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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

JOSE PABLO JIMENEZ, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

NESTLE WATERS NORTH AMERICA,
INC., a Delaware corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.: BCV-20-102561

**DECLARATION OF KRISTEN M. AGNEW
IN SUPPORT OF PLAINTIFF’S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: April 6, 2022
Time: 8:30 a.m.
Division: J

1 **DECLARATION OF KRISTEN M. AGNEW**

2 I, Kristen M. Agnew, declare as follows:

3 1. I am an attorney at law, duly licensed to practice before all Courts in the State of
4 California, and am with the law firm Diversity Law Group, counsel of record for Plaintiff Jose
5 Pablo Jimenez (“Plaintiff”). I have personal knowledge of the facts set forth below and if called
6 to testify I could and would do so competently.

7 **FACTUAL AND PROCEDURAL HISTORY**

8 2. October 16, 2020, Plaintiff filed a letter with the Labor Workforce &
9 Development Agency (“LWDA”) alleging that Defendant had violated Labor Code sections 201-
10 203, 204, 226(a), 226.7, 246, 510, 512, 558 and 1194.

11 3. On November 2, 2020, Plaintiff filed a class and representative action complaint
12 (“Complaint”) in Kern County Superior Court, on behalf of himself and all similarly situated
13 employees (the “Action”). As set forth in the Complaint, Plaintiff alleges that Defendant
14 maintained a policy and practice of: (1) failing to pay overtime at the regular rate of pay, in
15 violation of California Labor Code sections 510, 558 and 1194; (2) failing to provide off-duty
16 meal periods and/or pay meal period premiums at the regular rate of pay, in violation of
17 California Labor Code sections 226.7 and 512; (3) failing to provide off-duty rest periods and/or
18 pay rest period premiums at the regular rate of pay, in violation of California Labor Code section
19 226.7; (4) failing to pay all earned wages upon termination, including sick pay, in violation of
20 Labor Code sections 201, 202 and 203; (5) failing to provide accurate itemized wage statements,
21 in violation of Labor Code section 226(a); and (6) engaging in unfair business practices, in
22 violation of California Business and Professions Code section 17200, *et seq.* (“UCL”). Plaintiff
23 also sought derivative civil penalties pursuant to California Labor Code section 2698, *et seq.*, the
24 Private Attorneys General Act (“PAGA”).

25 4. On December 14, 2020, Defendant filed a Notice of Removal in the United States
26 District Court for the Eastern District of California, pursuant to 28 U.S.C. section 1332(d)(2)
27 (Class Action Fairness Act [“CAFA”]), thereby effectuating the removal of the Action to Federal
28 Court.

1 5. Pursuant to the Parties’ Joint Stipulation to Remand, the Federal Court remanded
2 the Action to this Court, on December 6, 2021.

3 6. On January 18, 2022, Plaintiff filed a Supplemental PAGA Notice with the
4 LWDA. The Supplemental PAGA Notice clarifies that, as a result of the work performed during
5 unpaid meal periods, Defendant failed to pay wages for all hours worked. The Supplemental
6 PAGA Notice also included an additional allegation that Defendant rounded employee time, in
7 violation of Labor Code sections 510, 558, 1194, 1197 and 1197.1.

8 7. On February 7, 2021, Plaintiff filed the operative First Amended Complaint to
9 add these additional allegations

10 **DISCOVERY AND INVESTIGATION**

11 8. Class Counsel investigated the facts surrounding the claims in this Action before
12 filing the lawsuit and conducted extensive discovery during the course of litigating and
13 prosecuting the case.

14 9. Following the removal of the Action to Federal Court, the Parties met and
15 conferred to discuss the factual allegations and the merits of their respective claims and defenses.

16 10. On or about February 24, 2021, I met and conferred with defense counsel, as
17 required by Rule 26(f) of the Federal Rules of Civil Procedure. Defense counsel argued that the
18 overtime and meal/rest break claims of Plaintiff, and other putative class members who operated
19 commercial vehicles, are preempted by the Federal Motor Carrier Safety Act (“FMSCA”) and
20 applicable Department of Transportation (“DOT”) regulations.

21 11. Counsel also raised the prior court-approved class action settlement in *Ortega et*
22 *al. v. Nestle Waters North America, Inc.*, (Los Angeles Sup. Ct. Case No. No. BC623610) as a
23 partial bar to liability. Defense counsel provided me with the settlement documents in the *Ortega*
24 matter, including the settlement agreement and order granting final approval, which I reviewed.
25 *Otega* resulted in a class action and PAGA settlement on behalf of all current and former non-
26 exempt employees of Defendant who worked in various positions from June 10, 2012 to May 9,
27 2018. The claims resolved included the same claims as alleged here for unpaid meal and rest
28 periods, unpaid overtime and minimum wages, unlawful wage statements, unpaid wages due at

1 termination, and claims under PAGA.

2 12. On March 12, 2021, the Parties exchanged initial disclosures and mutually
3 identified percipient witnesses and key documents.

4 13. Plaintiff also propounded written discovery relevant to the class and PAGA
5 claims. Amongst other relevant topics, the discovery required Defendant to provide documents
6 and information relevant to class certification, including the number of putative class members,
7 Defendant's policies and procedures with respect to the calculation of the regular rate of pay
8 used to calculate overtime wages, Defendant's policies and procedures with respect to the
9 calculation and payment of meal and rest period premiums, Defendant's meal and rest period
10 policies, Defendant's policies and procedures with respect to the rate used to calculate sick pay
11 earnings, and payroll records of putative class members.

12 14. On or about May 7, 2021, the Parties agreed to engage in private mediation with a
13 third-party neutral. The Parties also agreed to stay further discovery pending the outcome of
14 mediation. In lieu of formal discovery, the Parties agreed to the informal exchange of
15 information that would be necessary for each side to value the claims and defenses at issue in the
16 Action.

17 15. In advance of the mediation, Defendant produced extensive payroll data,
18 including a 20% sample of time and payroll records for putative class members, the estimated
19 number of putative class members and aggrieved employees, the aggregate number of pay
20 periods/workweeks worked during the liability periods, and sample wage statements. Defendant
21 also produced an Excel spreadsheet that contained the formulas used to calculate incentive pay.

22 16. My office also retained an expert to review the payroll data and perform a
23 comprehensive damage analysis in preparation for mediation. Based on the payroll and time
24 records, the expert was able to estimate: (1) the average hourly rate of putative class members
25 during the liability period; (2) the number of pay periods in which putative class members earned
26 meal/rest period premiums and non-discretionary incentive wages; (3) the number of shifts in
27 which putative class members worked at least 3.5 hours and/or more than six hours; and (4) the
28 number of pay periods where putative class members received the payment of a meal/rest period

premium. The expert also opined that it appeared that, on occasion, Defendant paid wages based on the rounded the punch in and out times of putative class members.

MEDIATION

17. On October 12, 2021, the Parties participated in a full day mediation with the Honorable Brian C. Walsh (Ret.). During the mediation, counsel zealously advocated on behalf of their respective clients. The Parties gained valuable insight and exchanged significant information about their respective positions. After continued arm's length negotiations, facilitated by the mediator, the Parties reached a settlement in principle and entered into a Memorandum of Understanding.

18. As a condition of settlement, the Parties agreed to the remand of the Action to this Court. The Parties also agreed that Plaintiff would amend the Complaint and PAGA Notice to address the rounding practice and clarify that the meal period violation also encompassed off-the-clock work.

SUMMARY OF THE MONETARY TERMS OF SETTLEMENT

19. On or about January 25, 2022, the Parties executed a Joint Stipulation of Class and Representative Action Settlement ("Settlement Agreement" or "Settlement"). Attached hereto as **Exhibit A** is a true and correct copy of the Settlement Agreement.

20. As defined by the Settlement, the Class consists of all current and former non-exempt employees of Defendant who worked in the State of California at any time during the period of May 6, 2016 through January 10, 2022 (the "Class Period"). Settlement Agreement ("SA") § A-3. In light of the *Ortega* release, the Class excludes: (a) those Class Members who participated in the *Ortega* Settlement and separated employment on or before May 9, 2018; and (b) any pay periods on or before May 9, 2018 for those in the Class who participated in the *Ortega* Settlement and remained employed after May 9, 2018. SA § A-3. Defendant represents that there are 1,807 Class Members who collectively worked approximately 112,693 pay periods during the Class Period. SA § D-2.

21. Some Class Members may also be PAGA Group Members. SA § A-23. PAGA Group Members consist of all current and former non-exempt employees of Defendant who

1 worked in the State of California at any time during the PAGA Period (May 6, 2019 to January
2 10, 2022). SA §§ A-23, A-25.

3 22. The Settlement Agreement requires Defendant to pay the gross amount of
4 \$1,600,000 (“Maximum Settlement Amount”). SA § A-18. This is a non-reversionary settlement
5 as the entirety of the Maximum Settlement Amount will be fully paid out. SA §§ D-1, D-12.

6 23. The Settlement allocates \$50,000 of the Maximum Settlement Amount to resolve
7 all claims, penalties, and remedies under the PAGA (the “PAGA Payment”). SA §§ A-24, D-1.
8 Pursuant to PAGA, seventy-five percent (75%) of the PAGA Payment, *i.e.* the sum of \$37,500,
9 will be paid to the California Labor and Workforce Development Agency (“LWDA”). SA §§ A-
10 24, D-7. The remaining twenty-five percent (25%) of the PAGA Payment, *i.e.* the sum of
11 \$12,500, will be distributed to PAGA Group Members. SA §§ A-24, D-7.

12 24. As part of the Settlement Agreement, Defendant does not object to Class
13 Counsel’s request for attorney’s fees up to thirty-five percent (35%) of the Maximum Settlement
14 Amount, *i.e.* the sum of \$560,000, plus up to \$20,000 for reimbursement of litigation costs,
15 subject to the Court finally approving this Settlement. SA §§ A-5, D-4. Class Counsel expressly
16 acknowledges that the Court has final discretion in any fee award. SA § D-4.

17 25. Pursuant to the terms of the Settlement Agreement, and without opposition from
18 Defendant, Plaintiff is entitled to request an Enhancement Payment of \$10,000. SA §§ A-14, D-
19 5. Plaintiff expressly acknowledges that the Court has final discretion in any fee award or
20 Enhancement Payment. SA § D-5.

21 26. The Parties have selected Phoenix Settlement Administrators as the Settlement
22 Administrator. The Settlement provides for the payment of the fees and expenses reasonably
23 incurred by the Settlement Administrator. SA §§ A-35, D-6. The Parties have received a quote
24 from Phoenix Settlement Administrators for a fee of approximately \$7,250. Based on my
25 experience, I am of the opinion that this amount is reasonable in relation to the value of the
26 settlement. The administration costs will be deducted from the Maximum Settlement Amount.

27 27. Any portion of the Class Counsel Award, Service Payment to Plaintiff and/or
28 Settlement Administration Costs not approved by the Court shall be added to the Net Settlement

Amount. SA §§ D-4, D-5, D-5.

PAYMENTS TO SETTLEMENT CLASS MEMBERS AND AGGRIEVED EMPLOYEES

28. The Net Settlement Amount is the balance of the Maximum Settlement Amount remaining after deduction of the approved Service Payment to Plaintiff, Settlement Administration Costs, the PAGA Payment, and Class Counsel Award. SA § A-19. The Net Settlement Amount will be available for distribution to Participating Settlement Class Members. SA § D-10. Class Members do not need to do anything should they wish to receive their share of the settlement funds.

29. Assuming that the Court approves the requested attorney's fees (\$560,000), estimated litigation costs (\$20,000), Service Payment (\$10,000), Settlement Administration Costs (\$7,250) and the PAGA Payment (\$50,000), I estimate that the Net Settlement Amount will be at least \$952,750.

30. The Individual Class Settlement Payment to individuals Settlement Class Members (*i.e.*, those Class Members who do not opt-out of the Settlement) will be based on the number of pay periods he or she worked during the Class Period. *See* SA § D-10. Based on the size of the Class, the number of pay periods at issue and the Maximum Settlement Amount, Class Members will be entitled to recover, on average, up to approximately \$527.25 each or \$8.45 per pay period worked during the Class Period, after deductions for the PAGA Payment, Service Payment to Plaintiff, the requested attorneys' fees and costs and Settlement Administration Costs. The amount any particular Class Member will be entitled to recover will be greater or lower than this average depending on the number of pay periods he or she worked during the Class Period, with some entitled to receive more, and others less, and the number of opt-outs received. This is fair, as it directly allocates greater recovery to individual Class Members who have allegedly suffered greater harm.

31. The Settlement Agreement provides that all Individual Class Settlement Payments shall be allocated as twenty percent (20%) to W-2 wages and eighty percent (80%) to interest and penalties. SA § D-15.

32. Class Members who are also PAGA Group Members are also entitled to receive

1 twenty-five percent (25%) of the PAGA Payment (\$12,500). SA §§ A-23, D-8. As detailed in the
2 Settlement, the amount of the Individual PAGA Payment to each PAGA Group Member will be
3 determined by the number of pay periods he or she worked during the PAGA Period. SA §§ A-
4 17, D-8. All Individual PAGA Settlement Payments shall be allocated 100% as penalties. SA §
5 D-14.

6 33. Settlement Class Members and PAGA Group Members will have 180 days from
7 the mailing of the settlement payment to cash the check. SA § D-12. After the expiration of 180
8 days, the funds represented by uncashed settlement checks will be remitted to the *cy pres*
9 recipient Legal Aid at Work, pursuant to Civil Procedure section 384. SA § D-12. Neither I nor
10 my firm have any relationship with the designated *cy pres* recipient.

11 **STRENGTHS AND WEAKNESSES OF PLAINTIFF'S CLAIMS AND POTENTIAL**
12 **RECOVERABLE DAMAGES AND PENALTIES**

13 34. Based on an analysis of the facts and legal contentions in this case, documents
14 and information from Defendant, I negotiated the settlement with a clear understanding of the
15 value of the class and representative PAGA claims. I took into account the risk of not having the
16 claims certified and the risk of not prevailing at trial, even if the claims are certified. With the
17 assistance of an expert, I created a damages model to evaluate the realistic potential recovery for
18 the Class.

19 35. **Unpaid Overtime.** Defendant paid a variety of quarterly and monthly bonuses to
20 putative class members, including Plaintiff, other drivers, and sales representatives. Plaintiff
21 contends that Defendant did not include these non-discretionary incentive wages in the regular
22 rate computation for the purpose of paying overtime wages. Consequently, Plaintiff contends that
23 employees are owed additional overtime wages based on the correct regular rate of pay, and
24 derivative waiting time and wage statement penalties.

25 36. Defendant points to several alleged weaknesses in Plaintiff's theory of liability.
26 Defendant maintains that, as a matter of policy, when it paid the bonuses, it also included with
27 the payment retroactive adjustments to the overtime rate with the payment. Defendant further
28 maintains that it calculated these true-up payments at the flat-sum bonus rate under *Alvarado v.*

1 *Dart Container Corp. of Cal.* 4 Cal.5th 542 (Cal. 2018), such that the rate was not diluted by
2 overtime hours. Defendant provided confirmatory evidence to support this defense, including
3 wage statements and the formula used to calculate the incentive payments.

