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Attorneys for Plaintiff Amara O'Neill  
and the Certified Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE**

AMARA O'NEILL, on behalf herself and all  
those similarly situated,

Plaintiff,

vs.

ROBINSON PHARMA INC., a California  
Corporation; TOMMY NGUYEN, an  
individual; and DOES 1-20, inclusive,

Defendants.

Case No. 30-2020-01176039-CU-OE-CJC

**DECLARATION OF TOREY JOSEPH  
FAVAROTE IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
AND PAGA ACTION SETTLEMENT;  
APPOINTMENT OF SETTLEMENT  
ADMINISTRATOR; APPROVAL OF  
CLASS NOTICE PACKET; REQUEST  
FOR A CONTINUED STAY ON ALL  
NON-SETTLEMENT ACTIVITY IN THIS  
AND RELATED CASES AND SETTING  
OF FINAL APPROVAL HEARING**

Date: April 11, 2024

Time: 2:00 p.m.

Judge: Hon. Melissa R. McCormick

Dept.: CX104

Reservation No. 74183465

Action Filed: December 23, 2020

Trial Date: None set

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**DECLARATION OF TOREY JOSEPH FAVAROTE**

I, Torey Joseph Favarote, declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California, and before this Court. I am a partner at Gleason & Favarote LLP, attorneys of record for plaintiff Amara O'Neill ("Plaintiff") and the certified class. I have personal knowledge of the facts stated herein and would and could testify competently thereto if sworn as a witness.

2. This is a certified wage and hour class and PAGA action brought by Plaintiff against her former employer Robinson Pharma Inc. ("RPI" or "Defendant") for numerous alleged violations of the Labor Code. The certified class ("Class") is made up of 1,592 non-exempt employees who worked for RPI from January 29, 2017 to November 17, 2022. RPI employed the Class Members in Orange County California at its facilities manufacturing various pharmaceutical products.

3. RPI will pay a total of \$3,495,000.00 (the "Gross Settlement Amount") to settle the class and PAGA claims of the 1,592 certified Class Members. A true and correct copy of the settlement agreement is attached as **Exhibit 1** to this declaration (the "Settlement" or "Settlement Agreement.")

4. On November 17, 2022, the Court certified the following class in this action:

**The Class:** All non-exempt employees employed by Robinson Pharma Inc. in California from January 29, 2017 to the date of certification. [November 17, 2022]

5. The order from this Court certifying the above class in this Action is attached as **Exhibit 2** to this declaration.

6. In connection with this motion my office has provided notice to the Labor and Workforce Development Agency immediately prior to filing pursuant to California Labor Code section 2699(1)(2). (See **Exhibit 7**.)

7. The principal terms of the Settlement are outlined below and in detail in ¶¶ 23-31:

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|----------------------------------------------------------------------------|-----------------------|
| <b>Settlement Amount</b>                                                   | <b>\$3,495,000.00</b> |
| PAGA Penalties to the State (75% of total PAGA allocation of \$800,000.00) | \$600,000.00          |
| Class Counsel Fees Payment (33.33% of the gross settlement)                | Up to \$1,165,000.00  |
| Class Counsel Expenses Payment                                             | Up to \$30,000.00     |
| Class Representative Enhancement                                           | Up to \$10,000.00     |
| Settlement Administrator's Fees                                            | Up to \$20,000.00     |
| Net Settlement Amount (Employee PAGA allocation and Class combined)        | \$1,670,000.00        |

#### **Expected Average Distribution Amounts**

8. Under the Settlement the average Settlement award to a Class Member is expected to be approximately \$1,048.99. The minimum Settlement award is expected to be approximately \$10.44 for a single workweek worked with the maximum award at up to approximately \$3,497.40 for a Class Member who worked the full Settlement period of January 29, 2017 through July 1, 2023 (the "Class Period"), i.e. 335 workweeks.

#### **Effect on Other Cases**

9. Class Counsel believes that the Settlement will resolve the claims at issue in this Action and the below listed cases for the Class Members during the Class Period:

- a. Cecilia Padilla v. Robinson Pharma, Inc., Orange County Superior Court Case No. 30-2021-01183520, filed on February 4, 2021;
- b. Manh Nguyen v. Robinson Pharma, Inc., Orange County Superior Court Case No. 30-2021-01224817, filed on October 4, 2021;
- c. Ridvan Ali Olivares v. Robinson Pharma, Inc., Orange County Superior Court Case No. 30-2022-01256198, filed on April 22, 2022; and
- d. Ridvan Ali Olivares v. Robinson Pharma, Inc., Orange County Superior Court Case No. 30-2022-01267160, filed on June 28, 2022.

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10. None of the named class or PAGA representatives in the above noted cases opted out of the Class and thus all of them are included in the Settlement.<sup>1</sup>

### **Procedural History of the Action**

11. Plaintiff first commenced this action on December 23, 2020, wherein she alleged various claims relating to sexual harassment. On January 29, 2021, Plaintiff amended her complaint to include wage and hour class claims including a failure to pay wages, failure to reimburse necessary business expenses, failure to pay all wages at termination, and failure to provide accurate wage statements.

12. On February 25, 2021, Plaintiff gave notice to the LWDA of her Labor Code claims and then amended her complaint again on May 13, 2021 to include a claim under PAGA. The LWDA did not respond or otherwise express any intent to investigate Plaintiff's claims within 60 days. Attached hereto as **Exhibit 3** is Plaintiff's February 25, 2021 PAGA notice letter submitted to the LWDA.

13. On August 18, 2022, Plaintiff moved for class certification which was granted by the Court on November 17, 2022. (See **Exhibit 2**). After the Class was certified Plaintiff promptly provided RPI's counsel with a draft class notice with the intention of securing a stipulation on the class notice. RPI's counsel failed to respond to Plaintiff's repeated attempts to meet and confer, which forced Plaintiff to prepare and file a motion for approval and distribution of her proposed class notice on December 28, 2022. After Plaintiff filed her motion, RPI's counsel responded to Plaintiff's meet and confer efforts and the parties entered a stipulation on the class notice and its distribution on January 10, 2023, which the Court approved on that same day. Ultimately 1,592 people did not opt out of the Class.

14. After the class notice period ended Plaintiff promptly moved to conduct additional class discovery. On April 28, 2023, after extensive meet and confer efforts failed, Plaintiff was forced to file two motions to compel responses to special interrogatories and document production

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<sup>1</sup> Cecilia Padilla, Manh Nguyen, Ridvan Ali Olivares and Filognio Cruz Gomez (a belatedly added plaintiff in the Olivares actions) are on the Class List provided by the notice administrator following the mailing of the certification notice and opt-out period in this case.

1 requests. On July 13, 2023, the Court granted Plaintiff's motions to compel and awarded Plaintiff  
2 \$3,750.00 in sanctions. As part of that order the Court approved Class Counsel at a rate of \$750.00  
3 per billable hour. Attached as **Exhibit 4** is a true and correct copy of the Court's order on  
4 Plaintiff's post certification motions to compel.

5 15. On May 22, 2023, Plaintiff filed a supplemental PAGA letter with the LWDA. The  
6 LWDA did not respond or otherwise express any intent to investigate Plaintiff's claims within 60  
7 days. Attached hereto as **Exhibit 5** is Plaintiff's May 22, 2023 supplemental PAGA letter  
8 submitted to the LWDA. On September 22, 2023, Plaintiff provided another supplemental PAGA  
9 letter to the LWDA providing more details and information. The LWDA did not respond or  
10 otherwise express any intent to investigate Plaintiff's claims within 60 days. Attached hereto as  
11 **Exhibit 6** is Plaintiff's September 22, 2023 supplemental PAGA letter submitted to the LWDA.

12 16. On August 9, 2023, the Parties participated in a full-day mediation before mediator  
13 Gail Glick, Esq. of Judicate West. At the end of a full day of arm's length negotiations, the  
14 mediation ended with a mediator's proposal which was accepted two days later on August 11,  
15 2023.

16 17. On August 25, 2023, the parties requested a stay on all non-settlement activity in  
17 this and all related matters which the Court granted on August 28, 2023.

18 18. On October 27, 2023, the parties finalized the long form Settlement Agreement.  
19 **(See Exhibit 1).**

20 19. On November 8, 2023, the parties stipulated to the filing of a third amended  
21 complaint in connection with the Settlement. The Court approved that stipulation on November 9,  
22 2023. Plaintiff filed her third amended complaint on December 1, 2023. Plaintiff timely provided  
23 that amended complaint to the LWDA on December 6, 2023.

24 20. On December 11, 2023, the Court approved a continuation of the stay on all non-  
25 settlement activities in this and all related matters.

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1                   **Discovery and Investigation of Facts**

2           21.     My office and I have performed extensive investigation into the facts of this Action.  
3     Our discovery and investigation includes: (i) taking the deposition of two person most  
4     knowledgeable witnesses; (ii) reviewing all of RPI's policies, procedures and practices applicable  
5     during the Class Period; (iii) reviewing more than 44,000 pages of documents produced in response  
6     to 77 requests for production, 34 special interrogatories, more than 40 form interrogatories, and  
7     successful motions to compel interrogatory responses and the production of documents;  
8     (iv) manually reviewing and entering more than 10,000 pages of paper time records which were not  
9     stored in electronic manipulatable format; and (v) performing a detailed analysis on the records  
10    produced in the Action.

11           22.     Additionally, my office interviewed and spoke to dozens of Class Members as part  
12    of our investigation into the Action. My law clerk David Danning, who has earned his law degree,  
13    speaks and can write in Vietnamese and was able to interpret for the Vietnamese speaking Class  
14    Members and translate messages from Vietnamese to English. David interned during law school at  
15    the largest domestic law firm in Vietnam, YKVN (a former affiliate of global law firm White &  
16    Case LLP) and has spent approximately five years living in Vietnam.

17           23.     All of this information, obtained through extensive formal and informal discovery  
18    prepared myself ("Class Counsel") with a substantial basis to assess the strengths and weaknesses  
19    of the Action prior to meditation.

20                   **Principle Terms of the Settlement**

21           24.     From the Gross Settlement Amount will be paid: (a) \$1,670,000 in *pro rata* awards  
22    to the Class Members based on the number of workweeks worked ("The Net Settlement Amount");  
23    (b) \$600,000.00 to the LWDA for its 75% share of the \$800,000.00 PAGA allocation; (c) up to  
24    \$10,000.00 for Plaintiff's requested class representative enhancement award; (d) up to  
25    \$1,165,000.00 (33.33% of the Gross Settlement Amount) for Class Counsel's requested attorneys'  
26    fees; (e) up to \$30,000.00 for Class Counsel's litigation costs; and (f) up to \$20,000.00 for the  
27    settlement administration costs to the parties' agreed upon Settlement Administrator, ILYM Group  
28    Inc. No part of the Gross Settlement Amount will revert to RPI and RPI will be separately

1 responsible for paying the employer's portion of payroll taxes for the wages portion of the  
2 Settlement awards to the Class Members. (Settlement Agreement, § 7.)

3 25. The Class Member Settlement awards will be classified as 25% wages and 75%  
4 penalties. Class Counsel feels this apportionment correctly accounts for the value of the derivative  
5 Labor Code §§ 226, 203, 204, 1174 and PAGA penalty claims, especially when accounting for the  
6 risks discussed in the *Kullar* analysis below.

7 26. The Net Settlement will be distributed to the Class Members as follows: "The Net  
8 Settlement Amount shall be allocated among Class Members by reference to the number of  
9 workweeks all Class Members worked during the Class Period. Each workweek worked by Class  
10 Members who were current employees as of July 1, 2023, will be equal to one (1) settlement share.  
11 (Settlement § 31.) Each workweek worked by Class Members who were former employees as of  
12 July 1, 2023, will be equal to one and one tenth (1.10) settlement shares. The total number of  
13 settlement shares for all Class Members will be added together and the resulting sum will be  
14 divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be  
15 multiplied by each Class Member's number of settlement shares to determine the Class Member's  
16 *pro rata* portion of the Net Settlement Amount (the "Individual Class Member Award").

17 27. In the event of a dispute regarding the number of workweeks worked under the  
18 Settlement, a Class Member may produce evidence to establish the dates they contend they have  
19 worked during the Class Period. However, unless the Class Member can produce convincing  
20 evidence proving they worked more workweeks than shown by RPI's records, their Settlement  
21 award shall be determined based on RPI's records and the Class List which has been submitted  
22 under the penalty of perjury. The Settlement Administrator shall inform counsel of both parties of  
23 all disputes it receives and RPI will review its records to provide additional information to the  
24 Settlement Administrator as necessary for any such disputes. The parties will meet and confer to  
25 resolve any disputes, however if no resolution can be reached the workweeks stated in the Class  
26 List shall prevail. (Settlement § 26).

27 28. The average Settlement award to a Class Member is expected to be approximately  
28 \$1,048.99. The minimum Settlement award is expected to be approximately \$10.44 for a single

1 workweek worked with the maximum award up to \$3,497.40 for a Class Member who worked the  
2 full Settlement period of January 29, 2017 through July 1, 2023, i.e. 335 workweeks.

3       29. Once the Judgment becomes Final, and in consideration of their Settlement awards  
4 and the other terms and conditions of the Settlement, each Class Member will release Robinson  
5 Pharma, Inc., and its affiliated entities, related companies, predecessors, successors, direct and  
6 indirect parent companies, subsidiaries and insurers, and each of these entities' present or past  
7 owners, officers, directors, employees, partners, members, principals, agents, insurers, co-insurers,  
8 re-insurers, shareholders, attorneys, personal or legal representatives, assigns, and all persons  
9 acting by, through, under, or in concert with them (collectively each of these, including Robinson  
10 Pharma, Inc., is referred to hereinafter as the "Released Parties"), from any and all claims that  
11 would have or could have arisen from the facts or circumstances alleged in any pleading in the  
12 Action, including but not limited to the Third Amended Complaint and any of Plaintiff's PAGA  
13 Letters, including the Supplemental PAGA Letter ("Released Claims"). The Released Claims  
14 include claims for: the purported payment or nonpayment of wages or other compensation  
15 (including, but not limited to, minimum wages, overtime wages, and/or premium pay); failure to  
16 pay wages at the correct regular rate (including, overtime, meal or rest period premiums, and sick  
17 leave); meal or rest period premiums; failure to pay for all hours worked; failure to timely pay  
18 wages during employment; failure to pay wages at discharge or termination; failure to provide  
19 compliant meal and rest periods; failure to accurately record time, including all time worked (due  
20 to, for example, off-the-clock work, rounding, and auto-deduction); failure to provide timely or  
21 compliant wage statements; failure to maintain records; failure to track, provide, or pay sick leave;  
22 failure to provide one day's rest in seven; unreimbursed business expenses; unfair business  
23 practices; statutory penalties, including waiting time penalties; violations of any provisions of the  
24 Industrial Welfare Commission Wage Orders; claims under the Private Attorneys General Act,  
25 including claims for penalties under California Labor Code sections: 201-204, 205, 205.5, 210,  
26 216, 218.5, 221-224, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 245-249, 432.5, 432.7, 510, 512, 551,  
27 552, 558, 1024.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.1, 1194.2, 1195, 1197, 1197.1, 1197.5,  
28 1198, 1199; 2698 *et seq.*, 2802, and for violations of the Industrial Welfare Commission Wage

1 Orders; liquidated damages; interest; injunctive relief; declaratory relief; and accounting, whether  
2 such causes of action are in tort, contract, or pursuant to a statutory remedy. (Settlement  
3 Agreement, § 15.)

4 30. Within 14 days of entry of preliminary approval RPI will provide the Class List to  
5 the Settlement Administrator. RPI will also submit a declaration under the penalty of perjury that  
6 all Class Members are included and their information on the Class List is true and correct to the  
7 best of the declarant's personal knowledge. (Settlement § 22.)

8 31. Within 21 days of receiving the Class List the Settlement Administrator will mail  
9 the Notice, attached as **Exhibit A to the Settlement**, to all Class Members via regular first class  
10 mail using the most current known mailing addresses identified in the Class List or through a  
11 National Change of Address ("NCOA") database search. For any envelopes from the initial  
12 returned as non-deliverable on or before 30 days after mailing, the Settlement Administrator will  
13 use any forwarding address provided to re-mail the returned envelope and, if no forwarding address  
14 is provided, will perform a skip trace to identify an address to which the envelope may be  
15 forwarded. The Settlement Administrator will re-mail the notice packet within 5 days after receipt  
16 of the returned envelope. The Settlement Administrator will maintain a report of the date of such  
17 re-mailings of the notice packet. (Settlement § 23.)

18 32. As the majority of the Class Members speak Vietnamese as their primary language  
19 the notice will be distributed in both English and Vietnamese. Based on the records produced, the  
20 experiences of Plaintiff, and my office's investigation speaking to dozens of Class Members, an  
21 English and Vietnamese translation of the notice should be sufficient to fully inform the Class  
22 Members.

23 33. Class Members will have 40 days to respond with any objections to the Settlement.  
24 (Settlement § 6.) The objection process is simple and straightforward, and only requires that the  
25 Class Member send a signed written explanation of their objection with the case name, case  
26 number, and their name, address, and telephone number to the Settlement Administrator and the  
27 parties' counsel. (Settlement § 24.)

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1                   **Compliance With PAGA**

2           34.     Immediately prior to filing these papers, my office submitted both the complete  
3 Settlement Agreement and these papers to the LWDA via the required portal on the LWDA's  
4 website. Attached as **Exhibit 7** is a true and correct copy of the LWDA's submission  
5 confirmation.

6           35.     My office will provide any judgment to the LWDA within 10 days of issuance as  
7 required by statute.

8                   **Plaintiff's Exposure Analysis**

9           36.     This section of my declaration is presented to comply with Kullar v Foot Locker  
10 Retail, Inc., 168 Cal.App.4th 116, 120 (2008), Clark v. American Residential Services LLC, 175  
11 Cal.App.4th 785 (2009), Munoz v. BCI Coca-Cola Bottling Company of Los Angeles, 186  
12 Cal.App.4th 399 (2010), and Nordstrom Commission Cases, 186 Cal.App.4th 576 (2010). The  
13 evidence provided below is to enable the Court to "ensure that the recovery represents a reasonable  
14 compromise" by providing "an understanding of the amount that is in controversy and the realistic  
15 range of outcomes of the litigation" through submission of "data... that will enable the court to  
16 make an independent assessment of the adequacy of the settlement terms." Kullar, supra, 168  
17 Cal.App.4th at 120 and 129.

18           37.     **The Classes' Unpaid Minimum/Straight Time Wage Claims:** The Classes'  
19 unpaid minimum/straight time wage claims are based on a number of allegedly unlawful practices  
20 the primary of which is RPI's former practice of automatically deducting up to 30 minutes of time  
21 worked whenever an employee did not clock out for a meal period and making hand edits (a mix of  
22 deductions and credits) to its employees' time records. RPI's automatic deduction policy also  
23 automatically deducted time from its employees' time worked when they would clock in early from  
24 a lunch to ensure that 30 minutes went unpaid<sup>2</sup>. Class Counsel's office performed an analysis of a  
25 6 month sample of time records for all then working employees (more than 10,000 pages of  
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27                   <sup>2</sup> For example, if the employee clocked in after 25 minutes of a meal period RPI's payroll  
28 software would automatically deduct 5 minutes from the employee's time worked.

1 records) at randomly selected times throughout the Class Period<sup>3</sup>. Using these records, Class  
2 Counsel's office determined the number of shifts with violations and the number of minutes of  
3 both unpaid straight and overtime, the number of meal period violations, and wages shorted from  
4 each shift, then compiled averages for that 6 month sample of records to extrapolate out for the rest  
5 of the class. The results of that analysis show that 75.1% of shifts had some kind of automatic  
6 deduction ranging from 1 to 30 minutes of time worked. These deductions resulted in a mix of  
7 unpaid straight time and overtime wages. This resulted in approximately 21 minutes of straight  
8 time being deducted each workweek on average, with an average rate of pay of \$17.74 per hour.  
9 Based on these results we believe that the maximum value of the minimum/straight time wage  
10 claims based on the automatic deductions theory was approximately \$993,154.39<sup>4</sup> in unpaid  
11 straight time wages plus unpaid overtime which is separately addressed below. All Class Members  
12 are in this group.

13 38. The Classes' unpaid minimum/straight time wage claims are also based on rounding  
14 of employee time, only paying employees for time scheduled, and employees having to perform the  
15 following work-related activities while off the clock: responding to work related communications;  
16 donning and doffing protective gear; attending meetings and orientations; completing paperwork;  
17 and going through security and Covid-19 screenings. While RPI denies these claims, Plaintiff's  
18 investigation and interviews showed that while this kind of off the clock work did happen primarily  
19 prior to January 1, 2022, it happened infrequently and/or only took up a few minutes each  
20 workweek in aggregate. Additionally, this kind of work was not always performed off the clock.  
21 RPI did also credit employees with up to seven additional minutes of paid time when they showed  
22 up on time for their shifts, and promptly closed or had employees exit after their shifts were over to  
23 efficiently bring in the next shift. Based on Class Counsel's investigation, interviews, and the  
24 documents produced, we estimated<sup>5</sup> that the Class Members lost as much as 20 minutes of

25 <sup>3</sup> Prior to January 1, 2022 when RPI changed their practices following the filing of this  
26 case.

27 <sup>4</sup>  $159,954 \text{ workweeks} \times 0.35 \text{ hours (equal to 21 minutes)} \times \$17.74 = \$993,154.39$ .

28 <sup>5</sup> After accounting for the 7 minutes of bonus time credited to the Class Members for  
showing up on time as previously mentioned.

1 compensable time per workweek on average for these issues. As such, we believe that these other  
2 theories for unpaid minimum/straight time wages are worth an additional \$945,861.32, for a total  
3 of \$1,939,015.71 when combined with the automatic deduction claims for unpaid wages discussed  
4 above.

5 39. Prior to the mediation RPI produced evidence which shows that it has at least some  
6 paper records of recorded meal periods and rest breaks which contradicted the automatic  
7 deductions in the time records it originally provided. Although these records are questionable, if  
8 RPI produces these records for all Class Members it could substantially reduce the value of  
9 Plaintiff's primary theory of recovery for her minimum and unpaid straight and overtime wage  
10 claims. However, these newly revealed records were not produced with the prior verified  
11 discovery responses which purported to produce all responsive records and RPI's persons most  
12 knowledgeable testified that no such records existed. As such, Class Counsel considers this new  
13 evidence questionable, possibly subject to an evidentiary sanction for being withheld, and/or  
14 subject to a successful motion in limine prior to trial. Given the evidence recovered in this Action,  
15 Class Counsel felt that the unpaid minimum/straight time wage claims had an 80% chance of  
16 surviving decertification ( $\$1,939,015.71 \times 80\% = \$1,551,212.56$ ), a 70% chance of prevailing at  
17 trial ( $\$1,551,212.56 \times 70\% = \$1,085,848.80$ ), and a 70% chance of prevailing on appeal  
18 ( $\$1,085,848.80 \times 70\% = \$760,094.16$ ). **As such, Class Counsel felt that the unpaid minimum**  
19 **and straight time wage claims had a potential settlement value of up to approximately**  
20 **\$760,094.16.**

21 40. **The Classes' Overtime Claim:** The Classes' primary overtime claim follows the  
22 same analysis as the Classes' unpaid minimum/straight time wage claims, and faces the same risks  
23 as that theory of recovery. Based on the results of the timecard analysis discussed above we  
24 believe that there were approximately 62 minutes of overtime deducted or unpaid each workweek  
25 on average with an average overtime pay rate of \$26.61<sup>6</sup> per hour. As such the maximum value of

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27  
28 <sup>6</sup>  $\$17.74 \text{ regular rate of pay} \times 1.5 \text{ for overtime} = \$26.61$

1 the overtime claims based on automatic deductions is approximately \$4,398,255.14.<sup>7</sup>

2 41. In addition to the automatic deduction policy, which ended around January 1, 2022  
3 as a result of this litigation, RPI's uniform policy was to not pay overtime at its employees' regular  
4 rates of pay and to not pay overtime on the seventh consecutive day of work in a workweek.  
5 However, the issuances of the bonuses which arguably should have been included in the regular  
6 rate of pay was infrequent and employees were not regularly scheduled to work seven days in a  
7 workweek, limiting the value of these theories of recovery. For example, based on the random 6-  
8 month sample provided, there were less than 0.4% of workweeks with the seventh consecutive day  
9 issue. RPI also contends that its bonuses were discretionary and did not need to be included in the  
10 regular rate of pay. These bonuses would have to be analyzed on a case-by-case basis (or possibly  
11 an employee-by-employee basis), as the bonuses vary widely. For example, the bonuses  
12 distributed for Vietnamese Lunar New Year were likely discretionary while the bonuses paid upon  
13 the completion of a particular project or launch of a new product may have been non-discretionary.  
14 Proving these damages would require extensive testimony as RPI often did not have any written  
15 metrics or guidelines for the bonuses it paid and when it had records, those records appear to be  
16 paper copies mixed into personnel files. Class Counsel used the sample data and the bonuses paid  
17 to Plaintiff as a model to estimate that the Class Members may have been owed up to 5 additional  
18 minutes of unpaid overtime per workweek for the bonuses and seventh day of work issues with the  
19 understanding that the actual damages were likely even lower<sup>8</sup>. As such, we believe that these  
20 other theories for the overtime claim were worth a maximum of \$354,698.00, for a grand total of  
21 \$4,752,953.13 when combined with the automatic deduction claim for unpaid overtime wages.

22 42. As discussed above, if RPI does have documentation of actually providing duty free  
23 meal periods during the times of its automatic deduction practice then that could substantially  
24 reduce the value of the Classes' overtime claim based on the auto deduction theory; and introduced  
25 the potential risk of decertification as a result of individualized issues potential predominating.

26 <sup>7</sup> 159,954 workweeks × 1.033333 hours (equal to 62 minutes) × \$26.61 = \$4,398,255.14.

27 <sup>8</sup> The bonuses that were standard and repeating appeared to be almost always discretionary,  
28 such as the bonuses on Vietnamese Lunar New Years and other holidays.

1 Given the evidence in this Action, Class Counsel felt that the overtime wage claim had a 70%  
2 chance of surviving decertification/manageability motions ( $\$4,752,953.13 \times 70\% =$   
3  $\$3,327,067.19$ ); a 70% chance of prevailing at trial ( $\$3,327,067.19 \times 70\% = \$2,328,947.04$ ), and a  
4 70% chance of prevailing on appeal ( $\$2,328,947.04 \times 70\% = \$1,630,262.92$ ). **As such, Class**  
5 **Counsel felt that the overtime claim had a potential settlement value of up to \$1,630,262.92.**

6 43. **The Classes' Meal Period and Rest Break Claims:** Much like the Classes' unpaid  
7 minimum/straight time and overtime claims, the primary thrust of the meal period claim is RPI's  
8 former automatic deduction policy and that its records showed no evidence of a meal period ever  
9 being provided to the Class Members. RPI's discovery and production of new records presents a  
10 risk to the value of the Classes' meal period and rest breaks claims, especially as those records  
11 purport to record both meal periods and rest breaks. However, the Classes' meal period claim  
12 remains valid as it is plain from the records that many employees did, albeit not regularly, suffer  
13 short and late meal periods and were not provided second meal periods. The Classes' rest break  
14 claim is much riskier, substantiating a very large discount, as Class Counsel's investigation shows  
15 that many of RPI's employees would testify to regularly being provided with timely rest breaks.  
16 While Class Counsel's investigation showed that employees had complaints about having to  
17 sometimes delay meal periods and rest breaks for production lines to finish, proving this would  
18 require extensive testimony and comparisons to paper records of recorded rest break times which  
19 contain class members' signatures which in turn could open the door to individualized issues and  
20 manageability concerns.

21 44. RPI's person most knowledgeable testified that RPI had never paid a meal period  
22 premium prior to January 1, 2022. Class Counsel's investigation also showed that no premiums of  
23 any kind were ever paid prior to January 1, 2022. RPI has since changed its policies following our  
24 lawsuit and its records and verified discovery responses show that it does now pay meal period and  
25 rest break premiums. RPI denies that employees have ever been required to remain on call during  
26 meal periods or rest breaks, and that they could not leave the premises for their meal periods and  
27 rest breaks. Our investigation did support their position.

28 ///

1           45. Based on the above, Class Counsel felt the value of the rest break claim was  
2 minimal. After considering the existence of records showing recorded rest breaks signed by  
3 employees and many employees willing to testify that they regularly received rest breaks, Class  
4 Counsel did not assign much value to the rest break claim. Class Counsel assigned a violation rate  
5 of 0.25 violations per workweek (equal to one violation a month) to the rest break claim. The  
6 results of the timecard analysis and Class Counsel's investigation, i.e. analyzing more than 10,000  
7 pages of time records for a 6-month period and then extrapolating those results out to the entire  
8 Class Period, it appears that the Class Members suffered on average of approximately 1.4 meal  
9 period violations per workweek. As discussed above the average rate of pay for the Class  
10 Members was \$17.74 and the Class Period contains approximately 159,954 workweeks. As such,  
11 Class Counsel believes that the maximum realistic value of the meal period and rest break claims  
12 was approximately \$4,682,013.53<sup>9</sup>. All Class Members are in this group.

13           46. As discussed above, if RPI does have documentation of actually providing duty free  
14 meal periods and rest breaks during the times of its automatic deductions then that would  
15 substantially reduce the value of, but not eliminate, the Classes' meal period and rest break claims.  
16 Additionally, RPI's has stated it could obtain testimony from employees claiming that they and  
17 other Class Members were provided with compliant meal periods and rest breaks. Given the  
18 evidence in this Action, Class Counsel felt that the meal period and rest break claims also had a  
19 50% chance of surviving decertification/manageability motions ( $\$4,682,013.53 \times 50\% =$   
20  $\$2,341,006.77$ ), a 50% chance of successfully challenging this new evidence and the so called  
21 "happy camper" witnesses, and winning at trial ( $\$2,341,006.77 \times 50\% = \$1,170,503.38$ ), and a  
22 50% chance of prevailing on appeal ( $\$1,170,503.38 \times 50\% = \$585,251.69$ ). **As such, Class**  
23 **Counsel felt that the meal period and rest break claims had a potential settlement value of up**  
24 **to \$585,251.69.**

25 ///

26  
27 <sup>9</sup> 1.65 combined meal period (1.4) and rest break (0.25) violations per workweek  $\times$  \$17.74  
28 average rate of pay  $\times$  159,954 workweeks = \$4,682,013.53.

