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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF SAN BERNARDINO**

18 LLUSBYSARET CISNEROS, on behalf of  
herself and all "aggrieved employees"  
19 pursuant to Labor Code § 2698 *et seq.*

20 Plaintiff,

21 v.

22 NIXON-EGLI EQUIPMENT CO. OF  
SOUTHERN CALIFORNIA, INC., a  
23 California corporation, and DOES 1 through  
24 10, inclusive,

25 Defendants.

CASE NO: CIVSB2119108

**CLASS ACTION**

**SETTLEMENT AGREEMENT AND  
RELEASE OF CLAIMS**

*Complaint Filed: July 1, 2021*

**SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This Settlement Agreement and Release of Claims ("Settlement Agreement" or "Stipulation of Settlement") is made and entered into by and between Plaintiff Llusbysaret Cisneros ("Cisneros" or "Plaintiff" or "Class Representative"), individually and on behalf of the Settlement Class and all others similarly situated, and Defendant Nixon-Egli Equipment Co. of Southern California, Inc. ("Defendant"), subject to the terms and conditions herein and the Court's approval.

**A. Definitions.**

1. Plaintiff and the Settlement Class (as defined below) and Defendant are collectively referred to herein as "the Parties."

2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of record for Plaintiff. For purposes of this settlement only, the firm of Gaines & Gaines, APLC shall be designated as "Class Counsel."

3. The "Action" means the case entitled *Llusbysaret Cisneros, Plaintiff, v. Nixon-Egli Equipment Co. of Southern California, Inc., and Does 1 Through 10, Inclusive, Defendants*, Case No. CIVSB2119108, pending before the Superior Court of the State of California for the County of San Bernardino.

4. The "Settlement Class" shall be defined as "all individuals who worked for Nixon-Egli Equipment Co. of Southern California, Inc. as hourly and/or non-exempt employees in California at any time between July 1, 2017 and January 31, 2022" (the "Class Period"). Defendant represents that this Class contains no more than approximately 84 members who worked no more than 11,000 workweeks during the Class Period.

5. Members of the Settlement Class shall collectively be referred to as a "Class Member" or "Class Members." Any Class Member who files a timely Request for Exclusion, as detailed below, will be excluded from the final Settlement Class.

6. The "PAGA Group" or "PAGA Members" means all individuals who worked for Nixon-Egli Equipment Co. of Southern California, Inc. as hourly and/or non-exempt employees in California at any time between April 23, 2020 to January 31, 2022 (the "PAGA Period").

1     **B.     General.**

2           1.     On April 23, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code  
3 Private Attorneys General Act of 2004 ("PAGA").

4           2.     On or about July 1, 2021, Plaintiff initiated the Action by filing a Representative  
5 Action Complaint for Penalties, pursuant to PAGA, on behalf of herself and all other aggrieved  
6 employees (the "Complaint"). The First Amended Complaint, attached hereto as Exhibit 3 and  
7 which will be filed as part of the settlement approval process, asserts direct individual, class, and  
8 PAGA representative action claims against Defendant for (1) failure to pay all wages due, including  
9 minimum, regular, and overtime wages (Labor Code §§ 510, 558, 1194, 1194.2, and 1197.1; IWC  
10 Wage Order 4-2001); (2) failure to provide compliant rest periods or compensation in lieu thereof  
11 (Labor Code §§ 226.7 and 558; IWC Wage Order 4-2001); (3) failure to provide compliant meal  
12 periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, and 558; IWC Wage Order 4-  
13 2001); (4) failure to comply with itemized employee wage statement provisions (Labor Code §§  
14 226 and 226.3; IWC Wage Order 4-2001); (5) failure to timely pay wages on designated pay dates  
15 (Labor Code § 204; IWC Wage Order 4-2001); (6) failure to timely pay wages due at separation of  
16 employment (Labor Code §§ 201-203); (7) failure to reimburse employee business expenses (Labor  
17 Code § 2802; IWC Wage Order 4-2001); (8) violation of Business and Professions Code §§ 17200,  
18 *et seq.*; and (9) civil penalties pursuant to Labor Code §§ 2698, *et seq.* for violations of Labor Code  
19 §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256; 512, 558, 1194, 1194.2, 1197.1, and 2802 (the  
20 "First Amended Complaint").

21           3.     Defendant denies any liability or wrongdoing of any kind associated with the claims  
22 alleged in the Action, and further denies that the Action is appropriate for class treatment for any  
23 purpose other than this settlement. Defendant contends that it has complied at all times with the  
24 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable  
25 federal, state, and local laws and regulations. It is Defendant's position that, if this case were to be  
26 litigated, class certification would be inappropriate because Plaintiff is not an adequate class  
27 representative, Plaintiff's claims are not typical of putative class members, and individual issues  
28 predominate over class issues. The Action, the negotiation and execution of this Settlement

1 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the  
2 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf  
3 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any  
4 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and  
5 may not be used as, an admission or evidence of the appropriateness of these or similar claims for  
6 class certification in the Action or with respect to any other proceeding.

7 4. The Class Representative contends that Defendant violated the California Labor  
8 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class  
9 certification.

10 5. Class Counsel represent that they have conducted a thorough investigation into the  
11 facts and law during the prosecution of this class action case, including the exchange of extensive  
12 informal discovery and the review and verification of statistical data and other facts and information  
13 provided by Defendant. Counsel for the Parties also represent that they have investigated the  
14 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and  
15 potential defenses thereto, and the damages and other losses claimed by Plaintiff.

16 6. On December 1, 2021, following their exchange of information and documents  
17 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties  
18 engaged in arm's-length negotiations with the assistance of mediator Lisa Klerman, Esq., through  
19 which they were able to reach the resolution of the Action set forth herein.

20 7. Based on their own independent investigation and evaluation, Class Counsel are of  
21 the opinion (and will so represent to the Court) that settlement for the consideration and on the  
22 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best  
23 interest of the Settlement Class in light of all known facts and circumstances, including the risk of  
24 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses  
25 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)  
26 that this settlement is fair and in the best interest of the Settlement Class.

27 8. The Parties agree that the Settlement Class described herein may be certified for  
28 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the

1 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not  
2 approved, the certification will have no force or effect and will immediately be revoked. The  
3 Parties further agree that certification for purposes of the settlement is in no way an admission that  
4 class certification is proper under the more stringent standard applied for litigation and that  
5 evidence of this limited stipulation for settlement purposes only will not be admissible for any  
6 purpose in this or any other proceeding.

7 **C. Terms of Settlement.**

8 1. The financial terms of the settlement are as follows:

9 (a) **Maximum Settlement Amount:** The Parties agree to settle this Action for  
10 a Maximum Settlement Amount of Two Hundred Eighty Five Thousand Dollars (\$285,000.00)  
11 ("the Maximum Settlement Amount"), subject to increase based on the escalator provision in  
12 paragraph H(17) herein. The Maximum Settlement Amount includes the attorneys' fees of Class  
13 Counsel; litigation costs and expenses (which includes, without limitation, all such fees and costs  
14 incurred to date, as well as such fees and costs to be incurred in documenting the settlement,  
15 providing any notices required as part of the settlement, securing Court approval of the settlement,  
16 and obtaining judgment in the Action); the service payment to the Class Representative, as  
17 approved by the Court; the payments to the California Labor and Workforce Development Agency  
18 ("LWDA") and PAGA Members pursuant to the PAGA claims in the Action; and all costs of  
19 administration, including, without limitation, settlement administration fees and expenses.  
20 Defendant shall pay all employer payroll tax obligations due on wage payments made from the Net  
21 Settlement Proceeds in addition to, and separate and apart from, the Maximum Settlement Amount.

