Status	Settled

62. Luis de Jesus v. Guardian Angel Home Care

Court	San Diego
Case No.	37-2020-00021049-CU-OE-CTL
Nature	Piece-Rate
Status	In Litigation

63. Charles Sandlin v. Secure Nursing Services, Inc.

Court	Los Angeles
Case No.	20STCV25675
Nature	Regular Rate
Status	Settled

64. Gabriel Mendez v. Bondz, Inc.

Court	San Joaquin
Case No.	STK-CV-UOE-2020-0007486
Nature	Piece-Rate
Status	In Litigation

65. James Conley v. Siskiyou Forest Products

Court	Shasta
Case No.	195819
Nature	Regular Rate and Meal/Rest Breaks + 226
Status	In Litigation

66. Alex Castellanos v. Southwest Patrol

Court	San Diego
Case No.	37-2020-00024905-CU-OE-CTL
Nature	Augutus
Status	In Litigation

67. Damien Hampton v. Pegasus Investors

Court	Sacramento
Case No.	34-2020-00281394-CU-BT-GDS
Nature	Unlawful Housing
Status	In Litigation

68. Tamara Perkins v. FSEI

Court	Sacramento
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Case No.	34-2020-00287054
Nature	Regular Rate
Status	In Litigation

69. Rodney Stovall v. Javelin Logistics Company

Court	Alameda
Case No.	RG20075705
Nature	Meal / Rest Breaks
Status	In Litigation

70. Gabrielle Boyd v. Bluestone Lane Holdings, LLC

Court	San Francisco
Case No.	CGC-20-585787
Nature	Tip Pooling ; Magadia
Status	In Litigation

71. Elias Kaser v. Aviation Consultants, Inc.

Court	Orange County
Case No.	
Nature	Meal / Rest Breaks, Regular Rate
Status	Settled

72. Christopher Chacon v. Panda Motors, Inc.

Court	San Bernardino
Case No.	CIV DS2022220
Nature	Regular Rate
Status	In Litigation

73. Willie Lang v. Pathways

Court	San Diego
Case No.	37-2019-00049969
Nature	Off the Clock
Status	In Litigation

74. Norma Reyes v. Simpson Garden Grove, Inc.

Court	Orange
Case No.	30-2020-0117564-CU-OE-CJC
Nature	Meal / Rest Breaks
Status	Settled

75. Daniel Jacobs v. Rush Media Company

Court	Los Angeles
Case No.	20STCV32350
Nature	Independent Contractor Misclassification
Status	In Litigation

76. Luis Ledesma v. TVJ Sons I, Inc.

Court	Santa Barbara
Case No.	20CV03573
Nature	Vaquero
Status	In Litigation

77. Kevin Cianfarani v. Career Strategies Temporary, Inc. (MPI)

Court	Los Angeles
Case No.	
Nature	Off the clock work
Status	Settled

78. Hector Avitia v. LAZ Parking

Court	San Diego
Case No	37-2020-00030133-CU-OE-CTL
Nature	Magadia + Augustus
Status	In Litigation

79. Sukhraj Kaur v. ACES 2020, LLC

Court	Contra Costa
Case No.	C20-02482
Nature	Meal/Rest Breaks, 2802
Status	In Litigation

80. Boaventura v. Rei Do Gado

Court	Contra Costa
Case No.	37-2020-00032342-CU-OE-CTL
Nature	Meal/Rest Breaks, 2802
Status	In Litigation

81. James Rachal v. ELG Metals, Inc.

Court	Los Angeles
Case No.	20STCV45861
Nature	Meal/Rest Breaks, Regular Rate
Status	In Litigation

82. Evelyn Nwansi v. Princeton Healthcare Center, LLC

Court	Alameda
Case No.	RG20083664
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

83. Michael Ashlock v. Advantis Medical Staffing

Court	San Diego
Case No.	37-2020-00022305-CU-OE-CTL
Nature	Regular Rate
Status	Settled

84. Moe Popal v. Ameriprise Auto & Home Insurance

Court	Riverside
Case No.	RIC2000006
Nature	Exempt/Non-Exempt Misclassification
Status	Settled

85. Mark Williams v. Web to Door

Court	San Francisco
Case No.	
Nature	Meal and Rest Break + Regular Rate
Status	In Litigation

86. Jessica Barackman v. Teaz N Pleaz, Inc.

Court	El Dorado
Case No.	SC20200179
Nature	Meal/Rest Breaks, Seating
Status	In Litigation

87. Nicolas Neutall v. Urban Alchemy

Court	San Francisco
Case No.	CGC-20-588622
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

EXHIBIT 5

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

July 31, 2020

CA2139

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

NRI USA, LLC
Certified Mail #70201290000153360922
Loretta G. Raftery
1334 Parkview Avenue, Suite 100
Manhattan Beach, CA 90266

Re: Notice Of Violations Of California Labor Code Sections §§ 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), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant NRI USA, LC in California and classified as non-exempt employees during the time period of July 31, 2019 until a date as determined by the Court. Our offices represent Plaintiff Alahjah Brown (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant NRI USA, LLC (“Defendant”). Plaintiff has been employed by Defendant in California as a Receiver since October of 2018 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to

advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates 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), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

9
10 ALAHJAH BROWN, an individual, on
11 behalf of himself and on behalf of all
12 persons similarly situated,

13 Plaintiff,

14 vs.