1           47.     **The Classes' Reimbursement Claim:** The Classes' reimbursement claim is  
2 centered largely on the required use of the Class Members' personal cellular telephones and  
3 personal vehicles for work. While there is evidence of the Class Members being required to use  
4 their personal cellular telephones at times for work related communications, Plaintiff acknowledges  
5 that it will be difficult to collect substantial evidence because it would rely on obtaining and sorting  
6 through private text messages/calls and extensive testimony that could arguably not be susceptible  
7 to common or classwide proof that made decertification a distinct possibility. Additionally, while  
8 Class Members were at times required to use their personal vehicles it appears that largely this was  
9 to drive between RPI facilities, which are closely grouped together (some as close as  
10 approximately a few hundred yards) and did not require significant travel. However, RPI has  
11 provided testimony that it had never reimbursed any cellular telephone expenses. The law is  
12 unclear as to what constitutes a reasonable percentage of an employee's cellular telephone bill for  
13 the purposes of reimbursement under Labor Code § 2802, and the mileage involved in this matter  
14 is almost de minimus and varies in time and scope. However, given that most cellular telephone  
15 plans are unlimited (meaning that the Class Members suffered no additional measurable cost for  
16 this usage), and the use of personal vehicles and cellular telephones was limited, Class Counsel felt  
17 the maximum they could likely secure was \$10.00 per month in reimbursable expenses. Given that  
18 the average employee only worked for RPI for about two years (24 months), Class Counsel felt that  
19 the realistic value of what could be recovered was likely around \$382,080.00<sup>10</sup>. All Class  
20 Members are in this group.

21           48.     Class Counsel felt that the reimbursement claims had a 50% chance of surviving  
22 decertification/manageability motions ( $\$382,080.00 \times 50\% = \$191,040.00$ ); a 60% chance of  
23 winning damages at trial ( $\$191,040.00 \times 60\% = \$114,624.00$ ), and a 60% chance of prevailing on  
24 appeal ( $\$114,624.00 \times 60\% = \$68,774.40$ ). **As such, Class Counsel felt that the expense**  
25 **reimbursement claim had a potential settlement value of up to \$68,774.40.**

26     ///

27     

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28     <sup>10</sup>  $\$10.00 \times 24 \text{ months} \times 1,592 \text{ Class Members} = \$382,080.00$ .

1           49.     **The Classes' Wage Statement Claim:** Pursuant to Labor Code §226(e), an  
2 employee is entitled to a \$50.00 penalty for the initial pay period and a \$100.00 penalty for each  
3 subsequent pay period up to a maximum of \$4,000.00 on this claim. Based on the data provided by  
4 RPI, Class Counsel estimates the total exposure for the wage statement claim was \$50,450.00 for  
5 the first violation and potentially up to \$3,661,600.00 if there were subsequent violations proven,  
6 which totaled approximately \$3,712,050.00 in potential liability. Class Counsel believes that there  
7 was an 80% chance of defeating any decertification/manageability motions on this claim  
8 ( $\$3,712,050.00 \times 80\% = \$2,969,640.00$ ), a 65% chance of prevailing at trial as RPI could argue  
9 that its conduct was not knowing and intentional ( $\$2,969,640.00 \times 65\% = \$1,930,266.00$ ), and 70%  
10 of prevailing on appeal ( $\$1,930,266.00 \times 70\% = \$1,351,186.20$ ). The law is unclear as to whether  
11 anything other than initial penalties may be collected, as "initial" and "subsequent" penalties have  
12 specific definitions under the Labor Code. Amaral v. Cintas Corp. No. 2, 163 Cal. App. 4th 1157,  
13 1209 (2008). **As such, Class Counsel felt that the wage statement claim had a potential**  
14 **settlement value of up to \$1,351,186.20.** All Class Members are in this group.

15           50.     **The Classes' Waiting Time Penalties Claim:** Class Counsel has calculated the  
16 potential waiting time penalties under Labor Code § 203 on the unpaid wages at approximately  
17 \$4,304,433.60 (1,011 former employees  $\times$  \$17.74 regular rate of pay  $\times$  8 hours per day  $\times$  30 days  
18 of penalties). A finding of "willful" behavior on the part of RPI would be required before these  
19 penalties could be awarded. RPI may claim to be an unsophisticated family run company, which  
20 based on Class Counsel's investigation appears to be correct. Furthermore, there is deposition  
21 testimony which shows that RPI's head of payroll was unaware of exactly how RPI's former  
22 payroll program was operating to the detriment of the employees and could not fully explain how  
23 the program operated. Class Counsel believed that there was an 80% chance of defeating any  
24 decertification/manageability motions on this claim ( $\$4,304,433.60 \times 80\% = \$3,443,546.88$ ), but  
25 the risk of prevailing at trial on this claim and winning significant damages was only about 60%  
26 ( $\$3,443,546.88 \times 60\% = \$2,066,128.13$ ). Class Counsel further estimated that the class had a 60%  
27 chance of prevailing on any appeal ( $\$2,066,128.13 \times 60\% = \$1,239,676.88$ ). **As such, Class**  
28 **Counsel felt that the waiting time penalties claim had a potential settlement value of up to**

1 **\$1,239,676.88.** 1,011 Class Members are estimated to be in this group.

2       51.     **The Classes' Regular Pay Claim:** Pursuant to Labor Code § 204 an employer is  
3 required to pay all wages twice a month and establish regular paydays. Intentional violations of  
4 Labor Code § 204 are punishable for an initial violation rate of \$100.00 and a subsequent violation  
5 of rate of \$200.00 plus 25% of the wages withheld. Class Counsel did not place much value on  
6 this claim because RPI did have established regular twice a month paydays and the burden of  
7 showing that RPI's failure to pay wages was intentional is a high burden to meet. Additionally, the  
8 law is unclear as to whether anything other than initial penalties may be collected, as "initial" and  
9 "subsequent" penalties have specific definitions under the Labor Code. Amaral v. Cintas Corp.  
10 No. 2, 163 Cal. App. 4th 1157, 1209 (2008). As such, Class Counsel believes that the likely  
11 maximum potential penalties under this claim was approximately \$159,200.00<sup>11</sup>. Counsel believed  
12 that there was an 80% chance of defeating any decertification or manageability motions  
13 (\$159,200.00 × 80% = \$127,360.00), but the risk of prevailing at trial on this claim and winning  
14 significant damages was only about 50% (\$127,360.00 × 50% = \$63,680.00). Class Counsel  
15 further estimated that the Class had a 70% chance of prevailing on any appeal (\$63,680.00 × 70%  
16 = \$44,576.00). **As such, Class Counsel felt that the claim had a potential settlement value of**  
17 **up to \$44,576.00.** All Class Members are in this group.

18       52.     **Interest on Wage Claims:** As noted above, the wage claims have an estimated  
19 settlement value of approximately \$2,975,608.77<sup>12</sup>. Dividing this amount equally over the five and  
20 a half years covered and applying a non-compounded 10% interest rate per annum there is  
21 approximately \$1,109,090.54 at issue in interest on the wage claims in this Action. As this is  
22 entirely derivative of the wage claims themselves it is subject to the same average levels of risk  
23 noted above for the unpaid wage claims at surviving decertification/manageability (\$1,109,090.54  
24 × 70% risk = \$776,363.38), 70% chance of prevailing at trial (\$776,363.38 × 70% = \$543,454.37),  
25 and a 70% chance of prevailing on any appeal (\$543,454.37 × 70% = \$380,418.06). **As such,**

26  
27 <sup>11</sup> 1,592 Class Members × 1 × \$100.00 initial penalty = \$159,200.00.

28 <sup>12</sup> \$760,094.16 for unpaid minimum/straight time wages + \$1,630,262.92 for unpaid  
overtime wages + \$585,251.69 for meal period and rest break premium wages = \$2,975,608.77

1 **Class Counsel felt that the interest on wage claims had a potential settlement value of up to**  
2 **\$380,418.06.**

3 53. **The Classes' PAGA Claim:** Pursuant to Labor Code §2699, et seq., an employee is  
4 entitled to a \$100.00 penalty for the initial pay period and a \$200.00 penalty per employee, per pay  
5 period, for each subsequent violation of the Labor Code, unless the Labor Code already provides  
6 for a civil penalty. PAGA penalty awards are within the trial court's discretion, and can be reduced  
7 based on a number of factors including willfulness. The Settlement settles the PAGA claims of all  
8 Class Members as set forth in the third amended complaint. Furthermore, it is questionable if the  
9 Class can recover multiple penalties for each alleged wrong i.e. "stacking of PAGA penalties," as  
10 there is limited California case law on the subject. Additionally, the Court has the inherent ability  
11 to reduce PAGA penalties, and some courts have even reduced penalties to as low as \$5.00 per  
12 violation. (§ 2699, subd. (e)(2); Carrington v. Starbucks Corp., 30 Cal. App. 5th 504, 528 (2018)  
13 (affirming a trial court's reduction of PAGA penalties of just \$5.00 per violation per pay period,  
14 and the imposition of only initial penalties.) Class Counsel does not believe that the facts in this  
15 case support the imposition of maximum penalties against RPI, and instead it is likely that RPI  
16 could win a substantial reduction of penalties by arguing it is a family run company and that it did  
17 change its practices.

18 54. RPI limited its cut off liability for nearly all wage related claims on January 1, 2022  
19 when it implemented a new payroll system and drastic changes to its employment practices. While  
20 it remains unsettled by California appellate courts, there is a growing body of authority that  
21 provides that it is improper to "stack" PAGA penalties. Class Counsel determined the maximum  
22 possible exposure for the entire PAGA claim, if the Class received 100% of the potential penalties  
23 with a near 100% violation rate for all potential Labor Code violations with all of the subsequent  
24 penalties awarded between March 9, 2020 and January 1, 2022, was approximately \$34,224,000.00  
25 (1,592 initial pay periods × 12 underlying Labor Code violations × \$100.00 penalty =  
26 \$1,910,400.00 in initial penalties) and (20,196 subsequent pay periods × 8 repeating underlying  
27  
28

1 Labor Code violations × \$200.00 penalty = \$32,313,600.00 in subsequent penalties<sup>13</sup>). Such an  
2 award however is purely theoretical. Class Counsel believes there was no possibility of winning a  
3 100% violation rate and subsequent penalties on all 12 underlying violations<sup>14</sup>. Class Counsel also  
4 believes that since RPI is a local closely held family run company, its ability to pay a large PAGA  
5 judgment was dubious.

6 55. Class Counsel has determined that applying initial violation penalties for the 12  
7 underlying Labor Code violations at issue (4 of which do not repeat) for the relevant 21,788 pay  
8 periods with a 50% violation rate (estimated by Class Counsel's to be the average of the  
9 ascertainable violation rates), the maximum realistic PAGA exposure was approximately  
10 \$9,033,600.00. Class Counsel felt that the Class had a reasonable chance of prevailing on some of  
11 the PAGA claims for the reasons noted above in the discussion of the underlying claims, winning  
12 on half of the initial penalties for those claims that could realistically repeat, but did realize that  
13 PAGA penalties are discretionary and can be reduced by the Court. Class Counsel also felt that  
14 there was a reasonable chance of many of the claims for off-the-clock work, meal and rest break  
15 violations, expense reimbursement, seating and temperature being declared unmanageable either  
16 before trial or on appeal. Class Counsel were also cognizant that the recovery for these penalties  
17 may be construed to represent a double recovery when combined with recovery for the other class  
18 claims. **As such, Class Counsel felt that the PAGA claims had a potential settlement value of**  
19 **up to \$1,129,200.00.**

21 <sup>13</sup> Note that at least 4 claims are incredibly unlikely to repeat and/or cannot repeat, thus they  
22 have no reliable subsequent penalties, i.e. those for failure to pay wages at termination, unlawful  
23 background checks at hiring, failing to keep accurate records, and failing to respond to records  
requests. It is also very unlikely that some claims have a more than marginal violation rates such  
as the rest break and twice monthly payday claims.

24 <sup>14</sup> While this issue has never directly been approached by the California appellate courts or  
the California Supreme Court there is a growing body of opinions which provides that a subsequent  
PAGA penalty rate cannot be applied until there is a court judgment or Labor Commissioner  
25 citation successfully imposed on the employer. Amaral v. Cintas Corp. No. 2, 163 Cal.App.4th  
1157, 1209, 78 Cal.Rptr.3d 572 (2008). Patel v. Nike Retail Services, Inc. (N.D. Cal. 2014) 58  
26 F.Supp.3d 1032, 1042; Steenhuysen v. UBS Financial Services, Inc. (N.D. Cal. 2018) 317 F.Supp.3d  
1062, 1067–1068; Trang v. Turbine Engine Components Technologies Corp. (C.D. Cal., Dec. 19,  
27 2012) WL 6618854, at \*5; Perez v. WinnCompanies, Inc., E.D. Cal., Nov. 10, 2014, WL 5823064,  
at \*8.

1           56. Class Counsel believes that the PAGA allocation of \$800,000.00 for 1,592  
2 aggrieved employees (more than 22% of the Gross Settlement Amount) is sufficient to vindicate  
3 the State's interest in enforcement of the State's labor laws and is a sufficient penalty to deter  
4 future violations, many of which RPI already fixed. The key evidence is that Plaintiff's litigation  
5 caused a relatively quick and drastic overhaul of RPI's employment practices starting on January 1,  
6 2022. In Class Counsel's experience this is also a far greater allocation to PAGA than most  
7 class/PAGA settlements, which often just allocate a token amount to PAGA.

8           57. The \$3,495,000.00 Settlement that was reached represents an excellent recovery.  
9 The Settlement was discounted in light of: (i) the risk that some of the claims would be decertified  
10 or declared unmanageable due to individualized issues; (ii) the risk of trial, delay and costs  
11 associated with the review and analysis of thousands of pages of handwritten and edited paper time  
12 records; (iii) failing to collect significant amounts at trial from a small privately held family  
13 business; and (iv) the risk of appeal. **Class Counsel believes that a Settlement of approximately**  
14 **11.62% of the realistic potential exposure on the underlying claims, including the PAGA**  
15 **claims, in light of all the above noted factors, is a fair and reasonable settlement.**

16           58. I believe that the claims are meritorious. I, however, have also considered the risk  
17 that certain claims may be decertified, declared unmanageable, or damages and penalties would not  
18 be as high as anticipated as well as all of the appellant issues. Furthermore, should litigation have  
19 progressed any further, each side would have incurred significant expense, without measurable  
20 increase in recoverable damages/penalties. In addition, I am aware that RPI assesses the claims  
21 differently and at significantly lower amounts, and believes that RPI may be able to provide  
22 favorable testimony and evidence in its defense. Having carefully weighed all these  
23 considerations, I am satisfied that the proposed settlement is in the best interests of the certified  
24 Class. In short, the parties believe the terms of the Settlement Agreement are fair and reasonable  
25 and should be preliminarily approved by the Court.

26           59. I believe that the Settlement is very fair and reasonable. I have conducted  
27 significant discovery and significant motion practice in the case, as noted above, so that I could  
28 properly evaluate both the strengths and weaknesses of the case.

1           **Class Representative Enhancement**

2           60.     I believe that the Class Representative Enhancement Award of \$10,000.00 to named  
3 Plaintiff is fair and reasonable in addition to her estimated class award of approximately \$1,217.30  
4 for 106 workweeks worked (106 workweeks  $\times$  \$10.44 per workweek  $\times$  1.1 as a former employee).

5           61.     Plaintiff is a former employee of RPI and her lawsuit will provide substantial  
6 compensation to approximately 1,592 current and former employees. Plaintiff's lawsuit has also  
7 created meaningful and drastic changes in RPI's employment practices which will benefit countless  
8 employees in the future. In addition, Plaintiff worked to review and respond to written discovery  
9 by RPI, produced and identified documents which greatly assisted in Class Counsel's investigation.  
10 Plaintiff also helped in preparing the motion for class certification, and travelled to southern  
11 California to personally attend the mediation of this Action with Class Counsel.

12           62.     Plaintiff has remained in contact with Class Counsel throughout this litigation and  
13 the settlement process. All in all, Plaintiff has been diligent and acted above and beyond that of  
14 which is expected of a class representative throughout all the stages of the litigation, up to and  
15 including preliminary approval of the class action settlement. Included in this is Plaintiff's  
16 willingness to litigate the claims of the Class before her own sexual harassment and assault claims,  
17 which Plaintiff has voluntarily pushed to the wayside to first champion the Class. There are few  
18 individuals that are willing to act as class representatives and provide the work, diligence and  
19 willingness to assume a substantial risk if RPI had prevailed in this case, especially as the  
20 Vietnamese community is closely knit and Plaintiff risked being blacklisted in her community and  
21 by other employers. Plaintiff's willingness to assume the financial risk is also significant.  
22 California law states that the losing party may be responsible for paying the prevailing party's  
23 costs. As such, if Plaintiff did not prevail in this case, as the class representative she could have  
24 potentially been subjected to a cost award in the amount of tens of thousands of dollars. As such,  
25 Class Counsel believes that the requested enhancement for the class representative is fair and  
26 reasonable.

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1                   **Fair and Reasonable Settlement**

2                   63.     This case was settled through arms-length negotiation after a full day of mediation.  
3     The mediation was held on August 9, 2023. Class Counsel submits that the Settlement for each  
4     participating Class Member is fair, reasonable, and adequate given the inherent risk. The amount  
5     recoverable for each Class Member as set forth in the Memorandum of Points and Authorities and  
6     in this declaration, is fair and reasonable based on a review of all objective evidence. The  
7     Settlement that has been reached, subject to this Court's approval, is the product of a lot of effort by  
8     the parties and their counsel.

9                   **Class Counsel Torey Joseph Favarote's Qualifications**

10           64.     I have already been approved as Class Counsel in this Action. My firm and I have  
11     extensive experience handling wage and hour class actions and/or representative actions in state  
12     and federal courts. I personally have been practicing since 1998 and started as an associate at  
13     Brobeck, Phleger and Harrison, LLP in the Employment Group. I spent the majority of my five  
14     years there handling wage and hour class actions. In the 25 years that I have been practicing law, I  
15     estimate that I have been counsel of record on at least 75 wage and hour class actions and/or  
16     representative actions and have dedicated at least 75% of my time over my career handling wage  
17     and hour cases.

18           65.     I am admitted, in good standing, to practice as an attorney in the State of California  
19     and have never been subject to discipline by the State Bar of California.

20           66.     I am admitted to practice in all California state courts as well as in the following  
21     federal courts: Northern District of California, Central District of California, Southern District of  
22     California, Eastern District of California, and the Ninth Circuit Court of Appeals.

23           67.     I and my firm Gleason & Favarote, LLP have been counsel of record in the  
24     following wage and hour class and/or representative actions to name just a few:

- 25                   a.     Arthur Barnes et. al. v. Target Corporation., Case No. CIVDS2007761  
26                   b.     Joshua Loughrie et al. v. Target Corporation., Case No. CIVDS1804580  
27                   c.     Alexander Duarte v. LAZ Parking, et al., LASC Case No. BC646274

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- 1 d. Peter Thom v. PMAB-3, LLC, et al., Case No. 30-2015-00825585-CU-OE-  
2 CXC  
3 e. Nathan A. Scholz, et al. v. Tom James Company, et al., Case No. BC499218  
4 f. Keith Lee v. American Linehaul Corporation, et al., Case No. BC589745  
5 g. Nathan Pulley v. Stein Mart, Inc., Case No.: 34-2015-00186167  
6 h. La Tina Sankey v. Aéropostale West, Inc., Case No.: BC457468  
7 i. Angel Pakaz v. Aéropostale West, Inc., Case No.: BC493736  
8 j. Andrea Ware v. Soho House West Hollywood, LLC., et al., Case No.:  
9 BC496246  
10 k. Xiao Ping Zhu v. TAWA Supermarket, Inc., Case No.: BC398659  
11 l. Ivan Rojo v. FMI, Inc., Case No.: BC426208

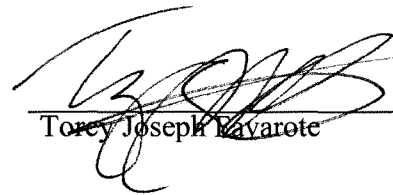
12 **Class Counsel's Attorney's Fees and Costs**

13 68. In the present case, Class Counsel is requesting \$1,165,000.00 (33.33%) for  
14 attorneys' fees. Class Counsel believes that this is appropriate based upon a common fund and/or  
15 Lodestar analysis which will be explained in detail in Class Counsel's request for fees and costs at  
16 the final fairness hearing if the Court grants preliminary approval of the Settlement. This  
17 Settlement is for \$3,495,000.00 and Class Counsel believes that pursuant to Laffitte v. Robert Half  
18 International Inc., 1 Cal.5th 480, 503 (2016) and Lealao v. Beneficial California, Inc., 82  
19 Cal.App.4th 19, this request is fair and reasonable in view of the typical common fund attorneys'  
20 fees awards and similar California class action settlements, and the hours worked on this case.  
21 Likewise, Class Counsel has requested up to \$30,000.00 in litigation costs. Class Counsel will file  
22 a detailed statement of time worked and costs at the time of final approval.

23 69. The parties have agreed on ILYM Group Inc. as the claims administrator and  
24 respectfully request this Court appoint them to handle the notice of settlement and claims  
25 administration procedures. ILYM handled the mailing of the class notices regarding certification  
26 and the opt-out process following certification, so it is already familiar with the needs and  
27 intricacies of providing notice to the Class and has their contact information. ILYM is a reputable  
28 class action administrator located in Tustin, California with more than 13 years of settlement

1 administration experience. Class Counsel has worked with ILYM to administrate settlements in  
2 the past and has never had a reason to doubt their competence as class action administrators.  
3 ILYM's website shows that it has administrated more than 100 settlements for state and federal  
4 courts all over California in the last three years. The costs of the claims administration are  
5 estimated to be up to \$20,000.00.

6 I declare under penalty of perjury under the laws of the United States of America and the  
7 State of California that the foregoing is true and correct, and that this declaration is made and  
8 executed on this 5th day of January 2024, at Long Beach, California.

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11 Torey Joseph Favarote  
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# **EXHIBIT 1**

## **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release (“Settlement,” “Agreement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Amara O’Neill (“Plaintiff”) and Defendant Robinson Pharma, Inc. (“Defendant”). Plaintiff and Defendant are collectively referred to as the “Parties,” with each being referred to as a “Party.”

### **RECITALS**

**Whereas**, on December 23, 2020, Plaintiff filed an action in the Superior Court of California for the County of Orange titled *Amara O’Neill v. Robinson Pharma, Inc., et al.*, Case No. 30-2020-01176039-CU-OE-CJC (the “Action”), asserting individual claims for: (1) sexual assault and intimidation by violence; (2) sexual assault and battery; (3) sexual harassment and hostile work environment; (4) failure to prevent harassment; (5) retaliation; (6) whistleblower retaliation; (7) wrongful termination; and (8) intentional infliction of emotion distress;

**Whereas**, on January 29, 2021, Plaintiff filed a First Amended Complaint in the Action adding to the claims set forth in the original complaint claims under the California Labor Code and Unfair Competition Law for: (1) failure to reimburse business expenses; (2) failure to pay wages; (3) failure to pay all wages at termination; (4) failure to provide accurate wage statements; and (5) unfair business practices. Plaintiff sought to pursue these added claims on a class basis;

**Whereas**, on May 13, 2021, Plaintiff filed a Second Amended Complaint in the Action asserting an additional cause of action for the recovery of civil penalties pursuant to California’s Private Attorneys General Act (“PAGA”);

**Whereas**, on November 17, 2022, the Court granted Plaintiff’s Motion for Class Certification and certified a class comprised of all non-exempt employees of Robinson Pharma, Inc. from January 29, 2017 through November 17, 2022;

**Whereas**, the Court approved the distribution of class notices to all non-exempt employees who comprised the class certified on November 17, 2022, which among other things, provided each individual information regarding their ability to opt out of the class and the procedures for doing so;

**Whereas**, at the conclusion of the notice periods, approximately 1,592 persons did not opt out of the settlement and comprise class members of the certified class;

**Whereas**, the Parties agreed to attempt to resolve the Action (excluding Plaintiff's individual non-wage and hour claims) through mediation and, pursuant to such agreement, participated on August 9, 2023, in a full-day mediation before mediator Gail Glick. The case did not settle that day, but the Parties did ultimately agree to a mediator's proposal on August 11, 2023;

**Whereas**, the mediator's proposal and this Settlement do not in any way settle, resolve or release Plaintiff's individual non-wage and hour claims which include but are not limited to her claims for: (1) sexual assault and intimidation by violence; (2) sexual assault and battery; (3) sexual harassment and hostile work environment; (4) failure to prevent harassment; (5) retaliation; (6) whistleblower retaliation; (7) wrongful termination; and (8) intentional infliction of emotion distress;

**Whereas**, Class Counsel has made a thorough and independent investigation of the facts and law relating to the allegations in the Action and of other potential claims that could have been asserted, including those in the Class Member Release stated in Paragraph 15 below. In agreeing to this Settlement Agreement, Plaintiff has considered: (a) the facts developed during discovery, class certification, the Parties' mediation process, and the law applicable thereto; (b) the attendant risks of continued litigation and the uncertainty of the outcome of the claims alleged against Defendant; and (c) the desirability of consummating this Settlement according to the terms of this Settlement Agreement. Plaintiff has concluded that the terms of this Settlement are fair, reasonable and adequate, and that it is in the best interests of the Class Members to settle their claims against Defendant pursuant to the terms set forth herein;

**Whereas**, Defendant denies all claims as to liability, damages, penalties, interest, fees, and all other forms of relief, and denies the allegations asserted in the Action. Defendant has agreed to resolve the Action via this Settlement, but to the extent this Settlement Agreement is deemed void or the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action upon all procedural, merits, and factual grounds, including, without limitation, the ability to move to decertify the class, as well as

asserting any and all other privileges and potential defenses. This Settlement Agreement shall not be construed as an admission by Defendant or any of the Released Parties (as defined below) of any fault, liability or wrongdoing, which Defendant expressly denies;

**Whereas**, the Parties recognize that Court approval of this Settlement is required to effectuate the Settlement, and that the Settlement will not become operative until the Court grants final approval of it and the Settlement Effective Date occurs;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, it is hereby agreed by and between the Parties hereto as follows:

### **DEFINITIONS**

#### **RELATING TO CLASS MEMBERSHIP:**

1. “Class Members” means the individuals that comprise the class certified by the Court on November 17, 2022, which include all non-exempt employees of Robinson Pharma, Inc. from January 29, 2017 through November 17, 2022, and that did not opt out from the Certified Class.

2. “Class” or “Certified Class” is the group of people comprised of the Class Members.

3. “Class Period” means the period January 29, 2017 through July 1, 2023.

#### **RELATING TO CLASS NOTICE:**

4. “Class List” means an electronic database containing a list of all Class Members that Defendant will compile from their records. The Class List shall include each Class Member’s: (1) full name, (2) last known address; (3) last known telephone number (if any); (4) Social Security number or tax ID number; and (5) the total number of workweeks that each Class Member worked in the state of California between January 29, 2017 and July 1, 2023.

5. “Notice Packet” and “Notice” means the document attached as **Exhibit A**. The Notice Packet shall not include an opportunity for a Class Member to opt-out of the Settlement, but will advise the Class Member of his/her opportunity to object to the Settlement.

6. “Response Deadline” means 40 calendar days after the date on which the Settlement Administrator initially mails Notice Packets to the Class Members.

**RELATING TO CLASS PAYMENT:**

7. “Gross Settlement Amount” means the maximum, non-reversionary total amount that Defendant shall pay in connection with this Agreement. The Gross Settlement Amount is the gross sum of Three Million Four Hundred Ninety-Five Thousand Dollars (\$3,495,000.00). The Gross Settlement Amount includes: (a) all Individual Class Member Awards; (b) the payment to the Labor Workforce Development Agency for its share of the PAGA Payment; (c) Class Representative Service Payment; (d) Class Counsel’s Attorneys’ Fees and Costs; and (e) Settlement Administration Costs to the Settlement Administrator. The Parties agree that Defendant will have no obligation to pay any amount in connection with this Agreement apart from the Gross Settlement Amount, Defendant’s employer’s portion of payroll taxes on the Individual Class Member Awards and any potential increase in connection with the Escalator Clause set forth in section 32 below.

8. The “Net Settlement Amount” means the Gross Settlement Amount less: (a) Class Representative Service Payment; (b) Class Counsel’s Attorneys’ Fees and Costs; (c) the payment to the Labor Workforce Development Agency for its share of the PAGA Payment; and (d) Settlement Administration Costs to the Settlement Administrator. The Net Settlement Fund will be distributed to the Class Members consistent with the calculation method provided in Paragraph 31 below. The Parties acknowledge that all of these amounts are subject to the Court’s approval.

9. “PAGA Payment” means the amount of the Gross Settlement Amount allocated to settle all claims and remedies under the Private Attorneys’ General Act, California Labor Code section 2698, *et seq.* The PAGA Payment shall be \$800,000.00, of which 75%, or \$600,000.00 shall be paid to the Labor Workforce Development Agency out of the Gross Settlement. The remaining 25%, or \$200,000.00, shall be paid to the Class Members out of the Net Settlement Amount.

**RELATING TO OTHER PAYMENTS:**

10. “Class Counsel” means Torey Joseph Favarote of Gleason & Favarote LLP, located at 4014 Long Beach Blvd., Suite 300, Long Beach, California 90807.

11. “Class Counsel’s Attorneys’ Fees and Costs” means attorneys’ fees and costs agreed upon by the Parties, and subject to approval by the Court, for Class Counsel’s fees and costs incurred in investigation of the Action, litigation of the Action, resolution of the Action, administration of the Settlement, including fees and costs incurred through final approval and disbursement of payments under this Settlement and obtaining entry of the Judgment, and which shall not exceed thirty-three point three three percent (33.33%) of the Gross Settlement Amount, or \$1,165,000.00 plus actual litigation costs up to Thirty Thousand Dollars (\$30,000.00). Defendant agrees not to challenge or oppose Class Counsel’s motion or application for attorneys’ fees and costs up to these amounts.

12. “Class Representative Service Payment” means the amount that may be paid upon Court approval to Plaintiff Amara O’Neill in recognition of her effort and work in prosecuting the Action on behalf of the Class Members, which shall not exceed \$10,000.00. Defendant agrees not to challenge or oppose Class Counsel’s motion or application for a Class Representative Service Payment up to the amount stated in this paragraph.

13. “Settlement Administrator” means ILYM Group, Inc. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

14. “Settlement Administration Costs” or “Administrator Costs” or “Administration Costs” means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, calculating estimated amounts per Class Member, distributing the Settlement Amount, providing necessary reports and declarations, coordinating the translation of the Notice Packet to Vietnamese, and other duties and responsibilities set forth herein to process this Settlement, and as requested jointly by the Parties, and which shall not exceed \$20,000.00.