22 (b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the  
23 Maximum Settlement Amount less the amounts approved and awarded by the Court for: attorneys'  
24 fees and documented litigation costs and expenses incurred or advanced by Class Counsel; the  
25 service payment to the Class Representative; the payments to the LWDA and PAGA Members  
26 pursuant to PAGA; and the costs of administering the settlement.

27 (c) **Individual Payment Amounts:** "Individual Payment Amount" means the  
28 portion of the Net Settlement Proceeds distributable to each Class Member who participates in the

1 Settlement (i.e., who does not submit a valid request for exclusion form) and the portion of the  
2 PAGA Payment distributable to each PAGA Member, regardless if they request exclusion from the  
3 class settlement of not. The Individual Payment Amounts will be calculated by dividing the Net  
4 Settlement Proceeds by the total weeks worked by all participating Class Members in California in  
5 a non-exempt position during the Class Period, which will yield the applicable weekly rate. The  
6 weekly rate shall be multiplied by the number of weeks each individual participating Class Member  
7 worked for Defendant in California in a non-exempt position during the Class Period to yield their  
8 Individual Payment Amount. Each Participating Settlement Class Member who does not opt out  
9 will receive an Individual Payment Amount equal to their individual weeks worked in California  
10 in a non-exempt position during the Class Period multiplied by the Workweek Value.

11 i. For tax purposes, each Individual Payment Amount will be  
12 apportioned (a) 33-1/3% as wages (reported on an IRS Form W-2 and subject to applicable  
13 withholdings); and (b) 66-2/3%, equally as penalties and interest (reported on an IRS Form 1099,  
14 if required). All Individual Payment Amounts paid to Class Members will be subject to any  
15 applicable wage garnishments, liens, or other legally mandated treatment as required by law.

16 (d) **PAGA Payments:** The Parties agree that Ten Thousand Dollars  
17 (\$10,000.00) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this  
18 amount, Seventy-Five percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500.00), shall  
19 be paid to the LWDA, and the remaining Twenty-Five percent (25%), or Two Thousand Five  
20 Hundred Dollars (\$2,500.00), shall be distributed to PAGA Members on a pro rata basis based on  
21 the number of workweeks worked by each PAGA Member during the PAGA Period. "Individual  
22 PAGA Payment Amount" means the portion of the PAGA Payment distributable to each PAGA  
23 Member. The Individual PAGA Payment Amounts will be calculated by dividing the employee  
24 portion of the PAGA Payment (\$2,500.00) by the total weeks worked by all PAGA Members in  
25 California in a non-exempt position during the PAGA Period, which will yield the applicable  
26 weekly rate. The weekly rate shall be multiplied by the number of weeks each individual PAGA  
27 Member worked for Defendant in California in a non-exempt position during the PAGA Period to  
28 yield their Individual PAGA Payment Amount. PAGA Members will receive their portion of the

1 PAGA Payment regardless of their decision to opt out of the class settlement (i.e., Class Members  
2 who opt out will nevertheless receive their Individual PAGA Payment).

3 (e) **Service Payment to Class Representative:** The amount awarded to the  
4 Class Representative as a service payment will be set by the Court in its discretion, not to exceed  
5 Ten Thousand Dollars (\$10,000.00). This amount will be deducted from the Maximum Settlement  
6 Amount. An IRS Form 1099 will be issued to the Class Representative for her service payment.  
7 Defendant agrees not to dispute or otherwise object to the service payment if Plaintiff requests  
8 \$10,000 or less.

9 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be  
10 deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into  
11 account the settlement award that has been made available for the Settlement Class by the efforts  
12 of Class Counsel. The amount awarded shall not exceed 40% of the Maximum Settlement Amount  
13 (i.e., One Hundred Fourteen Thousand Dollars (\$114,000.00)). An IRS Form 1099 will be issued  
14 to Class Counsel with respect to its award of attorneys' fees. Defendant agrees not to dispute or  
15 otherwise object to the attorneys' fee award requested by Class Counsel so long as the request does  
16 not exceed 40% of the Maximum Settlement Amount.

17 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from  
18 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-  
19 pocket litigation costs and expenses, not to exceed Twelve Thousand Dollars (\$12,000.00). An  
20 IRS Form 1099 will be issued to Class Counsel with respect to its award of costs and expenses.  
21 Defendant agrees not to dispute or otherwise object to the attorneys' cost award requested by Class  
22 Counsel so long as the request does not exceed \$12,000.

23 (h) **Settlement Administration Costs:** The fees and other charges of the  
24 Settlement Administrator to administer the Settlement are expected to total no more than Five  
25 Thousand Dollars (\$5,000.00), and will be paid from the Maximum Settlement Amount. These  
26 fees shall include any costs associated with the required tax reporting on any Individual Payment  
27 Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the  
28 Parties have agreed that ILYM Group, Inc. will serve as a neutral third-party claims' administrator

1 (“Settlement Administrator”) to perform all acts related to providing notice to the Settlement Class.  
2 Settlement Administrator shall be responsible for (a) printing and distributing the Court-approved  
3 Notice of Class Action Settlement (“Class Notice”) to all Class Members; (b) administering the  
4 settlement; (c) processing exclusions, objections, and field inquiries from Class Members; (d)  
5 resolving disputes; (e) calculating the Individual Payment Amount each Participating Class  
6 Members is eligible to receive, and the Individual PAGA Payment Amount each PAGA Member  
7 shall receive; (f) distributing the Maximum Settlement Amount as directed by the Court and set  
8 forth herein; (g) tax reporting; (h) providing necessary weekly status reports; and (i) other duties  
9 and responsibilities set forth herein.

10 (i) **No Warranty by Defendant:** Plaintiff understands and agrees that  
11 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant  
12 makes no representations regarding tax obligations or consequences, if any, related to this  
13 Settlement Agreement.

14 **D. Release of Claims.**

15 1. Upon the Effective Date, and subject to Defendant’s full payment of the Maximum  
16 Settlement Amount, Plaintiff and all Settlement Class Members who do not timely opt-out will be  
17 deemed to have fully released and discharged Defendant, and each of its former, present, and future  
18 owners, parents, and subsidiaries, and all of their current, former, and future spouse(s), children,  
19 officers, directors, members, managers, employees, consultants, partners, shareholders, joint  
20 venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal  
21 representatives (“Released Parties”) from any and all Released Claims which arose during their  
22 employment in a non-exempt position in California during the Class Period. PAGA Members  
23 who opt-out of the Settlement shall not be bound by any Judgment or release, but will nevertheless  
24 release Released Claims that arise under PAGA.

