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NORTH AMERICA, INC.

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

11 JOSE PABLO JIMENEZ, as an individual and
on behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 NESTLE WATERS NORTH AMERICA,
15 INC., a Delaware corporation; and DOES 1
through 50, inclusive,

16 Defendant.

Case No. _____

CLASS ACTION

**NOTICE OF REMOVAL OF CIVIL
ACTION TO UNITED STATES DISTRICT
COURT**

[28 U.S.C. § 1332(d) (Class Action Fairness
Act)]

*[Filed concurrently with Civil Cover Sheet;
Notice of Party with Financial Interest; and
Declarations of Nancy DiRienzo and Jesse C.
Ferrantella]*

Complaint Filed: November 2, 2020

Trial Date: Not Set

1 Defendant Nestlé Waters North America, Inc. (“Nestlé Waters”) removes this putative class
2 action to the United States District Court for the Eastern District of California under 28 U.S.C. §
3 1332(d) (the Class Action Fairness Act [“CAFA”]) and § 1446 because (1) Nestlé Waters is a
4 citizen of a state different than Plaintiff; (2) the number of members of all proposed plaintiff
5 classes in the aggregate is over 100; and (3) the matter in controversy exceeds the sum or value of
6 \$5,000,000, exclusive of interest and costs. All CAFA requirements are satisfied.

7 The foregoing facts were true when Plaintiff filed his Class Action Complaint
8 (“Complaint”) and remain true as of the date of filing this Notice of Removal. Removal jurisdiction
9 is therefore appropriate as detailed more fully below.

10 **I. STATE COURT ACTION**

11 1. Plaintiff filed his Class Action Complaint on November 2, 2020 in the Kern County
12 Superior Court (“Action”). The Action was assigned Case No. BCV-20-102561. Declaration of
13 Jesse C. Ferrantella [“Ferrantella Decl.”], ¶ 2; Ex. 1 (Complaint). A copy of the Class Action
14 Complaint is attached as **Exhibit 1**.

15 2. Plaintiff served his Complaint on Nestlé Waters on November 13, 2020. (*Id.* ¶ 3, Ex.
16 2.) A copy of the proof of service is attached as **Exhibit 2**.

17 3. On December 11, 2020, Nestlé Waters filed an Answer to Plaintiff’s Class Action
18 Complaint in the Kern County Superior Court. (Ferrantella Decl., ¶ 4, Ex. 3.) A copy of the
19 Answer is attached as **Exhibit 3**.

20 **II. REMOVAL IS TIMELY**

21 4. Under 28 U.S.C. § 1446(b) and Federal Rule of Civil Procedure 6(a), Nestlé
22 Waters’ deadline to remove the Action is December 14, 2020. *Murphy Bros., Inc. v. Michetti Pipe*
23 *Stringing, Inc.*, 526 US 344, 354 (1999). This removal is timely.

24 **III. REMOVAL IS PROPER UNDER CAFA**

25 5. Removal is proper given Plaintiff’s allegations and claims. Plaintiff’s Complaint
26 asserts: (1) Violation of California Labor Code §§ 510, 558 and 1194 (Overtime); (2) Violation of
27 California Labor Code §§ 226.7 and 512 (Meal Period Premiums); (3) Violation of California
28 Labor Code § 226.7 (Rest Period Premiums); (4) Violation of California Labor Code §§ 201

1 through 203 (Failure to Timely Pay Wages); (5) Violation of California Labor Code § 226(a) (Non
2 -Compliant Wage Statements); and (6) Violation of California Business & Professions Code §§
3 17200, *et seq.* (Ex. 1, Complaint.) It also asserts a violation of the Private Attorneys General Act of
4 2004, Labor Code §§ 2698 *et seq.* (*Id.*)

5 6. CAFA grants district courts original jurisdiction over civil class action lawsuits filed
6 under federal or state law in which (1) any member of a class of plaintiffs is a citizen of a state
7 different from any defendant; (2) the number of members of all proposed plaintiff classes in the
8 aggregate is over 100; and (3) where the matter in controversy exceeds the sum or value of
9 \$5,000,000, exclusive of interests and costs. 28 U.S.C. § 1332(d). CAFA authorizes such removal
10 under 28 U.S.C. § 1446.

