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and Proposed Class Counsel

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*

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SEEKING
LEAVE TO FILE FIRST AMENDED
COMPLAINT**

DATE: February 24, 2022

TIME: 9:00 a.m.

DEPT.: S24

Action Filed: July 1, 2021

I, DANIEL F. GAINES, hereby declare and state as follows:

1. I am an attorney duly admitted to the practice of law in the State of California. I am a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Llusbysaret Cisneros ("Cisneros" or "Plaintiff") and proposed Class Counsel in this action. I have personal knowledge of the facts set forth herein and if called as a witness to testify to them, I could and would do so competently.

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DECLARATION OF DANIEL F. GAINES IN SUPPORT OF UNOPPOSED MOTION AND UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND SEEKING LEAVE TO
FILE FIRST AMENDED COMPLAINT

1 **Education and Experience:**

2 2. I obtained my BS degree from the University California at Berkeley in 2003. I
3 majored in Business Administration at the Haas School of Business.

4 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
5 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
6 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
7 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

8 4. Since becoming a member of the Bar, I have practiced law with my partner/father,
9 Kenneth, at Gaines & Gaines, APLC. My father has practiced law in California for over 40 years,
10 emphasizing litigation for the vast majority of his career. Our current practice specializes in
11 litigation, with an emphasis in employment disputes like this one. Over 95% of our practice is
12 devoted to complex employment litigation.

13 5. My firm has represented employees in complex employment matters such as this
14 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
15 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
16 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

17 **Factual and Procedural Background:**

18 6. On April 23, 2021, Plaintiff sent a letter to the Labor and Workforce Development
19 Agency ("LWDA"), alleging Defendant violated the California Labor Code and seeking penalties
20 under the Private Attorneys General Act ("PAGA"). Specifically, Plaintiff alleged Defendant
21 failed to pay wages to Defendant's non-exempt California employees, denied employees meal
22 periods and rest periods, failed to reimburse business expenses, failed to provide accurate itemized
23 wage statements, and failed to timely pay wages at the separation of employment.

24 7. On or about July 1, 2021, Plaintiff initiated the instant lawsuit (the "Action") by
25 filing a Representative Action Complaint for Penalties, pursuant to PAGA, on behalf of herself
26 and all other aggrieved employees (the "Complaint"). The First Amended Class and
27 Representative Action Complaint, which will be filed as part of the settlement approval process,
28 asserts direct individual, class, and PAGA representative action claims against Defendant for (1)

1 failure to pay all wages due, including minimum, regular, and overtime wages (Labor Code §§
2 510, 558, 1194, 1194.2, and 1197.1; IWC Wage Order 4-2001); (2) failure to provide compliant
3 rest periods or compensation in lieu thereof (Labor Code §§ 226.7 and 558; IWC Wage Order 4-
4 2001); (3) failure to provide compliant meal periods or compensation in lieu thereof (Labor Code
5 §§ 226.7, 512, and 558; IWC Wage Order 4-2001); (4) failure to comply with itemized employee
6 wage statement provisions (Labor Code §§ 226 and 226.3; IWC Wage Order 4-2001); (5) failure
7 to timely pay wages on designated pay dates (Labor Code § 204; IWC Wage Order 4-2001); (6)
8 failure to timely pay wages due at separation of employment (Labor Code §§ 201-203); (7) failure
9 to reimburse employee business expenses (Labor Code § 2802; IWC Wage Order 4-2001); (8)
10 violation of Business and Professions Code §§ 17200, *et seq.*; and (9) civil penalties pursuant to
11 Labor Code §§ 2698, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3,
12 226.7, 256; 512, 558, 1194, 1194.2, 1197.1, and 2802 (the “First Amended Complaint”).