**RELATING TO RELEASED CLAIMS AND RELEASED PARTIES:**

15. “Class Member Release” means the following release of claims, which is given by each Class Member:

I hereby fully, forever, irrevocably, and unconditionally release and discharge for the time period of January 29, 2017, through July 1, 2023, Robinson Pharma, Inc., and its affiliated entities, related companies, predecessors, successors, direct and indirect parent companies, subsidiaries and insurers, and each of these entities’ present or past owners, officers, directors, employees, partners, members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, personal or legal representatives, assigns, and all persons acting by, through, under, or in concert with them (collectively each of these, including Robinson Pharma, Inc., is referred to hereinafter as the “Released Parties”), from any and all claims that would have or could have arisen from the facts or circumstances alleged in any pleading in the Action, including but not limited to the Third Amended Complaint and any of Plaintiff’s PAGA Letters, including the Supplemental PAGA Letter (“Released Claims”). The Released Claims include claims for: the purported payment or nonpayment of wages or other compensation (including, but not limited to, minimum wages, overtime wages, and/or premium pay); failure to pay wages at the correct regular rate (including, overtime, meal or rest period premiums, and sick leave); meal or rest period premiums; failure to pay for all hours worked; failure to timely pay wages during employment; failure to pay wages at discharge or termination; failure to provide compliant meal and rest periods; failure to accurately record time, including all time worked (due to, for example, off-the-clock work, rounding, and auto-deduction); failure to provide timely or compliant wage statements; failure to maintain records; failure to track, provide, or pay sick leave; failure to provide one day’s rest in seven; unreimbursed business expenses; unfair business practices; statutory penalties, including waiting time penalties; violations of any provisions of the Industrial Welfare Commission Wage Orders; claims under the Private Attorneys General Act, including claims for penalties under California Labor Code sections: 201-204, 205, 205.5, 210, 216, 218.5, 221-224, 225.5, 226,

226.2, 226.3, 226.6, 226.7, 245-249, 432.5, 432.7, 510, 512, 551, 552, 558, 1024.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.1, 1194.2, 1195, 1197, 1197.1, 1197.5, 1198, 1199; 2698 *et seq.*, 2802, and for violations of the Industrial Welfare Commission Wage Orders; liquidated damages; interest; injunctive relief; declaratory relief; and accounting, whether such causes of action are in tort, contract, or pursuant to a statutory remedy.

The Class Member Release will be effective upon the Effective Date.

**RELATING TO PRELIMINARY AND FINAL APPROVAL:**

16. “Settlement Court” means the Superior Court of California, County of Orange and specifically the courtroom in which Case No. 30-2020-01176039-CU-OE-CJC is pending, or any other court and/or courtroom holding jurisdiction.

17. “Preliminary Approval” means the Court order granting preliminary approval of the Settlement Agreement.

18. “Final Approval” means the Court order granting final approval of the Settlement Agreement.

19. “Effective Date” means the latter of: (1) the 61st day (unless the last such date is a weekend or holiday, in which case the next business day shall be used), after the Settlement Court enters an order granting final approval of this Settlement Agreement and judgment in the Action, provided that no timely appeal is taken by a Class Member of the order of final approval and entering judgment in the Action; or (2) if any timely appeal is filed by a Class Member, the date of final resolution of such appeal (including any appeals to the highest court of the State of California or the United States Supreme Court) provided that such resolution does not in any way alter the terms of the Settlement Agreement. The Effective Date will not arise if the Settlement is (1) altered, modified, or rejected by the Settlement Court; or (2) altered, modified, or rejected by any appellate court following a timely appeal filed by a Class Member.

**ADDITIONAL TERMS**

20. Supplemental PAGA Notice and Amended Pleading. The Parties stipulate and

agree that for settlement purposes, Plaintiff will seek leave to amend to file a Third Amended Complaint in the form attached hereto as **Exhibit B**, to assert the claims, legal allegations, legal theories, and factual allegations necessary to effectuate the Release in this Settlement Agreement and to aggregate the claims, legal allegations, and factual allegations pled in the following related actions:

- ❖ *Cecilia Padilla vs. Robinson Pharma, Inc.*, Orange County Superior Court Case No. 30-2021-01183520, filed on February 4, 2021;
- ❖ *Manh Nguyen vs. Robinson Pharma, Inc.*, Orange County Superior Court Case No. 30-2021-01224817, filed on October 4, 2021;
- ❖ *Ridvan Ali Olivares vs. Robinson Pharma, Inc.*, Orange County Superior Court Case No. 30-2022-01256198, filed on April 22, 2022;
- ❖ *Ridvan Ali Olivares vs. Robinson Pharma, Inc.*, Orange County Superior Court Case No. 30-2022-01267160, filed on June 28, 2022.

For settlement purposes, Plaintiff has also filed a Supplemental PAGA Letter to the Labor Workforce Development Agency to assert additional claims, legal allegations, legal theories, and factual allegations necessary to effectuate the Release in this Settlement Agreement. The Supplemental PAGA Letter is attached hereto as **Exhibit C**. The Third Amended Complaint shall be filed no sooner than 70 days after the LWDA's receipt of the Supplemental PAGA Letter, and shall include, in addition to all allegations and theories for PAGA liability set forth in the Second Amended Complaint, but also all additional allegations and theories for PAGA liability set forth in the Supplemental PAGA letter. The Settlement is expressly conditioned upon: (1) the approval by both Parties of the Third Amended Complaint and (2) an order by the Settlement Court granting Plaintiff leave to file the Third Amended Complaint and her filing of the same. In the event that (i) leave to amend to file a Third Amended Complaint as described above is not granted by the Court, (ii) a Third Amended Complaint as described above is not filed with the Court, or (iv) the State chooses to pursue directly in its behalf the claims asserted in the Supplemental PAGA Letter as described above, then this Settlement shall be null and void.

21. Preliminary Approval Hearing. Within thirty (30) calendar days of the filing of the Third Amended Complaint (as detailed in paragraph 20), Plaintiff shall file a motion with the Settlement Court seeking among other things: (a) Preliminary Approval of the proposed Settlement Agreement; (b) staying all non-settlement activity in the action; and (c) setting a date for a hearing

concerning Final Approval of the Settlement Agreement. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include all attachments hereto. Class Counsel will be responsible for drafting all documents necessary to obtain preliminary approval, though the parties will meet and confer on such materials, and Class Counsel will submit the settlement approval papers to the Settlement Court. Defendant may, but is not obligated to, submit a separate brief in support of preliminary approval at the time any opposition would be due. If Defendant does not submit a separate brief in support of preliminary approval, Defendant is obligated to submit a notice of non-opposition to the ultimate relief sought in the motion for preliminary approval, but not necessarily to all statements contained therein.

22. Delivery of the Class List. Within fourteen (14) calendar days of entry of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator, which shall be used solely for the administration of this Settlement Agreement. The Defendant must also submit with the Class List a declaration under penalty of perjury that all Class Members are included and their information on the Class List is true and correct to the best of the declarant's personal knowledge. In the event that the Settlement Agreement is not finally approved by the Court, or if it is in any way altered or disapproved on appeal, the Settlement Administrator shall not thereafter use the Class List, and shall destroy any and all copies or versions of it (including any in electronic form).

23. Notice by First-Class U.S. Mail. Within twenty-one (21) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail in both English and Vietnamese, using the most current, known mailing addresses identified in the Class List or through a National Change of Address database search. The first page of the Settlement Notice shall prominently estimate the dollar amounts of any Individual Class Member Award and the number of workweeks and, if applicable, pay periods during the PAGA Period used to calculate these amounts. For any returned envelopes from this mailing as non-deliverable on or before 30 days after mailing, the Settlement Administrator will use any forwarding address provided to re-mail the returned envelope and, if no forwarding address is provided, will perform a skip trace to identify an address to which the envelope may be forwarded. The Settlement Administrator shall undertake such effort and further

mailing no later than five (5) calendar days after receipt of the returned envelope. The Settlement Administrator will maintain a report of the date of such re-mailings of the Notice Packet. No additional mailings shall occur and under no circumstances shall such additional mailings extend the Response Period.

24. Objections to the Settlement. A Class Member may object to the Settlement by filing a written objection with the Settlement Court using the case name and number of the Settlement Court (found on the first page of the Notice Packet), and mailing a copy of his/her written objection to Class Counsel, Counsel for Defendant, and the Settlement Administrator at the addresses listed in the Notice Packet, each postmarked by no later than the Response Deadline. A Class Member may also object to Class Counsel's request for Attorney's Fees. The objection should be signed, set forth the objecting Class Member's name, address and telephone number, and state why he/she objects to the proposed Settlement and whether he/she intends to appear at the Final Approval Hearing. Any Class Member who does not object in the manner described in the Notice shall be deemed to have waived any objections, and shall be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the requested Class Counsel's Attorney Fees, Class Counsel's Costs, Class Representative Service Payment, the Release, and any other provision of this Settlement.

25. The Parties believe that compliance with the procedures described in paragraphs 23 through 24 above and in the Notice will constitute due and sufficient notice to Class Members of this Settlement.

26. Disputes Regarding Workweeks. To the extent that any Class Member disputes the number of workweeks that the Class Member worked, as shown in his or her Notice, such Class Member may produce evidence to the Settlement Administrator establishing the dates they contend to have worked for Defendant. Weeks "worked" for purposes of this settlement will be determined by reference to timekeeping, payroll, and/or other records. The deadline for Settlement Class Members to submit disputes pursuant to this paragraph is the Response Deadline (disputes must be postmarked by the Response Deadline). Unless the Settlement Class Member presents convincing evidence proving he or she worked more workweeks than shown by Defendant's records, his/her Settlement Award will be determined based on Defendant's records. The

Settlement Administrator shall notify counsel for the Parties of any disputes it receives. Defendant shall review its records and provide further information to the Settlement Administrator, as necessary. The Settlement Administrator shall provide a recommendation to counsel for the Parties. Counsel for the Parties shall then meet and confer in an effort to resolve the dispute. If the dispute cannot be resolved by the Parties, the workweeks shall be as stated in Defendant's Class List. The Settlement Administrator will notify the disputing Class Member of the decision.

27. Reports Regarding Administration of the Settlement Agreement. Within fourteen (14) calendar days after expiry of the Response Deadline, the Settlement Administrator will provide Defendant's counsel and Class Counsel with a written report which certifies the number of Class Members who have submitted an objection to the settlement, along with copies of all such objections. Additionally, the Settlement Administrator will provide to counsel for the Parties any updated reports regarding the administration of the Settlement on a weekly basis and as reasonably requested by a Party.

28. Final Settlement Approval Hearing and Entry of Judgment / Motion for Fees, Etc. Within twenty-eight (28) calendar days after expiry of the Response Deadline, Plaintiff will submit a Motion for Final Approval/Settlement Fairness Hearing. Class Counsel will be responsible for drafting all documents necessary to obtain final approval, and Class Counsel will submit the settlement approval papers to the Settlement Court. However, Defendant may submit a separate brief in support of final approval. If Defendant does not submit a separate brief in support of final approval, Defendant is obligated to submit a notice of non-opposition to the ultimate relief sought in the motion for final approval, but not necessarily to all statements contained therein. Class Counsel may submit a motion requesting an award of Class Counsel's Attorney Fees, Class Counsel's Costs, and Class Representative Service Payment as defined herein seeking amounts no greater than the maximum amount stated herein, to which Defendant will not object. If Defendant does not submit a separate brief in support of these award requests, Defendant is obligated to submit a notice of non-opposition to the motion for the awards, provided that the amounts sought are within the limits stated herein. The hearing on these motions shall be as specified in the Preliminary Approval Order or, if no such date is specified, at the earliest available date on the Settlement Court's calendar.

29. Notice to the Labor and Workforce Development Agency. Plaintiff shall be responsible for timely providing all notices to the Labor and Workforce Development Agency and providing Defendant's counsel confirmation of same, including submission of the proposed settlement contemporaneously with the filing of the motion for preliminary approval, under California Labor Code § 2699(l)(2), and submission of any judgment within 10 days after entry of same, under California Labor Code § 2699(l)(3). Defendant may also choose to provide such notice to the Labor and Workforce Development Agency.

30. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the Settlement Court or in conjunction with or after the Final Approval/Settlement Fairness Hearing, the Parties will present the Settlement Judgment (which will expressly note that no liability has been found, and there is no admission of wrongdoing) to the Court for its approval. After entry of the Settlement Judgment, the Court will have continuing and exclusive jurisdiction solely for: (a) addressing the interpretation and enforcement of the terms of the Settlement; (b) Settlement administration matters; (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement; and (d) all of the individual claims asserted by Plaintiff in the Third Amended Complaint that are not released pursuant to this Settlement Agreement consistent with the provisions of Paragraph 41 below.

31. Allocation of Net Settlement Amount to Calculate the Class Members' Final Settlement Awards. The Net Settlement Amount shall be allocated among Class Members by reference to the number of work weeks all Class Members worked during the Class Period. Each workweek worked by Class Members who were current employees as of July 1, 2023, will be equal to one (1) settlement share. Each workweek worked by Class Members who were former employees as of July 1, 2023, will be equal to one and one tenth (1.10) settlement shares. The total number of settlement shares for all Class Members will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Class Member's number of settlement shares to determine the Class Member's *pro rata* portion of the Net Settlement Amount (the "Individual Class Member Award"). As discussed above, 25% of each Individual Class Member Award shall, for tax purposes, be designated as wages and shall be reported using a Form W-2, and 75% of each Individual Class Member Award shall, for tax, purposes be designated as non-wages and shall be

reported using a Form 1099. The Individual Class Member Awards and allocation as discussed immediately above and below shall be calculated by the Settlement Administrator within fifteen (15) calendar days of the Effective Date and the Settlement Administrator shall provide Defendant's and Class Counsel with the final Individual Class Member Award calculations on this same day.

32. Escalator Clause. The Gross Settlement Amount is based on Defendant's verified representation under penalty of perjury that there are approximately 160,000 workweeks for the Class Members from January 29, 2017, through July 1, 2023. If the actual number of workweeks increases by more than 10%, then the Gross Settlement Amount shall be increased proportionately. For example, if the number of workweeks is 11% higher, the Gross Settlement Amount shall be increased by 1%. Defendant may elect to shorten the Class Period to the date on which the 110% threshold was reached. Defendant will have five (5) calendar days from its receipt of the final Individual Class Member Award calculations which will be conducted by the Settlement Administrator before the Notice Packets are mailed, to inform Class Counsel and the Settlement Administrator of its election under the terms of this provision.

33. Funding the Settlement. Within ten (10) calendar days of the Effective Date, Defendant shall provide the Settlement Administrator via wire transfer the funds equal to the Gross Settlement Amount.

34. Distribution of Payments. Within ten (10) calendar days after Defendant transfers funds equal to the Gross Settlement Amount to the Settlement Administrator, the Settlement Administrator shall distribute:

- a. to Class Counsel – Class Counsel's Attorney Fees awarded by the Court and the Class Counsel's Costs awarded by the Court, all of which shall be reported using a Form 1099;
- b. to Plaintiff Amara O'Neill – the Class Representative Service Payment awarded by the Court which shall be reported using a Form 1099;
- c. to the LWDA – \$600,000.00 representing its share of the PAGA Payment;
- d. to the Settlement Administrator - Administrative Costs incurred and approved up

to \$20,000.00.

e. to each Class Member his or her Individual Class Member Award with appropriate tax forms as described herein;

35. Administration of Tax Forms. The Settlement Administrator will be responsible for issuing to Plaintiff, Class Members, the LWDA, the Settlement Administrator, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement, and for forwarding all payroll taxes and penalties to the appropriate government authorities.

36. Tax Allocation. For tax reporting purposes, any payments made to Class Members (excluding Class Representative Service Payment) shall be allocated as follows: (a) 25% as wages; and (b) 75% as non-wages. All other payments made pursuant to this Agreement shall be deemed non-wages, and will be reported using an IRS Form 1099.

37. Tax Liability. Defendant and their counsel and Plaintiff and Class Counsel make no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and Class Members are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard. Plaintiff and Class Members understand and agree that they each will be solely responsible for the payment of any taxes and penalties assessed on their share of the payments described herein and will hold Defendant, their counsel, Plaintiff and Class Counsel free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages. Each party to this Settlement (for purposes of this section, the "Acknowledging Party" and each party to this agreement other than the Acknowledging Party, an "other Party") acknowledges and agrees that (1) no provision of this Settlement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor will any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Settlement, (b) has not entered into this Settlement based upon the recommendation of any other Party or any attorney or advisor to any

other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other Party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this agreement.

38. Uncashed Settlement Checks. Class Members will have 180 calendar days within which to negotiate (cash or deposit) their settlement checks from the date on which they are mailed. If any settlement check is not negotiated within that period of time, it will be voided. In the event that any settlement check is returned to the Settlement Administrator within 160 calendar days of mailing and a forwarding address is provided within that time period, the Settlement Administrator shall re-mail the settlement check to the forwarded address and notify the Class Member of the deadline to cash the check to avoid it being voided. For any settlement checks deemed void as a result of being uncashed for more than 180 days, the Settlement Administrator will disburse the uncashed funds, subject to the Court's approval, to the California State Controller Unclaimed Property Fund in the name of the Class Member to be held by the Controller's Office for the benefit of the Class Member until such time as he or she claims his or her property, as allowed by law.

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

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

41. Release of Claims & Rights by Plaintiff Amara O'Neill. The Parties agree that Plaintiff will not and is not releasing or discharging the Released Parties from any claims, demands, obligations, causes of action, rights, or liabilities except for those Plaintiff will release through the Class Member Release provided in this Settlement. Among the claims expressly

excluded from this Settlement and the Class Member Release are Plaintiff's individual claims and related rights to attorney's fees and costs asserted in Plaintiff's Third Amended Complaint for: (1) sexual assault and intimidation by violence; (2) sexual assault and battery; (3) sexual harassment and hostile work environment; (4) failure to prevent harassment; (5) retaliation; (6) whistleblower retaliation; (7) wrongful termination; and (8) intentional infliction of emotion distress.

42. Nullification of Settlement Agreement. In the event that: (a) the Settlement Court does not finally approve the Settlement as provided herein; or (b) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

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

44. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements with respect to the subject matter hereof may be deemed binding on the Parties.

45. Amendment or Modification. This Settlement Agreement may be amended or modified only by a formal written instrument signed by counsel for all Parties or their successors-in-interest.

46. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement.

47. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

48. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

49. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile, electronic and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts if requested by one Party. A signature through Adobesign or DocuSign, facsimile, electronic means, or scan shall for purposes of this Settlement Agreement be as valid and enforceable as an original signature.

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

51. Waiver of Certain Appeals. In the event the Court finally approves this Settlement, the Parties agree to waive appeals concerning this Settlement. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings.

52. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached 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 Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will

be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission 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.

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

54. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

55. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

56. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

57. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith in drafting and executing all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement and obtain final

approval of the Settlement. Should the Settlement Court decline to preliminarily approve or finally approve aspects of the Settlement, the Parties shall work together in good faith to address any concerns raised by the Settlement Court, with good faith intention to propose a revised Settlement for the Settlement Court's approval. Further, the Parties shall work together in good faith to address any concerns raised by the LWDA. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the mediator used for the August 9, 2023 mediation to resolve such disagreement.

58. Publicity: The Parties recognize that the fact of settlement of this matter is non-confidential, as notice of the settlement will go out to Class Members and the filings and approval process are a matter of public record. However, the Parties and their counsel agree they shall not issue any press release regarding the Settlement. Class Counsel further agrees that as to any media relating to the pharmaceutical, nutraceutical, and supplement industry (including any trade periodical, publication, or magazine, or any other print or internet-based media), that Class Counsel shall not publicize or advertise: (1) the terms of the Settlement; (2) the amounts Defendant will pay in connection with the Settlement; and (3) the events, allegations, claims, or facts giving rise or related to the Action.

59. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to

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disclosure in any proceeding to enforce its terms, notwithstanding any confidentiality provisions that otherwise might apply under federal or state law.

**IN WITNESS WHEREOF**, the Parties and their Counsel have executed this Settlement Agreement as follows:

**PLAINTIFF AMARA O'NEILL**

\_\_\_\_\_  
Amara O'Neill,  
on her own behalf and as class representative  
of the certified class

Dated: \_\_\_\_\_, 2023

**GLEASON & FAVAROTE LLP**

\_\_\_\_\_  
By: Torey Joseph Favarote  
As Attorney for Plaintiff and the Certified Class

Dated: \_\_\_\_\_, 2023

**DEFENDANT ROBINSON PHARMA, INC.**

DocuSigned by:  
  
AB0E66EC11840427...

By: Van Nguyen, Human Resources Manager

Dated: 10/27/2023  
\_\_\_\_\_, 2023

*Approved as to form:*

**GREENBERG TRAURIG, LLP**

\_\_\_\_\_  
By: Mark D. Kemple  
Attorney for Robinson Pharma, Inc.

Dated: \_\_\_\_\_, 2023

disclosure in any proceeding to enforce its terms, notwithstanding any confidentiality provisions that otherwise might apply under federal or state law.

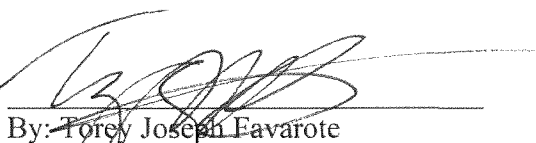
**IN WITNESS WHEREOF**, the Parties and their Counsel have executed this Settlement Agreement as follows:

**PLAINTIFF AMARA O'NEILL**

DocuSigned by:  
  
\_\_\_\_\_  
Amara O'Neill,  
on her own behalf and as class representative  
of the certified class

Dated: 10/25/2023, 2023

**GLEASON & FAVAROTE LLP**

  
\_\_\_\_\_  
By: Torey Joseph Favarote  
As Attorney for Plaintiff and the Certified Class

Dated: October 25, 2023

**DEFENDANT ROBINSON PHARMA, INC.**

\_\_\_\_\_  
By:

Dated: \_\_\_\_\_, 2023

*Approved as to form:*

**GREENBERG TRAURIG, LLP**

\_\_\_\_\_  
By: Mark D. Kemple  
Attorney for Robinson Pharma, Inc.

Dated: \_\_\_\_\_, 2023

disclosure in any proceeding to enforce its terms, notwithstanding any confidentiality provisions that otherwise might apply under federal or state law.

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Settlement Agreement as follows:

**PLAINTIFF AMARA O'NEILL**

\_\_\_\_\_  
Amara O'Neill,  
on her own behalf and as class representative  
of the certified class

Dated: \_\_\_\_\_, 2023

**GLEASON & FAVAROTE LLP**

\_\_\_\_\_  
By: Torey Joseph Favarote  
As Attorney for Plaintiff and the Certified Class

Dated: \_\_\_\_\_, 2023

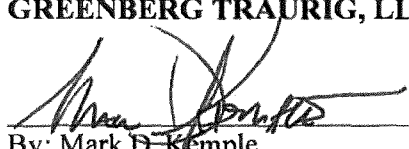
**DEFENDANT ROBINSON PHARMA, INC.**

\_\_\_\_\_  
By:

Dated: \_\_\_\_\_, 2023

*Approved as to form:*

**GREENBERG TRAURIG, LLP**

  
\_\_\_\_\_  
By: Mark D. Kemple  
Attorney for Robinson Pharma, Inc.

Dated: October 27, 2023

**EXHIBIT A**  
**(Notice of Class Action Settlement)**

## **NOTICE OF CLASS ACTION SETTLEMENT**

This is an Official Court Notice of a Proposed Settlement in the following lawsuit:  
*Amara O'Neill v. Robinson Pharma, Inc., et al.*; Orange County Superior Court Case  
No. 30-2020-01176039-CU-OE-CJC

Name [insert name]

*Correction to Address Needed?*

Address [insert address]

*Contact the Settlement Administrator.*

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### **CLASS MEMBERS ARE HEREBY NOTIFIED AS FOLLOWS:**

A proposed settlement (the "Settlement") has been reached in the above-referenced class and representative action lawsuit that was certified by the Court on November 17, 2022 and is currently pending in the Superior Court for the County of Orange (the "Action"). Because your rights may be affected by this Settlement, it is important that you read this notice carefully.

Records show that you are a member of the class of employees certified by the Court in this Action on November 17, 2022. You are a class member because you: (i) worked as a non-exempt employee in California for Robinson Pharma, Inc. ("RPI") at some point during the period from January 29, 2017 to November 17, 2022, and (ii) did not request to be excluded from that class or opt back in to the class ("Class" or "Class Member"). After certification, former employee and plaintiff Amara O'Neill ("Plaintiff") and RPI reached a proposed Settlement on behalf of all Class Members for all alleged claims in the period January 29, 2017 to July 1, 2023 (the "Class Period"). Because you are a Class Member, you are entitled to participate in the Settlement discussed in this notice and receive a settlement payment. Based on information contained in RPI's records, you worked [insert number] weeks during the Class Period and thus are eligible to receive a settlement payment in the gross estimated amount of \$[insert amount] less applicable payroll taxes.

As explained in more detail below, *you do not need to take any action to receive your Settlement payment*. As a class member, you will receive Settlement funds and be bound by the release of any claims described in this notice.

### **A. PURPOSE OF THIS NOTICE**

On November 17, 2022, the Court certified the following class: All non-exempt employees employed by RPI in California from January 29, 2017 to November 17, 2022 ("Class"). After certification, notice was sent to the Class, informing the Class Members of their right to request exclusion from the Class by "opting out." Those who opted out received a further notice informing all those who opted out of their right to opt back in to the Class. You are getting this notice because you are a Class Member—i.e., you worked as a non-exempt employee for RPI in California and either: (i) did not opt out of the Class, or (ii) opted out and opted back in to the Class.

Plaintiff and RPI reached a proposed Settlement on behalf of all Class Members for the Class Period. This notice is intended to inform you of the class action Settlement and your options (*i.e.*, participating and objecting).

## **B. DESCRIPTION OF THE ACTION**

Plaintiff sued RPI claiming that since 2017 RPI has required its employees to send and respond to emails, text messages, and telephone calls after hours, resulting in unpaid wages, unreimbursed business expenses, failure to pay all wages owed and due at discharge, failure to provide accurate wage statements, violations of California's unfair competition law ("UCL"), and civil penalties due under the Labor Code Private Attorneys General Act ("PAGA"). Plaintiff also alleged that RPI failed to pay overtime wages and for all time worked, failed to pay wages at the correct regular rate (including, overtime, meal or rest period premiums, and sick leave), failed to provide compliant meal and rest periods or premiums therefor, failed to timely pay wages during employment or at discharge or termination, failed to accurately record time, including all time worked, failed to track, provide, or pay sick leave, failed to provide one day's rest in seven, violated provisions of the Industrial Welfare Commission Wage Orders, improperly used credit and background check information and owed civil penalties, including under PAGA, for all of the foregoing alleged violations. Plaintiff claims that RPI owes Class Members wages, penalties, liquidated damages, interest, injunctive relief, declaratory relief, accounting, plus attorneys' fees and court costs. RPI disputes these allegations and believes it complied with the law.

The parties engaged in significant efforts to obtain the facts regarding the claims asserted, including the exchange of detailed data regarding Plaintiff and the Class, the production of policy and procedure documents, depositions of RPI payroll and human resources representatives, a full day mediation session, and the exchange of scores of pages of detailed briefing and factual and legal analysis in connection with class certification, as well as mediation. The parties disagree as to the probable outcome of the Action with respect to liability and damages if the Action were not settled. While Plaintiff and RPI are prepared to proceed with litigating the Action, each side recognizes that litigating is a risky and costly proposition and that each may not prevail on any or all of the claims.

This Settlement is the result of good-faith and arm's-length negotiations between the Plaintiff and RPI. Each side agrees that given the risks and expense associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and is in the best interests of the Class Members.

Please be advised that the Court has not ruled on the merits of the Plaintiff's claims or RPI's defenses (which means the Court has not made a determination of who is right or wrong).

On [date of preliminary approval] the Court granted preliminary approval of this proposed Settlement of the Action. The Court will decide whether to give final approval to the proposed Settlement at a hearing scheduled for [INSERT DATE] ("Final Approval Hearing"). See below for details. The date of the Final Approval Hearing is subject to be changed.

### C. SUMMARY OF TERMS OF THE PROPOSED SETTLEMENT

Subject to the Court's approval, the terms of the Settlement are as follows:

1. The settlement amount is \$3,495,000.00 (the "Settlement Amount") from which RPI would pay: (a) a minimum of \$1,625,000.00 for payment to Settlement Members, of which 25% shall for tax purposes be deemed wages subject to Form W-2 reporting, and 75% shall for tax purposes be deemed non-wages; (b) a maximum of \$1,165,000.00 (33.33% of the Settlement Amount) for the payment of Class Counsel's attorney fees plus litigation costs up to \$30,000.00; (c) \$600,000.00 to the State of California for its share of the Settlement Amount allocated for settlement of the PAGA claims; (d) a maximum of \$10,000.00 for the payment of a class representative service payment to the named Plaintiff for her service to the Class in bringing the case on behalf of the Class; and (e) a maximum of \$20,000.00 for Settlement Administration Costs. The Settlement Amount shall not include employer payroll taxes due upon payment of the 25% allocated to wages payable to the Class Members, which will be paid outside the Settlement Amount. In the event that the maximum sums stated in subsections (b)-(e) are not approved and awarded by the Court, the unapproved and awarded sums shall be added to the Class Recovery (subsection (a)). None of these sums shall revert to RPI. The amount set forth above in subsection (a) is referred to herein as the "Class Recovery."

2. The Class Recovery will be allocated among Class Members based upon calculations made using RPI's records. Specifically, a participating Class Member's share of the Net Settlement, will be calculated by reference to the number of workweeks all Class Members worked during the Class Period. Each workweek worked by Class Members who were current employees as of July 1, 2023, will be equal to one (1) settlement share. Each workweek worked by Class Members who were former employees as of July 1, 2023, will be equal to one and one tenth (1.1) settlement shares to account for the additional claims that former employees have under the law. The total number of settlement shares for all Class Members will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Class Member's number of settlement shares to determine the Class Member's *pro rata* portion of the Net Settlement Amount (the "Individual Class Member Award"). As discussed above, 25% of each Individual Class Member's Award shall for tax purposes be designated as wages and shall be reported using a Form W-2, and 75% of each Individual Class Member's Award shall for tax purposes be designated as non-wages and shall be reported using a Form 1099.

3. Based on the foregoing methodology, your estimated Individual Class Member Recovery is shown on page 1 of this notice. PLEASE NOTE that your Final Individual Settlement Member Total Recovery may be more or less than the amount stated above after accounting for all sums payable from the Settlement Amount.