11 7. This Court has original jurisdiction over the Action under CAFA because it is a civil
12 case filed as class action wherein at least one member of the putative class is a citizen of a State
13 different from Nestlé Waters, the number of individuals in the proposed classes in the aggregate is
14 over 100, and the matter in controversy exceeds \$5,000,000, exclusive of interest and costs.

15 **A. CAFA’s Diversity of Citizenship Requirement is Satisfied**

16 8. CAFA’s diversity requirement is satisfied “so long as ‘any member of a class of
17 plaintiffs is a citizen of a State different from any defendant.’” *Bradford v. Bank of Am. Corp.*, No.
18 CV 15-5201-GHK (JCX), 2015 WL 5311089, at *3 (C.D. Cal. Sept. 10, 2015) (citing *California v.*
19 *IntelliGender, LLC*, 771 F.3d 1169, 1172 (9th Cir. 2014)); 28 U.S.C. §§ 1332(d)(2), 1453(a), (b).

20 9. Plaintiff is a resident of the State of California within the meaning of 28 U.S.C. §
21 1332(a). (Declaration of Nancy DiRienzo [“DiRienzo Decl.”], ¶ 9.)

22 10. At all relevant times, Nestlé Waters has been a citizen of Connecticut and Delaware.
23 Under 28 U.S.C. § 1332(c)(1), a corporation shall be deemed to be a citizen of every State and
24 foreign state which it has been incorporated and of the State or foreign state where it has its
25 principal place of business. A company’s “‘principal place of business’ refers to the place where
26 the corporation’s high level officers direct, control, and coordinate the corporation’s activities,”
27 *i.e.*, the corporation’s “nerve center.” *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010). The
28 “nerve center” is normally where the corporation maintains its headquarters. *Id.*

1 11. At all relevant times, Nestlé Waters has been a company organized under the laws
2 of Delaware, with its principal place of business in Stamford, Connecticut. Nestlé Waters’ principal
3 place of business is in Connecticut because its headquarters are located there, and that is where
4 Nestlé Waters’ executive management directs, controls, and coordinates its activities. Nestlé
5 Waters has not been incorporated in California and has not had its headquarters, executive offices,
6 or principal place of business in California. (DiRienzo Decl., ¶¶ 2-5.) Accordingly, Nestlé Waters
7 is a citizen of Connecticut and Delaware, and not a citizen of California.

8 12. Minimal diversity is established because Plaintiff is a citizen of California and
9 Nestlé Waters is not; it is a citizen of Connecticut and Delaware. Removal is therefore proper
10 under 28 U.S.C. § 1332(d). *Serrano v. 180 Connect Inc.*, 478 F.3d 1018, 1019 (9th Cir. 2007).

11 **B. CAFA’s Class Size Requirement Is Satisfied**

12 13. Plaintiff brings the Action pursuant to California Code of Civil Procedure § 382 on
13 behalf of numerous subclasses (collectively defined as the “Class”), including persons that fall
14 within this category:

15 All current and former non-exempt employees of Defendants in the
16 State of California, who worked more than 3.5 hours in any shift, at
17 any time from May 6, 2016, through the present (Complaint, ¶ 17
(c).)

18 14. From May 6, 2016 through the date of this Notice of Removal, Nestlé Waters
19 employed, in the aggregate, at least 861 employees in the putative class. (DiRienzo Decl. ¶ 6.)
20 Thus, CAFA’s size requirement is satisfied.

21 **C. CAFA’s Requisite \$5 Million Amount In Controversy Is Satisfied**

22 15. CAFA authorizes the removal of class action cases in which the amount in
23 controversy for all class members exceeds \$5 million. 28 U.S.C. § 1332(d).