15 NRI USA, LLC, a California Limited
16 Liability Company, and DOES 1 through
17 50, inclusive,

18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

1 Plaintiff Alahjah Brown (“PLAINTIFF”) an individual, on behalf of himself and all other
2 similarly situated current and former employees alleges on information and belief, except for
3 his own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

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

9 2. DEFENDANT specializes in e-commerce & wholesale fulfillment of premium
10 apparel, footwear, accessories and select goods.

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

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California
17 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
18 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
19 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
20 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
21 (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
25 which failed to lawfully compensate these employees. DEFENDANT’s uniform policy and
26 practice alleged herein is an unlawful, unfair and deceptive business practice whereby
27 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members
28 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA

1 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the
2 named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been
3 economically injured by DEFENDANT's past and current unlawful conduct, and all other
4 appropriate legal and equitable relief.

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

14 7. The agents, servants and/or employees of the Defendants and each of them acting
15 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
16 agent, servant and/or employee of the Defendants, and personally participated in the conduct
17 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
18 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
19 all Defendants are jointly and severally liable to PLAINTIFF and the other members of the
20 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
21 Defendants' agents, servants and/or employees.

22 23 **THE CONDUCT**

24 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
28 and CALIFORNIA CLASS Members to work without paying them for all the time they are

1 under DEFENDANT's control. DEFENDANT requires PLAINTIFF and the CALIFORNIA
2 CLASS Members to work off the clock without paying them for all the time they performed
3 post-shift duties, specifically by failing to provide enough labor hours to accomplish all the job
4 tasks that DEFENDANT expected PLAINTIFF and CALIFORNIA CLASS Members to
5 complete on a daily and/or weekly basis. Specifically, DEFENDANT requires PLAINTIFF and
6 CALIFORNIA CLASS members to clock out of DEFENDANT's timekeeping system and then
7 travel to other locations owned and operated by DEFENDANT to then perform more work for
8 DEFENDANT. DEFENDANT failed to pay PLAINTIFF and other CALIFORNIA CLASS
9 Members for this required travel to different work sites designated by DEFENDANT in the
10 same work shift. Additionally, from time to time, DEFENDANT requires PLAINTIFF to work
11 while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
12 PLAINTIFF is from time to time interrupted by work assignments. As a result, PLAINTIFF
13 and other CALIFORNIA CLASS Members forfeit minimum wage and overtime compensation
14 by from time to time working without their time being accurately recorded and without
15 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform
16 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
17 time worked is evidenced by DEFENDANT's business records.

18 9. As a result of their rigorous work schedules, PLAINTIFF and other
19 CALIFORNIA CLASS Members are also from time to time unable to take off duty meal breaks
20 and are not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA
21 CLASS Members are from time to time required to perform work as ordered by DEFENDANT
22 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
23 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a
24 second off-duty meal period from time to time in which these employees are required by
25 DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and the other
26 CALIFORNIA CLASS Members therefore forfeit meal breaks without additional compensation
27 and in accordance with DEFENDANT's corporate policy and practice.

28 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other

1 CALIFORNIA CLASS Members are also required from time to time to work in excess of four
2 (4) hours without being provided ten (10) minute rest periods. Further, these employees are
3 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
4 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
5 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
6 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
7 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members are also
8 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
9 PLAINTIFF and other CALIFORNIA CLASS Members are from time to time denied their
10 proper rest periods by DEFENDANT and DEFENDANT's managers. Additionally, the
11 applicable California Wage Order requires employers to provide employees with off-duty rest
12 periods, which the California Supreme Court defined as time during which an employee is
13 relieved from all work related duties and free from employer control. In so doing, the Court
14 held that the requirement under California law that employers authorize and permit all
15 employees to take rest period means that employers must relieve employees of all duties and
16 relinquish control over how employees spend their time which includes control over the
17 locations where employees may take their rest period. Employers cannot impose controls that
18 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
19 DEFENDANT's policy restricts PLAINTIFF and other CALIFORNIA CLASS Members from
20 unconstrained walks and requires these employees to remain on DEFENDANT's premises
21 under DEFENDANT's control during what should be their paid, off duty rest periods.