4. Each Class Member consents to the following release ("Release"):

I hereby fully, forever, irrevocably, and unconditionally release and discharge for the time period of January 29, 2017, through July 1, 2023, Robinson Pharma, Inc., and its affiliated entities, related companies, predecessors, successors, direct and indirect parent companies, subsidiaries and insurers, and each of these entities' present or past

owners, officers, directors, employees, partners, members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, personal or legal representatives, assigns, and all persons acting by, through, under, or in concert with them (collectively each of these, including Robinson Pharma, Inc., is referred to hereinafter as the "Released Parties"), from any and all claims that would have or could have arisen from the facts or circumstances alleged in any pleading in the Action, including but not limited to the Third Amended Complaint and Amended PAGA Letter, including the Supplemental PAGA Letter ("Released Claims"). The Released Claims include claims for: the purported payment or nonpayment of wages or other compensation (including, but not limited to, minimum wages, overtime wages, and/or premium pay); failure to pay wages at the correct regular rate (including, overtime, meal or rest period premiums, and sick leave); meal or rest period premiums; failure to pay for all hours worked; failure to timely pay wages during employment; failure to pay wages at discharge or termination; failure to provide compliant meal and rest periods; failure to accurately record time, including all time worked (due to, for example, off-the-clock work, rounding, and auto-deduction); failure to provide timely or compliant wages statements; failure to maintain records; failure to track, provide, or pay sick leave; failure to provide one day's rest in seven; unreimbursed business expenses; unfair business practices; statutory penalties, including waiting time penalties; violations of any provisions of the Industrial Welfare Commission Wage Orders (including its provisions regarding suitable seating); claims under the Private Attorneys General Act, including claims for penalties under California Labor Code sections: 201-204, 205, 205.5, 210, 216, 218.5, 221-224, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 245-249, 432.5, 432.7, 510, 512, 551, 552, 558, 1024.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.1, 1194.2, 1195, 1197, 1197.1, 1197.5, 1198, 1199; 2698 et seq., 2802, and for violations of the Industrial Welfare Commission Wage Orders (including its provisions regarding suitable seating and temperature requirements); liquidated damages; interest; injunctive relief; declaratory relief; and accounting, whether such causes of action are in tort, contract, or pursuant to a statutory remedy.

#### **D. TO PARTICIPATE IN THE SETTLEMENT**

**To participate in the Settlement, you do not need to take any further action.** Upon final approval from the Court, you will receive a Settlement check for an amount as described above on page 1.

#### **E. TO OBJECT TO THE SETTLEMENT**

If you believe the proposed Settlement or award of fees and costs to Class Counsel is unfair or inadequate in any respect, you may object to the Settlement by submitting a written objection to the Settlement Administrator, Class Counsel, and Counsel for RPI at the addresses listed in this notice. You may not "opt out" of the Settlement as you have already been provided an opportunity to do so after receiving the class notice on certification. An objection must meet all of the requirements listed at the end of this section to be valid and to ensure that it is heard.

Class Counsel's application for fees will be filed with the Court on or before [INSERT DATE]. You may access that document any time after that date through the Orange County Superior Court's

Online Case Access system, which can be accessed by logging in at <[www.occourts.org/online-services/case-access/](http://www.occourts.org/online-services/case-access/)>, finding the "Civil Case & Document Access" portion of the website and clicking the "Access Now" link displayed on that page. Users will be required to accept the terms of use and enter the case number (30-2020-01176039-CU-OE-CJC) to obtain case documents. Users may incur fees charged by the Orange County Superior Court for providing electronic public access to court records. If you believe you have a basis to object, you may do so by submitting a written objection in the manner described below.

All objections must be signed and set forth your name, mailing address, and telephone number, and clearly state and explain why you object to the proposed Settlement or to the requested attorney's fees and whether you or someone on your behalf intends to appear at the Final Approval Hearing. If you submit a timely objection, you may appear, at your own expense, at the Final Approval Hearing, discussed below.

You cannot ask the Court to order a larger settlement; the Court can only approve or deny the Settlement. If the Court denies approval, no Settlement payments will be sent out and the lawsuit will continue; if that is what you want to happen, you can object.

Any Class Member who does not object in the manner described above shall be deemed to have waived any objections and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the payment of attorneys' fees, litigation costs, the Class Representative Service Payment, and any and all other aspects of the Settlement.

Requirements for Objections: All written objections and supporting papers must (i) clearly identify the case name and number (*Amara O'Neill v. Robinson Pharma, Inc., et al.*; Orange County Superior Court Case No. 30-2020-01176039-CU-OE-CJC), (ii) be mailed to Class Counsel, Counsel for RPI, and the Settlement Administrator at the addresses below, (iii) be signed and set forth your name, mailing address, and telephone number, and clearly state and explain why you object to the proposed Settlement or to the requested attorney's fees and whether you or someone on your behalf intends to appear at the Final Approval Hearing, and (iv) be filed or postmarked on or before **[INSERT DATE]**. Failure to comply with these requirements will be deemed a waiver of any objections.

#### **F. DISPUTES AS TO WORKWEEKS CREDITED**

For each Class Member, the weeks worked during the applicable Class Period will be calculated from RPI's records. If you disagree with the numbers reported above, you may submit evidence to the Settlement Administrator on or before **[INSERT DATE]**, with documentation to establish the number of workweeks you claim to have actually worked for RPI in California during the Class Period. DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS. The Parties and Settlement Administrator will evaluate the evidence submitted by the Class Member and discuss in good faith how many workweeks should be credited to each Class Member.

## **G. TAXES**

For tax reporting purposes, any payments made to Settlement Class Members (excluding Class Representative Service Payment) shall be allocated as follows: (a) 25% as wages; and (b) 75% as non-wages. All other payments, including any PAGA payment, made pursuant to this Agreement shall be deemed non-wages, and will be reported using an IRS Form 1099. If you have any questions regarding the tax treatment of any payments pursuant to the Settlement, you should consult your own tax advisor at your own expense. RPI, Plaintiff, and their attorneys make no representation as to the tax treatment or legal effect of the payments called for hereunder, and cannot and do not provide you tax advice in this regard.

## **H. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT**

The Court will hold a Final Approval Hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the administrative costs, and the class representative service payment on **[INSERT DATE AND TIME]** in Department CX101 of the Orange County Superior Court Civil Complex Center located at 751 S. Santa Ana Blvd., Santa Ana, California 92701. The date of the Final Approval Hearing is subject to change.

## **I. ADDITIONAL INFORMATION**

It is important for the parties to have your current address in order to be able to send you other mailings regarding the Action. You should contact the Settlement Administrator to report any change of your address after you receive this Notice.

This Notice only summarizes the Action, the Settlement, and other related matters. *Please do not contact the Court or the Court Clerk about this notice.* For additional information, you may access the publicly available information regarding this lawsuit. That information is available online at [www.occourts.org/online-services/case-access/](http://www.occourts.org/online-services/case-access/), or at the office of the clerk of the Orange County Superior Court, Civil Complex Center located at 751 S. Santa Ana Blvd., Santa Ana, California 92701. You may also contact the Settlement Administrator at:

**NAME OF ADMINISTRATOR**  
**ADDRESS**  
**TOLL-FREE PHONE NUMBER; FAX**  
**E-MAIL ADDRESS**

The attorney for the class ("Class Counsel") is:

Torey Joseph Favarote (tfavarote@gleasonfavarote.com)  
Gleason & Favarote LLP  
4014 Long Beach Blvd., Suite 300  
Long Beach, California 90807  
Phone: (213) 452-0510; Fax: (213) 452-0514

The attorneys for RPI are:

Mark D. Kemple (kemplem@gtlaw.com)  
Ryan C. Bykerk (bykerkr@gtlaw.com)  
Greenberg Traurig, LLP  
1840 Century Park East, Suite 1900  
Los Angeles, California 90067  
Phone: (310) 586-7700; Fax: (310) 586-7800

***PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.***

***THIS NOTICE IS NOT A RECOMMENDATION BY THE COURT AS TO ANY ACTION  
YOU SHOULD OR SHOULD NOT TAKE.***

***\*\*\*THIS IS NOT AN ADVERTISEMENT FROM A LAWYER\*\*\****

**EXHIBIT B**  
**(Third Amended Complaint)**

TOREY JOSEPH FAVAROTE (SBN: 198521)  
GLEASON & FAVAROTE LLP  
4014 Long Beach Blvd., Suite 300  
Long Beach, California 90807  
Telephone: (213) 452-0510  
Facsimile: (213) 452-0514  
[tfavarote@gleasonfavarote.com](mailto:tfavarote@gleasonfavarote.com)

Attorneys for Plaintiff Amara O'Neill  
And the Certified Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE**

AMARA O'NEILL, on behalf herself and all  
those similarly situated,

Plaintiff,

vs.

ROBINSON PHARMA INC., a California  
Corporation; TOMMY NGUYEN, an  
individual; and DOES 1-20, inclusive,

Defendants.

Case No. 30-2020-01176039-CU-OE-CJC

**THIRD AMENDED CLASS ACTION AND  
PAGA COMPLAINT FOR DAMAGES  
AND PENALTIES**

1. **CLASS ACTION:** VIOLATION OF  
CALIFORNIA LABOR CODE § 2802;
2. **CLASS ACTION:** FAILURE TO PAY  
MINIMUM WAGE IN VIOLATION OF  
LABOR CODE §§ 558, 1194, 1194.2,  
1197, 1197.1, 1198, 1199 AND THE IWC  
WAGE ORDERS;
3. **CLASS ACTION:** FAILURE TO PAY ALL  
WAGES AT TERMINATION IN VIOLATION  
OF LABOR CODE §§ 201-203;
4. **CLASS ACTION:** FAILURE TO PAY  
OVERTIME WAGES IN VIOLATION OF  
LABOR CODE §§ 510, 558, 1194, 1198  
AND THE IWC WAGE ORDERS;
5. **CLASS ACTION:** FAILURE TO MAINTAIN  
ACCURATE RECORDS IN VIOLATION OF  
LABOR CODE §§ 226, 1174(d), 1198.5  
AND THE IWC WAGE ORDERS;
6. **CLASS ACTION:** FAILURE TO PROVIDE  
MEAL PERIODS AND REST BREAKS IN  
VIOLATION OF LABOR CODE §§ 226.7,  
512, CAL. CODE. REG. TITLE 8, 11070  
AND THE IWC WAGE ORDERS;
7. **CLASS ACTION:** FAILURE TO PROVIDE  
ACCURATE WAGE STATEMENTS IN  
VIOLATION OF LABOR CODE §226;



1 Representative Plaintiff AMARA O'NEILL (herein referred to as "Plaintiff" or "O'Neill"),  
2 has brought this action on behalf of herself and all other similarly situated against defendants  
3 ROBINSON PHARMA INC., TOMMY NGUYEN, and DOES 1-20 (hereafter collectively  
4 referred to as "Defendants"). Plaintiff is informed and believes, and on that basis alleges as  
5 follows:

6 **PARTIES AND JURISDICTION**

7 1. Plaintiff AMARA O'NEILL was at all times relevant to this action, an employee of  
8 Defendant ROBINSON PHARMA INC. (hereinafter "RPI") as a project coordinator at one of its  
9 Santa Ana, California facilities. While employed by RPI, and at all times relevant to this action,  
10 Plaintiff performed the majority of her employment duties for RPI in Orange County.

11 2. Defendant RPI is a California corporation registered, qualified, and doing business  
12 in the State of California, with its principal place of business in Orange County, and is  
13 headquartered at 2811 South Harbor Boulevard Santa Ana CA 92704.

14 3. Plaintiff is informed and believes and, on this basis, alleges that defendant,  
15 TOMMY "TUNG" NGUYEN (hereinafter "Tommy") is and was at all times relevant hereto an  
16 employee of RPI with the title of Facilities Manager, a supervisor of Plaintiff, and a resident of the  
17 State of California.

18 4. Jurisdiction and venue are also proper in this Court because all the claims alleged  
19 herein arose in Orange County and all of the Defendants reside in and/or are doing or did business  
20 in Orange County, and/or their principal place of business is in Orange County, in each case, at the  
21 times relevant herein. Pursuant to California Code of Civil Procedure section 395(a), venue is  
22 proper in this County because Defendants reside in this County and the harm to Plaintiff occurred  
23 in this County.

24 5. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein  
25 as DOES 1 through 20. Defendants Does 1 through 20 are sued herein under fictitious names  
26 pursuant to California Code of Civil Procedure section 474. Plaintiff is informed and believes, and  
27 on that basis alleges, that each Defendant sued under such fictitious names is in some manner  
28 responsible for the wrongs and damages as alleged herein. Plaintiff does not at this time know the

1 true names or capacities of said Defendants but prays that the same may be inserted herein when  
2 ascertained.

3 6. At all times relevant, each and every Defendant was an agent and/or employee of  
4 each and every other Defendant. In doing the things alleged in the causes of action stated herein,  
5 each and every Defendant was acting within the course and scope of this agency or employment,  
6 and was acting with the consent, permission, and authorization of each remaining Defendant. All  
7 actions of each Defendant as alleged herein were ratified and approved by every other Defendant or  
8 their officers or managing agents.

9 7. Plaintiff is informed and believes and thereon alleges that in performing the  
10 unlawful acts alleged herein, each Defendant was the agent, employee and representative of each of  
11 the remaining Defendants, and in doing the unlawful things alleged was acting within the course,  
12 purpose, scope and authority of such agency, employment or representation.

13 8. Each act was done with malice, oppression, and was despicable conduct entitling  
14 Plaintiff to punitive and exemplary damages.

15 **STATEMENT OF FACTS: CLASS AND PAGA CLAIMS**

16 9. This is a PAGA action pursuant to The Private Attorneys General Act ("PAGA")  
17 Labor Code section 2698 *et. seq.*, class action pursuant to California Code of Civil Procedure  
18 section 382, and individual action on behalf of Amara O'Neill (hereinafter for the class and PAGA  
19 claims "Representative Plaintiff") and all other aggrieved employees and other class members who  
20 worked for Defendant RPI in California as an hourly non-exempt employee for: (i) failure to  
21 reimburse all business expenses in violation of Labor Code § 2802; (ii) failure to pay minimum  
22 wages in violation of California Labor Code §§ 204, 210, 223, 558, 1194, 1194.2, 1197, 1197.1  
23 and 1198, 1199 and the IWC Wage Orders; (iii) failure to pay waiting time penalties in violation of  
24 Labor Code §§ 201-203; (iv) failure to pay overtime wages in violation of Labor Code §§ 204, 210,  
25 223, 510, 558, 1194, 1198 and the IWC Wage Orders; (v) failure to maintain accurate records in  
26 violation of Labor Code §§ 226, 1174(d), 247.5 and the IWC Wage Orders; (vi) failure to provide  
27 meal periods in violation of Labor code §§ 226.7, 512, Cal. Code. Reg. Title 8, 11070 and the IWC  
28 Wage Orders; (vii) failure to provide accurate wage statements in violation of Labor Code §§ 226

1 and 226.3; (viii) failure to timely pay wages in violation of Labor Code § 204; and (ix) unlawful  
2 business practices in violation of Bus. & Prof. Code section 17200 *et. seq.*; and (x) violations for  
3 PAGA Labor Code § 2698 *et seq.*

4 10. At all relevant times, RPI has had a consistent policy and practice of failing to pay  
5 its non-exempt employees like Representative Plaintiff, minimum, straight, overtime and double  
6 time wages for work performed, and as a result have failed to pay all wages at termination and  
7 failed to provide accurate wage statements. RPI has also failed to reimburse all necessarily  
8 incurred business expenses, including but not limited to use of Representative Plaintiff and the  
9 other Class and PAGA Member's personal cellular telephones, other cellular devices and/or data  
10 plans, and use of their personal vehicles. RPI has also failed to provide legally sufficient meal  
11 periods and rest breaks to its non-exempt employees, as well as failed to keep accurate records, and  
12 issue accurate wage statements.

13 11. At all relevant times, RPI has had a consistent practice of requiring its non-exempt  
14 employees to send and respond to work related calls, texts and emails on their personal cellular  
15 telephones and other cellular devices. Representative Plaintiff and the other Class and PAGA  
16 Members have at all times relevant to this complaint been required to send and respond to work  
17 related calls, texts, and emails on their personal cellular telephones throughout the day and at times  
18 while off the clock without reimbursement or pay. Representative Plaintiff and the other Class and  
19 PAGA Members were, or are, hourly non-exempt employees who were not paid for the time spent  
20 responding to work communications while off the clock and were not reimbursed for the use of  
21 their personal cellular telephones, devices and/or data plans. If Representative Plaintiff or the  
22 Class and PAGA Members did not send and/or respond to these off the clock work  
23 communications, they could be given poor performance evaluations, be reprimanded, they could  
24 also be denied raises and/or promotions as a result.

25 12. Additionally, at all relevant times, it was RPI's consistent policy and practice to not  
26 pay all wages, including minimum, straight time, overtime, and double time wages, for all work  
27 performed. RPI's non-exempt employees were required to attend meetings, go to training sessions,  
28 go through security and Covid-19 screenings, don and doff personal protective equipment, attend

1 orientation sessions, and complete paperwork without all lawful compensation paid to them.  
2 Additionally, RPI would frequently only pay Representative Plaintiff or the Class and PAGA  
3 Members for the hours they were scheduled to work, regardless of the time actually worked,  
4 resulting in a failure to pay minimum wage for all time worked. RPI's failure to pay all wages was  
5 compounded by its unlawful practices of only paying for scheduled time, time shaving, rounding,  
6 editing timecards, and automatic deduction, as described below.

7 13. At all relevant times, RPI has had the consistent practice of requiring its non-exempt  
8 employees to use their personal vehicles to carry supplies between buildings or otherwise use their  
9 personal vehicles without reimbursement for mileage or any of the costs associated with the use of  
10 their personal vehicles.

11 14. At all relevant times, RPI has had the consistent practice of utilizing an automatic  
12 deduction policy and timekeeping system configured to always ensure that 30 minutes of each  
13 employee's workday went unpaid, regardless of whether a meal period was actually provided or  
14 taken. For example, if an employee did not clock out for a meal period RPI's payroll system would  
15 automatically deduct 30 minutes of time worked. RPI's automatic system would also make  
16 deductions to time worked even if the employee took a meal period. For example, if an employee  
17 clocked back in after 25 minutes of a meal period, RPI's system would automatically deduct an  
18 additional 5 minutes from the employees' time worked for that day. RPI's deduction policies, both  
19 manual and automatic, deprived Representative Plaintiff and the other Class and PAGA Members  
20 of all earned wages, including earned overtime wages. RPI's timeclocks and payroll system also  
21 improperly rounded employee time to the employee's detriment and unlawfully shaved time off  
22 Representative Plaintiff and the other Class and PAGA Members' time worked. Wherever RPI's  
23 automatic systems did not deduct time worked, RPI's payroll personnel would make secret hand  
24 deductions to ensure that every shift worked by every non-exempt employee longer than 6 hours  
25 had thirty minutes of time worked deducted, regardless of whether meal periods were actually  
26 provided.

27 15. At all relevant times, RPI has had the consistent practice of not paying  
28 Representative Plaintiff and the other Class and PAGA Members all earned overtime and not

1 paying overtime at their regular rate of pay. It is RPI's policy to not pay overtime after 40 hours  
2 worked in a workweek, to not pay overtime for work performed on the seventh consecutive day of  
3 work in a workweek, and to not pay overtime or double time for work performed after 8 and 12  
4 hours in a day. It is RPI's uniform practice and procedure to round employee time, to  
5 automatically deduct time worked from its employees' time worked, to make secret hand edits to  
6 employee timecards, and to otherwise not pay all owed overtime and not pay that overtime at its  
7 employees' regular rate of pay. For example, RPI's payroll personnel would consistently make  
8 hand edits to employee timecards, wiping away tens of hours of overtime and double time each pay  
9 period. These policies have resulted in, and continue to result in, a vast and systematic theft of  
10 overtime wages from Representative Plaintiff and the other Class and PAGA Members, as well as  
11 derivative violations of the Labor Code.

12 16. At all relevant times, RPI has had the consistent practice of never including bonuses  
13 and other non-hourly forms of compensation into its employees' regular rate of pay for any  
14 purposes, including but not limited to overtime, meal period premiums, and rest break premiums.  
15 Representative Plaintiff and the other Class and PAGA Members often received non-discretionary  
16 bonuses in the form of cash, gift cards, shift differentials, and other performance incentives but this  
17 non-hourly compensation is never included in the regular rate of pay for the purposes of calculating  
18 overtime, meal period and rest break premiums, or any other payment which is required to be made  
19 at the regular rate of pay. Additionally, RPI would often fail to include these bonuses on  
20 Representative Plaintiff and the other Class and PAGA Members' wage statements.

21 17. At all relevant times, RPI has had the consistent practice of not providing adequate  
22 meal periods and rest breaks. Often meal periods and rest breaks were not provided at all to  
23 Representative Plaintiff and the other Class and PAGA Members. However, when meal periods  
24 and rest breaks were provided, those meal periods and/or rest breaks were late, short, interrupted,  
25 or otherwise legally inadequate. Representative Plaintiff and the other Class and PAGA Members  
26 were often not permitted to leave the premises during their meal periods and rest breaks, and it is  
27 RPI's policy to not allow its non-exempt employees to leave its premises during rest breaks. RPI's  
28 employees are also required to tend to or monitor machinery and factory lines at all times, making

1 all of their meal periods and rest breaks “on-duty.” Representative Plaintiff and the other Class and  
2 PAGA Members, even those who did not work in the factory areas, were not relieved of all duties  
3 during any meal periods or rest breaks, and were required to remain on call to return at a moment’s  
4 notice. Furthermore, it is RPI’s policy and practice to require its non-exempt employees to wait  
5 until a factory line has finished before it allows breaks of any kind even if that results in  
6 unprovided, late, and/or short meal periods and rest breaks. It is also RPI’s policy to never provide  
7 second or third meal periods to any employee regardless of the amount of time worked, and to  
8 never provide any rest breaks past 8 hours in a workday. Additionally, RPI never paid any meal  
9 period or rest break premiums until mid-2022, and even then, RPI has never paid premiums at their  
10 employees’ regular rate of pay.

11 18. At all relevant times, RPI has had the consistent practice of requiring its employees  
12 to, at times, work seven or more days in a row without providing a days rest. As described above  
13 RPI does not pay overtime wages or double time wages for hours worked on the seventh  
14 consecutive day of work, or past 40 hours worked in a workweek.

15 19. At all relevant times, RPI has had the consistent practice of failing to timely and  
16 correctly pay all wages to Representative Plaintiff and the other Class and PAGA Members as  
17 required by California law, both as a result of the practices described above and independently as  
18 its own practice. As part of these failings, and as a policy unto itself, RPI has a consistent practice  
19 of not timely paying all wages at least twice a calendar month via regular bi-monthly paydays as  
20 required by Labor Code sections 204 and 210.

21 20. At all relevant times, RPI has had the consistent practice of performing and/or  
22 requiring Representative Plaintiff and the other Class and PAGA Members to undergo unlawful  
23 background checks, including criminal and credit checks, as a condition of employment including  
24 continuing employment. In addition to these unlawful background checks, RPI has used its  
25 employment applications to request information about arrests which did not result in convictions in  
26 violation of California Law.

27 21. At all relevant times, RPI has had the consistent practice of not providing suitable  
28 seating, despite being able to provide seating and with the knowledge that much of the work at RPI

1 reasonably permits the use of seats.

2       22. At all relevant times, RPI has had the consistent practice of not providing  
3 Representative Plaintiff and the other Class and PAGA Members with legally adequate sick days  
4 and when provided, to not pay sick leave at the correct rate of pay. RPI failed to keep adequate  
5 records of hours worked or sick days, both used and accrued, and failed to provide these records to  
6 Representative Plaintiff and the other Class and PAGA Members to hide the deprivation. RPI does  
7 not, as a consistent practice, provide its non-exempt employees with any records, either in the form  
8 of wage statements or other documents informing them of their accrued sick leave in violation of  
9 California law and did not accurately represent sick day wages on its wage statements.

10       23. RPI's failure to pay all wages, pay wages at the correct rates, and pay for all work  
11 performed has resulted in Representative Plaintiff and the other Class and PAGA Members  
12 receiving inaccurate wage statements which did not list the correct number of hours worked, wages  
13 earned (including but not limited to sick day wages), and/or correct rates of pay. Additionally, RPI  
14 does not provide accurate wage statements when multiple rates of pay are worked in a pay period.

15       24. The above-described failures also result in a failure to pay all wages at termination,  
16 entitling Representative Plaintiff and the other Class Members to waiting time penalties.  
17 Additionally, it is RPI's consistent and uniform practice is to not pay all wages at termination, and  
18 to instead pay them on the next regularly scheduled payday.

19       25. At all relevant times, RPI has had the consistent practice of failing to keep accurate  
20 records as required by law. RPI does not keep accurate time records, wage statements, or other  
21 employee records as required by law, both as an intentional practice to avoid responsibility for its  
22 wage theft and as a result of the myriad of Labor Code violations described herein. Furthermore,  
23 RPI has a routine policy and practice of ignoring employee record requests made under any Labor  
24 Code section, including but not limited to, Labor Code sections 1198.5, 432, 247.5 and 226(b).  
25 When RPI does rarely provide its employees with requested records those productions are  
26 incomplete, contained false records, or are untimely.

27       26. At all relevant times, RPI has had the consistent practice of failing to abide by the  
28 temperature control guidelines set forth in the IWC Wage Orders, including but not limited to those

1 regarding excessive heat (beyond reasonable comfort and safety) and excessive cold temperatures  
2 (below 60 degrees Fahrenheit) in its workplaces. As a result of this failure, and its draconian cost  
3 cutting measures, O'Neill and the other Aggrieved Employees are/were provided with little to no  
4 ventilation, heating, or cooling in the workplace. As such RPI is in violation of Labor Code section  
5 1198 and the IWC Wage Orders.

6 27. Representative Plaintiff and the other PAGA Members, all persons who are  
7 employed or have been employed by PRI in California as a non-exempt hourly employee during  
8 the period of February 25, 2020 through November 17, 2022, seeks payment of penalties under  
9 PAGA for all of the above described violations of California law, as well as those presented in  
10 Plaintiff's PAGA notice letters filed on February 25, 2020, May 22, 2023, and September 22, 2023,  
11 and attorneys' fees, interest, and costs pursuant to statute for violations of the California Labor  
12 Code under section 2698 *et al.*

### 13 **CLASS ACTION ALLEGATIONS**

14 28. Representative Plaintiff brings this action on behalf of herself and all others  
15 similarly situated as a class action pursuant to Section 382 of the Code of Civil Procedure.

16 29. Representative Plaintiff represents a certified Class defined as all persons who are  
17 employed or have been employed by Defendant PRI in California as a non-exempt hourly  
18 employee from January 29, 2017 through November 17, 2022, who have not opted out of the  
19 certified Class.

20 30. Representative Plaintiff reserves the right under Rule 1855(b) of the California  
21 Rules of Court to amend or modify the class descriptions with greater specificity or further division  
22 into subclasses or limitation to particular issues.

23 31. This action has been brought and is properly maintained as a class action under the  
24 provisions of Section 382 of the California Code of Civil Procedure because there is a well-defined  
25 community of interest in the litigation and the Classes are easily ascertainable.

#### 26 **A. Numerosity**

27 32. The members of the Class as defined are so numerous that joinder of all the  
28 members of the Class is impracticable. While the precise number of Class Members for the Class

1 has not been determined at this time, Representative Plaintiff is informed and believes that RPI  
2 does, and has, employed during the Class Period at least 1,592 individuals, in non-exempt hourly  
3 positions in California who are or have been affected by RPI's unlawful and uniform policies  
4 during the Class Period.

5 33. Upon information and belief, Representative Plaintiff alleges that RPI's  
6 employment records will provide information as to the number of all members of the Class.  
7 Joinder of all members of the Class is not practicable.

8 **B. Commonality**

9 34. There are questions of law and fact common to the Class that predominates over any  
10 questions affecting only individual Class Members. These common questions of law and fact  
11 include, without limitation:

- 12 (a) Whether RPI required the Class Members to work off the clock without  
13 compensation;
- 14 (b) Whether RPI failed to pay all wages due, including minimum wages, straight  
15 time wages, overtime wages, and/or double time wages to the Class  
16 Members due to its auto deduction, time shaving, hand editing, rounding,  
17 and other unlawful policies;
- 18 (c) Whether RPI violated Labor Code §§ 201-203 by failing to pay all wages  
19 due and owing at the time of termination of employment for the Class  
20 Members;
- 21 (d) Whether RPI violated Labor Code § 204 by failing to timely pay all wages  
22 due and owing to the Class Members;
- 23 (e) Whether RPI failed to provide the legally sufficient meal periods and rest  
24 breaks to the Class Members;
- 25 (f) Whether RPI violated Labor Code § 226 for the failure to furnish the Class  
26 Members with complete and accurate itemized wage statements and payroll  
27 records;
- 28 (g) Whether RPI failed to keep accurate records as required by law; and

1 (h) Whether RPI violated Labor Code § 2802 by failing to reimburse necessary  
2 and foreseeable business expenses incurred by the Class Members.

3 **C. Typicality**

4 35. The claims of Representative Plaintiff are typical of the claims of the Class.  
5 Representative Plaintiff and all Class Members sustained injuries and damages arising out of and  
6 caused by RPI's common course of conduct in violation of the law as alleged therein.

7 **D. Adequacy of Representation**

8 36. Representative Plaintiff will fairly and adequately represent and protect the interests  
9 of the Class Members. Counsel who represents Representative Plaintiff is competent and  
10 experienced.

11 **E. Superiority of Class Action**

12 A class action is superior to other available means for the fair and efficient adjudication of  
13 this controversy. Individual joinder of all Class Members is not practicable, and questions of law  
14 and fact common to the Class predominate over any questions affecting only individual members  
15 of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of  
16 RPI's illegal policy and/or practice of failing to properly compensate and/or reimburse the Class  
17 Members as alleged above. Class action treatment allows those similarly situated persons to  
18 litigate their claims in the manner that is most efficient and economical for the parties and the  
19 judicial system.

20 **STATEMENT OF FACTS: INDIVIDUAL CLAIMS**

21 37. RPI is a California based manufacturer of pharmaceuticals and dietary supplements  
22 based in Santa Ana California. RPI actively employs more than 800 employees and generates tens  
23 of millions of dollars in revenue each year.

24 38. In or about 2018, Plaintiff began her employment with RPI as a project coordinator.  
25 From the beginning of her employment with RPI, defendant Tommy "Tung" Nguyen ("Tommy"),  
26 a male who is more than 45 years old, began to pay an inappropriate amount of attention to  
27 Plaintiff, a female who is only 23 years old. At the beginning of her employment, after Plaintiff  
28 met Tommy, Tommy began to persistently pester Plaintiff about her relationship status and then

1 her sexual history, including questions on if she had a boyfriend and/or if she was sleeping with  
2 anyone.

3 39. Over the following months Tommy increased his campaign of sexual harassment  
4 with the intention of coercing or bullying Plaintiff into an unwanted sexual relationship. Tommy  
5 began by paying Plaintiff inappropriate compliments, and commenting on her body or weight in  
6 comparison to other female employees. Plaintiff would often tell Tommy that his comments were  
7 inappropriate or demeaning. Tommy would either disregard Plaintiff's protests or react negatively  
8 with a mean comment or remark.

9 40. Tommy's father is the CEO of RPI, Tuong Nguyen, his sister is the head of Human  
10 Resources, Van Nguyen. In addition to his deep family connections at RPI, during all relevant  
11 times Tommy had the power to fire Plaintiff, judge Plaintiff's work performance, and manage  
12 Plaintiff's work assignments. Tommy made his position within RPI, and his family's control over  
13 RPI, known to Plaintiff with the intent of leveraging that power and influence over Plaintiff.