25 2. The “Released Claims” include all claims, rights, demands, liabilities and causes  
26 of actions that are alleged or reasonably could have been alleged based on the facts and claims  
27 asserted in the Action, including the following claims: (i) failure to pay all regular wages,  
28 minimum wages, and overtime wages due; (ii) failure to provide meal periods or premium

1 compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof;  
2 (iv) failure to reimburse necessary business expenses; (v) failure to provide complete and accurate  
3 itemized wage statements; (vi) failure to pay wages timely upon separation of employment; (vii)  
4 failure to timely pay wages during employment (including a claim under the Industrial Welfare  
5 Commission Wage Orders, and common law including conversion); (viii) unfair business practices  
6 that could have been premised on the claims, causes of action, or legal theories of relief described  
7 above or any of the claims, causes of action, or legal theories of relief pleaded in the Action; (ix)  
8 failure to maintain required payroll records; and (x) all claims under PAGA that could have been  
9 premised on the claims, causes of action or legal theories described above or any of the claims,  
10 causes of action or legal theories of relief pleaded in the Action. The Released Claims are  
11 expressly limited to claims arising during the Class Period during employment in a non-exempt  
12 position. All PAGA Members will be deemed to have fully, finally and forever released, settled,  
13 compromised, relinquished, and discharged any and all Released Claims arising under PAGA with  
14 respect to the Released Parties, irrespective of whether a Class Member submits a request for  
15 exclusion.

16 **E. Notice and Exclusion Process.**

17 1. Within ten (10) calendar days after entry of the order granting preliminary approval  
18 of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class  
19 Members, including their last known addresses, telephone numbers, social security numbers, and  
20 their dates of employment in a non-exempt position in California during the Class Period  
21 ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security  
22 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All  
23 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This  
24 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the  
25 Settlement Administrator. The Settlement Administrator shall use due care with respect to the  
26 storage, custody, use, and/or dissemination of the confidential information. Such information must  
27 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.  
28

2. A notice of pendency of class action, proposed settlement, and hearing date for Court approval ("Class Notice") in the form attached hereto as Exhibit 1, and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail, within fourteen (14) calendar days after entry of the order granting preliminary approval. Attached to the Class Notice will be a request for exclusion form ("Request for Exclusion Form") in the form attached hereto as Exhibit 2.

3. The Settlement Administrator will make reasonable efforts to ensure that the Class Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be presumed that if an envelope has not been returned within thirty (30) days of the mailing that the Class Member received the Class Notice. In the event of returned or non-deliverable notices, the Settlement Administrator will make reasonable efforts to locate Class Members and re-send the notices.

4. Each Class Member will be fully advised of the settlement, the ability to object to the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will inform the Class Members of the Court-established deadlines for filing objections and a Request for Exclusion Form. The Request for Exclusion shall not be effective as to the release of claims arising under PAGA. PAGA Members who opt-out of the Settlement shall not be bound by any Judgment or release, but will nevertheless release Released Claims that arise under PAGA.

5. Each Class Notice will contain personalized information setting forth the number of weeks each Class Member worked for Defendant in California in a non-exempt position during the Class Period and their estimated Individual Payment Amount. To the extent a Class Member disputes any of the information listed on his or her Class Notice, the Class Member may produce evidence to the Settlement Administrator showing such information the Class Member contends should be reflected in the Class Notice. Defendant's records will be presumed determinative, however, and the Settlement Administrator's decision on these matters will be final. The Class Notice will also set forth IRS W-9 information if required.

6. All Class Members who do not submit a Request for Exclusion Form will be eligible to receive an Individual Payment Amount—and PAGA Members will receive their portion of the

1 PAGA Payment, if eligible, regardless of their decision to opt out of the class settlement—which  
2 shall be mailed to them if and when the Effective Date occurs.

3 7. In order to elect not to participate in the Settlement, a Class Member must submit a  
4 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five  
5 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to  
6 Class Members, unless the Court requires a longer period, in which case the Court ordered  
7 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The  
8 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the  
9 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the  
10 next day on which the U.S. Postal Service is open.

11 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days  
12 for those Class Members whose Class Notice and Exclusion Form are returned as “undeliverable.”  
13 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day  
14 on which the U.S. Postal Service is open.

15 9. The Settlement Administrator will search for additional addresses on returned mail  
16 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days  
17 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second  
18 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not  
19 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter  
20 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to  
21 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the  
22 Settlement Administrator will search using the social security number for a more current address.  
23 If no address is found within 10 days, no further action is required.

24 10. The Settlement Administrator will notify the Parties of the total number of valid  
25 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the  
26 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice  
27 and Request for Exclusion Forms to Class Members).

28

1           11. In order to object to the settlement, a Class Member must mail his or her objection  
2 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the  
3 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer  
4 period, in which case the Court ordered objection period will apply. If the 45th day falls on a  
5 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on  
6 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be  
7 extended for any reason.

8           12. The Settlement Administrator shall provide to the Parties, at least twelve (12)  
9 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration  
10 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request  
11 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve  
12 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report  
13 listing the amount of all payments to be made to each Class Member without names or personal  
14 identifying information.

15           13. Defendant shall deposit the Maximum Settlement Amount with the Settlement  
16 Administrator no later than ten (10) calendar days after the Effective Date. The effective date of  
17 this Settlement Agreement ("Effective Date") is the date the Court signs an order granting final  
18 approval of the settlement and entering judgment thereon. If objections to the settlement are filed,  
19 the Effective Date of the settlement is the sixty-fifth (65th) day after notice of the final approval  
20 order is mailed, unless an appeal is filed, in which case the Effective Date is the day after (a) the  
21 settlement is upheld by the Court of Appeals, or (b) all appeals are dismissed.

22           14. The Settlement Administrator shall disburse the Maximum Settlement Amount  
23 within fifteen (15) calendar days after its receipt thereof. Class Members must cash each of their  
24 Individual Payment Amount checks within one hundred eighty (180) calendar days after they are  
25 mailed by the Settlement Administrator. The value of any checks uncashed more than one hundred  
26 eighty (180) days after mailing shall be paid to the State of California State Controller's Office, to  
27 be held in the name of the respective Class Member.

**F. Duties of the Parties Prior to Court Approval.**

1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the Court for preliminary approval of this settlement and entry of an order accomplishing the following:

- (a) scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
- (b) approving as to form and content the proposed Class Notice;
- (c) approving as to form and content the proposed Request for Exclusion Form;
- (d) preliminarily certifying the Settlement Class for purposes of settlement;
- (e) preliminarily approving the PAGA payments of \$7,500 to the LWDA and \$2,500 to PAGA Members, based on the formulas specified herein;
- (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;
- (g) preliminarily setting the service payment to the Class Representative;
- (h) preliminarily approving ILYM Group, Inc. as the Settlement Administrator and its estimated fees and costs of \$5,000; and
- (i) permitting Plaintiff to file the First Amended Complaint.

The Parties shall submit this Settlement Agreement to the Court and the LWDA in support of Plaintiff's unopposed motion for preliminary approval of the settlement.

**G. Duties of the Parties in Connection with and Following Final Court Approval.**

1. In connection with the hearing on final approval of the settlement provided for in this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10) calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the Court):

- (a) approving the settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) approving Class Counsel's application for an award of attorneys' fees and reimbursement of documented litigation costs and expenses, the service payment to the Class

Representative, the PAGA Payments to the LWDA and PAGA Members, and the costs of administering the settlement; and

(c) entering judgment in this Action in accordance with this Stipulation, pursuant to Cal. Rules of Court, Rule 3.769(h).

2. Class Counsel shall file an application for attorneys' fees and reimbursement of costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the Court).

