

POTTER HANDY LLP
Mark D. Potter (SBN 166317)
mark@potterhandy.com
James M. Treglio (SBN 228077)
jimt@potterhandy.com
100 Pine St., Ste 1250,
San Francisco, CA 94111
Tel: (858) 375-7385
Fax: (888) 422-5191

Attorneys for Plaintiffs and the Proposed Class

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

RICARDO ALEXANDER OCAMPO,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

NOR-CAL BEVERAGE CO., INC.,
a California corporation with its principal place
of business in California, and DOES 1 to 100,
inclusive,

Defendants.

CASE NO. 30-2021-01226173-CU-OE-CXC

**SUPPLEMENTAL DECLARATION OF
JAMES M. TREGLIO IN SUPPORT OF
PLAINTIFF'S MOTION FOR ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Judge: Honorable Randall J. Sherman
Hearing Date: July 28, 2023
Time: 10:00 a.m.
Department: CX105

1 I, James M. Treglio, declare as follows:

2 1. I am an attorney at law duly authorized to practice law in the State of California. I am over
3 18 years of age. I have personal knowledge of the facts set forth in this declaration and could and would
4 testify competently to them.

5 2. I am the lead attorney of the class action division for the law firm of Potter Handy, LLP,
6 ("PH," "Co-Class Counsel" or "Plaintiff's Counsel"), attorney of record for Plaintiff Ricardo Alexander
7 Ocampo ("Plaintiff").

8 3. On May 04, 2023, I met and conferred with Defendant Nor-Cal Beverage Co., Inc.'s
9 ("Defendant") Counsel to discuss the Court's Tentative Ruling in regard to Plaintiff's Motion for Order
10 Granting Preliminary Approval of Class Action Settlement ("Motion").

11 4. At the May 04, 2023, meet and confer, Defendant's Counsel and I agreed to notify the
12 Court that we would not be appearing at the May 05, 2023, hearing on Plaintiff's Motion and that we
13 would be submitting on the Court's Tentative Ruling.

14 5. On May 05, 2023, the Court confirmed its Tentative Ruling in its May 05, 2023, Minute
15 Order.

16 6. The Tentative Ruling, in part, identified deficiencies in Plaintiff's moving papers and the
17 proposed Class Action Settlement Agreement and instructed the Parties to file supplemental papers
18 addressing the Court's concerns, submit an amendment to the Class Action Settlement Agreement, and
19 provide red-lined versions of any revised papers. In addition, the Court instructed the Parties to provide
20 the Court with an explanation of how the pending issues were resolved with references to any corrections
21 to the Class Action Settlement Agreement and the Class Notice.

22 7. Per the Court's instructions, the foregoing explains how the pending issues were resolved:

23 **Issue:** *Plaintiff provides no information as to defendant's potential exposure for plaintiff's claims*
24 *for failure to pay all wages owed, failure to pay all overtime wages owed, failure to pay all wages owed*
25 *in a timely manner, waiting time penalties, failure to provide a day of rest, failure to reimburse business*
26 *expenses, and unfair competition.*

1 **Resolution:** Based upon investigation, direct exchanges of information, and an analysis of records
2 provided by Defendant, I prepared a summary of Defendant’s potential maximum liability exposure for
3 Plaintiff’s claims for failure to pay all wages owed, failure to pay all overtime wages owed, failure to pay
4 all wages owed in a timely manner, waiting time penalties, failure to provide a day of rest, failure to
5 reimburse business expenses, and unfair competition. The maximum potential exposure for these claims
6 was then added to the potential exposure for Plaintiff’s meal break, rest break, wage statement, and PAGA
7 claims that was previously provided to the Court, and the Gross Settlement Amount was compared to
8 Defendant’s cumulative maximum potential liability for all of Plaintiff’s claims.

9 Going into the mediation, on July 28, 2022, Defendant’s Counsel provided Plaintiff’s counsel with
10 information regarding the size of the Class, the size of the aggrieved employees, the number of
11 workweeks, the number of payperiods, and the number of wage statements issued during the Class and
12 PAGA period. From these records, Plaintiff was able to determine that the Class Members are all non-
13 exempt employees working five or more days per workweek. According to this data, there are 1,189 non-
14 exempt class members, and 66,810 wage statements. The average rate of compensation during that time
15 period is \$27.87. Because Plaintiff and the aggrieved employees spent eight hours or more working on
16 “compensated” time, this uncompensated time for work done beyond eight hours each day and the lack of
17 second meal periods and additional rest breaks should have been compensated at the overtime rate.
18 However, of the 1,189 class members, 1,047 signed releases while the action was pending, and thus no
19 claim for unpaid wages. As a result, the Class was 142 members, or 11% of the original class.

20 For the total unpaid wages claim, including the claim for unpaid overtime, Plaintiff calculated the
21 loss of 20 minutes per day, which amounted to \$4,395,796.88 in unpaid wages. However, taking into
22 account the releases, the total value of this unpaid wages claim had to be reduced by 89%, or **\$483,437.65**.
23 For the meal period claim, the allegation primarily rested on the failure to provide a second meal period
24 during the Class Period. The records and policies produced by Defendant during mediation confirmed
25 that, indeed, Plaintiff and the Class Members were not provided with a second meal period. Based on that
26 data, Plaintiff estimated the total damages at \$9,309,973.50, but taking into account the release, the total
27 exposure was **\$1,436,642.76**. Plaintiff’s rest period claims also had a similar exposure of \$1,436,642.76.
28 While waiting time penalties were calculated at \$2,251,896, nature of such a claim, and the requirement

1 that such claims require evidence of willfulness, made the value of the 203 penalties to be less than
2 \$50,000. Further, the wage statement claim, while initially valued at \$5,080,000, had to be reduced
3 significantly due to the releases, most of which were signed by current employees. As such, the value of
4 the wage statement violations was, at best \$129,276.

5 With regard to the Plaintiff's claims for failure to pay wages in a timely manner in violation of
6 Labor Code §§204 and 210, and for failing to provide a day of rest, Labor Code §§ 551 and 552, those
7 claims asserted could only be brought for civil penalties under PAGA. In total, Plaintiff calculated the
8 PAGA penalties as being \$1,790,217.00.¹ However, since PAGA penalties are discretionary, and because
9 almost 89% of the Class had agreed to settle all claims, including PAGA claims with the Defendant prior
10 to the mediation, Plaintiff was convinced of the likelihood that the Court would discount the PAGA
11 penalties as well. Thus, the total exposure for the PAGA penalties was calculated at \$129,276.00.

12 With regard to unreimbursed business expenses, the Plaintiff informed me that he and other
13 employees regularly used their cell phones for purposes of communication with their supervisors. Drivers
14 for the Defendant also use their cell phones for navigation purposes. At mediation, I calculated the total
15 exposure of the unreimbursed business expenses claim at \$10 per workweek. During the Class Period,
16 there were 49,739 workweeks, which amounts to damages of \$497,390. However, taking into account the
17 releases signed, the total exposure was \$54,712.90.

18 In total, the exposure for Plaintiff's claims at the mediation was \$3,719,988.07.²

21 ¹ This is assuming that PAGA penalties do not stack. While there are numerous decisions regarding
22 stacking in federal court, there is no case law from a California Court of Appeal dealing with the subject
23 of stacking of PAGA penalties. Further, it appears that the stacking of civil penalties in a PAGA action
24 is inappropriate. *E.g.*, *Snow v. United Parcel Services, Inc.*, 2020 WL 1638250, *3 (C.D. Cal April 1,
25 2020) ("plaintiffs may only recover a set of civil penalties for each type of violation."); *Salazar v. PODS*
26 *Enterprise, LLC*, 2019 WL 2023726, *6 (C.D. Cal. May 8, 2019) ("it is possible (although highly
27 unlikely) that [plaintiff] could recover PAGA penalties for each separate type of Labor Code violation");
28 *Smith v. Lux Retail North America*, 2013 WL 2932243, *4 (N.D. Cal. June 13, 2013) (questioning
whether it was "really plausible that we would pile one penalty on another for a single substantive
wrong"). Since the failure to pay all wages owed claim and the failure to provide a day of rest claim are
related to Plaintiff's other allegations, it is likely the Court would not stack these penalties.

² As the Court is well-aware, the Unfair Competition Law (UCL), Business and Professions Code
section 17200, et seq., is a derivative action to Plaintiff's other causes of action. Effectively, the
inclusion of UCL expands the statute of limitations for unpaid wages from three years to four years. In

1 However, Defendant raised a number of defenses to Plaintiff's claims, including, but not limited
2 to, preemption of Plaintiff's unpaid wages and overtime wage claims based on the existence of a valid
3 collective bargaining agreement (Labor Code §514), the existence of a valid rest period policy, challenges
4 to class certification due to the variety of job titles in the Class Definition, as well as trial and appeal.
5 Thus, of the claims alleged in the Complaint, only Plaintiff's meal period claim appeared to be the most
6 viable going forward. As such, I valued the claims at issue at just over \$1 million. At the mediation, Judge
7 Guilford, the mediator in this action, convinced me that \$390,000, a 39% recovery of the realistic exposure
8 in this action would be fair and reasonable to the Class.

9 **Issue:** *The moving papers do not include a copy of the two LWDA letters that counsel asserts were*
10 *sent to the LWDA on July 20, 2021 and November 11, 2022.*

11 **Resolution:** Included with this Supplemental Declaration are copies of the July 20, 2021 letter and
12 the November 11, 2022 letter to the LWDA. A true and correct copy of the July 20, 2021 letter to the
13 LWDA is attached hereto as **Exhibit A**. A true and correct copy of the November 11, 2022 letter to the
14 LWDA is attached hereto as **Exhibit B**. These copies are provided to the Court so it may verify that the
15 settlement terms are consistent with the letters provided to the LWDA. Further, attached at **Exhibits C**
16 and **D** are true and correct copies of the Notices of Submission related to **Exhibits A** and **B**.

17 **Issue:** *Plaintiff has not provided the court with the estimated high and low payments to class*
18 *members or aggrieved employees under the proposed settlement.*

19 **Resolution:** The Parties will provide these figures in Plaintiff's Motion for Final Approval of Class
20 Action Settlement.

21 **Issue:** *The allocation of only 20% of the settlement payments for wages appears to be low. The*
22 *estimated exposure analysis in the motion allocates over 90% of the class members' potential (non-PAGA)*
23 *recovery to wages. Either an increase to 33 1/3% or an explanation of why the figure is not at least 33*
24 *1/3% is required.*

25
26
27 the calculation for unpaid wages, including overtime compensation, meal periods, rest periods, and
28 unreimbursed expenses, Plaintiff calculated the damages based on a four-year statute of limitations.
Thus, there is no separate calculation for Plaintiff's UCL cause of action.

1 **Resolution:** The Parties met and conferred on May 04, 2023 and agreed to resolve this issue by
2 amending the Class Action Settlement Agreement to allocate 33 1/3% of the settlement payments to wages
3 and 66 2/3% of the settlement payments to interest, penalties, and reimbursements.

4 The change to the allocation of settlement payments is reflected in the Amendment to Settlement
5 Agreement, which amends Section III(F)(5)(b) Tax Treatment for Individual Settlement Shares, to reflect
6 that an individual's settlement share will be apportioned as 33 1/3% to wages and 66 2/3% to interest,
7 penalties, and reimbursements. Attached as **Exhibit E** is a true and correct copy of the Amendment to
8 Settlement Agreement, executed by all Parties.

9 **Issue:** *The parties have not provided the court with a declaration from plaintiff's or defendant's*
10 *counsel as to any potential conflict of interest as to the proposed cy pres recipient, Legal Aid at Work, as*
11 *required by CCP §382.4.*

12 **Resolution:** I have no connection or relationship with Legal Aid at Work, and according to the
13 Declaration of Ellen Bronchetti, filed herewith, she does not either.

14 **Issue:** *The settlement agreement (on pp. 16-17), the class notice, and the Notice of Settlement*
15 *Payment (Exhibit D) all state that the Administrator will resolve any workweek disputes. The documents*
16 *should reflect instead that while the Administrator and the parties will attempt to resolve any such dispute,*
17 *the court ultimately will decide any unresolved dispute.*

18 **Resolution:** The Parties agreed to amend the Class Action Settlement Agreement to reflect that
19 the Court ultimately will decide any unresolved workweek dispute.

20 The change of the decisionmaker in the event of an unresolved workweek dispute is reflected in
21 the Amendment to Settlement Agreement, which amends Section III(I)(2)(e) to state, "If the Parties cannot
22 agree over the workweeks to be credited, the Court shall make the final decision based on the information
23 presented by the Class Member and Defendant." See **Exhibit E**.

24 The Parties agreed to revise the Class Notice to reflect that the Court ultimately will decide any
25 unresolved workweek dispute. The change can be found in Section 6 of the revised Class Notice, which
26 reads in pertinent, "In the event they are unable to resolve any dispute under this Section, the Court shall
27 make a decision regarding the dispute." Attached as **Exhibit F** is a true and correct copy of the revised
28 Class Notice.

