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Attorneys for Plaintiffs LANDON JONES, ZEHRA KAZMI, and DIANA O'BYRNE
on behalf of themselves and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

LANDON JONES, on behalf of himself and
on behalf of all other aggrieved employees,

Plaintiff,

vs.

NESPRESSO USA, INC, a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 25STCV03443

CLASS ACTION

Assigned for All Purposes To:

Hon. Tony L. Richardson

Dept.: 415

**DECLARATION OF ENOCH J. KIM IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT**

*[filed concurrently with Plaintiffs' Notice of
Motion and Motion; Memorandum of Points and
Authorities; Declarations of Kimberly Sutherland,
Jarrett Gorlick, Landon Jones, Zehra Kazmi, and
Diana O'Byrne; and [Proposed] Order]*

Date: January 11, 2027

Time: 8:30 a.m.

Dept.: 415

Reservation ID: 687435204543

Original Complaint Filed: February 7, 2025

First Amended Complaint Filed: May 1, 2026

Trial Date: None Set

DECLARATION OF ENOCH J. KIM

I, Enoch J. Kim, declare as follows:

1. I am an attorney licensed and admitted to practice before all courts of the State of California and the United States District Court for the Central, Southern, Eastern, and Northern Districts of California. I am Senior Counsel at D.Law, Inc. and counsel for Plaintiffs Landon Jones, Zehra Kazmi, And Diana O’Byrne (“Plaintiffs”), on behalf of themselves and all other similarly situated employees of Defendant Nespresso USA, Inc. (“Defendant”) (Plaintiffs and Defendant collectively referred to herein as “the Parties”).

2. All of the matters set forth herein are within my personal knowledge. I submit this Declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement Agreement (“Motion”). A true and correct copy of the Parties’ Class Action and PAGA Settlement Agreement (“Settlement Agreement” or “Settlement”) is attached as **Exhibit 1** hereto, with the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the Settlement Agreement.

Procedural History

3. On November 26, 2024, Plaintiff Jones commenced a class action by filing a Complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal-Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Reimbursement of Necessary Expenditures Under Labor Code § 2802; (6) Violation of Labor Code § 226(a); (7) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (8) Penalties pursuant to Labor Code § 203; and (9) Violation of Business & Professions Code § 17200 *et seq.* (the “Jones Class Action”).

4. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Jones gave timely written notice to Defendant and California’s Labor and Workforce Development Agency (“LWDA”) by sending his PAGA Notice on November 26, 2024 (LWDA-CM-1063850-24). A true and correct copy of his PAGA Notice is attached hereto as **Exhibit 2**.

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5. On December 31, 2024, Defendant removed the Jones Class Action to the U.S. District Court for the Central District of California, Case No. 2:24-cv-11230-MRA-AGR (the “Jones Federal Action”).

6. On February 7, 2025, Plaintiff Jones filed a Complaint for Representative Action for Penalties Under Private Attorneys General Act, Labor Code § 2698 *et seq.* for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Failure to Reimburse Necessary Business Expenditures Under Labor Code § 2802; (6) Violation of Labor Code § 226(a); (7) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; and (8) Violation of Labor Code § 203 (the “Action”).

7. Plaintiffs gave timely written notice to Defendant and the LWDA by sending their amended PAGA Notice on March 30, 2026 (LWDA-CM-1063850-24). A true and correct copy of their amended PAGA Notice is attached hereto as **Exhibit 3**. On May 1, 2026, Plaintiffs subsequently filed their First Amended Class Action Complaint (“Operative Complaint”), which adds class allegations and Plaintiffs Zehra Kazmi and Diana O'Byrne to the Action.

8. On April 17, 2026, Plaintiff Jones and Defendant filed a Joint Stipulation of Dismissal Without Prejudice Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) in the Jones Class Action, which the Court granted on the same day.

9. Plaintiffs contend that Defendant failed to pay all wages due by requiring Class Members to work off the clock, failed to provide meal and rest breaks and premium wages for non-compliant meal and rest breaks, failed to furnish accurate wage statements, failed to timely pay wages including final wages, failed to keep required payroll records, and failed to reimburse necessary business expenses. Defendant denies any liability and maintains that its policies and practices fully comply with the California Labor Code.

Investigation

10. Before filing the lawsuit, my firm conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. This required thorough discussions and interviews between Class Counsel and Plaintiffs, in addition to the above-described research into the various legal issues involved in the case. After filing the lawsuit, Class Counsel

1 conducted a thorough investigation of the facts and claims giving rise to the action, including (1)
2 meeting and conferring with defense counsel and conducting formal and informal discovery; (2)
3 reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing
4 Plaintiffs' personnel files and other documentation; (4) interviewing Plaintiffs regarding Defendant's
5 policies and workplace; (5) researching the applicable law and potential defenses; (6) constructing
6 damage models based on interpretations of California law and the facts and numbers provided by
7 Defendant; and (7) reviewing information provided by Defendant in response to formal and informal
8 discovery and in advance of the mediation. The Parties conducted their own evaluations of the
9 potential recoveries based on the claims alleged in the Action, including consulting experts.

10 11. Defendant, for its part, vigorously contested liability, the amount of claimed damages,
11 and the propriety of class certification. After analyzing the relevant documents and other gathered
12 data, Class Counsel believed that this case was appropriate for resolution via mediation. Given the
13 high level of risk present for both sides, the Parties elected to mediate Plaintiffs' claims and explore
14 the possibility of settlement.

15 **Settlement Efforts**

16 12. On September 16, 2025, the Parties participated in an all-day mediation with mediator
17 Louis Marlin, a respected and highly experienced mediator in wage and hour class actions which lead
18 to the Parties reaching an agreement on general settlement terms to resolve the lawsuit. During
19 mediation, counsel for Plaintiffs and Defendant discussed all aspects of the case, including the risks
20 of litigation and the risks to both Parties of proceeding with a class certification motion, as well as
21 the law on unpaid wages, meal periods, rest periods, wage statements, reimbursements, and final pay.
22 The Parties continued to work together negotiating the long form settlement terms following
23 mediation, as set forth in the Settlement Agreement.

24 13. Based on their own independent investigations and evaluations, Class Counsel is of
25 the opinion that the Settlement with Defendant for the consideration and terms set forth herein,
26 considering the representatives and class claims, and the risk of loss, is fair, reasonable, and adequate.
27 Class Counsel is also of the opinion that the total consideration and payment set forth in this
28 Settlement Agreement is adequate in light of the uncertainties surrounding the risk of further

1 litigation, the possibility of losing class certification, that the PAGA claim could be deemed
2 unmanageable, and the defenses that Defendant has asserted and/or could assert as to the substantive
3 merit of the claims. Based on the settlement negotiations, which were extensive and conducted in
4 good faith and at arm's length between attorneys with substantial experience litigating wage and hour
5 class action cases, the Settlement was the product of a non-collusive settlement process and
6 compromises in the interest of reaching a full and complete settlement. As a result, Class Counsel has
7 determined that the Settlement is in the best interests of the Class.

8 **Summary of the Settlement**

9 14. Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay
10 \$330,000.00 ("Gross Settlement Amount" or "GSA") on a non-reversionary basis to settle and release
11 all claims asserted by Plaintiffs in the Operative Complaint on behalf of the proposed Class. (Exhibit
12 1, Settlement Agreement, ¶ 1.22.) The Gross Settlement Amount will be used to pay Individual Class
13 Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment,
14 Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the
15 Administration Expenses Payment. (*Id.* at ¶¶ 3.2.1–3.2.5.) The Gross Settlement Amount does not
16 include the employer's share of payroll taxes, which will be paid by Defendant in addition to the
17 Gross Settlement Amount. (*Id.* at ¶ 3.1.) Based on its records, (1) there are 690 Class Members and
18 31,397 total workweeks from January 5, 2022, through November 15, 2025, and (2) there are 475
19 Aggrieved Employees who worked 17,979 PAGA Pay Periods from November 26, 2023, through
20 November 15, 2025. (*Id.* at ¶ 8.)

21 15. The Settlement Agreement defines the "Class" as all persons employed by Defendant
22 in California and classified as a non-exempt hourly employee who worked for Defendant during the
23 Class Period, which is the period from January 5, 2022, through November 15, 2025. (Exhibit 1,
24 Settlement Agreement, ¶¶ 1.5, 1.12.) The Settlement Agreement also defines "Aggrieved Employee"
25 as a person employed by Defendant in California and classified as a non-exempt hourly employee
26 who worked for Defendant during the PAGA Period, which is the period from November 26, 2023
27 through November 15, 2025. (*Id.* at ¶¶ 1.4, 1.32.) The "Net Settlement Amount" available for
28 distribution to Participating Class Members is the Gross Settlement Amount less the following

1 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
2 Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel
3 Litigation Expenses Payment, and the Administration Expenses Payment. (*Id.* at ¶ 1.28.) The
4 remainder is to be paid to Participating Class Members as Individual Class Payments. (*Id.*) These
5 amounts are detailed as follows:

- 6 • Class Counsel Fees Payment: Up to one-third (1/3) of the Gross Settlement Amount, or
7 **\$110,000.00**, to Class Counsel as attorneys' fees for the litigation and resolution of this Action
8 (Exhibit 1, Settlement Agreement, ¶ 3.2.2);
- 9 • Class Counsel Litigation Expenses Payment: Reimbursement of actual expenses incurred to
10 prosecute the Action, which is currently estimated not to exceed **\$30,000.00** (Exhibit 1,
11 Settlement Agreement, ¶ 3.2.2);
- 12 • Class Representative Service Payments: Up to \$10,000.00 to Plaintiff Jones, \$5,000.00 to
13 Plaintiff Kazmi, and \$5,000.00 to Plaintiff O'Bryne (for a total of **\$20,000.00**) as an award
14 for their service as the Class Representatives (Exhibit 1, Settlement Agreement, ¶ 3.2.1);
- 15 • Administration Expenses Payment: Up to **\$9,990.00** to the Administrator for its fees and costs
16 to administer the Settlement (Exhibit 1, Settlement Agreement, ¶ 3.2.3); and
- 17 • PAGA Penalties: **\$33,000.00** for settlement of claims for civil penalties under PAGA, with
18 35% allocated to the Individual PAGA Payments (\$11,550.00) to be paid on a pro-rata basis
19 to the Aggrieved Employees and 65% allocated to the LWDA (\$21,450.00) ("LWDA PAGA
20 Payment"). (Exhibit 1, Settlement Agreement, ¶ 3.2.5.)

21 16. If the Court approves the above allocations from the Gross Settlement Amount, the
22 Net Settlement Amount is estimated to be **\$127,010.00**. Each Class Member's share of the Net
23 Settlement Amount ("Individual Class Payment") will be calculated by (a) dividing the Net
24 Settlement Amount by the total number of Workweeks worked by all Participating Class Members
25 during the Class Period, and (b) multiplying the result by each Participating Class Member's
26 Workweeks. (Exhibit 1, Settlement Agreement, ¶ 3.2.4.) For the approximately 690 Class Members
27 (if no exclusions), the average Individual Class Payment, using a straight average, is **\$184.07**. If the
28 Court approves a lesser amount for any of the above requested allocations from the Net Settlement

1 Amount, none of the Gross Settlement Amount would revert to Defendant. (*Id.* at ¶ 3.1.) Instead, the
2 remainder will be added to the Net Settlement Amount to be distributed to Participating Class
3 Members. (*Id.*)

4 17. Not later than fourteen (14) days after the Court grants Preliminary Approval of the
5 Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft
6 Excel spreadsheet. (Exhibit 1, Settlement Agreement, ¶ 4.2.) In no event later than fourteen (14) days
7 after receiving the Class Data, the Administrator will send to all Class Members identified in the Class
8 Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the
9 form attached to the Settlement Agreement as Exhibit A. (Exhibit 1, Settlement Agreement, ¶ 7.4.2.)
10 The Class Notice includes a summary of the case and settlement terms and provides Class Members
11 with detailed instructions on how to exclude themselves, object to the settlement, and challenge the
12 number of Workweeks and/or PAGA Pay Periods attributed to each Class Member per Defendant’s
13 records. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). Class Members will have sixty
14 (60) days from the mailing of the Class Notice (plus an additional fourteen (14) calendar days for
15 Class Members whose Class Notice is re-mailed) to opt out of the Settlement, object to the Settlement,
16 and/or challenge the number of Workweeks and/or PAGA Pay Periods (“Response Deadline”).
17 (Exhibit 1, Settlement Agreement, ¶¶ 1.44, 7.4.4.)

18 **Certification for Settlement Purposes Only is Appropriate**

19 18. Plaintiffs allege that the proposed Class satisfies the criteria for certification of a
20 settlement class under California law, as embodied in California Code of Civil Procedure § 382.
21 Defendant has agreed to the conditional certification of the class for settlement purposes only.
22 Defendant does not concede that certification is appropriate outside of this Settlement and preserves
23 all rights to oppose certification if, for any reason, the settlement does not become effective. In
24 general, courts may take a proposed settlement into account in evaluating the propriety of class
25 certification. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser
26 standard” of scrutiny applies in certifying classes for settlement purposes. *Id.* Therefore, the Court
27 should take into consideration the fact that the Parties have settled their claims and stipulated to
28 certification for settlement purposes when assessing whether the Settlement is fair and reasonable.

1 19. Numerosity and Ascertainability. The putative Class is so numerous that joinder of all
2 members is impractical. Class Members are all persons employed by Defendant in California and
3 classified as a non-exempt hourly employee who worked for Defendant during the Class Period,
4 which is the period from January 5, 2022, through November 15, 2025. (Exhibit 1, Settlement
5 Agreement, ¶¶ 1.5, 1.12.) As of the date of the Settlement Agreement, Defendant has identified 690
6 Class Members based on a review of its payroll and personnel records. Thus, there is numerosity and
7 ascertainability.