#### **H. Miscellaneous Provisions:**

##### **1. Voiding the Agreement.**

A failure of the Court to approve any material condition of this Settlement Agreement which effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or materially modified on appellate review, shall render the entire Stipulation of Settlement voidable and unenforceable as to all Parties herein at the option of any Party. Defendant retains the right, in the exercise of its sole discretion, to nullify the settlement within thirty (30) days after expiration of the opt out period, if ten percent (10%) or more of the Class Members opt out of this Settlement.

##### **2. Parties' Authority.**

The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

##### **3. Mutual Full Cooperation.**

The Parties agree to fully cooperate with each other to accomplish the terms of this Stipulation of Settlement, including but not limited to, execution of such documents and such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement.

1           **4. No Prior Assignments.**

2           The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,  
3 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or  
4 entity any portion of any liability, claim, demand, action, cause of action or rights released and  
5 discharged by this Stipulation of Settlement.

6           **5. No Admission.**

7           Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be  
8 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part  
9 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this  
10 Settlement Agreement with the intention of avoiding further disputes and litigation with the  
11 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and  
12 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408  
13 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or  
14 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

15           **6. Construction.**

16           The Parties hereto agree that the terms and conditions of this Settlement Agreement are the  
17 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement  
18 Agreement shall not be construed in favor of or against any Party by reason of the extent to which  
19 any Party or her or its counsel participated in the drafting of this Settlement Agreement.

20           **7. Captions and Interpretations.**

21           Paragraph titles or captions contained herein are inserted as a matter of convenience and for  
22 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement  
23 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a  
24 recital.

25           **8. Modification.**

26           This Settlement Agreement may not be changed, altered, or modified, except in writing and  
27 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be  
28

1 discharged except by performance in accordance with its terms or by a writing signed by each of  
2 the Parties hereto on their attorneys.

3 **9. Integration Clause.**

4 This Settlement Agreement contains the entire agreement between the Parties relating to  
5 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,  
6 understandings, representations, and statements, whether oral or written and whether by a Party or  
7 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in  
8 writing.

9 **10. Binding on Assigns.**

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

12 **11. Governing Law.**

13 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted  
14 according to the laws of the State of California, without giving effect to any conflict of law  
15 principles or choice of law principles.

16 **12. Signatures of All Class Members Unnecessary to be Binding.**

17 It is agreed that, because the members of the Settlement Class are numerous, it is impossible  
18 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,  
19 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release  
20 provided herein and such shall have the same force and effect as if this Settlement Agreement was  
21 executed by each Class Member.

22 **13. Counterparts.**

23 This Settlement Agreement may be executed in counterparts, and when each Party has  
24 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,  
25 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement  
26 Agreement, which shall be binding upon and effective as to all Parties.

27 **14. Confidentiality**

28 Until Plaintiff files his motion for preliminary approval of the class action settlement, the

Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing agencies, or as otherwise required by law.

**15. No Publicity**

Plaintiff and her Counsel will not contact the media about the settlement or respond to any inquiries by the media regarding the Settlement, other than to state that the matter was amicably settled, and the Court did not find Defendant liable. Plaintiff and her Counsel also will not post any information about the settlement on social media or their firms' websites.

**16. Representation Regarding Class Size.**

Defendant has represented that there are no more than approximately 84 Class Members who worked no more than 11,000 workweeks during the Class Period. Should either of these numbers increase by more than 5%, the Maximum Settlement Amount will increase proportionately based on the larger increase. For example, if there are 11,550 workweeks or 88 employees (i.e., an exactly 5% increase for both), the Maximum Settlement Amount will remain unchanged. If there are 12,100 workweeks (i.e., a 10% increase) and 92 employees (i.e., a 10% increase), the Maximum Settlement Amount shall increase by 5% (based on the greater increase in excess of the 5% threshold).

Dated: December 30, 2021

By: LLUSBYSARET CISNEROS  
DocuSigned by: LLUSBYSARET CISNEROS  
A70F0F3F8E8343C...  
**LLUSBYSARET CISNEROS**  
 Plaintiff and Class Representative

Dated: January 6, 2022

**NXION-EGLI EQUIPMENT CO. OF  
 SOUTHERN CALIFORNIA, INC.**

By: JAMES NIKON  
 Its: LL

**APPROVED AS TO FORM AND CONTENT:**

Dated: December 30, 2021

GAINES & GAINES, APLC

By: Daniel F. Gaines

Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.

Counsel for Plaintiff and Class

Representative

Dated: January 4, 2022

LEWIS BRISBOIS BISGAARD & SMITH  
LLP

By: K. Den Bleyker

Katherine C. Den Bleyker, Esq.

William B. Richards, Jr., Esq.

Janet Hur, Esq.

Counsel for Defendant

# **EXHIBIT 1**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

LLUSBYSARET CISNEROS, on behalf of  
herself and all "aggrieved employees" pursuant  
to Labor Code § 2698 *et seq.*

Plaintiff,

v.

NIXON-EGLI EQUIPMENT CO. OF  
SOUTHERN CALIFORNIA, INC., a California  
corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: CIVSB2119108

*Assigned to the Hon. Gilbert Ochoa, Dept. S24*

**NOTICE OF PENDENCY OF PROPOSED  
CLASS ACTION SETTLEMENT AND  
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT  
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

*A California court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement will provide \$285,000 to pay claims to all individuals who worked for Nixon-Egli Equipment Co. of Southern California, Inc. ("Defendant") as hourly and/or non-exempt employees in California at any time between July 1, 2017 and January 31, 2022.
- The settlement resolves a lawsuit alleging that Defendant failed to pay all wages due, including minimum, regular, and overtime wages; provide compliant meal and rest periods or premium compensation in lieu thereof; timely pay wages due on designated pay dates; timely issue final wages upon separation of employment; issue accurate and complete itemized wage statements; and reimburse employee business expenses. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$114,000 as attorneys' fees and \$12,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money could have been awarded if employees won at trial.

| <b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Do Nothing</b>                                        | You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below. |
| <b>Exclude Yourself</b>                                  | To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive <b>no money from the Settlement</b> . This is the only option that allows you to ever be part of any other lawsuit against Nixon-Egli Equipment Co. about the legal claims that were brought in this case.                                                |
| <b>Object</b>                                            | Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.                                                                                                                                                                                                                                                   |
| <b>Go to a Hearing</b>                                   | Ask to speak in Court about the fairness of the settlement, as detailed below.                                                                                                                                                                                                                                                                                                                                                                        |

### **WHY DID YOU RECEIVE THIS NOTICE?**

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

### **WHAT IS THIS LAWSUIT ABOUT?**

On July 1, 2021, Plaintiff Llusbysaret Cisneros ("Plaintiff"), a former employee of Nixon-Egli Equipment Co. of Southern California, Inc., filed this lawsuit in the San Bernardino County Superior Court. The lawsuit, as amended, alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former hourly and/or non-exempt California employees of Defendant employed from July 1, 2017 through January 31, 2022 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not paid all wages due, including minimum, regular, and overtime wages; were not provided all compliant meal and rest periods or premium compensation in lieu thereof; were not timely paid wages due on designated pay dates; were not timely issued final wages upon separation of employment; were not issued accurate and complete itemized wage statements; and were not reimbursed for all business expenses incurred. The Settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.  
Alex P. Katofsky, Esq.  
Gaines & Gaines, APLC  
27200 Agoura Road, Suite 101  
Calabasas, CA 91301  
Phone: (866) 550-0855

Defendant's Attorneys

Katherine C. Den Bleyker, Esq.  
William B. Richards, Jr., Esq.  
Janet Hur, Esq.  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
633 West 5<sup>th</sup> Street, Suite 4000  
Los Angeles, CA 90071

**SUMMARY OF THE SETTLEMENT**

**A. Why is there a Settlement?**

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes she would have prevailed on her claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement Agreement" or "Stipulation of Settlement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class members.