24 16. Under CAFA, the “District Court [must] determine whether it has jurisdiction by
25 adding up the value of the claim of each person who falls within the definition of [a plaintiff’s]
26 proposed class and determine whether the resulting sum exceeds \$5 million.” *Standard Fire Ins.*
27 *Co. v. Knowles*, 133 S.Ct. 1345, 1348 (2013). Courts look to the allegations in the complaint in
28 determining the amount in controversy. *LaCross v. Knight Trans. Inc.*, 775 F.3d 1200, 1202 (9th

1 Cir. 2015) (“[O]ur first source of reference in determining the amount in controversy [is] plaintiff’s
2 complaint”). “In determining the amount in controversy, the Court accepts the allegations
3 contained in the complaint as true and assumes the jury will return a verdict in the plaintiff’s favor
4 on every claim.” *Henry v. Central Freight Lines, Inc.*, 692 F. App’x 806 (9th Cir. 2017).

5 17. Plaintiff seeks the recovery of meal and rest period premium pay, unpaid wages
6 (including overtime wages), itemized wage statement penalties, and waiting time penalties, on
7 behalf of himself and the putative classes. (*See* Complaint.) The Complaint, on its face, satisfies the
8 \$5 million threshold for CAFA removal.¹ *See* 28 U.S.C. § 1332(d).

9 **1. Relevant Putative Class Data**

10 18. Plaintiff seeks to certify various classes from May 6, 2016 to the present. From May
11 6, 2016 to the Notice of Removal, Nestlé Waters employed, in the aggregate, at least 861 non-
12 exempt employees in California who worked approximately 75,226 workweeks or 37,832 pay
13 periods. (DiRienzo Decl. ¶ 6.) Those employees had an average hourly rate of approximately
14 \$21.02. (*Id.*) During this period, non-exempt employees received bi-weekly wage statements. (*Id.*)

15 19. From May 6, 2017 to the Notice of Removal, Nestlé Waters terminated at least 448
16 non-exempt employees in California, and their average hourly rate was approximately \$21.25. This
17 equals an average daily rate (8 hours) of approximately \$170.00. Of the 448 terminated employees,
18 440 were discharged at least 30 days prior to this Notice of Removal. (DiRienzo Decl. ¶ 7.)

19 20. From May 6, 2019 to Notice of Removal, Nestlé Waters issued at least 14,927 wage
20 statements to at least 577 non-exempt employees in California. For removal, any pay periods above
21 40 for a given employee (i.e., a \$3,950 penalty) were excluded, so as not to exceed the maximum
22 statutory penalty alleged by Plaintiff (which Nestlé Waters denies). (DiRienzo Decl. ¶ 8.)

23 **2. Meal and Rest Period Premium Pay**

24 21. Plaintiff alleges the meal and rest class begins May 6, 2016, which is a four-year
25 lookback. (Complaint, ¶ 17(b), (c).)

26 _____
27 ¹ In alleging the amount in controversy for purposes of CAFA removal, Nestlé Waters does not
28 concede in any way that the allegations in the Complaint are accurate, or that Plaintiff is entitled to
any of the monetary relief requested in the Complaint. Nor does Nestlé Waters concede that any or
all putative class members are entitled to any recovery in this case, or are appropriately included in
the Action.

1 22. Plaintiff’s sixth cause of action for violation of the UCL alleges Defendant
2 “engaged and continue to engage in unfair and unlawful business practices in California by
3 practicing, employing, and utilizing the employment practices outlined above, including by: ... (b)
4 failing to provide off-duty meal periods to employees who worked 5 hours or longer in one shift
5 and/or pay meal period premiums at the correct regular rate of pay that included all non-
6 discretionary remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (c) failing to
7 provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay
8 rest period premiums at the correct regular rate of pay that included all non-discretionary
9 remuneration, in violation of Labor Code §§ 201-203 and 226.7.” Complaint, ¶ 57.