4 37. Defendant further maintains that the overtime claim is preempted by the FMSCA
5 and DOT regulations. These laws preempt overtime claims where the individual (a) was
6 employed by a motor carrier registered with the Department of Transportation, (b) engaged
7 through his or her job duties in activities that affect the safety of the motor vehicle operation, and
8 (c) engaged in the transport of property in interstate commerce. *See* 29 U.S.C. § 213(b)(1); 29
9 C.F.R. § 782.2; 49 U.S.C. 13501 *et seq.*; IWC Wage Order 9, § 3(L)(1); Cal. Code Regs. tit. 8, §
10 11090(3)(L). Here, Defendant contends that Plaintiff and other putative class members who were
11 drivers fall squarely within these requirements. Defendant presented confirmatory evidence that
12 it is a licensed DOT carrier and Plaintiff and other drivers operated covered commercial motor
13 vehicles. Defendant also produced documents demonstrating that Plaintiff and other drivers were
14 engaged in activities that affect the safety of the motor vehicle operations and moved goods in
15 interstate commerce.

16 38. To the extent that any damages arise from the alleged overtime violation, this
17 amount is reflected in the valuation of the derivative waiting time penalties claim.

18 39. **Rest and Meal Period Penalties.** Plaintiff alleges that, as a pattern and practice,
19 Defendant required putative class members to carry cell phones and/or handheld computers and
20 respond to calls during meal and rest periods. Plaintiff alleges that employees' breaks were
21 frequently interrupted and shortened as a result of being required to respond to work calls. On
22 the occasions where Defendant paid meal/rest period premiums, Plaintiff alleges that Defendant
23 paid the premium at a rate which was below the regular rate of pay, in violation of Labor Code
24 section 226.7.

25 40. Defendant asserts several defenses to the meal and rest period claims. First, as
26 noted above, Defendant contends that these claims are preempted by the FMSCA and DOT
27 regulations. Defendant further argues that the meal and rest period claims are not suitable for
28 class treatment because there is no common method of proof to establish liability. Citing the

1 recent Court of Appeal decision in *Donohue v. AMN Servs.*, Defendant argues that time records
2 showing missed, short, or delayed meal periods do not result in “automatic liability for
3 employers.” 11 Cal.5th 58 (2021). Instead, Plaintiff must prove that Defendant actively impeded,
4 discouraged, or prohibited employees from taking a break. *Brinker Restaurant Corp. v. Superior*
5 *Court*, 53 Cal.4th 1004 (2012). Thus, as argued by Defendant, individualized issues will
6 predominate as to the specific reason for an allegedly improper meal or rest period. Relatedly,
7 Defendant contends that its meal period compliance rates are above 95%, and on the occasions
8 where a meal period was missed/short/late, it automatically processed the meal period premium
9 pay.

10 41. With respect to the alleged meal and period violations, I estimate that Defendant’s
11 exposure is approximately **\$3,872,314.50**. Using Defendant’s payroll data, Plaintiff’s expert
12 estimates that Class Members worked approximately 224,482 workweeks during the Class
13 Period. Assuming that Class Members experienced one non-compliant meal or rest period each
14 week, with an average regular rate of \$23.00 per hour, I estimate that the maximum potential
15 exposure as \$5,163,086. However, I discounted this figure by 25% to account for the meal/rest
16 period penalties already paid by Defendant, difficulty of certifying and proving the claim
17 (particularly because rest periods do not have to be recorded), and to account for the possibility
18 of Class Members voluntarily choosing to forego a meal/rest period, yielding a realistic damage
19 estimate of approximately \$3,872,314.50.

20 42. **Waiting Time Penalties.** Plaintiff seeks waiting time penalties predicated on
21 Defendant’s alleged underpayment/non-payment of overtime and meal and rest period
22 premiums. Plaintiff also seeks waiting time penalties based on Defendant’s alleged
23 underpayment of sick pay earnings whenever non-discretionary incentive wages were paid
24 within the same work week. Under the Healthy Workplaces, Healthy Families Act of 2014, Cal.
25 Lab. Code section 245 *et seq.* (“HWHFA”), “[p]aid sick time for nonexempt employees shall be
26 calculated in the **same manner as the regular rate of pay** for the workweek in which the
27 employee uses paid sick time, whether or not the employee actually works overtime in that
28 workweek.” Cal. Lab. Code § 226(l)(1) (emphasis added). Here, Plaintiff alleges that during

workweeks where an employee earned incentive wages and sick pay earnings, Defendant paid the sick pay at the employee's base hourly rate. Plaintiff contends that the sick pay should have been paid at the employee's regular rate of pay, which includes all non-discretionary pay, such as incentive wages.

43. The waiting time penalties claim is contested on a number of grounds. With respect to the alleged unpaid sick time, Defendant contends that paid sick leave are not "wages" within the meaning of Labor Code sections 201, 202 and 203. Additionally, Defendant maintains that there is no private right of action to bring a paid sick pay claim. This argument presents novel legal issues and there is substantial ground for difference of opinion as to the remedies, if any, available to employees who have experienced a violation of the HWHFA. I am unaware of the existence of any published California Court of Appeal decision that grapples with this issue. There are a handful of unreported district court opinions, including *Titus v. McLane Foodservice, Inc.*, which have held that only the Labor Commissioner may recover penalties for a violation of HWHFA. 2016 WL 4797497. While *Titus* is by no means controlling authority, the Court may look to it as a persuasive authority, despite Plaintiff's contention that it was wrongly decided. Even had Plaintiff ultimately prevailed on the merits, given the novelty of the legal questions it raised, Defendant may have sought immediate appellate review through a writ or appeal.

44. Defendant further argues that, even if it is wrong on the law, Plaintiff cannot establish that Defendant willfully failed to pay wages at termination, as required by Labor Code section 203. Defendant argues that it disputes, in good faith, that the allegedly unpaid wages, including sick leave, amounts to wages due. This is a legal defense that, if successful, could potentially defeat Plaintiff's section 203 claim.

45. The data produced by Defendant indicates that there are 859 Class Members who separated employment during the period of May 6, 2017 to the end of the Class Period. Based on an average straight time hourly rate of \$23.00, I estimate that the maximum amount of waiting time penalties total \$4,741,680 (\$23 x 8 hours x 30 days x 859 Class Members). However, I discounted this figure by 25% to account for the difficulty of prevailing at class certification and at trial, Defendant's available defenses, and how a disproportionate award of penalties compared

1 to the amounts for the underlying wage claims would raise Due Process concerns. As a result, a
2 more realistic damage estimate for the waiting time penalty claim is approximately **\$3,556,260**.

3 46. **Wage Statement Claim.** The wage statement claim is purely derivative in nature,
4 and therefore vulnerable to a motion for summary judgment. *See Maldonado v. Epsilon Plastics,*
5 *Inc.*, 22 Cal. App. 5th 1308 (2018) (finding that the employees did not suffer a violation under
6 226(a) where their wage statement cause of action was derived from an underlying wage and
7 hour violation for overtime). Additionally, Defendant maintains that any alleged omission of
8 information from the wage statements was not a “knowing and intentional failure” by Defendant
9 to comply with Labor Code section 226(a), and penalties are therefore unwarranted. *See Harris*
10 *v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009).

11 47. The data produced by Defendant indicates that 1,348 Class Members received
12 approximately 57,159 wage statements during the period of May 6, 2019 to the end of the Class
13 Period. Thus, the maximum Labor Code section 226(e) penalties total \$5,648,500 [(\$50 x 1,348)
14 + (\$100 x 55,811)]. However, I discounted the maximum exposure by 75% to account for the
15 significant risk that the claim could be dismissed on a motion for summary judgment. As a result,
16 a more realistic damage estimate for the wage statement penalty claim is approximately
17 **\$1,412,125**.

18 48. **PAGA Penalties.** The data produced by Defendant indicates the Class Members
19 worked approximately 46,148 pay periods during the PAGA Period. Applying the standard civil
20 penalty of \$100 per pay period, yields \$4,614,800 in potential liability. However, I believe it is
21 unrealistic to assume that the Court will award the full amount of PAGA penalties if Plaintiff
22 prevails at trial. Indeed, the potential recovery is uncertain because the Court can decline to
23 award the full amount of PAGA penalties where “...if, based on the facts and circumstances of
24 the particular case, to do otherwise, would result in an award that is unjust, arbitrary and
25 oppressive, or confiscatory.” *See* Cal. Labor Code § 2699(e)(2).

26 49. Under the facts of this case, I appreciate the risk that Defendant could present a
27 persuasive argument to reduce the amount of PAGA penalties at trial. As shown in the Court of
28 Appeal’s decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA

1 claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the
2 employer's good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018).
3 Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539; *see O'Connor*,
4 2016 WL 4398271, at *17 (noting that even if PAGA penalties amounted to \$1 billion, such
5 award "could well be reduced, as a court may reduce the penalty when to do otherwise would
6 result in an award that is unjust, arbitrary and oppressive, or confiscatory"). Thus, assuming that
7 the Court uses *Carrington* as a benchmark and assesses PAGA penalties of approximately 10%
8 of the total maximum, a more realistic estimate of the PAGA penalties at issue is **461,480**.

9 50. Based on the class data provided by Defendant, I estimate that Defendant's
10 maximum liability exposure is approximately **\$9,302,179.50**.

11 **THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

12 51. I believe that Plaintiff and the Class could prevail at trial. However, I also believe
13 in the fairness of the settlement, which is based on factoring in the uncertainty and risks
14 attendant to not prevailing on one or more theories of liability, the possibility of losing at trial
15 and potential for appeals. Moreover, as Defendant adamantly denies that it should be liable for
16 the full extent of the alleged damages and penalties, there is a possibility that Plaintiff and the
17 Class would be awarded less or recover nothing at trial. Thus, after taking into account sharply
18 disputed legal issues involved in this litigation, the risks associated with further prosecution,
19 delays caused by potential appeals, and the substantial benefits to be received pursuant to the
20 Settlement, I believe that the proposed settlement is fair, reasonable, and adequate and is in the
21 best interests of the Class.

22 52. However, despite the asserted fairness of the settlement terms, should any Class
23 Member wish to pursue his or her own case for the claims being released herein, each Class
24 Member has the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement of the
25 class claims.

26 **NOTICE TO LWDA**

27 53. Concurrent with the filing of the Motion for Preliminary Approval of Class
28 Action Settlement, my office uploaded the Motion, Settlement Agreement, and proposed order to

1 the LWDA's website.

2 **ATTORNEY'S EXPERIENCE**

3 54. My firm has a great deal of experience in wage and hour class action litigation
4 and has been approved as class counsel in a number of class actions.

5 55. I am one of the primary attorneys on this matter. My qualifications are as follows:
6 I was the 2003 recipient of the Spelman Presidential Scholarship to Emory University School of
7 Law. During law school, I was a summer associate at the law firm of Sonnenschein, Nath and
8 Rosenthal, and clerked with the Atlanta office of the Equal Employment Opportunity
9 Commission. I received my J.D. from Emory University in 2006 and was admitted to the
10 California Bar in December 2006. Following law school, I was an associate at Sonnenschein
11 from September 2006 to May 2009.

12 56. Since 2009, my primary area of practice has been employment litigation. I have
13 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was
14 an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then
15 senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June
16 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500
17 companies in employment litigation in both state and federal courts, as well as before
18 government agencies, including the California Department of Labor. My practice included the
19 defense of single plaintiff and multi-plaintiff lawsuits involving claims under the California Fair
20 Employment and Housing Act, the California Labor Code and the Fair Labor Standards Act. I
21 also handled a number of wage and hour class actions.

22 57. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time
23 handling employment cases. I primarily represent employees.

24 58. I served as the lead associate on a number of wage and hour class actions,
25 including *Martha Cardenas v. Gold's Gym*, Los Angeles County Superior Court Case No.
26 BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los Angeles County Superior
27 Court Case No. BC439428; *Christopher Williams v. Allstate Insurance Co.*, Los Angeles County
28 Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles County Superior Court

Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los Angeles Superior Court Case No. BC523610; *Michael Oliver v. Konica Minolta Business Solutions U.S.A., Inc.*, Santa Clara County Superior Court Case No. 114-CV-263183; *Tessa Hodge v. Zale Delaware, Inc., d/b/a Piercing Pagoda*, San Bernardino Superior Court Case No CIVVS1301632; *Warren v. Paychex, Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia v. Zale Delaware Inc. et al*, S.D. Cal. Case No. 3:13-cv-01565; and *Benjamin Burgess et al v. Tesoro Refining and Marketing Company et al*, C.D. Cal. Case No. 2:10-cv-05870.

59. I have been approved as class counsel in numerous other wage/hour class actions that have been granted class certification and final approval, including: *Antonio Becerra-Mata v. PSC Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030; *Kosal So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court Case No. BC608609; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case No. 1-16-CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa Clara County Superior Court Case No. 17CV306751; *Foaad Hanna v. Equinix, LLC*, Santa Clara County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing Association*, Alameda County Superior Court Case No. RG18908139; *Cody Wirbick v. Sundt Construction, Inc.*, U.S. District Court for the Eastern District of California Case No. 2:19-cv-02067-MCE-CKD; *Jose Vasquez Ruiz v. Perdue Foods, LLC*, Sonoma County Superior Court Case No. SCV 264649; *Delmer Wood III v. Reeve Trucking Company Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2018-0004414; *Eric Chavez v. Converse, Inc.*, U.S. District Court for the Northern District of California Case No. 15-cv-03746-NC; *Jharett Siron v. Raypak, Inc.*, Ventura County Superior Court Case No. 56-2019-00527959-CU-OE-VTA; *Prexxie Pascual and Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court Case No. 19CV345211; and *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court Case No. 19CV341582.

60. I also second chaired two jury trials where I represented the prevailing defendant.

1 Both cases involved employees who brought claims against their former employers pursuant to
2 the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*,
3 Los Angeles County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt &*
4 *Whitney Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case No. BC468909. More
5 recently, I was lead trial counsel on a PAGA bench trial, in which the plaintiff was the prevailing
6 party.

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

9 Executed on this 28th day of February 2022, at Los Angeles, California.

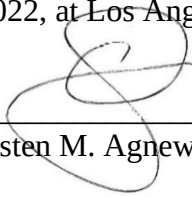
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12 _____
13 Kristen M. Agnew
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EXHIBIT A

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
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Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

JOSE PABLO JIMENEZ, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

NESTLE WATERS NORTH AMERICA,
INC., a Delaware corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.: BCV-20-102561

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

This Joint Stipulation of Class and Representative Action Settlement is made and entered into by and between Jose Pablo Jimenez and Blue Triton Brands, Inc., formerly known as Nestle Waters North America, Inc.

A. DEFINITIONS

The following definitions are applicable to this Agreement. Definitions contained elsewhere in this Agreement shall also be effective:

1. “Action” means *Jose Pablo Jimenez v. Nestle Waters North America, Inc.* filed in the Superior Court of the State of California for the County of Kern on November 2, 2020, Case No. BCV-20-102561, which was subsequently removed by Defendant to the United States District Court for the Eastern District of California, Case No. 1:20-cv-01762-NONE-JLT, on December 14, 2020. Consistent with the terms of the Agreement, the Parties will take steps to remand the Action to Superior Court in which the Complaint was filed.

2. “Agreement” or “Settlement Agreement” mean this Joint Stipulation of Class and Representative Action Settlement.

3. “Class” or “Class Member(s)” mean all current and former non-exempt employees of Defendant who worked in the State of California at any time during the Class Period. However, the Class shall exclude (a) those Class Members who participated in the *Ortega* Settlement and separated employment on or before May 9, 2018, and (b) any pay periods on or before May 9, 2018 for those in the Class who participated in the *Ortega* Settlement and remained employed after May 9, 2018.

4. “Class Counsel” means Larry W. Lee, Kristen M. Agnew and Nicholas Rosenthal of Diversity Law Group, P.C.