8 20. Well-Defined Community of Interest. Plaintiffs contend, and Defendant does not
9 dispute for settlement purposes only, that common issues of fact and law predominate as to each of
10 the claims alleged by Plaintiffs, and the Class is united in its proof. This action involves, *inter alia*, a
11 determination about Defendant's alleged failure to pay wages and overtime due to allegedly common
12 off-the-clock work, failure to provide meal and rest breaks and premium wages for non-compliant
13 meal and rest breaks, failure to furnish accurate wage statements, failure to maintain required payroll
14 records, failure to timely pay wages including final wages, and failure to reimburse necessary business
15 expenses. Plaintiffs contend Defendant's practices affected Class Members in the same way and
16 presents questions that are suitable for common adjudication because all Class Members were subject
17 to the same employment policies and practices. The outcome of litigation in this matter depends upon
18 questions that are common to Class Members.

19 21. Typicality. The class representatives' claims are typical when they arise from the same
20 event, practice, or course of conduct that gives rise to the claims of other putative Class Members,
21 and if their claims rest on the same legal theories. Here, Plaintiffs allege that their claims are typical
22 of Class Members' claims because they arose from the same factual basis and are based on the same
23 legal theories. Plaintiffs and Class Members were employed by Defendant during the Class Period
24 and were subject to the allegedly unlawful meal and rest policies and pay practices at issue in this
25 litigation. Thus, the typicality requirement is satisfied.

26 22. Adequacy. Plaintiffs' interests are aligned with those of the Class Members, as they
27 have suffered the same injuries as the Class Members and have no conflicts of interest. Plaintiffs have
28 not shrunken from this responsibility. Indeed, Plaintiffs have devoted a substantial amount of time

1 and energy to litigating this Action and effectuating a settlement. Furthermore, as set forth below,
2 Class Counsel are experienced in wage-and-hour litigation, especially class actions, and have
3 zealously represented the interests of the Class in litigating this case and have no conflicts of interest.
4 Accordingly, the adequacy requirement is satisfied.

5 23. Predominance and Superiority. Plaintiffs contend that individualized issues do not
6 predominate over the issues of law and fact that are common to the Class as a whole. As explained,
7 *supra*, Plaintiffs allege there are common issues of law and fact given that Plaintiffs and all Class
8 Members were subjected to the same policies and pay practices during the relevant time period.
9 Plaintiffs and Class Members seek alleged meal and rest premiums, unpaid wages and overtime, and
10 penalties for work performed as non-exempt employees for Defendant. Plaintiffs allege that these
11 issues are suitable for common adjudication because all Class Members were allegedly subject to the
12 same employment policies, and Plaintiffs contend the practices applied uniformly to all Class
13 Members.

14 24. Plaintiffs contend that class resolution is superior to other available methods for the
15 fair and efficient adjudication of the controversy, as there is little interest or incentive for Class
16 Members to individually control the prosecution of separate actions. Although the alleged injuries
17 resulting from Defendant's policies and practices are allegedly real and significant, the cost of
18 individually litigating each such case against Defendant would easily exceed the value of any relief
19 that could be obtained by any one Class Member individually. If Class Members are forced to litigate
20 their claims individually, this would result in 690 individual actions against Defendant. Here, the
21 alternative methods of resolution are individual suits for relatively small amounts. Hence, an
22 individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf
23 a potential recovery.

24 **The Settlement is Fair, Adequate, and Reasonable**

25 25. In deciding whether to approve a proposed class action settlement, the Court must find
26 that a proposed settlement is "fair, adequate, and reasonable" and falls within the "range of approval."
27 *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as "the strength
28 of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of

maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the Class Members to the proposed settlement.” *Id.* The Settlement satisfies all of these requirements.

A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations.

26. The proposed settlement was reached as a result of arm’s length negotiations after the completion of pertinent formal and informal discovery and the exchange of necessary class data. The negotiations have been, at all times, adversarial and non-collusive in nature. *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, “a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms-length negotiation, untainted by collusion.”). Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As described below, Defendant presented multiple defenses to Plaintiffs’ claims, both on the merits and with respect to class certification. Thus, while Plaintiffs were prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. Assistance from a well-respected mediator ensured that negotiations were non-collusive and well-informed.

B. Extent of Discovery and Stage of Proceedings.

27. As stated above, the Parties engaged in substantial formal and informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendant’s defenses. This litigation has reached the stage where the Parties have a clear view of their respective strengths and weaknesses.

C. Strength of Plaintiff’s Case and the Risk, Expense, Complexity, and Likely Duration of Any Litigation.

28. Plaintiffs’ claims are based on Defendant’s alleged failure to pay wages (including overtime), failure to provide meal and rest periods, failure to reimburse business expenses, failure to pay final wages when required, failure to provide accurate wage statements, and largely derivative claims under the UCL and PAGA.

1 29. Plaintiffs allege that Defendant failed to pay Plaintiffs and Class Members at least
2 minimum wages for all hours worked and proper overtime wages for hours worked in excess of eight
3 hours in a day and 40 hours in a week. Specifically, Plaintiffs allege that Defendant required Plaintiffs
4 and Class Members to perform work prior to clocking in for the start of their shifts and at the end of
5 meal breaks, including waiting in line to access time clocks and donning and doffing uniforms prior
6 to clocking in. Plaintiffs also allege that Plaintiffs and Class Members worked post-shift by staying
7 to wait until all employees exited the store and until the manager set the alarm and locked the doors
8 before being allowed to leave. Additionally, Plaintiffs allege that Plaintiffs and Class Members were
9 required to answer work-related calls and texts outside work hours.

10 30. Defendant contends that it instructed Class Members to record all hours worked, that
11 it paid Class Members for all reported hours worked, that any off-the-work was performed without
12 Defendant's knowledge and was de minimis, and that it paid wages to Class Members at the proper
13 rates. Defendant contends that off-the-clock work allegations will be difficult to certify because
14 Defendant has a lawful policy prohibiting off-the-clock work. Defendant also argues that, given its
15 written policies and practices, any unrecorded hours are likely subject to individualized inquiry and
16 unlikely to be certified. Given the difficulty in certifying this claim, Class Counsel applied a
17 significant discount to damages based on this theory.

18 31. Plaintiffs also allege that Defendant failed to provide proper meal breaks to Plaintiffs
19 and Class Members. Plaintiffs alleged that Plaintiffs and Class Members often worked shifts over five
20 hours without taking a meal period, took meal periods late, or had their meal periods interrupted by
21 work demands.

22 32. Defendant argues that its meal period policies comply with California law. Defendant
23 further contends that Class Members were authorized, permitted, and never denied the opportunity to
24 take their meal periods, and that any deviations from their scheduled meal breaks were at the voluntary
25 election of Class Members. Defendant further contends that the meal break claim requires
26 individualized inquiries, which would preclude class certification. If Defendant's contentions are
27 proven true and prevail in trial, the likely outcome would be no recovery for the Class Members on
28 the meal break claim.

1 33. Plaintiffs also allege that Defendant did not provide Class Members with paid 10-
2 minute rest breaks for every four hours or a major fraction thereof. Plaintiffs contend that Defendant
3 failed to permit Plaintiffs and Class Members to take legally compliant rest periods because
4 Defendant would instruct Plaintiffs and Class Members to end their rest break early or take their rest
5 break late to ensure at least one employee was always on the sales floor and responsive to work
6 demands, such as assisting customers.

7 34. Defendant argues that its rest break policies comply with California law. Defendant
8 maintains that it authorized and permitted Class Members to take duty-free rest breaks of at least ten
9 minutes for every four hours worked or major fraction thereof. Defendant contends that there are no
10 restrictions, in policy or practice, on where employees can go during their rest breaks. Considering
11 that, unlike meal periods, rest breaks need not be recorded, these violations would likely be difficult
12 to prove at trial and potentially depress the damages ultimately awarded. Therefore, Class Counsel
13 applied significant and appropriate discounts to the rest break claim.

14 35. Additionally, Plaintiffs allege that Plaintiffs and Class Members used their cellular
15 phones to conduct work-related activities for which they were not reimbursed, including
16 communicating with management regarding schedules and work assignments both on and off the
17 clock. Plaintiffs also alleges that Plaintiffs and Class Members were required to use their personal
18 cellphones to assist customers with pricing when certain items did not show up in the POS system.
19 Defendant maintains that Plaintiffs and Class Members did not incur business expenses and/or were
20 properly reimbursed for all business expenses and further contend that any unreimbursed business
21 expenses were not necessary expenditures as required by Labor Code section 2802. Defendant also
22 maintains that individualized issues relating to this claim would preclude class certification.

23 36. As for the wage statement and waiting time penalties claims, Defendant contends that
24 these claims are merely derivative of the underlying claims and that Plaintiffs and Class Members
25 would be unable to first establish liability for the underlying claims for the reasons described above.
26 Defendant further contends that even if they could first establish liability for the underlying claims,
27 Plaintiffs and Class Members would be unable to establish that Defendant's conduct was willful and
28 knowing as required by the relevant statutes since Defendant acted in good faith to provide accurate

1 wage statements and pay all wages due to Plaintiffs and Class Members. Thus, Defendant contends
2 that the wage statement and waiting time penalties claims to have little to no value.

3 37. Similarly, Defendant contends that the PAGA claim is also derivative of the
4 underlying claims in the Action and ultimately fails because the underlying claims have no merit.
5 Defendant also contends that even if Plaintiffs and Class Members could establish Labor Code
6 violations, which Defendant denies Plaintiffs and Class Members can establish such violations, the
7 Court has the discretion to award less than the maximum civil penalty amount and would award
8 substantially less civil penalties here because Defendant acted in good faith to comply with the
9 relevant wage and hour laws and any violations were minor and technical in nature.

10 38. Defendant generally denies all claims alleged in the Action and further denies that
11 class and/or representative treatment is appropriate for any purpose other than this Settlement, that it
12 had compliant policies and practices, and that it complied with all applicable laws. However, after
13 careful consideration, Defendant has concluded that further litigation would be protracted and
14 expensive and that it is desirable for the Action to be fully and finally settled in the manner and upon
15 the terms and conditions herein.

16 39. As stated above, while Plaintiffs and Class Counsel contend the claims asserted in the
17 Operative Complaint have merit, they also acknowledge the expense, delay, and risks of continued
18 litigation. Although the Parties engaged in significant formal and informal discovery in advance of
19 mediation, the Parties still had significant discovery to complete had the matter not been settled. This
20 would have required the expenditure of substantial time and resources by both Parties that would have
21 very likely spanned several years. Even if Plaintiffs were to certify the class, the Parties would incur
22 considerably more attorney fees and costs through a possible decertification motion, trial, and
23 possible appeal. This Settlement avoids those risks and the accompanying expense.

24 **D. The Risk of Maintaining Class Action Status Through Trial.**

25 40. Plaintiffs have not yet filed their motion for class certification, and as such, the extent
26 to which Plaintiffs' proposed Class was certifiable is somewhat speculative. Absent a settlement,
27 there was a risk that there would not be a certified class at the time of trial, or if there were, it could
28 consist of a significantly smaller group of employees than the proposed Class, resulting in less overall

1 recovery.

2 41. Finally, in class actions, decertification is always a possibility, and there is always a
3 risk that a trial of this magnitude can become unmanageable. Cases like *Duran v. U.S. Bank Nat.*
4 *Assn.* (2014) 59 Cal. 4th 1, 34 addresses the complexity of using statistical samples in class actions
5 and demonstrates that decertification is a real risk that Class Counsel must consider. A class trial
6 would have also required expert witnesses, the accrual of extensive litigation costs, and the
7 commitment of extensive further time and financial resources. Finally, given the complexity and
8 unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy
9 and costly appeal. An appeal would result in further delay for the Class Members who have already
10 waited years for resolution in this matter. Risk and legal uncertainty must be dealt with in any
11 litigation, and this Settlement was the product of a compromise accounting for those risks and
12 uncertainties.

13 **E. The Presence of a Governmental Participant.**

14 42. Class Counsel will be submitting the Settlement Agreement and this Motion to the
15 LWDA concurrently with the filing of this Motion pursuant to Labor Code § 2699(1)(2).

16 **F. The Amount Offered in Settlement is Fair Given the Potential Value of the Claims.**

17 43. Because the Class consists of numerous employees, it was unlikely that the potential
18 monetary claims of individual Class Members would have proved viable without the class-action
19 mechanism. The Settlement Agreement should be approved in light of two California appellate
20 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*
21 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

22 44. The strength of the Plaintiffs' case in light of the settlement amount is deemed by
23 courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175
24 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiffs allege that Defendant failed to pay minimum
25 wages and overtime, failed to provide meal and rest breaks, failed to provide accurate wage
26 statements, failed to pay all wages upon termination, and failed to reimburse business expenses, all
27 in violation of California law. Plaintiffs seek related violations of California's Business & Professions
28 Code, penalties pursuant to Labor Code § 2699 *et seq.* Summary calculations for estimated liability

1 for each of these claims follow.

2 Failure to Pay Minimum and Overtime Wages:

3 45. Plaintiffs allege that Defendant failed to pay Plaintiffs and Class Members at least
4 minimum wages for all hours worked and proper overtime wages for hours worked in excess of eight
5 hours in a day and 40 hours in a week. Specifically, Plaintiffs allege that Defendant required Plaintiffs
6 and Class Members to perform work prior to clocking in for the start of their shifts and at the end of
7 meal breaks, including waiting in line to access time clocks and donning and doffing uniforms prior
8 to clocking in. Plaintiffs also allege that Plaintiffs and Class Members worked post-shift by staying
9 to wait until all employees exited the store and until the manager set the alarm and locked the doors
10 before being allowed to leave. Additionally, Plaintiffs allege that Plaintiffs and Class Members were
11 required to answer work-related calls and texts outside work hours.