22 11. During the CALIFORNIA CLASS PERIOD, DEFENDANT systematically fails
23 to record and pay PLAINTIFF and CALIFORNIA CLASS Members the correct amount of
24 wages due for split-shift premiums. The applicable Industrial Welfare Commission Wage
25 Orders define a "split-shift" as a "work schedule, which is interrupted by non-paid, non-
26 working, periods established by the employer, other than bona fide rest or meal periods." The
27 Industrial Welfare Commission Wage Orders further provide, "When an employee works a split
28 shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage

1 for that workday, except when the employee resides at the place of employment.”
2 DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work split-shifts
3 throughout the CALIFORNIA CLASS PERIOD, but intentionally and unlawfully fails to pay
4 PLAINTIFF and the CALIFORNIA CLASS Members split-shift premium wages.

5 12. DEFENDANT also fails to provide PLAINTIFF and the other members of the
6 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
7 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
8 every employer shall furnish each of his or her employees with an accurate itemized wage
9 statement in writing showing, among other things, gross wages earned and all applicable hourly
10 rates in effect during the pay period and the corresponding amount of time worked at each
11 hourly rate. Aside, from the violations listed above, DEFENDANT failed to issue to
12 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
13 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the
14 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
15 Code § 226.

16 13. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
17 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
18 incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of
19 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
20 2802, employers are required to indemnify employees for all expenses incurred in the course
21 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
22 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
23 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
24 directions of the employer, even though unlawful, unless the employee, at the time of obeying
25 the directions, believed them to be unlawful."

26 14. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
27 Members as a business expense, are required by DEFENDANT to use their own personal
28 cellular phones and personal vehicles to inter-location travel as a result of and in furtherance

1 of their job duties as employees for DEFENDANT but are not reimbursed or indemnified by
2 DEFENDANT for the cost associated with the use of their personal cellular phones and
3 personal vehicles, including but not limited to gas money, for DEFENDANT's benefit.
4 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members are required by
5 DEFENDANT to use their personal cellular phones to respond to managers while off the clock
6 (which also results in minimum wage and overtime violations. As a result, in the course of their
7 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
8 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
9 related to the use of their personal cellular phones and personal vehicles all on behalf of and for
10 the benefit of DEFENDANT.

11 15. In violation of the applicable sections of the California Labor Code and the
12 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
13 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
14 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
15 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended
16 to purposefully avoid the payment for all time worked as required by California law which
17 allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
18 complied with the law. To the extent equitable tolling operates to toll claims by the
19 CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be
20 adjusted accordingly.

21 16. By reason of this uniform conduct applicable to PLAINTIFF and all
22 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
23 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
24 (the "UCL"), by engaging in a company-wide policy and procedure which fails to accurately
25 calculate and record all missed meal and rest periods and failed to pay all minimum and
26 overtime wages due to PLAINTIFF and other CALIFORNIA CLASS Members. The proper
27 recording of these employees' missed meal and rest breaks is the DEFENDANT's burden. As
28 a result of DEFENDANT's intentional disregard of the obligation to meet this burden,

1 DEFENDANT fails to properly calculate and/or pay all required compensation for work
2 performed by the members of the CALIFORNIA CLASS and violated the California Labor
3 Code and regulations promulgated thereunder as herein alleged.

4 17. Specifically as to PLAINTIFF, DEFENDANT fails to provide all the legally
5 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
6 Labor Code and fails to pay him all minimum and overtime wages due to him,. DEFENDANT
7 does not have a policy or practice which provides timely off-duty meal and rest breaks to
8 PLAINTIFF and also fails to compensate PLAINTIFF for his missed meal and rest breaks. The
9 nature of the work performed by the PLAINTIFF does not prevent him from being relieved of
10 all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's
11 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
12 DEFENDANT's business records. DEFENDANT also requires PLAINTIFF to work off the
13 clock without paying him for all the time she is working for DEFENDANT. The amount in
14 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

15 16 **JURISDICTION AND VENUE**

17 18. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
19 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees
20 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

21 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
23 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
24 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
25 committed the wrongful conduct herein alleged in this County against members of the
26 CALIFORNIA CLASS.

27 ///

28 ///

THE CALIFORNIA CLASS

20. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

21. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

22. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engages in a practice whereby DEFENDANT systematically fails to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoys the benefit of this work, requires employees to perform this work and permits or suffers to permit this work.

23. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§

1 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

2 24. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
3 CLASS Members is impracticable.