5. “Class Counsel Award” means such award of fees and costs and expenses as the Court may authorize to be paid to Class Counsel for the services they have rendered and will render to Plaintiff and the Class in the Action. Defendant agrees not to oppose a Class Counsel Award of up to thirty-five percent (35%) of the Maximum Settlement Amount, *i.e.* the sum of Five Hundred Sixty Thousand Dollars (\$560,000.00), and costs in the amount of up to Twenty Thousand Dollars

1 (\$20,000.00), subject to the Court finally approving this Settlement. Any portion of the Class
2 Counsel Award not approved by the Court shall be added to the Net Settlement Amount.

3 6. "Class List and Data" means a true and complete list of all Class Members that
4 Defendant will compile, based on its business records, and provide to the Settlement Administrator
5 within ten (10) business days after the Court grants preliminary approval of the Settlement. The
6 Class List shall be formatted in Microsoft Office Excel and shall include each Class Member's full
7 name, his or her last known home address, telephone number, Social Security Number, beginning
8 and ending dates of employment, number of pay periods during the Class Period, and the number
9 of pay periods during the PAGA period. As noted above, the pay periods during the Class Period
10 will be adjusted for the *Ortega* Settlement, meaning the Class and Class Period shall exclude (a)
11 those Class Members who participated in the *Ortega* Settlement and separated employment on or
12 before May 9, 2018, and (b) any pay periods on or before May 9, 2018 for those in the Class who
13 participated in the *Ortega* Settlement and remained employed after May 9, 2018. Defendant will
14 provide the Class List and Data confidentially to the Settlement Administrator only, and the Settlement
15 Administrator shall treat the information as private and confidential and take all necessary precautions
16 to maintain the confidentiality of the Class List and Data. The Settlement Administrator will only use
17 this information to carry out its duties as specified in this Settlement.

18 7. "Class Period" means the period from May 6, 2016 through January 10, 2022.
19 However, as noted above, the Class Period shall exclude (a) those Class Members who participated
20 in the *Ortega* Settlement and separated employment on or before May 9, 2018, and (b) any pay
21 periods on or before May 9, 2018 for those in the Class who participated in the *Ortega* Settlement
22 and remained employed after May 9, 2018.

23 8. "Class Representative" or "Plaintiff" means Plaintiff Jose Pablo Jimenez.

24 9. "Complaint" means the First Amended Complaint filed by Plaintiff in this Action
25 in the Superior Court for the State of California, County of Kern.

26 10. "Counsel for Defendant" or "Defense Counsel" means Spencer Skeen, Jesse
27 Ferrantella, and Cameron Flynn of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
28

1 11. “Court” means the Superior Court for the State of California, County of Kern, or
2 any other court taking jurisdiction of the Action.

3 12. “Defendant” means Blue Triton Brands, Inc., formerly known as Nestle Waters
4 North America, Inc.

5 13. “Effective Date” shall be the later of either: (i) the date that the Judgment of the
6 Court granting Final Approval of the settlement is final and no longer subject to appeal, if there
7 are objections; or (ii) five (5) business days after notice is provided by Plaintiff to Defendant that
8 the Court entered the order on Final Approval of the settlement, if there are no objections.

9 14. “Enhancement Payment” or “Service Payment” means the amount that the Court
10 authorizes to be paid to Plaintiff, in addition to his Individual Class Settlement Payment and
11 Individual PAGA Settlement Payment, in recognition of his efforts and risks in assisting with the
12 prosecution of the Action. Subject to the Court granting final approval, the Parties agree that
13 Plaintiff shall be paid up to Ten Thousand Dollars (\$10,000.00) from the Maximum Settlement
14 Amount.

15 15. “Final Approval” means that the Final Approval Order and Judgment have been
16 entered by the Court.

17 16. “Individual Class Settlement Payment” means the amount payable from the Net
18 Settlement Amount to each Settlement Class Member.

19 17. “Individual PAGA Settlement Payment” means the amount payable from the Net
20 PAGA Penalty to each PAGA Group Member.

21 18. “Maximum Settlement Amount” means the amount of One Million Six Hundred
22 Thousand Dollars (\$1,600,000.00) to be paid by Defendant as a result of this Stipulation. The
23 Maximum Settlement Amount includes all Individual Class Settlement Payments to Settlement
24 Class Members, all Individual PAGA Settlement Payments to PAGA Group Members, the
25 Enhancement/Service Payment to Plaintiff, Settlement Administration Costs to the Settlement
26 Administrator, the LWDA’s portion of the PAGA Payment, and the Class Counsel Award.
27 Defendant, however, shall pay the employer’s share of the payroll taxes separately from and in
28 addition to the Maximum Settlement Amount.

1 19. “Net Settlement Amount” means the balance of the Maximum Settlement Amount
2 remaining after deduction of the approved Enhancement Payment to Plaintiff, Settlement
3 Administration Costs, PAGA Payment, and Class Counsel Award. The entire Net Settlement
4 Amount is the maximum amount that will be available for distribution to Settlement Class
5 Members.

6 20. “Notice of Objection” means a Class Member’s valid and timely written objection
7 to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the
8 objector’s full name, signature, address, and telephone number; (b) a written statement of basis for
9 the objection; and (c) any copies of papers, briefs, or documents upon which the objection is based.
10 The Notice of Objection must be returned by mail to the Settlement Administrator at the specified
11 address indicated in the Notice Packet and must be postmarked by the Response Deadline. Any
12 Notice of Objection received shall apply solely to the Released Class Claims. There is no right to
13 object to the Released PAGA Claims.

14 21. “Notice Packet” means the Notice of Proposed Class Action Settlement,
15 substantially in the form attached as Exhibit A. The Notice Packet shall be mailed in English.

16 22. “*Ortega Settlement*” means the settlement in *Ortega et al. v. Nestle Waters N. Am.,*
17 *Inc.*, Los Angeles County Superior Court, Case No. BC623610, which released the claims at issue
18 in the Agreement for a period from June 10, 2012 through May 9, 2018.

19 23. “PAGA Group Members” means all current and former non-exempt employees of
20 Defendant who worked in the State of California at any time during the PAGA Period.

21 24. “PAGA Payment” means the portion of the Maximum Settlement Amount that the
22 Parties have agreed will be allocated to resolve all claims, penalties, and remedies under the Private
23 Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*, “PAGA”). The amount of the
24 PAGA Payment is subject to Court approval pursuant to California Labor Code section 2699(l).
25 The Parties have agreed that Fifty Thousand Dollars (\$50,000.00) of the Maximum Settlement
26 Amount shall be allocated to the resolution of any PAGA Group Members’ claims arising under
27 PAGA. Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Payment, *i.e.* the sum of
28 Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00), shall be paid to the California Labor

1 and Workforce Development Agency (“LWDA”). The remaining twenty-five percent (25%) of
2 the PAGA Payment, *i.e.* the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) (“Net
3 PAGA Penalty”), shall be distributed to the PAGA Group Members.

4 25. “PAGA Period” means the period from May 6, 2019 to January 10, 2022.

5 26. “Parties” means Plaintiff, on behalf of himself, PAGA Group Members and
6 Settlement Class Members, and Defendant collectively.

7 27. “Preliminary Approval” means the Court’s order granting preliminary approval of
8 the Settlement.

9 28. “Qualifying Pay Period(s)” means any pay period worked during the Class Period
10 by a Settlement Class Member.

11 29. “Released Class Claims” means any claims for wages, premiums, fringes,
12 liquidated damages, or penalties alleged or that could have been alleged against Released Parties
13 arising out of the facts, circumstances, and primary rights at issue in the operative complaint and
14 any amendments, including all claims for: (1) failure to pay overtime wages, including claims for
15 unpaid time and off-the-clock work, in violation of Labor Code sections 510, 558, and 1194; (2)
16 failure to pay minimum wages, including claims for unpaid time and off-the-clock work, in
17 violation of Labor Code sections 1194, 1197 and 1197.1; (3) failure to provide meal periods and
18 properly calculate the rate of compensation on premiums paid, in violation of Labor Code sections
19 226.7 and 512; (4) failure to provide rest periods and properly calculate the rate of compensation
20 on premiums paid, in violation of Labor Code section 226.7; (5) failure to pay or properly calculate
21 sick pay wages, in violation of Labor Code section 246; (6) failure to pay wages during
22 employment and upon termination, in violation of Labor Code sections 201, 202, 203 and 204; (7)
23 failure to provide accurate itemized wage statements, in violation of Labor Code section 226(a);
24 and (8) violations of California’s unfair competition law (Business and Professions Code section
25 17200, *et seq.*) predicated on the above alleged violations. The Released Class Claims covers
26 claims that accrued during the Class Period.

27 30. “Released PAGA Claims” all claims for penalties under the California Private
28 Attorneys’ General Act, Labor Code section 2698 *et. seq.* alleged or that could have been alleged

1 against Released Parties arising out of the facts, circumstances, and primary rights at issue in the
2 operative complaint and any amendments, including all claims for (1) failure to pay overtime
3 wages, including claims for unpaid time and off-the-clock work; (2) failure to pay minimum
4 wages, including claims for unpaid time and off-the-clock work; (3) failure to provide meal periods
5 and properly calculate the rate of compensation on premiums paid; (4) failure to provide rest
6 periods and properly calculate the rate of compensation on premiums paid; (5) failure to pay or
7 properly calculate sick pay wages (6) failure to pay wages during employment and upon
8 termination; and (7) failure to provide accurate itemized wage statements during the PAGA Period.

9 31. “Released Parties” means Defendant and each of their insurers, brands, concepts,
10 affiliates, subsidiaries, parent companies, predecessors, successors, assigns, employees, officers,
11 directors, agents, attorneys, administrators, representatives, heirs, estates, powers-of-attorney, and
12 any individual or entity that could be jointly liable with Defendant.

13 32. “Request for Exclusion” means a timely letter submitted by a Class Member
14 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a)
15 clearly state that the Class Member does not wish to be included in the Settlement; (b) set forth the
16 name, address, telephone number, and last four digits of the Social Security Number of the Class
17 Member requesting exclusion; (c) be signed by the Class Member; (d) be returned by mail to the
18 Settlement Administrator at the specified address indicated in the Notice Packet; and (e) be
19 postmarked on or before the Response Deadline. There is no right to request exclusion from the
20 Released PAGA Claims.

21 33. “Response Deadline” means forty-five (45) days after the Settlement Administrator
22 initially mails the Notice Packet to Class Members, and the last date on which Class Members may
23 submit a Request for Exclusion or Notice of Objection to the Settlement.

24 34. “Settlement” means the agreement among the Parties to resolve the Action, as set
25 forth in this Stipulation.

26 35. “Settlement Administration Costs” means the fees and expenses reasonably
27 incurred by the Settlement Administrator as a result of the procedures and processes expressly
28 required by this Agreement, which are estimated at Fifteen Thousand Dollars (\$15,000.00). Any

1 portion of the Settlement Administration Costs not used or approved by the Court shall be added
2 to the Net Settlement Amount.

3 36. "Settlement Administrator" means Phoenix Settlement Administrators.

4 37. "Settlement Class" or "Settlement Class Member(s)" means all hourly non-exempt
5 employees who worked for Defendant in California at any time during the Class Period, who do
6 not opt out of the Settlement.

7 38. "Settlement Payment Check" means the payment of the Individual Class Settlement
8 Payment to Settlement Class Members and Individual PAGA Settlement Payment to PAGA Group
9 Members.

10 **B. FACTUAL BACKGROUND**

11 1. On or about October 16, 2020, Plaintiff sent written notice to the California Labor
12 & Workforce Development Agency ("LWDA") of Defendants' alleged violations of Labor Code
13 sections 201, 202, 203, 204, 226(a), 226.7, 246, 510, 512, 558 and 1194.

14 2. On or about November 2, 2020 Plaintiff filed a Class Action Complaint for
15 Damages in Kern Superior Court, Case No. BCV-20-102561, naming Nestle Waters North
16 America, Inc. as a defendant. As set forth in the complaint, Plaintiff alleged causes of action for
17 (1) violation of Labor Code sections 510, 558, and 1194; (2) violation of Labor Code sections
18 226.7 and 512; (3) violation of Labor Code section 226.7; (4) violation of Labor Code sections
19 201, 202 and 203; (5) violation of Labor Code section 226(a); (6) violation of Business and
20 Professions Code section 17200, et seq.; and (7) violation of California Labor Code section 2698,
21 *et seq.*, the Private Attorneys General Act.

22 3. On December 14, 2020, Defendant filed a Notice of Removal in the United States
23 District Court for the Eastern District of California, pursuant to 28 U.S.C. section 1332(d)(2)
24 (Class Action Fairness Act ["CAFA"]), thereby effectuating the removal of the Action to Federal
25 Court.

26 4. On or about February 24, 2021, the Parties met and conferred as required by Rule
27 26(f) of the Federal Rules of Civil Procedure. The Parties filed a Joint Rule 26(f) report with the
28 district court, on March 8, 2021 (Dkt. No. 5).

1 5. On March 12, 2021, the Parties exchanged initial disclosures, pursuant to Rule
2 26(a) of the Federal Rules of Civil Procedure. The Parties identified relevant documents and the
3 identifies of witnesses who may have discoverable information related to the claims and defenses
4 at issue in the Action.

5 6. On March 17, 2021, Plaintiff served Interrogatories (Set One) and Requests for
6 Production (Set One). The discovery required Defendant to provide documents and information
7 relevant to class certification, including the number of putative class members, Defendant's
8 policies and procedures with respect to the calculation of the regular rate of pay used to calculate
9 overtime wages, Defendant's policies and procedures with respect to the calculation and payment
10 of meal and rest period premiums, Defendant's meal and rest period policies, Defendant's policies
11 and procedures with respect to the rate used to calculate sick pay earnings, and payroll records of
12 putative class members.

13 7. On or about May 7, 2021, the Parties agreed to engage in private mediation with a
14 third-party neutral. Shortly thereafter, the Parties filed a Stipulation and [Proposed] Order to Stay
15 the Case Pending Mediation. The district court entered an order approving the Stipulation, on May
16 26, 2021 (Dkt. No. 10).

17 8. On October 12, 2021, the Parties participated in a full day mediation with the
18 Honorable Brian C. Walsh (Ret.). After continued arm's length negotiations, facilitated by the
19 mediator, the Parties reached a settlement in principle and entered into a Memorandum of
20 Understanding. The Parties now formalize their agreement and all material terms in this Settlement
21 Agreement.

22 9. Based on their investigation and evaluation of this case, Class Counsel has
23 concluded that the settlement described in this Settlement Agreement is fair, reasonable, and
24 adequate and is in the best interest of the Class in light of all known facts and circumstances,
25 defenses asserted by Defendant, adverse findings regarding liability, and numerous potential
26 appellate issues.

27 10. Neither this Settlement Agreement, nor any document referred to or contemplated
28 herein, nor any action taken to carry out the terms of this Settlement, is, may be construed as, or

1 may be used as, an admission, concession, or indication by or against Defendant of evidence of
2 any unlawful conduct, fault, wrongdoing, or liability whatsoever.

3 11. The Parties recognize the risk, expense, and delay in continuing the Action, and
4 therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties
5 desire to settle, compromise, and discharge all disputes and claims arising from or relating to the
6 Action.

7 **C. REMAND, AMENDED COMPLAINT AND AMENDED PAGA NOTICE**

8 1. Remand. The Parties have agreed to remand the Action from the United States
9 District Court for the Eastern District of California to the California Superior Court, County of
10 Kern. The remand is without prejudice to Defendant's right to file a Notice of Removal in
11 accordance with 28 U.S.C. section 1332(d)(2).