10 23. The statute of limitations for a claim under the UCL is four years. Cal. Bus. & Prof.
11 Code § 17208. Under the UCL, an individual may recover unlawfully withheld wages as a form of
12 restitution. *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 173 (2000). A plaintiff
13 may seek to recover meal or rest period premium pay as a form of restitution under the UCL, under
14 the theory that premium pay constitutes wages. *See Tomlinson v. Indymac Bank, F.S.B.*, 359 F.
15 Supp. 2d 891, 896-97 (C.D. Cal. 2005). Plaintiff thus seeks to certify meal and rest period classes
16 dating back four years, to May 6, 2016. Complaint, ¶ 17(b)-(c).

17 24. Plaintiff further alleges that Defendant had a ***pattern and practice*** of meal and rest
18 violations, with alleged violations occurring ***frequently***. Specifically, Plaintiff alleges “as a ***pattern***
19 ***and practice***, Defendants require Plaintiff and other employees to carry cell phones and/or
20 handheld computers and respond to calls during meal and rest periods. Plaintiff’s meal and rest
21 periods were ***frequently interrupted and shortened*** as a result of being required to respond to these
22 work calls.” Complaint, ¶ 23 (emphasis added); *see also id.* ¶¶ 36 (“as a pattern and practice,
23 Defendants required Plaintiff and other employees to carry cell phones and/or handheld computers
24 and respond to calls during meal periods. As a result, *Plaintiff and Class Member’s* meal and rest
25 periods were frequently interrupted and shortened by these work calls.”) (emphasis added), 41 (“as
26 a pattern and practice, Defendants required Plaintiff and other employees to carry cell phones
27 and/or handheld computers and respond to calls during rest periods. As a result, *Plaintiff and Class*

1 *Member's* meal and rest periods were frequently interrupted and shortened by these work calls.”)
2 (emphasis added). Plaintiff thus seeks relief under the UCL. (*Id.*, ¶ 57.)

3 25. From May 6, 2016 to the Notice of Removal, Nestlé Waters employed at least 861
4 non-exempt employees in California who worked approximately 75,226 workweeks or 37,832 pay
5 periods; and had an average hourly rate of approximately \$21.02. (DiRienzo Decl. ¶ 6.) During this
6 period, non-exempt employees were issued wage statements on a bi-weekly basis. (*Id.*)

7 26. Nestlé Waters may employ reasonable assumptions based on the Complaint to
8 determine the amount in controversy. *Arias v. Residence Inn By Marriott, Ltd.*, 936 F.3d 920, 927
9 (9th Cir. 2019) (“[A]ssumptions made part of the defendant's chain of reasoning need not be
10 proven; they instead must only have ‘some reasonable ground underlying them.’”). Based on the
11 alleged “pattern and practice” of “frequent” meal and rest period violations, Nestlé Waters utilized
12 an extremely conservative estimate of 25% meal and 25% rest period violation rates (or one meal
13 and one rest violation per employee per week), resulting in a total amount of meal and rest period
14 premium pay in controversy of approximately of **\$3,162,500**. (Meal Period: 75,226 work weeks x
15 \$21.02 average hourly rate x 4 total shifts per week x 25% violation rate = \$1,581,250; Rest
16 Period: 75,226 work weeks x \$21.02 average hourly rate x 4 total shifts per week x 25% violations
17 rate = \$1,581,250; 1,581,250 + \$1,581,250 = \$3,162,500).

18 27. Similar allegations can support far higher violation rates as a matter of law. The
19 Ninth Circuit supports such assumptions. In *Arias*, the plaintiff alleged that the defendant routinely
20 failed to provide compensation for missed rest breaks, among other claims. The defendant assumed
21 one missed rest break per week (a 20% violation rate). 936 F.3d at 923. The defendant also
22 suggested that assuming three missed rest periods per week (a 60% violation rate) would be
23 conservative and would place \$6,466,480 in controversy. *Id.* The Ninth Circuit indicated that the
24 defendant's “assumptions are plausible and may prove to be reasonable in light of the allegations in
25 the complaint.” *Id.* at 927. The court made clear that a defendant need not “prove it actually
26 violated the law at the assumed rate.” *Id.* (“The amount in controversy is simply an estimate of the
27 total amount in dispute, not a prospective assessment of defendant's liability.”) (quoting *Lewis v.*
28 *Verizon Commc'ns, Inc.*, 627 F.3d 395, 401 (9th Cir. 2010)).