4 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
5 California law by:

6 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
7 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
8 deceptively having in place company policies, practices and procedures
9 that uniformly and systematically failed to record and pay PLAINTIFF
10 and the other members of the CALIFORNIA CLASS for all time worked
11 minimum wages owed and overtime wages owed for work performed by
12 these employees;

13 (b) Committing an act of unfair competition in violation of the UCL, by
14 failing to provide the PLAINTIFF and the other members of the
15 CALIFORNIA CLASS with the legally required meal and rest periods;
16 and,

17 (c) Committing an act of unfair competition in violation of the California
18 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
19 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
20 the CALIFORNIA CLASS members with necessary expenses incurred in
21 the discharge of their job duties.

22 26. This Class Action meets the statutory prerequisites for the maintenance of a Class
23 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

24 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
25 that the joinder of all such persons is impracticable and the disposition of
26 their claims as a class will benefit the parties and the Court;

27 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
28 that are raised in this Complaint are common to the CALIFORNIA

1 CLASS will apply uniformly to every member of the CALIFORNIA
2 CLASS;

3 (c) The claims of the representative PLAINTIFF are typical of the claims of
4 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
5 other members of the CALIFORNIA CLASS, is classified as a non-
6 exempt employee paid on an hourly basis who has been subjected to the
7 DEFENDANT's deceptive practice and policy which failed to provide the
8 legally required meal and rest periods to the CALIFORNIA CLASS and
9 thereby systematically underpaid compensation to PLAINTIFF and
10 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
11 result of DEFENDANT's employment practices. PLAINTIFF and the
12 members of the CALIFORNIA CLASS were and are similarly or
13 identically harmed by the same unlawful, deceptive, unfair and pervasive
14 pattern of misconduct engaged in by DEFENDANT; and,

15 (d) The representative PLAINTIFF will fairly and adequately represent and
16 protect the interest of the CALIFORNIA CLASS, and has retained
17 counsel who are competent and experienced in Class Action litigation.
18 There are no material conflicts between the claims of the representative
19 PLAINTIFF and the members of the CALIFORNIA CLASS that would
20 make class certification inappropriate. Counsel for the CALIFORNIA
21 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
22 Members.

23 27. In addition to meeting the statutory prerequisites to a Class Action, this action is
24 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

25 (a) Without class certification and determination of declaratory, injunctive,
26 statutory and other legal questions within the class format, prosecution of
27 separate actions by individual members of the CALIFORNIA CLASS will
28 create the risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
 - 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;
- 1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- (c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of

1 this action pursuant to Cal. Code of Civ. Proc. § 382.

2 28. This Court should permit this action to be maintained as a Class Action pursuant
3 to Cal. Code of Civ. Proc. § 382 because:

4 (a) The questions of law and fact common to the CALIFORNIA CLASS
5 predominate over any question affecting only individual CALIFORNIA
6 CLASS Members because the DEFENDANT's employment practices are
7 uniform and systematically applied with respect to the CALIFORNIA
8 CLASS;

9 (b) A Class Action is superior to any other available method for the fair and
10 efficient adjudication of the claims of the members of the CALIFORNIA
11 CLASS because in the context of employment litigation a substantial
12 number of individual CALIFORNIA CLASS Members will avoid
13 asserting their rights individually out of fear of retaliation or adverse
14 impact on their employment;

15 (c) The members of the CALIFORNIA CLASS are so numerous that it is
16 impractical to bring all members of the CALIFORNIA CLASS before the
17 Court;

18 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
19 able to obtain effective and economic legal redress unless the action is
20 maintained as a Class Action;

21 (e) There is a community of interest in obtaining appropriate legal and
22 equitable relief for the acts of unfair competition, statutory violations and
23 other improprieties, and in obtaining adequate compensation for the
24 damages and injuries which DEFENDANT's actions have inflicted upon
25 the CALIFORNIA CLASS;

26 (f) There is a community of interest in ensuring that the combined assets of
27 DEFENDANT are sufficient to adequately compensate the members of
28 the CALIFORNIA CLASS for the injuries sustained;

- 1 (g) DEFENDANT has acted or refused to act on grounds generally applicable
2 to the CALIFORNIA CLASS, thereby making final class-wide relief
3 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 4 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
5 the business records of DEFENDANT; and,
- 6 (i) Class treatment provides manageable judicial treatment calculated to bring
7 a efficient and rapid conclusion to all litigation of all wage and hour
8 related claims arising out of the conduct of DEFENDANT as to the
9 members of the CALIFORNIA CLASS.

10 29. DEFENDANT maintains records from which the Court can ascertain and identify
11 by job title each of DEFENDANT's employees who as have been systematically, intentionally
12 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein
13 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
14 of similarly situated employees when they have been identified.