12 2. Amended Complaint. In connection with this Settlement, Plaintiff shall file a First
13 Amended Complaint in Kern County Superior Court in the form attached hereto as Exhibit B. The
14 Parties agree that Defendant shall maintain any and all affirmative defenses but shall not be
15 required to file an Answer or other responsive pleading to the First Amended Complaint and that
16 such agreement precludes Plaintiff from any right to: (a) obtain a default judgment against
17 Defendant on the basis that Defendant did not respond to the First Amended Complaint; (b) argue
18 that Defendant waived any right to a demurrer or other challenge to the pleadings; and (c) argue
19 that Defendant waived any affirmative defense. If the Settlement does not obtain Preliminary and
20 Final Approval, Plaintiff will withdraw the First Amended Complaint and it will be void ab initio.

21 3. Amended Notice to LWDA. In connection with this Settlement, Plaintiff will send
22 an amended/supplemental written notice to the California Labor & Workforce Development
23 Agency ("LWDA") of Defendant's alleged violations of Labor Code sections 201, 202, 203, 204,
24 226(a), 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1 and attaching and referencing the First
25 Amended Complaint.

26 **D. MONETARY CONSIDERATION**

27 1. Settlement Consideration. Defendant shall pay the sum of the Maximum Settlement
28 Amount as specified in this Agreement, which shall be used to pay: (1) Individual Class Settlement

1 Payments to Settlement Class Members; (2) Class Counsel Award; (3) Enhancement Payment; (4)
2 Settlement Administration Costs; (5) the LWDA's portion of the PAGA Payment; and (6) the
3 Individual PAGA Settlement Payments to PAGA Group Members. The Parties agree that this is a
4 non-reversionary Settlement and that no portion of the Maximum Settlement Amount shall revert
5 to Defendant. In no event shall Defendant be required to pay more than the Maximum Settlement
6 Amount as specified in this Agreement.

7 2. Calculation of Maximum Settlement Amount. The Maximum Settlement Amount
8 was calculated with, and is premised on, Defendant's representation that are 1,807 Class Members
9 who worked approximately 112,693 pay periods during the Class Period. In the event that the
10 number of pay periods worked by Class Members during the Class Period exceeds 112,693 by
11 more than ten percent (10%), the Maximum Settlement Amount will increase by a proportionate
12 percentage for all additional pay periods above the ten percent allowance (*i.e.* if the number of pay
13 periods worked by Class Members during the Class Period increases by twelve percent, the
14 Maximum Settlement Amount would increase by two percent.)

15 3. Funding of the Maximum Settlement Amount. Within thirty (30) calendar days
16 after the Effective Date, Defendant shall make a one-time deposit of the Maximum Settlement
17 Amount into a Qualified Settlement Fund to be established by the Settlement Administrator. In
18 addition, and as an amount separate from the Maximum Settlement Amount, Defendant shall also
19 transmit the employer-side taxes on the wage portion of the Individual Class Settlement Payments
20 to the Settlement Administrator for deposit into the Qualified Settlement Account.

21 4. Class Counsel Award. Defendant agrees not to oppose or impede any application
22 or motion by Class Counsel for attorneys' fees of up thirty-five percent (35%) of the Maximum
23 Settlement Amount, *i.e.* the sum of Five Hundred Sixty Thousand Dollars (\$560,000), and costs
24 in the amount of up to Twenty Thousand Dollars (\$20,000.00). The Class Counsel Award shall be
25 paid from the Maximum Settlement Amount. It is understood by Class Counsel that the Court has
26 final discretion in any fee award. The Settlement Administrator shall issue an IRS Form 1099 to
27 Class Counsel reflecting the awarded attorneys' fees, costs, and expenses. Any portion of the
28 Class Counsel Award not awarded to Class Counsel shall be added to the Net Settlement Amount

1 and shall be distributed as provided in this Agreement. Notwithstanding any other provision of this
2 Agreement, if the Court should fail to award attorneys' fees to Class Counsel in the full amount
3 provided for in this Agreement, no order of the Court or modification of any order of the Court
4 concerning the amount of any attorneys' fees to be paid by Defendant to Class Counsel pursuant
5 to this Settlement shall constitute grounds for cancellation or termination of the Agreement or
6 grounds for limiting any other provision of the Judgment. It is agreed that no order of the Court,
7 including any order concerning attorneys' fees, may alter or otherwise increase the Maximum
8 Settlement Amount.

9 5. Class Representative Enhancement Payment. Defendant agrees not to oppose or
10 impede any application or motion by Plaintiff for an Enhancement Payment of up to Ten Thousand
11 Dollars (\$10,000.00) to Plaintiff. The Enhancement Payment shall be paid from the Maximum
12 Settlement Amount, and shall be paid in addition to Plaintiff's Individual Class Settlement
13 Payment and Individual PAGA Settlement Payment. It is understood by Class Counsel and
14 Plaintiff that the Court has final discretion in any Enhancement Payment. The Settlement
15 Administrator shall issue an IRS Form 1099 to Plaintiff reflecting the Enhancement Payment.
16 Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his
17 Enhancement Payment and shall hold harmless Defendant from any claim or liability for taxes,
18 penalties, or interest arising as a result of the Enhancement Payment. Any portion of the
19 Enhancement Payment not awarded to Plaintiff shall be added to the Net Settlement Amount and
20 shall be distributed to Settlement Class Members as provided in this Agreement. Any order of the
21 Court or modification of any order of the Court concerning the amount of the Enhancement
22 Payment shall not constitute grounds for cancellation or termination of the Agreement or grounds
23 for limiting any other provision of the Judgment.

24 6. Settlement Administration Costs. The Settlement Administrator shall be paid for
25 the reasonable costs of administration of the Settlement from the Maximum Settlement Amount,
26 currently estimated at Fifteen Thousand Dollars (\$15,000.00). These costs, which shall be paid
27 from the Maximum Settlement Amount, shall include, *inter alia*, the required tax reporting on the
28 Individual Class Settlement Payments and Individual PAGA Settlement Payments, the issuing of

1099 and W-2 IRS Forms, establishing a Qualified Settlement Fund, administering and distributing the Maximum Settlement Amount, administering and sending the Notice Packet, and providing necessary reports and declarations. Any portion of the Settlement Administration Costs not allowed shall be added to the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement.

7. PAGA Payment. Subject to Court approval, the Parties agree that the amount of Fifty Thousand Dollars (\$50,000.00) of the Maximum Settlement Amount shall be designated for satisfaction of claims for civil penalties under the PAGA. The Settlement Administration shall pay seventy-five percent (75%) of the PAGA Payment, *i.e.* the sum of Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00), to the LWDA. The remaining twenty-five percent (25%), *i.e.* the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) (“Net PAGA Penalty”), shall be distributed to PAGA Group Members.

8. Individual PAGA Payment. The Net PAGA Penalty shall be used to satisfy Individual PAGA Settlement Payments to PAGA Group Members in accordance with the terms of this Agreement. The Settlement Administrator will allocate the Net PAGA Penalty by (1) calculating the total pay periods during the PAGA Period using the Class List and Data; and (2) then dividing the Net PAGA Penalty by the number of pay periods during the PAGA Period, which will result in the PAGA Period Pay Period Value. The number of pay periods worked by each PAGA Group Member will be multiplied by the PAGA Period Pay Period Value to determine the Individual PAGA Settlement Payment.

9. PAGA Group Members are entitled to 100% of the Net PAGA Penalty. Defendant maintains no reversionary right to any portion of the Net PAGA Penalty.

10. Net Settlement Amount. The Net Settlement Amount shall be used to satisfy Individual Class Settlement Payments to Settlement Class Members in accordance with the terms of this Agreement. The Settlement Administrator will allocate the Individual Class Settlement Payments by (1) calculating the total Qualifying Pay Periods using the Class List and Data; and (2) then dividing the Net Settlement Amount by the number of Qualifying Pay Periods, which will result in the Pay Period Value. The number of pay periods worked by each Settlement Class

1 Member will be multiplied by the Pay Period Value to determine the Individual Class Settlement
2 Payments.

3 11. Settlement Class Members are entitled to 100% of the Net Settlement Amount.
4 Defendant maintains no reversionary right to any portion of the Net Settlement Amount. If there
5 are any timely submitted Requests for Exclusion, the Settlement Administrator shall
6 proportionately increase the Individual Class Settlement Payments for each Settlement Class
7 Member so that the amount actually distributed to Settlement Class Members equals 100% of
8 the Net Settlement Amount.

9 12. Uncashed Settlement Payment Checks. Any Settlement Payment Checks issued by
10 the Settlement Administrator to Settlement Class Members and PAGA Group Members shall be
11 negotiable for not less than one hundred eighty (180) days from the date of their issuance. This is
12 a non-reversionary settlement. All Individual Class Settlement Payments to Settlement Class
13 Members and Individual PAGA Settlement Payments to PAGA Group Members, that remain un-
14 cashed after one hundred eighty (180) days of the mailing of the Settlement Payment Check by the
15 Settlement Administrator shall be paid out pursuant to California Code of Civil Procedure section
16 384 to the following *cy pres* recipient: Legal Aid at Work. In such event, those Settlement Class
17 Members and PAGA Group Members will nevertheless remain bound by the Settlement. Both
18 Plaintiff and Defendant, and their respective counsel, represent that they do not have any
19 involvement in the governance of work of Legal Aid at Work. In compliance with California Code
20 of Civil Procedure section 384, after all amounts actually paid to Settlement Class Members and
21 PAGA Group Members have been made (i.e., the time for Settlement Class Members and PAGA
22 Group Members to negotiate the checks has expired), the Settlement Administrator shall provide
23 a report to the Court, and if there are any remaining unclaimed funds (i.e., funds from checks not
24 negotiated by Settlement Class Members and PAGA Group Members), the Final Judgment shall
25 be amended to direct said funds to be paid to Legal Aid at Work. Defendant shall not pay any
26 interest on the funds transferred to the Settlement Administrator, nor shall Defendant have any
27 obligation to pay amounts in interest or otherwise over the Maximum Settlement Amount set forth
28 in the settlement agreement.

1 13. No Credit Toward Benefit Plans. The Individual Class Settlement Payments made
2 to Settlement Class Members, the Individual PAGA Settlement Payments made to PAGA Group
3 Members, the Enhancement Payment made to Plaintiff, as well as any other payments made
4 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
5 benefit plans to which any Settlement Class Member and/or PAGA Group Member may be
6 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock
7 purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plans. Rather,
8 it is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts
9 to which any Settlement Class Member or PAGA Group Member may be entitled under any benefit
10 plans.

11 14. Tax Treatment of Individual PAGA Settlement Payments. All Individual PAGA
12 Settlement Payments shall be allocated 100% as penalties. The amount of the payment shall be
13 reported on an IRS Form 1099 by the Settlement Administrator.

14 15. Treatment of Individual Class Settlement Payments. All Individual Class
15 Settlement Payments shall be allocated as 20% to W-2 wages and 80% to interest and penalties.
16 The amount allocated to penalties shall be reported on an IRS Form 1099 by the Settlement
17 Administrator.

18 16. Administration of Taxes by the Settlement Administrator. The Settlement
19 Administrator shall be responsible for issuing to Plaintiff, Settlement Class Members, PAGA
20 Group Members and Class Counsel, 1099 and W-2 IRS Forms or other tax forms as may be
21 required by law for all amounts paid pursuant to this Agreement.

22 17. Tax Liability. Defendant, Defense Counsel, the Settlement Administrator, and
23 Class counsel make no representation as to the tax treatment or legal effect of the payments called
24 for hereunder, and Plaintiff, PAGA Group Members and Settlement Class Members are not relying
25 on any statement, representation, or calculation by Defendant, Defense Counsel, Plaintiff's
26 counsel, or by the Settlement Administrator in this regard. Plaintiff, PAGA Group Members and
27 Settlement Class Members understand and agree that they will be solely responsible for the
28 payment of any and all taxes and penalties assessed on their respective payments described herein

1 and will defend, indemnify, and hold Defendant, Defense Counsel, Plaintiff's counsel, and the
2 Settlement Administrator free and harmless from and against any claims resulting from treatment
3 of such payments as non-taxable penalties/damages.

4 18. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
5 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
6 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
7 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
8 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
9 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
10 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
11 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
12 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
13 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
14 EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL
15 FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,
16 (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
17 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
18 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
19 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
20 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
21 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
22 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
23 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
24 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
25 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
26 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
27 AGREEMENT.

1 **E. ADMINISTRATION OF THE SETTLEMENT**

2 1. Settlement Administration Process. The Parties agree to cooperate in the
3 administration of the Settlement and to make all reasonable efforts to control and minimize the
4 costs and expenses incurred in the administration of the Settlement. The Settlement Administrator
5 shall provide the following services:

6 a. Establish and maintain a Qualified Settlement Fund account;
7 b. Calculate the number of Qualifying Pay Periods worked by Class Members;
8 c. Calculate the amount of the Settlement each Class Member is eligible to
9 receive;

10 d. Verify the last known address for each Class Member through a generally
11 utilized, national address update database prior to mailing the Notice Packet;

12 e. Print and mail the Notice Packet in English;

13 f. Conduct additional address searches for mailed Notice Packets that are
14 returned as undeliverable and, to the extent new and more current addresses are found, also reprint
15 and re-mail Notice Packets accordingly;

16 g. Establish and maintain a toll-free informational telephone support line to
17 assist Class Members who have questions regarding the Notice Packet;

18 h. Field inquiries from Class Members, and administer any Requests for
19 Exclusion;

20 i. Providing weekly status reports to counsel for the Parties, including: (a) the
21 number of Notices mailed (including information regarding undeliverable and/or emailed
22 Notices); (b) the number of disputes received (and sending copies of said disputes); (c) the number
23 of objections received; and (d) the number of requests for exclusion received;

24 j. Calculate Individual Class Settlement Payments and Individual PAGA
25 Settlement Payments;

26 k. Distribute and pay the Service Payment, Individual Class Settlement
27 Payments, Individual PAGA Settlement Payments, the LWDA's portion of the PAGA Payment,
28 and fees and costs awarded to Class Counsel;

1 l. Prepare and print 1099 and W-2 IRS Forms; and

2 m. Provide declarations and/or other information to the Court as requested.

3 2. Delivery of the Class List and Data. Within ten (10) business days of Preliminary
4 Approval, Defendant shall provide the Class List and Data to the Settlement Administrator.

5 3. Notice by First-Class U.S. Mail. Within five (5) business days after receiving the
6 Class List and Data from Defendant, the Settlement Administrator shall mail a Notice Packet to
7 all Class Members via regular First-Class U.S. Mail, using the most current, known mailing
8 addresses identified in the Class List.

9 4. Confirmation of Contact Information in the Class List. Prior to mailing, the
10 Settlement Administrator shall perform a search based on the National Change of Address
11 Database for information to update and correct for any known or identifiable address changes.

12 5. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
13 Packet will provide: (1) information regarding the nature of the Action; (2) a summary of the
14 Settlement's principal terms; (3) the Class definition; (4) each Class Member's estimated
15 Individual Class Settlement Payment and the formula for calculating Individual Class Settlement
16 Payments; (5) each PAGA Group Member's estimated Individual PAGA Settlement Payment and
17 the formula for calculating Individual PAGA Settlement Payments; (6) the dates that comprise the
18 Class Period and PAGA Period; (7) instructions on how to submit valid Requests for Exclusion,
19 or objections to the settlement of the Released Class Claims; (8) the deadlines by which the Class
20 Member must submit a Request for Exclusion or Notice of Objection to the settlement of the
21 Released Class Claims; (9) the date for the final approval hearing; and (10) the claims to be
22 released. The Notice Packet will also inform Class Members that, in order to receive the Individual
23 Class Settlement Payment and Individual PAGA Settlement Payment, they do not need to do
24 anything except keep the Settlement Administrator apprised of their current mailing addresses.