12 46. Defendant contends that it instructed Class Members to record all hours worked, that
13 it paid Class Members for all reported hours worked, that any off-the-work was performed without
14 Defendant's knowledge and was de minimis, and that it paid wages to Class Members at the proper
15 rates. Defendant contends that off-the-clock work allegations will be difficult to certify because
16 Defendant has a lawful policy prohibiting off-the-clock work. Defendant also argues that, given its
17 written policies and practices, any unrecorded hours are likely subject to individualized inquiry and
18 unlikely to be certified. Given the difficulty in certifying this claim, Class Counsel applied a
19 significant discount to damages based on this theory.

20 47. Plaintiffs' expert estimated Defendant's exposure on the unpaid wages claims to be
21 approximately \$454,031.00 (assuming 10 minutes per shift and 44.4% attributable to overtime).
22 However, given Defendant's defenses and the potential hurdles facing certification of off-the-clock
23 claims, Class Counsel applied an 85% discount, making for an adjusted realistic exposure of
24 \$68,104.65 for Defendant.

25 Meal Periods and Rest Breaks:

26 48. Plaintiffs also allege that Defendant failed to provide proper meal breaks to Plaintiffs and
27 Class Members. Plaintiffs alleged that Plaintiffs and Class Members often worked shifts over five
28 hours without taking a meal period, took meal periods late, or had their meal periods interrupted by

1 work demands.

2 49. For each meal period missed, of less than 30 minutes, or taken late for which the employee
3 was not provided a reasonable opportunity to take a complete and timely meal period, an employer
4 must pay the employee an additional one hour of compensation. Labor Code § 226.7. This additional
5 hour of compensation is referred to as “premium pay.” To comply with these laws, every employer
6 must keep, for each employee, accurate time records showing when the employee begins and ends
7 each work period and takes his or her meal periods. See Wage Order 4-2001(7)(A)(3). Plaintiffs allege
8 that Defendant failed to pay the legally required premium at their regular rate of pay whenever meal
9 periods were missed, interrupted, or late.

10 50. Defendant argues that its meal period policies comply with California law. Defendant
11 further contends that Class Members were authorized, permitted, and never denied the opportunity to
12 take their meal periods, and that any deviations from their scheduled meal breaks were at the voluntary
13 election of Class Members. Defendant further contends that the meal break claim requires
14 individualized inquiries, which would preclude class certification. If Defendant’s contentions are
15 proven true and prevail in trial, the likely outcome would be no recovery for the Class Members on
16 the meal break claim.

17 51. Plaintiffs’ expert estimated Defendant’s maximum exposure on the meal period claim at
18 approximately \$288,645.00 (based on late, missed, or short meal breaks for shifts greater than 5
19 hours). However, given Defendant’s contentions, Class Counsel applied an 85% discount, making for
20 an adjusted realistic exposure of \$43,296.75 for Defendant.

21 52. Rest Breaks: The same argument applied to rest breaks. Plaintiffs also allege that
22 Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or a
23 major fraction thereof. Plaintiffs contend that Defendant failed to permit Plaintiffs and Class Members
24 to take legally compliant rest periods because Defendant would instruct Plaintiffs and Class Members
25 to end their rest break early or take their rest break late to ensure at least one employee was always
26 on the sales floor and responsive to work demands, such as assisting customers.

27 53. Defendant argues that its rest break policies comply with California law. Defendant
28 maintains that it authorized and permitted Class Members to take duty-free rest breaks of at least ten

minutes for every four hours worked or major fraction thereof. Defendant contends that there are no restrictions, in policy or practice, on where employees can go during their rest breaks. Considering that, unlike meal periods, rest breaks need not be recorded, these violations would likely be difficult to prove at trial and potentially depress the damages ultimately awarded. Therefore, Class Counsel applied significant and appropriate discounts to the rest break claim.

54. Plaintiffs' expert estimated Defendant's maximum liability exposure on the rest break period claim at approximately \$2,248,985.00 using a 100% violation rate. However, given Defendant's contentions and considering a more realistic violation rate for the Class as well as the potential hurdles facing certification of rest break claims, Class Counsel applied a 90% discount making for an adjusted realistic exposure of \$224,898.50 for Defendant. Owing to the arguments above and the fact that the recording of rest periods is not required, this claim was substantially discounted and was not a major driver of exposure in this case.

Inaccurate Wage Statement Violations:

55. Under Labor Code § 226(a), Plaintiffs and the Class are entitled to recover \$50 for initial violations for inaccurate wage statements and \$100 for subsequent violations, up to a maximum of \$4,000 per employee. Plaintiffs allege Defendant issued wage statements to Plaintiffs and the Class Members that failed to accurately account for all off-the-clock work and missed meal and rest premiums which Defendant knew or reasonably should have known were owed to Plaintiffs and Class Members.

56. Defendant challenged Plaintiffs' claim for Labor Code § 226(e) penalties, including by arguing they were merely derivative of the other claims that lacked merit, and Plaintiffs' failure to prove the underlying claims could result in the dismissal of these derivative claims. Defendant also argued that it did not knowingly and intentionally commit these alleged violations. *See, e.g.*, Labor Code § 226(e) (recovery of penalties requires showing there was "a knowing and intentional failure by an employer").

57. Plaintiffs' expert estimated Defendant's maximum total exposure on the section 226 claim at approximately \$1,558,900.00 (442 employees from November 26, 2023 to September 16, 2025 with a \$4,000.00 per employee maximum). After considering Defendant's contentions and the

1 potential class certification issues, Class Counsel discounted this amount by 95% to get an adjusted
2 realistic exposure of \$77,945.00.

3 Failure to Pay Final Wages at Termination or Separation:

4 58. In allegedly failing to pay Class Members their minimum wages, overtime wages, and
5 premium pay for deficiently provided meal periods and rest breaks, all discussed above, Plaintiffs
6 allege that Defendant willfully failed to pay Class Members all wages due and certain at the time of
7 termination or within seventy-two (72) hours of resignation, as required under Labor Code § 203.

8 59. Section 203 further provides that if an employer willfully fails to pay an employee all
9 wages due at termination or within 72 hours of resignation, then that employee's wages will continue
10 as a penalty until paid for a period of up to 30 days from the date they were due. Because Class
11 Members stopped working for Defendant but were allegedly not paid their full compensation for the
12 reasons discussed above, Class Members did not receive all wages due upon termination of
13 employment.

14 60. Defendant challenged this claim under Labor Code § 203 with several arguments, including
15 that this claim is merely derivative of the other claims that lacked merit and that under Labor Code §
16 203, employers are only obligated to pay waiting-time penalties if they "willfully" fail to pay wages
17 due and owing at the time of termination or resignation. As Title 8, California Code of Regulations,
18 § 13520 states: "A willful failure to pay wages within the meaning of Labor Code Section 203 occurs
19 when an employer intentionally fails to pay wages to an employee when those wages are due.
20 However, a good faith dispute that any wages are due will preclude imposition of waiting time
21 penalties under Section 203." Defendant argued that their good faith disputes and lack of willfulness
22 would excuse its violations. Defendant maintained that because they had viable defenses in both law
23 and fact, such penalties were subject to a three-year limitations period under Labor Code § 203(b).

24 61. Plaintiffs' expert estimated Defendant's maximum total exposure on the section 203 claim
25 at approximately \$2,057,750.00 (assuming 477 terminated employees during the relevant period and
26 30 days per employee and 7.0 hours per workday). Given the foregoing arguments, Class Counsel
27 discounted this amount by 95% to get an adjusted realistic exposure of \$102,887.50.

28 ///

1 Failure to Reimburse for Necessary Business Expenditures:

2 62. Under Labor Code § 2802(a) Defendant must indemnify Plaintiffs and Class Members for
3 all necessary expenditures or losses incurred in direct consequence of the discharge of their duties.
4 As discussed above, Plaintiffs allege that Plaintiffs and Class Members used their cellular phones to
5 conduct work-related activities for which they were not reimbursed, including communicating with
6 management regarding schedules and work assignments both on and off the clock. Plaintiffs also
7 alleges that Plaintiffs and Class Members were required to use their personal cellphones to assist
8 customers with pricing when certain items did not show up in the POS system. Defendant maintains
9 that Plaintiffs and Class Members did not incur business expenses and/or were properly reimbursed
10 for all business expenses and further contend that any unreimbursed business expenses were not
11 necessary expenditures as required by Labor Code section 2802. Defendant also maintains that
12 individualized issues relating to this claim would preclude class certification.

13 63. Plaintiffs estimated Defendant's total exposure on the unreimbursed business expenses
14 claim at approximately \$27,600.00 (\$40 x 690 Class Members). However, given Defendant's
15 contentions and the potential for the need for individualized inquiries, making class certification of
16 this claim difficult, Class Counsel applied a discount of 80% to get an adjusted realistic exposure of
17 \$5,520.00.

18 PAGA Penalties:

19 64. The Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq.*, allows
20 Plaintiffs to obtain civil penalties on behalf of themselves and other aggrieved employees for
21 Defendant's violation of any provision of the Labor Code enumerated under Labor Code § 2699.5.
22 Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil
23 penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars
24 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
25 (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor
26 Code § 2699(m), sixty-five percent (65%) of the penalties recovered must be allocated to the Labor
27 and Workforce Development Agency (LWDA), with the remaining thirty-five percent (35%)
28 allocated to the affected employees. The limitations period for all penalties is one year prior to the

1 filing of the complaint.

2 65. The provisions of the Labor Code potentially triggering PAGA penalties in this case
3 include, but are not limited to, Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3,
4 226.4, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199,
5 2698, 2699, *et seq.* and 2802. PAGA penalties are not mandatory and are instead permissive. Labor
6 Code § 2699(e)(2) states that “a court may award a lesser amount than the maximum civil penalty
7 amount specified by this part if, based on the facts and circumstances of the particular case, to do
8 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” *See*
9 *Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (substantially reducing PAGA penalties by 30%
10 under this provision); see also *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018)
11 (affirming penalty reduction of 90% for practice that resulted in meal periods occasionally starting
12 minutes after the fifth hour of work); *Sanchez v. McDonald’s Corp.* (2017), LASC Case No. No. BC
13 499888 (98% reduction from \$41 million to \$775,000); *Ghrdilyan v. RJ Financial* (2012), LASC
14 Case No. BC430633 (94% reduction from \$5.4 million to \$325,000); *Fleming v. Covidien, Inc.*
15 (2011), USDC Case No. ED CV 10-01487-RGK (OPx) (87% reduction from \$2.8 million to
16 \$375,000).

17 66. PAGA penalties are also derivative of each and every other claim, and Defendant argued
18 the PAGA claims would be subject to the same defenses as the underlying claims, as well as additional
19 equitable defenses, including substantial compliance. Finally, under *Amaral v. Cintas Corp.* (2008)
20 163 Cal.App.4th 1157, Defendant asserted that penalties under PAGA could, at best, be awarded only
21 at the rates obtainable for initial violations under the applicable statutes, because Defendant had never
22 been notified of the alleged violations. *Id.* at 1208-1209.

23 67. Plaintiffs estimated Defendant’s total exposure on the PAGA claim at approximately
24 **\$1,797,900.00** (17,979 PAGA Pay Periods x \$100). However, Class Counsel also estimated any
25 PAGA recovery would be substantially reduced and applied discounts in light of the countervailing
26 arguments with regard to the other causes of action and the Court’s power to award “a lesser amount
27 than the maximum civil liability.” Class Counsel applied a discount of 95% to get an adjusted realistic
28 exposure of \$89,895.00. The PAGA allocation agreed upon by the Parties, therefore, was **\$33,000.00.**

1 subject to the Court's final approval. 65% of that amount (\$21,450.00) will be paid to the LWDA out
2 of the Gross Settlement Amount, and the remaining 35% (\$11,550.00) will be distributed to the
3 Aggrieved Employees.

4 Unfair Business Practices

5 68. Plaintiffs pled this cause of action to augment their other causes of action and aid in their
6 prosecution. Business & Professions Code § 17208 extends the statute of limitations on Plaintiffs'
7 wage claims, which qualify as unfair business practices, to four years rather than the three years
8 provided by statute.

9 Summary

10 69. The foregoing discussion establishes the adequacy of the Settlement amount in light of the
11 merits of Plaintiffs' case and establishes the fairness of the class-action settlement in the instant case,
12 including by analyzing it in light of the *Clark* and *Kullar* decisions. It does so by explaining the legal
13 basis for each of Plaintiffs' causes of action, summarizing the evidence that Class Counsel gathered
14 in support of those causes of action, and relating to Defendant's legal and factual arguments that
15 worked to detract from the strength of Plaintiffs' case.

16 70. Class Counsel applied reasonable and justified discounts, considering the facts and legal
17 contexts outlined above. These substantial discounts were necessary in light of Defendant's
18 contentions and denial of liability. In addition, Defendant argued that said employees were
19 dissimilarly situated co-workers, making the certification of all Class Members less than a certainty.
20 This Settlement, like most others, was the product of compromise. As addressed above, Plaintiffs
21 estimated that Defendant faced approximately \$612,547.40 in total realistic exposure on Plaintiffs'
22 main claims. The Gross Settlement Amount of \$330,000.00, therefore, represents a recovery for the
23 Class Members of approximately 53.9% of the total realistic exposure Plaintiffs estimated Defendant
24 could face on these class-wide claims. Class Counsel submits that this is an optimal result for the
25 Class in light of all of the factors described above.

26 Class Counsel Fees Payment is Fair and Reasonable

27 71. Under the Settlement, Class Counsel requests, without opposition from Defendant, an
28 award of \$110,000.00 for attorneys' fees and up to \$30,000.00 for reasonable expenses incurred to

1 prosecute the Action. This request is fair, reasonable, and adequate to compensate Class Counsel for
2 the substantial work they have put into this case. Moreover, they assumed the risk by taking it in the
3 first place as they will not receive any compensation for their efforts until recovery is obtained for the
4 Class. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work
5 that they have already done and for all the work they will continue to do in carrying out and overseeing
6 the notification to Class Members, communicating with Class Members regarding their claims, and
7 assisting in the administration of the Settlement if it is preliminarily approved. The requested fee is
8 reasonable for the services provided to Class Members and for the benefits they are to receive.