**B. Who is in the Settlement Class?**

The Settlement encompasses a class composed of all individuals who worked for Nixon-Egli Equipment Co. of Southern California, Inc. as hourly and/or non-exempt employees in California at any time between July 1, 2017 and January 31, 2022.

**C. What does the Settlement provide?**

**1. Maximum Settlement Amount.**

The Settlement provides that Defendant will pay Two Hundred Eighty Five Thousand Dollars (\$285,000.00) (the "Maximum Settlement Amount") to settle the lawsuit.

**2. Net Settlement Proceeds.**

The "Net Settlement Proceeds" is the portion of the Maximum Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Proceeds amount is the Maximum Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will fix these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed One Hundred Fourteen Thousand Dollars (\$114,000.00);

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed Twelve Thousand Dollars (\$12,000.00);

(c) **Service Payment to the Class Representative** in an amount set by the Court, not to exceed Ten Thousand Dollars (\$10,000.00), for her service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed Five Thousand Dollars (\$5,000.00), for administering the settlement; and

(e) **PAGA Payments** in the total amount of Ten Thousand Dollars (\$10,000.00) for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). Seventy-Five percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500.00), shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining Twenty-Five percent (25%), or Two Thousand Five Hundred Dollars (\$2,500.00), will be distributed to hourly-paid, non-exempt employees who worked for Defendant from April 23, 2020 to January 31, 2022 ("PAGA Members"), for the release of their claims arising under PAGA

3. **Individual Payment Amount.**

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below. Your Individual Payment Amount includes both your estimated share of the Net Settlement Proceeds and, if eligible, your share of the PAGA Payment ("Individual PAGA Payment Amount").

**D. What Are You Giving Up To Get A Payment Or Stay In The Class?**

Upon the Effective Date, and subject to Defendant's full payment of the Maximum Settlement Amount, Plaintiff and all Settlement Class Members who do not timely opt-out will be deemed to have fully released and discharged Defendant, and each of its former, present, and future owners, parents, and subsidiaries, and all of their current, former, and future spouse(s), children, officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives ("Released Parties") from any and all Released Claims which arose during their employment in a non-exempt position in California during the Class Period. PAGA Members who opt-out of the Settlement shall not be bound by any Judgment or release, but will nevertheless release Released Claims that arise under PAGA.

The "Released Claims" include all claims, rights, demands, liabilities and causes of actions that are alleged or reasonably could have been alleged based on the facts and claims asserted in the Action, including the following claims: (i) failure to pay all regular wages, minimum wages, and overtime wages due; (ii) failure to provide meal periods or premium compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to reimburse necessary business expenses; (v) failure to provide complete and accurate itemized wage statements; (vi) failure to pay wages timely upon separation of employment; (vii) failure to timely pay wages during employment (including a claim under the Industrial Welfare Commission Wage Orders, and common law including conversion); (viii) unfair business practices that could have been premised on the claims, causes of action, or legal theories of relief described above or any of the claims, causes of action, or legal theories of relief pleaded in the Action; (ix) failure to maintain required payroll records; and (x) all claims under PAGA that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action. The Released Claims are expressly limited to claims arising during the Class Period during employment in a non-exempt position.

All PAGA Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all Released Claims arising under PAGA with respect to the Released Parties, irrespective of whether a Class Member submits a request for exclusion.

**E. How Is My Share Of The Settlement Calculated?**

Each participating Class Member (those who do not opt out of the Settlement) and all PAGA Members shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form) and is a portion of the PAGA Payment distributable to each PAGA Member, regardless if they request exclusion from the class settlement or not.

As to Class Members, the Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual participating Class Member worked for Defendant in California in a non-exempt position during the Class Period to yield their Individual Payment Amount. Each Participating Settlement Class Member who does not opt out will receive an Individual Payment Amount equal to their individual weeks worked in California in a non-exempt position during the Class Period multiplied by the Workweek Value.

As to PAGA Members, Individual PAGA Payment Amounts will be calculated by dividing the employee portion of the PAGA Payment (\$2,500.00) by the total weeks worked by all PAGA Members in California in a non-exempt position during the PAGA Period (April 23, 2020 to January 31, 2022), which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual PAGA Member worked for Defendant in California in a non-exempt position during the PAGA Period to yield their Individual PAGA Payment Amount. PAGA Members will receive their portion of the PAGA Payment regardless of their decision to opt out of the class settlement (i.e., Class Members who opt out will nevertheless receive their Individual PAGA Payment).

For tax purposes, each Individual Payment Amount will be apportioned (a) 33-1/3% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 66-2/3% equally as penalties and interest (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

**According to the records of Defendant, you worked [ ] weeks while employed in a non-exempt position in California from July 1, 2017 through January 31, 2022 and you worked [ ] weeks while employed in a non-exempt position in California from April 22, 2020 through January 31, 2022. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[ ]. This amount is subject to change based on the final ruling of the Court.**

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than \_\_\_\_\_, 2022. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

**THE SETTLEMENT HEARING**

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on \_\_\_\_\_, at 8:30 a.m., in the Courtroom of Judge Ochoa of the San Bernardino County Superior Court, Department S24, located at 247 W. Third Street, San Bernardino,

California 92415. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

### **WHAT ARE YOUR OPTIONS?**

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

**IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.** If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than \_\_\_\_\_. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than \_\_\_\_\_.

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT AND RELEASE OF NON-PAGA CLAIMS**

You have a right to exclude yourself ("opt out") from the Settlement Class and release of non-PAGA claims, but if you choose to do so, you will not receive any benefits from the proposed settlement. However, if eligible, you will still receive a payment in an amount equal to your estimated pro rata share of the PAGA Payment because the Request for Exclusion does not apply to this claim. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than \_\_\_\_\_. The Request for Exclusion shall not be effective as to the release of claims rising under PAGA. Class Members who opt-out of the Settlement will nevertheless release Released Claims that arise under PAGA.

### **ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined

at any time during regular business hours at the Office of the Clerk of the San Bernardino County Superior Court, located at 247 W. Third Street, San Bernardino, California 92415.

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you may contact the Settlement Administrator at [address], [telephone number].

**PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.**

**BY ORDER OF THE SUPERIOR COURT OF  
THE STATE OF CALIFORNIA**

# **EXHIBIT 2**

**REQUEST FOR EXCLUSION**

**ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT** OF THE ACTION KNOWN AS *Llusbysaret Cisneros, Plaintiff, v. Nixon-Egli Equipment Co. of Southern California, Inc., and Does 1 Through 10, Inclusive, Defendants, San Bernardino County Superior Court*, Case No. CIVSB2119108. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant Nixon-Egli Equipment Co. of Southern California, Inc. as an hourly and/or non-exempt employee in California between July 1, 2017 and January 31, 2022.

**I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.**

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Residence Street Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE [45 days after mailing of Notice]. Send this signed request for exclusion form to the Settlement Administrator:

Nixon-Egli Claims Administrator  
c/o ILYM Group, Inc.