15
16 **THE CALIFORNIA LABOR SUB-CLASS**

17 30. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh
18 Causes of Action on behalf of a California sub-class, defined as all members of the
19 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
20 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior
21 to the filing of the complaint and ending on the date as determined by the Court (the
22 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
23 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
24 Members is under five million dollars (\$5,000,000.00).

25 31. DEFENDANT, as a matter of company policy, practice and procedure, and in
26 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
27 requirements, and the applicable provisions of California law, intentionally, knowingly, and
28 wilfully, engages in a practice whereby DEFENDANT fails to correctly calculate compensation

1 for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR
2 SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT
3 enjoys the benefit of this work, requires employees to perform this work and permits or suffers
4 to permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
5 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
6 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
7 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR
8 SUB-CLASS PERIOD should be adjusted accordingly.

9 32. DEFENDANT maintains records from which the Court can ascertain and identify
10 by name and job title, each of DEFENDANT's employees who have been systematically,
11 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
12 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
13 any additional job titles of similarly situated employees when they have been identified.

14 33. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
15 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

16 34. Common questions of law and fact exist as to members of the CALIFORNIA
17 LABOR SUB-CLASS, including, but not limited, to the following:

- 18 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
19 compensation due to members of the CALIFORNIA LABOR SUB-
20 CLASS for missed meal and rest breaks in violation of the California
21 Labor Code and California regulations and the applicable California Wage
22 Order;
- 23 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS with accurate
25 itemized wage statements;
- 26 (c) Whether DEFENDANT has engaged in unfair competition by the
27 above-listed conduct;
- 28 (d) The proper measure of damages and penalties owed to the members of the

CALIFORNIA LABOR SUB-CLASS; and,

(e) Whether DEFENDANT's conduct was willful.

35. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

(a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

(b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

(c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee; and,

(d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;

(e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

36. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

(a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class

will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, is a non-exempt employee paid on an hourly basis who has been subjected to the DEFENDANT's practice and policy which fails to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,

(d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

37. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of

1 separate actions by individual members of the CALIFORNIA LABOR
2 SUB-CLASS will create the risk of:

3 1) Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA LABOR SUB-CLASS which
5 would establish incompatible standards of conduct for the parties
6 opposing the CALIFORNIA LABOR SUB-CLASS; or,

7 2) Adjudication with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS which would as a practical
9 matter be dispositive of interests of the other members not party to
10 the adjudication or substantially impair or impede their ability to
11 protect their interests.

12 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
13 or refused to act on grounds generally applicable to the CALIFORNIA
14 LABOR SUB-CLASS, making appropriate class-wide relief with respect
15 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
16 DEFENDANT uniformly fails to pay all wages due. Including the correct
17 wages for all time worked by the members of the CALIFORNIA LABOR
18 SUB-CLASS as required by law;

19 (c) Common questions of law and fact predominate as to the members of the
20 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
21 violations of California Law as listed above, and predominate over any
22 question affecting only individual CALIFORNIA LABOR SUB-CLASS
23 Members, and a Class Action is superior to other available methods for
24 the fair and efficient adjudication of the controversy, including
25 consideration of:

26 1) The interests of the members of the CALIFORNIA LABOR SUB-
27 CLASS in individually controlling the prosecution or defense of
28 separate actions in that the substantial expense of individual

actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

38. This Court should permit this action to be maintained as a Class Action pursuant

1 to Cal. Code of Civ. Proc. § 382 because:

- 2 (a) The questions of law and fact common to the CALIFORNIA LABOR
3 SUB-CLASS predominate over any question affecting only individual
4 CALIFORNIA LABOR SUB-CLASS Members;
- 5 (b) A Class Action is superior to any other available method for the fair and
6 efficient adjudication of the claims of the members of the CALIFORNIA
7 LABOR SUB-CLASS because in the context of employment litigation a
8 substantial number of individual CALIFORNIA LABOR SUB-CLASS
9 Members will avoid asserting their rights individually out of fear of
10 retaliation or adverse impact on their employment;
- 11 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
12 numerous that it is impractical to bring all members of the CALIFORNIA
13 LABOR SUB-CLASS before the Court;
- 14 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
15 Members, will not be able to obtain effective and economic legal redress
16 unless the action is maintained as a Class Action;
- 17 (e) There is a community of interest in obtaining appropriate legal and
18 equitable relief for the acts of unfair competition, statutory violations and
19 other improprieties, and in obtaining adequate compensation for the
20 damages and injuries which DEFENDANT's actions have inflicted upon
21 the CALIFORNIA LABOR SUB-CLASS;
- 22 (f) There is a community of interest in ensuring that the combined assets of
23 DEFENDANT are sufficient to adequately compensate the members of
24 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 25 (g) DEFENDANT has acted or refused to act on grounds generally applicable
26 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
27 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
28 CLASS as a whole;

- 1 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
4 CLASS Members who worked for DEFENDANT in California at any
5 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
6 (i) Class treatment provides manageable judicial treatment calculated to bring
7 a efficient and rapid conclusion to all litigation of all wage and hour
8 related claims arising out of the conduct of DEFENDANT as to the
9 members of the CALIFORNIA LABOR SUB-CLASS.