9 **Class Representative Service Payments are Fair and Reasonable**

10 72. Plaintiffs are entitled to reasonable service payments for their efforts and initiative in
11 bringing and helping to prosecute this action and obtaining a settlement that benefits the Class.
12 Plaintiffs spent significant time better apprising themselves of their rights, searching for attorneys,
13 and contacting Class Counsel.

14 73. Plaintiffs conferred with Class Counsel to discuss every aspect of their case. Plaintiffs
15 provided Class Counsel with information about Defendant and about the industry generally, produced
16 and reviewed documents, and identified witnesses. Plaintiff Jones consulted with Class Counsel
17 regarding litigation strategy, monitored the progress of the litigation with Class Counsel, attended his
18 deposition taken by Defendant, participated in the mediation process, and reviewed and signed the
19 Settlement Agreement. Plaintiff Kazmi and Plaintiff O'Byrne also helped negotiate, finalize, and sign
20 the Settlement Agreement. In light of the foregoing, Class Counsel believes that the Class
21 Representative Service Payments of \$10,000.00 for Plaintiff Jones, \$5,000.00 for Plaintiff Kazmi,
22 and \$5,000.00 for Plaintiff O'Byrne (for a total of \$20,000.00) are fair and reasonable.

23 **Proposed Class Notice Provides Adequate Notice**

24 74. The notification procedure set out in the Settlement Agreement provides the greatest
25 likelihood that each and every Class Member will receive the Class Notice, attached to the Settlement
26 as Exhibit A. Under the Settlement, not later than fourteen (14) days after the Court grants Preliminary
27 Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form
28 of a Microsoft Excel spreadsheet. (Exhibit 1, Settlement Agreement, ¶ 4.2.) In no event later than

1 fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members
2 identified in the Class Data, via first-class USPS mail, the Class Notice substantially in the form
3 attached to the Settlement Agreement as Exhibit A. (Exhibit 1, Settlement Agreement, ¶ 7.4.2.) The
4 Class Notice includes a summary of the case and settlement terms and provides Class Members with
5 detailed instructions on how to exclude themselves, object to the settlement, and challenge the number
6 of Workweeks and/or PAGA Pay Periods attributed to each Class Member per Defendant's records.
7 (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). Class Members will have sixty (60) days
8 from the mailing of the Class Notice (plus an additional fourteen (14) calendar days for Class
9 Members whose Class Notice is re-mailed) to opt out of the Settlement, object to the Settlement,
10 and/or challenge the number of Workweeks and/or PAGA Pay Periods ("Response Deadline").
11 (Exhibit 1, Settlement Agreement, ¶¶ 1.44, 7.4.4.) This is the best and most practicable way to ensure
12 the greatest possible number of Class Members will receive the Class Notice.

13 75. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the claims
14 involved, the terms of the Settlement, and their options thereunder. (Exhibit 1, Settlement Agreement,
15 Exhibit A, Class Notice). It provides for a specific procedure to seek exclusion from the Class, dispute
16 payments and Class Data, challenge Workweek and PAGA Pay Period data, and make objections to
17 the Settlement. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). In the Class Notice, Class
18 Members will also receive Class Counsel's contact information so they can speak to attorneys
19 conversant with the legal and factual issues involved in this case, as well as the contact information
20 for the Administrator. The efforts taken to ensure that Class Members receive the Class Notice and
21 are well informed about the settlement are reasonable and provide the best notice practicable under
22 the facts.

23 **Qualifications and Adequacy of Class Counsel**

24 76. D.Law (formerly known as Davtyan Law Firm) prosecutes wage and hour cases, including
25 class actions and PAGA actions on behalf of employees and others who have had their rights violated.
26 D.Law, either on its own or with co-counsel, is currently serving as plaintiffs' counsel of record in
27 numerous wage and hour and employment class action and PAGA action cases pending in both state
28 and federal court.

1 77. D.Law is well-qualified and has ample experience, knowledge, and resources to act as
2 counsel and represent Plaintiffs and the putative Class and Aggrieved Employees in this action. Our
3 practice is exclusively focused on employment matters and representing plaintiffs in wage and hour
4 actions with the same or similar causes of actions brought forth in the matter pending before this
5 Court.

6 78. D.Law has litigated and successfully resolved many wage and hour class action cases
7 involving failure to pay wages and derivative Labor Code claims and penalties. See e.g. De La Rosa
8 v. The Coca Cola Company et al. (Superior Court of California in Napa, 17CV000787), Harvey v.
9 Bed Bath & Beyond of California Limited Liability Company (Superior Court of California in
10 Alameda, RG17885153), Paredes v. Bottling Group LLC et. al. (Superior Court of California in
11 Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in Fresno,
12 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-cv-01084-L-
13 AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los Angeles,
14 BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles, BC 632
15 276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara,
16 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in Los
17 Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior Court of
18 California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc. (Superior Court of
19 California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v. Victor Valley Global et al.
20 (Superior Court of California in San Bernardino, CIVDS1709289), Puerta-Gildardo v. Real Time
21 Staffing Services LLC et. al. (Superior Court of California in Los Angeles, BC565445), Vargo v.
22 Pregis Innovative Packaging LLC (Superior Court of California in Tulare, 270836), Conlin v. Aegis
23 Senior Communities LLC (Northern District of California, 17-cv-05534-LHK), Galarza v. Kloeckner
24 Metals Corporation (Central District of California, 2:17-cv-04910-FMO), Estes v. L3 Technologies,
25 Inc. et al. (Southern District of California, 3:17-cv-02356-H-JMA), Rowser v. Trunk Club, Inc.
26 (Central District of California, 2:17-cv-05064-DSF-RAO), Leach v. The Claremont Colleges, Inc.
27 (Superior Court of California in Los Angeles, BC686451), Vaesau v. PCT Enterprises, Inc. dba
28 Precision Cabinets (Superior Court of California, County of Contra Costa MSC18-02404), Terry v.

1 TF Louderback, Inc. dba Bay Area Beverage Company (Superior Court of the State of California,
2 County of Contra Costa, MSC18-00859), Roach v. Westcare California, Inc. (Superior Court of
3 California in Kern County, BCV-17-102367-SDS), Patton v. Church & Dwight Co., Inc. (Central
4 District of California, EDCV 18-903-MWF (KKx)), Juarez v. ISL Employees, Inc. (Superior Court
5 of California in Madera, MCV074787), Ferraro v. USC Verdugo Hill s Hospital, et al. (Superior Court
6 of California in Los Angeles, 18STCV09463), Ford v. Account Control Technology, Inc., et al.
7 (Superior Court of California in Los Angeles, 19STCV09369), Ornelas v. iStorage, et al. (Superior
8 Court of California in San Francisco, CGC-18-571421), Martinez v. Ronpak, Inc. (Superior Court of
9 California in Riverside, RIC1901307), Barrera et al. v. Exclusive Wireless, Inc. (Superior Court of
10 California in Stanislaus, 9000687), Barajas v. Mancha Development Company LLC (Superior Court
11 of California in Orange County, 30-2018-00974707-CU-OE-CXC), Prado v. IMAX Corporation dba
12 IMAC Worldwide Home (Superior Court of California in San Bernardino, CIVDS1820265),
13 Rodriguez v. ND Industries, Inc. (Superior Court of California in Los Angeles, 19STCV38096),
14 Singletary v. Motel 6 Operating LP, et al. (Southern District of California, 3:20-cv-0270-LAB-AHG),
15 Quizon v. CF Watsonville East, LLC, et al. (Superior Court of California in Santa Cruz, 20CV01868),
16 Stephenson v. Bakersfield Dodge, Inc. (Superior Court of California in Kern, BCV-20-102693),
17 Bacerra v. Hugo Boss Retail, Inc. (Superior Court of California in San Diego, 37-2021-00002933-
18 CU-OE-CTL), Walker v. Ariat International, Inc. (Superior Court of California in Alameda,
19 HG19026439), Orr v. Petvet Care Centers (California) Inc. (Superior Court of California in Santa
20 Clara, 19CV354063), Jimenez v. OEC Distribution Services, Inc. (Superior Court of California in
21 San Bernardino, CIVDS1915743), Virdi v. Absolute Security International (Superior Court of
22 California in San Bernardino, CIVDS 1909589), Raj v. First Transit, Inc (Superior Court of California
23 in Sacramento, 34-2021-00295895-CU-OE-GDS), Marchbanks v. Torrid Administration, Inc.
24 (Superior Court of California in San Diego, 37-2020-00008179-CU-OE-NC), among others.

25 79. I am Senior Counsel at D.Law where I manage the class action and PAGA settlement
26 department. I was admitted to the California Bar in December 2008. I received my J.D. from
27 Pepperdine University School of Law and B.S. from the University of Southern California. Since
28 graduating from law school, I have dedicated virtually my entire career on the practice of employment

1 law. I have practiced employment law from the plaintiff's side, from the defense side, and from an
2 in-house position. I have significant experience specifically working on wage and hour class actions
3 from the plaintiff's side as well as the defense side, with the majority of my experience coming from
4 the plaintiff's side.

5 80. The collective experience of the D.Law attorneys in litigating employment wage and hour
6 matters has been integral in identifying legal issues, evaluating the strengths and weaknesses of a
7 case, and generally negotiating fair and reasonable class and representative action settlements.
8 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the
9 constantly evolving substantive law (state and federal), as well as the procedural law of class and
10 representative action litigation. In this action, the attorneys at D.Law are fully equipped to use the
11 skills and knowledge developed over decades of prosecuting and defending wage and hour class
12 actions to fairly and adequately represent the interests of the Class Members and Aggrieved
13 Employees. Therefore, based on our resources, experience, and knowledge, the attorneys at D.Law
14 are well-qualified to act as Class Counsel and represent the Plaintiffs and the putative Class Members
15 and Aggrieved Employees in this action.

16 81. We understand the responsibilities owed as counsel to the Class Members and the
17 Aggrieved Employees we represent. The attorneys at D.Law thoroughly investigated the claims
18 asserted in this action and have remained committed to dedicating the resources necessary to represent
19 the Class and vigorously pursue their claims. Based upon my experience and understanding of the
20 claims and defenses in this action, I believe the settlement is fair, adequate, and reasonable for the
21 Class Members and Aggrieved Employees and all involved, and that the Settlement is well within the
22 range of reasonableness that would permit it to be finally approved. I am not aware of any conflict of
23 interest with Plaintiffs or any other Class Member that would interfere with our duties as Class
24 Counsel.

25 82. On June 12, 2026, Plaintiffs submitted the Class Action and PAGA Settlement Agreement
26 and Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement Agreement
27 and supporting documents to the LWDA. A true and correct copy of the confirmatory email from the
28 LWDA is attached hereto as **Exhibit 4.**

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

3 Executed this 12th day of June 2026 in Pasadena, California

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6 Enoch J. Kim
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EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Landon Jones, Zehra Kazmi, and Diana Sue O’Byrne (“Plaintiffs”) and Defendant Nespresso USA, Inc. (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1 “Action” means Plaintiffs’ lawsuit alleging wage and hour violations against Defendant captioned *Landon Jones et al. v. Nespresso USA, Inc.* initiated on February 7, 2025 and pending in Superior Court of the State of California, County of Los Angeles, case number 25STCV03443.
- 1.2 “Administrator” means Apex Class Action Administration (“Apex”), the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means a person employed by Defendant in California and classified as a non-exempt hourly employee who worked for Defendant during the PAGA Period.
- 1.5 “Class” means all persons employed by Defendant in California and classified as a non-exempt hourly employee who worked for Defendant during the Class Period.
- 1.6 “Class Counsel” means D.Law, Inc.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of

Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from January 5, 2022, through November 15, 2025.
- 1.13 “Class Representatives” means the named Plaintiffs in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative, Landon Jones, Zehra Kazmi, and Diana Sue O’Byrne.
- 1.14 “Class Representative Service Payments” means the payment to the Class Representatives for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of Los Angeles.
- 1.16 “Defendant” means named Defendant Nespresso USA, Inc.
- 1.17 “Defense Counsel” means Vorys, Sater, Seymour and Pease LLP.
- 1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day after the deadline for filing a notice of appeal from the Judgment has passed; or (b) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment, issues a remittitur, and no further appeals are possible.
- 1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means \$330,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments and the Administrator’s Expenses.