28. District courts also support far higher alleged meal and rest period violation rates for purposes of CAFA removal. *See, e.g., Elizarraz v. United Rentals, Inc.*, 2019 WL 1553664, at *3-4 (C.D. Cal. Apr. 9, 2019) (“courts have found violations rates of 50% proper with language such as “policy and practice”); *Alvarez v. Office Depot, Inc.* No. CV177220PSGAFMX, 2017 WL 5952181, at *3 (C.D. Cal. Nov. 30, 2017) (finding reasonable a 60% violation rate for claims relating to missed meal and rest periods when the complaint is indeterminate with respect to violation rates); *Bryant v. NCR Corp.*, 284 F. Supp. 3d 1147, 1151-52 (S.D. Cal. 2018) (accepting 60% violation rate based on alleged “policy and practice” of violations); *Oda v. Gucci Am., Inc.*, No. 2:14-CV-07469-SVW, 2015 WL 93335, at *4-5 (C.D. Cal. Jan. 7, 2015) (upholding assumed 50% violation rate on both meal *and* rest period claims where plaintiffs alleged that “Plaintiffs and the class members sometimes did not receive all of their meal periods in a lawful fashion” and Defendant “maintained a policy or practice of not paying additional compensation to employees for missed, uninterrupted [sic], and/or timely meal and/or rest periods”); *Olson v. Becton, Dickinson & Co.*, No.: 19cv865-MMA (BGS), 2019 WL 4673329, at *5 (S.D. Cal., Sep. 25, 2019) (applying *Arias*, finding “application of a 25% violation rate is reasonable” where there is a “pattern and practice” of alleged meal and rest period violations) (citing *Arias*, 936 F.3d at 927).

3. Waiting Time Penalties

29. Plaintiff alleges “Defendants’ willful failure to provide all overtime wages due and owing to Plaintiff and Class Members upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due.” Complaint, ¶ 34. As a result, he seeks waiting time penalties on behalf of the entire class: “Therefore, *Plaintiff and other members of the Class who have separated from employment* from Defendants are entitled to compensation pursuant to Labor Code § 203.” Complaint, ¶ 34 (emphasis added); *see also id.*, ¶¶ 51 (seeking same waiting time penalties for unpaid wages on behalf of “*Plaintiff and the Class Members*,” and noting “*Plaintiff and the Class Members* are entitled to recover” this penalty) (emphasis added), 57, Prayer for Relief ¶¶ 5-8. Plaintiff also seeks the same waiting time penalties on behalf of himself and the putative class due to the alleged failure to provide lawful meal and rest periods referenced above. *Id.* ¶¶ 39 (seeking same waiting time penalties due to unpaid meal period

1 premium payments), 44 (seeking same for unpaid rest period premium payments), *see also id.*
2 Prayer for Relief ¶¶ 5-8.

3 30. California Labor Code section 203 provides “[i]f an employer willfully fails to pay
4 ... any wages of an employee who is discharged or who quits, the wages of the employee shall
5 continue as a penalty from the due date thereof at the same rate until paid or until an action therefor
6 is commenced; but the wages shall not continue for more than 30 days.” A three-year statutory
7 period applies to claims for waiting time penalties. *Pineda v. Bank of Am., N.A.*, 50 Cal. 4th 1389,
8 1398 (2010).