\_\_\_\_\_  
\_\_\_\_\_

# **EXHIBIT 3**

DANIEL F. GAINES, ESQ. SBN 251488  
daniel@gaineslawfirm.com  
ALEX P. KATOFISKY, ESQ. SBN 202754  
alex@gaineslawfirm.com  
EVAN S. GAINES, ESQ. SBN 287668  
evan@gaineslawfirm.com  
**GAINES & GAINES, APLC**  
27200 Agoura Rd., Suite 101  
Calabasas, CA 91301  
Telephone: (818) 703-8985  
Facsimile: (818) 703-8984

Attorneys for Plaintiff Llusbysaret Cisneros, on behalf of herself and on behalf of all similarly situated individuals and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

LLUSBYSARET CISNEROS, on behalf of  
herself and all "aggrieved employees"  
pursuant to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

NIXON-EGLI EQUIPMENT CO. OF  
SOUTHERN CALIFORNIA, INC., a  
California corporation, and DOES 1 through  
10, inclusive,

Defendants.

CASE NO: CIVSB2119108

*Assigned to the Honorable Gilbert Ochoa,  
Dept. S24 - SBJC*

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT FOR:**

**1. FAILURE TO PAY ALL WAGES DUE,  
INCLUDING MINIMUM, REGULAR,  
AND OVERTIME WAGES (LABOR  
CODE §§ 510, 558, 1194, 1194.2 AND  
1197.1; IWC WAGE ORDER 4-2001)**

**2. FAILURE TO PROVIDE COMPLIANT  
REST PERIODS OR COMPENSATION  
IN LIEU THEREOF (LABOR CODE §§  
226.7 AND 558; IWC WAGE ORDER 4-  
2001)**

**3. FAILURE TO PROVIDE COMPLIANT  
MEAL PERIODS OR COMPENSATION  
IN LIEU THEREOF (LABOR CODE §§  
226.7 AND 512; IWC WAGE ORDER 4-  
2001)**

**4. FAILURE TO COMPLY WITH  
ITEMIZED EMPLOYEE WAGE  
STATEMENT PROVISIONS (LABOR  
CODE §§ 226 AND 226.3 AND IWC  
WAGE ORDER 4-2001)**

**5. FAILURE TO TIMELY PAY WAGES  
ON DESIGNATED PAY DATES (LABOR  
CODE § 204; IWC WAGE ORDER 4-2001)**

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**6. FAILURE TO PAY WAGES DUE AT  
SEPARATION OF EMPLOYMENT  
(LABOR CODE §§ 201-203)**

**7. FAILURE TO REIMBURSE EXPENSES  
(LABOR CODE § 2802 AND IWC WAGE  
ORDER 4-2001)**

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

**9. CIVIL PENALTIES PURSUANT TO  
LABOR CODE § 2698 ET SEQ. FOR  
VIOLATIONS OF LABOR CODE §§ 201,  
202, 203, 204, 210, 226, 226.3, 226.7, 256,  
510, 512, 558, 1194, 1194.2, 1197.1, AND  
2802**

**DEMAND FOR JURY TRIAL**

*Complaint Filed: July 1, 2021*

Plaintiff LLUSBYSARET CISNEROS ("Plaintiff"), individually and on behalf of all similarly situated individuals (the "Class" or "Plaintiff Class"), on behalf of the general public, and as an "aggrieved employee" under the Labor Code Private Attorneys General Act of 2004, complains of Defendants, and each of them, as follows:

**I.**

**INTRODUCTION AND FACTUAL BACKGROUND**

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other employees who work or formerly worked for NIXON-EGLI EQUIPMENT CO. OF SOUTHERN CALIFORNIA, INC., a California corporation, and any subsidiaries or affiliated companies (hereinafter collectively referred to as "Defendants") within the State of California.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the "liability period") Defendants have had a consistent policy of failing to pay all wages due to Class Members (as defined below); provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members; pay all expense reimbursement due to Class Members; provide

1 accurately itemized wage statements to Class Members; timely pay wages on designated pay dates;  
2 and to timely pay wages upon separation of employment to Class Members (as defined below).

3 3. Plaintiff, on behalf of herself and the members of the Class, brings this action pursuant  
4 to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2,  
5 1197.1, and 2802, seeking compensation for all unpaid wages, unpaid premium meal and rest period  
6 wages, statutory penalties, liquidated damages, injunctive and other equitable relief, and reasonable  
7 attorneys' fees and costs.

8 4. Plaintiff, on behalf of herself and Class Members and pursuant to Business &  
9 Professions Code §§ 17200-17208, seeks injunctive relief, restitution, and disgorgement of all  
10 benefits Defendants enjoyed from their failure to pay all wages due to Class Members.

11 5. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395  
12 because Defendants employed Plaintiff and other Class Members in San Bernardino County,  
13 California.

14 6. Plaintiff, on behalf of herself and all aggrieved employees pursuant to Labor Code §§  
15 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

16 7. Pursuant to the Judicial Council's Emergency Rule 9 of the California Rules of Court,  
17 Plaintiff's claims are subject to tolling from April 6, 2020 through October 1, 2020.

## 18 II.

### 19 PARTIES

#### 20 A. Plaintiff

21 8. Plaintiff LLUSBYSARET CISNEROS was employed by Defendants from September  
22 2018 through May 2020 as a non-exempt employee in San Bernardino County, California.

23 9. During her work with Defendants, Plaintiff was:

- 24 a. Willfully denied the payment of all wages due;
- 25 b. Willfully denied compliant rest periods or compensation in lieu thereof;
- 26 c. Willfully denied compliant meal periods or compensation in lieu thereof;
- 27 d. Willfully denied the payment of all expense reimbursement due;
- 28 e. Willfully denied the timely payment of all wages on designated pay days;

1 f. Willfully denied accurately itemized wage statements; and

2 g. Denied the timely payment of wages upon separation of her employment.

3 **B. Defendants**

4 10. Defendant NIXON-EGLI EQUIPMENT CO. OF SOUTHERN CALIFORNIA, INC.,  
5 is a California corporation. Defendant NIXON-EGLI EQUIPMENT CO. OF SOUTHERN  
6 CALIFORNIA, INC. employed Plaintiff and Class Members throughout the State of California,  
7 including in San Bernardino County, California.

8 11. The true names and capacities, whether individual, corporate, associate, or otherwise,  
9 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who  
10 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is  
11 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a  
12 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will  
13 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants  
14 designated hereinafter as DOES when such identities become known.

15 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted  
16 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,  
17 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally  
18 attributable to the other Defendants.

19 13. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting  
20 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more  
21 provisions of the California Labor Code as alleged herein.

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III.

**CLASS ACTION ALLEGATIONS**

14. Plaintiff brings this action on behalf of herself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following class composed of and defined as follows:

**THE CLASS**

All individuals who worked for Defendant Nixon-Egli Equipment Co. of Southern California, Inc. as hourly and/or non-exempt employees in California at any time between July 1, 2017 and January 31, 2022.

15. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify these class descriptions with greater specificity or further division into subclasses or limitation to particular issues.

16. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

**A. Numerosity**

17. The potential members of the Class as defined are so numerous that joinder of all Class Members is impracticable. While the precise number of members of the Class has not been ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently employ, and during the relevant time periods employed, over 75 persons in the State of California who fall within the Class definition.

18. Accounting for employee turnover during the relevant period necessarily increases this number. Plaintiff alleges Defendants' employment records would provide information as to the number and location of members of the Class. Joinder of members of the Class is not practicable.