13 8. Defendant denies any liability or wrongdoing of any kind associated with the claims
14 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
15 purpose other than this settlement. Defendant contends that it has complied at all times with the
16 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
17 federal, state, and local laws and regulations. It is Defendant’s position that, if this case were to
18 be litigated, class certification would be inappropriate because Plaintiff is not an adequate class
19 representative, Plaintiff’s claims are not typical of putative class members, and individual issues
20 predominate over class issues. The Action, the negotiation and execution of this Settlement
21 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
22 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
23 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
24 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
25 may not be used as, an admission or evidence of the appropriateness of these or similar claims for
26 class certification in the Action or with respect to any other proceeding.

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

4 **Investigation and Settlement Discussions:**

5 10. My colleagues and I have conducted a thorough investigation into the facts and law
6 during the prosecution of this class action case, including the exchange of extensive informal
7 discovery and the review and verification of statistical data and other facts and information
8 provided by Defendant. My colleagues and I have investigated the applicable law as applied to
9 the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and
10 the damages and other losses claimed by Plaintiff.

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

15 12. The Parties thereafter jointly prepared the Settlement Agreement and Release of
16 Claims ("Settlement"). A true and correct copy of the Settlement is attached hereto as **Exhibit B**.

17 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**
18 **Litigation:**

19 13. Based on our independent investigation and evaluation, my colleagues and I are of
20 the opinion that settlement for the consideration and on the terms set forth in this Settlement
21 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
22 light of all known facts and circumstances, including the risk of significant delay, the risk the
23 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

24 14. The Parties agree that the Settlement Class described herein may be certified for
25 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
26 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
27 approved, the certification will have no force or effect and will immediately be revoked. The
28 Parties further agree that certification for purposes of the settlement is in no way an admission that

1 class certification is proper under the more stringent standard applied for litigation and that
2 evidence of this limited stipulation for settlement purposes only will not be admissible for any
3 purpose in this or any other proceeding.

4 15. My office created a comprehensive damage analysis using sampling information
5 obtained through informal discovery. This damage analysis reveals that the negotiated settlement
6 falls within a realistic range of recovery on Class Members' claims.

7 16. Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members all wages
8 due, in violation of Labor Code §§ 510, 558, and 1194 and IWC Wage Order 4-2001. Plaintiff
9 and Class Members contend that they were required to work off-the-clock both before and after
10 their shifts, communicating with other employees through texts, calls, and emails. This would
11 violate Labor Code §§ 510, 558, and 1194 and IWC Wage Order 4-2001. Based on an assumption
12 that an average of 10 minutes were unpaid per employee per shift, and extrapolated to all Class
13 Members during a four-year class period, this claim yields up to \$185,911 in unpaid wages.
14 Defendant strongly contended that no employees ever worked off the clock, and that a highly
15 intensive and individualized factual inquiry would be required to prove this claim, which may not
16 be amenable to class treatment. A substantial discount was required to compromise this claim as
17 this juncture of the proceedings based on the risk involved in future litigation.

18 17. Plaintiff further alleges that Defendant failed to permit or authorize her and Class
19 Members to take timely 30-minute meal periods for shifts greater than five hours in length, in
20 violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-2001. Labor Code § 512
21 provides that employers (like Defendant) may not employ an employee for a work period of more
22 than five hours without providing a 30-minute meal period starting no later than the end of the 5th
23 hour. Instead, Plaintiff alleges that she and Class Members were routinely denied, and not
24 authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked
25 that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period for
26 every shift worked that exceeded 10 hours, but were not paid premium wages of one hour's pay
27 for each missed first or second meal period. Plaintiff alleges that meal periods would be typically
28 late, short, or interrupted and that employees would be required to continue working without

1 compensation. This would violate Labor Code §§ 226.7, 510, 512, 558, and 1194 and IWC Wage
2 Order 4-2001. Plaintiff further alleges that when meal periods were provided, Defendant
3 purportedly maintained a practice requiring Plaintiff and Class Members to carry a two-way radio
4 and be alert to and respond to calls during their meal period, resulting in an on-duty meal period
5 and additional unpaid wages for time worked during their meal period. Finally, Plaintiff alleges
6 that Defendant rarely, if ever, paid meal period premiums, and allegedly failed to maintain meal
7 period records during a substantial portion of the Class, in violation of Labor Code §§ 1174 and
8 1174.5. Plaintiff's damage model revealed a potential of approximately \$735,000 in unpaid meal
9 premiums. Defendant argued that employees were provided all meal periods to which they were
10 entitled, and that an individualized factual inquiry would be required to prove this claim, which
11 may not be amenable to class treatment. A discount was required to compromise this claim as this
12 juncture of the proceedings based on the risk involved in future litigation.