1 The Parties agreed to revise the Notice of Settlement Payment to reflect that the Court ultimately
2 will decide any unresolved workweek dispute. The change can be found in Section V of the Workweek
3 Dispute and Change of Personal Information Form (the title was revised to accurately reflect the
4 document's subject matter), which reads in pertinent, "If the dispute cannot be resolved informally, the
5 dispute will be resolved by the Court." Attached as **Exhibit G** is a true and correct copy of the Workweek
6 Dispute and Change of Personal Information form.

7 **Issue:** *The definition of "PAGA Released Claims" in §I.HH of the settlement agreement is too*
8 *broad. The release must be limited to claims that are asserted in the operative pleading or that could be*
9 *asserted based on the facts alleged in the operative pleading. Amaro vs. Anaheim Arena Management,*
10 *LLC (2021) 69 Cal. App. 5th 521, 537 (4th Dist., Div. 3). Thus, the phrase "based on any and all*
11 *underlying Labor Code violations that were or reasonably could have been alleged in the Complaints and*
12 *the PAGA Notice" is overbroad and must be modified.*

13 **Resolution:** The Parties agreed to amend the Class Action Settlement Agreement to appropriately
14 limit the PAGA release and modify the phrase "based on any and all underlying Labor Code violations
15 that were or reasonably could have been alleged in the Complaints and the PAGA Notice."

16 The modification is reflected in the Amendment to Settlement Agreement, which amends Section
17 I(HH) PAGA Released Claims to state, "PAGA Released Claims mean any and all...claims against PAGA
18 Released Parties for penalties pursuant to PAGA *based on any and all claims that are asserted or could*
19 *have been asserted based on the facts alleged in the First Amended Complaint* that arose during the PAGA
20 Period..." See **Exhibit E**.

21 **Issue:** *The settlement agreement in §III.K states that aggrieved employees will "fully, finally, and*
22 *forever be barred from seeking any claims for penalties". However, this court will not issue an injunction*
23 *against the aggrieved employees. Res judicata and collateral estoppel arguments should provide*
24 *defendant with sufficient protection against facing these same claims again. The phrase "fully, finally,*
25 *and forever be barred" must be changed to "may be forever barred as a matter of law".*

26 **Resolution:** The Parties agreed to amend the Class Action Settlement Agreement to change the
27 phrase "fully, finally and forever be barred" to "may be forever barred as a matter of law." The change is
28 reflected in the Amendment to Settlement Agreement, which amends Section III(K) PAGA Release of

1 the Class Action Settlement Agreement, to state “may be forever barred as a matter law” rather than “fully,
2 finally, and forever be barred.” See **Exhibit E**.

3 **Issue:** *The Class Notice uses the phrases “Eligible Aggrieved Employees” and “Eligible*
4 *Employees” throughout, but this is a class action and representative action settlement. The notice should*
5 *simply use the term “Class Members” when referring to class members, “Aggrieved Employees” when*
6 *referring to aggrieved employees, and “Class Members and Aggrieved Employees” when referring to*
7 *both.*

8 **Resolution:** The Parties agreed to revise the Class Notice so that the term “Class Members” is
9 used when referring to class members, “Aggrieved Employees” when referring to aggrieved employees,
10 and “Class Members and Aggrieved Employees” when referring to both.

11 To execute the revisions in a manner least likely to confuse recipients, the Parties updated the
12 bullet points on page of 1 of the Class Notice. Specifically, the Parties changed the phrase “This lawsuit
13 involves “Eligible Employees” defined as:” to “This lawsuit involves “Class Members” defined as:.” The
14 Parties also added the following language, “This lawsuit involves “Aggrieved Employees” defined as:”
15 “All current and former hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in
16 California from July 21, 2020, to [Insert Date of Preliminary Approval].” See **Exhibit F**.

17 Additional revisions, reflecting the appropriate “Class Members,” “Aggrieved Employees,” or
18 “Class Members and Aggrieved Employees,” can be found in the following sections: Section 1, Section
19 2, Section 4, Section 5, Section 9, and Section 10. See **Exhibit F**.

20 **Issue:** *The class period is erroneously stated as October 13, 2017 to the date of Preliminary*
21 *Approval, when it should say October 14, 2017 to the date of Preliminary Approval. (Class Notice at p.*
22 *1.) Also, the date of preliminary approval should be a placeholder and filled in with an exact date when*
23 *preliminary approval is granted.*

24 **Resolution:** The Parties revised the Class Notice at page 1 to state the correct class period and to
25 include the date of preliminary approval as a placeholder to be filled in with the exact date that preliminary
26 approval is granted. The changes were made to the definitions of “Class Members” and “Class Period.”
27 The definition of “Class Members” now states, “All current and former hourly-paid, non-exempt
28 employees employed by Nor-Cal Beverage Co., Inc. in California from October 14, 2017, to [Insert Date

1 of Preliminary Approval].” The definition of “Class Period” now states, “The “Class Period” covered by
2 this lawsuit is October 14, 2017 through [Insert Date of Preliminary Approval].” See **Exhibit F**.

3 **Issue:** *The DO NOTHING section on page 3 of the Class Notice and Section 7 of the Class Notice*
4 *include a summary of the releases, but instead should detail the same releases included in the Settlement*
5 *Agreement, including both the Class Release and the PAGA Release.*

6 **Resolution:** The Parties revised the DO NOTHING section on page 3 of the Class Notice and
7 Section 7 of the Class Notice to remove the summary of the releases. The Parties updated the DO
8 NOTHING section on page 3 and Section 7 to include the Class Release and the PAGA Release language
9 from the Class Action Settlement Agreement.

10 The DO NOTHING section now reads: “By doing nothing, you will receive a share of the
11 settlement proceeds, and you will give up any rights to sue Defendants (and all of their current or former
12 subsidiaries, parents, divisions, affiliates, predecessors, insurers, agents, employees, successors, assigns,
13 officers, directors, employees, partners, attorneys, managing agents, attorneys, human resources
14 representatives, payroll representatives, executors, and shareholders, including their respective pension,
15 profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such
16 plans, and those plans’ respective current or former trustees and administrators, agents, employees, and
17 fiduciaries) for claims pled or arising out of or reasonably related to the transactions and occurrences pled
18 in the Complaint s, including but not limited to all of the following: (1) Violation of Labor Code sections
19 1194, 1194.2, 1198, 1199 and WAGE ORDER NO. 1 (Failure to Pay All Wages Owed); (2) Violation of
20 Labor Code sections 510, 1194, 1194.2, 1198, and WAGE ORDER NO. 1 (Failure to Pay All Overtime
21 Wages Owed); (3) Violation of Labor Code sections 226.7, 512, and WAGE ORDER NO. 1 (Failure to
22 Provide Meal Periods and Pay Missed Meal Period Premiums); (4) Violation of Labor Code sections
23 226.7 and WAGE ORDER NO. 1 (Failure to Provide Rest Breaks and Pay Missed Rest Break Premiums)
24 (5) Violation of Labor Code sections 226 and 226.3 (Non-Compliant Wage Statements); (6) Violation of
25 Labor Code section 204 (Failure to Pay All Wages Owed in a Timely Manner); (7) Violation of Labor
26 Code sections 201, 202 and 203 (Final Wages Not Timely Paid); (8) Violation of Labor Code sections
27 551 and 552 (Failure to Provide a Day of Rest); (9) Violation of Labor Code section 2802 (Failure to
28 Reimburse Business Expenses); (10) Violation of Labor Code sections 245, 246, 247, and 248 (Failure to

1 Provide Paid Sick Days); (11) Violations of Labor Code sections 2699, *et. seq.*, and 558 (PAGA and other
2 penalties); (12) Violations of Business & Professions Code sections 17200, *et seq.*; (13) any other claims
3 or penalties under the wage and hour laws pleaded or that reasonably could have been alleged in the
4 Complaint and Class Action; (14) all damages, penalties, interest and other amounts recoverable under
5 said causes of action under California law and federal law, to the extent permissible, including but not
6 limited to the Labor Code as to the facts alleged in the Class Action, the applicable Wage Orders as to the
7 facts alleged in the Complaints, and the California Unfair Competition Law; and (15) all allegations,
8 causes of action, liabilities, demands, obligations, and claims for penalties pursuant to PAGA based on
9 any and all claims that are asserted or could be asserted based on the facts alleged in the First Amended
10 Complaint that arose during the PAGA Period, which includes, but is not necessarily limited to, violations
11 of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 245, 246, 247, 248, 510,
12 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.” See **Exhibit F**.

13 Section 7 now reads: “The claims you will Release by doing nothing are: all claims asserted or
14 that could have been asserted in the lawsuit, including those for (1) violation of Labor Code sections 1194,
15 1194.2, 1198, 1199 and WAGE ORDER NO. 1 (Failure to Pay All Wages Owed); (2) violation of Labor
16 Code sections 510, 1194, 1194.2, 1198, and WAGE ORDER NO. 1 (Failure to Pay All Overtime Wages
17 Owed); (3) violation of Labor Code sections 226.7, 512, and WAGE ORDER NO. 1 (Failure to Provide
18 Meal Periods and Pay Missed Meal Period Premiums); (4) violation of Labor Code sections 226.7 and
19 WAGE ORDER NO. 1 (Failure to Provide Rest Breaks and Pay Missed Rest Break Premiums) (5)
20 violation of Labor Code sections 226 and 226.3 (Non-Compliant Wage Statements); (6) violation of Labor
21 Code section 204 (Failure to Pay All Wages Owed in a Timely Manner); (7) violation of Labor Code
22 sections 201, 202 and 203 (Final Wages Not Timely Paid); (8) violation of Labor Code sections 551 and
23 552 (Failure to Provide a Day of Rest); (9) violation of Labor Code section 2802 (Failure to Reimburse
24 Business Expenses); (10) violation of Labor Code sections 245, 246, 247, and 248 (Failure to Provide
25 Paid Sick Days); (11) violations of Labor Code sections 2699, *et. seq.*, and 558 (PAGA and other
26 penalties); (12) violations of Business & Professions Code sections 17200, *et seq.*; (13) any other claims
27 or penalties under the wage and hour laws pleaded or that reasonably could have been alleged in the
28 Complaint and Class Action; (14) all damages, penalties, interest and other amounts recoverable under

1 said causes of action under California law and federal law, to the extent permissible, including but not
2 limited to the Labor Code as to the facts alleged in the Class Action, the applicable Wage Orders as to the
3 facts alleged in the Complaints, and the California Unfair Competition Law; and (15) all allegations,
4 causes of action, liabilities, demands, obligations, and claims for penalties pursuant to PAGA based on
5 any and all claims that are asserted or could be asserted based on the facts alleged in the First Amended
6 Complaint that arose during the PAGA Period, which includes, but is not necessarily limited to, violations
7 of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 245, 246, 247, 248, 510,
8 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.” See **Exhibit F**.

9 **Issue:** *The ASK TO BE EXCLUDED (OPT OUT) section on p. 3 of the Class Notice and Section*
10 *9 on p. 7 should state that class members cannot opt out of the PAGA portion of the settlement and will*
11 *still receive a PAGA payment if eligible.*

12 **Resolution:** The Parties revised the ASK TO BE EXCLUDED (OPT OUT) section on page 3 of
13 the Class Notice and Section 9 on page 7 of the Class Notice to state that class members cannot opt out of
14 the PAGA portion of the settlement and will still receive a PAGA payment is eligible.

15 The ASK TO BE EXCLUDED (OPT OUT) section on page 3 now reads:

16 “Exclude yourself from this lawsuit. Keep your rights to file a separate claim against Defendants.”

17 “If you ask to be excluded, you **will not** receive a share of the settlement proceeds, but you keep
18 any rights you may have to bring your own suit against Defendants for the same legal claims in this
19 lawsuit.”

20 “You cannot exclude yourself from the PAGA portion of this lawsuit or settlement and will receive
21 PAGA payment if eligible.” See **Exhibit F**.

22 Section 9 on page 7 now reads, in pertinent: “You cannot opt out of the PAGA portion of the
23 settlement and will receive a PAGA payment if eligible.” See **Exhibit F**.

24 **Issue:** *The OBJECT section on page 3 of the Class Notice should make clear that if a class member*
25 *asks to be excluded, he or she may not also object.*

26 **Resolution:** The Parties revised the OBJECT section on page 3 of the Class Notice to make clear
27 that if a class member asks to be excluded, he or she may not also object.

28 The OBJECT section on page 3 of the Class Notice now reads:

1 “Object to the terms of this Settlement.”

2 “If you ask to be excluded from this lawsuit, you may **not** also object to the terms of the
3 settlement.” See **Exhibit F**.

4 **Issue:** *The net settlement amount listed in Section 5 of the Class Notice is incorrect. It should state*
5 *\$172,000.00.*

6 **Resolution:** The Parties revised the net settlement amount listed in Section 5 of the class notice to
7 state \$172,000.00. See **Exhibit F**.

8 **Issue:** *The Class Notice in §9 should reference the opt-out form.*

9 **Resolution:** The Parties revised Section 9 of the Class Notice to reference the opt-out form.