**B. Commonality**

19. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- a. Whether Defendants failed to pay Plaintiff and Class Members all wages due, including minimum, regular, and overtime wages, in violation of Labor Code §§ 510, 558, 1194, 1194.2, and 1197.1 and IWC Wage Order 4-2001;
- b. Whether Defendants failed to properly provide compliant rest periods or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§ 226.7 and 558, and IWC Wage Order 4-2001;
- c. Whether Defendants failed to properly provide compliant meal periods or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 4-2001;
- d. Whether Defendants failed to provide Plaintiff and Class Members with accurately itemized wage statements, in accordance with Labor Code §§ 226 and 226.3 and IWC Wage Order 4-2001;
- e. Whether Defendants failed to timely pay Plaintiff and Class Members all wages due and owing at the separation of their employment, in violation of Labor Code §§ 201-203;
- f. Whether Defendants failed to timely pay wages to Plaintiff and Class Members on designated pay dates, in violation of Labor Code § 204 and IWC Wage Order 4-2001;
- g. Whether Defendants failed to reimburse Plaintiff and Class Members for necessary business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor Code § 2802 and IWC Wage Order 4-2001; and
- h. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

**C. Typicality**

20. The claims of the named Plaintiff are typical of the claims of members of the Class. Plaintiff and members of the Class sustained injuries and damages arising out of and caused by

1 Defendants' common course of conduct in violation of laws, regulations that have the force and effect  
2 of law, and statutes as alleged herein.

3 **D. Adequacy of Representation**

4 21. Plaintiff will fairly and adequately represent and protect the interests of members of  
5 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large  
6 employment class actions.

7 **E. Superiority of Class Action**

8 22. A class action is superior to other available means for the fair and efficient adjudication  
9 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and  
10 questions of law and fact common to the proposed Class predominate over any questions affecting  
11 only individual members of the proposed Class. Each member of the proposed Class has been  
12 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

13 23. Class action treatment will allow those similarly situated persons to litigate their  
14 claims in the manner that is most efficient and economical for the parties and the judicial system.  
15 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this  
16 action that would preclude its maintenance as a class action.

17 **IV.**

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **PLAINTIFF AND CLASS AGAINST ALL DEFENDANTS**

21 **FAILURE TO PAY ALL WAGES DUE**

22 **(LABOR CODE §§ 510, 558, 1194, 1194.2 AND 1197.1)**

23 24. Plaintiff incorporates paragraphs 1 through 23 of this Complaint as though fully set  
24 forth herein.

25 25. Labor Code § 510 provides that, "any work in excess of eight hours in one workday  
26 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the  
27 seventh day of work in any one workweek shall be compensated at the rate of no less than one and  
28 one-half times the regular rate of pay for an employee." Labor Code § 1194 provides that "any

1 employee receiving less than the legal minimum wage or the legal overtime compensation applicable  
2 to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this  
3 minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and  
4 costs of suit."

5 26. During the liability period, Defendants failed to pay Plaintiff and Class Members all  
6 wages due, including minimum, regular and overtime wages, in violation of Labor Code §§ 510, 558,  
7 and 1194 and IWC Wage Order 4-2001. Plaintiff and Class Members were required to work off-the-  
8 clock both before and after their shift. They were required to communicate with other employees  
9 through texts, calls, and emails, all before and after their shift and without compensation.  
10 Additionally, Defendants rounded down the hours that Plaintiff and Class Members worked to the  
11 benefit of Defendants. This violates Labor Code §§ 510, 558, and 1194 and IWC Wage Order 4-2001.

12 27. As a result of the unlawful acts of Defendants in willfully failing to pay all wages,  
13 Plaintiff and Class Members have been deprived of wages in amounts to be determined at trial, and  
14 are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and  
15 costs pursuant to Labor Code § 1194 and liquidated damages pursuant to Labor Code § 1194.2.

16 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

17 **V.**

18 **SECOND CAUSE OF ACTION**

19 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

20 **FAILURE TO PROVIDE COMPLIANT REST PERIODS OR COMPENSATION IN LIEU**  
21 **THEREOF (LABOR CODE §§ 226.7 AND 558 AND IWC WAGE ORDER 4-2001)**

22 28. Plaintiff incorporates paragraphs 1 through 27 of this Complaint as though fully set  
23 forth herein.

24 29. Plaintiff and Class Members are entitled to one hour of pay for each day that  
25 Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and  
26 IWC Wage Order 4-2001.

27 30. Defendants failed to pay premium wages to Plaintiff and Class Members who were  
28 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Plaintiff and

1 Class Members were routinely not authorized and unable to take an off-duty, 10-minute rest period  
2 for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one  
3 hour's pay for each missed rest period. When rest periods were provided (which happened rarely, if  
4 ever), Plaintiff and Class Members were required to carry, and be alert to, a two-way radio, resulting  
5 in an on-duty rest period. This violates Labor Code § 226.7 and IWC Wage Order 4-2001.

6 31. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the  
7 payment of all rest period compensation which she and Class Members are owed, according to proof.

8 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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10 **VI.**

11 **THIRD CAUSE OF ACTION**

12 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

13 **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS OR COMPENSATION IN LIEU**  
14 **THEREOF (LABOR CODE §§ 226.7, 512, AND 558 AND IWC WAGE ORDER 4-2001)**

15 32. Plaintiff incorporates paragraphs 1 through 31 of this Complaint as though fully set  
16 forth herein.

17 33. Plaintiff and Class Members are entitled to one hour of pay for each day that  
18 Defendants failed to properly provide one or more compliant meal periods as set forth in Labor Code  
19 §§ 226.7 and 512 and IWC Wage Order 4-2001.

20 34. Defendants failed to pay premium wages to Plaintiff and Class Members who were  
21 denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001.  
22 Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-  
23 minute meal period for every shift worked that exceeded five hours in duration, and a second meal  
24 period when they worked shifts greater than ten hours, but were not paid premium wages of one  
25 hour's pay for each missed meal period. When meal periods were provided, Plaintiff and Class  
26 Members were required to carry a two-way radio and be alert to and respond to calls during their meal  
27 period, resulting in an on-duty meal period and additional unpaid wages for time worked during their  
28 meal period. Meal periods would also be typically late, short, or interrupted and employees would

1 be required to continue working without compensation. This violates Labor Code §§ 226.7 and 512  
2 and IWC Wage Order 4-2001.

3 35. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, Plaintiff  
4 seeks the payment of all unpaid meal period compensation which she and Class Members are owed,  
5 according to proof.

6 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

7 **VII.**

8 **FOURTH CAUSE OF ACTION**

9 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

10 **FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT**

11 **PROVISIONS (LABOR CODE §§ 226 AND 226.3 AND IWC WAGE ORDER 4-2001)**

12 36. Plaintiff incorporates paragraphs 1 through 35 of this Complaint as though fully set  
13 forth herein.

14 37. Section 226(a) of the California Labor Code requires Defendants to provide wage  
15 statements to employees. In those wage statements, Defendants must provide an accurate itemized  
16 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)  
17 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-  
18 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee  
19 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period  
20 for which the employee is paid, (7) the name of the employee and only the last four digits of his or  
21 her social security number or an employee identification number other than a social security number,  
22 (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates  
23 in effect during the pay period and the corresponding number of hours worked at each hourly rate by  
24 the employee. Defendants have failed to comply with Labor Code § 226(a).