9 31. From May 6, 2017 to the Notice of Removal, Nestlé Waters terminated at least 448
10 non-exempt employees in California, of which 440 have been discharged for at least 30 days,
11 (DiRienzo Decl. ¶ 7.) The average hourly rate of these employees was approximately \$21.25. (*Id.*)
12 This equals an average daily rate (8 hours) of approximately \$170.00. (*Id.*)

13 32. Therefore, based on Plaintiff’s allegations, the amount in controversy for waiting
14 time penalties is at least **\$2,244,000** (\$21.25 per hour x 8 hours x 30 days x 440 putative class
15 members). *See Crummie v. CertifiedSafety, Inc.*, No. 17-CV-03892-RS, 2017 WL 4544747, at *3
16 (N.D. Cal. 2017) (finding it “completely reasonable” for the defendant to assume the maximum,
17 30-day period of waiting time penalties where the allegations supported the assumption); *Marentes*
18 *v. Key Energy Servs. Cal, Inc.*, No. L13-CV-02067 AWI, 2015 WL 756516, at *9 (E.D. Cal.
19 2015) (where “wages are alleged to have not been paid, the full thirty days may be used for each of
20 the putative class members.”).

21 **4. Wage Statement Penalties**

22 33. Plaintiff alleges that Nestlé Waters’ wage statements “should have reflected the
23 applicable hourly rates of pay and gross and net wages earned ... However, the wage statements
24 provided to Plaintiff and other employees failed to identify such information.” Complaint, ¶ 54. He
25 further alleges the “wages [sic] statements identified incorrect wage rates and net and gross wages
26 earned, in violation of Labor Code § 226(a)” and that “such a pattern, practice and uniform
27 administration of corporate policy as described herein is unlawful and creates an entitlement to
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1 recovery by the *Plaintiff and the Class* in a civil action, for all damages or penalties pursuant to
2 Labor Code § 226.” Complaint, ¶¶ 54-55 (emphasis added).

3 34. Plaintiff’s wage statement claim incorporates the prior allegations in the Complaint.
4 Complaint, ¶¶ 52, 54. This includes both the alleged underpayment of wages and the alleged meal
5 and rest period violations discussed above. Complaint, ¶¶ 23, 36, 41.

6 35. A one-year statutory period applies to Plaintiff’s claim for wage statement penalties.
7 Cal. Code Civ. Proc. § 340(a); *Falk v. Children’s Hospital Los Angeles*, 237 Cal.App.4th 1454,
8 1469 (2015). Labor Code § 226(e) provides for the greater of all actual damages or \$50.00 for the
9 initial pay period in which a violation occurred and \$100.00 for each subsequent pay period in
10 which a violation occurred, up to \$4,000.00 per putative class member. Cal. Lab. Code § 226(e).

11 36. From May 6, 2019 to the date of removal, Nestlé Waters issued at least 14,927 wage
12 statements to at least 577 non-exempt employees in California. (DiRienzo Decl. ¶ 8.) For purposes
13 of removal, any pay periods above 40 for a given employee (i.e., a penalty of \$3,950) were
14 excluded, so as to not exceed the maximum statutory penalty alleged by Plaintiff under Labor Code
15 section 226(e) of \$4,000.

16 37. Based on the above, the total amount of potential wage statement penalties to
17 putative class members in controversy is at least **\$1,463,850** (577 wage statements x \$50 =
18 \$28,850; 14,350 wage statements x \$100 = \$1,435,000 [\$28,850+ \$1,435,000 = \$1,463,850]).
19 Since each employee’s wage statements is capped at 40 for purposes of removal (a penalty of
20 \$3,950), the amount in controversy is actually greater than detailed here.

21 **5. Attorney Fees**

22 38. Based on the above, Nestlé Waters has demonstrated there is at least **\$6,870,350** in
23 controversy (\$3,162,500 in meal and rest premiums + \$2,244,000 in waiting time penalties +
24 \$1,463,850 in wage statement penalties = \$6,870,350).