25 6. Re-Mailing of Returned Notices. Any Notice Packets returned to the Settlement
26 Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly via
27 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
28 Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding

1 address is provided, the Settlement Administrator shall promptly attempt to determine the correct
2 address using a skip-trace, or other search using the name, address, and/or Social Security Number
3 of the Class Member involved and shall then perform a re-mailing. Those Class Members who
4 receive a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) days
5 from the original Response Deadline.

6 7. Request for Exclusion Procedures. Any Class Member, other than Plaintiff, may
7 opt-out from the Settlement by submitting a written Request for Exclusion to the Settlement
8 Administrator postmarked by the Response Deadline. A Request for Exclusion must: (1) contain
9 the name, address, telephone number, and the last four digits of the Social Security Number of the
10 person requesting exclusion; (2) clearly state that the Class Member does not wish to be included
11 in the Settlement; (3) be signed by the Class Member; (4) be returned by mail to the Settlement
12 Administrator at the specified address; and (5) be postmarked on or before the Response Deadline.
13 The date of the postmark shall be the exclusive means to determine whether a Request for
14 Exclusion is timely. By submitting such a Request for Exclusion, a Class Member shall be deemed
15 to have exercised his or her option to opt out of the Action and not be bound by this Agreement.
16 Accordingly, a Class Member who timely submits a valid Request for Exclusion will not be
17 entitled to an Individual Class Settlement Payment under this Settlement and will not be bound by
18 the terms of the Settlement pertaining to the release of the class claims. Provided, however, that
19 no PAGA Group Member may opt out of or be excluded from participating in the settlement of
20 the Released PAGA Claims. PAGA Group Members will be entitled to their portion of the Net
21 PAGA Penalty, regardless of whether the employee submits a valid Request for Exclusion.

22 Any Class Member who fails to submit a valid and timely Request for Exclusion on or
23 before the Response Deadline shall be deemed a Settlement Class Member, and will be bound by
24 all terms of the Settlement to the fullest possible extent, if the Settlement is granted final approval
25 by the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise
26 encourage Class Members to submit a Request for Exclusion. Class Counsel shall not represent
27 any Class Members with respect to any such request.

1 8. No PAGA Opt-Out. Consistent with California law, no Class Member who is a
2 PAGA Group Member may opt out of or be excluded from participating in the settlement of the
3 Released PAGA Claims. All PAGA Group Members shall be bound by the judgment entered
4 herein and will have released the Released PAGA Claims upon the final approval of this Settlement
5 and the deposit of the Maximum Settlement Amount into a Qualified Settlement Fund.

6 9. Settlement Terms Bind All Settlement Class Members Who Do Not Opt-Out. Any
7 Class Member who does not affirmatively opt-out of the Settlement by submitting a valid and
8 timely Request for Exclusion shall be bound by the terms of the Settlement to the fullest possible
9 extent, including those pertaining to the Released Class Claims, as well as any Judgment that may
10 be entered by the Court.

11 10. Disputes Regarding Individual Settlement Payments. In the event that Class
12 Members have a dispute as to the data provided by the Defendant, Class Members will have the
13 opportunity to provide documentation and/or an explanation. If there is a dispute, the Settlement
14 Administrator will consult with the Defendant to determine whether an adjustment is warranted.
15 The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual
16 Class Settlement Payments and/or Individual PAGA Settlement Payments under the terms of this
17 Agreement, and that determination shall be binding.

18 11. Objection Procedures. Any Class Member who does not opt-out of the settlement
19 of the Released Class Claims shall be entitled to object to the Settlement. To object to the
20 Settlement, a Class Member must return by mail a written statement of objection to the Settlement
21 Administrator at the specified address by the Response Deadline. The Notice of Objection must
22 include: (a) the objector's full name, signature, address, and telephone number; (b) a written
23 statement of the basis for the objection; and (c) any copies of papers, briefs, or documents upon
24 which the objection is based. Class Members may also appear at the Final Fairness Hearing to
25 present any objections, even if they do not submit written objections. Any Class Member who
26 submits a valid Request for Exclusion shall not be allowed to object to this Settlement.

27 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
28 Class Members to submit written objections to the Settlement or appeal from the Order and

Judgment. Class Counsel shall not represent any Class Members with respect to any such objections to this Settlement. No later than five (5) days after the Response Deadline, the Settlement Administrator shall provide Defense Counsel with a complete list of all Class Members who have timely and properly requested exclusion from the Class.

12. Defendant's Right to Rescind. If more than five percent (5%) of the Class Members submit a timely and valid Request for Exclusion, Defendant will have the right, but not the obligation, to revoke and void this Agreement at their discretion. Defendant must exercise the option to rescind within ten (10) business days of Defense Counsel receiving notification from the Settlement Administrator that more than five percent (5%) of the Class Members have submitted timely and valid Requests for Exclusion from the Settlement. If Defendant exercises this right to void the Agreement, then the Parties will have no further obligations under the Agreement, including, without limitation, any obligation by Defendant to pay the Maximum Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant shall pay all settlement administration costs incurred by the Settlement Administrator up to the date of Defendant's notice to rescind, in an amount that shall not exceed \$15,000.00. In the event the Settlement is terminated, the Parties shall proceed in all respects as if this Agreement had not been executed. The Parties agree that they will not encourage any Class Member to object to the Settlement or to opt out.

13. Settlement Administrator's Reports of Information. The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly report which certifies the number of Class Members who have submitted valid Requests for Exclusion. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement as needed or requested. The Settlement Administrator shall also forward to the Parties' counsel any Notices of Objection received immediately upon receipt. Further, to the extent there is a question about the validity or timeliness of a Request for Exclusion, the Settlement Administrator shall immediately forward any Request for Exclusion to the Parties' counsel (with identifying information of the Class Member kept anonymous when presented to

Class Counsel to the extent possible) so that they can determine whether the Request for Exclusion is valid and timely.

14. Distribution Timing of Individual Settlement Payments. After Effective Date, and within fifteen (15) calendar days of Defendant funding the Maximum Settlement Amount, the Settlement Administrator shall issue payments to (1) Settlement Class Members; (2) the PAGA Group Members; (3) the Labor and Workforce Development Agency; (4) Plaintiff; and (5) Class Counsel. The Settlement Administrator shall also issue a payment to itself for services performed in connection with the Settlement.

15. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator shall provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

16. Administration Costs if Settlement Fails or is Delayed. If an objection to the Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if the Settlement is voided or rescinded, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

17. Disputes Regarding Administration of Settlement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

F. RELEASE LANGUAGE

1. Release of Claims by Plaintiff. As a condition to obtaining the Enhancement Payment provided for herein, Plaintiff (on behalf of himself and his spouse, heirs, executors, administrators, trustees, and/or permitted assigns) also agrees to a general release of any and all claims against Defendant and the Released Parties (as defined above)—which shall include without limitation any and all claims which in any way relate to his employment with Defendant, under State or Federal law, in tort, common law, statute, contract, or equity, whether pled in the Complaint or not, including but not limited to any claims under the FLSA, Title VII, ADA, FEHA,

1 ADEA, PAGA, California Labor Code, or any Industrial Welfare Commission Wage Order—now
2 existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence
3 from the beginning of time to the date of execution hereof. Plaintiff further expressly waives and
4 relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits of Section
5 1542 of the California Civil Code, which provides: “**A general release does not extend to claims**
6 **that the creditor or releasing party does not know or suspect to exist in his or her favor at**
7 **the time of executing the release and that, if known by him or her, would have materially**
8 **affected his or her settlement with the debtor or released party.**”

9 2. Release of Claims by Settlement Class Members. Upon the deposit of the
10 Maximum Settlement Amount into a Qualified Settlement Fund, Plaintiff and all Settlement Class
11 Members, as well as their spouses, heirs, executors, administrators, trustees, and/or permitted
12 assigns, hereby do and shall be deemed to have fully, finally, and forever released, settled,
13 compromised, relinquished, and discharged, to the fullest extent possible, any and all of the
14 Released Parties of and from any and all Released Class Claims that accrued during the Class
15 Period.

16 3. Release of Claims by PAGA Group Members. Upon the deposit of the Maximum
17 Settlement Amount into a Qualified Settlement Fund, Plaintiff and all PAGA Group Members, as
18 well as their spouses, heirs, executors, administrators, trustees, and/or permitted assigns, hereby
19 do and shall be deemed to have fully, finally, and forever released, settled, compromised,
20 relinquished, and discharged, to the fullest extent possible, any and all of the Released Parties of
21 and from any and all Released PAGA Claims that accrued during the PAGA Period.

22 **G. NON-ADMISSION OF LIABILITY & APPROVAL PROCESS**

23 1. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
24 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
25 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, that
26 it has violated any federal, state, or local law; violated any regulations or guidelines promulgated
27 pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached
28 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or

engaged in any other unlawful conduct with respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law, regulation, or legal requirement. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission of any nature on the part of Defendant, or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local, or other applicable law.

2. Class Action Certification. The Parties are agreeing to class certification for settlement purposes only. This Agreement shall not constitute, in this or any other proceeding, an admission of any kind by Defendant, including without limitation, that certification of a class for trial or any other purpose is appropriate or proper, or that Plaintiff or any Settlement Class Member can establish any of the requisite elements for class treatment of any of the claims in this Action. If, for any reason, the Settlement is not finally approved, this Agreement will be void and the Parties will be restored to their respective positions in the lawsuit as if they had not entered into this Agreement. The Parties further agree that this Agreement or any documents or orders issued related to this Settlement will not be admissible, other than according to the Settlement's terms, in this or any other proceeding as evidence that either: (i) a class action should be certified, or (ii) Defendant is liable to Plaintiff or any Settlement Class Member.

3. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to request the Preliminary Approval of the Settlement, conditional certification of the Class, and the entry of a Preliminary Approval Order: (i) approving of the proposed Settlement, and (ii) setting a date for a Final Approval/Settlement Fairness Hearing. Class Counsel shall draft, and, subject to Defendant's review, Plaintiff will file a motion for preliminary approval of the Settlement and Preliminary Approval Order. The Preliminary Approval Order shall provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff shall submit this Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice Packet, attached to this Agreement as Exhibit A.

1 4. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit
2 Requests for Exclusion or Notices of Objections to the Settlement, and with the Court's
3 permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine the
4 Final Approval of the Settlement along with the amounts properly payable for (i) Individual Class
5 Settlement Payments and Individual PAGA Settlement Payments; (ii) the LWDA Payment; (iii)
6 the Class Counsel Award; (iv) the Enhancement Payment; and (v) Settlement Administration
7 Costs. Class Counsel will be responsible for drafting all documents necessary to obtain final
8 approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs
9 application to be heard at the Final Approval Hearing.

10 5. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the
11 Motion for Final Approval, the Parties shall also jointly seek the entry of Judgment consistent with
12 the terms of this Agreement. After entry of the Judgment, the Court shall have continuing
13 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms
14 of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as
15 may be appropriate under court rules or as set forth in this Agreement. Notice of the Judgment
16 shall be posted on a website created by the Settlement Administrator.

17 6. Nullification of Settlement. In the event that the Settlement does not become final
18 for any reason, then this Agreement, and any documents generated to bring it into effect, shall be
19 null and void. Any order or judgment entered by the Court in furtherance of this Agreement shall
20 likewise be treated as void from the beginning.

21 7. Invalidity of Any Provision. Before declaring any provision of this Agreement
22 invalid, the Court shall first attempt to construe the provision as valid to the fullest extent possible
23 consistent with applicable precedents so as to define all provisions of this Agreement valid and
24 enforceable. Any invalid, illegal, or unenforceable provision determined by the Court shall in no
25 way affect any other provision if Defendant and Class Counsel, on behalf of the Parties and the
26 Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable
27 provision had never been included in this Agreement.

1 8. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
2 this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
3 Settlement after arm's-length negotiations, mediation, and in the context of adversarial litigation,
4 taking into account all relevant factors, present and potential. The Parties further acknowledge that
5 they are each represented by competent counsel and that they have had an opportunity to consult
6 with their counsel regarding the fairness and reasonableness of this Agreement.

7 9. Enforcement Actions. In the event that one or more of the Parties institutes any
8 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
9 Settlement, or to declare rights and/or obligations under this Settlement, the prevailing Party or
10 Parties shall be entitled to recover from the non-prevailing Party or Parties reasonable attorneys'
11 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

12 H. MISCELLANEOUS

13 1. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety
14 of the Parties' Settlement terms. No other prior or contemporaneous written or oral negotiations
15 or agreements may be deemed binding on the Parties.

16 2. Exhibits Incorporated by Reference. The terms of this Agreement include the terms
17 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
18 herein. Any Exhibits to this Agreement are an integral part of the Settlement.

19 3. Amendment or Modification. This Agreement may be amended or modified only
20 by a written instrument signed by the Parties or their successors-in-interest.

21 4. Authorization to Enter into Agreement. Counsel for all Parties warrant and
22 represent they are expressly authorized by the Parties whom they represent to negotiate this
23 Agreement and to take all appropriate actions required or permitted to be taken by the Parties
24 pursuant to this Agreement to effectuate its terms and to execute any other documents required to
25 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
26 other and use their best and good-faith efforts to effect the implementation of the Settlement. If
27 the Parties are unable to reach agreement on the form or content of any document needed to
28 implement the Settlement, or on any supplemental provisions that may become necessary to

1 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
2 such disagreement.

3 5. Confidentiality Preceding Preliminary Approval. The Parties and their counsel
4 agree that they will not issue any press releases, initiate any contact with the press, respond to any
5 press inquiry, post information on any social media or website, or have any communication with
6 the press about the fact, amount, or terms of the Settlement. Nothing in this provision shall prevent
7 Defendant from making any legally-required disclosure.

8 6. No Prior Assignments. The Parties and their counsel represent, covenant, and
9 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
10 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
11 action, cause of action, or right herein released and discharged.

12 7. Disputes Regarding Language of Final Settlement Agreement. If the Parties have a
13 dispute with regard to the language of the Agreement, the Parties agree to attempt to informally
14 resolve the dispute by engaging the Honorable Brian C. Walsh to mediate such dispute.

15 8. Binding on Successors and Assigns. This Agreement shall be binding upon, and
16 inure to the benefit of, the successors, heirs, or assigns of the Parties hereto, as previously defined.

17 9. California Law Governs. All terms of this Agreement and Exhibits hereto shall be
18 governed by and interpreted according to the laws of the State of California.

19 10. Execution and Counterparts. This Agreement is subject only to the execution of all
20 Parties. However, the Agreement may be executed in one or more counterparts. All executed
21 counterparts and each of them, including facsimile and scanned copies of the signature page, shall
22 be deemed to be one and the same instrument provided that counsel for the Parties shall exchange
23 among themselves original signed counterparts.

24 11. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
25 that Plaintiff or Class Counsel may appeal any reduction in the Class Counsel's Award below the
26 amount Class Counsel requests, and either Party may appeal any order that materially alters the
27 Agreement's terms.

1 12. Captions. The captions and section numbers in this Agreement are inserted for the
2 reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
3 provisions of this Agreement.

4 13. Waiver. No waiver of any condition or covenant contained in this Agreement or
5 failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or
6 constitute a further waiver by such Party of the same or any other condition, covenant, right, or
7 remedy.

8 14. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
9 and conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly
10 against one Party than another merely by virtue of the fact that it may have been prepared by
11 counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations
12 between the Parties, all Parties have contributed to the preparation of this Agreement.

13 15. Representation by Counsel. The Parties acknowledge that they have been
14 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
15 and that this Agreement has been executed with the consent and advice of counsel. Further,
16 Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement.