- 1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 35% of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period.
- 1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (m).
- 1.27 “LWDA PAGA Payment” means the 65% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (m).
- 1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 “Non-Participating Class Member” means any Class Member who opts out of the Class Settlement by sending the Administrator a valid and timely written Request for Exclusion.
- 1.30 “Operative Complaint” means the First Amended Complaint the Parties anticipate Plaintiffs will file, in Los Angeles County Superior Court in the *Landon Jones v. Nespresso USA, Inc.* Action, which adds class claims as well as Plaintiff Kazmi and Plaintiff O’Byrne to the Action.
- 1.31 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.32 “PAGA Period” means the period from November 26, 2023 through November 15, 2025.
- 1.33 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.34 “PAGA Notice” means Plaintiffs’ March 30, 2026, amended letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

- 1.35 "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 35% to the Aggrieved Employees (\$11,550.00) and the 65% to LWDA (\$21,450.00) in settlement of PAGA claims.
- 1.36 "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 "Plaintiffs" means Landon Jones, Zehra Kazmi, and Diana Sue O'Byrne, the named plaintiffs in the Action.
- 1.38 "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.39 "Preliminary Approval Order" means the Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.40 "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.41 "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.
- 1.42 "Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.43 "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44 "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, (b) fax, email, or mail his or her Objection to the Settlement, or (c) fax, email, or mail Challenges to Workweeks and/or PAGA Pay Periods. Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.45 "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.46 "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. **RECITALS.**

- 2.1 On November 26, 2024, Plaintiff Jones commenced a class action by filing a Complaint alleging causes of action against Defendant for (1) failure to pay minimum wages; (2) failure to pay wages and overtime under Labor Code section 510; (3) meal period liability under Labor Code section 226.7; (4) rest break liability under Labor Code section 226.7; (5) reimbursement of necessary expenditures under Labor Code section 2802; (6) violation of Labor Code section 226(a); (7) failure to keep required payroll records under Labor Code sections 1174 and 1174.5; (8) penalties pursuant to Labor Code section 203; and (9) violation of Business & Professions Code section 17200 *et seq.*, the California Labor Code, and the applicable IWC Wage Orders.
- 2.2 On February 7, 2025, Plaintiff Jones filed a Complaint for Representative Action for Penalties Under Private Attorneys General Act, Labor Code § 2698 *et seq.* for (1) failure to pay minimum wages; (2) failure to pay wages and overtime under Labor Code section 510; (3) meal period liability under Labor Code section 226.7; (4) rest break liability under Labor Code section 226.7; (5) failure to reimburse necessary business expenditures under Labor Code section 2802; (6) violation of Labor Code section 226(a); (7) failure to keep required payroll records under Labor Code sections 1174 and 1174.5; and (8) penalties pursuant to Labor Code section 203, as well as allegations related to Defendant's failure to provide suitable seating.
- 2.3 The Parties agree that Plaintiffs will file an amended complaint in the Action, adding class allegations and Plaintiffs Kazmi and O'Byrne to the Action. By stipulating to the filing of an amended complaint in the Action, Defendant does not waive any argument or defense against any claim alleged in the Operative Complaint should this Agreement not become effective for any reason. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.4 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.5 On September 16, 2025, the Parties participated in an all-day mediation presided over by Louis Marlin which led to this Agreement to settle the Action.
- 2.6 Prior to mediation, Plaintiffs obtained, through informal discovery, a sampling of time and payroll data for the putative class, and figures and information regarding the class size and composition. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar").
- 2.7 The Court has not granted class certification because the Parties engaged in mediation before any class certification.

2.8 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

2.9 Within five (5) days of the Effective Date, Plaintiffs will file a Request for Dismissal in all other actions that are pending against Defendant.

3. **MONETARY TERMS.**

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay \$330,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1 To Plaintiffs: Class Representative Service Payments to the Class Representatives of not more than \$10,000.00 for Plaintiff Jones and \$5,000.00 for Plaintiff Kazmi and Plaintiff O'Byrne, each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as Participating Class Members). Defendant will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payments less than the amounts requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third, which is currently estimated to be \$110,000.00 and a Class Counsel Litigation Expenses Payment for reimbursement of actual expenses incurred, which is currently estimated not to exceed \$30,000.00. Defendant will not oppose requests for these payments that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a

Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Court's decision to award less than the amounts requested for the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement, shall have no impact on the enforceability of this Agreement, and shall not give rise to any further claims or appeals by Class Counsel, any Class Representative, and/or the Administrator. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

- 3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$9,990.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$9,990.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
 - 3.2.4.1 Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
 - 3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$33,000.00 to be paid from the Gross Settlement Amount, with 65% (\$21,450.00) allocated to the LWDA PAGA Payment and 35% (\$11,550.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties, \$11,550.00, by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. **SETTLEMENT FUNDING AND PAYMENTS.**

4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 690 Class Members who collectively worked a total of 31,397 workweeks from January 5, 2022, to November 15, 2025, and 475 Aggrieved Employees who worked a total of 17,979 PAGA Pay Periods from November 26, 2023 to November 15, 2025.

4.2 Class Data. Not later than 14 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Under no circumstances shall the Administrator share Class Data with Class Counsel without prior approval of Defense Counsel. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator by check no later than 30 days after the Effective Date.

4.4 Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments.

4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, if requested by the Class Member prior to the void date.

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of

the Individual Class Payments, Plaintiffs and Class Members will release claims against all Released Parties as follows:

5.1 Plaintiffs' Release. Plaintiffs and their respective former, present, and future spouses, representatives, agents, attorneys, heirs, administrators, executors, successors, assigns generally, and all others claiming by or through them, do hereby voluntarily and knowingly release and discharge Released Parties of and from all claims, transactions, or occurrences of any nature whatsoever that accrued during Plaintiffs' employment with Defendant, known or unknown, that Plaintiffs have or may have against any Released Party, whether in tort, contract, or for violation of any state, federal, or local statute, rule, or regulation arising out of, relating to, or in connection with any act or omission by or on the part of Defendant or Released Parties ("Plaintiffs' Release"). Plaintiffs' Release applies from the beginning of time until the date this agreement is executed by Plaintiffs. Plaintiffs' Release is a full and general release of claims and shall be interpreted as broadly as the law permits; provided, however, Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims that cannot be released by law, including for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences after the date Plaintiffs execute this agreement. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.1 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2 Release by Participating Class Members: All Participating Class Members release the Released Parties from any and all claims that were alleged in the Operative Complaint, or reasonably could have been alleged based on the facts stated in the Operative Complaint and arising during the Class Period, including claims for failure to pay minimum wages, wages, and overtime, meal period violations, rest period violations, failure to reimburse business expenses, failure to issue accurate and itemized wage statements, failure to keep payroll records, failure to pay final wages and waiting time penalties, failure to provide suitable seating, and for unfair competition (Cal. Business and Profession Code §§ 17200, et seq.) predicated on the aforementioned Labor Code violations including, without limitation, Labor Code §§ 201-204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, and 2802 and applicable IWC Wage Orders (collectively, the "Released Class Claims"). This

release shall apply to claims arising during the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3 Release by Aggrieved Employees: All Aggrieved Employees and the State of California release the Released Parties from any and all claims for civil penalties, interest, fees or costs under PAGA that were alleged, or reasonably could have been alleged, based on the facts and allegations in the PAGA Notice that arose during the PAGA Period, including claims for failure to pay minimum wages, wages, and overtime, meal period violations, rest period violations, failure to reimburse business expenses, failure to issue accurate and itemized wage statements, failure to keep payroll records, failure to pay final wages and waiting time penalties, and failure to provide suitable seating pursuant to, without limitation, Labor Code §§ 201-204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802, applicable IWC Wage Orders, and California Code of Regulations, Title 8, §§ 11000 *et seq.* ("Released PAGA Claims").

6. **MOTION FOR PRELIMINARY APPROVAL**. Plaintiffs will file a motion for preliminary approval ("Motion for Preliminary Approval") that at least complies with the Court's current checklist for Preliminary Approvals.

6.1 Plaintiffs' Responsibilities. Plaintiffs will prepare all documents necessary for obtaining Preliminary Approval, including: (i) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (ii) signed declarations from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (iii) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Class Members, and/or the Administrator.

6.2 Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 60 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary

Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 6.3 Duty to Cooperate. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone or email, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. **SETTLEMENT ADMINISTRATION.**

- 7.1 Selection of Administrator. The Parties have jointly selected Apex to serve as the Administrator and verified that, as a condition of appointment, Apex agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members.
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 7.4.3 Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone or by email, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address, email address and telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity.

The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating and Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and/or PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination regarding the challenges.

7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payments.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a

written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any components of the Settlement.

7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall notify Class Counsel and Defense Counsel and email Defense Counsel a list containing (a) Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid). The Administrator shall not provide contact information to Class Counsel.

7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received with any contact information redacted.

7.8.4 Workweek and/or PAGA Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or PAGA Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

- 7.8.5 Administrator's Declaration. Not later than 14 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- 7.8.6 Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.
- 7.9 Employer-Side Payroll Taxes. At least twenty-eight (28) days prior to the deadline stated in Paragraph 4.3 of this Agreement, the Administrator shall provide Defendant with (1) the amount of the employer-side payroll taxes attributable to the Wage Portions of the Individual Class Payments; and (2) wiring instructions.
8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE** Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 690 Class Members and 31,397 total workweeks from January 5, 2022, through November 15, 2025, and (2) there are 475 Aggrieved Employees who worked 17,979 PAGA Pay Periods from November 26, 2023, through November 15, 2025. If the number of total Workweeks encompassed within the Class Period exceeds 33,000 (at the time of mediation, Defendant estimated that there were 33,000 Workweeks encompassed within the Class Period) by more than 15% (i.e. an increase to more than 37,950 Workweeks), then the GSA shall be increased in proportion to the percentage increase in the number of total Workweeks encompassed in the Class Period in excess of 37,950 Workweeks. For example, if the number is 16% higher, the Gross Settlement Amount will be increased by 1%. In the alternative, Defendant may elect to modify the end date of the Class Period and PAGA Period such that the end date of the Class Period and PAGA Period results in a Workweek count that does not exceed 37,950. If the GSA is increased pursuant to this provision, the Class Counsel Fees Payment shall be one-third of the increased GSA.

9. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Unless otherwise ordered by the Court, not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval").
- 10.1 **Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2 **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members and/or Aggrieved Employees), the Parties will attempt to work together to find a mutually agreeable resolution that address the Court's concerns.
- 10.3 **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.5 **Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a

material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payments or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. **ADDITIONAL PROVISIONS.**

- 12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for

Preliminary Approval with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.
- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties, and approved by the Court.

- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

D.Law, Inc.
Roman Shkodnik

r.shkodnik@d.law

Mason Doidge

m.doidge@d.law

450 N Brand Blvd., Suite 840

Glendale, CA 91203

(818) 962-6465

To Defendant:

VORYS, SATER, SEYMOUR AND PEASE LLP

Thomas N. McCormick (SBN 325537)

tnmccormick@vorys.com

Cory D. Catignani (SBN 332551)

cdcattignani@vorys.com

Krystal V. Campos (SBN 351517)

kvcampos@vorys.com

2211 Michelson Drive, Suite 500

Irvine, California 92612

Telephone: (949) 526-7904

Facsimile: (949) 526-7904

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

12.20 Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable.

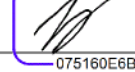
12.21 Severability. In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties, the Class Members, and the Aggrieved Employees, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

12.22 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Class Action and PAGA Settlement Agreement between Plaintiff, on the one hand, and Defendants, on the other hand, as of the date(s) set forth below:

Dated: 4/7/2026

Landon Jones

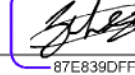
Signed by:


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Dated: 4/7/2026

Zehra Kazmi

Signed by:


87E839DFF67F453...

Dated: 4/7/2026

Diana Sue O'Byrne

Signed by:


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Dated: Apr 10, 2026

NESPRESSO USA, INC.

DocuSigned by:


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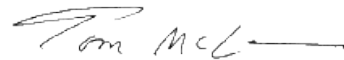
By: Hillary Anderson

Title: Legal Counsel

Approved as to form and content:

Dated: April 10, 2026

**VORYS, SATER, SEYMOUR AND
PEASE LLP**



Thomas N. McCormick
Cory D. Catignani
Krystal V. Campos
Attorneys for Defendant

Dated: 4/7/2026

D.LAW, INC.

A handwritten signature in black ink, appearing to read "Roman Shkodnik", written over a horizontal line.

Roman Shkodnik, Esq.

Mason Doidge, Esq.

Attorneys for Plaintiffs Landon Jones, Zehra
Kazmi, and Diana Sue O'Byrne

EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND
HEARING DATE FOR FINAL COURT APPROVAL**

Landon Jones et al. v. Nespresso USA, Inc.
Los Angeles County Superior Court Case Number 25STCV03443

The Superior Court for the State of California authorized this Notice. Read it carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Nespresso USA, Inc. (“Nespresso”) for alleged wage and hour violations. The Action was filed by former Nespresso employees Landon Jones, Zehra Kazmi, and Diana Sue O’Byrne (“Plaintiffs”) and seeks payment of (1) back wages and other relief for a class of hourly non-exempt employees (“Class Members”) who worked for Nespresso during the Class Period (January 5, 2022, through November 15, 2025); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt hourly employees who worked for Nespresso during the PAGA Period (November 26, 2023 through November 15, 2025) (“Aggrieved Employees”).

Nespresso denies all of the allegations and maintains that its policies fully comply with the law. The parties mediated the dispute and were able reach a proposed Settlement that has two main parts: (1) a Class Settlement requiring Nespresso to fund Individual Class Payments, and (2) a PAGA Settlement requiring Nespresso to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Nespresso’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Nespresso’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Nespresso’s records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ pay periods** during the PAGA Period. If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Nespresso to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Nespresso.

If you worked for Nespresso during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage and hour claims and PAGA Period penalty claims against Nespresso.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Nespresso, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Nespresso will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Nespresso that are covered by this Settlement (Released Class Claims and Released PAGA Claims, defined below).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Nespresso must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).
Participating Class Members Can Object to the Class	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel

Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/PAGA Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many pay periods you worked at least one day during the PAGA Period, respectively. The number of Class Period workweeks and number of PAGA Period pay periods you worked according to Nespresso's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former Nespresso employees. The Action accuses Nespresso of violating California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination and reimbursable expenses and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiffs are represented by attorneys in the Action: D.Law, Inc. ("Class Counsel.")

Nespresso strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Nespresso or Plaintiffs are correct on the merits.

In the meantime, Plaintiffs and Nespresso hired an experienced practitioner in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement,

Plaintiffs and Nespresso have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Nespresso does not admit any violations or concede the merit of any claims. Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Nespresso has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Nespresso Will Pay \$330,000.00 as the Gross Settlement Amount (Gross Settlement). Nespresso has agreed to deposit the Gross Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Nespresso will fund the Gross Settlement Amount not more than 30 days after the Judgment entered by the Court becomes final. The Judgment will be final the day after the deadline for filing a notice of appeal from the Judgment has passed, or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment, issues a remittitur, and no further appeals are possible.
2. Court Approved Deductions from Gross Settlement Amount. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - a. Up to \$110,000.00 (one-third of the Gross Settlement Amount) to Class Counsel for attorneys' fees and reimbursement of their litigation expenses, which is currently estimated not to exceed \$30,000.00. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - b. Up to \$10,000.00 to Plaintiff Jones, \$5,000.00 to Plaintiff Kazmi, and \$5,000.00 to Plaintiff O'Byrne as a Class Representative Service Payments for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payment and any Individual PAGA Payment.
 - c. Up to \$9,990.00 to the Administrator for services administering the Settlement.