10 Section 9 of the Class Notice now reads, in pertinent:

11 “Anyone not wishing to participate in the settlement may exclude himself or herself (“opt out”)
12 by completing, signing, and mailing the “Opt-Out Form” included in this Notice packet indicating that
13 they do not want to participate in the settlement to the Claims Administrator, Rust Consulting, by XXXX,
14 In order to be valid, the Opt-Out Form must contain your full name, and any names used in the past, your
15 address, your social security number, and a clear and unequivocal statement that you want to be excluded
16 from the Settlement.”

17 “If your Opt-Out Form is postmarked after XXXX, it will be rejected, and you will be a
18 Participating Class Member and be bound by the settlement terms and release. Anyone who submits a
19 timely and valid Opt-Out Form shall not be deemed a Participating Class Member and will not receive
20 any payment as part of this settlement...” See **Exhibit F**.

21 **Issue:** *The Class Notice in §10 improperly requires: “Any attorney who will represent an*
22 *individual objecting to this Settlement who has not filed a written objection must file a notice of*
23 *appearance with the Judge and serve Class Counsel and Defense Counsel no later than _____.” This*
24 *requirement is too restrictive, and the sentence must be removed.*

25 **Resolution:** The Parties revised Section 10 of the Class Notice to remove the offending sentence.

26 The paragraph that contained the offending sentence in Section 10 of the Class Notice now reads:

27 “Any Class Member may make an objection at the Final Approval Hearing with or without filing
28 or serving any written objection. The Class Member may appear personally or through an attorney, at his

1 or her own expense, at the Final Approval hearing to present his or her objection directly to the Court.
2 The Final Approval and Fairness Hearing will be held in Department _____ of the County of Orange,
3 Superior Court of the State of California, located at 700 Civic Center Dr W, Santa Ana, California 92701
4 on [insert date], at XX (a.m./p.m.) (Pacific Time).” See **Exhibit F**.

5 **Issue:** *There is no explanation of the calculation for the individual class settlement payment in*
6 *Section 5 of the Class Notice.*

7 **Resolution:** The Parties updated Section 5 of the Class notice to include an explanation of the
8 calculation for the individual class settlement payment.

9 The Parties added the following language to Section 5 of the Class Notice:

10 “The Settlement Administrator will then calculate the Individual Settlement Shares for
11 Participating Class Members. The Individual Settlement Share is calculated based on each Participating
12 Class Member’s pro-rata share of the Net Settlement Amount (less Individual PAGA Payments) based on
13 workweeks during the Class Period as follows: (i) the number of weeks he or she worked as an hourly-
14 paid, non-exempt employee in California during the Class Period, divided by (ii) the total number of
15 weeks worked by all Participating Class Members collectively during the Class Period, which is then
16 multiplied by the Net Settlement Amount (less Individual PAGA Payments).” See **Exhibit F**.

17 **Issue:** *Exhibit C includes claim form language, but this is an opt-out settlement, and so the claim*
18 *form language must be deleted.*

19 **Resolution:** The Parties agreed that Exhibit C will not be used. In its place, the Parties provide the
20 Opt-Out Form, a true and correct copy of which is attached hereto as **Exhibit H**.

21 **Issue:** *Exhibit D is entitled Notice of Settlement Payment, but it appears to be a workweek dispute*
22 *form and change of address form. The form must be titled accurately.*

23 **Resolution:** The Parties revised the title of the Notice of Settlement Payment to accurately reflect
24 its subject matter. The Notice of Settlement Payment is now titled “Workweek Dispute and Change of
25 Personal Information Form.” See **Exhibit G**.

26 **Issue:** *Plaintiff has not shown that he served the LWDA with his moving papers. Plaintiff is ordered*
27 *to give notice of the ruling to the LWDA, and to defendant unless it waives notice, to serve the LWDA with*
28

1 his original moving papers as well as any new papers filed for future hearings, and to file a proof of
2 service showing such compliance.

3 **Resolution:** Plaintiff provided notice of the ruling to the LWDA on July 13, 2023. Defendant
4 waived notice of the ruling. Plaintiff also served the LWDA with his original moving papers on July 13,
5 2023 and with the papers filed in advance of the July 28, 2023 Preliminary Approval Hearing on July 14,
6 2023. Plaintiff filed the proof of service showing such compliance in conjunction with this declaration.

7 **Issue:** *Counsel should propose a realistic Final Approval Hearing date, bearing in mind that all*
8 *papers in support of the Final Approval Hearing, including detailed hourly breakdowns of plaintiff's*
9 *attorneys to support a lodestar cross-check, detailed plaintiff attorney cost breakdowns, an Administrator*
10 *declaration and invoice, and plaintiff's declaration to support the enhancement request, must be filed at*
11 *least 16 calendar days before the Final Approval Hearing date, to provide enough time for court review,*
12 *and must be served in compliance with CCP notice of motion requirements.*

13 **Resolution:** The Parties agree and propose November 15, 2023, or a date soon after as convenient
14 for the Court, as a realistic Final Approval Hearing date.

15 8. The Court requested red-lined versions of any revised papers being submitted with
16 Plaintiff's supplemental papers. Attached as **Exhibit I** is a true and correct copy of a red-line version of
17 the Class Notice. Attached as **Exhibit J** is a true and correct copy of a red-line version of the Notice of
18 Settlement Payment (now titled Workweek Dispute and Change of Personal Information Form).

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

21 Executed this ___ day of July 2023, in San Diego, California.

22
23
24 By _____
25 James M. Treglio, Esq.
26
27
28

EXHIBIT A



POTTER HANDY, LLP

A Law Firm

8033 Linda Vista Rd, Suite 200
San Diego, CA 92111

Rene Potter, Attorney
ReneP@PotterHandy.com
Jim Treglio
JimT@PotterHandy.com
Phone: (858) 375-7385
Fax: (888) 422-5191

July 20, 2021

Filed Via LWDA's PAGA Claim Notice Online Form

Copy Sent Via Certified Mail to:

Human Resources
Nor-Cal Beverage Co., Inc.
2150 Stone Blvd.
West Sacramento, CA 95691

Ms. Shannon Deary-Bell
Resident Agent for Service for
Nor-Cal Beverage Co., Inc.
2286 Stone Blvd.
West Sacramento, CA 95691

Nor-Cal Beverage Co., Inc.
2150 Stone Blvd.
West Sacramento, CA 95691

Re: Ricardo Alexander Ocampo v. Nor-Cal Beverage Co., Inc.,
California Labor Code § 2699 Penalties; Notice of Intent to File Suit

Dear Counsel:

This office represents Plaintiff Ricardo Alexander Ocampo ("Plaintiff") and a proposed group of current and former employees working for Nor-Cal Beverage Co., Inc., ("Defendants") in the State of California for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 551, 552, 1194, 1194.2, 1197, 1197.1, 1198,¹ 1199, as well as IWC Wage Order No. 1-2001. Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of the following groups of aggrieved employees:

¹ All alleged violations of IWC Wage Order 4-2001 are also deemed to be alleged violations of Labor Code §§ 1197 and 1198.

- (1) *all individuals who are or were employed by Defendant or its predecessor or merged entities in California as hourly, non-exempt employees, who worked for shifts over 10 hours and were not provided with second meal periods, from one year prior to the mailing of this notice through the present (“meal period aggrieved employees”);*
- (2) *all individuals who are or were employed by Defendant or its predecessor or merged entities in California as hourly, non-exempt employees, who worked shifts in excess of three and a half hours, from one year prior to the mailing of this notice through the present (“rest period aggrieved employees”);*
- (3) *all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as hourly, non-exempt employees, who work or worked in excess of eight hours in a day or forty hours in a workweek from any time from one year prior the filing of this notification through the present (“overtime aggrieved employees”); and*
- (4) *all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as hourly, non-exempt employees from one year prior to the mailing of this notice through the present (“wage statement aggrieved employees”).*

Collectively, hereinafter referred to as the “Aggrieved Employees” or “aggrieved employees.”

This letter is to provide notice to you and to the California Labor Workforce Development Agency of some of the facts and legal theories in connection with the above referenced aggrieved employees in compliance with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*²

Factual Background

Plaintiff and the aggrieved employees are and were employed by Nor-Cal Beverage Co., Inc., a company that boasts of being the largest independent beverage co-packer west of the Mississippi and a highly-respected equipment solutions provider. Plaintiff was hired as a Filler Machine Operator II assigned to Defendant’s production facility in West Sacramento on January 13, 2021 until he resigned on April 15, 2021. Defendant paid Plaintiff \$18.58

² See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) 2012 WL 10890355, at *4.

per hour.

Like all Aggrieved Employees, Plaintiff was not provided with a second meal period even if he worked for shifts over 10 hours. In addition, Plaintiff and the Aggrieved Employees were only given two 15-minute breaks although they worked for at least 12 hours daily. In most instances, the breaks were taken late or not given at all.

When Plaintiff joined the company, Defendant informed him that he will be paid overtime for work rendered beyond 40 hours per week. Although Plaintiff worked for at least 60 hours every week, he was not paid for his overtime work. Plaintiff would be paid for around four hours of overtime on some weeks and none at all on most weeks.

Finally, in many instances, Plaintiff and the Aggrieved Employees were made to work seven consecutive days without being given any rest days.

Claims Asserted by Plaintiff

i. Plaintiff and the Aggrieved Employees Were Not Compensated for All Hours Worked

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Labor Code § 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order 1-2001 § 4 also obligates employers to pay each employee minimum wages for all hours worked.

As noted above, Plaintiff and the aggrieved employees were only compensated for 40 hours of work each week, even if they worked for at least 60 hours weekly. While they would be paid for a few hours of overtime on some weeks, no overtime was paid on most weeks.

Plaintiff and the aggrieved employees were also not provided with second meal periods and additional rest breaks even if they worked for at least 12 hours daily. In most instances, the breaks were taken late or not given at all. As a result, Plaintiff and the aggrieved employees are not compensated for all hours worked.

In 2018, the California Supreme Court held in *Troester v. Starbucks, Inc.* (2018) 5

Cal.5th 829, that an employee must be compensated for any time in which they are under the control of their employer, and performing work, even if that amount of time, as here, is limited to a few minutes per day. Thus, by not compensating Plaintiff and the aggrieved employees for the time spent working beyond 40 hours per week and by not providing Plaintiff and the aggrieved employees with second meal periods and additional rest breaks even if they worked for at least 12 hours every day, Defendant has violated the Labor Code and the Wage Order.

Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff and the meal period aggrieved employees are not paid for all hours worked under Labor Code § 1194, the employee may recover minimum wages for the time associated with the overtime for which they received no compensation. (See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.) Since Defendant failed to provide Plaintiff and all aggrieved employees with compensation for all hours worked, including overtime hours, each are entitled to recover liquidated damages under Labor Code § 1194.2 through PAGA. Based upon these same factual allegations, Plaintiff also seeks penalties on behalf of all aggrieved employees penalties under Labor Code § 1199.

ii. Plaintiff and the Meal Period Aggrieved Employees Are Not and Were Not Provided with Meal Periods of Thirty Minutes of Interrupted Off-Duty Time

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. “An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. *Id.*

Generally, the DLSE and courts have “found that the nature of the work exception applies: ‘(1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer.’” (*Id.* at p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d

952, 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents an employee from being relieved *before* requiring an employee to take an on-duty meal period.” (*Lubin, supra*, 5 Cal. App. 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who requested on-duty meal periods determined that the nature of the work prevented officers from being relieved of all duty.” (*Id.* at p. 947; *Benton, supra*, 220 Cal. App. 4th at p. 729.)

As with rest periods, under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033. (Emphasis added.)

As a result of its meal period policies of not providing second meal periods even if Plaintiff and the aggrieved employees work for shifts over 10 hours each day, Defendant violated Labor Code § 512 and IWC Wage Order No. 1 by failing to provide second duty-free meal periods to Plaintiff and the aggrieved employees of 30 minutes or more.

Thus, Defendant unlawfully retained control of Plaintiff and the aggrieved employees during their meal periods, even though the nature of the work did not necessitate an on-duty meal period (and by failing to enter into proper on-duty meal period agreements). See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 275 (holding that on-premises breaks violate California law). As a result of Defendant’s failure to authorize or permit lawful meal periods, Plaintiff and the aggrieved employees did not receive second meal periods even if they worked for more than 10 hours per day. Defendant also failed to pay Plaintiff and the meal period aggrieved employees meal period premiums for each workday that the employees did not receive a compliant second meal period.

Labor Code § 226.7 provides “an employer shall not require an employee to work

during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Similarly, IWC Wage Order 1-2001 prohibits an employer from "employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order 1-2001 further obligates employers to provide an employee to "pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided." Accordingly, for each day that Plaintiff and the aggrieved employees did not receive compliant second meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage Order 1-2001.

iii. Plaintiff and the Aggrieved Employees were not Provided Duty Free Compliant Rest Periods

Pursuant to Labor Code § 226.7, and Wage Order 1-2001, Defendant failed to provide Plaintiff and the other rest period aggrieved employees with additional duty-free rest periods of not less than ten (10) minutes for every major fraction of four hours worked.

Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Under IWC Wage Order 1-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

Defendant failed to implement a lawful rest period policy that informed Plaintiff and the aggrieved employees of their right to receive lawful rest periods for shifts greater than 3.5 hours. Although Plaintiff and the aggrieved employees worked for at least 12 hours per day, Defendant only provided them with two (2) 15-minute breaks. In most instances, the breaks were taken late or not given at all. To the extent that Plaintiff and the rest period aggrieved employees could stop work during their shifts, they were nonetheless on-call, and were not provided with duty-free rest periods. *See Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016) (holding that on-duty rest breaks violate California law).

Pursuant to Labor Code § 226.7 and Wage Order 1-2001, Defendant failed to provide Plaintiff and the rest period aggrieved employees with additional duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked.

The *Brinker* Court explained in the context of rest breaks that employer liability

attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not-if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required-***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., supra, 53 Cal.4th at 1033. (Emphasis added.)

Since Defendant did not offer employees the opportunity to receive additional compliant off-duty ten minute rest periods, "the court may not conclude employees voluntarily chose to skip ... breaks." *Alberts v. Aurora Behavioral Health Care*, (2015) 241 Cal. App. 4th 388, 410 ("[i]f an employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."); accord *Brinker Rest. Corp. v. Sup. Ct., supra*, 53 Cal.4th at 1033 ("No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.").

Even an employer who maintains an otherwise compliant rest period policy, "reminded their employees of their availability-and the importance-of taking breaks on a daily basis, and even went so far as to conduct regular audits to ensure that employees were being offered rest breaks" will still be liable for rest period violations if the employees were not separately or properly compensated for the non-productive time associated with rest periods under a piece-rate compensation system. *Amaro v. Gerawan Farming, Inc.*, 2016 U.S. Dist. LEXIS 66842 * (E.D. Cal. May 19, 2016) *aff'd* *Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS 112540, 2016 WL 4440966, at * 11 (E.D. Cal. Aug. 22, 2016); rev. denied by 9th Cir. (9th Cir. Nov. 16, 2016).

In addition, Plaintiff and the rest period aggrieved employees were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with additional compliant rest period.

iv. Plaintiff and the Overtime Aggrieved Employees Were Not Paid Proper Overtime Compensation for All Hours Worked in Excess of 8 Hours in Day or Forty Hours in a Workweek

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the overtime aggrieved employees could not then agree and cannot now agree to work for a lesser wage than the amount proscribed by Labor Code §§ 510 and 1194.

For the reasons stated above, Plaintiff and the overtime aggrieved employees worked certain hours for which they were not paid. Plaintiff and the overtime aggrieved employees had to work beyond 40 hours each week. This time amounts and amounted to at least 20 hours per week. Because Plaintiff and the aggrieved employees spent eight hours or more working on “compensated” time, this uncompensated time for work done beyond eight hours each day and the lack of second meal periods and additional rest breaks should have been compensated at the overtime rate. Instead, no compensation was paid at all, in violation of Cal. Labor Code §§ 510, 1194, and Wage Order 1-2001. Plaintiff is an aggrieved employee for purposes of seeking penalties under PAGA.

v. Defendant Violated and Continues to Violate Labor Code § 204

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Due to Defendant’s failure to pay Plaintiff and the aggrieved employees for all rest and meal period premiums³ and overtime, Defendant failed to timely pay the aggrieved

³ Courts routinely find that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. See *e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug.

employees within seven (7) days of the close of the payroll period in accordance with Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

vi. Defendant's Violation of Labor Code §§ 201-203

As a result of Defendant's failure to pay wages to Plaintiff and the aggrieved employees for overtime, meal period minimum wages, and meal/rest period premiums, Defendant violated Labor Code § 203. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendant's faulty policies described above, all aggrieved employees whose employment with Defendant concluded were not compensated at the appropriate rate. Additionally, Defendant has failed to pay all aggrieved employees for all overtime, meal period premiums, and rest period premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

vii. Defendant's Violation of Labor Code §§ 226(a) and 226.3

Further, Defendant failed to provide Plaintiff and the aggrieved employees accurate itemized wage statements in accordance with Labor Code § 226(a) (1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

10, 2016) (denying the defendant's motion for summary judgment on the plaintiff's claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang's China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 "concerned only whether 'a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5'"); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant's motion for summary judgment because "the premium payments due under section 226.7 are to be considered "wages" for purposes of sections 203 and 226.7"]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3-4 [distinguishing *Kirby*, and finding "Plaintiffs' section 203 claim for failure to pay wages...can be based on amounts owed under section 226.7.".)

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Due to Defendant's failure to provide Plaintiff and the Aggrieved Employees lawful meal and rest periods (and pay missed rest period premiums), the wage statements issued by Defendant do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code § 226(a)(1), (2), (5), and (9) with respect to Plaintiff and the aggrieved employees.

Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant's violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”];

Pedroza v. PetSmart, Inc., No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).⁴

viii. Defendant’s Violation of Labor Code §§ 551 and 552

Further, Defendant failed to provide Plaintiff and the aggrieved employees rest days in accordance with Labor Code §§ 551 and 552, which provide as follows:

551. Every person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.

552.

No employer of labor shall cause his employees to work more than six days in seven.

Despite these requirements under the law, Defendant made Plaintiff and the aggrieved employees work for seven consecutive days on several workweeks without providing them with rest days, in violation of Labor Code §§ 551 and 552. *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074, 1083 (2017). Further, Plaintiff and the aggrieved employees do not fall within any exception to Labor Code §§ 551 and 552. They are not part-time employees as defined by Labor Code §556, as each works in excess of 30 hours in a workweek, and more than 6 hours in any one day of that workweek. Further, the nature of the work does not fit within any of the exceptions illuminated in Labor Code § 554, nor does it necessarily create a need to work more than seven consecutive days. As a result, Defendant has violated Labor Code §§ 551 and 552.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action and a Class Action against Defendants seeking PAGA penalties under Labor Code § 2699 to be brought by Plaintiff, individually and on behalf of the aggrieved employees, as defined above.

⁴ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326, *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees and all putative class members. If Defendants are interested in attempting to resolve this matter on a class-wide basis, including the PAGA claims, please contact me or have your lawyer contact me so that we can discuss an informal discovery plan and the possibility of early mediation on or before **August 10, 2021**. If we do not hear from you on or before **August 10, 2021**, we will proceed with this matter with the understanding that Defendants do not wish to negotiate an early resolution of this matter.

Respectfully submitted,

Jim Treglio

Jim Treglio

POTTER HANDY, LLP

EXHIBIT B



POTTER HANDY, LLP

A Law Firm

100 Pine St., Ste 1250
San Francisco, CA 94111

Rene Potter, Attorney
ReneP@PotterHandy.com
Jim Treglio
JimT@PotterHandy.com
Phone: (858) 375-7385
Fax: (888) 422-5191

November 11, 2022

Filed Via LWDA's PAGA Claim Notice Online Form

Copy Sent Via Certified Mail and Email to:

GREENBERG TRAURIG, LLP
Ellen M. Bronchetti, Esq.
101 Second Street Suite 2200
San Francisco, CA 94105
ellen.bronchetti@gtlaw.com

Ms. Shannon Deary-Bell
Resident Agent for Service for
Nor-Cal Beverage Co., Inc.
2286 Stone Blvd.
West Sacramento, CA 95691

Counsels for Nor-Cal Beverage Co., Inc.

Re: *Ricardo Alexander Ocampo v. Nor-Cal Beverage Co., Inc.,*
California Labor Code § 2699 Penalties; Amended Notice of Intent to File Suit

Dear Counsel:

This office represents Plaintiff Ricardo Alexander Ocampo ("Plaintiff") and a proposed group of current and former employees working for Nor-Cal Beverage Co., Inc., ("Defendants") in the State of California for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 245-248, 510, 512, 551, 552, 1194, 1194.2, 1197, 1197.1, 1198,¹ 1199, 2802, as well as IWC Wage Order No. 1-2001. Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of the following groups of aggrieved employees:

¹ All alleged violations of IWC Wage Order 4-2001 are also deemed to be alleged violations of Labor Code §§ 1197 and 1198.

- (1) all individuals who are or were employed by Defendants or their predecessor or merged entities in California as hourly, non-exempt employees, who worked for shifts over 10 hours and were not provided with second meal periods, from one year prior to the mailing of this notice through the present (“meal period aggrieved employees”);*
- (2) all individuals who are or were employed by Defendants or their predecessor or merged entities in California as hourly, non-exempt employees, who worked shifts in excess of three and a half hours, from one year prior to the mailing of this notice through the present (“rest period aggrieved employees”);*
- (3) all individuals who are or were employed by Defendants or their predecessor or merged entities in California as hourly, non-exempt employees, who work or worked in excess of eight hours in a day or forty hours in a workweek from any time from one year prior the filing of this notification through the present (“overtime aggrieved employees”);*
- (4) all individuals who are or were employed by Defendants or their predecessor or merged entities in California as hourly, non-exempt employees from one year prior to the mailing of this notice through the present (“wage statement aggrieved employees”);*
- (5) all individuals who are or were employed by Defendants or their predecessor or merged entities in California in an hourly, non-exempt position, who are or were required to spend business expenses without sufficient reimbursement for their expenses from one year prior to the filing of this notice through the present (“reimbursement aggrieved employees”); and*
- (6) all individuals who are or were employed by Defendants or their predecessor or merged entities in California as hourly, non-exempt employees, who were not provided with paid sick days from one year prior to the mailing of this notice through the present (“paid sick days aggrieved employees”).*

Collectively, hereinafter referred to as the “Aggrieved Employees” or “aggrieved employees.”

This letter is to provide notice to you and to the California Labor Workforce Development Agency of some of the facts and legal theories in connection with the above referenced aggrieved employees in compliance with the Private Attorneys General Act of

2004, pursuant to California Labor Code § 2698 *et seq.*²

Factual Background

Plaintiff and the aggrieved employees are and were employed by Nor-Cal Beverage Co., Inc., a company that boasts of being the largest independent beverage co-packer west of the Mississippi and a highly-respected equipment solutions provider. Plaintiff was hired as a Filler Machine Operator II assigned to Defendant's production facility in West Sacramento on January 13, 2021 until he resigned on April 15, 2021. Defendant paid Plaintiff \$18.58 per hour.

Like all Aggrieved Employees, Plaintiff was not provided with a second meal period even if he worked for shifts over 10 hours. In addition, Plaintiff and the Aggrieved Employees were only given two 15-minute breaks although they worked for at least 12 hours daily. In most instances, the breaks were taken late or not given at all.

When Plaintiff joined the company, Defendant informed him that he will be paid overtime for work rendered beyond 40 hours per week. Although Plaintiff worked for at least 60 hours every week, he was not paid for his overtime work. Plaintiff would be paid for around four hours of overtime on some weeks and none at all on most weeks.

In many instances, Plaintiff and the Aggrieved Employees were made to work seven consecutive days without being given any rest days.

Plaintiff and the Aggrieved Employees were made to use their personal mobile phones for business-related calls but Defendant failed to reimburse these expenses.

Finally, Defendants failed to provide Plaintiff and the Aggrieved Employees with paid sick days.

Claims Asserted by Plaintiff

- i. Plaintiff and the Aggrieved Employees Were Not Compensated for All Hours Worked

² See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) 2012 WL 10890355, at *4.

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Labor Code § 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order 1-2001 § 4 also obligates employers to pay each employee minimum wages for all hours worked.

As noted above, Plaintiff and the aggrieved employees were only compensated for 40 hours of work each week, even if they worked for at least 60 hours weekly. While they would be paid for a few hours of overtime on some weeks, no overtime was paid on most weeks.

Plaintiff and the aggrieved employees were also not provided with second meal periods and additional rest breaks even if they worked for at least 12 hours daily. In most instances, the breaks were taken late or not given at all. As a result, Plaintiff and the aggrieved employees are not compensated for all hours worked.

In 2018, the California Supreme Court held in *Troester v. Starbucks, Inc.* (2018) 5 Cal.5th 829, that an employee must be compensated for any time in which they are under the control of their employer, and performing work, even if that amount of time, as here, is limited to a few minutes per day. Thus, by not compensating Plaintiff and the aggrieved employees for the time spent working beyond 40 hours per week and by not providing Plaintiff and the aggrieved employees with second meal periods and additional rest breaks even if they worked for at least 12 hours every day, Defendant has violated the Labor Code and the Wage Order.

Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff and the meal period aggrieved employees are not paid for all hours worked under Labor Code § 1194, the employee may recover minimum wages for the time associated with the overtime for which they received no compensation. (See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage]; *accord Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.) Since Defendant failed to provide Plaintiff and all aggrieved employees with compensation for all hours worked, including overtime hours, each are entitled to recover liquidated damages under

Labor Code § 1194.2 through PAGA. Based upon these same factual allegations, Plaintiff also seeks penalties on behalf of all aggrieved employees penalties under Labor Code § 1199.

ii. Plaintiff and the Meal Period Aggrieved Employees Are Not and Were Not Provided with Meal Periods of Thirty Minutes of Interrupted Off-Duty Time

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. “An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. *Id.*

Generally, the DLSE and courts have “found that the nature of the work exception applies: ‘(1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer.’” (*Id.* at p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents an employee from being relieved *before* requiring an employee to take an on-duty meal period.” (*Lubin, supra*, 5 Cal. App. 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who requested on-duty meal periods determined that the nature of the work prevented officers from being relieved of all duty.” (*Id.* at p. 947; *Benton, supra*, 220 Cal. App. 4th at p. 729.)

As with rest periods, under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033. (Emphasis added.)

As a result of its meal period policies of not providing second meal periods even if Plaintiff and the aggrieved employees work for shifts over 10 hours each day, Defendant violated Labor Code § 512 and IWC Wage Order No. 1 by failing to provide second duty-free meal periods to Plaintiff and the aggrieved employees of 30 minutes or more.

Thus, Defendant unlawfully retained control of Plaintiff and the aggrieved employees during their meal periods, even though the nature of the work did not necessitate an on-duty meal period (and by failing to enter into proper on-duty meal period agreements). *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 275 (holding that on-premises breaks violate California law). As a result of Defendant's failure to authorize or permit lawful meal periods, Plaintiff and the aggrieved employees did not receive second meal periods even if they worked for more than 10 hours per day. Defendant also failed to pay Plaintiff and the meal period aggrieved employees meal period premiums for each workday that the employees did not receive a compliant second meal period.

Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Similarly, IWC Wage Order 1-2001 prohibits an employer from "employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order 1-2001 further obligates employers to provide an employee to "pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided." Accordingly, for each day that Plaintiff and the aggrieved employees did not receive compliant second meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage Order 1-2001.

iii. Plaintiff and the Aggrieved Employees were not Provided Duty Free Compliant Rest Periods

Pursuant to Labor Code § 226.7, and Wage Order 1-2001, Defendant failed to provide Plaintiff and the other rest period aggrieved employees with additional duty-free rest periods of not less than ten (10) minutes for every major fraction of four hours worked.

Labor Code § 226. 7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or

applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Under IWC Wage Order 1-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

Defendant failed to implement a lawful rest period policy that informed Plaintiff and the aggrieved employees of their right to receive lawful rest periods for shifts greater than 3.5 hours. Although Plaintiff and the aggrieved employees worked for at least 12 hours per day, Defendant only provided them with two (2) 15-minute breaks. In most instances, the breaks were taken late or not given at all. To the extent that Plaintiff and the rest period aggrieved employees could stop work during their shifts, they were nonetheless on-call, and were not provided with duty-free rest periods. *See Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016) (holding that on-duty rest breaks violate California law).

Pursuant to Labor Code § 226.7 and Wage Order 1-2001, Defendant failed to provide Plaintiff and the rest period aggrieved employees with additional duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked.

The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not-if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required-***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., *supra*, 53 Cal.4th at 1033. (Emphasis added.)

Since Defendant did not offer employees the opportunity to receive additional compliant off-duty ten minute rest periods, "the court may not conclude employees voluntarily chose to skip ... breaks." *Alberts v. Aurora Behavioral Health Care*, (2015) 241 Cal. App. 4th 388, 410 ("[i]f an employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."); accord *Brinker Rest. Corp. v. Sup. Ct.*, *supra*, 53 Cal.4th at 1033 ("No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.").

Even an employer who maintains an otherwise compliant rest period policy, "reminded their employees of their availability-and the importance-of taking breaks on a daily basis, and even went so far as to conduct regular audits to ensure that employees were being offered rest breaks" will still be liable for rest period violations if the employees were not separately or properly compensated for the non-productive time associated with rest periods under a piece-rate compensation system. *Amaro v. Gerawan Farming, Inc.*, 2016 U.S. Dist. LEXIS 66842 * (E.D. Cal. May 19, 2016) *aff'd* *Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS 112540, 2016 WL 4440966, at * 11 (E.D. Cal. Aug. 22, 2016); rev. denied by 9th Cir. (9th Cir. Nov. 16, 2016).

In addition, Plaintiff and the rest period aggrieved employees were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with additional compliant rest period.

iv. Plaintiff and the Overtime Aggrieved Employees Were Not Paid Proper Overtime Compensation for All Hours Worked in Excess of 8 Hours in Day or Forty Hours in a Workweek

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the overtime aggrieved employees could not then agree and cannot now agree to work for a lesser wage than the amount proscribed by Labor Code §§ 510 and 1194.

For the reasons stated above, Plaintiff and the overtime aggrieved employees worked certain hours for which they were not paid. Plaintiff and the overtime aggrieved employees had to work beyond 40 hours each week. This time amounts and amounted to at least 20 hours per week. Because Plaintiff and the aggrieved employees spent eight hours or more working on "compensated" time, this uncompensated time for work done beyond eight hours each day and the lack of second meal periods and additional rest breaks should have been compensated at the overtime rate. Instead, no compensation was paid at all, in violation of Cal. Labor Code §§ 510, 1194, and Wage Order 1-2001. Plaintiff is an aggrieved employee for purposes of seeking penalties under PAGA.

v. Defendant Violated and Continues to Violate Labor Code § 204

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Due to Defendant’s failure to pay Plaintiff and the aggrieved employees for all rest and meal period premiums³ and overtime, Defendant failed to timely pay the aggrieved employees within seven (7) days of the close of the payroll period in accordance with Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

vi. Defendant’s Violation of Labor Code §§ 201-203

As a result of Defendant’s failure to pay wages to Plaintiff and the aggrieved employees for overtime, meal period minimum wages, and meal/rest period premiums, Defendant violated Labor Code § 203. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

³ Courts routinely find that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts owed under section 226.7.”.)

Due to Defendant's faulty policies described above, all aggrieved employees whose employment with Defendant concluded were not compensated at the appropriate rate. Additionally, Defendant has failed to pay all aggrieved employees for all overtime, meal period premiums, and rest period premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

vii. Defendant's Violation of Labor Code §§ 226(a) and 226.3

Further, Defendant failed to provide Plaintiff and the aggrieved employees accurate itemized wage statements in accordance with Labor Code § 226(a) (1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Due to Defendant's failure to provide Plaintiff and the Aggrieved Employees lawful meal and rest periods (and pay missed rest period premiums), the wage statements issued by Defendant do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code § 226(a)(1), (2), (5), and (9) with respect to Plaintiff and the

aggrieved employees.

Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant’s violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).⁴

viii. Defendant’s Violation of Labor Code §§ 551 and 552

Further, Defendant failed to provide Plaintiff and the aggrieved employees rest days in accordance with Labor Code §§ 551 and 552, which provide as follows:

551. Every person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.

552.

No employer of labor shall cause his employees to work more than six days in seven.

Despite these requirements under the law, Defendant made Plaintiff and the aggrieved employees work for seven consecutive days on several workweeks without providing them with rest days, in violation of Labor Code §§ 551 and 552. *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074, 1083 (2017). Further, Plaintiff and the aggrieved employees do not fall within any exception to Labor Code §§ 551 and 552. They are not

⁴ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326, *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

part-time employees as defined by Labor Code §556, as each works in excess of 30 hours in a workweek, and more than 6 hours in any one day of that workweek. Further, the nature of the work does not fit within any of the exceptions illuminated in Labor Code § 554, nor does it necessarily create a need to work more than seven consecutive days. As a result, Defendant has violated Labor Code §§ 551 and 552.

ix. Defendants Violated, and Continues to Violate Labor Code § 2802

Plaintiff and the Aggrieved Employees had to use their personal cellphones to make business-related calls for Defendants. However, Defendants did not reimburse business expenses associated with these cellphone charges.

Cal. Labor Code §2802 (a) provides that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Thus, employees such as Plaintiff and the Reimbursement Aggrieved Employees, are entitled to reimbursement for the expenses they incur during the course of their duties. The duty to reimburse even extends to the use of equipment the employee may already own, and would be required to pay for anyway. *Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal. App. 4th 1137, 1144 (“The threshold question in this case is this: Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer would receive a windfall because it would be passing its operating expenses on to the employee.”) After all, the purpose of 2802 is to “prevent employers from passing along their operating expenses onto their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, (2007) 42 Cal. 4th 554, 562.

Here, Defendants did not have a reimbursement policy for Plaintiff and the Reimbursement Aggrieved Employees for their reasonable and necessary business expenses. Thus, it is clear that not only did Plaintiff and the Aggrieved Employees incur

expenses as a result of their employment, but that Defendants had a constructive knowledge of those expenses, and anticipating them, informed Plaintiff and the Aggrieved Employees that it would not provide any reimbursement. Therefore, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated § 2802 with respect to Plaintiff and the Aggrieved Employees.

x. Defendants' violation of Labor Code §§ 245-248

Labor Code § 246(a)(1) clearly states that: "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Labor Code §§ 245-248 provide guidelines on how to determine the number of paid sick days employees will be entitled to.

However, contrary to the mandate of Labor Code §§ 245-248, Defendants have failed and refused to provide Plaintiff and the aggrieved employees with paid sick days.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action and a Class Action against Defendants seeking PAGA penalties under Labor Code § 2699 to be brought by Plaintiff, individually and on behalf of the aggrieved employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees and all putative class members. If Defendants are interested in attempting to resolve this matter on a class-wide basis, including the PAGA claims, please contact me or have your lawyer contact me so that we can discuss an informal discovery plan and the possibility of early mediation on or before **December 5, 2022**. If we do not hear from you on or before **December 5, 2022**, we will proceed with this matter with the understanding that Defendants do not wish to negotiate an early resolution of this matter.

In all electronic correspondence you send me, kindly include the following addresses:

jimt@potterhandy.com

kevinw@potterhandy.com

waizaa@potterhandy.com

trinam@potterhandy.com

karent@potterhandy.com

ocampovnorcalbeveragecoincz9154022@projects.filevine.com

Respectfully submitted,

James M. Treglio

James M. Treglio

POTTER HANDY, LLP

EXHIBIT C

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Trina Mercado](#)
Subject: Thank you for submission of your PAGA Case.
Date: Tuesday, July 20, 2021 11:46:01 PM

7/20/2021

LWDA Case No. LWDA-CM-838658-21
Law Firm : Potter Handy LLP
Plaintiff Name : Ricardo Alexander Ocampo
Employer: Nor-Cal Beverage Co., Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT D

Trina Mercado

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Friday, November 11, 2022 7:38 PM
To: Trina Mercado
Subject: [EXTERNAL] Thank you for your Amended PAGA Claim Notice Submission.

11/11/2022 07:37:20 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: https://urldefense.proofpoint.com/v2/url?u=http-3A__labor.ca.gov_Private-5FAttorneys-5FGeneral-5FAct.htm&d=DwIFaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_Cdp gnVfiiMM&r=79Q0R7gAvLTZZIT49IU1pW5RKfx8IeeYjlgyJ3yK5RI&m=NmNVctA07MBZ3PG_qwYeicit-1Ku_JoJ-fD41YPCV_4&s=1pcdPTcQtUlGiwj6bW_SqixNHsqLOdgmynge dWWtX6s&e=

This email has been scanned for spam and viruses by Proofpoint Essentials. Visit the following link to report this email as spam:

https://us2.proofpointessentials.com/index01.php?mod_id=11&mod_option=logitem&mail_id=1668224257-fLqyiGl-2w8W&r_address=trinam%40potterhandy.com&report=1

EXHIBIT E

AMENDMENT TO SETTLEMENT AGREEMENT

In accordance with section III(M)(8) of the Settlement Agreement between the Parties hereto, the Parties hereby amend sections I(HH), III(F)(5)(b), III(I)(2)(e), and III(K) to the Settlement Agreement as required by the Court's May 05, 2023 order to provide as follows:

I(HH) PAGA Released Claims: PAGA Released Claims mean any and all allegations, causes of action, liabilities, demands, obligations, and claims against PAGA Released Parties for penalties pursuant to PAGA based on any and all claims that are asserted or could be asserted based on the facts alleged in the First Amended Complaint that arose during the PAGA Period, which includes, but is not necessarily limited to, alleged violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 245, 246, 247, 248, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

III(F)(5)(b) Tax Treatment for Individual Settlement Shares. Each Participating Class Member's Individual Settlement Share will be apportioned as follows: thirty-three and one-third percent (33 1/3%) wages (the "Wage Portion") and sixty-six and two-thirds percent (66 2/3%) interest, penalties, and reimbursements (collectively the "Non-Wage Portion"). The Wage Portion shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Subject to requirements of applicable law, payment of all amounts subject to withholdings will be made subject to backup withholding. Payroll tax withholding and deductions will not be taken from the Non-Wage Portion and instead a Form 1099 will be issued to each of the Participating Class Member, who will assume full responsibility and liability for the taxes due on their Non-Wage Portion of their Individual Settlement Shares and shall hold Defendant harmless from any and all liability with regard thereto. Participating Class Members will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Shares and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Shares.