10
11 **FIRST CAUSE OF ACTION**

12 **For Unlawful Business Practices**

13 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

14 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

15 39. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
16 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
17 Complaint.

18 40. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
19 Code § 17021.

20 41. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
21 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
22 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
23 competition as follows:

24 Any person who engages, has engaged, or proposes to engage in unfair
25 competition may be enjoined in any court of competent jurisdiction. The court
26 may make such orders or judgments, including the appointment of a receiver, as
27 may be necessary to prevent the use or employment by any person of any practice
which constitutes unfair competition, as defined in this chapter, or as may be
necessary to restore to any person in interest any money or property, real or
personal, which may have been acquired by means of such unfair competition.

28 Cal. Bus. & Prof. Code § 17203.

1 42. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Industrial Wage Order(s), the California Code of Regulations and the California
4 Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802,
5 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
6 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
7 unfair competition, including restitution of wages wrongfully withheld.

8 43. By the conduct alleged herein, DEFENDANT's practices are unlawful and unfair
9 in that these practices violate public policy, are immoral, unethical, oppressive, unscrupulous
10 or substantially injurious to employees, and are without valid justification or utility for which
11 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the
12 California Business & Professions Code, including restitution of wages wrongfully withheld.

13 44. By the conduct alleged herein, DEFENDANT's practices are deceptive and
14 fraudulent in that DEFENDANT's uniform policy and practice fails to provide the legally
15 mandated meal and rest periods, and the required amount of compensation for missed meal and
16 rest periods, reporting time pay, and overtime and minimum wages owed, due to a systematic
17 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
18 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
19 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
20 Prof. Code § 17203, including restitution of wages wrongfully withheld.

21 45. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
22 and deceptive in that DEFENDANT's employment practices cause PLAINTIFF and the other
23 members of the CALIFORNIA CLASS to be underpaid during their employment with
24 DEFENDANT.

25 46. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
26 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to provide
27 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
28 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

1 47. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
2 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
3 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
4 for each workday in which a second off-duty meal period was not timely provided for each ten
5 (10) hours of work.

6 48. PLAINTIFF further demands on behalf of himself and each member of the
7 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
8 duty paid rest period was not timely provided as required by law.

9 49. By and through the unlawful and unfair business practices described herein,
10 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
11 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
12 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
13 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
14 to unfairly compete against competitors who comply with the law.

15 50. All the acts described herein as violations of, among other things, the Industrial
16 Welfare Commission Wage Orders, the California Code of Regulations, and the California
17 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive
18 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business
19 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

20 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
21 and do, seek such relief as may be necessary to restore to them the money and property which
22 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
23 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
24 unfair business practices, including earned but unpaid wages for all time worked.

25 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
26 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
27 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
28 engaging in any unlawful and unfair business practices in the future.

1 53. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
2 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
3 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
4 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
5 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
6 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
7 engage in these unlawful and unfair business practices.

8
9 **SECOND CAUSE OF ACTION**

10 **For Failure To Pay Minimum Wages**

11 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

13 **and Against All Defendants)**

14 54. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
15 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
16 paragraphs of this Complaint.

17 55. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
18 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
19 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
20 accurately calculate and pay reporting time and minimum wages to PLAINTIFF and
21 CALIFORNIA CLASS Members.

22 56. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
23 public policy, an employer must timely pay its employees for all hours worked.

24 57. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
25 commission is the minimum wage to be paid to employees, and the payment of a less wage than
26 the minimum so fixed is unlawful.

27 58. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
28 including reporting time pay and minimum wage compensation and interest thereon, together

1 with the costs of suit.

2 59. DEFENDANT maintains a uniform wage practice of paying PLAINTIFF and the
3 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
4 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
5 is to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
6 other members of the CALIFORNIA LABOR SUB-CLASS.

7 60. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
8 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
9 result of implementing a uniform policy and practice that denies accurate compensation to
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
11 minimum wage pay.

12 61. In committing these violations of the California Labor Code, DEFENDANT
13 inaccurately calculates the correct time worked and consequently underpays the actual time
14 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
15 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
16 benefits in violation of the California Labor Code, the Industrial Welfare Commission
17 requirements and other applicable laws and regulations.

18 62. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive
20 the correct reporting time pay and minimum wage compensation for their time worked for
21 DEFENDANT.