- d. Up to \$33,000.00 for PAGA Penalties, allocated 65% (\$21,450.00) to the LWDA PAGA Payment and 35% (\$11,550.00) in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions except the PAGA Penalties. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement Amount (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiffs and Nespresso are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Nespresso will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Nespresso have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement. 5.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member setting forth a Class Member's name, present address, email address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-

Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Nespresso.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert the Released PAGA Claims against Nespresso as defined below.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Nespresso have agreed that, in either case, the Settlement will be void: Nespresso will not pay any money and Class Members will not release any claims against Nespresso.
8. Administrator. The Court has appointed a neutral company, Apex Class Action Administration (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion and written objections. The Administrator will also decide Class Member Challenges over Workweeks and/or PAGA Pay Periods, mail and remail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Nespresso has fully funded the Gross Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Nespresso or any Released Parties for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members release Released Parties from any and all claims that were alleged in the Operative Complaint, or reasonably could have been alleged based on the facts stated in the Operative Complaint and arising during the Class Period, including claims for failure to pay minimum wages, wages, and overtime, meal period violations, rest period violations, failure to reimburse business expenses, failure to issue accurate and itemized wage statements, failure to keep payroll records, failure to pay final wages and waiting time penalties, failure to provide suitable seating, and for unfair competition (Cal. Business and Profession Code §§ 17200, *et seq.*) predicated on the aforementioned Labor Code violations, including, without limitation, Labor Code §§ 201-204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, and 2802 and applicable IWC Wage

Orders (collectively, the "Released Class Claims"). This release shall apply to claims arising during the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

"Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

10. Aggrieved Employees' PAGA Release. After the Court's Judgment is final and Nespresso has fully funded the Gross Settlement Amount and separately paid all employer payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against Nespresso and Released Parties, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Nespresso or any Released Party based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Aggrieved Employees and the State of California release the Released Parties from any and all claims for civil penalties, interest, fees or costs under PAGA that were alleged, or reasonably could have been alleged, based on the facts and allegations in the PAGA Notice that arose during the PAGA Period, including claims for failure to pay minimum wages, wages, and overtime, meal period violations, rest period violations, failure to reimburse business expenses, failure to issue accurate and itemized wage statements, failure to keep payroll records, failure to pay final wages and waiting time penalties, and failure to provide suitable seating pursuant to Labor Code §§ 201-204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802, applicable IWC Wage Orders, and California Code of Regulations, Title 8, §§ 11000 *et seq.* ("Released PAGA Claims").

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$11,550.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/PAGA Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Nespresso's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or PAGA Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Nespresso's calculation of Workweeks and/or PAGA Pay Periods based on Nespresso's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or PAGA Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Nespresso's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Landon Jones v. Nespresso USA, Inc.*, and

include your identifying information (full name, address, email address, and telephone number). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Nespresso are asking the Court to approve. At least _____ days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Payment stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as Class Representative Service Payments. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Payment may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the *Action Landon Jones v. Nespresso USA, Inc.* and include your name, current address, email address, and telephone number, and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ in Department 39 of the Los Angeles County Superior Court, located at the Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via Zoom. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Nespresso and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____'s website at _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

D.Law, Inc.
Roman Shkodnik
r.shkodnik@d.law
Mason Doidge
m.doidge@d.law
450 N Brand Blvd., Suite 840
Glendale, CA 91203
(818) 962-6465

Settlement Administrator:

Name of Company: Apex Class Action Administration
Email Address: Sean@apexclassaction.com
Mailing Address: 18 Technology Drive, Suite 154, Irvine, CA 92618
Telephone: 949.878.3676

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 2

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

CT Corporation System, Agent for Service
Nespresso USA, Inc
330 N Brand Suite 700
Glendale, CA 91203
Certified Mail Tracking Number: 9414 8112 0620 5556 8783 18

Nespresso USA, Inc
111 West 33RD Street, 5TH Floor
New York, NY 10120
Certified Mail Tracking Number: 9414 8112 0620 5556 8706 71

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
*Jones v. Nespresso USA, Inc, et al.***

Gentlepersons:

This office represents Plaintiff Landon Jones (“Plaintiff”) and other similarly situated aggrieved non-exempt employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Nespresso USA, Inc; and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiff’s Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in Los Angeles County Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.



We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff's class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked.

Additionally, Aggrieved Employees were not paid for the time that they worked "pre-shift" and "post-shift" without compensation by waiting in line to access timeclocks before clocking in, donning and doffing uniforms, not being allowed to leave after clocking out until all other employees exited the jobsite and the jobsite was locked up, and setting up, organizing, and decorating retail work spaces in preparation for serving customers before clocking in. Moreover, Defendants required Employees to use their personal cell phones to respond to work demands outside of scheduled work hours, and Employees were not compensated for this time. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Because of the foregoing understatement of hours worked, Defendants also failed to pay Plaintiff and Aggrieved Employees proper overtime wages. Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Defendants had a common policy and/or practice of denying Plaintiff and Aggrieved Employees proper meal periods. Specifically, Plaintiff and Aggrieved Employees were required to work through their meal periods which they were consistently denied. Furthermore, Defendants had a consistent policy and practice of instructing Employees to clock out for meal periods and continue working. Also, what meal periods Plaintiff and Aggrieved Employees did take, were consistently less than 30 minutes, taken well after their fifth consecutive hour of work, and were on-duty due to Defendants' policy and practice of interrupting meal breaks with work demands, all in violation of Labor Code and applicable Wage Orders. Similarly, Plaintiff and Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders.



Defendants have consistently failed to provide Plaintiff and Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Plaintiff and Aggrieved Employees were required to work through their rest breaks which they were continuously denied. What rest breaks were taken were on-duty due to Defendants' policy and practice of interrupting rest breaks with work demands.

Defendants had a common policy and practice of failing to reimburse Plaintiff and Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Plaintiff and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants, including but not limited to personal cell phone usage, which was necessary to perform their duties under Defendants' employ.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, and premium pay for deficiently provided meal periods and rest breaks.

Moreover, Defendants failed to pay Plaintiff and Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

Defendants also failed to provide suitable seating to Aggrieved Employees. The operations at Defendants' facilities allowed for the presence and use of a stool or seat by Aggrieved Employees during the performance of their work duties. The nature of the effected job positions can reasonably be accomplished while using a seat or stool. However, Defendant failed to provide Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The



applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines “Hours Worked” as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants’ unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Specifically, Aggrieved Employees were not paid for the time that they worked, including as alleged above in connection with working during meal breaks and working “pre-shift” and “post-shift” without compensation by waiting in line to access timeclocks before clocking in, donning and doffing uniforms, not being allowed to leave after clocking out until all other employees exited the jobsite and the jobsite was locked up, and setting up, organizing, and decorating retail work spaces in preparation for serving customers before clocking in. Moreover, Aggrieved Employees were not paid for the time that they spent answering work-related phone calls and texts while off-the-clock. Thus, Plaintiff and Aggrieved Employees were required to work hours without wages. Additionally, Defendants did not pay Plaintiff and Aggrieved Employees at the applicable minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all



time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiff and Aggrieved Employees. In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Plaintiff and Aggrieved Employees earned wages and overtime. Specifically, Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, Defendants had a consistent policy of not paying Employees wages for all hours worked, including time worked while clocked out for meal breaks and working "pre-shift" and "post-shift" without compensation by waiting in line to access timeclocks before clocking in, donning and doffing uniforms, not being allowed to leave after clocking out until all other employees exited the jobsite and the jobsite was locked up, and setting up, organizing, and decorating retail work spaces in preparation for serving customers before clocking in. Plaintiff and Class members were also not paid for the time that they spent answering work-related phone calls and texts while off-the-clock. Plaintiff and Aggrieved Employees worked in excess of 8 hours a day and/or 40 hours a week, further entitling Plaintiff and Aggrieved Employees to overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders. Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated.



Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. This unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Aggrieved Employees a reasonable protocol for correcting time records when Aggrieved Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Aggrieved Employees' detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions. Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with meal periods late and well after the fifth hour of work, could not be relieved to take their meal periods, or were required to remain on-duty at all times and were unable to take off-duty meal periods or were otherwise not provided with the opportunity to take required meal periods.



On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendants' control due to Defendants' policy and practice interrupting meal periods with work demands, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Specifically, Defendants had a uniform policy and practice of instructing Employees to clock out for meal periods and continue working. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations or failed to provide rest breaks altogether. What rest breaks were provided were not duty-free due to Defendants' policy and practice of interrupting rest breaks with work demands.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Plaintiff and Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Defendants have failed to reimburse Plaintiff and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including but not limited to personal cell phone usage, which was necessary to perform their duties under Defendants' employ in violation of Labor Code § 2802. Defendants systematically and uniformly failed to reimburse those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees, by Defendants, failed to accurately account for wages, overtime, and premium pay for deficiently provided meal periods and rest breaks. The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period,



not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

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In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by requiring off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not properly recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination or within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Provide Suitable Seating

Plaintiff also alleges that operations at Defendants' facilities allowed for the presence and use of a stool or seat by the Aggrieved Employees during the performance of their work duties. The nature of the effected job positions can reasonably be accomplished while using a seat or stool. California Labor Code § 1198 requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful." Paragraph (14)(A) of the applicable IWC Wage Orders provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Paragraph 14(B) of the applicable IWC Wage Orders provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

In violation of the applicable sections of the California Labor Code and the requirements of the applicable IWC Wage Order, Defendants failed to provide Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting. Defendants knew or should have known that Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties, and that Defendants did not provide suitable seating and did not allow them to sit when it did not interfere with the performance of their duties.

With their conduct, Defendants have violated California Labor Code § 1198 and Paragraph 14 of the applicable IWC Wage Orders by failing to provide suitable seating to Aggrieved Employees. Defendants have violated the California Labor Code, including Section 1198, and regulations promulgated thereunder as herein alleged, including Paragraph 14 of the applicable IWC Wage Orders.



Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiff and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802, including as follows:

(a) **Wage Claims:** For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) **Meal and Rest Period Claims:** For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) **Inaccurate Wage Statements and Failure to Maintain Records:** For failure to provide Plaintiff and the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and



paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

(f) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Nespresso USA, Inc, and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

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Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

DLAW, INC.

David Yeremian

Cc: Nespresso USA, Inc

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Attorneys for Plaintiff LANDON JONES,
on behalf of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

LANDON JONES, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

NESPRESSO USA, INC, a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
6. Violation of Labor Code § 226(a);
7. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5
8. Penalties Pursuant to Labor Code § 203; and
9. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff LANDON JONES, (hereinafter “Plaintiff”) on behalf of himself and all others
2 similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants NESPRESSO
8 USA, INC, a Delaware corporation; and DOES 1 through 50 (all defendants being collectively
9 referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated
10 various provisions of the California Labor Code, relevant orders of the Industrial Welfare
11 Commission (IWC) and California Business & Professions Code, and seeks redress therefore.

12 2. Plaintiff is a resident of California and during the time period relevant to this
13 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
14 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
15 worked for Defendants in Los Angeles County, and in other nonexempt positions, throughout
16 California and, and consistently worked at Defendants’ behest without being paid all wages due.
17 More specifically, Plaintiff and the other similarly situated Class members were employed by
18 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
19 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
20 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
21 subjected to the same policies and practices, and (3) endured similar violations at the hands of
22 Defendants as the other Employee Class members who served in similar and related positions.

23 3. Defendants required Plaintiff and the Employees in the Class to perform work
24 while remaining under Defendants’ control before and after being on the clock for their daily work
25 shift. Defendants thus failed to pay Plaintiff and the Class members for all hours worked and
26 provided them with inaccurate wage statements that prevented Plaintiff and the Class from
27 learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class
28

1 with lawful meal and rest periods, as employees were not provided with the opportunity to take
2 timely, uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

3 **THE PARTIES**

4 **A. The Plaintiff**

5 4. Plaintiff LANDON JONES has resided in California and during the time period
6 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
7 the State of California.

8 **B. The Defendants**

9 5. Defendant NESPRESSO USA, INC is a Delaware corporation with its principle
10 executive offices in New York, New York and has been listed as the employer on Plaintiff's wage
11 statements during the relevant time period. NESPRESSO USA, INC lists a mailing address in
12 New York, New York with the California Secretary of State and employs Plaintiff and the Class
13 members at Defendants' offices and facilities in Beverly Hills, California, and throughout
14 California and conducts business throughout California.

15 6. The true names and capacities, whether individual, corporate, associate, or
16 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
17 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
18 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
19 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
20 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
21 this Complaint to reflect the true names and capacities of the Defendants designated herein as
22 Does 1 through 50 when their identities become known.

23 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
24 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
25 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
26 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
27 all respects as the employers or joint employers of Employees. Defendants, and each of them,
28 exercised control over the wages, hours or working conditions of Employees, or suffered or

1 permitted Employees to work, or engaged, thereby creating a common law employment
2 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
3 employed Employees.

4 **JURISDICTION AND VENUE**

5 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
6 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
7 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
8 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
9 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
10 obligations and liabilities giving rise to this lawsuit occurred at least in part in Los Angeles
11 County, Defendants maintain and operate company offices and facilities in Los Angeles County,
12 and Defendants employ Plaintiff and other Class members in Los Angeles County and throughout
13 California.