13 18. Plaintiff also contends that Defendant failed to provide Plaintiff and Class Members
14 with legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required
15 by Labor Code § 226.7 and Wage Order 4-2001. Plaintiff alleges that when rest periods were
16 provided, Defendant maintained a practice requiring Plaintiff and other employees to carry, and
17 be alert to, a two-way radio, resulting in an on-duty rest period. That is, during rest periods
18 employers must relieve employees of all duties and **relinquish control over how employees**
19 **spend their time.**" (Emphasis added). An employer may not place any limitations on where
20 employees may go or not go during their rest periods). Plaintiff's damage model revealed a
21 potential of \$185,428 in potential unpaid rest premiums based on a 25% violation rate. Defendant
22 strongly contended that no employees ever were denied or not authorized to take rest periods, and
23 that an individualized factual inquiry would be required to prove this claim, which may not be
24 amenable to class treatment. A substantial discount was required to compromise this claim as this
25 juncture of the proceedings based on the risk involved.

26 19. Plaintiff also contends that she and other employees were required to incur expenses
27 in the performance of their job duties for which they were not fully reimbursed, in violation of
28 Labor Code § 2802. Plaintiff alleges that during the COVID-19 pandemic, she and other

1 employees worked from home and were required to use their own personal cellular phone or other
2 mobile device to perform work for Defendant, but were not reimbursed by Defendant for these
3 expenses, in violation of Labor Code § 2802. Because of the short time frame during which this
4 claim could apply and the small number of employees which it would affect, its value was similarly
5 small, perhaps less than \$20,000. Defendant contends that this claim has no merit for a host of
6 reasons and contends that it fully reimbursed employees for all expenses they incurred which were
7 reasonable and necessary in nature. Defendant is also insistent that no class would be certified on
8 this claim. A substantial discount was required to compromise this claim as this juncture of the
9 proceedings based on the risk involved in future litigation.

10 20. Through the proposed First Amended Complaint, Plaintiff also seeks wage
11 statement statutory penalties pursuant to Labor Code § 226(e), waiting time penalties pursuant to
12 Labor Code § 203, and PAGA civil penalties derivative of the underlying violations alleged.
13 Plaintiff estimates that the value of these penalties – which are derivative, discretionary, and
14 subject to defenses of their own – is approximately \$493,000 (without stacking duplicative and
15 oppressive PAGA penalties), a substantial amount which required a compromise to resolve based
16 on risk of litigation. Plaintiff believed it was unlikely that many of these penalties could be
17 recovered because their value could eclipse the value of alleged underpaid wages (if wages were
18 recovered at all), because Plaintiff's claims are novel, and because of Defendant's potential
19 independent defenses to these penalties.

20 21. The discount negotiated for settlement here is a reasonable compromise, particularly
21 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
22 a 50% or higher hurdle, especially with respect to the meal, rest period, and off-the-clock claims,
23 to which Defendant maintains strong arguments to defeat class certification (in addition to multiple
24 defenses on the merits of the claims), and the fact that Plaintiff and Class Members entered into
25 arbitration agreements with Defendant, which may render the class action claims valueless
26 because they cannot be pursued in a group action and few, if any, employees are likely to pursue
27 their claims on an individual basis. Class certification is a substantial risk in any class action case.
28 Here, while Plaintiff maintains that the requirements of class certification are met, Defendant

1 proffers various arguments why class treatment is not appropriate, including but not limited to that
2 individualized inquires among Class Members predominate over common ones. If Defendant was
3 to defeat Plaintiff's class certification motion, there would be no class wide relief whatsoever, and
4 most Class Members would likely not file individual claims.