25 39. Plaintiff also seeks attorney fees in connection with the above claims. Complaint, ¶¶
26 33, 38, 43, 55, and Prayer for Relief. In the Ninth Circuit, 25% of the total recovery is the
27 “benchmark level” for reasonable attorney fees in class action cases. *Garibay v. Archstone*
28 *Communities LLC*, 539 F. App’x 763, 764 (9th Cir. 2013). Using this 25% benchmark, courts have

1 included attorney fees for 25% of the total recovery in determining the amount in controversy
2 under CAFA. *Id.* (contemplating inclusion of 25% of total recovery in attorney fees under CAFA);
3 *Rwomwijhu v. SMX, LLC*, No. CV1608105ABPJWX, 2017 WL 1243131, at *6 (C.D. Cal. Mar. 3,
4 2017) (including fees in calculation, noting that “courts in the Ninth Circuit, including this one,
5 have allowed an estimated fee award of 25% of a plaintiff’s damages in calculating the amount in
6 controversy under CAFA”); *Altamirano v. Shadow Indus., Inc.*, No. C-13-0939 EMC, 2013 WL
7 2950600, at *13 (N.D. Cal. Jan. 14, 2013) (including 25% attorney’s fees to increase the amount-
8 in-controversy to above \$5 million CAFA threshold).

9 40. Assuming an award of attorney fees in the benchmark amount of 25% of the total
10 recovery, the amount in controversy for such fees is **\$1,717,604** ($\$6,870,414 \times 0.25 = \$1,717,604$).

11 **6. Summary**

12 41. Based Plaintiff’s allegations, the amount in controversy is at least **\$8,587,937.50**
13 ($\$6,870,350 + \$1,717,587.50 = \$8,587,937.50$). Even excluding Plaintiff’s other claims, including
14 overtime wages, minimum wages, and unpaid sick pay, the Complaint easily satisfies the \$5
15 million threshold.

16 **IV. VENUE IS PROPER IN THIS COURT**

17 42. Under 28 U.S.C. § 1441(a), this Notice of Removal is filed in the district court of
18 the United States in which the Action is pending. The Kern County Superior Court is within the
19 Eastern District of California. 28 U.S.C. § 84(b). Therefore, venue is proper in this Court because it
20 is the district and division embracing the place where the Action is pending. 28 U.S.C. § 1441(a).

21 43. Under 28 U.S.C. § 1446(a), this Notice of Removal is accompanied by the
22 Declarations of Nancy DiRienzo and Jesse Ferrantella, and Exhibits 1 to 3, which constitute a copy
23 of all processes, pleadings, and orders provided to Nestlé Waters.

24 44. As required by 28 U.S.C. § 1446(b) and Federal Rule of Civil Procedure 6(a), this
25 Notice of Removal was filed timely as Plaintiff served his Complaint on November 13, 2020.
26 (Ferrantella Decl. ¶ 3, Ex. 2.)

27 45. As required by 28 U.S.C. § 1446(d), Nestlé Waters provided Notice of Removal to
28 Plaintiff through his attorneys of record.

1 46. As required by 28 U.S.C. § 1446(d), a copy of the original Notice of Removal will
2 be filed with the Superior Court of the State of California, for the County of Kern.

3 47. If this Court has a question regarding the propriety of this Notice of Removal,
4 Nestlé Waters requests it issue an Order to Show Cause so it may have an opportunity to more fully
5 brief the grounds for this removal.

6 **V. CONCLUSION**

7 48. For the foregoing reasons, Nestlé Waters removes this putative class action to the
8 United States District Court for the Eastern District of California.

9 DATED: December 14, 2020

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

11 By: /s/ Spencer C. Skeen
12 Spencer C. Skeen
13 Jesse C. Ferrantella
14 Attorneys for Defendant NESTLÉ WATERS
15 NORTH AMERICA, INC.
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Exhibit 1

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED

11/3/2020

Kern County Superior Court

By Sophia Munoz Alvarez, Deputy

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

NESTLE WATERS NORTH AMERICA, INC., a Delaware corporation;
and DOES 1 through 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JOSE PABLO JIMENEZ, as an individual and on behalf of all others
similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California, County of Kern
1415 Truxtun Ave., Bakersfield, CA 93301