III(I)(2)(e) Class Members may dispute the information provided in their Notice Packet but must do so in writing and it must be postmarked by the Response Deadline. To the extent Class Members dispute the number of weeks to which they have been credited or the amount of their Individual Settlement Share, Class Members must produce evidence to the Settlement Administrator showing that such information is inaccurate. The Settlement Administrator will jointly work with the Parties to resolve the dispute in good faith. Defendant's records will be presumed determinative, unless the Class Member produces payment stubs, wage statements or other documents which conflict with Defendant's records. If the Parties cannot agree over the workweeks to be credited, the Court shall make the final decision based on the information presented by the Class Member and Defendant.

III(K) PAGA Release. As of the Effective Final Settlement Date, all Eligible Aggrieved Employees and the State of California, including the LWDA, on their own behalf, and on behalf of their respective current, former and future heirs, spouses, executors, administrators, agents, and attorneys, may be forever barred as a matter of law from seeking any claims for penalties pursuant to PAGA for the PAGA Released Claims during the PAGA Period against PAGA Released Parties. The *res judicata* effect of the Final Approval will be the same as that of the PAGA Release.

IT IS SO AGREED AND APPROVED:

07/11/2023

Dated: _____, 2023

RICARDO ALEXANDER OCAMPO

Ricardo Ocampo

53C9515DC5D6A6015A033E24D2303B73

readysign

Dated: 7/12/, 2023

NOR-CAL BEVERAGE CO., INC.



Shannon Deary-Bell, CEO

Dated: 07/12/2023, 2023

POTTER HANDY LLP

James M. Treglio

E66D4686FB3D25DD70C737C7645D4A67

readysign

James M. Treglio, Esq.

Attorneys for Plaintiff Ricardo Alexander Ocampo,
individually and on behalf of all others similarly
situated

Dated: 07/13, 2023

GREENBERG TRAURIG, LLP



Ellen Bronchetti, Esq.

Attorneys for Nor-Cal Beverage Co., Inc.

EXHIBIT F

[CLASS MEMBER NAME]

**RICARDO ALEXANDER OCAMPO PLAINTIFF V. NOR-CAL
BEVERAGE CO, INC., DEFENDANT**

County of Orange, Superior Court of the State of California

Case No.: 30-2021-01226173-CU-OE-CXC

If you are one of the “Class Members ”defined below, a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS
IMPORTANT INFORMATION ABOUT YOUR RIGHTS.**

- This lawsuit involves “Class Members” defined as:

“All current and former hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in California from October 14, 2017, to [Insert Date of Preliminary Approval].”
- This lawsuit involves “Aggrieved Employees” defined as:

“All current and former hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in California from July 21, 2020, to [Insert Date of Preliminary Approval].”
- The “Class Period” covered by this lawsuit is October 14, 2017 through [Insert Date of Preliminary Approval].
- The “PAGA Period” covered by this lawsuit is July 21, 2020 through [Insert Date of Preliminary Approval].
- You are receiving this Notice because records reflect that you may be one of the Class Members, defined above.
- Plaintiff in this class action alleges that Defendants failed to pay Plaintiff and his fellow employees in California all wages owed; failed to pay Plaintiff and his fellow employees in California all overtime and other wages owed; failed to provide Plaintiff and his fellow employees meal periods and pay missed meal period premiums; failed to provide Plaintiff and his fellow employees paid rest breaks and pay rest break premiums; failed to provide accurate wage statements to Plaintiff and his fellow employees within the four years prior to the filing of this Complaint; failed to pay all wages owed in a timely manner; failed to pay all wages due to former employees based on the foregoing; failed to reimburse all employees’ business expenses’; failed to provide employees with paid sick days as required by applicable law; failed to provide a day of rest; engaged in unfair business

practices; and are liable for penalties under California's Private Attorneys General Act or "PAGA."

- Defendants deny the allegations in the lawsuit and contend that they are without foundation or merit. The Court has not made any decision regarding the merits of the lawsuit.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff's claims or Defendants' defenses.
- You will not be penalized or retaliated against for participating in this class action settlement.
- You have several options available to you:

DO NOTHING

By doing nothing, you will receive a share of the settlement proceeds, and you will give up any rights to sue Defendants (and all of their current or former subsidiaries, parents, divisions, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, directors, employees, partners, attorneys, managing agents, attorneys, human resources representatives, payroll representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries) for claims pled or arising out of or reasonably related to the transactions and occurrences pled in the Complaint s, including but not limited to all of the following: (1) Violation of Labor Code sections 1194, 1194.2, 1198, 1199 and WAGE ORDER NO. 1 (Failure to Pay All Wages Owed); (2) Violation of Labor Code sections 510, 1194, 1194.2, 1198, and WAGE ORDER NO. 1 (Failure to Pay All Overtime Wages Owed); (3) Violation of Labor Code sections 226.7, 512, and WAGE ORDER NO. 1 (Failure to Provide Meal Periods and Pay Missed Meal Period Premiums); (4) Violation of Labor Code sections 226.7 and WAGE ORDER NO. 1 (Failure to Provide Rest Breaks and Pay Missed Rest Break Premiums) (5) Violation of Labor Code sections 226 and 226.3 (Non-Compliant Wage Statements); (6) Violation of Labor Code section 204 (Failure to Pay All Wages Owed in a Timely Manner); (7) Violation of Labor Code sections 201, 202 and 203 (Final Wages Not Timely Paid); (8) Violation of Labor Code sections 551 and 552 (Failure to Provide a Day of Rest); (9) Violation of Labor Code section 2802 (Failure to Reimburse Business Expenses); (10) Violation of Labor Code sections 245, 246, 247, and 248 (Failure to Provide Paid Sick Days); (11) Violations of Labor Code sections 2699, *et. seq.*, and 558 (PAGA and other penalties); (12) Violations

of Business & Professions Code sections 17200, *et seq.*; (13) any other claims or penalties under the wage and hour laws pleaded or that reasonably could have been alleged in the Complaint and Class Action; (14) all damages, penalties, interest and other amounts recoverable under said causes of action under California law and federal law, to the extent permissible, including but not limited to the Labor Code as to the facts alleged in the Class Action, the applicable Wage Orders as to the facts alleged in the Complaints, and the California Unfair Competition Law; and (15) all allegations, causes of action, liabilities, demands, obligations, and claims for penalties pursuant to PAGA based on any and all claims that are asserted or could be asserted based on the facts alleged in the First Amended Complaint that arose during the PAGA Period, which includes, but is not necessarily limited to, violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 245, 246, 247, 248, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

**ASK TO BE
EXCLUDED (OPT
OUT)**

Exclude yourself from this lawsuit. Keep your rights to file a separate claim against Defendants.

If you ask to be excluded, you **will not** receive a share of the settlement proceeds, but you keep any rights you may have to bring your own suit against Defendants for the same legal claims in this lawsuit.

You cannot exclude yourself from the PAGA portion of this lawsuit or settlement and will receive PAGA payment if eligible.

OBJECT

Object to the terms of this Settlement.

If you ask to be excluded from this lawsuit, you may **not** also object to the terms of the settlement.

**Your options are explained in this notice.
To opt out or object, you must act by **XXXX**.**

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of the Class Members during the Class Period. You have received this notice because Defendant's records indicate that you are a Class Member of this class.

2. What is this lawsuit about?

This lawsuit was filed on October 13, 2021 in this class action on behalf of the Class Members during the Class Period and Aggrieved Employees during the PAGA Period. The Plaintiff

alleges in the lawsuit that Defendant failed to pay Plaintiff and his fellow employees in California all wages owed; failed to pay Plaintiff and his fellow employees in California all overtime wages owed; failed to provide Plaintiff and his fellow employees meal periods and pay missed meal period premiums; failed to provide Plaintiff and his fellow employees paid rest breaks and pay rest break premiums; failed to provide accurate wage statements to Plaintiff and his fellow employees within the four years prior to the filing of this Complaint; failed to pay all wages owed in a timely manner; failed to pay all wages due to former employees based on the foregoing; failed to provide a day of rest; engaged in unfair business practices; and are liable for penalties under California's Private Attorneys General Act or "PAGA."

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented. Although Defendant disputes Plaintiff's claims and asserts that they have complied with all of their legal obligations toward the Class Members and Aggrieved Employees, Defendant has also concluded that further litigation would be protracted and expensive.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Amount is \$390,000.00. Under the proposed settlement, the following amounts will be deducted before any payments are made to Class Members and Aggrieved Employees, subject to final approval by the Court:

- Attorneys' fees: \$130,000.00
- Litigation Costs: \$20,000.00
- Claims Administration Costs: \$13,000.00
- Class Representative Enhancement Payment: \$10,000.00
- Penalties to the Labor & Workforce Development Agency: The sum of \$60,000.00 is allocated to the PAGA payment, of which \$45,000.00 will be paid to the LWDA, and the remainder, \$15,000.00, will become part of the Net Settlement Amount

After these deductions, \$172,000.00 will be available for payment to the Class Members and Aggrieved Employees receiving this notice ("Net Settlement Amount").

The Individual PAGA Payment is calculated based on each Aggrieved Employee's pro-rata share of the PAGA Payment allocated to the Aggrieved Employees based on workweeks during the PAGA Period as follows: (i) the number of workweeks he or she worked as an hourly-paid, non-exempt employee in the State of California during the PAGA Period, divided by (ii) the total

number of workweeks worked by all Aggrieved Employees for the Defendant collectively during the PAGA Period, which is then multiplied by the PAGA Payment allocated to the Aggrieved Employees. The Settlement Administrator will use the Class Data to calculate the number of workweeks worked by each Aggrieved Employee based on their dates of employment with Defendant for purposes of this calculation.

The Settlement Administrator will then calculate the Individual Settlement Shares for Participating Class Members. The Individual Settlement Share is calculated based on each Participating Class Member's pro-rata share of the Net Settlement Amount (less Individual PAGA Payments) based on workweeks during the Class Period as follows: (i) the number of weeks he or she worked as an hourly-paid, non-exempt employee in California during the Class Period, divided by (ii) the total number of weeks worked by all Participating Class Members collectively during the Class Period, which is then multiplied by the Net Settlement Amount (less Individual PAGA Payments).

Thirty-three and one-third percent (33 1/3%) of your Individual Settlement Share payment will be treated as unpaid wages. Applicable taxes will be withheld from the wages portion of your Individual Settlement Share payment only and reported on an IRS Form W-2. The remaining sixty-six and two-thirds percent (66 2/3%) of your Individual Settlement Payment will be treated as penalties, interest, and reimbursement and will be paid pursuant to an IRS Form 1099.

The Settlement Administrator will send out settlement checks to Participating Class Members and Aggrieved Employees after the settlement is finally approved by the Court. You will have 180 days after the Settlement Administrator mails your settlement check to cash it; otherwise it will be voided and the amount of your settlement payment will be sent to the *cy pres* recipient Legal Aid at Work.

According to Defendant's records, the total number of workweeks during which you were under contract with the Defendant during the Class Period is _____, and the total number of workweeks that you were under contract with the Defendant during the Class Period to deliver two or more delivery routes is _____. If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on these pay periods, your estimated settlement amount is _____.

6. What if I disagree with the number of pay periods shown above?

If you believe the information in the notice is incorrect regarding the number of pay periods, you will need to write a letter setting forth the number of pay periods that you believe are correct. You may attach any relevant documentation in support thereof. You must mail your letter to:

Rust Consulting
[Insert Address]

You must submit such information by **XXXX**. Class Counsel and the Claims Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the Court shall make a decision regarding the dispute.

7. What do I have to do to receive a share of the settlement?

If you wish to receive an award under the terms of this settlement, you do not have to do anything. However, it is advisable to confirm your current mailing address with the Claims Administrator in order to ensure you receive your settlement share. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will Release by doing nothing are: all claims asserted or that could have been asserted in the lawsuit, including those for (1) violation of Labor Code sections 1194, 1194.2, 1198, 1199 and WAGE ORDER NO. 1 (Failure to Pay All Wages Owed); (2) violation of Labor Code sections 510, 1194, 1194.2, 1198, and WAGE ORDER NO. 1 (Failure to Pay All Overtime Wages Owed); (3) violation of Labor Code sections 226.7, 512, and WAGE ORDER NO. 1 (Failure to Provide Meal Periods and Pay Missed Meal Period Premiums); (4) violation of Labor Code sections 226.7 and WAGE ORDER NO. 1 (Failure to Provide Rest Breaks and Pay Missed Rest Break Premiums) (5) violation of Labor Code sections 226 and 226.3 (Non-Compliant Wage Statements); (6) violation of Labor Code section 204 (Failure to Pay All Wages Owed in a Timely Manner); (7) violation of Labor Code sections 201, 202 and 203 (Final Wages Not Timely Paid); (8) violation of Labor Code sections 551 and 552 (Failure to Provide a Day of Rest); (9) violation of Labor Code section 2802 (Failure to Reimburse Business Expenses); (10) violation of Labor Code sections 245, 246, 247, and 248 (Failure to Provide Paid Sick Days); (11) violations of Labor Code sections 2699, *et seq.*, and 558 (PAGA and other penalties); (12) violations of Business & Professions Code sections 17200, *et seq.*; (13) any other claims or penalties under the wage and hour laws pleaded or that reasonably could have been alleged in the Complaint and Class Action; (14) all damages, penalties, interest and other amounts recoverable under said causes of action under California law and federal law, to the extent permissible, including but not limited to the Labor Code as to the facts alleged in the Class Action, the applicable Wage Orders as to the facts alleged in the Complaints, and the California Unfair Competition Law; and (15) all allegations, causes of action, liabilities, demands, obligations, and claims for penalties pursuant to PAGA based on any and all claims that are asserted or could be asserted based on the facts alleged in the First Amended Complaint that arose during the PAGA Period, which includes, but is not necessarily limited to, violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 245, 246, 247, 248, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself (“opt out”) by completing, signing, and mailing the “Opt-Out Form” included in this Notice packet indicating that they do not want to participate in the settlement to the Claims Administrator, Rust Consulting, by XXXX. In order to be valid, the Opt-Out Form must contain your full name, and any names used in the past, your address, your social security number, and a clear and unequivocal statement that you want to be excluded from the Settlement.