5 22. Plaintiff also faced the risk of a loss on the merits on her claims. It is very possible
6 that the Court would agree with Defendant's position that its meal and rest period policies and
7 practices complied with the requirements of California law or could not be certified. In such a
8 case, the value of the majority of Plaintiff's claims would be zero.

9 23. Finally, Plaintiff faced the risk that she would not obtain a maximum
10 damage/penalty award on all (or any of) her claims. For example, Plaintiff seeks discretionary
11 penalties pursuant to the PAGA. Even if Plaintiff did prevail on these claims, it is possible that
12 the Court would not impose all PAGA penalties pursuant to its discretionary power to reduce them.

13 24. Defendant strongly contends that its policies and practices do not violate any laws.
14 It contends that it properly provided for all meal and rest periods and fully compensated their
15 employees for all time worked. It further contends that the wage statements it provides to its
16 employees are fully compliant with California law.

17 25. When the costs and risks of non-certification and loss on the merits are considered,
18 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

19 26. The settlement for each Class Member is fair, reasonable, and adequate, given the
20 inherent risk of litigation, the risk relative to class certification, and the costs of pursuing such
21 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
22 Action.

23 **Class Certification Requirements:**

24 27. To date, no class has been certified. The Stipulation of Settlement contains a
25 provision pursuant to which we stipulate to the Court's provisional certification of the
26 approximately 84-member Settlement Class, but do so for purposes of this settlement only.

1 28. In this case, the Class Members are identifiable from Defendant's employment and
2 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.
3 According to Defendant's records, the Class comprises approximately 84 employees.

4 29. The Class Members' claims all stem from a common source: members of the
5 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
6 with their employment. All members of the Class seek the same relief under the same California
7 laws (related to unpaid wages, unpaid meal and rest period premiums, unreimbursed business
8 expenses, inaccurate or incomplete wage statements, failure to timely pay wages due upon
9 separation, and derivative claims). Under these circumstances, the commonality requirement is
10 satisfied for purposes of certifying the Settlement Class for settlement purposes.

11 30. In this case, named Plaintiff and proposed Class Representative Llusbysaret
12 Cisneros is a former non-exempt employee who worked for Defendant in the State of California
13 as a non-exempt employee during the Class Period (and PAGA Period). She contends that
14 Defendant failed to pay all wages, failed to provide meal and rest periods, failed to comply with
15 itemized employee wage statement provisions, failed to reimburse expenses, and failed to timely
16 pay wages at the separation of employment, in violation of Labor Code §§ 201-203, 204, 210,
17 226(a), 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197.1, 2698, 2699, and 2802, among
18 other Labor Code provisions. She has the same claims as those that the members of the Settlement
19 Class would reasonably be expected to bring based on the course of conduct alleged herein.

20 31. Plaintiff has also demonstrated that she will aggressively and competently assert the
21 interests of the proposed Settlement Class; she has taken an active role in this litigation and has no
22 apparent conflicts with other Class Members.

23 **Leave to File First Amended Class and Representative Action Complaint:**

24 32. As part of this Settlement Agreement, the Parties seek to file a First Amended Class
25 and Representative Action Complaint which asserts direct individual, class, and PAGA
26 representative action claims against Defendant for (1) failure to pay all wages due, including
27 minimum, regular, and overtime wages (Labor Code §§ 510, 558, 1194, 1194.2, and 1197.1; IWC
28 Wage Order 4-2001); (2) failure to provide compliant rest periods or compensation in lieu thereof