14 41. Tommy began abusing his, and his family's, power and position in RPI to force  
15 Plaintiff into one-on-one situations with Tommy. Tommy and other management at RPI made it  
16 Plaintiff's responsibility to communicate with Tommy and ensure he attended meetings. Tommy  
17 would not go to meetings at other RPI buildings unless Plaintiff rode there with him in his personal  
18 vehicle. At times Tommy would not respond to work communications unless Plaintiff physically  
19 went to him or text messaged/called him from her personal cellular telephone. Often Plaintiff's  
20 direct supervisor, Anne Pham, who is also a close personal friend of Tommy and his family, would  
21 also order Plaintiff into these one-on-one situations with Tommy. As soon as these one-on-one  
22 situations began, Tommy's campaign of sexual harassment intensified and became apparent, yet  
23 RPI ignored it and did nothing to stop the sexual harassment of Plaintiff, even after Plaintiff  
24 complained about Tommy touching her inappropriately and without consent on numerous  
25 occasions to RPI management.

26 42. During one of these forced one-on-one encounters, Tommy began telling Plaintiff  
27 that "it is normal for married men to have mistresses or girlfriends to keep them happy" and that  
28 Plaintiff "could make him [Tommy] happy." From that point on Tommy began to pressure

1 Plaintiff into an unwanted sexual relationship by employing a cycle of negative reinforcement.  
2 Tommy would make an unwanted sexual advance on Plaintiff, Plaintiff would rebuff his advances,  
3 Tommy would retaliate against Plaintiff, and then Tommy would attempt to smooth things over  
4 and make another unwanted sexual advance. Plaintiff constantly reported this sexual harassment to  
5 RPI management who did nothing. The managers and supervisors did not bring Plaintiff's  
6 complaints of sexual harassment to the human resources department.

7 43. The first time Tommy sexually assaulted Plaintiff was in Conference Room F at one  
8 of RPI's facilities on or around December 2019. Tommy required Plaintiff to be present for a  
9 conference call. Alone together before the conference call Tommy moved his chair within inches  
10 Plaintiff and put his hand on her knee. Plaintiff was frozen in horror at this egregiously  
11 inappropriate act. Then Tommy began to rub Plaintiff's thigh with his hand. Plaintiff moved away  
12 from Tommy and Tommy pretended like nothing happened. Shortly after another co-worker  
13 arrived, and Tommy moved a reasonable distance away from Plaintiff.

14 44. Tommy's campaign of sexual harassment continued unabated. He continued to  
15 make inappropriate comments to Plaintiff and ask her inappropriate questions. He would often tell  
16 Plaintiff that he found her attractive, and when Plaintiff protested that those comments made her  
17 feel uncomfortable, Tommy would often inappropriately react to the rejection through mean or  
18 demeaning comments. Some of these exchanges included telling Plaintiff that "if she didn't find a  
19 man before she was 30 years old everyone would think she was gay," that Plaintiff needed to find a  
20 man "while she was still pretty," and that if she gained weight, he "wouldn't think she is pretty  
21 anymore." Tommy made the latter comment in front of RPI's EMS Manager Luis Heredia, but  
22 RPI did nothing.

23 45. Tommy's sexual harassment and sexual assaults only intensified the more Plaintiff  
24 resisted. Tommy began insisting that he was her "boyfriend" to which Plaintiff responded that his  
25 assertion was inappropriate and gross. Soon after, whenever Plaintiff went to Tommy to ask if  
26 there was work he needed her to do, Tommy would respond that he did not need anything from her  
27 "until later tonight." At times Tommy would make this comment in front of co-workers. During  
28 one such occasion Plaintiff asked Tommy what he meant by that comment. Tommy laughed at

1 Plaintiff and called her “a naive little girl.” Plaintiff reported this harassment to RPI management,  
2 but RPI did nothing.

3 46. Tommy appeared to revel in Plaintiff’s discomfort and the more Plaintiff protested  
4 or rejected Tommy’s unwelcome sexual advances the more he enjoyed humiliating Plaintiff or  
5 making her feel uncomfortable. Tommy would always attempt to play off his behavior as joking  
6 around and attempt to smooth things over before making another unwanted sexual advance at  
7 Plaintiff.

8 47. Eventually Plaintiff told Tommy that she had a boyfriend in order to get him to stop  
9 harassing her. Tommy reacted very negatively, called Plaintiff disgusting, and began asking if she  
10 had sex with her boyfriend and how often she met with her boyfriend. Soon after Tommy began  
11 false rumors that insinuated Plaintiff had sex with a co-worker and had numerous “boyfriends” she  
12 was sleeping with.

13 48. Tommy also grew more desperate and aggressive, he began to sexually assault  
14 Plaintiff more often with unwanted groping and grabbing. Beginning in late July of 2020 Tommy  
15 began attempting to grab Plaintiff’s hands when they were alone. Every time this happened  
16 Plaintiff would tell Tommy to stop and attempt to pull her hands away from Tommy. Tommy  
17 would attempt to hold onto Plaintiff’s hands and tell her that he liked how soft her skin was.  
18 Plaintiff reported this to RPI management every time it happened but RPI did nothing. In fact,  
19 Plaintiff’s supervisor Anne Pham who is good friends with Tommy and his family, continued to  
20 order Plaintiff into one-on-one situations with Tommy.

21 49. On or around August 18, 2020, Tommy called Plaintiff over to the “Harbor 5  
22 Warehouse” on the premise of checking out a dust collector and requested to see a few documents.  
23 When Plaintiff showed Tommy a document on her phone Tommy placed his hand on Plaintiff’s  
24 hip. Plaintiff moved away, hoping this was an accidental contact. However, Tommy placed his  
25 hand on Plaintiff’s hip again, and purposefully stroked his hand down her hip. Plaintiff  
26 immediately pushed Tommy away from her body and told him “don’t do that!” Tommy only  
27 laughed at Plaintiff. Plaintiff again reported this sexual harassment and sexual assault to RPI  
28 management, RPI management again did nothing.

1           50. On or around September 4, 2020 Tommy requested Plaintiff come to a cubicle in  
2 "Harbor 5," one of RPI's manufacturing facilities, by asking that she bring him cleaning wipes and  
3 help him clean the cubicle. Plaintiff complied and began to clean the cubicle with Tommy.  
4 Tommy attempted to joke with Plaintiff, but Plaintiff just wanted to finish her work assignment.  
5 That is when Tommy sexually assaulted Plaintiff again by slapping her buttocks. Plaintiff was  
6 frozen in terror and humiliation. Tommy made a show of winding up his arm to slap Plaintiff on  
7 the buttocks a second time, but much harder. Plaintiff then pushed Tommy's arm away and told  
8 him "to never do that to me again." Tommy laughed and would not back off, so Plaintiff had to  
9 yell to get the attention of nearby co-workers and repeated loudly, "never do that to me again!"

10           51. After the September assault and battery happened, Plaintiff again reported this  
11 illegal conduct/behavior to management. Seeing that Plaintiff would not let this assault be brushed  
12 under the rug, Plaintiff's supervisor Anne Pham, who is close friends with Tommy and his family,  
13 told Plaintiff that this would not happen again and that she should stay away from her attacker,  
14 Tommy. However, RPI did nothing to protect Plaintiff from Tommy, and this course of action  
15 communicated to Plaintiff that while at RPI she would never be free from this constant sexual  
16 harassment and sexual assault.

17           52. When Plaintiff complained about this grossly inappropriate response, Plaintiff's  
18 supervisor Anne Pham told her RPI would conduct an investigation into the assault. However,  
19 Anne Pham did not involve Human Resources and instead appointed one of Tommy's young male  
20 subordinates, Kevin Tran, to conduct a short sham investigation. This action, and the short  
21 investigation which followed, violated RPI's written policy on reporting sexual harassment which  
22 requires the Human Resources Department to be involved. This sham investigation also confirmed  
23 Plaintiff's fears that while at RPI she would never be safe in the workplace.

24           53. Mere days after beginning the investigation, Plaintiff was informed that she would  
25 be moved to a new department and she would not have to see Tommy anymore, however Plaintiff  
26 would still work in the same building as Tommy and Tommy would still have authority over her.  
27 In her new position Tommy could still walk over to Plaintiff's desk at any time he wanted or  
28 follow her into the manufacturing areas. Tommy was only given a one-day suspension, and it was

1 recommended to Tommy that he should consider attending sensitivity training. This punishment  
2 was in violation of RPI's written sexual harassment policy which requires a much stronger  
3 punishment, and RPI's code of conduct specifies that repeat offenses of this nature require  
4 discharge of the employee. Plaintiff knew she was still not safe from Tommy, and while she tried  
5 to continue working diligently, she was filled with intense fear and anxiety knowing that at any  
6 minute Tommy could approach her again and continue to assault and harass her with impunity.  
7 Plaintiff also feared that while her complaint resulted in virtually no consequences for Tommy, that  
8 he and his family, who controls RPI, would retaliate against her.

9 54. As a result of RPI's and Tommy's actions, Plaintiff has been diagnosed with post-  
10 traumatic stress disorder ("PTSD") and suffers from insomnia, nightmares, lack of appetite, a  
11 persistent feeling of insecurity, anxiety attacks and panic attacks. Plaintiff has had to take off  
12 significant time from work and is seeking medical and psychological therapy in order to cope with  
13 her experiences working at RPI. Seeing as RPI made no changes and would allow the sexual  
14 harassment and assault to continue, Plaintiff had no choice but to resign because she would never  
15 be safe in the RPI workplace.

16 55. RPI provides only token sexual harassment training to its employees because it does  
17 not want to pay its employees for the time it takes to conduct sexual harassment training.

18 56. RPI fostered an environment in which the complained of sexual harassment and  
19 sexual assault is tolerated and condoned.

20 57. RPI allowed its supervisors to perpetrate harassment and sexual assault at will,  
21 without consequence. RPI refused, and continues to refuse, to take action against sexual assault  
22 and sexual harassment in its workplaces.

23 58. Plaintiff is informed and believes and thereon alleges that each of the Defendants is  
24 in some manner intentionally, negligently, or otherwise responsible for the acts, occurrences and  
25 transactions alleged herein.

26 59. Plaintiff has exhausted all of her administrative remedies under state law.

27 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

28 60. On November 23, 2020, Plaintiff filed an administrative complaint against

1 Defendants with the California Department of Fair Employment and Housing (hereinafter referred  
2 to as the “DFEH”), pursuant to Section 12960 of the California Government Code, substantially  
3 alleging the acts and conduct as herein described. The DFEH issued a “Right to Sue” notice dated  
4 November 23, 2020. On November 30, 2020 Plaintiff amended her DFEH complaint and received  
5 an updated right to sue letter on November 30, 2020. Copies of Plaintiff’s DFEH Complaints and  
6 Notices of Right to Sue are all attached hereto as **Exhibit “A.”**

7 61. On February 25, 2021 Plaintiff notified the California Labor and Workforce  
8 Development Agency (“LWDA”) and RPI of the numerous Labor Code violations suffered by  
9 Plaintiff and the other aggrieved employees. On May 22, 2023 and September 22, 2023, Plaintiff  
10 provided amended notices to the LWDA and RPI listing additional facts and theories suffered by  
11 Plaintiff and the other Aggrieved Employees which are incorporated into the Complaint.

## 12 **CLASS ACTION: CAUSES OF ACTION**

### 13 **FIRST CAUSE OF ACTION**

#### 14 **VIOLATION OF CALIFORNIA LABOR CODE § 2802**

##### 15 **(Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)**

16 62. Representative Plaintiff realleges each paragraph of this Complaint as though fully  
17 set forth.

18 63. California Labor Code § 2802, requires RPI to “indemnify his or her employees for  
19 all necessary expenditures or losses incurred by the employee in direct consequence of the  
20 discharge of his or her duties, or of his or her obedience to the directions of the employer, even  
21 though unlawful, unless the employee, at the time of obeying the directions, believed them to be  
22 unlawful”. Cal Lab Code § 2802.

23 64. With respect to requiring employees to utilize their personal cellular telephones for  
24 the company’s business, the court in Cochran v. Schwan’s Home Service, 228 Cal. App. 4th 1137  
25 (2014) held that, “when employees must use their personal cell phones for work-related  
26 calls, Labor Code § 2802 requires the employer to reimburse them. Whether the employees have  
27 cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a  
28 reasonable percentage of their cell phone bills.” Id. at 1140.

65. RPI has had a companywide policy and practice of not reimbursing necessarily incurred business expenses and as a result has violated California Labor Code § 2802. Here, RPI has had companywide practice of requiring its California based non-exempt hourly employees to send and respond to work communications and perform work related task with their personal cellular telephones and other cellular devices (which used their personal data and service plans), during the workday and after the workday while off the clock and without reimbursement. If Representative Plaintiff and the other Class and PAGA Members did not respond to work related communications sent directly to their personal cellular telephones and cellular devices they could be reprimanded, face negative performance reviews, and potentially be denied promotions, raises or be terminated as a result.

66. Additionally, Representative Plaintiff and the other Class and PAGA Members were at times required to use their personal vehicles to carry supplies between buildings or otherwise use their personal vehicles without reimbursement for mileage or any of the costs associated with the use of their personal vehicles.

67. During the Class Period Representative Plaintiff and the other Class and PAGA Members have been required to personally incur and pay for these business expenses, including the use of their personal cellular telephones and personal vehicles, in the discharge of their employment duties, all without reimbursement from RPI.

68. RPI has a policy of regularly and consistently refusing to reimburse Representative Plaintiff and the Class Members for all necessarily incurred business expenses, in violation of California law.

## SECOND CAUSE OF ACTION

**FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF  
LABOR CODE §§ 204, 210, 558, 1194, 1194.2, 1182.12, 1197, 1197.1, 1198, 1199 AND THE  
WAGE ORDERS.**

**(Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)**

69. Plaintiff realleges each paragraph of this Complaint as though fully set forth.

70. California Labor Code §§ 204, 210, 558, 1182.12, 1194, 1194.2, 1197, 1197.1,

1 1198, 1199 and the IWC wage orders makes it unlawful to require or suffer any employee to work  
2 without compensation for that time spent working under the employer's control and to not timely  
3 pay for that earned compensation.

4 71. At all relevant times, RPI has had the consistent practice of not paying  
5 Representative Plaintiff and the other Class and PAGA Members for all work done for or at the  
6 direction of RPI. RPI has had a companywide practice of requiring Representative Plaintiff and  
7 the other Class and PAGA Members to send and respond to work related communications while  
8 Representative Plaintiff and the other Class and PAGA Members were off the clock. At times RPI  
9 would assign work related tasks in these communications with resulted in further off the clock  
10 work. RPI did not compensate Representative Plaintiff and the other Class and PAGA Members  
11 for the time they spent working off the clock at RPI's direction.

12 72. At all relevant times, RPI has had the consistent practice of requiring its non-  
13 exempt employees to work off the clock, by going through security screenings, Covid-19  
14 screenings, attend trainings and orientations, attend certain meetings, performing both pre and post  
15 shift activities off the clock, and donning and doffing protective gear off the clock without  
16 compensation. Representative Plaintiff and the other Class and PAGA Members were also denied  
17 at least minimum and the correct legal wages for all work performed due to RPI's practices of time  
18 shaving, rounding, and automatic deduction policies, in addition to RPI's practice of making hand  
19 edits to deduct time worked from its employees' timecards.

20 73. As a result of RPI's unlawful conduct, Representative Plaintiff and the Class  
21 Members have suffered damages in an amount, subject to proof, to the extent they were not paid  
22 all wages due. Plaintiff and the Class Members have been deprived of full compensation for work  
23 performed in amounts to be determined at trial, and are entitled to the recovery of such amounts,  
24 plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code sections  
25 218.5, 558, 1194, 1194.2, 1197, 1197.1, and 1198.

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**THIRD CAUSE OF ACTION**  
**FAILURE TO PAY WAITING TIME PENALTIES IN VIOLATION OF**  
**LABOR CODE §§ 201-203**

**(Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)**

74. Representative Plaintiff hereby re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

75. California Labor Code § 201 requires an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge.

76. California Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon separation from employment, as required by either Sections 201 or 202, then the employer is liable for waiting time penalties in the form of continued compensation for up to 30 workdays.

77. As discussed herein, RPI has willfully failed and refused to timely pay all wages to Representative Plaintiff and the other Class and PAGA Members whose employment terminated both as its own practice, and as a result of its extensive unlawful policies. As a result, RPI is liable to Representative Plaintiff and the Class Members for waiting time penalties, together with costs, under Labor Code § 203.

78. As a result of RPI's unlawful conduct, Representative Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid all wages due each pay period. The precise amount of unpaid wages and waiting time penalties are not presently known to Representative Plaintiff but can be determined according to proof and RPI's records.

**FOURTH CAUSE OF ACTION**  
**FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE §§ 204, 210, 510,**  
**558, 1194, 1197, 1198 AND THE WAGE ORDERS**

**(Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)**

79. Representative Plaintiff hereby re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

1           80. Labor Code section 204, 210, 510, 1194, 1197, 1198 and the IWC Wage Orders  
2 require that employees must be timely paid one half their regular hourly rate of pay for all hours  
3 worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first  
4 eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek. Furthermore,  
5 employees must be paid two times their regular hourly rate for all hours worked in excess of  
6 twelve (12) hours in a workday and for all hours worked in excess of eight (8) hours on the  
7 seventh (7th) consecutive day of work in a workweek.

8           81. As discussed herein, Representative Plaintiff and the other Class and PAGA  
9 Members were not paid all earned overtime and not paid overtime at their regular rate of pay.  
10 Examples of this include, but are not limited to, RPI's consistent policies of not paying overtime  
11 after 40 hours worked in a workweek, not pay overtime for work performed on the seventh  
12 consecutive day of work in a workweek, unlawful time rounding and shaving, unlawful automatic  
13 deduction of time worked, secret hand edits to employee timecards, unpaid off the clock activities,  
14 and not paying overtime at its employees' regular rate of pay by failing to include non-  
15 discretionary bonuses and all non-hourly forms of compensation into the regular rate of pay.  
16 These policies have resulted in, and continue to result in, a vast and systematic theft of overtime  
17 wages from Representative Plaintiff and the other Class and PAGA Members, as well as derivative  
18 violations of the Labor Code.

19           82. As a result of RPI's practices, Representative Plaintiff and the other Class and  
20 PAGA Members have been deprived of all overtime wages owed to them.

21           83. RPI's pattern, practice and uniform administration of its policy and practice to not  
22 timely pay Plaintiff and the Class all earned overtime wages, is unlawful and creates entitlements  
23 pursuant to Labor Code sections 1194, 1194.2, 1197.1, 1199, Cal. Code of Reg. § 11090 and IWC  
24 Wage Orders. Plaintiff and the Class are entitled to recover from RPI, penalties, withheld wages,  
25 liquidated damages, interest, reasonable attorneys' fees and costs of suit.

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**FIFTH CAUSE OF ACTION**  
**FAILURE TO MAINTAIN ACCURATE RECORDS IN VIOLATION OF LABOR CODE**  
**§§ 226, 432, 1174(D), 1198.5 AND THE WAGE ORDERS;**  
**(Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)**

84. Representative Plaintiff hereby re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

85. Labor Code §§ 226, 432, 1174(D), 1198.5 and the IWC Wage Orders require employers to keep accurate employment records, including accurate time and payroll records showing daily hours worked and all wages paid for that time worked.

86. At all relevant times, Plaintiff is informed and believes that it is RPI's knowing uniform practice and procedure not keep accurate records as required by law. RPI does not keep accurate time records, wage statements, or other employee records as required by law, both as an intentional practice to avoid responsibility for its wage theft and as a result of the myriad of Labor Code violations described herein. Furthermore, RPI has a routine policy and practice of ignoring employee record requests made under any Labor Code section, including but not limited to, Labor Code §§ 1198.5, 432, and 226(b). When RPI does rarely provide its employees with requested records those productions are incomplete, contained false records, or are untimely.

87. RPI's pattern, practice and uniform administration of its policy and practice to not keep accurate records is unlawful and creates entitlements including penalties pursuant to Labor Code sections §§ 226, 1174(D), and 1198.5.

**SIXTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE MEAL PERIODS AND REST BREAKS IN VIOLATION OF**  
**LABOR CODE §§ 226.7, 512, CAL. CODE. REG. TITLE 8, 11070 AND THE WAGE**  
**ORDERS**  
**(Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)**

88. Representative Plaintiff hereby re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

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1           89. California Labor Code § 226.7, 512, and the IWC Wage Orders provide that no  
2 employer shall employ an employee for a work period of more than five (5) hours without  
3 providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all  
4 of his or her duties. In addition, An employer shall not employ an employee for a work period of  
5 more than 10 hours per day without providing the employee with a second meal period of not less  
6 than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal  
7 period may be waived by mutual consent of the employer and the employee only if the first meal  
8 period was not waived.

9           90. California Labor Code § 226.7 and the IWC Wage Orders require that employers  
10 provide ten (10) minutes net rest time per four (4) hours worked or major fraction thereof, and that  
11 those 10 minute breaks must be paid.

12           91. Under Labor Code § 2267, Representative Plaintiff and the Class Members are  
13 entitled to one (1) hours worth of premium wages, paid at their regular rate of pay, for each day in  
14 which they were not provided with a legally adequate meal period and/or rest break.

15           92. As described herein, during her employment with RPI, Representative Plaintiff and  
16 the other Class and PAGA Members regularly worked in excess of 5 hours without being afforded  
17 timely, uninterrupted duty-free thirty (30) minute meal period for every five (5) hours of work and  
18 ten (10) hours worked, in which they were not relieved of all duties as required by Labor Code  
19 sections 226.7, 512, 1198 and IWC Wage Orders. Additionally, as described herein,  
20 Representative Plaintiff and the other Class and PAGA Members were not provided with legally  
21 adequate off duty rest breaks as required by Labor Code sections 226.7, 1198 and IWC Wage  
22 Orders.

23           93. As discussed herein, RPI's uniform unlawful practices and procedures include but  
24 are not limited to: not permitting it employees to leave the premises during their meal periods and  
25 rest breaks, requiring its employees to tend to or monitor machinery and factory lines while on  
26 meal periods and rest breaks, requiring its employees to wait until a factory line has finished  
27 before it allows breaks of any kind, never providing second or third meal periods regardless of the  
28 amount of time worked, requiring all employees to be ready to return at a moments notice, and

1 never paying premiums at their employees' regular rate of pay.

2 94. As a result of the unlawful acts of RPI, Plaintiff and the Class have been deprived  
3 of wages and/or other compensation in amounts to be determined at trial, and are entitled to  
4 recover such amounts from RPI, plus interest thereon, attorneys' fees, and costs of suit.

5 95. As a direct and proximate result of RPI's violation of Labor Code section 226.7 and  
6 the IWC Wage Orders, Plaintiff and the Class Members have suffered irreparable harm and  
7 monetary damages. Plaintiff seeks damages and all other relief allowable including premium pay  
8 at the regular rate of pay for each workday during which Plaintiff and the Class Members were not  
9 provided legally adequate meal periods and rest breaks, attorney's fees, and prejudgment interest.

10 96. Plaintiff and Class Members also are entitled to one (1) hour of pay at their regular  
11 rate of pay for each day that they were not provided a legally adequate meal period and/or rest  
12 break.

#### 13 **SEVENTH CAUSE OF ACTION**

#### 14 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS IN VIOLATION OF** 15 **LABOR CODE § 226**

16 **(Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)**

17 97. Representative Plaintiff hereby re-alleges and incorporates all preceding paragraphs  
18 as though fully set forth herein.

19 98. Section 226(a) of the California Labor Code requires RPI to provide accurate  
20 itemized wage statements at the time of payment of wages which include, but are not limited to,  
21 the following: the correct gross wages earned; the correct total time worked by the employee; the  
22 correct net wages earned; the inclusive dates of the period for which the employee is paid; and all  
23 applicable hourly rates in effect during the pay period and the corresponding correct total number  
24 of hours worked at each hourly rate by the employee.

25 99. Representative Plaintiff contends that she and the Class and PAGA Members have  
26 been injured by RPI's failure to provide all of the requisite information on its itemized wage  
27 statements in that such failure, *inter alia*, masks possible and actual underpayments to RPI's  
28 employees described herein, including but not limited to those caused by RPI's of time shaving,

1 rounding, and automatic deduction policies. RPI formatting its wage statements to make it  
2 difficult for RPI's employees to verify that they have in fact been paid the proper amounts owing  
3 for all hours worked. Said conduct was done knowingly and intentionally since RPI is aware of  
4 California law, and said conduct was enacted with the design to harm Representative Plaintiff and  
5 the Class Members.

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE § 204 AND THE**  
8 **WAGE ORDERS**

9 **(Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)**

10 100. Representative Plaintiff hereby re-alleges and incorporates all preceding paragraphs  
11 as though fully set forth herein.

12 101. Labor Code § 204 requires employers to timely pay all wages for work performed  
13 in the first half and second halves of each month via regular paydays which must occur at least  
14 twice a month.

15 102. As discussed herein, Representative Plaintiff and the other Class and PAGA  
16 Members were not timely paid all earned wages and overtime on regularly scheduled bi-monthly  
17 paydays as required by Labor Code § 204. As its own policy, Robinson often failed to pay  
18 Representative Plaintiff and the other Class and PAGA Members regularly and timely all wages  
19 owed to them, including but not limited to minimum, straight, overtime, double, and premium  
20 wages.

21 103. RPI's pattern, practice and uniform administration of its policy and practice to not  
22 timely pay Plaintiff and the Class all earned overtime wages, is unlawful and creates entitlements  
23 pursuant to Labor Code sections 1194, 1194.2, 1197.1, 1199, Cal. Code of Reg. § 11090 and IWC  
24 Wage Orders. Plaintiff and the Class are entitled to recover from RPI, penalties, withheld wages,  
25 liquidated damages, interest, reasonable attorneys' fees and costs of suit.

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**NINTH CAUSE OF ACTION**  
**UNLAWFUL BUSINESS PRACTICES**  
**IN VIOLATION OF BUS. & PROF. CODE § 17200, *ET SEQ.***  
**(Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)**

104. Representative Plaintiff hereby re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

105. RPI's failure to correctly pay the legal wages and failure to reimburse employees for all necessary business expenses incurred in the case on their job constitute unlawful activity prohibited by Business and Professions Code section 17200, *et seq.*, including but not limited to Sections 17200, 17202, and 17203.

106. The actions of RPI in failing to pay Representative Plaintiff and the Class Members in a lawful manner as alleged herein constitute false, unfair, fraudulent and/or deceptive business practices, within the meaning of Business and Professions Code section 17200, *et seq.*

107. As a result of its unlawful acts, RPI has reaped and continues to reap unfair benefits at the expense of Representative Plaintiff and the Class Members. RPI should be enjoined from this activity and made to disgorge these ill-gotten gains and restore to Representative Plaintiff and Class Members the wrongfully withheld wages and reimbursement for business expenses pursuant to Business and Professions Code section 17203. Representative Plaintiff is informed and believes, and thereon alleges that RPI has been unjustly enriched through its unlawful activities described herein, including but not limited to its failure to pay all wages, provide meal periods and rest breaks, wage theft, failure to keep accurate records, and failure to properly reimburse necessary business expenses.

108. Representative Plaintiff is informed and believes, and thereon alleges, that she and the Class Members are prejudiced by RPI's unfair practices.

109. As a direct and proximate result of the unfair business practices of RPI, Representative Plaintiff and the Class Members are entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all wages/premiums/business expenses, which have been unlawfully withheld from Representative Plaintiff and the Class Members, as a result of

1 the business acts and practices described therein and enjoin RPI to cease and desist from engaging  
2 in the practices described therein.

3 110. The illegal conduct alleged herein is believed to be continuing, and there is no  
4 indication that RPI will not continue such activity into the future. Representative Plaintiff alleges  
5 that if RPI is not enjoined from the conduct set forth in this complaint, they will continue to fail to  
6 pay all wages, and will continue to fail to provide reimbursement for necessary business expenses  
7 as described herein.

8 **TEENTH CAUSE OF ACTION**

9 **VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR**  
10 **CODE §§ 2698 ET SEQ.**

11 **(Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)**

12 111. Plaintiff refers to and incorporates all of the paragraphs of this Complaint as though  
13 fully set forth herein.

14 112. For at least one (1) year prior to the filing of Plaintiff's initial PAGA notice with the  
15 LWDA on February 25, 2021, RPI has had the consistent and unlawful practices described in  
16 Plaintiff's PAGA notice letters filed on February 25, 2021, May 22, 2023, and September 22, 2023.

17 113. For at least one (1) year prior to the filing of Plaintiff's initial PAGA notice with the  
18 LWDA, as a pattern and practice RPI's has failed to: (i) reimburse all business expenses in  
19 violation of Labor Code § 2802; (ii) pay minimum wages in violation of California Labor Code  
20 §§ 558, 1194, 1194.2, 1197, 1197.1 and 1198, 1199 and the IWC Wage Orders; (iii) pay waiting  
21 time penalties in violation of Labor Code §§ 201-203; (iv) pay overtime wages in violation of  
22 Labor Code §§ 510, 558, 1194, 1198 and the IWC Wage Orders; (v) maintain accurate records in  
23 violation of Labor Code §§ 226, 432, 1174(d) and the IWC Wage Orders; (vi) provide meal  
24 periods and rest breaks in violation of Labor code §§ 226.7, 512, Cal. Code. Reg. Title 8, 11070  
25 and the IWC Wage Orders; (vii) provide accurate wage statements in violation of Labor Code  
26 § 226; (viii) failed to timely pay all wages in violation of Labor Code § 204; (ix) failed to provide  
27 sick days, adequately pay sick days, keep records of sick days, and provide sick day information  
28 and documents in violation of Labor Code §§ 246 and 247.5; and (x) failed to provide sufficient

1 heating, cooling, and ventilation in violation of Labor Code § 1198 and the IWC Wage Orders.

2 114. California Labor Code section 2698 *et. seq.* provides employees with a private right  
3 of action to remedy an employer's failure to comply with Labor Code sections designated in Labor  
4 Code section 2699.5. As described here in, and in Representative Plaintiff's PAGA notice letters  
5 filed February 25, 2021 and May 22, 2023, RPI has violated Labor Code §§ 201, 201.3, 202, 203,  
6 204, 204.1, 204.11, 205, 205.5, 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.6, 226.7,  
7 245, 246, 247-249, 256, 432, 432.5, 432.7, 510, 512, 516, 551, 552, 558, 558.1, 1024.5, 1174,  
8 1175, 1182.12, 1194, 1194.2, 1195, 1197, 1197.1, 1197.5, 1198, 1771, 1774, 1776, 1811, 1815,  
9 2802, and the California Code of Regulations, Title 8, section 11000 *et seq.* Representative  
10 Plaintiff's PAGA notice letters filed February 25, 2020, May 22, 2023, and September 22, 2023  
11 are incorporated by reference. These sections are provided for under Labor Code section 2699.5.  
12 Penalties for violations under Labor Code section 2699(f)(2) are one hundred dollars (\$100.00) for  
13 each aggrieved employee per pay period for the initial violation, and two hundred dollars  
14 (\$200.00) per subsequent violation for each aggrieved employee per pay period where the Labor  
15 Code does not already provide a penalty.