17 16. Cooperation and Execution of Necessary Documents. All Parties shall cooperate in
18 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
19 this Agreement.

20 17. Binding Agreement. The Parties warrant that they understand and have full
21 authority to enter into this Agreement, and further intend that this Agreement shall be fully
22 enforceable and binding on all Parties, and agree that it shall be admissible and subject to
23 disclosure in any proceeding to enforce its terms.

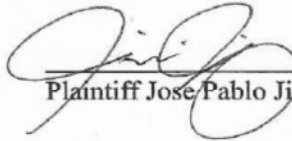
24 18. Stay of Proceedings. The Parties agree to stay all proceedings and keep the stay in
25 place except for such proceedings necessary to implement and complete the Agreement.

26 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
27 Joint Stipulation of Class Action Settlement Between Plaintiff and Defendant as of the date(s) set
28 forth below:

SIGNATURES

READ CAREFULLY BEFORE SIGNING

DATED: January twenty first, 2022 ~~2021~~ **PLAINTIFF JOSE PABLO JIMENEZ**



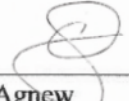
Plaintiff Jose Pablo Jimenez

DATED: _____, 2021 **DEFENDANT BLUE TRITON BRANDS, INC., formerly known as NESTLE WATERS NORTH AMERICA, INC.**

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

DATED: January 24, 2022 **DIVERSITY LAW GROUP, P.C.**



Kristen M. Agnew
Attorneys for Plaintiff and the Class

DATED: January 25, 2022 **Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**



Spencer C. Skeen
Jesse C. Ferrantella
Cameron O. Flynn
Attorneys for Defendant

SIGNATURES

READ CAREFULLY BEFORE SIGNING

DATED: _____, 2021 **PLAINTIFF JOSE PABLO JIMENEZ**

Plaintiff Jose Pablo Jimenez

DATED: 1/25/2022

**DEFENDANT BLUE TRITON BRANDS,
INC., formerly known as NESTLE
WATERS NORTH AMERICA, INC.**

DocuSigned by:

Hih Song Kim

07255D1365AA486...

Hih Song Kim

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

DATED: _____, 2021 **DIVERSITY LAW GROUP, P.C.**

Kristen M. Agnew
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Jesse C. Ferrantella
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Attorneys for Defendant

EXHIBIT A

Jose Pablo Jimenez v. Nestle Waters North America, Inc.
Superior Court of California, County of Kern
(Case No. CIV DS BCV-20-102561)

NOTICE OF CLASS-ACTION SETTLEMENT (“NOTICE”)

IF YOU ARE A CURRENT OR FORMER NON-EXEMPT EMPLOYEE OF BLUE TRITON BRANDS, INC. (FORMERLY KNOWN AS NESTLE WATERS NORTH AMERICA, INC.) IN THE STATE OF CALIFORNIA DURING THE PERIOD OF MAY 6, 2016 THROUGH JANUARY 10, 2022, YOU MAY BE ABLE TO COLLECT MONEY FROM A CLASS ACTION SETTLEMENT.

The Kern County Superior Court (“Court”) authorized this Notice to be sent by Phoenix Class Action Administration Solutions (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.

DEFENDANT CANNOT AND WILL NOT RETALIATE AGAINST YOU IN ANY WAY FOR PARTICIPATING IN THIS SETTLEMENT.

«BarcodeString»
SIMID «SIMID»
ATTN: «FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

YOU ARE ESTIMATED TO RECEIVE APPROXIMATELY
Individual PAGA Payment: \$ _____
Individual Class Settlement Payment: \$ _____
THROUGH THIS CLASS ACTION SETTLEMENT

- Jose Pablo Jimenez (“Named Plaintiff”) has sued Blue Triton Brands, Inc. (formerly known as Nestle Waters North America, Inc.) (“Defendant”) on behalf of himself and all other similarly situated employees.
- The parties to the lawsuit have reached a tentative settlement, and the Court has preliminarily approved it.
- The settlement resolves the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

You Can DO NOTHING

You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will **lose** any rights to sue Defendant separately for the same legal claims made in the lawsuit. The estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.

You Can ASK TO BE EXCLUDED FROM THE CLASS SETTLEMENT (Deadline: _____, 2022)	If you ask to be excluded from the class settlement, you will get no payment from the class settlement, but you will keep any rights to sue Defendant separately for the same legal claims made in this lawsuit. However, you may not request exclusion from the settlement of the PAGA claim. Important: You cannot ask to be excluded <u>and</u> still get a class settlement payment.
You Can OBJECT TO THE SETTLEMENT (Deadline: _____, 2021)	If you do not like the class settlement, you can send a written objection to the Settlement Administrator by the deadline. However, you may not object to the settlement of the PAGA claim. If your objection is overruled, you will still be bound by the terms of the settlement and will receive a settlement payment. Important: If you object to the settlement, you cannot also ask to be excluded.

THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE THEM—ARE EXPLAINED IN THIS NOTICE.

The Court is in charge of this lawsuit and still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. **Please be patient.**

1. Why Should You Read This Notice?

You should read this Notice because you may be entitled to money from a class action settlement.

2. What Is This Lawsuit About?

In the lawsuit, the Named Plaintiff claims that Defendant committed multiple wage and hour violations, including failing to properly pay all wages by failing to include all non-discretionary remuneration earned into the calculation of the regular rate used to calculate overtime, sick pay, and meal and rest period premium wages. Named Plaintiff further claims that Defendant failed to pay all wages by failing to compensate for all hours worked, including requiring unpaid or off-the-clock work. Named Plaintiff further alleges that Defendant failed to provide duty-free meal and rest periods by, among other things, requiring employees to carry cell phones and/or handheld devices and respond to calls during meal and rest periods. Plaintiff claimed that employees' meal and rest periods were frequently interrupted and shortened as a result of being required to respond to these work calls. As a result of these violations, Named Plaintiff claims that Defendant failed to timely pay all wages during or after employment. Named Plaintiff further claims Defendant failed to issue accurate itemized wage statements.

Defendant denies the allegations in the lawsuit and denies it has engaged in any wrongdoing. Defendant asserts that it complied with all legal requirements, but is resolving this action in order to avoid the costs of further legal proceedings.

3. Why Is This A Class Action?

This lawsuit is a class action. In a class action, one or more persons, called a class representative (in this case, the Named Plaintiff Jose Pablo Jimenez), sue on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves from the class. The Kern County Superior Court is in charge of the case. The lawsuit is known as *Jose Pablo Jimenez v. Nestle Waters North America, Inc.*, Case No. BCV-20-102561.

4. Why Is There A Settlement?

The Court did not decide in favor of Named Plaintiff or Defendant. Named Plaintiff thinks he could have won at trial. Defendant thinks that it would have won at trial. But there was no trial. Instead, both parties agreed to a settlement. That way, they avoid the cost of litigation, and the individuals potentially affected will get compensation. The class representative and the attorneys think the settlement is best for class members.

5. How Do I Know If I Am Part Of The Settlement?

The Court has decided that any current or former non-exempt employee of Defendant who worked in the State of California at any time during the period from May 6, 2016 through January 10, 2022 (the “Class Period”), is a class member. However, please note that the Class and Class Period excludes (a) those Class Members who participated in a prior settlement in *Ortega et al. v. Nestle Waters N. Am., Inc.*, Los Angeles County Superior Court, Case No. BC623610 (“the *Ortega* Settlement”) and separated employment on or before May 9, 2018, and (b) any pay periods on or before May 9, 2018 for those in the Class who participated in the *Ortega* Settlement and remained employed after May 9, 2018.

6. What Does The Settlement Provide?

The proposed settlement provides for a payment by Defendant of One Million Six Hundred Thousand Dollars (\$1,600,000.00) to fully and finally resolve all claims in the lawsuit (referred to as the “Maximum Settlement Amount”). The total amount to be distributed to class members who can be located, and who do not exclude themselves from the class settlement, will be the value of the Maximum Settlement Amount after deducting the following (the “Net Settlement Amount”): (a) settlement-administration costs not to exceed \$15,000; (b) class-representative service award to Named Plaintiff not to exceed \$10,000.00 for his work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable); (c) Class Counsel’s attorneys’ fees not to exceed \$560,000; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$20,000.00; and (f) PAGA Payment in the amount of \$50,000.00. **Class Counsel’s attorneys’ fees and costs, and Named Plaintiff’s class-representative service award, remain subject to Court approval.**

By statute, the Labor and Workforce Development Agency will receive seventy-five percent of the PAGA Payment —i.e. the amount of \$37,500.00. Class Members who worked during the period from May 6, 2019 to January 10, 2022 (the “PAGA Period”) will receive a portion of the remaining twenty-five percent of the PAGA Payment (“Net PAGA Penalty”).

No portion of the Net Settlement Amount or Net PAGA Penalty will be returned to Defendant under any circumstances. Instead any unclaimed portions will be sent to the *cy pres* recipient, Legal Aid at Work.

7. How Much Will My Settlement Payment Be?

Based upon Defendant’s records, your estimated settlement payment is \$_____, less taxes. All Individual Class Settlement Payments shall be allocated as 20% to W-2 wages and 80% to interest and penalties. Applicable payroll taxes will be withheld from the wage portion of your Individual Class Settlement Payment only. However, Defendant is responsible for payment of Defendant’s share of the employer payroll taxes to be paid in connection with the settlement.

Your Individual Class Settlement Payment is based on the number of Qualifying Pay Periods that you worked during the Class Period, as compared to the total number of Qualifying Pay Periods worked by all Class Members

during the Class Period. A Qualifying Pay Period means any pay period worked during the Class Period by a Class Member.

Based upon Defendant's records, the number of Qualifying Pay Periods that you worked is determined to be **. If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of wage statements with payment for wages, see below (Question 9).

If you were employed by Defendant during the PAGA Period, you are also entitled to a pro rata share of the Net PAGA Penalty based on the number of pay periods you worked during the PAGA Period. Your Individual PAGA Settlement Payment is \$_____.

8. How Do I Get A Payment?

To qualify for payment, you need not do anything. The Settlement Administrator will mail you a check within approximately seventy-five days after the Court enters a judgment based on this settlement, but possibly later depending on whether there is any appeal of the judgment entered by the Court.

9. What If I Believe The Information Is Inaccurate?

If you believe the number of Qualifying Pay Periods you worked during the Class Period is inaccurate, you may dispute it by sending a letter to [ADMINISTRATOR'S ADDRESS] no later than [RESPONSE DEADLINE]. Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and a statement as to what and why you are disputing. Also attach a copy of any documentation you want to include to support your dispute.

10. What Am I Giving Up To Get A Settlement Payment?

Unless you request to be excluded from the class settlement, you remain a part of the settlement class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against Defendant for any legal claims that arise out of the facts alleged by Named Plaintiff in the lawsuit, or any claims that could have been brought under the facts and allegations made in the lawsuit. Specifically, you will be giving up or "releasing" Defendant from the claims described below:

Any claims for wages, premiums, fringes, liquidated damages, or penalties alleged or that could have been alleged against Released Parties arising out of the facts, circumstances, and primary rights at issue in the operative complaint and any amendments, including all claims for: (1) failure to pay overtime wages, including claims for unpaid time and off-the-clock work; (2) failure to pay minimum wages, including claims for unpaid time and off-the-clock work; (3) failure to provide meal periods and properly calculate the rate of compensation on premiums paid; (4) failure to provide rest periods and properly calculate the rate of compensation on premiums paid; (5) failure to pay or properly calculate sick pay wages; (6) failure to pay wages during employment and upon termination; (7) failure to provide accurate itemized wage statements; and (8) violations of California's unfair competition law (Business and Professions Code section 17200, et seq.) predicated on the above alleged violations. The Release Class Claims covers claims that accrued during the Class Period [May 6, 2016 through January 10, 2022].

Additionally, if you worked during the period from May 6, 2019 to January 10, 2022, you will be giving up or "releasing" the Released PAGA Claims summarized below:

All claims for penalties under the California Private Attorneys' General Act, Labor Code section 2698 et.

seq. alleged or that could have been alleged against Released Parties arising out of the facts, circumstances, and primary rights at issue in the operative complaint and any amendments, including all claims for (1) failure to pay overtime wages, including claims for unpaid time and off-the-clock work; (2) failure to pay minimum wages, including claims for unpaid time and off-the-clock work; (3) failure to provide meal periods and properly calculate the rate of compensation on premiums paid; (4) failure to provide rest periods and properly calculate the rate of compensation on premiums paid; (5) failure to pay or properly calculate sick pay wages (6) failure to pay wages during employment and upon termination; and (7) failure to provide accurate itemized wage statements during the PAGA Period [May 6, 2019 through January 10, 2022].

11. How Do I Exclude Myself From The Settlement?

To exclude yourself from the class settlement (also referred to as “opt-out”), you must mail a letter to the Settlement Administrator saying that you want to be excluded from the *Jose Pablo Jimenez v. Nestle Waters North America, Inc.* settlement.

Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and your signature. You must mail your exclusion letter postmarked no later than **[RESPONSE DEADLINE]**, to the Settlement Administrator at **[ADMINISTRATOR’S ADDRESS]**.

If you submit a timely and valid “opt-out” request, you will no longer be a member of the class and you will not receive any money from the class portion of the settlement, or be able to object to the settlement, but you will not be legally bound by anything that happens regarding the class action portion of this lawsuit. You will keep any rights to sue (or continue to sue) Defendant in the future for the class claims made in this lawsuit, at your own expense.

You may not opt-out, or request to be excluded, from the settlement of the PAGA claim. Thus, even if you submit a timely and valid “opt-out” request, you will still receive an Individual PAGA Payment and will be deemed to have released the PAGA claims. Your estimated Individual PAGA Payment is shown above.

12. If I Don’t Exclude Myself, Can I Sue Defendant Or Get Money From The Settlement?

If you do not exclude yourself from the settlement, you cannot sue Defendant for any of the claims that this settlement resolves. If you have a pending lawsuit against Defendant, speak to your lawyer in that case immediately. You may have to exclude yourself from this case to continue on with your own lawsuit. Remember, the exclusion deadline is **[RESPONSE DEADLINE]**.

If you exclude yourself from the Settlement, you will not receive any money from the settlement of the class action claims in this matter.

13. How Do I Tell The Court That I Don’t Believe That The Settlement Is Fair?

If you are a class member and you do not exclude yourself from the class settlement, you can object to the settlement if you believe that the settlement is unfair or inadequate. You can give reasons why you think the Court should not approve the settlement. If you object and follow the procedures set out in this section, your objection will be considered.

If you decide to object to the proposed settlement, you must do so in writing. Upon the submission of your objection, you may then also appear at the final approval hearing for the settlement (see section 17 below for details as to when this hearing will take place), either in person or through an attorney at your own expense.

All objections must be signed by you and must include: (1) your full name, signature, address, and telephone number; (2) the case name; (3) a written statement of the basis for your objection; and (4) any copies of papers, briefs, or documents upon which the objection is based. You must mail your objection postmarked no later than **[RESPONSE DEADLINE]**, to the Settlement Administrator at **[ADMINISTRATOR'S ADDRESS]**.

There is no right to object to the settlement of the PAGA claim. Thus, even if you submit a timely objection to the class settlement, you will still receive an Individual PAGA Payment and will be deemed to have released the PAGA claims. Your estimated Individual PAGA Payment is shown above.

14. What Is The Difference Between Objecting And Excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the class. Excluding yourself, on the other hand, is telling the Court that you don't want to be part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you. However, if you file an objection, you will still receive settlement benefits under the settlement if it is approved by the Court. **Do not submit both an Objection and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

15. Do I Have A Lawyer In This Case?

The Court decided that the law firm of Diversity Law Group, which represents the Named Plaintiff, is also qualified to represent the class members. You will not be charged for these lawyers. These law firms are referred to as "Class Counsel." If you want to be represented by your own lawyer, you may hire one at your own expense.