1 (Labor Code §§ 226.7 and 558; IWC Wage Order 4-2001); (3) failure to provide compliant meal
2 periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, and 558; IWC Wage Order 4-
3 2001); (4) failure to comply with itemized employee wage statement provisions (Labor Code §§
4 226 and 226.3; IWC Wage Order 4-2001); (5) failure to timely pay wages on designated pay dates
5 (Labor Code § 204; IWC Wage Order 4-2001); (6) failure to timely pay wages due at separation of
6 employment (Labor Code §§ 201-203); (7) failure to reimburse employee business expenses (Labor
7 Code § 2802; IWC Wage Order 4-2001); (8) violation of Business and Professions Code §§ 17200,
8 *et seq.*; and (9) civil penalties pursuant to Labor Code §§ 2698, *et seq.* for violations of Labor Code
9 §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256; 512, 558, 1194, 1194.2, 1197.1, and 2802. A
10 true and correct copy of the proposed Third Amended Complaint is attached hereto as **Exhibit B-**
11 **2.**

12 **Settlement of Claims Pursuant to Labor Code § 2699 *et seq.* (PAGA)**

13 33. Concurrently with the filing of this Motion, my office is transmitting the Settlement
14 Agreement (and these approval documents) to the LWDA, in compliance with Labor Code §
15 2699(l)(2).

16 I declare, under penalty of perjury, under the laws of the State of California, that the
17 foregoing is true and correct. Executed this 18th day of January, 2022 at Calabasas, California.

18
19
20 Daniel F. Gaines
DANIEL F. GAINES

EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrory v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

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Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaience OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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15
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **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 or 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

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

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

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

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

27 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
28 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

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

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

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

8 **H. Miscellaneous Provisions:**

9 1. **Voiding the Agreement.**

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

16 2. **Parties' Authority.**

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

19 3. **Mutual Full Cooperation.**

20 The Parties agree to fully cooperate with each other to accomplish the terms of this
21 Stipulation of Settlement, including but not limited to, execution of such documents and such other
22 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
23 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
24 by this Settlement Agreement and any other efforts that may become necessary by order of the
25 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
26 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
27 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
28 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.

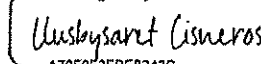
15. No Publicity

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

DocuSigned by:

A70F0F3FBEB343C
LLUSBYSARET CISNEROS
Plaintiff and Class Representative

Dated: January 6, 2022

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

By: 
JAMES NIX
Its: 602

1 APPROVED AS TO FORM AND CONTENT:

2 Dated: December 30, 2021

GAINES & GAINES, APLC

3 By: Daniel F. Gaines

4 Daniel F. Gaines, Esq.

5 Alex P. Katofsky, Esq.

6 Counsel for Plaintiff and Class

Representative

7 Dated: January 4, 2022

8 LEWIS BRISBOIS BISGAARD & SMITH
9 LLP

10 By: K. Den Bleyker

11 Katherine C. Den Bleyker, Esq.

12 William B. Richards, Jr., Esq.

13 Janet Hur, Esq.

14 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.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	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.
Exclude Yourself	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 no money from the Settlement . 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.
Object	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.
Go to a Hearing	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 5th 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

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
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4 **GAINES & GAINES, APLC**
27200 Agoura Rd., Suite 101
5 Calabasas, CA 91301
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

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

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

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

13 Plaintiff,

14 v.

15 NIXON-EGLI EQUIPMENT CO. OF
16 SOUTHERN CALIFORNIA, INC., a
California corporation, and DOES 1 through
17 10, inclusive,

18 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;

f. Willfully denied accurately itemized wage statements; and

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

B. Defendants

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

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

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

13. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more 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.

9
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.

27 ///

28 ///

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 By: _____
5 DANIEL F. GAINES
6 EVAN S. GAINES
7 Attorney for Plaintiff

8 **DEMAND FOR JURY TRIAL**

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

10 Dated: December 15, 2021

Respectfully submitted,

11 GAINES & GAINES
12 A Professional Law Corporation

13 By: _____
14 DANIEL F. GAINES
15 EVAN S. GAINES
16 Attorney for Plaintiff