16 115. Plaintiff has exhausted the administrative prerequisites to file a claim under Labor  
17 Code section 2698 *et seq.* by sending notice to the California Labor Workforce and Development  
18 Agency ("LWDA") online filing system on February 25, 2021, May 22, 2023, and September 22,  
19 2023 along with a certified copy to RPI. It has been over 65 days since the exhaustion and  
20 Plaintiff has not received confirmation from the LWDA that it will not investigate the complaint  
21 within the time limits set forth in Labor Code section 2699.3(a)(2).

## 22 **INDIVIDUAL ACTION: CAUSES OF ACTION**

### 23 **ELEVENTH CAUSE OF ACTION**

#### 24 **SEXUAL ASSAULT AND INTIMIDATION BY VIOLENCE IN VIOLATION OF** 25 **CALIFORNIA CIVIL CODE SECTIONS 51.7 AND 52 *ET SEQ.***

26 **(Plaintiff against all Defendants and Does 1 through 20, Inclusive)**

27 116. Plaintiff refers to and incorporates all of the paragraphs of this Complaint as though  
28 fully set forth herein.

1           117. California law prohibits sexual harassment and sexual assault both inside and  
2 outside the workplace. As set forth in greater detail above, defendant RPI, by and through its  
3 managerial employees and managing agents including defendant Tommy, are charged with  
4 committing sexual assault against Plaintiff. Defendants ratified and aided the sexual assaults  
5 committed against Plaintiff and ensured that Tommy would face no real consequences for the  
6 complained of assaults so that he could continue his assaults on Plaintiff. Furthermore, Defendant  
7 RPI aided Tommy's sexual harassment and sexual assault by ordering Plaintiff into one-on-one  
8 situations alone with Tommy.

9           118. At all times herein, Tommy was acting as an agent of RPI and within the scope of  
10 his employment with RPI.

11           119. On multiple occasions Plaintiff was placed in extreme apprehension and fear of  
12 offensive contact when Tommy physically and sexually assaulted Plaintiff by grabbing her hands,  
13 rubbing his hands against her thighs, stroking his hands against her hips, touching her legs, and  
14 roughly slapping her on the buttocks all without Plaintiff's consent and over Plaintiff's repeated  
15 and forceful objections. Each time Tommy physically and sexually assaulted Plaintiff, Tommy did  
16 so knowingly and intentionally with the intent to cause a harmful or offensive sexual contact with  
17 Plaintiff.

18           120. Plaintiff was emotionally and physically harmed by Tommy's assaults. In  
19 conjunction with the ongoing sexual assault, sexual harassment, and abusive conduct towards  
20 Plaintiff, it was clear that Tommy intended to cause harm to Plaintiff.

21           121. As a direct, legal, and foreseeable result of the wrongful acts of Tommy, Plaintiff  
22 has been harmed in that Plaintiff has suffered extreme depression and anxiety, suffered fear, loss  
23 of self-esteem, post-traumatic stress and other physical, emotional, mental and psychological  
24 ailments, for which she will incur medical expenses. Plaintiff is thereby entitled to general and  
25 compensatory damages in amounts to be proven at trial.

26           122. The conduct of RPI, and/or its agents/employees as described herein, was willful,  
27 malicious, oppressive, and done with a willful and conscious disregard for Plaintiff's rights and for  
28 the deleterious consequences of Tommy's actions. RPI, and/or its agents/employees or

1 supervisors, authorized, condoned, and ratified the unlawful conduct of Tommy. Consequently,  
2 Plaintiff is entitled to punitive damages against each of said the Defendants.

3 123. As a result of Defendants' violation of California Civil Code section 51.7, Plaintiff  
4 is entitled, pursuant to California Civil Code section 52(b)(2), to a mandatory civil penalty of  
5 twenty-five thousand dollars (\$25,000) to be paid to Plaintiff by each defendant for each act of  
6 sexual violence and/or intimidation. As a further result of Defendants' violation of California  
7 Civil Code section 51.7, Plaintiff is also entitled to attorney's fees as may be determined by the  
8 Court under California Civil Code section 52(b)(3).

9 **TWELFTH CAUSE OF ACTION**

10 **SEXUAL ASSAULT AND BATTERY IN VIOLATION OF CALIFORNIA CIVIL CODE**

11 **SECTION 1708.5.**

12 **(Plaintiff against all Defendants and Does 1 through 20, Inclusive)**

13 124. Plaintiff hereby re-alleges and incorporates all preceding paragraphs as though fully  
14 set forth herein.

15 125. California law prohibits sexual harassment and sexual assault both inside and  
16 outside the workplace. FEHA protects workers and applicants who have suffered sexual  
17 harassment and sexual assault in the workplace. As set forth in greater detail above, Defendant  
18 RPI, by and through its managerial employees and managing agents including defendant Tommy,  
19 are charged with committing sexual assault against Plaintiff. Defendants ratified and aided the  
20 sexual assaults committed against Plaintiff and ensured that Tommy would have opportunities to  
21 sexually harass and sexually assault Plaintiff and that Tommy would face no real consequences for  
22 the complained of assaults and harassment.

23 126. Tommy intended to and did cause harmful and offensive sexual contact with  
24 Plaintiff's body, including but not limited to her legs, hips, and thighs, on numerous occasions. The  
25 acts of Tommy resulted in sexually offensive contact and at no time did Plaintiff consent to any of  
26 the acts of Tommy as alleged herein.

27 127. On multiple occasions Plaintiff was placed in extreme apprehension and fear of an  
28 offensive contact when Tommy physically and sexually assaulted Plaintiff by grabbing her hands,

1 rubbing his hands against her thighs, stroking his hands against her hips, touching her legs, and  
2 roughly slapping her on the buttocks all without Plaintiff's consent and over Plaintiff's repeated  
3 and forceful objections. Each time he physically and sexually assaulted Plaintiff, Tommy did so  
4 knowingly and intentionally with the intent to cause a harmful or offensive sexual contact with  
5 Plaintiff.

6 128. Plaintiff was emotionally and physically harmed by Tommy's assaults. In  
7 conjunction with the ongoing sexual assault, sexual harassment, and abusive conduct towards  
8 Plaintiff, it was clear that Tommy intended to cause harm to Plaintiff.

9 129. As a direct, legal, and foreseeable result of the wrongful acts of Tommy, Plaintiff  
10 has been harmed in that Plaintiff has suffered extreme depression and anxiety, suffered fear, loss of  
11 self-esteem, post-traumatic stress and other physical, emotional, mental and psychological  
12 ailments, for which she will incur medical expenses. Plaintiff is thereby entitled to general and  
13 compensatory damages in amounts to be proven at trial.

14 130. RPI as Tommy's employer, is vicariously liable for Tommy's actions. RPI knew or  
15 should have known that such an act took place at the workplace, specifically given Plaintiff's  
16 numerous and direct complaints to RPI management.

17 131. The conduct of RPI, and/or its agents/employees as described herein, was willful,  
18 malicious, oppressive, and done with a willful and conscious disregard for Plaintiff's rights and for  
19 the deleterious consequences of Tommy's actions. RPI, and/or its agents/employees or  
20 supervisors, authorized, condoned, and ratified the unlawful conduct of Tommy. Consequently,  
21 Plaintiff is entitled to punitive damages against each of said the Defendants.

22 132. Plaintiff seeks an award of general damages, special damages, exemplary damages,  
23 costs and punitive damages in an amount to be determined according to proof at trial.

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**THIRTEENTH CAUSE OF ACTION**  
**SEXUAL HARASSMENT AND HOSTILE WORK ENVIRONMENT IN VIOLATION OF**  
**CALIFORNIA GOVERNMENT CODE SECTION 12940 *ET SEQ.***  
**(Plaintiff against all Defendants and Does 1 through 20, Inclusive)**

133. Plaintiff refers to and incorporates all of the paragraphs of this Complaint as though fully set forth herein.

134. At all relevant time periods RPI was an employer within the meaning of California Government Code section 12926(d), and as such is barred from permitting harassment of an employee on the basis of sex.

135. Defendants created and permitted a hostile work environment for Plaintiff making the conditions of her employment intolerable in direct contravention of various statutes and state law decisions, including but not limited to California Government Code section 12940(j). Plaintiff was subjected to sexual harassment, sexual assault, and a hostile work environment by subjecting Plaintiff to, and refusing and failing to protect Plaintiff from, RPI's managers, agents, and supervisors with respect to the sexual harassment and sexual assault as detailed herein.

136. The continuous sexual harassment and sexual assaults as described herein were sufficiently pervasive and severe as to alter the conditions of employment and to create a hostile and abusive work environment. RPI, its managers, principles, and supervisors had a duty to take all complaints of sexual harassment and sexual assault seriously and breached that duty. Specifically, RPI and its managers, principles, and supervisors refused to act after numerous complaints of sexual harassment and assault were lodged by Plaintiff. By refusing to investigate and take immediate corrective action in response to complaints of the ongoing sexual harassment and sexual assault of Tommy against Plaintiff RPI encouraged a hostile work environment to female employees and ratified the sexually harassing conduct of Tommy. Furthermore, the inaction by RPI allowed Tommy to continue his outrageous behavior towards Plaintiff, in fact Defendants aided Tommy's behavior as described above.

137. As a direct, legal, and foreseeable result of the wrongful acts of Defendants, Plaintiff has been harmed in that Plaintiff has suffered extreme depression and anxiety, suffered

1 fear, loss of self-esteem, post-traumatic stress and other physical, emotional, mental and  
2 psychological ailments, for which she will incur medical expenses. Plaintiff is thereby entitled to  
3 general and compensatory damages in amounts to be proven at trial.

4 138. All Defendants committed the acts alleged herein willfully, maliciously,  
5 fraudulently and oppressively with the wrongful intentions of injuring Plaintiff, from a willful  
6 improper motive amounting to malice, and in conscious disregard of Plaintiff's rights and for the  
7 deleterious consequences of the Defendants' actions.

8 139. At all times herein, the aforementioned acts of oppression, fraud or malice were  
9 authorized and/or ratified, with advance knowledge and conscious disregard, by Defendants and  
10 their respective agents, officers, supervisors and/or managers. Consequently, Plaintiff is entitled to  
11 punitive damages against Defendants.

12 140. As a result of the Defendants' harassing acts as alleged herein, Plaintiff is entitled  
13 to reasonable attorneys' fees and costs of suit as provided by California Government Code section  
14 12965(b).

15 **FOURTEENTH CAUSE OF ACTION**

16 **FAILURE TO PREVENT SEXUAL HARASSMENT IN VIOLATION OF**

17 **CALIFORNIA GOVERNMENT CODE SECTION 12940(k).**

18 **(Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)**

19 141. Plaintiff refers to and incorporates all of the paragraphs of this Complaint as though  
20 fully set forth herein.

21 142. At all times herein, Government Code§ 12940 (k), was in full force and effect and  
22 binding on RPI and/or DOES 1-10. This statute required RPI to take all reasonable steps necessary  
23 to prevent discrimination, harassment and retaliation from occurring.

24 143. At all times herein, RPI knew or reasonably should have known that the sexually  
25 harassing conduct and sexual assault alleged herein would and did proximately cause the physical  
26 and emotional distress to Plaintiff as alleged above.

27 144. At all times herein, RPI had the power, ability, authority, and duty to cease the  
28 conduct alleged above and to intervene to prevent or prohibit such conduct.

1           145. In violation of California Government Code section 12940(k), RPI through its  
2 officers, managing agents and/or supervisors, failed to take all reasonable steps necessary to  
3 prevent the above-alleged sexual harassment from occurring.

4           146. As a direct, legal, and foreseeable result of the wrongful acts of RPI, Plaintiff has  
5 been harmed in that Plaintiff has suffered extreme depression and anxiety, suffered fear, loss of  
6 self-esteem, post-traumatic stress and other physical, emotional, mental and psychological  
7 ailments, for which she will incur medical expenses. Plaintiff is thereby entitled to general and  
8 compensatory damages in amounts to be proven at trial.

9           147. At all times herein, the aforementioned acts of oppression, fraud or malice were  
10 authorized and/or ratified, with advance knowledge and conscious disregard, by RPI and its agents,  
11 officers, supervisors and/or managers. Consequently, Plaintiff is entitled to punitive damages  
12 against RPI.

13           148. As a result of the RPI's harassing acts as alleged herein, Plaintiff is entitled to  
14 reasonable attorneys' fees and costs of suit as provided by California Government Code section  
15 12965(b).

16                                   **FIFTEENTH CAUSE OF ACTION**  
17                                   **RETALIATION IN VIOLATION OF GOVERNMENT CODE**  
18                                   **SECTIONS 12940, *ET SEQ.***

19                   **(Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)**

20           149. Plaintiff refers to and incorporates all of the paragraphs of this Complaint as though  
21 fully set forth herein.

22           150. At all times herein mentioned California Government Code sections 12940, *et seq.*,  
23 were in full force and effect and were binding on RPI. These sections require RPI to refrain from  
24 retaliating against an employee for reporting sexual harassment, sexual assault and/or complaining  
25 about unlawful conduct of Defendants in violation of FEHA.

26           151. After making numerous complaints about the sexual harassment and sexual assault  
27 to RPI, RPI's managers, and Plaintiff's supervisors at RPI, RPI failed to do anything to protect  
28 Plaintiff against the ongoing and pervasive sexual harassment and sexual assault she was

1 experiencing in the RPI workplace. Instead, RPI made it clear that its policy would be to protect  
2 Plaintiff's assailant Tommy and that no meaningful punishment or deterrent would be offered in  
3 response to his ongoing sexual harassment and sexual assault. As a consequence of Plaintiff's  
4 complaints of sexual harassment and sexual assault in the workplace, Plaintiff was told that she  
5 needed to stay away from Tommy, and that Tommy would receive no substantive punishment for  
6 his illegal behavior. Meanwhile, Tommy retained authority over Plaintiff and could approach  
7 Plaintiff at any time to continue his illegal behavior with impunity. With this clear statement of  
8 RPI's policy, and that Plaintiff would never be safe in the RPI workplace, Plaintiff was  
9 constructively discharged in retaliation for the protected activity of reporting the sexual harassment  
10 and sexual assault committed against her by one of RPI's high ranking managers, Tommy.

11 152. As a proximate result of RPI's willful, knowing and intentional wrongful  
12 termination against Plaintiff, Plaintiff has lost employment earnings and benefits, past and future,  
13 according to proof.

14 153. As a proximate result of the above-mentioned wrongful termination Plaintiff has  
15 suffered emotional distress, physical and mental injuries and general damages, past and future, in a  
16 sum according to proof.

17 154. As a proximate result of the above-mentioned wrongful termination, Plaintiff has  
18 incurred and will continue to incur, attorneys' fees and costs.

19 155. RPI and/or DOES 1-20, and each of them, have committed the acts herein alleged  
20 maliciously and oppressively, with the wrongful intention of injuring Plaintiff, with an improper  
21 and intentional motive amounting to malice and conscious disregard of Plaintiff's rights.  
22 Accordingly, Plaintiff requests the assessment of punitive damages against RPI, in an amount  
23 appropriate to punish and make an example of them.

#### 24 SIXTEENTH CAUSE OF ACTION

#### 25 RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5.

26 (Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)

27 156. Plaintiff refers to and incorporates all of the paragraphs of this Complaint as though  
28 fully set forth herein.

1           157. At all times herein mentioned California Labor Code section 1102.5, was in full  
2 force and effect and were binding on RPI. This section makes it unlawful for RPI to retaliate  
3 against an employee for reporting an illegal act, including sexual harassment and sexual assault,  
4 either to a governmental entity, and/or a supervisor or manager within the workplace.

5           158. After making numerous complaints about the sexual harassment and sexual assault  
6 to RPI, RPI's managers, and Plaintiff's supervisors at RPI, RPI failed to do anything to protect  
7 Plaintiff against the ongoing and pervasive sexual harassment and sexual assault she was  
8 experiencing in the RPI workplace. Instead, RPI made it clear that its policy would be to protect  
9 Plaintiff's assailant Tommy and that no meaningful punishment or deterrent would be offered in  
10 response to his ongoing sexual harassment and sexual assault. As a consequence of Plaintiff's  
11 complaints of sexual harassment and sexual assault in the workplace, Plaintiff was told that she  
12 needed to stay away from Tommy, and that Tommy would receive no substantive punishment for  
13 his illegal behavior. Meanwhile, Tommy retained authority over Plaintiff and could approach  
14 Plaintiff at any time to continue his illegal behavior with impunity. With this clear statement of  
15 RPI's policy, and that Plaintiff would never be safe in the RPI workplace, Plaintiff was  
16 constructively discharged in retaliation for the protected activity of reporting the sexual harassment  
17 and sexual assault committed against her by one of RPI's high ranking managers, Tommy.

18           159. As a proximate result of RPI's willful, knowing and intentional wrongful  
19 termination against Plaintiff, Plaintiff has lost employment earnings and benefits, past and future,  
20 according to proof.

21           160. As a proximate result of the above-mentioned wrongful termination Plaintiff has  
22 suffered emotional distress, physical and mental injuries and general damages, past and future, in a  
23 sum according to proof.

24           161. As a proximate result of the above-mentioned wrongful termination, Plaintiff has  
25 incurred and will continue to incur, attorneys' fees and costs.

26           162. RPI and/or DOES 1-20, and each of them, have committed the acts herein alleged  
27 maliciously and oppressively, with the wrongful intention of injuring Plaintiff, with an improper  
28 and intentional motive amounting to malice and conscious disregard of Plaintiff's rights.

1 Accordingly, Plaintiff requests the assessment of punitive damages against RPI, in an amount  
2 appropriate to punish and make an example of them.

3 **SEVENTEENTH CAUSE OF ACTION**

4 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

5 **(Plaintiff against all Defendants and Does 1 through 20, Inclusive)**

6 163. Plaintiff refers to and incorporates all of the paragraphs of this Complaint as though  
7 fully set forth herein.

8 164. The conduct of Defendants as alleged herein are extreme and outrageous and  
9 exceed all standards of decency normally associated with a civilized society; such conduct was  
10 intentional and malicious and done for the purpose of, or with reckless disregard for the substantial  
11 probability of, causing Plaintiff to suffer humiliation, mental anguish and emotional and physical  
12 distress.

13 165. Plaintiff did in fact suffer severe emotional distress as a direct and proximate result  
14 of the above-described conduct.

15 166. As a direct and proximate result of the aforesaid unlawful acts of Defendants,  
16 Plaintiff has been personally harmed in that Plaintiff has suffered extreme depression and anxiety,  
17 suffered fear, humiliation, loss of self-esteem, post-traumatic stress and other physical, emotional,  
18 mental and psychological ailments, for which she will incur medical expenses. Plaintiff has been  
19 injured in mind and body all to Plaintiff's damage in an amount to be ascertained at the time of  
20 trial and is thereby entitled to general and compensatory damages in amounts to be proven at trial.

21 167. At all times herein, the aforementioned acts of oppression, fraud or malice were  
22 authorized and/or ratified, with advance knowledge and conscious disregard, by Defendants and  
23 their respective agents, officers, supervisors and/or managers. Consequently, Plaintiff is entitled to  
24 punitive damages against Defendants in an amount according to proof.

25 ///

26 ///

27 ///

28 ///

1 **EIGHTEENTH CAUSE OF ACTION**

2 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

3 **(Plaintiff against Defendant RPI and Does 1 through 20, Inclusive)**

4 168. Plaintiff refers to and incorporates all of the paragraphs of this Complaint as though  
5 fully set forth herein.

6 169. Under the laws of the state of California, an employer's right to terminate an at-will  
7 employee is subject to limits imposed by public policy whenever the basis of the discharge  
8 contravenes a fundamental public policy. Such public policy must inure to the benefit of the  
9 public at large and must be grounded in some statutory, regulatory, or constitutional provision.

10 170. At all times during Plaintiff's employment with RPI, a fundamental public policy  
11 against sexual harassment and sexual assault in the workplace place was, and is, set forth by the  
12 California State Constitution pursuant to Article 1, § 8, and affirmed by the California State  
13 Supreme Court in Rojo v. Kliger 52 Cal.3d 65, 90 (1990).

14 171. After Plaintiff's multiple complaints to RPI management and her supervisors  
15 regarding the ongoing sexual harassment and sexual assault ensured that RPI was aware of the  
16 ongoing sexual harassment and sexual assault committed by Tommy. Only after months of  
17 complaints did RPI commit to conducting a rushed sham investigation, conducted by one of  
18 Tommy's junior male subordinates instead of the Human Resources department. This sham  
19 investigation resulted in a single day suspension for Tommy despite there being no real doubt that  
20 the months of complained of sexual harassment and sexual assault in fact happened. After the  
21 conclusion of RPI's sham investigation, nothing changed in the RPI workplace and Tommy was  
22 still in a position of authority over Plaintiff and could still approach Plaintiff whenever he wanted  
23 to continue his sexually harassing behavior and ongoing sexual assaults. Due to this commitment  
24 by RPI to protect Tommy, who is the CEO's son, RPI made it impossible for Plaintiff to return to  
25 work in safety and without the constant fear of continued sexual harassment and sexual assault.  
26 RPI constructively terminated Plaintiff's employment by ensuring that she would never be safe  
27 from Tommy's sexual harassment and sexual assaults in the workplace.

28 ///

172. As a proximate result of RPI's willful, knowing and intentional wrongful termination against Plaintiff, Plaintiff has lost employment earnings and benefits, past and future, according to proof.

173. As a proximate result of the above-mentioned wrongful termination Plaintiff has suffered emotional distress, physical and mental injuries and general damages, past and future, in a sum according to proof.

174. As a proximate result of the above-mentioned wrongful termination, Plaintiff has incurred and will continue to incur, attorneys' fees and costs.

175. RPI and/or DOES 1-20, and each of them, have committed the acts herein alleged maliciously and oppressively, with the wrongful intention of injuring Plaintiff, with an improper and intentional motive amounting to malice and conscious disregard of Plaintiff's rights. Accordingly, Plaintiff requests the assessment of punitive damages against RPI, in an amount appropriate to punish and make an example of them.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and penalties against Defendants, and each of them, as follows:

1. For general economic and non-economic damages according to proof;
2. For compensatory damages according to proof;
3. For lost past and future wages in an amount to be determined at trial;
4. For exemplary and punitive damages in an amount to be determined at trial;
5. For civil penalties against Defendant RPI for retaliation pursuant to California Labor Code section 1102.5;
6. For civil penalties against each Defendant for each act of sexual violence pursuant to California Civil Code section 52(b)(2);
7. For civil penalties against RPI pursuant to California Labor Code section 2698 *et seq.*;
8. For prejudgment interest pursuant to California Civil Code sections 3287, 3288 and where otherwise provided by law;

9. For costs of suit incurred herein and reasonable attorneys' fees pursuant to the referenced statutes;

10. For wages pursuant to the California Labor Code;

11. For damages and/or penalties, an award of costs and reasonable attorney's fees pursuant to the California Labor Code;

12. That RPI be found to have engaged in unfair competition in violation of California Business and Professions Code section 17200, *et seq.*;

13. That RPI be ordered and enjoined to make restitution to Representative Plaintiff due to their unfair competition, pursuant to California Business and Professions Code sections 17203 and 17204;

14. That Defendants further be enjoined to cease and desist from unfair competition in violation of California Business and Professions Code section 17200, *et seq.*;

15. For attorneys' fees, interests and costs of suit pursuant to Labor Code sections 218.5, 1194(a), 2802, FEHA and Code of Civil Procedure section 1021.5;

16. For injunctive relief; and

17. For such other and further relief as the Court may deem just and proper.

Dated: December 1, 2023

GLEASON & FAVAROTE LLP  
TOREY JOSEPH FAVAROTE

By: Torey Joseph Favarote

Attorneys for Representative Plaintiff  
Amara O'Neill and those similarly situated

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury.

Dated: December 1, 2023

GLEASON & FAVAROTE LLP  
TOREY JOSEPH FAVAROTE

By: \_\_\_\_\_  
Torey Joseph Favarote  
Attorneys for Representative Plaintiff  
Amara O'Neill and those similarly situated

**EXHIBIT C**  
**(Supplemental PAGA Letter)**



GLEASON & FAVAROTE LLP

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Long Beach, California 90807

[gleasonfavarote.com](http://gleasonfavarote.com)

September 22, 2023

**VIA ELECTRONIC SUBMISSION**

Stewart Knox  
Secretary  
California Labor & Workforce Development Agency  
800 Capital Mall, Suite 5000 (MIC-55)  
Sacramento, CA 95814

Re: **Supplemental PAGA Notice, O'Neill v. Robinson Pharma Inc.**  
**Case No. LWDA-CM-822861-21**  
California Labor Code section 2699, *et seq.* violations

Dear Mr. Knox:

I am writing to provide supplemental notice on behalf of aggrieved employee Amara O'Neill ("O'Neill"). This notice is intended to supplement O'Neill's earlier notices filed on February 25, 2021, and on May 22, 2023, both of those notices are incorporated by reference. This supplemental notice is being made to the Labor & Workforce Development Agency on behalf of O'Neill, and other individuals, who were employed by Robinson Pharma Inc. ("RPI"), as non-exempt hourly employees California (the "Aggrieved Employees") going back one year from the original notice.

O'Neill, and each of the Aggrieved Employees described above, suffered from one or more of the following Labor Code violations by their current or former employer RPI.

O'Neill and other Aggrieved Employees' employment with RPI was governed by the California IWC Wage Orders, California Labor Code sections 201, 201.3, 202, 203, 204, 204.1, 204.11, 205, 205.5, 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.6, 226.7, 245-249, 256, 432, 432.5, 432.7, 510, 512, 516, 551, 552, 558, 558.1, 1024.5, 1174, 1175, 1182.12, 1194, 1194.2, 1195, 1197, 1197.1, 1197.5, 1198, 1771, 1774, 1776, 1811, 1815, 2802, and the California Code of Regulations, Title 8, section 11000 *et seq.* RPI has violated each of the above statutes and regulations. As noted above, O'Neill incorporates by reference all of the facts and theories from her prior notices.

In addition to RPI's extensive failure to pay all overtime and wages as discussed in O'Neill's prior notices, RPI had the policy and practice of only paying O'Neill and the Aggrieved Employees for scheduled hours regardless of the amount of time actually worked. RPI also rounded meal period, rest break, and shift start and end times to the detriment of O'Neill and the other Aggrieved Employees and resulted in O'Neill and the other Aggrieved Employees not being paid all wages, including minimum, straight, overtime, and double time wages.

Stewart Knox  
Secretary  
California Labor & Workforce Development Agency  
September 22, 2023  
Page 2 of 2

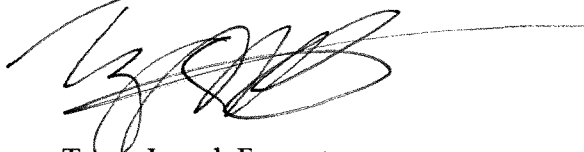
As previously discussed in prior notice letters, O'Neill and the other Aggrieved Employees were not paid all earned overtime wages, including overtime and double time wages earned after 40 hours worked in a workweek, 12 hours in a workday, and on the seventh consecutive day of work in a workweek. As a result of these, and all other previously discussed failures to pay wages, and as a policy in and of itself, RPI has a consistent practice of not timely paying all wages at least twice a calendar month via regular bi-monthly paydays as required by Labor Code sections 204 and 210. As a result of these and all other wage related Labor Code violations, RPI is subject to penalties for each underpaid Aggrieved Employee as set forth in Labor Code sections 558 and 210.

As previously discussed in prior notice letters, it is RPI's uniform practice and procedure to not properly calculate, and to not properly provide its employees with legally adequate sick days and does not pay sick leave pay at the rate required under Labor Code section 246. RPI additionally has the routine policy and practice of violating Labor Code section 247.5 by not maintaining and or providing records of hours worked and sick days taken by its non-exempt employees. RPI additionally has the routine policy and practice of refusing to comply with Labor Code section 246 by not providing O'Neill and the other Aggrieved Employees with wage statements or other documents displaying the amount of paid sick leave available to them, or paid time off in the alternative to sick leave. RPI's violations of these statutes subject it to penalties as set forth in Wood v. Kaiser Found. Hosps., 88 Cal. App. 5th 742 (2023).

In addition to RPI's prior discussed violations of Labor Code section 1198 and the IWC Wage Orders; RPI has violated the Labor Code and the IWC Wage Orders by failing to abide by the temperature control guidelines set forth in the IWC Wage Orders, including but not limited to those regarding excessive heat (beyond reasonable comfort and safety) and excessive cold temperatures (below 60 degrees Fahrenheit) in its workplaces. As a result of this failure, and its draconian cost cutting measures, O'Neill and the other Aggrieved Employees are/were being provided with little to no ventilation, heating, or cooling in the workplace. As such RPI is in violation of Labor Code section 1198 and the IWC Wage Orders and is subject to penalties.

Sincerely,

**GLEASON & FAVAROTE LLP**



Torrey Joseph Favarote

TJF/dd

cc Robinson Pharma, Inc., c/o Tam Nguyen, agent for service of process, 3330 South Harbor Boulevard, Santa Ana, CA 92704 (certified mail, return receipt requested)  
Mark D. Kemple, Ryan C. Bykerk, Oscar E. Peralta, Andrea Carmona, Jarrod Y. Nakano

# **EXHIBIT 2**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER**

**MINUTE ORDER**

DATE: 11/17/2022

TIME: 02:00:00 PM

DEPT: CX101

JUDICIAL OFFICER PRESIDING: Peter Wilson

CLERK: V. Harting

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: I. Olivares

CASE NO: **30-2020-01176039-CU-OE-CJC** CASE INIT.DATE: 12/23/2020

CASE TITLE: **O'Neill vs. Robinson Pharma Inc.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

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EVENT ID/DOCUMENT ID: 73871893

**EVENT TYPE:** Motion - Other

**MOVING PARTY:** Amara O'Neill

**CAUSAL DOCUMENT/DATE FILED:** Motion - Other For Class Certification, 08/18/2022

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EVENT ID/DOCUMENT ID: 73871894

**EVENT TYPE:** Status Conference

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**APPEARANCES**

No Appearance by all parties

Tentative Ruling posted on the Internet.

All parties submitted on the Court's tentative ruling.

The Court confirms the tentative ruling. The Court's final ruling is attached hereto and incorporated herein by reference.

The status conference is continued to February 24, 2023 at 9:00 a.m. and the parties are Ordered to file a joint status report by not later than February 17, 2023.

Plaintiff is ordered to give notice.