16. How Will The Attorneys For The Class And The Class Representative Be Paid?

The attorneys for the Named Plaintiff and the class will be paid from the Maximum Settlement Amount. Class Counsel will ask for up to \$560,000 in attorneys' fees and for actual litigation costs incurred up to a maximum of \$20,000.00, the actual amount of which will be determined by the Court at the final approval hearing (see section 17 below for details as to when this hearing will take place). Class Members (like you) do not have to pay the fees and costs of Class Counsel. **If you elect, however, to hire your own lawyer, you have to make your own arrangements to compensate your lawyer.**

If approved by the Court, a service payment for the Named Plaintiff of an amount up to \$10,000.00 will be paid from the Maximum Settlement Amount for his work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

17. Notice Of Hearing On Final Approval And Objections To Class-Action Settlement.

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable David R. Lampe on **[DATE]**, 2022, at ____ a.m., in Department 11 of the Superior Court of California for the County of Kern, located at 1415 Truxtun Avenue, Bakersfield California 93301, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not

know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

Once final approval is granted by the Court, the Court will enter judgment against Defendant, and all class members who have not requested exclusion will be deemed to have waived the Released Claims set forth above.

18. How Do I Get More Information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting the Settlement Administrator at **[ADD INFO]**.

19. What Is The Contact Information For The Court and Class Counsel?

The addresses for the Court and Class Counsel are as follows:

COURT	CLASS COUNSEL
Clerk of Court Kern County Superior Court 1415 Truxtun Avenue Bakersfield CA 93301	DIVERSITY LAW GROUP, P.C. Larry W. Lee lwlee@diversitylaw.com Kristen M. Agnew kagnew@diversitylaw.com Nicholas Rosenthal nrosenthal@diversitylaw.com 515 South Figueroa Street Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555 Facsimile: (213) 488-6554

WHAT IF I HAVE QUESTIONS?

If you have any questions about the settlement, you may contact the Settlement Administrator:

Jose Pablo Jimenez v. Nestle Waters North America, Inc.
c/o Phoenix Class Action Administration Solutions
Address
City, CA, Zip
Toll-Free Phone Number: **[insert]**

PLEASE DO NOT TELEPHONE DEFENSE COUNSEL, THE COURT, OR THE OFFICE OF THE COURT CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

EXHIBIT B

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

JOSE PABLO JIMENEZ, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

NESTLE WATERS NORTH AMERICA,
INC., a Delaware corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.: CIV DS BCV-20-102561

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) **VIOLATION OF LABOR CODE §§ 510,
558, AND 1194;**
- (2) **VIOLATION OF LABOR CODE §§ 226.7
AND 512;**
- (3) **VIOLATION OF LABOR CODE § 226.7;**
- (4) **VIOLATION OF LABOR CODE §§ 201-
203;**
- (5) **VIOLATION OF LABOR CODE § 226(a);**
- (6) **VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.*;**
- (7) **VIOLATION OF LABOR CODE § 2698,
ET SEQ.; AND**
- (8) **VIOLATION OF LABOR CODE §§ 1194,
1197, AND 1197.1**

DEMAND OVER \$25,000.00

1 Plaintiff Jose Pablo Jimenez (“Plaintiff”) hereby submits this Class Action Complaint
2 (“Complaint”) against Defendant Blue Triton Brands, Inc., formerly known as Nestle Waters
3 North America, Inc. and Does 1 through 50 (collectively, “Defendants”), on behalf of himself
4 and a class of all other similarly situated current and former employees of Defendants for
5 penalties and/or damages for failure to properly calculate the regular rate of pay for purposes of
6 paying overtime, meal and rest period premiums, and sick pay, provide off-duty meal and rest
7 breaks, pay all wages owed upon separation of employment, and provide accurate itemized wage
8 statements under California Labor Code statutes, and restitution for unfair business practices in
9 violation of Business and Professions Code § 17200, *et seq.*, as follows:

10 **INTRODUCTION**

11 1. This class action is within the Court’s jurisdiction under California Labor Code §§
12 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1 and 2698, *et seq.*, Business
13 and Professions Code § 17200, *et seq.* (the “UCL”), and the applicable Wage Orders of the
14 California Industrial Welfare Commission (“IWC”).

15 2. This Complaint challenges systemic illegal employment practices resulting in
16 violations of the California Labor Code and Business and Professions Code against individuals
17 who worked for Defendants.

18 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
19 jointly and severally, have acted intentionally and with deliberate indifference and conscious
20 disregard to the rights of all employees by failing to pay all wages (including time for all hours
21 or off-the-clock work), properly calculate the regular rate of pay for purposes of paying
22 overtime, meal and rest period premiums, and sick pay, provide off-duty meal and rest breaks,
23 pay all wages owed during and upon separation of employment, and provide accurate itemized
24 wage statements to Plaintiff and the Class.

25 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 have engaged in, among other things a system of willful violations of the California Labor Code
27 and the applicable IWC Wage Orders by creating and maintaining policies, practices, and
28 customs that knowingly deny employees the above stated rights and benefits.

1 5. The policies, practices and customs of Defendants described above and below
2 have resulted in unjust enrichment of Defendants and an unfair business advantage over
3 businesses that routinely adhere to the strictures of the California Labor Code and the California
4 Business and Professions Code.

5 **JURISDICTION AND VENUE**

6 6. The Court has jurisdiction over the violations of the California Labor Code §§
7 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1 and 2698, *et seq*, the UCL,
8 and the applicable Wage Orders.

9 7. Venue is proper in Kern County because Defendants are located in Bakersfield,
10 California.

11 **PARTIES**

12 8. Plaintiff was employed by Defendants as a driver from on or about July 2007 to
13 on or about July 2020. Plaintiff worked as an hourly, non-exempt employee.

14 9. Plaintiff was and is the victims of the policies, practices, and customs of
15 Defendant complained of in this action in ways that have deprived him of the rights guaranteed
16 by California Labor Code §§ 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, 1197,
17 1197.1 and 2698, *et seq.*, the applicable IWC Wage Orders, and the UCL.

18 10. Plaintiff is informed and believes, and based thereon alleges, that Nestle Waters
19 North America, Inc. was and is a Delaware corporation that maintains operations in the State of
20 California, including in Kern County, California.

21 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
22 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
23 and partnerships, licensed to do business and actually doing business in the State of California.
24 As such, and based upon all the facts and circumstances incident to Defendants' business,
25 Defendants are subject to the California Labor Code and the UCL.

26 12. Plaintiff does not know the true names or capacities, whether individual, partner
27 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
28 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this

1 complaint when the true names and capacities are known. Plaintiff is informed and believes and
2 based thereon alleges that each of said fictitious defendants was responsible in some way for the
3 matters alleged herein and proximately caused Plaintiff and members of the general public and
4 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

5 13. At all times herein mentioned, each defendant participated in the doing of the acts
6 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,
7 and each of them, were the agents, servants and employees of each of the other defendants, as
8 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
9 course and scope of said agency and employment.

10 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
11 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
12 joint venturer of, or working in concert with each of the other co-Defendants and was acting
13 within the course and scope of such agency, employment, joint venture, or concerted activity. To
14 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
15 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
16 Defendants.

17 15. At all times herein mentioned, Defendants, and each of them, were members of,
18 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
19 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

20 16. At all times herein mentioned, the acts and omissions of various Defendants, and
21 each of them, concurred and contributed to the various acts and omissions of each and all of the
22 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
23 herein mentioned, Defendants, and each of them, ratified each and every act or omission
24 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
25 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
26 damages as herein alleged.

27 **CLASS ACTION ALLEGATIONS**

28 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to

1 California Code of Civil Procedure section 382. Plaintiff proposes the following classes
2 (together, the “Class”):

- 3 a. All current and former non-exempt employees of Defendants in the State
4 of California, who earned non-discretionary remuneration, including but
5 not limited to incentive pay, shift differentials, and/or shift premiums, and
6 overtime wages during the same workweek, at any time from May 6,
7 2016, through the present (the “Overtime Regular Rate Class”);
- 8 b. All current and former non-exempt employees of Defendants in the State
9 of California, who worked more than 5 hours in any shift, at any time from
10 May 6, 2016, through the present (the “Meal Period Class”);
- 11 c. All current and former non-exempt employees of Defendants in the State
12 of California, who worked more than 3.5 hours in any shift, at any time
13 from May 6, 2016, through the present (the “Rest Period Class”);
- 14 d. All current and former non-exempt employees of Defendants in the State
15 of California who were paid “CA Meals/Breaks” premiums at any time
16 from May 6, 2016, through the present (the “Break Premium Regular Rate
17 Class”); and
- 18 e. All former non-exempt employees of Defendants in the State of California
19 who earned non-discretionary remuneration, including but not limited to
20 incentive pay, shift differentials, and/or shift premiums, and sick pay
21 during the same workweek, and whose employment ended at any time
22 from May 6, 2017, through the present (the “Sick Pay Class”).
- 23 f. All current and former non-exempt employees of Defendants in the State
24 of California, who were worked from May 6, 2016, through the present
25 (the “Unpaid Time Class”)

26 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
27 that joinder of all members would be impractical, if not impossible. The identity of the members
28 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.

Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to pay employees overtime wages at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 510, 558, and 1194; (b) failed to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (c) failed to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 226.7; (d) failed to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; (e) failed to provide accurate, itemized wage statements, in violation of Labor Code § 226(a); (f) failed to pay for all hours worked (including off-the-clock work and rounding of employee time) in violation of Labor Code §§ and 1194, 1197, and 1197.1, and (g) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California state and federal courts.

20. Defendants uniformly administered a corporate policy, practice of: (a) failing to pay employees overtime wages at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 510, 558, and 1194; (b) failing to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (c) failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or

1 pay rest period premiums at the correct regular rate of pay that included all non-discretionary
2 remuneration, in violation of Labor Code §§ 201-203 and 226.7; (d) failing to pay employees
3 sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in
4 violation of Labor Code §§ 201-203 and 246; (e) failing to provide accurate, itemized wage
5 statements, in violation of Labor Code § 226(a); (f) failing to pay for all hours worked (including
6 off-the-clock work and rounding of employee time) in violation of Labor Code §§ and 1194,
7 1197, and 1197.1, and (g) engaging in Unfair Business Practices in violation of the UCL, the
8 California Labor Code, and the applicable IWC Wage Orders.

9 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
10 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
11 Labor Code §§ 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698,
12 *et seq.*, the applicable IWC Wage Orders, and the UCL.

13 22. **Common Question of Law and Fact:** There are predominant common questions
14 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
15 concerning Defendants' policy and practice of: (a) failing to pay employees overtime wages at
16 the correct regular rate of pay that included all non-discretionary remuneration, in violation of
17 Labor Code §§ 201-203, 510, 558, and 1194; (b) failing to provide off-duty meal periods to
18 employees who worked 5 hours or longer in one shift and/or pay meal period premiums at the
19 correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor
20 Code §§ 201-203, 226.7, and 512; (c) failing to provide off-duty rest periods to employees who
21 worked 3.5 hours or longer in one shift and/or pay rest period premiums at the correct regular
22 rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-
23 203 and 226.7; (d) failing to pay employees sick pay at the correct regular rate of pay that
24 included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; (e)
25 failing to provide accurate, itemized wage statements, in violation of Labor Code § 226(a); (f)
26 failing to pay for all hours worked (including off-the-clock work and rounding of employee time)
27 in violation of Labor Code §§ and 1194, 1197, and 1197.1; and (g) engaging in Unfair Business
28 Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage

1 Orders.

2 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
3 class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
4 manner as the Class Members. As with other non-exempt employees, Plaintiff earned non-
5 discretionary remuneration, including without limitation, incentive pay, shift differentials, and/or
6 shift premiums. During workweeks when Plaintiff worked in excess of eight hours in a workday
7 and/or forty hours in a workweek and received non-discretionary remuneration during the same
8 workweek, Defendants failed to include any non-discretionary remuneration earned into the
9 calculation of the regular rate. Thus, Plaintiff is owed additional overtime pay based on the
10 correct, higher regular rate of pay. Similarly, when Plaintiff received sick pay, it was disbursed at
11 an incorrect rate of pay. Sick pay was disbursed at the base rate of pay rather than the regular
12 rate, factoring in all non-discretionary remuneration earned during the same pay period.
13 Additionally, Defendants failed to provide proper meal and rest breaks and/or pay meal and rest
14 period premiums in lieu thereof. More specifically, as a pattern and practice, Defendants required
15 Plaintiff and other employees to carry cell phones and/or handheld computers and respond to
16 calls during meal and rest periods. Plaintiff's meal and rest periods were frequently interrupted
17 and shortened as a result of being required to respond to these work calls. Plaintiff did not
18 receive pay for all time worked. Plaintiff was not provided premium compensation at the regular
19 rate of pay in lieu of these missed and/or shortened breaks. To date, Plaintiff has yet to receive
20 the underpaid overtime wages, sick pay, and meal and rest premium compensation owed to him.
21 Thus, Defendants are liable for waiting time penalties under Labor Code § 203. Moreover, given
22 the underpayment and/or nonpayment of overtime wages, sick pay, and meal and rest premiums,
23 the wage statements provided to Plaintiff displayed inaccurate overtime rates of pay and net and
24 gross wages earned. Therefore, Plaintiff is a member of the Class and has suffered the alleged
25 violations of Labor Code §§ 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, 1197 and
26 1197.1, and the UCL.

27 24. The California Labor Code upon which Plaintiff bases these claims are broadly
28 remedial in nature. These laws and labor standards serve an important public interest in

1 establishing minimum working conditions and standards in California. These laws and labor
2 standards protect the average working employee from exploitation by employers who may seek
3 to take advantage of superior economic and bargaining power in setting onerous terms and
4 conditions of employment.

5 25. The nature of this action and the format of laws available to Plaintiff and
6 members of the Class identified herein make the class action format a particularly efficient and
7 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
8 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable
9 advantage since it would be able to exploit and overwhelm the limited resources of each
10 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
11 Member to pursue an individual remedy would also discourage the assertion of lawful claims by
12 employees who would be disinclined to file an action against their former and/or current
13 employer for real and justifiable fear of retaliation and permanent damage to their careers at
14 subsequent employment.

15 26. The prosecution of separate actions by the individual class members, even if
16 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
17 to individual Class members against the Defendants and which would establish potentially
18 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
19 individual Class members which would, as a practical matter, be dispositive of the interest of the
20 other Class members not parties to the adjudications or which would substantially impair or
21 impede the ability of the Class members to protect their interests. Further, the claims of the
22 individual members of the Class are not sufficiently large to warrant vigorous individual
23 prosecution considering all of the concomitant costs and expenses.

24 27. Such a pattern, practice and uniform administration of corporate policy regarding
25 illegal employee compensation described herein is unlawful and creates an entitlement to
26 recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages,
27 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
28 according to the mandate of California Labor Code §§ 218.5, 226(a), 1194, 1197, and 1197.1 the

1 applicable IWC Wage Orders, and Code of Civil Procedure § 1021.5.

2 28. Proof of a common business practice or factual pattern, which the named Plaintiff
3 experienced and is representative of, will establish the right of each of the members of the
4 Plaintiff Class to recovery on the causes of action alleged herein.

5 29. The Class is commonly entitled to a specific fund with respect to the
6 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
7 restitution of those funds being improperly withheld by Defendants. This action is brought for
8 the benefit of the entire class and will result in the creation of a common fund.