If your Opt-Out Form is postmarked after XXXX, it will be rejected, and you will be a Participating Class Member and be bound by the settlement terms and release. Anyone who

submits a timely and valid Opt-Out Form shall not be deemed a Participating Class Member and will not receive any payment as part of this settlement. Such persons will keep any rights to sue Defendant separately about the claims made in this lawsuit.

You cannot opt out of the PAGA portion of the settlement and will receive a PAGA payment if eligible.

10. What if I have an objection?

A Class Member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Claims Administrator no later than **XXXX**.

If you ask to be excluded from this lawsuit, you may **not** also object to the terms of the settlement.

Any Class Member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. The Final Approval and Fairness Hearing will be held in Department _____ of the County of Orange, Superior Court of the State of California, located at 700 Civic Center Dr W, Santa Ana, California 92701 on **[insert date]**, at **XX (a.m./p.m.)** (Pacific Time).

Class Counsel:

POTTER HANDY, LLP

Mark D. Potter

Email: mark@potterhandy.com

James M. Treglio

Email: jimt@potterhandy.com

Tel: (858) 375-7385

Counsel for Defendant Nor-

Cal Beverage Co. Inc.

GREENBERG TRAURIG

Ellen.Bronchetti@gtlaw.com

11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Department _____ of the County of Orange, Superior Court of the State of California, located at 700 Civic Center Dr W, Santa Ana, California 92701 on **[insert date]**, at **XX (a.m./p.m.)** (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's Class Representative Service Awards, and the costs of claims administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also telephone the Claims Administrator, Rust Consulting (listed above), or Class Counsel (listed above).

14. Additional information and Courthouse social distancing information

This Notice only summarizes the lawsuit and settlement. For more information, you may inspect the Court file in Department _____ of the County of Orange, Superior Court of the State of California, located at 700 Civic Center Dr W, Santa Ana, California 92701. You may also review the settlement agreement and other documents on-line at [www._____](http://www._____.) or you may contact the Settlement Administrator as follows:

Rust Consulting

Telephone: _____

Facsimile: _____

Email: _____

Website: _____

You may also contact Class Counsel at the address and telephone number provided in Section 4 above. If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the settlement administrator.

If you are planning to come to the Final Approval Hearing, you should review and comply with the Court's Coronavirus (COVID-19) Guidance which may be found on the Court's website, at <https://www.cacd.uscourts.gov/news/coronavirus-covid-19-guidance>.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

EXHIBIT G

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA FOR THE
COUNTY OF ORANGE
RICARDO ALEXANDER OCAMPO V. NOR-CAL BEVERAGE CO, INC.**

CASE NO. 30-2021-01226173-CU-OE-CXC NOR-CAL SETTLEMENT CLASS

**WORKWEEK DISPUTE AND CHANGE OF
PERSONAL INFORMATION FORM**

MAIL TO:

Ocampo v. Nor-Cal Beverage Co. Inc., Settlement Administrator
c/o Rust Consulting
625 Marquette Avenue, Suite 880,
Minneapolis, MN 55402

INSTRUCTIONS

You must complete, sign, date and mail this Form to the address above **ONLY IF** (1) your personal information has changed and/or (2) you dispute the information. It is your responsibility to keep a current address on file with the Claims Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your information has changed:

Former Names (if any)

Street Address

City

State

Zip Code

(III) According to Defendants' records, you worked «Class_Workweeks» workweeks as a Class Member, an hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in California, from October 14, 2017. As a result, you are entitled to receive approximately «Class_estAmount».

(IV) According to Defendant's records, you worked «PAGA_Workweeks» workweeks as a PAGA Class Member, an hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in California from July 21, 2020. As a result, you are entitled to receive approximately «PAGA_estAmount».

«EmployeeName»

Rus

t Consulting ID: «ID»

- (V) If you disagree with the number of workweeks worked as stated in Paragraphs (III) or (IV) above, please explain why.

If you dispute the above information from Defendant's records, Defendant's records will control unless you are able to provide documentation that establishes otherwise, and that Defendant's records are mistaken. If there is a dispute about whether Defendant's information or yours is accurate, Defendant's Counsel, Plaintiff's Counsel, and the Claims Administrator will work to informally resolve the dispute. If the dispute cannot be resolved informally, the dispute will be resolved by the Court. This document must be postmarked no later than [Insert Date].

Please Note: All settlement payments may be subject to taxation and tax withholdings and may be reported to the IRS and state tax authorities. IRS Forms W-2 and 1099 (and equivalent California forms) will be issued pertaining to your settlement payment. The settlement checks will only be valid for 180 days and will not be re-issued.

EXHIBIT H

ELECTION NOT TO PARTICIPATE IN CLASS ACTION SETTLEMENT ("OPT-OUT FORM")

Superior Court of the State of California, County of Orange
Ricardo Alexander Ocampo v. Nor-Cal Beverage Co., Inc., et al.
Case No. 30-2021-01226173-CU-OE-CXC

ONLY SIGN AND MAIL THIS DOCUMENT IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS ACTION SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU WILL NOT RECEIVE A PAYMENT FROM THE CLASS ACTION SETTLEMENT.

This document must be postmarked no later than _____, 2023 and sent via U.S. Mail to:

Nor-Cal Beverage Settlement Administrator, C/O [INSERT SETTLEMENT ADMINISTRATOR]
[Insert Administrator Address]
[City, State ZIP]

By signing and mailing this form to exclude yourself from the class action settlement, you are agreeing to and confirming the following:

It is my decision not to participate in the class action settlement in *Ocampo v. Nor-Cal Beverage Co., Inc., et al.* I understand that by excluding myself I will not receive a settlement payment from the class action settlement.

I confirm that I am and/or was employed by Defendant as an hourly-paid or non-exempt employee in California during any part of the period of October 14, 2017, to [INSERT DATE OF PRELIMINARY APPROVAL]. I confirm that I have received and reviewed the Notice of Class Action Settlement in this action. I have decided to be excluded from the class, and I have decided **not** to participate in the proposed settlement.

Dated: _____

(Signature)

(Last Four Digits of Social Security Number)

(Type or print name and former name(s))

(Telephone Number)

(Address)

(Address continued)

EXHIBIT I

[CLASS MEMBER NAME]

**RICARDO ALEXANDER OCAMPO PLAINTIFF V. NOR-CAL
BEVERAGE CO, INC., DEFENDANT**

County of Orange, Superior Court of the State of California

Case No.: 30-2021-01226173-CU-OE-CXC

If you are one of the “Class Members” ~~Eligible Aggrieved Employees~~ (Class Members) defined below, a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS
IMPORTANT INFORMATION ABOUT YOUR RIGHTS.**

- This lawsuit involves “Class Members” ~~Eligible Employees~~ defined as:

“All current and former hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in California from October 14~~3~~, 2017, to [Insert Date of Preliminary Approval] ~~the date of Preliminary Approval.~~”

- This lawsuit involves “Aggrieved Employees” defined as:

“All current and former hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in California from July 21, 2020, to [Insert Date of Preliminary Approval].”

- The “Class Period” covered by this lawsuit is October 14~~3~~, 2017 through [Insert Date of Preliminary Approval] ~~the date of a Preliminary Approval Order entered by the Court.~~

- The “PAGA Period” covered by this lawsuit is July 21, 2020 through [Insert Date of Preliminary Approval].

- You are receiving this Notice because records reflect that you may be one of the Class Members, defined above.

- Plaintiff in this class action alleges that Defendants failed to pay Plaintiff and his fellow employees in California all wages owed; failed to pay Plaintiff and his fellow employees in California all overtime and other wages owed; failed to provide Plaintiff and his fellow employees meal periods and pay missed meal period premiums; failed to provide Plaintiff and his fellow employees paid rest breaks and pay rest break premiums; failed to provide accurate wage statements to Plaintiff and his fellow employees within the four years prior to the filing of this Complaint; failed to pay all wages owed in a timely manner; failed to pay all wages due to former employees based on the foregoing; failed to reimburse all employees’ business expenses; failed to provide employees with paid sick days as

required by applicable law; failed to provide a day of rest; engaged in unfair business practices; and are liable for penalties under California's Private Attorneys General Act or "PAGA."

- Defendants deny the allegations in the lawsuit and contend that they are without foundation or merit. The Court has not made any decision regarding the merits of the lawsuit.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff's claims or Defendants' defenses.
- You will not be penalized or retaliated against for participating in this class action settlement.
- You have several options available to you:

DO NOTHING

By doing nothing, you will receive a share of the settlement proceeds, and you will give up any rights to sue Defendants (and all of their current or former subsidiaries, parents, divisions, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, directors, employees, partners, attorneys, managing agents, attorneys, human resources representatives, payroll representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries) for claims pled or arising out of or reasonably related to the transactions and occurrences pled in the Complaint s, including but not limited to all of the following: (1) Violation of Labor Code sections 1194, 1194.2, 1198, 1199 and WAGE ORDER NO. 1 (Failure to Pay All Wages Owed); (2) Violation of Labor Code sections 510, 1194, 1194.2, 1198, and WAGE ORDER NO. 1 (Failure to Pay All Overtime Wages Owed); (3) Violation of Labor Code sections 226.7, 512, and WAGE ORDER NO. 1 (Failure to Provide Meal Periods and Pay Missed Meal Period Premiums); (4) Violation of Labor Code sections 226.7 and WAGE ORDER NO. 1 (Failure to Provide Rest Breaks and Pay Missed Rest Break Premiums) (5) Violation of Labor Code sections 226 and 226.3 (Non-Compliant Wage Statements); (6) Violation of Labor Code section 204 (Failure to Pay All Wages Owed in a Timely Manner); (7) Violation of Labor Code sections 201, 202 and 203 (Final Wages Not Timely Paid); (8) Violation of Labor Code sections 551 and 552 (Failure to Provide a Day of Rest); (9) Violation of Labor Code section 2802 (Failure to Reimburse Business Expenses); (10) Violation of Labor Code sections 245, 246, 247, and 248 (Failure to Provide Paid Sick Days); (11) Violations of Labor Code sections

2699, et. seq., and 558 (PAGA and other penalties); (12) Violations of Business & Professions Code sections 17200, et seq.; (13) any other claims or penalties under the wage and hour laws pleaded or that reasonably could have been alleged in the Complaint and Class Action; (14) all damages, penalties, interest and other amounts recoverable under said causes of action under California law and federal law, to the extent permissible, including but not limited to the Labor Code as to the facts alleged in the Class Action, the applicable Wage Orders as to the facts alleged in the Complaints, and the California Unfair Competition Law; and (15) all allegations, causes of action, liabilities, demands, obligations, and claims for penalties pursuant to PAGA based on any and all claims that are asserted or could be asserted based on the facts alleged in the First Amended Complaint that arose during the PAGA Period, which includes, but is not necessarily limited to, violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 245, 246, 247, 248, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

**ASK TO BE
EXCLUDED (OPT
OUT)**

Exclude yourself from this lawsuit. Keep your rights to file a separate claim against Defendants.

If you ask to be excluded, you **will not** receive a share of the settlement proceeds, but you keep any rights you may have to bring your own suit against Defendants for the same legal claims in this lawsuit.

You cannot exclude yourself from the PAGA portion of this lawsuit or settlement and will receive PAGA payment if eligible.

OBJECT

Object to the terms of this Settlement.

If you ask to be excluded from this lawsuit, you may **not** also object to the terms of the settlement.

**Your options are explained in this notice.
To opt out or object, you must act by **XXXX**.**

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of the Class Members~~Eligible Aggrieved Employees~~ during the Class Period. You have received this notice because Defendant's records indicate that you are an Class Member~~"Eligible Aggrieved Employee"~~ of this class.