***O'Neill vs. Robinson Pharma Inc.***  
**Case No. 30-2020-01176039**

**COURT'S FINAL RULING**

Plaintiff Amara O'Neill seeks class certification of the following classes:

- Class: All non-exempt employees employed by Robinson Pharma Inc. in California from January 29, 2017 to the date of certification.
- Subclass A: All Class Members employed during the time from January 29, 2017, through Class certification, who terminated their employment relationship with Defendant and did not receive all wages owed to them in accordance with Labor Code § 201-203 (Waiting Time Penalties Subclass);
- Subclass B: All Class Members employed during the time from January 29, 2017, through Class certification, who incurred reasonable business expenses in the discharge of their duties and were not reimbursed (Expense Reimbursement Subclass);
- Subclass C: All Class Members employed during the time from January 29, 2017, through Class certification, who did not receive accurate itemized wage statements in accordance with Labor Code § 226 (Wage Statement Subclass);
- Subclass D: All Class Members employed during the time from January 29, 2017, through Class certification, who were not paid all wages, including all correct overtime wages, for time spent working for Defendant (Off the Clock Wages Subclass);
- Subclass E: All Class Members employed during the time from January 29, 26 2017, through Class certification, who whose payroll and time records were not maintained 27 completely and accurately (Failure to Maintain Records Subclass); and
- Subclass F: All Class Members employed during the time from January 29, 2 2017, through Class certification, who did not receive a meal period premium for 3 unprovided meal periods (Meal Period Subclass).

ROA 138, NOM.

**Relevant Authority:** "The party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. [Citations.] In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021 [internal quotations and citations omitted].) These elements are typically referred to as: (1) ascertainability; (2) numerosity; (3) commonality; (4) typicality; (5) adequacy; and (6) superiority. (See e.g. *Capitol People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 681.)

Plaintiff bears the burden of proof on these elements. This must be established by admissible evidence; the parties may not rely on allegations in their complaint. (*Soderstedt v. CBIZ Southern Calif., LLC* (2011) 197 Cal.App.4th 133, 154-155 [where plaintiffs submitted only 3 declarations of proposed class members, in the absence of admissible evidence re size of class, moving party failed to meet burden to show numerosity]; *Barriga v. 99 Cents Only Stores LLC* (2020) 51 Cal.App.5th 299, 322-323 [trial court has duty to scrutinize declarations re class certification to ensure they are not the product of "coercion or deception"].)

**The Merits:** Defendant appears to concede that Plaintiff has met her burden of establishing all elements for class certification except for commonality, typicality, and adequacy. Defendant does not discuss or challenge any of the other elements for certification.

#### COMMONALITY AND SUPERIORITY

In analyzing the issue of commonality,

"[t]he 'ultimate question' the element of predominance presents is whether 'the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.' [Citations.] The answer hinges on 'whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment.' [Citation.] A court must examine the allegations of the complaint and supporting declarations [citation] and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding would be both desirable and feasible. 'As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.' " (*Brinker, supra*, 53 Cal.4th at pp. 1021-1022, 139 Cal.Rptr.3d 315, 273 P.3d 513, fn. omitted.) Indeed, "at the class certification stage, as long as the plaintiff's posited theory of liability is amenable to resolution on a classwide basis, the court should certify the action for class treatment even if the plaintiff's theory is ultimately incorrect at its substantive level, because such an approach relieves the defendant of the jeopardy of serial class actions and, once the defendant demonstrates the posited theory is substantively flawed, the defendant 'obtain[s] the preclusive benefits of such victories against an entire class and not just a named plaintiff.' " (*Hall v. Rite Aid Corp.* (2014) 226 Cal.App.4th 278, 293-294, 171 Cal.Rptr.3d 504, italics omitted.)

(*ABM Indus. Overtime Cases* (2017) 19 Cal. App. 5th 277, 307-08.) Thus, the focus is on whether the Plaintiff's theory of recovery is amenable to class treatment. Plaintiff has satisfied this requirement.

Defendant criticizes Plaintiff's evidence and argues that it does not show a uniform or widespread policy or practice across all of its offices and departments. Defendant also argues that the evidence presented by Plaintiff is conclusory. However, Defendant presents no evidence, or even argument, explaining how its policies and practices were different depending on location or department. Defendant also presents no evidence contradicting any of Plaintiff's evidence and has not objected to any of Plaintiff's evidence. Defendant presents no evidence of the various departments or positions within its company, or any counter-declarations or written policies demonstrating any differences in its policies, or the

implementation of those policies based on department, manager or employment position. Defendant's arguments are not persuasive.

Plaintiff's evidence shows Defendant has uniform policies and practices relating to timekeeping, meal periods, off the clock work, and reimbursement for business expenses that affect all non-exempt employees.

In its Employee Handbook, Defendant has a written policy requiring each non-exempt employee to accurately record his or her start and end time for each shift and meal periods. If corrections or modifications are made "both employee and supervisor must verify for accuracy of the changes by initial[ing] the time card." ROA 136, Favarote, Ex. B, Nguyen Depo., Ex. 2, Employee Handbook, p. 17 Appx. 078. Despite this policy, Defendant admits it did not follow this policy, and instead, had a uniform practice and procedure of reviewing and making hand edits to every single time card for every single pay period for all its non-exempt employees without advising them of the edits or having them acknowledge their time cards were accurate, and paying the non-exempt employees based on those hand edits. ROA 136, Favarote Decl., ¶5, Ex. B, Nguyen Depo., at pp. 43:20-46:20, 55:1-57:12, 60:3-61:15, 72:22-73:20, 79:14-78:7; ROA 136, Favarote Decl., Ex. D, Pham Depo., at p. 28:7-20.

Defendant argues that Plaintiff has not demonstrated there was any harm or time was deducted as a result of its uniform practices and procedures but that is an issue of proof of damages that does not defeat the common questions of liability.

Additionally, Defendant's policy requires employees to take their breaks and meal periods at certain times. ROA 136, Favarote Decl., Ex. B, Nguyen Depo., at pp. 41:3-43:9, 74:18-78:22. Defendant's timekeeping software has an auto-lunch function that automatically deducts 30 minutes for lunch when an employee does not clock out for a meal period within a certain time, and when the employee clocks back in early from lunch, the auto-lunch function automatically deducts the difference from the employee's time worked to ensure that 30 minutes are not paid. ROA 136, Favarote Decl., Ex. D, Pham Depo., at pp. 34:13-35:4, 43:15-23, 44:3-21, 50:16-51:13; ROA 136, Ex. E. This auto-lunch feature happens regardless of whether the employee actually takes a meal break or is required to take a delayed or shortened meal break because of work. At no time has Defendant ever paid a premium for missed or delayed meal periods. ROA 136, Favarote Decl., Ex. D, Pham Depo., at p. 41:1-23.

Defendant's practice of automatically recording a 30-minute meal break even if the meal break was not taken or shortened because of work, and Plaintiff's evidence of missed, delayed and short meal periods, give rise to the rebuttable presumption of a meal period violation as set forth in *Donohue v. AMN Servs., LLC* (2021) 11 Cal. 5th 58, 78 ["If time records show noncompliant meal periods, then a rebuttable presumption of liability arises"].) Further, as the California Supreme Court explained "[I]t is the employer's duty to maintain accurate time records; the law does not expect or require employees to keep their own time records to uncover potential meal period violations." (*Id.* at 80-81.)

Defendant contends Individualized Issues predominate because its policy demonstrates it makes meal periods available. Defendant argues that meal breaks was dependent on the manager and department, but Defendant does not offer any evidence that this is actually the case. Defendant's policy does not contradict the evidence of its practice and procedure of automatically deducting 30 minutes for lunch and not paying a premium regardless of whether the meal break was not actually taken, delayed or shortened. Nor is there any evidence that the employees waived their right to take any meal breaks.

Other courts have determined that automatically deducting 30 minutes for meal breaks regardless of whether the meal break was actually taken raises common legal and factual issues that may support class certification. (*Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1294, 1304. See also, *ABM Indus. Overtime Cases*, *supra*, 19 Cal. App. 5th at 309.)

As to the Waiting Time Penalties class, Plaintiff presents evidence of her resignation and final wage statement as well as seven other employees' time cards and pay summaries to support her allegation that there is a policy of not paying terminated employees all their wages within 72 hours as required under Labor Code §§ 201-203. ROA 136, Favarote Decl., at ¶15 and Exs. H and I. Again, Defendant has not contradicted any of this evidence or identified any policies or practices to contradict Plaintiff's evidence and the reasonable conclusions that can be drawn therefrom.

As for the Expense Reimbursement Class, Plaintiff presents evidence that Defendant never reimbursed any employees for use of their personal cell phones on work matters. In her declaration, Plaintiff states her supervisors and management employees would "routinely call and text hourly employees including [herself] on [their] personal cellular telephones for work related issues both during and after work hours." ROA 136, Ex. J, O'Neill Decl., ¶4. While Plaintiff's evidence of the use of personal cell phones by non-exempt employees is thin, Defendant has not opposed or objected to Plaintiff's declaration nor has Defendant presented contrary evidence. Defendant has not shown that it has any policies about contacting employees on their personal cell phones or advising employees that they do not have to respond to managing or supervising employees on their cell phones or after hours. As such, Plaintiff's evidence is sufficient to establish a uniform policy and practice of contacting employees on their personal cell phones and failing to reimburse them for a necessary business expense.

The Wage Statement Class and Failure to Maintain Records Class are derivative of the other claims. Since common issues of fact and law predominate the other issues, common issues of act and law are also found here.

Given the common questions of fact and law, and the number of putative class members, Plaintiff has met the superiority requirement.

#### TYPICALITY AND ADEQUACY

The "test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." (*Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375 (Internal quotes omitted).) Further, the class representative, though qualified counsel, must show he or she can adequately represent the class by being capable of "vigorously and tenaciously" protecting the interests of class members. (*Simons v. Horowitz* (1984) 151Cal.App.3d 834, 846.)

"The adequacy inquiry ... serves to uncover conflicts of interest between named parties and the class they seek to represent." (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 851.) "Where there is a conflict that goes to the very subject matter of the litigation, it will defeat a party's claim of class representative status. Thus, a finding of adequate representation will not be appropriate if the proposed class representative's interests are antagonistic to the remainder of the class." (*Ibid.* [internal quotes and citations omitted].)

Defendant contends that Plaintiff's claims really center on her individual sexual harassment claims, and therefore, her claims are not typical. Defendant's arguments are not persuasive.

Having individual claims is not unusual for a named class plaintiff. Plaintiff has presented evidence that she was subject to the same policies and practice as all other nonexempt employees. Defendant has not presented any evidence to show otherwise. Defendant presents no evidence that Plaintiff was not subject to its uniform policies and practices or that she was subject to any unique policies or practices. Defendant has not shown that Plaintiff's sexual harassment claims are adverse or conflict with the class claims. Nor has Defendant shown that Plaintiff is unable to fairly represent the class interests.

Plaintiff has attested to understanding her obligations and responsibilities as class representative. ROA 136, Ex. J, O'Neill Decl., ¶¶8-9. Accordingly, there is sufficient evidence to satisfy the requirements for typicality and adequacy.

#### ASCERTAINABILITY AND NUMEROSITY

There is no dispute that Plaintiff has met ascertainability and numerosity. The putative classes can be determined through Defendant's records and consist of approximately 1,750 putative Class Members, of which 1,341 were employed within one year of filing the lawsuit for purposes of Labor Code § 226 and 930 were terminated during the Class Period. ROA 136, Favarote Decl., ¶9.

For the reasons set forth above, the Court GRANTS the motion for certification.

# **EXHIBIT 3**



213.452.0510 Main  
213.452.0514 Fax

4014 Long Beach Blvd., Suite 300  
Long Beach, California 90807

[gleasonfavarote.com](http://gleasonfavarote.com)

GLEASON & FAVAROTE LLP

February 25, 2021

**VIA ELECTRONIC SUBMISSION**

Julie A. Su  
Acting Secretary  
California Labor & Workforce Development Agency  
800 Capital Mall, MIC-55  
Sacramento, CA 95814

Re: **O'Neill v. Robinson Pharma Inc.**  
California Labor Code section 2698, *et seq.* violations

Dear Ms. Su:

I am writing on behalf of aggrieved employee Amara O'Neill ("O'Neill"). This notice is being made to the Labor & Workforce Development Agency pursuant to the requirement of Labor Code section 2698 *et al.* that O'Neill, and other aggrieved employees, who were employed by Robinson Pharma Inc. ("RPI"), as non-exempt hourly employees in California (the "Aggrieved Employees").

O'Neill, and each of the Aggrieved Employees described above, suffered from one or more of the following Labor Code violations by their current or former employer RPI.

O'Neill's employment with RPI began in or around November of 2018 and ended in or around December 2020. O'Neill and the other Aggrieved Employees' employment with RPI was governed by the California Wage Orders, and California Labor Code sections 201, 202, 203, 226, 510, 1194, 1194.2, 1197, 1197.1, 1198 and 2802.

O'Neill worked for RPI as a non-exempt hourly employee in Orange County California. O'Neill and the other Aggrieved Employees were required to use their personal cellular devices in order to send and receive work-related calls, texts, emails, and other communications. O'Neill and the other Aggrieved Employees used their personal cellular service and/or data plans for the above-mentioned required work communications but were not compensated for the time nor reimbursed for use of their cellular devices and/or the use of their cellular service and/or data plans by RPI in violation of the Labor Code sections noted above.

O'Neill and the other Aggrieved Employees also frequently received and were expected to respond to the above-mentioned work-related calls, texts, emails, and other communications outside of regular working hours and while off the clock. O'Neill and the other Aggrieved Employees were not compensated for the time spent receiving, reviewing, and/or responding to

Julie A. Su  
Acting Secretary  
California Labor & Workforce Development Agency  
Re: **O'Neill v. Robinson Pharma Inc.**  
California Labor Code section 2698, *et seq.* violations  
February 25, 2021  
Page 2 of 3

work related communications while off the clock in violation of Labor Code § 510, 1194, 1194.2, 1197, 1197.1 and 1198.

O'Neill is informed and believes that it is RPI's uniform practice and procedure to not reimburse its non-exempt employees for the use of their personal cellular devices and associated cellular service and/or data service plans. O'Neill is also informed and believes that it is RPI's uniform policy and procedure to fail to pay wages for all time worked due to a policy of not paying its non-exempt employees for time spent working off the clock reviewing and responding to said messages and emails. The aforementioned off the clock work has also resulted in O'Neill and the other Aggrieved Employees receiving inaccurate wage statements which fail to accurately provide, amongst other information required by law, the correct number of hours worked at each applicable rate, the correct total amount earned, and the correct total number of hours worked. All of these policies and practices are in violation of Labor Code sections 201, 202(a), 203, 226(a), 510, 1194, 1194.2, 1197, 1197.1, 1198 and 2802, as well as the relevant California Wage Orders.

California Labor Code section 2802 requires that employers reimburse business expenses reasonably incurred by employees in the course of their employment. RPI required and directed O'Neill and the other Aggrieved Employees to use their personal cellular devices and any associated cellular service plans and/or data plans to receive and respond to work related communications, including but not limited to calls, texts, and emails. RPI managers, supervisors, and other employees with authority over O'Neill and the other Aggrieved Employees would often send work related communications directly to O'Neill and the other Aggrieved Employees' personal cellular devices and expect prompt review and responses. As a result, RPI has violated California Labor Code section 2802 by failing to reimburse O'Neill and the other Aggrieved Employees for the use of their cellular devices and their associated cellular service and/or data plans.

California Labor Code sections 510, 1194, 1194.2, 1197, 1197.1, 1198, and the California Wage Orders strictly require that employers pay wages, including minimum wage, for all work performed. O'Neill and the other Aggrieved Employees frequently would receive work related communications, including but not limited to calls, texts, and emails, while off the clock and were expected to respond to those work-related communications while off the clock. O'Neill and the other Aggrieved Employees were not compensated for the time spent receiving, reviewing, and responding to the above-mentioned work-related communications. As a result, RPI has violated California Labor Code sections 510, 1194, 1194.2, 1197, 1198, and the relevant California Wage Orders by failing to compensate O'Neill and the other Aggrieved Employees for all work performed for RPI.

Labor Code section 226 requires an employer to furnish its employees with accurate itemized wage statements showing, among other things, gross wages earned, net wages earned, all applicable hourly rates in effect during each respective pay period and the corresponding

Julie A. Su  
Acting Secretary  
California Labor & Workforce Development Agency  
Re: **O'Neill v. Robinson Pharma Inc.**  
California Labor Code section 2698, *et seq.* violations  
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correct number of hours worked at each hourly rate by each respective individual. As a pattern and practice, in violation of Labor Code section 226(a), RPI did not furnish accurate and legally compliant itemized wage statements to the Aggrieved Employees. As one example, because O'Neill and the other Aggrieved Employees were not paid for all time spent working for RPI, as discussed above, RPI did not provide wage statements stating the correct number of hours worked at each applicable rate, or the correct total amount of wages earned.

Because O'Neill and the other Aggrieved Employees were not paid for all time spent working for RPI, RPI failed to remit all wages earned by O'Neill and the other Aggrieved Employees at the time of termination. At the time of termination, RPI failed to pay O'Neill and the other Aggrieved Employees who no longer worked for RPI all wages owed pursuant to California Labor Code sections 201-203, because they were not paid for all compensable time spent working off the clock, as detailed above. Thus, they are also entitled to up to 30 days of wages pursuant to California Labor Code sections 201, 202 and 203.

Sincerely,

**GLEASON & FAVAROTE LLP**

A handwritten signature in black ink, appearing to read 'TJF', with a horizontal line extending to the right.

Torey Joseph Favarote

TJF/dd

cc ROBINSON PHARMA, INC.  
c/o Agent for Service of Process  
Tam Nguyen  
3330 South Harbor Boulevard  
Santa Ana, CA 92704

# **EXHIBIT 4**

TOREY JOSEPH FAVAROTE (SBN: 198521)  
GLEASON & FAVAROTE LLP  
4014 Long Beach Blvd., Suite 300  
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[tfavarote@gleasonfavarote.com](mailto:tfavarote@gleasonfavarote.com)

Attorneys for Plaintiff Amara O'Neill and  
the certified class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE**

AMARA O'NEILL, on behalf herself and all  
those similarly situated,

Plaintiff,

vs.

ROBINSON PHARMA INC., a California  
Corporation; TOMMY NGUYEN, an  
individual; and DOES 1-20, inclusive,

Defendants.

) Case No. 30-2020-01176039-CU-OE-CJC

) **NOTICE OF JULY 13, 2023 COURT**  
) **ORDER**

) Date: July 13, 2023

) Time: 2:00 p.m.

) Judge: Hon. Peter Wilson

) Dept.: CX101

) Action Filed: December 23, 2020

) Trial Date: None Set

1                   **TO DEFENDANT AND ITS ATTORNEYS OF RECORD HEREIN:**

2                   **PLEASE TAKE NOTICE** that on July 13, 2023, in department CX101 the Honorable  
3 Judge Peter Wilson held a hearing on plaintiff Amara O'Neill's motion to compel responses to her  
4 Requests for Production Set Three and Special Interrogatories Set Three:

5                   The Court has adopted its tentative attached hereto as **Exhibit A** with the following  
6 modifications, except as stated below the tentative remains the same in all other respects.

- 7                   • Defendant may only make appropriate objections based on attorney client privilege and  
8                   must submit a privilege log for any documents withheld based on attorney client privilege  
9                   within 30 days of notice.
- 10                  • The parties may stipulate to allow Defendant additional time to provide objection free  
11                  (excepting only attorney client privilege) verified responses.
- 12                  • Sanctions are shifted to Counselor Nakano at his request.

13  
14 Dated: July 13, 2023

**GLEASON & FAVAROTE LLP**  
**TOREY JOSEPH FAVAROTE**

15  
16  
17 By



18                   Torey Joseph Favarote

19                   Attorneys for Representative Plaintiff  
20                   Amara O'Neill and the certified class

# **EXHIBIT A**

## **TENTATIVE RULINGS**

**Judge Peter J. Wilson**  
**Dept. CX101**

**657-622-5301**

**July 13, 2023**

These are the Court's tentative rulings. They may become orders if the parties do not appear at the hearing. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4<sup>th</sup> 436, 442, fn. 1.)

If the parties agree to submit on the Court's tentative ruling, please call the Court Clerk to inform the Court that **all parties** submit on the Court's tentative ruling.

Appearances, whether remote or in person, must be in compliance with Code of Civil Procedure §367.75, Rule 3.672 of the California Rules of Court, and Superior Court of California, County of Orange, Appearance Procedure and Information, Civil Unlimited and Complex, located at [https://www.occourts.org/media-relations/covid/Civil Unlimited and Complex Appearance Procedure and Information.pdf](https://www.occourts.org/media-relations/covid/Civil%20Unlimited%20and%20Complex%20Appearance%20Procedure%20and%20Information.pdf).

Information, instructions and procedures to appear remotely are also available at <https://www.occourts.org/media-relations/aci.html>.

Unless the court orders otherwise, remote appearances will be conducted via Zoom through the court's online check-in process, available at <https://www.occourts.org/media-relations/aci.html>. Once online check-in is completed, counsel and self-represented parties will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room while the clerk provides access to the video hearing.

The public may attend hearings by coming to court or via remote access as described above.

Parties preferring to be heard in person, instead of remotely, should provide notice of their intent to appear in person to the court and to all other parties at least five days before the hearing.

Requests for fee waivers may be submitted to [CivilSRL@occourts.org](mailto:CivilSRL@occourts.org) or the drop box outside the Central Justice Center courthouse.

**COURT REPORTERS:** Official court reporters (i.e. court reporters employed by the Court) are NOT typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- [Civil Court Reporter Pooling](#); and

- For additional information, please see the court's website at [Court Reporter Interpreter Services](#) for additional information regarding the availability of court reporters.

**Note: Procedural Guidelines for Class Action and PAGA Settlement appear after the Tentative Rulings.**

| # | Case Name                                                   | Tentative Ruling                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---|-------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6 | O'Neill vs. Robinson<br>Pharma Inc.<br><br>30-2020-01176039 | <p>Plaintiff Amara O'Neill seeks an order compelling Defendant Robinson Pharma, Inc. to provide (1) responses to Plaintiff's Special Interrogatories, Set Three and (2) responses to Plaintiff's Requests for Production, Set Three. Plaintiff also seeks an award of monetary sanctions in the amount of \$6,750 against Defendant.</p> <p>As framed by the papers, the parties' dispute is procedural. It concerns (1) the timeliness of Defendant's responses to the discovery requests, (2) the timeliness of Plaintiff's motions to compel, (3) Plaintiff's alleged failure to meet and confer prior to filing the motions, and (4) Plaintiff's failure to submit a supporting separate statement.</p> <p>Because the Court finds Plaintiff prevails regarding the un-timeliness of Defendant's responses, Plaintiff also prevails on the other issues.</p> <p>The parties agree or otherwise do not dispute the following pertinent dates:</p> <p>Requests for Production, Set Three:</p> <ul style="list-style-type: none"> <li>- 12-01-22 (Service of Requests via email)</li> <li>- 12-31-22 (30 days later, a Saturday)</li> <li>- 01-05-23 (Service of Responses)</li> </ul> <p>Special Interrogatories, Set Three</p> <ul style="list-style-type: none"> <li>- 12-08-22 (Service of Requests via email)</li> <li>- 01-07-23 (30 days later, a Saturday)</li> <li>- 01-10-23 (Two-week extension granted by Plaintiff)</li> <li>- 01-25-23 (Service of Responses)</li> </ul> |

Plaintiff argues the responses are untimely as they were due no later than 01-04-23 (RFPs) and 01-24-23 (SROGs). Defendant contends the response deadlines were the respective dates of its service (i.e. one day later) and were therefore timely. The point of contention concerns the application of CRC 1.10 and CCP § 1010.6.

Code of Civil Procedure § 1010.6(a)(1)(B) states, in relevant part: "Any period of notice, or any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days[.]"

"Unless otherwise provided by law, if the last day for the performance of any act that is required by these rules to be performed within a specific period of time falls on a Saturday, Sunday, or other legal holiday, the period is extended to and includes the next day that is not a holiday." (Cal. Rules of Court, Rule 1.10(b).)

Defendant argues that because both 30-day "deadlines" fell on Saturdays, CRC 1.10(b) provides an initial extension to the next court day, and two court days are then further added pursuant § 1010.6(a)(1)(B).

The Court disagrees.

As correctly articulated by Plaintiff, CRC 1.10(b) does not apply here because the actual deadlines are not, in fact, Saturdays at all. Email service extends the 30-day deadline an additional two court days. (Cal. Code Civ. Proc. § 1010.6(a)(1)(B).) That means the deadline for the RFP responses was extended from 12-31-22 to 01-04-23, and the deadline for the SROG responses was extended from 01-07-23 to 01-10-23. As to the latter, a two-week extension was subsequently requested by Defendant on 01-10-23 and granted by Plaintiff the same day. The SROG responses were thus due no later than 01-24-23.

As the discovery responses were served on 01-05-23 (RFPs) and 01-25-23 (SROGs), they

are both untimely. Accordingly, no meet and confer was required. (The Court notes the parties in fact engaged in extensive meet and confers regarding this dispute and it is unfortunate an agreement could not be reached.)

The failure to timely respond means the 45-day deadline to file a motion to compel does not apply, nor was Plaintiff required to file a separate statement.

As to monetary sanctions, Code of Civil Procedure sections 2030.290 and 2031.300 state that if a party on whom interrogatories or a demand for inspection are served "fails to serve a timely response to it," the party waives all objections and the propounding party may move for an order compelling responses to the interrogatory or demand. (Code Civ. Proc., §§ 2030.290(a)-(b), 2031.300(a)-(b).) These sections also state "the court shall impose a monetary sanction . . . against any party, person or attorney who unsuccessfully makes or opposes a motion . . . unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., §§ 2030.290(c), 2031.300(c).)

Accordingly, Plaintiff's motions are GRANTED.

Defendant is ORDERED to serve verified responses, without objections, within 10 days of being served with notice of this Order.

The Court finds no substantial justification for Defendant's failure to serve timely responses. Calendaring the incorrect date, and the alleged inability to access documents or information due to computer problems, do not constitute substantial justification for not serving timely discovery responses. Thus, the Court GRANTS Plaintiff monetary sanctions against Defendant in the total amount of \$3,750. The Court has reduced the requested amount to reflect five hours of reasonable attorney's fees (\$750/hr) due to the uncomplicated nature of the papers. Sanctions are due and payable to Plaintiff's counsel within 30 days of notice of this order.

|  |                           |
|--|---------------------------|
|  | Plaintiff to give notice. |
|--|---------------------------|

### **Procedural Guidelines for Preliminary Approval of Class Action Settlements**

Parties submitting class action settlements for preliminary approval should be certain that the following procedures are followed and that all of the following issues are addressed. Failure to do so may result in unnecessary delay of approval. It is also strongly suggested that these guidelines be considered during settlement negotiations and the drafting of settlement agreements.

1) NOTICED MOTION - Pursuant to California Rule of Court ("CRC") 3.769(c), preliminary approval of a class action settlement must be obtained by way of regularly noticed motion.

2) CLAIMS MADE VS. CHECKS-MAILED SETTLEMENT/CY PRES – The court typically finds that settlement distribution procedures that do not require the submission of claim forms, but rather provide for settlement checks to be automatically mailed to qualified recipients, result in greater benefit to the members of most settlement classes. If a claims-made procedure is proposed, the settling parties must be prepared to explain why that form is superior to a checks-mailed approach. If the settlement results in "unpaid residue or unclaimed or abandoned class member funds," the agreement must comply with Code of Civil Procedure § 384.

3) REASONABLENESS OF SETTLEMENT AMOUNT – Admissible evidence, typically in the form of declaration(s) of plaintiffs' counsel, must be presented to address the potential value of each claim that is being settled, as well the value of other forms of relief, such as interest, penalties and injunctive relief. Counsel must break out the potential recovery by claims, injuries, and recoverable costs and attorneys' fees so the court can discern the potential cash value of the claims and how much the case was discounted for settlement purposes. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.) Where the operative complaint seeks injunctive relief, the value of prospective injunctive relief, if any, should be included in the *Kullar* analysis. The court generally requires that this analysis be fully developed and supported at the preliminary approval stage. The analysis must state the number of anticipated class members (broken down by subclasses if applicable), and the final approval hearing papers must similarly state the number of class members (again by subclass, if applicable).

This analysis must also include a description of the expected low, average, and high payments to class members, and the expected amount to be received by the Plaintiff(s) (excluding any enhancement award).

4) ALLOCATION – In employment cases, if the settlement payments are divided between taxable and non-taxable amounts, a rationale should be provided consistent with counsel's *Kullar* analysis. The agreement and notice should clearly indicate whether there will be withholdings from the distribution checks, and who is paying the employer's share of any payroll tax. The court is unlikely to approve

imposing the employer's share of payroll taxes on class members. If the operative complaint and the settlement include penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), proof of submission to the LWDA must be provided. (Labor Code §2999(l)(1).)

5) RELEASE - The release should be fairly tailored to the claims that were or could be asserted in the lawsuit based upon the facts alleged in the complaint. Releases that are overbroad will not be approved. Furthermore, while the court has no problem, conceptually, with the waiver by the named Plaintiff of the protection of Civil Code §1542, a 1542 waiver by the absent class members is generally inappropriate in the class settlement context. A comprehensive description of released claims as those arising out of the allegations of the operative complaint generally provides an adequate level of protection against future claims. A 1542 waiver, which by its own terms is not necessarily circumscribed by any definition of "Released Claims," goes too far. Also, although the court will not necessarily withhold approval on this basis, it generally considers a plain language summary of the release to be better than a verbatim rendition in the proposed class notice.

6) SETTLEMENT ADMINISTRATION - The proposed Settlement Administrator must be identified, including basic information regarding its level of experience. Where calculation of an individual's award is subject to possible dispute, a dispute resolution process should be specified. The court will not approve the amount of the costs award to the Settlement Administrator until the final approval hearing, at which time admissible evidence to support the request must be provided. The court also generally prefers to see a settlement term that funds allocated but not paid to the Settlement Administrator will be distributed to the class pro rata.

The settlement should typically provide that the settlement administrator will conduct a skip trace not only on returned mail, but also on returned checks.

7) NOTICE PROCEDURE - The procedure of notice by first-class mail followed by re-sending any returned mail after a skip trace is usually acceptable. A 60-day notice period is usually adequate.

8) NOTICE CONTENT - The court understands that there can be a trade-off between precise and comprehensive disclosures and easily understandable disclosures and is willing to err on the side of making the disclosures understandable. By way of illustration, parties should either follow, or at least become familiar with the formatting and content of The Federal Judicial Center's "Illustrative" Forms of Class Action Notices at <http://www.fjc.gov/>, which conveys important information to class members in a manner that complies with the standards in the S.E.C.'s plain English rules. (17 C.F.R. § 230.421.)