22 63. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
23 other members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked that
24 they are entitled to, constituting a failure to pay all earned wages. DEFENDANT fails to
25 accurately pay the PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS the
26 wages for the time they work in accordance with 1197 & 1197.1, even though the PLAINTIFF
27 and the other members of the CALIFORNIA LABOR SUB-CLASS are regularly required,
28 permitted or suffered to work, and do in fact work, off the clock time as to which

1 DEFENDANT fails to accurately record and pay as evidenced by DEFENDANT's business
2 records and witnessed by employees.

3 64. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
4 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS for the true time they work, PLAINTIFF and the other members of the CALIFORNIA
6 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
7 which are presently unknown to them and which will be ascertained according to proof at trial.

8 65. DEFENDANT knew or should have known that PLAINTIFF and the other
9 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
10 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
11 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
12 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
13 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
14 correct reporting time pay and minimum wages for their time worked.

15 66. In performing the acts and practices herein alleged in violation of California labor
16 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
17 all time worked and provide them with the requisite compensation, DEFENDANT acted and
18 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
19 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
20 their legal rights, or the consequences to them, and with the despicable intent of depriving them
21 of their property and legal rights, and otherwise causing them injury in order to increase
22 company profits at the expense of these employees.

23 67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
25 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
26 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
27 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
28 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code §§ 510, *et seq.*]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

6 68. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
7 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs
8 of this Complaint.

9 69. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
11 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay
12 these employees for all overtime worked, including, work performed in excess of eight (8)
13 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
14 workweek.

15 70. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
16 public policy, an employer must timely pay its employees for all hours worked.

17 71. Cal. Lab. Code § 510 further provides that employees in California shall not be
18 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
19 unless they receive additional compensation beyond their regular wages in amounts specified
20 by law.

21 72. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
22 including reporting time pay and minimum wage and overtime compensation and interest
23 thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the
24 employment of an employee for longer hours than those fixed by the Industrial Welfare
25 Commission is unlawful.

26 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
27 CALIFORNIA LABOR SUB-CLASS Members are required by DEFENDANT to work for
28 DEFENDANT and are not paid for all the time they work, including overtime work.

1 74. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
3 result of implementing a uniform policy and practice that failed to accurately record overtime
4 work by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied
5 accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR
6 SUB-CLASS for overtime work, including, the overtime work performed in excess of eight (8)
7 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
8 workweek.

9 75. In committing these violations of the California Labor Code, DEFENDANT
10 inaccurately records overtime worked and consequently underpays the overtime worked by
11 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
12 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
13 of the California Labor Code, the Industrial Welfare Commission requirements and other
14 applicable laws and regulations.

15 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
16 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
17 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
18 including overtime work.

19 76. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
20 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not
21 receiving full compensation for overtime worked.

22 77. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
23 from the overtime requirements of the law. None of these exemptions are applicable to the
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
26 to a valid collective bargaining agreement that would preclude the causes of action contained
27 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the
28 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,

1 non-waiveable rights provided by the State of California.

2 78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
3 other members of the CALIFORNIA LABOR SUB-CLASS are paid less for overtime worked
4 that they are entitled to, constituting a failure to pay all earned wages.

5 79. DEFENDANT fails to accurately pay the PLAINTIFF and the other members of
6 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was
7 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
8 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
9 CLASS are required to work, and did in fact work, overtime as to which DEFENDANT fails
10 to accurately record and pay as evidenced by DEFENDANT's business records and witnessed
11 by employees.

12 80. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
13 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
14 CLASS for the true amount of time they worked, PLAINTIFF and the other members of the
15 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
16 injury in amounts which are presently unknown to them and which will be ascertained
17 according to proof at trial.

18 81. DEFENDANT knew or should have known that PLAINTIFF and the other
19 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for all overtime
20 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
21 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
22 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
23 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for
24 overtime worked.

25 82. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
27 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
28 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and

1 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
2 disregard for their legal rights, or the consequences to them, and with the despicable intent of
3 depriving them of their property and legal rights, and otherwise causing them injury in order
4 to increase company profits at the expense of these employees.

5 83. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
6 therefore request recovery of all overtime wages, according to proof, interest, statutory costs,
7 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
8 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
9 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
10 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

11
12 **FOURTH CAUSE OF ACTION**

13 **For Failure to Provide Required Meal Periods**

14 **[Cal. Lab. Code §§ 226.7 & 512]**

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

16 84. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
17 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
18 of this Complaint.