2. What is this lawsuit about?

This lawsuit was filed on October 13, 2021 in this class action on behalf of the Class Members~~Eligible Aggrieved Employees~~ during the Class Period and Aggrieved Employees during the PAGA Period. The Plaintiff alleges in the lawsuit that Defendant failed to pay Plaintiff and his fellow employees in California all wages owed; failed to pay Plaintiff and his fellow employees in California all overtime wages owed; failed to provide Plaintiff and his fellow employees meal periods and pay missed meal period premiums; failed to provide Plaintiff and his fellow employees paid rest breaks and pay rest break premiums; failed to provide accurate wage statements to Plaintiff and his fellow employees within the four years prior to the filing of this Complaint; failed to pay all wages owed in a timely manner; failed to pay all wages due to former employees based on the foregoing; failed to provide a day of rest; engaged in unfair business practices; and are liable for penalties under California's Private Attorneys General Act or "PAGA."

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented. Although Defendant disputes Plaintiff's claims and asserts that they have complied with all of their legal obligations toward the Class Members and Aggrieved Employees~~Eligible Aggrieved Employees~~, Defendant has also concluded that further litigation would be protracted and expensive.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Amount is \$390,000.00. Under the proposed settlement, the following amounts will be deducted before any payments are made to ~~Eligible Aggrieved Employees~~Class Members and Aggrieved Employees, subject to final approval by the Court:

- Attorneys' fees: \$130,000.00
- Litigation Costs: \$20,000.00
- Claims Administration Costs: \$13,000.00
- Class Representative Enhancement Payment: \$10,000.00
- Penalties to the Labor & Workforce Development Agency: The sum of \$60,000.00 is allocated to the PAGA payment, of which \$45,000.00 will be paid to the LWDA, and the remainder, \$15,000.00, will become part of the Net Settlement Amount

After these deductions, \$172~~60~~,000.00 will be available for payment to the ~~Eligible Aggrieved Employees~~Class Members and Aggrieved Employees receiving this notice ("Net Settlement Amount").

The Individual PAGA Payment is calculated based on each ~~Eligible~~-Aggrieved Employee's pro-rata share of the PAGA Payment allocated to the ~~Eligible~~-Aggrieved Employees based on workweeks during the PAGA Period as follows: (i) the number of workweeks he or she worked as an hourly-paid, non-exempt employee in the State of California during the PAGA Period, divided by (ii) the total number of workweeks worked by all ~~Eligible~~-Aggrieved Employees for the Defendant collectively during the PAGA Period, which is then multiplied by the PAGA Payment allocated to the ~~Eligible~~-Aggrieved Employees. The Settlement Administrator will use the Class Data to calculate the number of workweeks worked by each ~~Eligible~~-Aggrieved Employee based on their dates of employment with Defendant for purposes of this calculation.

~~Eligible Aggrieved Employees are not required to submit a claim form to receive their Individual PAGA Payment.~~ The Settlement Administrator will then calculate the Individual Settlement Shares for Participating Class Members. The Individual Settlement Share is calculated based on each Participating Class Member's pro-rata share of the Net Settlement Amount (less Individual PAGA Payments) based on workweeks during the Class Period as follows: (i) the number of weeks he or she worked as an hourly-paid, non-exempt employee in California during the Class Period, divided by (ii) the total number of weeks worked by all Participating Class Members collectively during the Class Period, which is then multiplied by the Net Settlement Amount (less Individual PAGA Payments).

Thirty-three and one-third percent (33 1/3%) of your Individual Settlement Share payment will be treated as unpaid wages. Applicable taxes will be withheld from the wages portion of your Individual Settlement Share payment only and reported on an IRS Form W-2. The remaining sixty-six and two-thirds percent (66 2/3%) of your Individual Settlement Payment will be treated as penalties, interest, and reimbursement and will be paid pursuant to an IRS Form 1099.

The Settlement Administrator will send out settlement checks to ~~class members~~Participating Class Members and Aggrieved Employees after the settlement is finally approved by the Court. You will have 180 days after the Settlement Administrator mails your settlement check to cash it; otherwise it will be voided and the amount of your settlement payment will be sent to the *cy pres* recipient Legal Aid at Work.

~~For tax purposes, the Settlement Payments will be considered as income reported on an IRS Form 1099. Nothing in this Notice should be construed as providing you with tax advice. You should consult with your tax advisor concerning the tax consequences of the payment you receive. You agree to hold harmless Defendants from any liability for taxes, fees, costs, or assessments resulting from your failure to timely pay taxes, interest, fees, or penalties owed.~~

According to Defendant's records, the total number of workweeks during which you were under contract with the Defendant during the Class Period is _____, and the total number of workweeks that you were under contract with the Defendant during the Class Period to deliver two or more delivery routes is _____. If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on these pay periods, your estimated settlement amount is _____.

6. What if I disagree with the number of pay periods shown above?

If you believe the information in the notice is incorrect regarding the number of pay periods, you will need to write a letter setting forth the number of pay periods that you believe are correct. You may attach any relevant documentation in support thereof. You must mail your letter to:

Rust Consulting
[Insert Address]

You must submit such information by XXXX. Class Counsel and the Claims Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the ~~Claims Administrator~~Court shall ~~review all information, material and documents and~~ make a decision regarding the dispute.

7. What do I have to do to receive a share of the settlement?

If you wish to receive an award under the terms of this settlement, you do not have to do anything. However, it is advisable to confirm your current mailing address with the Claims Administrator in order to ensure you receive your settlement share. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will Release by doing nothing are: all claims asserted or that could have been asserted in the lawsuit, including those for (1) violation of Labor Code sections 1194, 1194.2, 1198, 1199 and WAGE ORDER NO. 1 (Failure to Pay All Wages Owed); (2) violation of Labor Code sections 510, 1194, 1194.2, 1198, and WAGE ORDER NO. 1 (Failure to Pay All Overtime Wages Owed); (3) violation of Labor Code sections 226.7, 512, and WAGE ORDER NO. 1 (Failure to Provide Meal Periods and Pay Missed Meal Period Premiums); (4) violation of Labor Code sections 226.7 and WAGE ORDER NO. 1 (Failure to Provide Rest Breaks and Pay Missed Rest Break Premiums) (5) violation of Labor Code sections 226 and 226.3 (Non-Compliant Wage Statements); (6) violation of Labor Code section 204 (Failure to Pay All Wages Owed in a Timely Manner); (7) violation of Labor Code sections 201, 202 and 203 (Final Wages Not Timely Paid); (8) violation of Labor Code sections 551 and 552 (Failure to Provide a Day of Rest); (9) violation of Labor Code section 2802 (Failure to Reimburse Business Expenses); (10) violation of Labor Code sections 245, 246, 247, and 248 (Failure to Provide Paid Sick Days); (11) violations of Labor Code sections 2699, *et. seq.*, and 558 (PAGA and other penalties); (12) violations of Business & Professions Code sections 17200, *et seq.*; (13) any other claims or penalties under the wage and hour laws pleaded or that reasonably could have been alleged in the Complaint and Class Action; (14) all damages, penalties, interest and other amounts recoverable under said causes of action under California law and federal law, to the extent permissible, including but not limited to the Labor Code as to the facts alleged in the Class Action, the applicable Wage Orders as to the facts alleged in the Complaints, and the California Unfair Competition Law; and (15) all allegations, causes of action, liabilities, demands, obligations, and claims for penalties pursuant to PAGA based on any and all claims that are asserted or could be asserted based on the facts alleged in the First Amended Complaint that arose during the PAGA Period, which includes, but is not

necessarily limited to, violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 245, 246, 247, 248, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. ~~misclassification, failure to pay wages, failure to provide lawful meal and rest periods, failure to maintain required records, failure to furnish accurate itemized wage statements, failure to indemnify for necessary business expenditures, violation of bond requirements, unfair business practices, and are penalties under California's Private Attorneys General Act or "PAGA."~~

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself ("opt out") by completing, signing, and mailing the "Opt-Out Form" included in this Notice packet ~~a letter~~ indicating that they do not want to participate in the settlement to the Claims Administrator, Rust Consulting, by **XXXX**. In order to be valid, the ~~letter~~ Opt-Out Form must contain your full name, and any names used in the past, your address, your social security number, and a clear and unequivocal statement that you want to be excluded from the Settlement.

If your ~~Request for Exclusion~~ Opt-Out Form is postmarked after **XXXX**, it will be rejected, and you will be a Participating ~~Eligible Aggrieved Employee~~ Class Member and be bound by the settlement terms and release. Anyone who submits a timely and valid ~~Request for Exclusion~~ Opt-Out Form shall not be deemed a Participating ~~Eligible Aggrieved Employee~~ Class Member and will not receive any payment as part of this settlement. Such persons will keep any rights to sue Defendant separately about the claims made in this lawsuit.

You cannot opt out of the PAGA portion of the settlement and will receive a PAGA payment if eligible.

10. What if I have an objection?

A ~~class member~~ Class Member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Claims Administrator no later than **XXXX**.

If you ask to be excluded from this lawsuit, you may **not** also object to the terms of the settlement.

Any ~~class member~~ Class Member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. ~~Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Judge and serve Class Counsel and Defense Counsel no later than _____.~~ The Final Approval and Fairness Hearing will be held in Department _____ of the County of Orange, Superior Court of the State of California, located at 700 Civic Center Dr W, Santa Ana, California 92701 on **[insert date]**, at **XX (a.m./p.m.)** (Pacific Time).

Class Counsel:
POTTER HANDY, LLP
Mark D. Potter
Email: mark@potterhandy.com

Counsel for Defendant Nor-
Cal Beverage Co. Inc.

James M. Treglio
Email: jimt@potterhandy.com
Tel: (858) 375-7385

GREENBERG TRAURIG

Ellen.Bronchetti@gtlaw.com

11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Department _____ of the County of Orange, Superior Court of the State of California, located at 700 Civic Center Dr W, Santa Ana, California 92701 on [insert date], at XX (a.m./p.m.) (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's Class Representative Service Awards, and the costs of claims administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also telephone the Claims Administrator, Rust Consulting (listed above), or Class Counsel (listed above).

14. Additional information and Courthouse social distancing information

This Notice only summarizes the lawsuit and settlement. For more information, you may inspect the Court file in Department _____ of the County of Orange, Superior Court of the State of California, located at 700 Civic Center Dr W, Santa Ana, California 92701. You may also review the settlement agreement and other documents on-line at www. _____ or you may contact the Settlement Administrator as follows:

Rust Consulting

Telephone: _____

Facsimile: _____

Email: _____

Website: _____

You may also contact Class Counsel at the address and telephone number provided in Section 4 above. If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the settlement administrator.

If you are planning to come to the Final Approval Hearing, you should review and comply with the Court's Coronavirus (COVID-19) Guidance which may be found on the Court's website, at <https://www.cacd.uscourts.gov/news/coronavirus-covid-19-guidance>.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

EXHIBIT J

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA FOR THE
COUNTY OF ORANGE
RICARDO ALEXANDER OCAMPO V. NOR-CAL BEVERAGE CO, INC.**

CASE NO. 30-2021-01226173-CU-OE-CXC NOR-CAL SETTLEMENT CLASS

**WORKWEEK DISPUTE AND CHANGE OF
PERSONAL INFORMATION FORM**
NOTICE OF SETTLEMENT PAYMENT

MAIL TO:

Ocampo v. Nor-Cal Beverage Co. Inc., Settlement Administrator
c/o Rust Consulting
625 Marquette Avenue, Suite 880,
Minneapolis, MN 55402

INSTRUCTIONS

You must complete, sign, date and mail this Form to the address above **ONLY IF** (1) your personal information has changed and/or (2) you dispute the information. It is your responsibility to keep a current address on file with the Claims Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your information has changed:

Former Names (if any)

Street Address

City

State

Zip Code

(III) According to Defendants' records, you worked «Class_Workweeks» workweeks as a Class Member, an _____ hourly-paid, _____ non-exempt _____ employees _____ employed by Nor-Cal Beverage Co., Inc. in California, from October 14, 2017. As a result, you are entitled to receive approximately «Class_estAmount».

(IV) According to Defendant's records, you worked «PAGA_Workweeks» workweeks as a PAGA Class Member, an hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in California from July 21, 2020. As a

result, you are entitled to receive approximately «PAGA_estAmount».

(V) If you disagree with the number of workweeks worked as stated in Paragraphs (III) or (IV) above, please explain why.

If you dispute the above information from Defendant's records, Defendant's records will control unless you are able to provide documentation that establishes otherwise, and that Defendant's records are mistaken. If there is a dispute about whether Defendant's information or yours is accurate, Defendant's Counsel, Plaintiff's Counsel, and the Claims Administrator will work to informally resolve the dispute. ~~and~~ If the dispute cannot be resolved informally, the dispute will be resolved by the ~~Claims Administrator~~Court. This document must be postmarked no later ~~than~~ than [Insert Date].

Please Note: All settlement payments may be subject to taxation and tax withholdings and may be reported to the IRS and state tax authorities. IRS Forms W-2 and 1099 (and equivalent California forms) will be issued pertaining to your settlement payment. The settlement checks will only be valid for 180 days and will not be re-issued.