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BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

EMAD MISSREEZADAH, on behalf of
the State of California, as a private
attorney general,

Plaintiff,

vs.

NCR CORPORATION, a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 21SMCV00873

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

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

6 **INTRODUCTION**

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

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

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

22 **THE PARTIES**

23 4. Defendant NCR Corporation (“DEFENDANT”) is a Corporation that at all
24 relevant times mentioned herein conducted and continues to conduct substantial business in the
25 state of California.

26 5. DEFENDANT, previously known as National Cash Register, is an American
27 software, managed and professional services, consulting and technology company that also
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1 makes self-service kiosks, point-of-sale terminals, automated teller machines, check processing
2 systems, and barcode scanners.

3 6. PLAINTIFF was employed by DEFENDANT in California from July of 2019 to
4 October of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
5 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
6 of minimum and overtime wages due for all time worked.

7 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to
10 himself and all individuals who are or previously were employed by DEFENDANT in
11 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
12 the time period of January 7, 2020 until a date as determined by the Court (the "PAGA
13 PERIOD").

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

22 9. The true names and capacities, whether individual, corporate, subsidiary,
23 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
24 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
25 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
26 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.

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

1 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
2 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
3 responsible in some manner for one or more of the events and happenings that proximately
4 caused the injuries and damages hereinafter alleged.

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

13 THE CONDUCT

14 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
15 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
16 meaning the time during which an employee is subject to the control of an employer, including
17 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
18 and other AGGRIEVED EMPLOYEES to work without paying them for all the time they were
19 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
20 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
21 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
22 should have been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and the
23 AGGRIEVED EMPLOYEES would clock out of DEFENDANT's timekeeping system, in order
24 to perform additional work for DEFENDANT as required to meet DEFENDANT's job
25 requirements. Further, PLAINTIFF and other AGGRIEVED EMPLOYEES from time to time
26 were not paid wages for all time worked, including overtime wages, such that in the aggregate
27 employees were underpaid wages as a result of DEFENDANT's pattern and practice of
28

1 unevenly rounding time worked by its employees. DEFENDANT's policy and practice not to
2 pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is evidenced by
3 DEFENDANT's business records.

4 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
5 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
6 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
7 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
8 for more than five (5) hours during some shifts without receiving a meal break. Further,
9 DEFENDANT from time to time failed to provide PLAINTIFF and the AGGRIEVED
10 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
11 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
12 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
13 and in accordance with DEFENDANT's corporate policy and practice. Finally, DEFENDANT
14 from time to time failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with
15 a third off-duty meal period for some workdays in which these employees were required by
16 DEFENDANT to work fifteen (15) hours of work. PLAINTIFF and other AGGRIEVED
17 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
18 accordance with DEFENDANT's corporate policy and practice.

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

1 as time during which an employee is relieved from all work related duties and free from
2 employer control. In so doing, the Court held that the requirement under California law that
3 employers authorize and permit all employees to take rest period means that employers must
4 relieve employees of all duties and relinquish control over how employees spend their time
5 which includes control over the locations where employees may take their rest period.
6 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
7 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
8 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
9 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
10 leave the work premises during their rest period.

11 14. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
12 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
13 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
14 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
15 time worked, meaning the time during which an employee was subject to the control of an
16 employer, including all the time the employee was permitted or suffered to permit this work.
17 DEFENDANT required these employees to work off the clock without paying them for all the
18 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
19 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under compensated
20 for all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
21 time worked by working without their time being accurately recorded and without compensation
22 at the applicable minimum wage and overtime wage rates. To the extent that the time worked
23 off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
24 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
25 1197, and 1197.1.

26 15. State and federal law provides that employees must be paid overtime at one-and-
27 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
28 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an

1 employee's performance.

2 16. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
3 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
4 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
5 DEFENDANT, including but not limited to the "CE Vehicle" "Shift 2 Premium" "Shift 3
6 Premium" and "Biometric Credit" items of pay. The non-discretionary incentive program
7 provided all employees paid on an hourly basis with incentive compensation when the
8 employees met the various performance goals set by DEFENDANT. However, when
9 calculating the regular rate of pay in order to pay overtime to PLAINTIFF and other
10 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
11 part of the employees' "regular rate of pay" for purposes of calculating overtime pay.
12 Management and supervisors described the incentive program to potential and new employees
13 as part of the compensation package. As a matter of law, the incentive compensation received
14 by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the "regular rate
15 of pay." The failure to do so has resulted in a underpayment of overtime compensation to
16 PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANT.

17 17. DEFENDANT also underpaid sick pay wages to PLAINTIFF and other
18 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay.
19 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES regularly earn
20 non-discretionary remuneration, including but not limited to, incentives, shift differential pay,
21 and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
22 pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

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

1 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an
2 hourly basis. As such, the wage statements should reflect all applicable hourly rates during the
3 pay period and the total hours worked, and the applicable pay period in which the wages were
4 earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT
5 provided to PLAINTIFF and other AGGRIEVED EMPLOYEES failed to identify such
6 information. More specifically, the wage statements failed to identify the accurate total hours
7 worked each pay period. When the hours shown on the wage statements were added up, they
8 did not equal the actual total hours worked during the pay period. Additionally, DEFENDANT
9 violated Section 226 by failing to identify the correct rates of pay and number of hours worked,
10 including for the "OT Premium," item of pay, which was a wage payment. Aside, from the
11 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
12 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
13 As a result, DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
14 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

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

24 20. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
25 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
26 to accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
27 AGGRIEVED EMPLOYEES. The proper recording of these employees' missed meal and rest
28 breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of

1 the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
2 required compensation for work performed by the AGGRIEVED EMPLOYEES and violated
3 the California Labor Code and regulations promulgated thereunder as herein alleged.

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

9
10 **JURISDICTION AND VENUE**

11 22. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10.

13 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
15 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
16 in this County and/or conducts substantial business in this County, and (ii) committed the
17 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
18 EMPLOYEES.

19 **FIRST CAUSE OF ACTION**

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

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

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

23 24. PLAINTIFF incorporates by reference the allegations set forth in the prior
24 paragraphs as though fully set forth at this point.

25 25. PAGA is a mechanism by which the State of California itself can enforce state
26 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
27 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
28 fundamentally a law enforcement action designed to protect the public and not to benefit private

1 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
2 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
3 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
4 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
5 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
6 subject to arbitration.

7 26. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to
10 himself and all individuals who are or previously were employed by DEFENDANT in
11 California and classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during
12 the time period of January 7, 2020 until a date as determined by the Court (the "PAGA
13 PERIOD").

14 27. On January 7, 2021, PLAINTIFF gave written notice by electronic mail to the
15 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
16 employer of the specific provisions of this code alleged to have been violated as required by
17 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
18 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
19 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
20 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

21 28. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
23 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
24 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
25 to pay minimum wages, and (e) failed to pay wages when due, all in violation of the applicable
26 Labor Code sections listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
27 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
28 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage

1 Order(s), and thereby gives rise to civil penalties as a result of such conduct.² PLAINTIFF
2 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney
3 General Act of 2004 as the representative of the State of California for the illegal conduct
4 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
8 severally, as follows:

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

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

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

15 Dated: May 11, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
16 LLP

17
18 By: /s/ Norman Blumenthal
19 Norman B. Blumenthal
20 Attorneys for Plaintiff
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27
28 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).