9 **FIRST CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE §§ 510, 558, AND 1194**

11 **(BY PLAINTIFF, THE OVERTIME REGULAR RATE CLASS, AND THE UNPAID**
12 **TIME CLASS AGAINST ALL DEFENDANTS)**

13 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
14 though fully set forth herein.

15 31. This cause of action is brought pursuant to Labor Code § 510, which requires an
16 employer to pay employees overtime at a rate of one and one-half the employee's regular rate of
17 pay for any work in excess of eight hours in a workday or forty hours in a workweek.

18 32. As a pattern and practice, Defendants suffered and permitted employees to work
19 in excess of eight hours in a workday and/or over forty hours in a workweek without proper
20 overtime pay. Specifically, as a pattern and practice, Defendants required Plaintiff and other
21 employees to carry cell phones and/or handheld computers and respond to calls during meal
22 periods. As a result, Plaintiff and Class Member's meal periods were frequently interrupted and
23 shortened by these work calls. Defendants also failed to pay Plaintiff and other employees for all
24 hours worked, including off-the-clock work. As a result, Defendants failed to overtime wages to
25 Plaintiff and the Class for worked performed.

26 33. Additionally, during workweeks when Plaintiff and Class Members worked
27 overtime and earned non-discretionary remuneration such as incentive pay, shift differentials,
28 and/or shift premiums, Defendants failed to properly calculate the regular rate of pay for

1 purposes of paying overtime. Specifically, Defendants failed to factor any non-discretionary
2 remuneration earned into the calculation of the regular rate of pay for purposes of paying
3 overtime wages. As a result of such policy and practice, Defendants underpaid overtime wages to
4 Plaintiff and the Class and thus owe additional overtime wages.

5 34. Such a pattern, practice, and uniform administration of corporate policy regarding
6 illegal employee compensation as described herein is unlawful and creates an entitlement to
7 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
8 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
9 to the mandate of California Labor Code §§ 218.5, 510, 558, and 1194.

10 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
11 willful failure to provide all overtime wages due and owing to Plaintiff and Class Members upon
12 separation from employment results in a continued payment of wages up to thirty (30) days from
13 the time the wages were due. Therefore, Plaintiff and other members of the Class who have
14 separated from employment from Defendants are entitled to compensation pursuant to Labor
15 Code § 203.

16 **SECOND CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

18 **(BY PLAINTIFF, THE MEAL PERIOD CLASS, AND THE BREAK PREMIUM**
19 **REGULAR RATE CLASS AGAINST ALL DEFENDANTS)**

20 36. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
21 though fully set forth herein.

22 37. At all relevant times, Defendants failed in its affirmative obligation to ensure that
23 Plaintiff and the Class had the opportunity to take and were provided with off-duty 30-minute
24 meal periods in accordance with the mandates of the California Labor Code and the applicable
25 IWC Wage Order. Specifically, as a pattern and practice, Defendants required Plaintiff and other
26 employees to carry cell phones and/or handheld computers and respond to calls during meal
27 periods. As a result, Plaintiff and Class Member's meal periods were frequently interrupted and
28 shortened by these work calls.

38. Defendants further failed to pay Plaintiff and the Class meal period premium compensation at the regular rate of pay, as mandated by Labor Code § 226.7. For each workday that a meal period is not provided, employees are entitled to one additional hour of pay at the employee's regular rate of pay/compensation. Throughout their employment, Plaintiff and Class Members earned non-discretionary remuneration such as incentive pay, shift differentials, and/or shift premiums. Such non-discretionary remuneration, however, were not included in the regular rate of pay for purposes of paying meal period premium pay. Instead, the meal period premiums were paid at the base rate of pay. As such, Plaintiff and the Class are owed additional meal period premium pay.

39. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for the unpaid balance of the premium compensation pursuant to Labor Code § 226.7, and the applicable IWC Wage Order, including interest thereon, penalties, reasonable attorneys' fees, and costs of suit.

40. Plaintiff is informed and believes, and based thereon alleges, that Defendants' willful failure to provide all meal period premium wages due and owing to Plaintiff and the Class upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Class who have separated from employment are entitled to compensation pursuant to Labor Code § 203.

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226.7

(BY PLAINTIFF, THE REST PERIOD CLASS, AND THE BREAK PREMIUM REGULAR RATE CLASS AGAINST ALL DEFENDANTS)

41. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

42. At all relevant times, Defendants failed in their affirmative obligation to ensure that Plaintiff and the Class had the opportunity to take and were provided with off-duty 10-minute rest periods in accordance with the mandates of the California Labor Code and the

1 applicable IWC Wage Order. Specifically, as a pattern and practice, Defendants required
2 Plaintiff and other employees to carry cell phones and/or handheld computers and respond to
3 calls during rest periods. As a result, Plaintiff and Class Member's rest periods were frequently
4 interrupted and shortened by these work calls.

5 43. Defendants further failed to pay Plaintiff and the Class rest period premium
6 compensation, as mandated by Labor Code § 226.7. For each workday that a rest period is not
7 provided, employees are entitled to one additional hour of pay at the employee's regular rate of
8 pay/compensation. Throughout their employment, Plaintiff and Class Members earned non-
9 discretionary remuneration such as incentive pay, shift differentials, and/or shift premiums. Such
10 non-discretionary remuneration, however, were not included in the regular rate of pay for
11 purposes of paying rest period premium pay. Instead, the rest period premiums were paid at the
12 base rate of pay. As such, Plaintiff and the Class are owed additional rest period premium pay.

13 44. Such a pattern, practice and uniform administration of corporate policy as
14 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
15 identified herein, in a civil action, for the unpaid balance of the premium compensation pursuant
16 to Labor Code § 226.7, and the applicable IWC Wage Order, including interest thereon,
17 penalties, reasonable attorneys' fees, and costs of suit.

18 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
19 willful failure to provide all meal period premium wages due and owing to Plaintiff and the Class
20 upon separation from employment results in a continued payment of wages up to thirty (30) days
21 from the time the wages were due. Therefore, Plaintiff and members of the Class who have
22 separated from employment are entitled to compensation pursuant to Labor Code § 203.

23 **FOURTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE §§ 201-203**

25 **(BY PLAINTIFF AND THE SICK PAY CLASS AGAINST ALL DEFENDANTS)**

26 46. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
27 though fully set forth herein.

28 47. Labor Code § 203 provides that if an employer willfully fails to pay wages owed

1 in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue
2 as a penalty from the due date, and at the same rate until paid, but the wages shall not continue
3 for more than thirty (30) days.

4 48. Labor Code § 201 provides if an employer discharges an employee, the wages
5 earned and unpaid at the time of discharge are due and payable immediately.

6 49. Labor Code § 202 provides that an employee is entitled to receive all unpaid
7 wages no later than 72 hours after an employee quits his or her employment, unless the employee
8 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
9 employee is entitled to his or her wages at the time of quitting.

10 50. Labor Code § 246 provides that an employee is entitled to receive sick time pay.
11 The employer shall calculate paid sick leave by using one of two calculations: (1) "Paid sick time
12 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
13 the workweek in which the employee uses paid sick time, whether or not the employee actually
14 works overtime in that workweek;" or (2) "Paid sick time for nonexempt employees shall be
15 calculated by dividing the employee's total wages, not including overtime premium pay, by the
16 employee's total hours worked in the full pay periods of the prior 90 days of employment."

17 51. Whenever Defendants paid Plaintiff and the Class Members sick time pursuant to
18 California Labor Code § 246, Defendants did so at the incorrect rate of pay. Defendants paid
19 Plaintiff and the Class Members at the base hourly rate of pay, as opposed to the regular rate of
20 pay, which would take into account all non-discretionary remuneration, or by dividing the
21 employees' total wages, not including overtime premium pay, by the employees' total hours
22 worked in the full pay periods of the prior 90 days of employment, as required by Labor Code §
23 246. This resulted in the employees being underpaid for sick time, and resulted in violations of
24 California Labor Code §§ 201, 202, and 203, and other derivative Labor Code violations,
25 because Defendants did not pay, or timely pay, Plaintiff and the Class Members all owing and
26 unpaid wages for work performed by them during their employment and at the end of their
27 employment.

28 52. Defendants willfully failed to pay Plaintiff and the Class Members all their wages

1 due, as alleged hereinabove and hereinafter, upon the termination of their employment within the
2 times prescribed by Labor Code §§ 201 and 202 and are therefore subject to a waiting time
3 penalty. Plaintiff and the Class Members are entitled to recover from Defendants the statutory
4 penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day
5 maximum pursuant to California Labor Code § 203.

6 **FIFTH CAUSE OF ACTION**

7 **VIOLATION OF LABOR CODE § 226(a)**

8 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

9 53. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
10 though fully set forth herein.

11 54. Defendants failed in their affirmative obligation to provide accurate itemized
12 wage statements. Defendants, as a matter of policy and practice, did not provide accurate records
13 in violation of Labor Code § 226(a) by failing to provide accurate payroll records to employees.

14 55. Here, Plaintiff and the Class were paid hourly. As such, the wage statements
15 should have reflected all hours worked, the applicable hourly rates of pay for all payments and
16 gross and net wages earned, pursuant to Labor Code section 226(a). However, the wage
17 statements provided to Plaintiff and other employees failed to identify such information. More
18 specifically, as a result of the aforementioned and hereinafter mentioned violations of the Labor
19 Code, the wages statements identified incorrect hours worked, wage rates and net and gross
20 wages earned, in violation of Labor Code § 226(a).

21 56. Such a pattern, practice and uniform administration of corporate policy as
22 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
23 in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest
24 thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code
25 § 226.

26 **SIXTH CAUSE OF ACTION**

27 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

28 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

1 57. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
2 though fully set forth herein.

3 58. Defendants, and each of them, have engaged and continue to engage in unfair and
4 unlawful business practices in California by practicing, employing, and utilizing the employment
5 practices outlined above, including by: (a) failing to pay employees overtime wages at the
6 correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor
7 Code §§ 201-203, 510, 558, and 1194; (b) failing to provide off-duty meal periods to employees
8 who worked 5 hours or longer in one shift and/or pay meal period premiums at the correct
9 regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code
10 §§ 201-203, 226.7, and 512; (c) failing to provide off-duty rest periods to employees who
11 worked 3.5 hours or longer in one shift and/or pay rest period premiums at the correct regular
12 rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-
13 203 and 226.7; (d) failing to pay employees sick pay at the correct regular rate of pay that
14 included all non-discretionary remuneration; and (e) failing to pay for all hours worked in
15 violation of Labor Code §§ 1194, 1197, and 1197.1.

16 59. Defendants' utilization of such unfair and unlawful business practices constitutes
17 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

18 60. Plaintiff seeks, individually and on behalf of other members of the Class similarly
19 situated, full restitution of monies, as necessary and according to proof, to restore any and all
20 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
21 complained of herein.

22 61. Plaintiff is informed and believes, and based thereon alleges, that at all times
23 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
24 as proscribed by California Business & Professions Code § 17200, *et seq.*, including those set
25 forth herein above thereby depriving Plaintiff and other members of the Class the minimum
26 working condition standards and conditions due to them under the California laws as specifically
27 described therein.

28 **SEVENTH CAUSE OF ACTION**

VIOLATION OF LABOR CODE § 2698, ET SEQ.

**(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,
AGAINST ALL DEFENDANTS)**

62. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

63. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from May 5***, 2019, through the present, for Defendants' violations of Labor Code §§ 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1 arising from Defendants' policy and practice of: (a) failing to pay employees overtime wages at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 510, 558, and 1194; (b) failing to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (c) failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 226.7; (d) failing to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; (e) failing to provide accurate, itemized wage statements, in violation of Labor Code § 226(a); and (f) failing to pay for all hours worked in violation of Labor Code §§ and 1194, 1197, and 1197.1.

64. On or about October 16, 2020, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). Plaintiff filed a supplemental written notice on [DATE]. To date, the LWDA has not responded to Plaintiff's written notice.

65. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violation of Labor Code §§ 201-203, 204,

226(a), 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1 for the time period described above, on behalf of himself and other Aggrieved Employees.

EIGHTH CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 1194, 1197, AND 1197.1

(BY PLAINTIFF, THE CLASS, AND THE UNPAID TIME CLASS AGAINST ALL DEFENDANTS)

66. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

67. This cause of action is brought pursuant to Labor Code §§ 1194, 1197, and 1197.1, which require an employer to pay employees minimum wages for all hours worked less than eight hours in a day and/or less than 40 hours in a workweek.

68. As a pattern and practice, Defendants suffered and permitted employees to work without payment of minimum wages for all hours worked in a workday and workweek. Specifically, as a pattern and practice, Defendants required Plaintiff and other employees to carry cell phones and/or handheld computers and respond to calls during meal periods. As a result, Plaintiff and Class Member's meal periods were frequently interrupted and shortened by these work calls. Defendants failed to pay minimum wages to Plaintiff and the Class for worked performed during their meal periods. Defendants further suffered and permitted employees to work without payment of wages for all hours worked in a workday and workweek by, as a pattern and practice, allowing off-the-clock work, including that based on rounding of time.

69. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid minimum wage pursuant to Labor Code §§ 1194, 1197 and 1197.1, and the applicable IWC Wage Order, including interest thereon, penalties, reasonable attorneys' fees, and costs of suit.

70. Plaintiff is informed and believes, and based thereon alleges, that Defendants' willful failure to pay minimum wages due and owing to Plaintiff and the Class upon separation from employment results in a continued payment of wages up to thirty (30) days from the time

1 the wages were due. Therefore, Plaintiff and members of the Class who have separated from
2 employment are entitled to compensation pursuant to Labor Code § 203.

3 **PRAYER FOR RELIEF**

4 1. WHEREFORE, Plaintiff prays for judgment for himself and all others on whose
5 behalf this suit is brought against Defendants, jointly and severally, as follows:

6 2. For an order certifying the proposed Class;

7 3. For an order appointing Plaintiff as the representative of the Class as described
8 herein;

9 4. For an order appointing counsel for Plaintiff as class counsel;

10 5. Upon the First Cause of Action, for damages and/or penalties pursuant to
11 California Labor Code §§ 201-203, 510, 558, and 1194, and for costs and attorneys' fees;

12 6. Upon the Second Cause of Action, for damages and/or penalties pursuant to
13 California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys' fees;

14 7. Upon the Third Cause of Action, for damages and/or penalties pursuant to
15 California Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;

16 8. Upon the Fourth Cause of Action, for damages and/or penalties pursuant to
17 California Labor Code §§ 201, 202, and 203, and for costs and attorneys' fees pursuant to Labor
18 Code § 218.5;

19 9. Upon the Fifth Cause of Action, for damages or penalties pursuant to California
20 Labor Code § 226(a), and for costs and attorneys' fees;

21 10. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
22 affected members of the general public of all funds unlawfully acquired by Defendants by means
23 of any acts or practices declared by this Court to be in violation of Business & Professions Code
24 § 17200, *et seq.*, and for costs and attorneys' fees;

25 11. Upon the Seventh Cause of Action, for civil penalties according to proof pursuant
26 to Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

27 12. Upon the Eighth Cause of Action, for damages and/or penalties pursuant to
28 California Labor Code §§ 201-203, 1194, 1197, and 1197.1, and for costs and attorneys' fees;

1 13. On all causes of action for attorneys' fees and costs as provided by California
2 Labor Code §§ 218.5, 226(a), 1194, and 2699, and Code of Civil Procedure § 1021.5; and

3 14. For such other and further relief the Court may deem just and proper.
4

5 DATED:

DIVERSITY LAW GROUP, P.C.

6
7 By: _____
8 Larry W. Lee
9 Kristen M. Agnew
10 Nicholas Rosenthal
11 Attorneys for Plaintiff and the Class
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