19 85. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to provide all
20 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
21 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
22 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
23 does not prevent these employees from being relieved of all of their duties for the legally
24 required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and
25 other CALIFORNIA LABOR SUB-CLASS Members are from time to time not fully relieved
26 of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to
27 provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally
28 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's

1 business records. Further, DEFENDANT fails to provide PLAINTIFF and CALIFORNIA
2 CLASS Members with a second off-duty meal period in some workdays in which these
3 employees were required by DEFENDANT to work ten (10) hours of work. As a result,
4 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeit
5 meal breaks without additional compensation and in accordance with DEFENDANT's strict
6 corporate policy and practice.

7 86. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
8 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
9 CLASS Members who are not provided a meal period, in accordance with the applicable Wage
10 Order, one additional hour of compensation at each employee's regular rate of pay for each
11 workday that a meal period was not provided.

12 87. As a proximate result of the aforementioned violations, PLAINTIFF and
13 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
14 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
15 suit.

17 **FIFTH CAUSE OF ACTION**

18 **For Failure to Provide Required Rest Periods**

19 **[Cal. Lab. Code §§ 226.7 & 512]**

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
21 **Defendants)**

22 88. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
23 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
24 of this Complaint.

25 89. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are
26 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
27 Further, these employees were denied their first rest periods of at least ten (10) minutes for
28 some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least

1 ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
2 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
3 or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are also not
4 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
5 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are periodically denied
6 their proper rest periods by DEFENDANT and DEFENDANT's managers.

7 90. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
8 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
9 CLASS Members who are not provided a rest period, in accordance with the applicable Wage
10 Order, one additional hour of compensation at each employee's regular rate of pay for each
11 workday that rest period was not provided.

12 91. As a proximate result of the aforementioned violations, PLAINTIFF and
13 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
14 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
15 suit.

17 **SIXTH CAUSE OF ACTION**

18 **For Failure to Provide Accurate Itemized Statements**

19 **[Cal. Lab. Code § 226]**

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
21 **Defendants)**

22 92. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
23 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
24 of this Complaint.

25 93. Cal. Labor Code § 226 provides that an employer must furnish employees with
26 an "accurate itemized" statement in writing showing:

27 (1) gross wages earned,

28 (2) total hours worked by the employee, except for any employee whose compensation

1 is solely based on a salary and who is exempt from payment of overtime under
2 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
3 Commission,

4 (3) the number of piecerate units earned and any applicable piece rate if the employee
5 is paid on a piece-rate basis,

6 (4) all deductions, provided that all deductions made on written orders of the employee
7 may be aggregated and shown as one item,

8 (5) net wages earned,

9 (6) the inclusive dates of the period for which the employee is paid,

10 (7) the name of the employee and his or her social security number, except that by
11 January 1, 2008, only the last four digits of his or her social security number or an
12 employee identification number other than a social security number may be shown on
13 the itemized statement,

14 (8) the name and address of the legal entity that is the employer, and

15 (9) all applicable hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate by the employee.

17 94. DEFENDANT also fails to provide PLAINTIFF and the other members of the
18 CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed
19 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
20 provides that every employer shall furnish each of his or her employees with an accurate
21 itemized wage statement in writing showing, among other things, gross wages earned and all
22 applicable hourly rates in effect during the pay period and the corresponding amount of time
23 worked at each hourly rate. Aside, from the violations listed above, DEFENDANT failed to
24 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
25 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and
26 the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which
27 violated Cal. Lab. Code § 226.

28 95. DEFENDANT knowingly and intentionally fails to comply with Cal. Lab. Code

§ 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

96. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

97. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

98. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT fails to reimburse PLAINTIFF and the

1 CALIFORNIA LABOR SUB-CLASS members for expenses which include, but are not
2 limited to, costs related to using their personal cellular phones all on behalf of and for the
3 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR
4 SUB-CLASS Members are required by DEFENDANT to use their personal cell phones to
5 respond to work related issues. DEFENDANT's policy, practice and procedure is to not
6 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
7 expenses resulting from using their personal cellular phones for DEFENDANT within the
8 course and scope of their employment for DEFENDANT. These expenses are necessary to
9 complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct
10 to assert any waiver of this expectation. Although these expenses are necessary expenses
11 incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
12 DEFENDANT fails to indemnify and reimburse PLAINTIFF and the CALIFORNIA
13 LABOR SUB-CLASS members for these expenses as an employer is required to do under
14 the laws and regulations of California.

15 99. PLAINTIFF therefore demands reimbursement for expenditures or losses
16 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
17 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
18 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
22 severally, as follows:

23 1. On behalf of the CALIFORNIA CLASS:

- 24 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
25 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
26 B) An order temporarily, preliminarily and permanently enjoining and restraining
27 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
28 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully

withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

C) Meal and rest period compensation pursuant to California Labor Code Section 226.7 and the applicable IWC Wage Order;

D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;

E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and,

F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

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C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.

Dated: July26, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: July 26, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

EXHIBIT 6