14 **FACTUAL BACKGROUND**

15 9. The Employees who comprise the Class and Collective, including Plaintiff, are
16 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
17 Employees who work in nonexempt positions at the direction of Defendants in the State of
18 California. Plaintiff and the Class members were either not paid by Defendants for all hours
19 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
20 Plaintiff and Employees were not paid for the time that they worked “pre-shift” and “post-shift”
21 without compensation by waiting in line to access timeclocks before clocking in, donning and
22 doffing uniforms, not being allowed to leave after clocking out until all other employees exited the
23 jobsite and the jobsite was locked up, and setting up, organizing, and decorating retail work spaces
24 in preparation for serving customers before clocking in. Moreover, Defendants required
25 Employees to use their personal cell phones to respond to work demands outside of scheduled
26 work hours, and Employees were not compensated for this time. Plaintiff also contends that
27 Defendants failed to pay Plaintiff and the Class members all wages due and owing, failed to
28 provide meal and rest breaks, and failed to furnish accurate wage statements, all in violation of

1 various provisions of the California Labor Code and applicable Wage Orders.

2 10. During the course of Plaintiff and the Class members' employment with
3 Defendants, they were not paid all wages they were owed, including for all work performed and
4 for all overtime hours worked and were forced to work during their meal and rest breaks.
5 Defendants failed to maintain timekeeping records for Plaintiff that would permit him to discover
6 the nature and extent of Defendants' unlawful timekeeping practices.

7 11. As a matter of uniform Company policy, Plaintiff and the Class members were
8 required to work during their meal and rest breaks which were not compensated by Defendants in
9 violation of the California Labor Code. Plaintiff and the Class members were also not paid
10 regular wages and overtime for the time they were required to comply with other requirements
11 imposed upon them, which they had to complete while working through their meal and rest
12 breaks and without compensation. As a result, Plaintiff and the Class members worked shifts over
13 eight (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the
14 appropriate overtime rate for all such hours, including by being required to perform work duties
15 and tasks without pay and while off-the-clock. As a result, Plaintiff and the Class members
16 worked substantial overtime hours during their employment with Defendants for which they were
17 not compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

18 12. As a result of the above described daily work demands and pressures to work
19 through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the
20 Class members were not properly paid for all wages earned and for all wages owed to them by
21 Defendants, including when working more than eight (8) hours in any given day and/or more than
22 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
23 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
24 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and
25 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
26 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
27 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
28 Labor Code, applicable IWC Wage Orders.

1 13. Therefore, from at least four (4) years prior to the filing of this lawsuit and
2 continuing to the present, Defendants had a consistent policy or practice of failing to pay
3 Employees for all hours worked and failing to pay minimum wage for all time worked as required
4 by California Law.

5 14. Additionally from at least four (4) years prior to the filing of this lawsuit and
6 continuing to the present, Defendants had a consistent policy or practice of failing to pay
7 Employees overtime compensation at premium overtime rates for all hours worked in excess of
8 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
9 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
10 sections of IWC Wage Orders.

11 15. Additionally, from at least four (4) years prior to the filing of this lawsuit and
12 continuing to the present, Defendants have regularly required Employees to work shifts in excess
13 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
14 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
15 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
16 hour of wages at each Employee’s effective regular rate of pay, for each meal period that
17 Defendants failed to provide or deficiently provided. Furthermore, Defendants had a consistent
18 policy and practice of instructing Employees to clock out for meal periods and continue working.

19 16. From at least four (4) years prior to the filing of this lawsuit and continuing to the
20 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
21 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
22 Defendants pay Employees premium pay for each day on which requisite rest breaks were not
23 provided or were deficiently provided at one hour of wages at each Employee’s effective regular
24 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

25 17. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
26 continuing to the present, Defendants have consistently failed to provide Employees with timely,
27 accurate, and itemized wage statements as required by California wage-and-hour laws.
28 Specifically, the wage statements given to Employees by Defendants failed to accurately account

1 for wages, overtime, and premium pay for deficient meal periods and rest breaks all of which
2 Defendants knew or reasonably should have known were owed to Employees, as alleged
3 hereinabove. The wage statements provided to Employees were confusing and required
4 Employees to engage in discovery and refer to outside sources to verify whether their pay was
5 correct, potentially resulting in a miscalculation by the Employees.

6 18. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
7 continuing to the present, Defendants have consistently failed to provide Employees with timely,
8 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

9 19. From at least four (4) years prior to the filing of this lawsuit and continuing to the
10 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
11 performance of their job duties for Defendants including, but not limited to, the cost of personal
12 cellphone usage, which was necessary to perform their duties under Defendants' employ in
13 violation of Labor Code § 2802.

14 20. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
15 continuing to the present, Defendants have consistently failed to keep accurate time and wage
16 records as required by California wage-and-hour laws.

17 21. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
18 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to
19 Employees at the time of their termination or within seventy-two (72) hours of their resignation, as
20 required by California wage-and-hour laws.

21 22. Defendants also failed to provide suitable seating to Plaintiff and Class members.
22 The operations at Defendants' facilities allowed for the presence and use of a stool or seat by
23 Plaintiff and Class members during the performance of their work duties. The nature of the
24 effected job positions can reasonably be accomplished while using a seat or stool. However,
25 Defendant failed to provide Plaintiff and Class members suitable seating when the nature of these
26 employees' work reasonably permitted sitting.

27 23. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
28 Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12,

1 1185, 1194, 1194.2 1197, 1199, and 2802.

2 24. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
3 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
4 enjoyed from their violations of Labor Code.

5 **CLASS ALLEGATIONS**

6 25. Plaintiff brings this class action on behalf of himself and all others similarly
7 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as
8 follows: all individuals employed by Defendants within the State of California at any time within
9 four (4) years of the filing of this lawsuit.

10 26. Further, Plaintiff seeks to represent the following Subclasses composed of and
11 defined as follows:

12 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
13 compensated for all hours worked for Defendants at the applicable minimum wage.

14 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
15 compensated for all hours worked for Defendants at the required rates of pay, including for all
16 hours worked in excess of eight in a day and/or forty in a week.

17 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
18 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
19 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

20 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
21 Defendants' policy and/or practice of failing to authorize and permit Employees to take
22 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
23 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

24 e. Subclass 5. Failure to Reimburse for Necessary Business Expenditures Subclass.
25 All Class members who were subject to Defendants' failure to reimburse for expenses necessarily
26 incurred in the performance of Employees job duties for Defendants.

27 f. Subclass 6. Wage Statement Subclass. All Class members who, within the
28 applicable limitations period, were not provided with accurate itemized wage statements.

g. Subclass 7. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

h. Subclass 8. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

i. Subclass 9. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

27. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues.

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

A. Numerosity

29. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class members has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit, employed more than 100 individuals within the State of California.

30. Accounting for employee turnover during the relevant time period increases this number substantially. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all class members.

B. Commonality

31. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. These common questions of law and fact

1 include:

- 2 a. Whether Defendants failed to pay Employees minimum wages;
- 3 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 4 c. Whether Defendants failed to pay Employees overtime as required under Labor
5 Code § 510;
- 6 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
7 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
8 premium pay in lieu thereof;
- 9 e. Whether Defendants violated Labor Code § 226.7, and the applicable IWC Wage
10 Orders, by failing to provide Employees with requisite rest breaks or premium pay
11 in lieu thereof;
- 12 f. Whether Defendants failed to reimburse Employees for necessary business
13 expenses;
- 14 g. Whether Defendants violated Labor Code § 226(a);
- 15 h. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 16 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
17 wages and compensation due and owing at the time of termination of employment;
- 18 j. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 19 k. Whether Employees are entitled to equitable relief pursuant to Business and
20 Professions Code § 17200 *et seq.*

21 **C. Typicality**

22 32. The claims of the named plaintiff are typical of those of the other Employees.
23 Employees all sustained injuries and damages arising out of and caused by Defendants' common
24 course of conduct in violation of statutes, as well as regulations that have the force and effect of
25 law, as alleged herein.

26 **D. Adequacy of Representation**

27 33. Plaintiff will fairly and adequately represent and protect the interest of Employees.
28 Counsel who represents Employees are experienced and competent in litigating employment class

actions.

E. Superiority of Class Action

34. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

35. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Against All Defendants)

36. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

37. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Employees time records and failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with working during meal breaks and working "pre-shift" and "post-shift" without compensation by waiting in line to access timeclocks before clocking in, donning and doffing uniforms, not being allowed to leave after clocking out until all other employees exited the jobsite and the jobsite was locked up, and setting up, organizing, and decorating retail work spaces in preparation for serving customers before clocking in. Plaintiff and Class members were also not paid for the time that they spent answering work-related phone calls and texts while off-the-clock. Additionally, Defendants had a consistent policy of failing to pay Employees for hours worked during alleged meal periods for which Employees were consistently denied, as also addressed herein. Defendants thus regularly failed to pay minimum wages to Plaintiff and Class members. Moreover, Defendants did not pay Plaintiff and

1 Employees at the applicable minimum wage for all hours worked. Defendants' uniform pattern of
2 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a
3 whole, as a result of implementing a uniform policy and practice that denied accurate
4 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

5 38. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
6 states:

7 The minimum wage for employees fixed by the commission is the
8 minimum wage to be paid to employees, and the payment of a less
9 wage than the minimum so fixed is unlawful.

9 39. The applicable minimum wages fixed by the commission for work during the
10 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
11 therefore entitled to double the minimum wage during the relevant period.

12 40. The minimum wage provisions of California Labor Code are enforceable by private
13 civil action pursuant to California Labor Code § 1194(a) which states:

14 Notwithstanding any agreement to work for a lesser wage, any
15 employee receiving less than the legal minimum wage or the legal
16 overtime compensation applicable to the employee is entitled to
17 recover in a civil action the unpaid balance of the full amount of
18 this minimum wage or overtime compensation, including interest
19 thereon, reasonable attorney's fees and costs of suit.

18 41. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
19 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

20 42. California Labor Code § 1194.2 also provides for the following remedies:

21 In any action under Section 1194 . . . to recover wages because of
22 the payment of a wage less than the minimum wages fixed by an
23 order of the commission, an employee shall be entitled to recover
24 liquidated damages in an amount equal to the wages unlawfully
25 unpaid and interest thereon.

24 43. Defendants have the ability to pay minimum wages for all time worked and have
25 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
26 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

27 44. Wherefore, Employees are entitled to recover the unpaid minimum wages
28 (including double minimum wages), liquidated damages in an amount equal to the minimum

wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

45. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

46. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including time worked while clocked out for meal breaks and working "pre-shift" and "post-shift" without compensation by waiting in line to access timeclocks before clocking in, donning and doffing uniforms, not being allowed to leave after clocking out until all other employees exited the jobsite and the jobsite was locked up, and setting up, organizing, and decorating retail work spaces in preparation for serving customers before clocking in. Plaintiff and Class members were also not paid for the time that they spent answering work-related phone calls and texts while off-the-clock. Employees regularly worked over 8 hours on a given day or over 40 hours in a given week without receiving overtime compensation.

47. Defendants' failure to pay compensation in a timely fashion also constituted a violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that provision of the California Labor Code, Defendants have failed to pay all wages and overtime compensation earned by Employees. Each such failure to make a timely payment of

1 compensation to Employees constitutes a separate violation of California Labor Code § 204.

2 48. Employees have been damaged by these violations of California Labor Code §§
3 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

4 49. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
5 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
6 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
7 reasonable attorneys' fees and costs.

8 **THIRD CAUSE OF ACTION**

9 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

10 **(Against All Defendants)**

11 50. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 51. Employees regularly worked shifts greater than five (5) hours and greater than ten
14 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
15 more than five (5) hours without providing him or her with a meal period of not less than thirty
16 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
17 meal period of not less than thirty (30) minutes.

18 52. Defendants failed to provide Employees with meal periods as required under the
19 Labor Code. Employees were consistently required to work through their meal periods which they
20 were consistently denied. Employees were also required to take meal periods after working well
21 beyond the five (5) hour shifts. In addition, Defendants had a consistent policy and practice of
22 instructing Employees to clock out for meal periods and continue working. What meal periods
23 were provided were also not duty-free due to Defendants' policy and practice of interrupting the
24 meal breaks with work demands. Furthermore, Employees were regularly required to work for
25 more than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute
26 meal period as required by law.

27 53. Moreover, Defendants failed to compensate Employees for each meal period not
28 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and

20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. Defendants failed to compensate the Employees in the Class for each meal period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order.

54. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, a sum to be proven at trial.

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

55. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

56. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift.

57. Defendants failed to provide Employees with timely rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. What rest breaks were provided were also not duty-free due to Defendants' policy and practice of interrupting rest breaks with work demands.

58. Moreover, Defendants failed to compensate Employees for each rest period not provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a rest period in accordance with this section, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. Defendants failed to compensate the Employees in the Class for each rest period not provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage

1 Order.

2 59. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
3 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
4 worked without the required rest breaks, a sum to be proven at trial.

5 **FIFTH CAUSE OF ACTION**
6 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
7 **IN VIOLATION OF LABOR CODE § 2802**

8 **(Against All Defendants)**

9 60. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 61. Under Labor Code § 2802(a), an employer must indemnify its employees for all
12 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
13 of his or her duties, or of his or her obedience to the directions of the employer.

14 62. Employees incurred necessary expenditures in the performance of their job duties
15 for Defendants, including but not limited to the cost of cell phone usage, which was necessary to
16 perform their duties under Defendants' employ. From four (4) years prior to the original filing of
17 this lawsuit and continuing to the present, Defendants consistently failed to reimburse Employees
18 for these necessarily incurred business expenses.

19 63. As a result of the unlawful acts of Defendants, Employees have been deprived of
20 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
21 plus interest and penalties thereon, attorneys' fees, and costs.