Notices should always provide: (1) contact information for class counsel to answer questions; (2) an URL to a web site, maintained by the claims administrator or plaintiffs' counsel, that has links to the notice and the most important documents in the case; and (3) for persons who wish to review the court's docket in the case, the URL for the court: : <https://ocapps.occourts.org/civilwebShoppingNS/Search.do>

The motion should address whether translation(s) of the Notice and all attachments thereto should be provided to class members.

9) CLAIM FORM - If a claim form is used, it should not repeat voluminous information from the notice, such as the entire release. It should only contain that which is necessary to elicit the information necessary to administer the settlement.

10) EXCLUSION AND OBJECTION- The court prefers that the Notice be accompanied by a Form to be completed by the class member seeking to be excluded, and a separate Form to be completed by the class member wishing to object.

The notice need only instruct class members who wish to exclude themselves to send a letter to the settlement administrator setting forth their name and a statement that they request exclusion from the class and do not wish to participate in the settlement. It should not include or solicit extraneous information not needed to effect an exclusion. The same applies to the contents of the Form, if used.

Objections should also be sent to the settlement administrator (not filed with the court nor served on counsel). Thereafter counsel should file a single packet of all objections with the court. The court will not approve blanket statements that objections will be waived or not considered if not timely or otherwise compliant—rather, any such statements must be preceded by a statement that "Absent good cause found by the court...."

11) INCENTIVE AWARDS - The court will not decide the amount of any incentive award until final approval hearing, at which time evidence regarding the nature of the plaintiff's participation in the action, including specifics of actions taken, time committed and risks faced, if any, must be presented. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.)

12) ATTORNEY FEES - The court will not approve the amount of attorneys' fees until final approval hearing, at which time sufficient evidence must be presented for a lodestar analysis. Parties are reminded that the court will not award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case, even if the parties have agreed to the fees. (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 573-575.) Further information regarding fee approval is set forth in the court's Procedural Guidelines for Final Approval of Class Action Settlements (below).

At the final approval hearing, Plaintiff's counsel must disclose whether they have any fee-splitting arrangement with any other counsel or confirm none exists. (*Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4th 172, 184; California Rules of Court, rule 3.769(b).)

13) CONCURRENT PENDING CASES – The declaration(s) filed in support of the motion must inform the court as to whether the parties, after making reasonable inquiry, are aware of any class, representative or other collective action

in any other court that asserts claims similar to those asserted in the action being settled. If any such actions are known to exist, the declaration shall also state the name and case number of any such case and the procedural status of that case. (*Trotsky vs. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal. App. 3d 134, 148; Effect of failure to inform court of another pending case on same or similar issues.)

14) PROPOSED ORDER GRANTING PRELIMINARY APPROVAL – All proposed orders should include the requisite "recital," "finding," and "order" language, including adequate information to provide clear instruction to the settlement administrator. The proposed order should also attach the proposed notice and any associated forms as exhibits. The proposed order must contain proposed dates for all future events contemplated therein.

### **Procedural Guidelines for Final Approval of Class Action Settlements**

Parties submitting class action settlements for final approval should be certain that the following procedures are followed, and that all of the following issues are addressed. Failure to do so may result in unnecessary delay of final approval.

1) Since the date and place of final approval hearings are set by the preliminary approval order, notice of which is typically included in the notice to class members of the settlement itself (California Rules of Court ["CRC"] 3.769(e) & (f)), the final approval hearing is outside the scope of Code of Civil Procedure §1005. Nevertheless, settling parties should caption their papers submitted in support of final approval as a "Motion for Final Approval," and set the matter for hearing on the reserved date.

2) With rare exceptions, the court will expect all issues related to final approval to be heard at the same time, including, without limitation, (a) final approval of the settlement itself, (b) approval of any attorney's fees request, (c) approval of incentive awards to class representatives, and (d) approval of expense reimbursements and costs of administration. If the settling parties elect to file separate motions for any of these categories, the motions must be set on the same day.

3) All requests for approval of attorney's fees awards, whether included in a Motion for Final Approval or made by way of a separate motion, must include detailed lodestar information, even if the requested amount is based on a percentage of the settlement fund. The court generally finds the declarations of class counsel as to hours spent on various categories of activities related to the action, together with hourly billing-rate information, to be sufficient, provided it is adequately detailed. It is generally not necessary to submit copies of billing records themselves with the moving papers, but counsel should be prepared to submit such records at the court's request.

Plaintiff's counsel must disclose whether they have any fee-splitting arrangement with any other counsel or confirm none exists. (*Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4<sup>th</sup> 172, 184; California Rules of Court, rule 3.769(b).)

4) Requests for approval of enhancement/incentive payments to class representatives must include evidentiary support consistent with the parameters

outlined in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4<sup>th</sup> 785, 804-807.

5) For all settlements that include a distribution to settlement class members, a final compliance hearing must be set, which requires the submission and approval of a final compliance status report after completion of the distribution process. The compliance hearing will be set when final approval is granted, so the moving papers should include a suggested range of dates for this purpose. The compliance status report must be filed at least 5 court days prior to the compliance hearing.

6) In light of the requirements of CRC 3.769(h), all final approvals must result in the entry of judgment, and the words "dismissal" and "dismissed" should be avoided not only in proposed orders and judgments, but also in settlement agreements.

7) To ensure appropriate handling by the court clerk, the court prefers the use of a combined "order and judgment," clearly captioned as such (e.g. "Order of Final Approval and Judgment" or "Order and Judgment of Final Approval"). The body of the proposed order and judgment must also incorporate the appropriate "judgment is hereby entered" language, and otherwise fully comply with California Rule of Court ("CRC") 3.769(h), including express reference to that rule as the authority for the court's continuing jurisdiction. The proposed order and judgment should also include the compliance hearing provision (with suggested date and time) discussed above.

8) If the actions that are being settled are included in a Judicial Council Coordinated Proceedings ("JCCP"), termination of each included action by entry of judgment is subject to CRC 3.545(b) & (c), and proposed orders and judgments must so reflect. Language must also be included to the effect that compliance with CRC 3.545(b)(1 & 2) shall be undertaken by class counsel, and that a declaration shall be filed confirming such compliance.

9) All proposed orders and judgments should include all the requisite "recital," "finding," "order" and "judgment" language in a manner that clarifies the distinctions between these elements, and care must be taken that all terms that require definition are either defined in the proposed order and judgment itself or that definitions found elsewhere in the record are clearly incorporated by reference. No proposed order and judgment should be submitted until after review by counsel for each settling party.

### **Procedural Guidelines for PAGA Settlements**

#### **(Private Attorney General Act of 2004, Labor Code sections 2698 et seq.)**

Pursuant to Labor Code section 2699(1)(2): "The superior court shall review and approve any settlement of any civil action filed pursuant to this part."

While the court will review every such motion for approval on its own merits, the court requires that at a minimum the settlement and/or any order or judgment requested from the court in connection with it must contain at least the following:

1. A comprehensive definition of the group of allegedly aggrieved employees represented by plaintiff in the action.

2. A definition of the PAGA claims encompassed by the settlement, premised on the allegations of the operative complaint.
3. The total consideration being provided by defendant(s) for the settlement ("gross settlement amount"), and a description of each allocation of the consideration, such that all of the total consideration is accounted for. This description must include:
  - a. A description of all consideration being received by plaintiff, including for plaintiff's individual claims and PAGA claims.
  - b. A description of all consideration being received by aggrieved employees including, as applicable, civil penalties and/or unpaid wages.
  - c. A statement of the amount of consideration that will be subject to the 75%/25% allocation required by section 2699(i).
  - d. The amounts sought for attorney's fees, attorney costs, and costs of administration.
  - e. Any amount sought as a plaintiff's enhancement.
  - f. A description of any other amount(s) being deducted from the gross settlement amount.
4. An explanation as to how the amount payable to each purported aggrieved employee is to be calculated.
5. An explanation as to why the attorneys' fees and costs sought are reasonable within the meaning of Labor Code section 2699 (g)(1).
6. A description of the tax treatment for any of the payments to plaintiff and/or aggrieved employees.
7. A provision setting forth the disposition of unclaimed funds, i.e., checks uncashed within a stated period of time after being sent to aggrieved employees.
8. A provision that the proposed settlement be submitted to the Labor and Workforce Development Agency at the same time that it is submitted to the court. (Labor Code section 2699(l)(2)).
9. A provision that the Court will retain jurisdiction to enforce the settlement pursuant to CCP section 664.6.
10. A notice to aggrieved employees that will accompany the payment to them. A copy of such notice is to be provided to the court for approval along with the motion seeking approval of the settlement. The notice must inform the recipient as to the scope of the released claims, and as to the recipient's responsibility for any taxes payable on the amount received.
11. Releases that do not include Civil Code section 1542 releases for aggrieved employees other than plaintiff.

12. Releases that release, for aggrieved employees other than plaintiff, no more than the civil penalties available under PAGA by reason of the facts alleged in the operative complaint.

Counsel's declaration(s) in support of the motion must state whether the parties (Plaintiff(s) and Defendant(s)) know of any other cases that may be impacted by the settlement.

The moving papers must include a copy of all written notices to the LWDA pursuant to Labor Code section 2699.3(a)(1)(A).

**PROOF OF SERVICE**

I, David Danning, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Gleason & Favarote, LLP, 4014 Long Beach Blvd., Suite 300, Long Beach, CA 90807.

On July 13, 2023, I served a copy(ies) of the following document(s):

**NOTICE OF JULY 13, 2023 COURT ORDER**

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

| Attorney                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Party(ies) Served                                                  | Method of Service |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|-------------------|
| LAW OFFICE OF JARROD Y. NAKANO<br>Jarrod Y. Nakano<br>4 Park Plaza, Suite 125<br>Irvine, California 92614<br>Tel: (949) 544-2640<br><a href="mailto:jarrod@nakanolawfirm.com">jarrod@nakanolawfirm.com</a>                                                                                                                                                                                                                                                                       | Attorneys for Defendants<br>ROBINSON PHARMA, INC. and TOMMY NGUYEN | Via Email         |
| LAW OFFICES OF ETHAN H. NELSON<br>Ethan H. Nelson<br>4 Park Plaza, Suite 1025<br>Irvine, CA 92614<br>Tel: (949) 229-0961<br>Fax: (949) 861-7122<br><a href="mailto:EthanNelsonEsq@gmail.com">EthanNelsonEsq@gmail.com</a>                                                                                                                                                                                                                                                        | Attorneys for Defendants<br>ROBINSON PHARMA, INC. and TOMMY NGUYEN | Via Email         |
| Mark D. Kemple<br>Ryan C. Bykerk<br>Oscar E. Peralta<br>Andrea Carmona<br>GREENBERG TRAURIG, LLP<br>1840 Century Park East, Suite 1900<br>Los Angeles, CA 90067-2121<br>Tel: (310) 586-7700<br>Fax: (310) 586-7800<br><a href="mailto:kemplem@gtlaw.com">kemplem@gtlaw.com</a><br><a href="mailto:bykerkr@gtlaw.com">bykerkr@gtlaw.com</a><br><a href="mailto:oscar.peralta@gtlaw.com">oscar.peralta@gtlaw.com</a><br><a href="mailto:carmonaa@gtlaw.com">carmonaa@gtlaw.com</a> | Attorneys for Defendants<br>ROBINSON PHARMA, INC. and TOMMY NGUYEN | Via Email         |



[BY E-MAIL] By transmitting via e-mail the document(s) listed above to the addresses set forth above on this date. This method of service was made pursuant to the agreement of counsel.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration was executed on July 13, 2023, at Long Beach, California.



David Danning

# **EXHIBIT 5**



213.452.0510 Main  
213.452.0514 Fax

4014 Long Beach Blvd., Suite 300  
Long Beach, California 90807

[gleasonfavarote.com](http://gleasonfavarote.com)

GLEASON & FAVAROTE LLP

May 22, 2023

**VIA ELECTRONIC SUBMISSION**

Stewart Knox  
Secretary  
California Labor & Workforce Development Agency  
800 Capital Mall, Suite 5000 (MIC-55)  
Sacramento, CA 95814

Re: **Supplemental PAGA Notice, O'Neill v. Robinson Pharma Inc.**  
**Case No. LWDA-CM-822861-21**  
California Labor Code section 2699, *et seq.* violations

Dear Mr. Knox:

I am writing to provide supplemental notice on behalf of aggrieved employee Amara O'Neill ("O'Neill"). This notice is intended to supplement O'Neill original notice filed on February 25, 2021. This supplemental notice is being made to the Labor & Workforce Development Agency on behalf of O'Neill, and other individuals, who were employed by Robinson Pharma Inc. ("RPI"), as non-exempt hourly employees California (the "Aggrieved Employees") going back one year from the original notice.

O'Neill, and each of the Aggrieved Employees described above, suffered from one or more of the following Labor Code violations by their current or former employer RPI.

O'Neill and other Aggrieved Employees' employment with RPI was governed by the California IWC Wage Orders, California Labor Code sections 201, 201.3, 202, 203, 204, 204.1, 204.11, 205, 205.5, 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.6, 226.7, 245-249, 256, 432.5, 432.7, 510, 512, 516, 551, 552, 558, 558.1, 1024.5, 1174, 1175, 1182.12, 1194, 1194.2, 1195, 1197, 1197.1, 1197.5, 1198, 1771, 1774, 1776, 1811, 1815, 2802, and the California Code of Regulations, Title 8, section 11000 *et seq.* RPI has violated each of the above statutes and regulations.

O'Neill worked for RPI as a non-exempt hourly project coordinator in Orange County California. California Labor Code section 2802 requires that employers reimburse the business expenses reasonably incurred by employees in the course of their employment. O'Neill and the other Aggrieved Employees were required to use their own cellular service and/or data plans but were not compensated for the use of their cellular devices or the use of their cellular service and/or data plans. O'Neill and the other Aggrieved Employees were at times required to use their personal vehicles to carry supplies between buildings or otherwise use their personal vehicles without reimbursement for mileage or any of the costs associated with the use of their

personal vehicles. As a result, RPI has violated California Labor Code section 2802 by failing to reimburse O'Neill and the other Aggrieved Employees.

O'Neill and the other Aggrieved Employees were not compensated for the time spent receiving, reviewing, and/or responding to work related communications while off the clock. Furthermore, O'Neill and other non-exempt employees were required to work off the clock, go through security screenings, Covid-19 screenings, attend trainings and orientations, and attend certain meetings without compensation. Additionally, O'Neill and the other Aggrieved Employees were required to perform both pre and post shift activities off the clock, and employees were required to don and doff protective gear off the clock without compensation. O'Neill and the other Aggrieved Employees were also denied minimum wages for all work performed due to RPI's practices of time shaving, rounding, and automatic deduction policies, in addition to RPI's practice of making hand edits to deduct time worked from its employees' timecards.

RPI's automatic deduction policy and timekeeping system is configured to always ensure that 30 minutes of each employee's workday went unpaid. For example, if an employee clocked back in after 25 minutes of a meal period, RPI's system would automatically deduct an additional 5 minutes from the employees' time worked for that day. RPI's deduction policies, both manual and automatic, deprived O'Neill and the other Aggrieved Employees of all earned wages, including earned overtime wages. RPI's timeclocks and payroll system also improperly rounded employee time to the employee's detriment and unlawfully shaved time off O'Neill and the other Aggrieved Employees' time worked.

O'Neill and the other Aggrieved Employees were not paid all earned overtime and not paid overtime at their regular rate of pay. It is RPI's policy to not pay overtime after 40 hours worked in a workweek and to not pay overtime for work performed on the seventh consecutive day of work in a workweek. As discussed above, it is RPI's uniform practice and procedure to round employee time, to automatically deduct time worked from its employees' time worked, to make secret hand edits to employee timecards, and to otherwise not pay all owed overtime and not pay that overtime at its employees' regular rate of pay. These policies have resulted in, and continue to result in, a vast and systematic theft of overtime wages from O'Neill and the other Aggrieved Employees, as well as derivative violations of the Labor Code.

O'Neill is informed and believes that it is RPI's uniform practice and procedure to never include bonuses or other non-hourly forms of compensation into its employees' regular rate of pay for any purposes. O'Neill and the other Aggrieved Employees often received non-discretionary bonuses in the form of cash, gift cards, and other incentives but this non-hourly compensation is never included in the regular rate of pay for the purposes of calculating overtime, meal period and rest break premiums, or any other payment which is required to be made at the regular rate of pay.

O'Neill is informed and believes that it is RPI's uniform practice and procedure to require the Aggrieved Employees to work seven or more days consecutively without a day's rest

being provided. Labor Code sections 551 and 552 require an employer like RPI to provide at least one day's rest in seven, but RPI does not do so, and instead requires its employees to work seven, eight, or even more days consecutively without a day's rest in violation of the Labor Code.

O'Neill is informed and believes that it is RPI's uniform practice and procedure to not provide adequate meal periods and rest breaks. Often meal periods and rest breaks were not provided at all to O'Neill and the Aggrieved Employees. However, when meal periods and rest breaks were provided, those meal periods and rest breaks were late, short, interrupted, or otherwise legally inadequate. Furthermore, O'Neill and the other Aggrieved Employees were often not permitted to leave the premises during their meal period or rest breaks. Aggrieved Employees were also required to tend to or monitor machinery and factory lines while on meal periods and rest breaks, making all of their meal periods and rest breaks "on-duty." It is RPI's policy and practice to require Aggrieved Employees to wait until a factory line has finished before it allows breaks of any kind. It is also RPI's policy to never provide second or third meal periods regardless of the amount of time worked, and to never provide rest breaks after 8 hours worked in a day. RPI has admitted that it never paid any meal period premiums or rest break premiums until mid-2022 after litigation in this matter began. Even after RPI began occasionally paying premiums, it did not pay those premiums at their employees' regular rate of pay. O'Neill and the other Aggrieved Employees, even those who did not work in the factory areas, were not relieved of all duties during any meal periods or rest breaks which were provided, and were required to remain on call to return at a moment's notice.

O'Neill is informed and believes that it is RPI's uniform practice and procedure to not keep accurate records as required by law. RPI does not keep accurate time records, wage statements, or other employee records as required by law, both as an intentional practice to avoid responsibility for its wage theft and as a result of the myriad of Labor Code violations described herein. Furthermore, RPI has a routine policy and practice of ignoring employee record requests made under any Labor Code section, including but not limited to, Labor Code sections 1198.5 and 226(b). When RPI does rarely provide its employees with requested records those productions are incomplete, contained false records, or are untimely.

O'Neill is informed and believes that it is RPI's uniform practice and procedure to require Aggrieved Employees to submit to an unlawful criminal and/or financial background check as a condition of obtaining and/or holding employment. Furthermore, RPI also required O'Neill, and still requires other Aggrieved Employees, to agree to unlawful background checks and has asked about arrests not resulting in convictions on its employment applications. These violations subject RPI to civil penalties under the Labor Code, including but not limited to Labor Code sections 432.5, 432.7, 1024.5, and 2699.

O'Neill is informed and believes that it is RPI's uniform practice and procedure to not provide suitable seating to the Aggrieved Employees when the nature of their work would reasonably permit the use of seats. Many of the job responsibilities of the Aggrieved Employees, including but not limited to much of the factory line work done at RPI, reasonably permits the

Stewart Knox  
Secretary  
California Labor & Workforce Development Agency  
May 22, 2023  
Page 4 of 4

use of seats but seating is not provided in violation of the IWC Wage Orders, which in turn is a violation of Labor Code section 1198.

O'Neill is informed and believes that it is RPI's uniform practice and procedure to not provide its employees with legally adequate sick days and does not pay sick leave pay at the rate required under Labor Code section 246. RPI is required to include all forms of compensation into the calculation of its sick leave pay but does not do so in violation of the Labor Code.

Labor Code section 226 requires an employer to furnish its employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned, net wages earned, all applicable hourly rates in effect during each respective pay period and the corresponding correct number of hours worked at each hourly rate by each respective individual. As a pattern and practice, in violation of Labor Code section 226(a), RPI does not furnish accurate and legally compliant itemized wage statements. RPI's aforementioned policies, including but not limited to its automatic deduction and hand edits to Aggrieved Employee timecards has resulted in O'Neill and the other Aggrieved Employees receiving inaccurate wage statements which fail to, amongst other information required by law, accurately provide the correct number of hours worked at each applicable rate, the correct total amount earned, and the correct total number of hours worked. Furthermore, RPI failed to include all bonuses, and non-hourly compensation on O'Neill and the other Aggrieved Employees' wage statements and has failed to issue accurate wage statements when multiple rates of pay were worked in the same pay period.

At the time of termination, RPI failed to pay Aggrieved Employees who no longer work for RPI all wages owed pursuant to California Labor Code §§ 201-203. RPI's failure to pay all wages at termination is due to RPI's many unlawful policies and wage theft, including but not limited to its automatic deduction policy and its practice of not paying termination wages until the next regularly scheduled pay period, when RPI provides a final check at all. These practices result in RPI failing to pay all wages at termination.

Sincerely,

**GLEASON & FAVAROTE LLP**



Torey Joseph Favarote

TJF/dd

cc Robinson Pharma, Inc., c/o Tam Nguyen, agent for service of process, 3330 South Harbor Boulevard, Santa Ana, CA 92704 (certified mail, return receipt requested)  
Jarrod Y. Nakano

# **EXHIBIT 6**



GLEASON & FAVAROTE LLP

213.452.0510 Main  
213.452.0514 Fax

4014 Long Beach Blvd., Suite 300  
Long Beach, California 90807

[gleasonfavarote.com](http://gleasonfavarote.com)

September 22, 2023

**VIA ELECTRONIC SUBMISSION**

Stewart Knox  
Secretary  
California Labor & Workforce Development Agency  
800 Capital Mall, Suite 5000 (MIC-55)  
Sacramento, CA 95814

Re: **Supplemental PAGA Notice, O'Neill v. Robinson Pharma Inc.**  
**Case No. LWDA-CM-822861-21**  
California Labor Code section 2699, *et seq.* violations

Dear Mr. Knox:

I am writing to provide supplemental notice on behalf of aggrieved employee Amara O'Neill ("O'Neill"). This notice is intended to supplement O'Neill's earlier notices filed on February 25, 2021, and on May 22, 2023, both of those notices are incorporated by reference. This supplemental notice is being made to the Labor & Workforce Development Agency on behalf of O'Neill, and other individuals, who were employed by Robinson Pharma Inc. ("RPI"), as non-exempt hourly employees California (the "Aggrieved Employees") going back one year from the original notice.

O'Neill, and each of the Aggrieved Employees described above, suffered from one or more of the following Labor Code violations by their current or former employer RPI.

O'Neill and other Aggrieved Employees' employment with RPI was governed by the California IWC Wage Orders, California Labor Code sections 201, 201.3, 202, 203, 204, 204.1, 204.11, 205, 205.5, 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.6, 226.7, 245-249, 256, 432, 432.5, 432.7, 510, 512, 516, 551, 552, 558, 558.1, 1024.5, 1174, 1175, 1182.12, 1194, 1194.2, 1195, 1197, 1197.1, 1197.5, 1198, 1771, 1774, 1776, 1811, 1815, 2802, and the California Code of Regulations, Title 8, section 11000 *et seq.* RPI has violated each of the above statutes and regulations. As noted above, O'Neill incorporates by reference all of the facts and theories from her prior notices.

In addition to RPI's extensive failure to pay all overtime and wages as discussed in O'Neill's prior notices, RPI had the policy and practice of only paying O'Neill and the Aggrieved Employees for scheduled hours regardless of the amount of time actually worked. RPI also rounded meal period, rest break, and shift start and end times to the detriment of O'Neill and the other Aggrieved Employees and resulted in O'Neill and the other Aggrieved Employees not being paid all wages, including minimum, straight, overtime, and double time wages.

Stewart Knox  
Secretary  
California Labor & Workforce Development Agency  
September 22, 2023  
Page 2 of 2

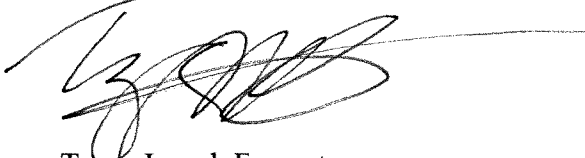
As previously discussed in prior notice letters, O'Neill and the other Aggrieved Employees were not paid all earned overtime wages, including overtime and double time wages earned after 40 hours worked in a workweek, 12 hours in a workday, and on the seventh consecutive day of work in a workweek. As a result of these, and all other previously discussed failures to pay wages, and as a policy in and of itself, RPI has a consistent practice of not timely paying all wages at least twice a calendar month via regular bi-monthly paydays as required by Labor Code sections 204 and 210. As a result of these and all other wage related Labor Code violations, RPI is subject to penalties for each underpaid Aggrieved Employee as set forth in Labor Code sections 558 and 210.

As previously discussed in prior notice letters, it is RPI's uniform practice and procedure to not properly calculate, and to not properly provide its employees with legally adequate sick days and does not pay sick leave pay at the rate required under Labor Code section 246. RPI additionally has the routine policy and practice of violating Labor Code section 247.5 by not maintaining and or providing records of hours worked and sick days taken by its non-exempt employees. RPI additionally has the routine policy and practice of refusing to comply with Labor Code section 246 by not providing O'Neill and the other Aggrieved Employees with wage statements or other documents displaying the amount of paid sick leave available to them, or paid time off in the alternative to sick leave. RPI's violations of these statutes subject it to penalties as set forth in Wood v. Kaiser Found. Hosps., 88 Cal. App. 5th 742 (2023).

In addition to RPI's prior discussed violations of Labor Code section 1198 and the IWC Wage Orders; RPI has violated the Labor Code and the IWC Wage Orders by failing to abide by the temperature control guidelines set forth in the IWC Wage Orders, including but not limited to those regarding excessive heat (beyond reasonable comfort and safety) and excessive cold temperatures (below 60 degrees Fahrenheit) in its workplaces. As a result of this failure, and its draconian cost cutting measures, O'Neill and the other Aggrieved Employees are/were being provided with little to no ventilation, heating, or cooling in the workplace. As such RPI is in violation of Labor Code section 1198 and the IWC Wage Orders and is subject to penalties.

Sincerely,

**GLEASON & FAVAROTE LLP**



Torrey Joseph Favarote

TJF/dd

cc Robinson Pharma, Inc., c/o Tam Nguyen, agent for service of process, 3330 South Harbor Boulevard, Santa Ana, CA 92704 (certified mail, return receipt requested)  
Mark D. Kemple, Ryan C. Bykerk, Oscar E. Peralta, Andrea Carmona, Jarrod Y. Nakano

# **EXHIBIT 7**

1 **PROOF OF SERVICE ON LWDA**

2 I, Thomas Steinhart, declare:

3 I am and was at the time of the service mentioned in this declaration, employed in the  
4 County of Los Angeles, California. I am over the age of 18 years and not a party to the within  
5 action. My business address is Gleason & Favarote, LLP, 4014 Long Beach Blvd., Suite 300,  
6 Long Beach, CA 90807.

7 On January 5, 2024, I served a copy(ies) of the following document(s):

- 8 1. **PLAINTIFF'S NOTICE OF MOTION FOR PRELIMINARY**  
9 **APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT;**  
10 **APPOINTMENT OF SETTLEMENT ADMINISTRATOR;**  
11 **APPROVAL OF CLASS NOTICE PACKET; REQUEST FOR A**  
12 **CONTINUED STAY ON ALL NON-SETTLEMENT ACTIVITY AND**  
13 **SETTING OF FINAL APPROVAL HEARING**
- 14 2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**  
15 **OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF**  
16 **CLASS AND PAGA ACTION SETTLEMENT; APPOINTMENT OF**  
17 **SETTLEMENT ADMINISTRATOR; APPROVAL OF CLASS**  
18 **NOTICE PACKET; REQUEST FOR A CONTINUED STAY ON ALL**  
19 **NON-SETTLEMENT ACTIVITY AND SETTING OF FINAL**  
20 **APPROVAL HEARING**
- 21 3. **DECLARATION OF TOREY JOSEPH FAVAROTE IN SUPPORT OF**  
22 **PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF**  
23 **CLASS AND PAGA ACTION SETTLEMENT; APPOINTMENT OF**  
24 **SETTLEMENT ADMINISTRATOR; APPROVAL OF CLASS**  
25 **NOTICE PACKET; REQUEST FOR A CONTINUED STAY ON ALL**  
26 **NON-SETTLEMENT ACTIVITY IN THIS AND RELATED CASES**  
27 **AND SETTING OF FINAL APPROVAL HEARING**
- 28 4. **PLAINTIFF AMARA O'NEILL'S DECLARATION IN SUPPORT OF**  
**HER MOTION FOR PRELIMINARY APPROVAL OF CLASS AND**  
**PAGA SETTLEMENT**
5. **[PROPOSED] ORDER: (1) PRELIMINARILY APPROVING**  
**PROPOSED CLASS AND PAGA SETTLEMENT; (2) APPOINTING**  
**SETTLEMENT ADMINISTRATOR; (3) APPROVING CLASS**  
**NOTICE; AND (4) SETTING HEARING FOR FINAL APPROVAL**  
**OF SETTLEMENT**
6. **[PROPOSED] SETTLEMENT AGREEMENT**

on the State of California Department of Industrial Relations Labor and Workforce Development  
Agency by electronically submitting them through the LWDA's website portal at  
<https://dir.tfaforms.net/312>. Email confirmation of that submission is attached hereto as

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Thomas Steinhart

# **EXHIBIT A**

**[EXHIBIT A NOT  
GENERATED  
YET]**

**PROOF OF SERVICE**

I, Thomas Steinhart, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Gleason & Favarote, LLP, 4014 Long Beach Blvd., Suite 300, Long Beach, CA 90807.

On January 5, 2024, I served a copy(ies) of the following document(s):

**DECLARATION OF TOREY JOSEPH FAVAROTE IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION  
SETTLEMENT; APPOINTMENT OF SETTLEMENT ADMINISTRATOR; APPROVAL  
OF CLASS NOTICE PACKET; REQUEST FOR A CONTINUED STAY ON ALL NON-  
SETTLEMENT**

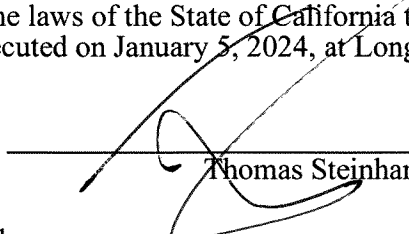
on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

| Attorney                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Party(ies) Served                                                        | Method of Service |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|-------------------|
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| LAW OFFICES OF ETHAN H. NELSON<br>Ethan H. Nelson<br>4 Park Plaza, Suite 1025<br>Irvine, CA 92614<br>Tel: (949) 229-0961<br>Fax: (949) 861-7122<br><a href="mailto:EthanNelsonEsq@gmail.com">EthanNelsonEsq@gmail.com</a>                                                                                                                                                                                                                                                        | Attorneys for Defendants<br>ROBINSON PHARMA,<br>INC. and TOMMY<br>NGUYEN | One Legal, LLC    |
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration was executed on January 5, 2024, at Long Beach, California.

  
Thomas Steinhart