25 38. Defendants failed to issue Plaintiff and Class Members wage statements that fully and  
26 accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class Members  
27 were not paid all wages due and all premium wages for unauthorized meal and rest periods, as stated  
28 above. The wage statements provided by Defendants failed to accurately state all gross wages earned,

1 in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2),  
2 net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect  
3 during the pay period and the corresponding number of hours worked at each hourly rate, in violation  
4 of Labor Code § 226(a)(9).

5 39. Independently, the wage statements issued to Plaintiff and Class Members failed to  
6 accurately set forth the inclusive dates of the period for which the employee was paid, in violation of  
7 Labor Code §§ 226(a)(6) and 226.3, because they failed to list the pay period start date and/or failed  
8 to accurately identify the inclusive pay period dates. The wage statements issued to Plaintiff and Class  
9 Members also list the employees' entire social security number, instead of only the last four digits of  
10 their social security number or an employee identification number, in violation of Labor Code §§  
11 226(a)(7) and 226.3. The wage statements also failed to set forth the correct name of the legal entity  
12 that employed Plaintiff and Class Members, in violation of Labor Code §§ 226(a)(8) and 226.3—the  
13 wage statements set forth the employing entity as "Nixon-Egli Equipment Co.", instead of the correct  
14 name, "Nixon-Egli Equipment Co. of Southern California, Inc." Finally, the wage statements issued  
15 to Plaintiff and Class Members also failed to list the overtime and/or double time rates of pay, in  
16 violation of Labor Code §§ 226(a)(9) and 226.

17 40. As a consequence of Defendants' willful conduct in failing to provide Class Members  
18 with accurate itemized wage statements, Plaintiff and Class Members have been injured because they  
19 have not been paid all wages due and were issued wage statements which do not reflect, and fail to  
20 accurately state, all information required by Labor Code § 226(a). The missing information cannot  
21 be discerned at all from the face of the wage statements themselves. As a result, Plaintiff and Class  
22 Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual  
23 damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each  
24 violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and  
25 are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

26 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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**VIII.**

**FIFTH CAUSE OF ACTION**

**FAILURE TO TIMELY PAY WAGES ON DESIGNATED PAY DATES**

**(LABOR CODE § 204; IWC WAGE ORDER 4-2001)**

41. Plaintiff incorporates paragraphs 1 through 40 of this Complaint as though fully set forth herein.

42. Labor Code § 204(a) requires that “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

43. Plaintiff and Class Members are issued their wages beyond these time frames, oftentimes days after each semi-monthly payroll period concludes. Defendants’ practice violates Labor Code §§ 204(a) and 210 and Plaintiff and Class Members are entitled civil penalties and damages.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

**IX.**

**SIXTH CAUSE OF ACTION**

**PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

**FAILURE TO TIMELY PAY WAGES DUE AT**

**SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**

44. Plaintiff incorporates paragraphs 1 through 43 of this Complaint as though fully set forth herein.

45. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee’s daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

46. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, including all wages due and premium wages for missed and denied meal and rest periods, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment.

47. More than 30 days have passed since Plaintiff and formerly employed Class Members have left Defendants' employ.

48. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff and formerly employed Class Members are entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

X.

### SEVENTH CAUSE OF ACTION

**PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

### FAILURE TO REIMBURSE EXPENSES (LABOR CODE § 2802 AND IWC WAGE

ORDER 4-2001)

49. Plaintiff incorporates paragraphs 1 through 48 of this Complaint as though fully set forth herein.

50. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiff and Class Members for all out-of-pocket expenses incurred by them in the performance of their job duties.

51. Plaintiff and Class Members to were required to use their personal cellular phones as part of their work tasks for Defendants, purchase and provide their own tools, equipment, and supplies needed to carry out their work duties, and/or incur laundry-related expenses to maintain and clean their uniforms, but were not fully reimbursed by Defendants for these expenses.

52. As a proximate result of the aforementioned violations, Plaintiff and Class Members have been damaged in an amount according to proof at the time of trial.

53. Pursuant to Labor Code § 2802, Plaintiff and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

## XI.

### EIGHTH CAUSE OF ACTION

**PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

## UNFAIR COMPETITION PURSUANT TO

**BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

54. Plaintiff incorporates paragraphs 1 through 53 of this Complaint as though fully set forth herein.

55. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and Class Members. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

56. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

57. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

58. Wage and hour laws express fundamental public policies. Properly providing employees with all wages and expense reimbursement due are fundamental public policies of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted

1 to work under substandard and unlawful conditions, and to protect law-abiding employers and its  
2 employees from competitors who lower their costs by failing to comply with minimum labor  
3 standards.

4 59. Defendants have violated statutes and public policies. Through the conduct alleged  
5 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have  
6 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair  
7 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,  
8 and all persons similarly situated, and all interested persons of rights, benefits, and privileges  
9 guaranteed to all employees under law.

10 60. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of  
11 §17200 *et seq.* of the Business & Professions Code.

12 61. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise  
13 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §  
14 17200 *et seq.* of the Business & Professions Code.

15 62. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others  
16 similarly situated have been damaged in a sum as may be proven.

17 63. Unless restrained by this Court, Defendants will continue to engage in the unlawful  
18 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court  
19 should make such orders or judgments, including the appointment of a receiver, as may be necessary  
20 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or  
21 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited  
22 to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the  
23 money Defendants have unlawfully failed to pay.

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**XII.**

**NINTH CAUSE OF ACTION**

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS  
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2698 ET SEQ. FOR VIOLATIONS  
OF LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 558, 1194,  
1194.2, 1197.1, AND 2802**

64. Plaintiff incorporates paragraphs 1 through 63 of this Complaint as though fully set forth herein.

65. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

66. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 256, 510, 512, 1194, 1194.2, 1197.1, and 2802; and

b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 210, 226.3, and 558.

67. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

68. On April 23, 2021, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of April 23, 2021. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the aggrieved employees she seeks to represent request relief as described below.

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**XII.**

**RELIEF REQUESTED**

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code § 1194 in the amount of all unpaid wages due to Plaintiff and Class Members;
2. For liquidated damages pursuant to Labor Code § 1194.2 in the amount of all unpaid minimum wages due to Plaintiff and Class Members;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal period was not properly provided to Plaintiff and Class Members pursuant to Labor Code § 226.7;
4. For compensatory damages in the amount of one hour of wages for each day on which a rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
5. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
6. For reimbursement of all expenses incurred by Plaintiff and Class Members pursuant to Labor Code § 2802;
7. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
8. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
9. For civil penalties pursuant to Labor Code §§ 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
10. An award of prejudgment and post-judgment interest;
11. An award providing for payment of costs of suit;
12. An award of attorneys' fees; and
13. Such other and further relief as this Court may deem just and proper.

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1 Dated: December 15, 2021

Respectfully submitted,

2 GAINES & GAINES  
3 A Professional Law Corporation

4  
5 By: \_\_\_\_\_  
6 DANIEL F. GAINES  
7 EVAN S. GAINES  
8 Attorney for Plaintiff

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

11 Dated: December 15, 2021

Respectfully submitted,

12 GAINES & GAINES  
13 A Professional Law Corporation

14 By: \_\_\_\_\_  
15 DANIEL F. GAINES  
16 EVAN S. GAINES  
17 Attorney for Plaintiff  
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