22 **SIXTH CAUSE OF ACTION**
23 **VIOLATION OF LABOR CODE § 226(a)**

24 **(Against All Defendants)**

25 64. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 65. California Labor Code § 226(a) requires an employer to furnish each of his or her
28 employees with an accurate, itemized statement in writing showing the gross and net earnings,

1 total hours worked, and the corresponding number of hours worked at each hourly rate; these
2 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
3 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
4 statements may be given to the employee separately from the payment of wages; in either case the
5 employer must give the employee these statements twice a month or each time wages are paid.

6 66. Defendants failed to provide Employees with accurate itemized wage statements in
7 writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by
8 Defendants, failed to accurately account for wages, overtime, and premium pay for deficient meal
9 periods and rest breaks, all of which Defendants knew or reasonably should have known were
10 owed to Employees, as alleged hereinabove. The wage statements provided to Employees were
11 confusing and required Employees to engage in discovery and refer to outside sources to verify
12 whether their pay was correct, potentially resulting in a miscalculation by the Employees.

13 67. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
14 Employees suffered injuries, including among other things confusion over whether they received
15 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
16 forcing them to make mathematical computations to analyze whether the wages paid in fact
17 compensated them correctly for all hours worked.

18 68. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
19 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
20 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
21 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
22 award of costs and reasonable attorneys' fees.

23 69. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
24 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
25 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
26 employee for each pay period.

27 70. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
28 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be

1 shown according to proof.

2 **SEVENTH CAUSE OF ACTION**

3 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

4 **AND 1174.5**

5 **(Against All Defendants)**

6 71. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 72. California Labor Code § 1174 requires that all employers shall keep accurate time
9 and wage records for all employees. California Labor Code § 1174.5 further requires that any
10 employee suffering injury due to a willful violation of the aforementioned obligations may seek
11 damages, including civil penalties, from the employer.

12 73. During the course of Plaintiff's and Employees' employment, Defendants
13 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
14 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
15 overtime, and premium pay as discussed above.

16 74. Accordingly, Defendants are liable for civil penalties pursuant to the California
17 Labor Code § 1174.5. for the three (3) years prior to the filing of this Complaint.

18 **EIGHTH CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE § 203**

20 **(Against All Defendants)**

21 75. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 76. Numerous Employees are no longer employed by Defendants; they either quit
24 Defendants' employ or were fired therefrom.

25 77. Defendants failed to pay these Employees all wages due and certain at the time of
26 termination or within seventy-two (72) hours of resignation.

27 78. The wages withheld from these Employees by Defendants remained due and owing
28 for more than thirty (30) days from the date of separation of employment.

1 79. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
2 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
3 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
4 to thirty (30) days from the date they were due.

5 **NINTH CAUSE OF ACTION**

6 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

7 **(Against All Defendants)**

8 80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
9 full herein.

10 81. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim
11 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in
12 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
13 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure § 1021.5.

15 82. Plaintiff is a "person" within the meaning of Business & Professions Code
16 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
17 relief, restitution, and other appropriate equitable relief.

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

20 84. Wage-and-hour laws express fundamental public policies. Paying employees their
21 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
22 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
23 to enforce minimum labor standards, to ensure that employees are not required or permitted to
24 work under substandard and unlawful conditions, and to protect law-abiding employers and their
25 employees from competitors who lower costs to themselves by failing to comply with minimum
26 labor standards.

27 85. Defendants have violated statutes and public policies. Through the conduct alleged
28 in this Complaint, Defendants have acted contrary to these public policies, have violated specific

1 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
2 violation of Business & Professions Code § 17200 *et seq.* Defendants' conduct has deprived
3 Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and
4 privileges guaranteed to all employees under the law.

5 86. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
6 violation of the Business & Professions Code § 17200 *et seq.*

7 87. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
8 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
9 care should have known that their conduct was unlawful; therefore their conduct violates the
10 Business & Professions Code § 17200 *et seq.*

11 88. As a proximate result of the above-mentioned acts of Defendants, Employees have
12 been damaged, in a sum to be proven at trial.

13 89. Unless restrained by this Court, Defendants will continue to engage in such
14 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
15 should make such orders or judgments, including the appointment of a receiver, as may be
16 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
17 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
18 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
19 have unlawfully failed to pay.

20 **RELIEF REQUESTED**

21 WHEREFORE, Plaintiff prays for the following relief:

- 22 1. For an order certifying this action as a class action;
- 23 2. For compensatory damages in the amount of the unpaid minimum wages for work
24 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
25 the filing of this action, as may be proven;
- 26 3. For liquidated damages in the amount equal to the unpaid minimum wage and
27 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 28 4. For compensatory damages in the amount of the hourly wage made by Employees

1 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
2 years prior to the filing of this action, as may be proven;

3 5. For compensatory damages in the amount of the hourly wage made by Employees
4 for each day requisite rest breaks were not provided or were deficiently provided and where no
5 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
6 be proven;

7 6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

8 7. For penalties pursuant to Labor Code § 226.3, as may be proven;

9 8. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
10 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

11 9. For penalties pursuant to Labor Code § 1174.5, as may be proven;

12 10. For restitution for unfair competition pursuant to Business & Professions Code
13 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

14 11. For compensatory damages in the amount of all previously unreimbursed business
15 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
16 from four (4) years prior to the original filing of this action, as may be proven;

17 12. For an order enjoining Defendants and their agents, servants, and employees, and
18 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
19 duties adumbrated in this Complaint;

20 13. For all general, special, and incidental damages as may be proven;

21 14. For an award of pre-judgment and post-judgment interest;

22 15. For an award providing for the payment of the costs of this suit;

23 16. For an award of attorneys' fees; and

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

25 ///

26 ///

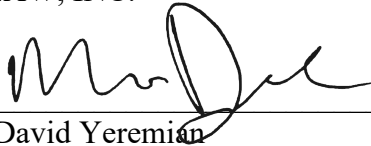
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1 DATED: November 26, 2024

D.LAW, INC.

2
3 By



David Yermian
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
LONDON JONES
and the putative class

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: November 26, 2024

D.LAW, INC.

By



David Yermian
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
LONDON JONES
and the putative class

EXHIBIT 3

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Nespresso USA, Inc
C/o Thomas McCormick
VORYS, SATER, SEYMOUR AND PEASE LLP
2211 Michelson Drive, Suite 500
Irvine, California 92612
Certified Mail Tracking Number: 9414 8111 0549 5812 1313 38

LWDA No. 1063850-24

**Re: Labor Code § 2698, *et seq.* Penalties – Amended PAGA Notice Letter to the LWDA
*Jones v. Nespresso USA, Inc, et al.***

Gentlepersons:

This office represents Plaintiffs Landon Jones, Zehra Kazmi, and Diana O’Byrne (“Plaintiffs”) and other similarly situated aggrieved non-exempt employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* (“the Act”). Plaintiffs would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Nespresso USA, Inc; and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiffs’ Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in Los Angeles County Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiffs and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiffs’ class-wide claims and claims under the Act, and the applicable California law governing them. It, along with



this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked.

Additionally, Aggrieved Employees were not paid for the time that they worked “pre-shift” and “post-shift” without compensation by waiting in line to access timeclocks before clocking in, donning and doffing uniforms, not being allowed to leave after clocking out until all other employees exited the jobsite and the jobsite was locked up, and setting up, organizing, and decorating retail work spaces in preparation for serving customers before clocking in. Moreover, Defendants required Employees to use their personal cell phones to respond to work demands outside of scheduled work hours, and Employees were not compensated for this time. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Because of the foregoing understatement of hours worked, Defendants also failed to pay Plaintiffs and Aggrieved Employees proper overtime wages. Plaintiffs and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiffs and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Defendants had a common policy and/or practice of denying Plaintiffs and Aggrieved Employees proper meal periods. Specifically, Plaintiffs and Aggrieved Employees were required to work through their meal periods which they were consistently denied. Furthermore, Defendants had a consistent policy and practice of instructing Employees to clock out for meal periods and continue working. Also, what meal periods Plaintiffs and Aggrieved Employees did take, were consistently less than 30 minutes, taken well after their fifth consecutive hour of work, and were on-duty due to Defendants’ policy and practice of interrupting meal breaks with work demands, all in violation of Labor Code and applicable Wage Orders. Similarly, Plaintiffs and Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders.

Defendants have consistently failed to provide Plaintiffs and Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Plaintiffs and Aggrieved Employees were required to work through their rest breaks which they were continuously denied. What rest breaks were taken were on-duty due to Defendants’ policy and practice of interrupting rest breaks with work demands.



Defendants had a common policy and practice of failing to reimburse Plaintiffs and Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Plaintiffs and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants, including but not limited to personal cell phone usage, which was necessary to perform their duties under Defendants' employ.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, and premium pay for deficiently provided meal periods and rest breaks.

Moreover, Defendants failed to pay Plaintiffs and Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

Defendants also failed to provide suitable seating to Aggrieved Employees. The operations at Defendants' facilities allowed for the presence and use of a stool or seat by Aggrieved Employees during the performance of their work duties. The nature of the effected job positions can reasonably be accomplished while using a seat or stool. However, Defendant failed to provide Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the attached Class Action Complaint, Plaintiffs and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable



IWC Wage Orders defines “Hours Worked” as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants’ unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Specifically, Aggrieved Employees were not paid for the time that they worked, including as alleged above in connection with working during meal breaks and working “pre-shift” and “post-shift” without compensation by waiting in line to access timeclocks before clocking in, donning and doffing uniforms, not being allowed to leave after clocking out until all other employees exited the jobsite and the jobsite was locked up, and setting up, organizing, and decorating retail work spaces in preparation for serving customers before clocking in. Moreover, Aggrieved Employees were not paid for the time that they spent answering work-related phone calls and texts while off-the-clock. Thus, Plaintiffs and Aggrieved Employees were required to work hours without wages. Additionally, Defendants did not pay Plaintiffs and Aggrieved Employees at the applicable minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiffs and Aggrieved Employees. In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees



and costs of suit pursuant to California Labor Code § 1194(a). Plaintiffs and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiffs and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs are seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Plaintiffs and Aggrieved Employees earned wages and overtime. Specifically, Plaintiffs and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiffs and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, Defendants had a consistent policy of not paying Employees wages for all hours worked, including time worked while clocked out for meal breaks and working "pre-shift" and "post-shift" without compensation by waiting in line to access timeclocks before clocking in, donning and doffing uniforms, not being allowed to leave after clocking out until all other employees exited the jobsite and the jobsite was locked up, and setting up, organizing, and decorating retail work spaces in preparation for serving customers before clocking in. Plaintiffs and Class members were also not paid for the time that they spent answering work-related phone calls and texts while off-the-clock. Plaintiffs and Aggrieved Employees worked in excess of 8 hours a day and/or 40 hours a week, further entitling Plaintiffs and Aggrieved Employees to overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders. Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not



paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. This unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Aggrieved Employees a reasonable protocol for correcting time records when Aggrieved Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Aggrieved Employees' detriment. Defendants have also violated these provisions by requiring Plaintiffs and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions. Under the PAGA, and following exhaustion of the notice period, Plaintiffs are seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with meal periods late and well after the fifth hour of work, could not be relieved to take their meal periods, or were required to remain on-duty at all times and were unable to take off-duty meal periods or were otherwise not provided with the opportunity to take required meal periods.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendants' control due to Defendants' policy and practice interrupting meal periods with work demands, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Specifically, Defendants had a



uniform policy and practice of instructing Employees to clock out for meal periods and continue working. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs are seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations or failed to provide rest breaks altogether. What rest breaks were provided were not duty-free due to Defendants' policy and practice of interrupting rest breaks with work demands.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs are seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Plaintiffs and Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Defendants have failed to reimburse Plaintiffs and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including but not limited to personal cell phone usage, which was necessary to perform their duties under Defendants' employ in violation of Labor Code § 2802. Defendants systematically and uniformly failed to reimburse those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the



Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiffs seek all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees, by Defendants, failed to accurately account for wages, overtime, and premium pay for deficiently provided meal periods and rest breaks. The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs assert PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiffs and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required



under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by law, subjects Defendants to “a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...”

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants’ systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, Plaintiffs were not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and was not paid all double time owed either. Defendants’ uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiffs and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by requiring off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs assert PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties



available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not properly recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiffs and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs assert PAGA claims for failure to provide Plaintiffs and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiffs and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination or within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiffs and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs assert PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).



Failure to Provide Suitable Seating

Plaintiffs also allege that operations at Defendants' facilities allowed for the presence and use of a stool or seat by the Aggrieved Employees during the performance of their work duties. The nature of the effected job positions can reasonably be accomplished while using a seat or stool. California Labor Code § 1198 requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful." Paragraph (14)(A) of the applicable IWC Wage Orders provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Paragraph 14(B) of the applicable IWC Wage Orders provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

In violation of the applicable sections of the California Labor Code and the requirements of the applicable IWC Wage Order, Defendants failed to provide Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting. Defendants knew or should have known that Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties, and that Defendants did not provide suitable seating and did not allow them to sit when it did not interfere with the performance of their duties.

With their conduct, Defendants have violated California Labor Code § 1198 and Paragraph 14 of the applicable IWC Wage Orders by failing to provide suitable seating to Aggrieved Employees. Defendants have violated the California Labor Code, including Section 1198, and regulations promulgated thereunder as herein alleged, including Paragraph 14 of the applicable IWC Wage Orders.

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiffs and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

Plaintiffs' PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiffs will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiffs and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor



Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802, including as follows:

(a) Wage Claims: For failure to provide Plaintiffs and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiffs and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiffs and the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Plaintiffs and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and



2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

(f) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiffs allege have been violated, including the facts and relevant theories alleged against Nespresso USA, Inc, and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiffs respectfully request that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiffs and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

D.LAW, INC.

A handwritten signature in black ink, appearing to read 'Mason Doidge', is written over the printed name.

Mason Doidge

Cc: Nespresso USA, Inc

EXHIBIT 4