CASE NUMBER:
(Número del Caso): **BCV-20-102561**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Larry W. Lee (SBN 228175)/Diversity Law Group, 515 S. Figueroa St. #1250, LA, CA 90071, 213-488-6555

DATE:
(Fecha) 11/3/2020

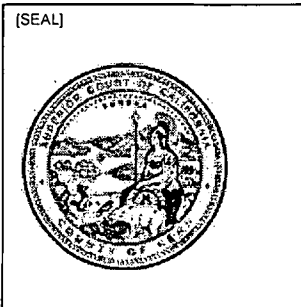
TAMARAH HARBER-PICKENS

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): Nestle Waters North America Inc, a Delaware corporation
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date): 11/13/2020

1 Larry W. Lee (State Bar No. 228175)
2 Kristen M. Agnew (State Bar No. 247656)
3 Nicholas Rosenthal (State Bar No. 268297)
4 **DIVERSITY LAW GROUP, P.C.**
5 515 S. Figueroa Street, Suite 1250
6 Los Angeles, CA 90071
7 (213) 488-6555
8 (213) 488-6554 facsimile

9 Attorneys for Plaintiff and the Class

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF KERN**

12 JOSE PABLO JIMENEZ, as an individual
13 and on behalf of all others similarly
14 situated,

15 Plaintiff,

16 vs.

17 NESTLE WATERS NORTH AMERICA,
18 INC., a Delaware corporation; and DOES
19 1 through 50, inclusive,

20 Defendants.

Case No.: BCV-20-102561

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE §§ 510, 558, AND 1194;
- (2) VIOLATION OF LABOR CODE §§ 226.7 AND 512;
- (3) VIOLATION OF LABOR CODE § 226.7;
- (4) VIOLATION OF LABOR CODE §§ 201-203;
- (5) VIOLATION OF LABOR CODE § 226(a);
- (6) VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.*;
- AND
- (7) VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

1 Plaintiff Jose Pablo Jimenez (“Plaintiff”) hereby submits this Class Action Complaint
2 (“Complaint”) against Defendant Nestle Waters North America, Inc. and Does 1 through 50
3 (collectively, “Defendants”), on behalf of himself and a class of all other similarly situated
4 current and former employees of Defendants for penalties and/or damages for failure to properly
5 calculate the regular rate of pay for purposes of paying overtime, meal and rest period premiums,
6 and sick pay, provide off-duty meal and rest breaks, pay all wages owed upon separation of
7 employment, and provide accurate itemized wage statements under California Labor Code
8 statutes, and restitution for unfair business practices in violation of Business and Professions
9 Code § 17200, *et seq.*, as follows:

10 **INTRODUCTION**

11 1. This class action is within the Court’s jurisdiction under California Labor Code §§
12 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, and 2698, *et seq.*, Business and
13 Professions Code § 17200, *et seq.* (the “UCL”), and the applicable Wage Orders of the California
14 Industrial Welfare Commission (“IWC”).

15 2. This Complaint challenges systemic illegal employment practices resulting in
16 violations of the California Labor Code and Business and Professions Code against individuals
17 who worked for Defendants.

18 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
19 jointly and severally, have acted intentionally and with deliberate indifference and conscious
20 disregard to the rights of all employees by failing to properly calculate the regular rate of pay for
21 purposes of paying overtime, meal and rest period premiums, and sick pay, provide off-duty
22 meal and rest breaks, pay all wages owed upon separation of employment, and provide accurate
23 itemized wage statements to Plaintiff and the Class.

24 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 have engaged in, among other things a system of willful violations of the California Labor Code
26 and the applicable IWC Wage Orders by creating and maintaining policies, practices, and
27 customs that knowingly deny employees the above stated rights and benefits.

28 5. The policies, practices and customs of Defendants described above and below

1 have resulted in unjust enrichment of Defendants and an unfair business advantage over
2 businesses that routinely adhere to the strictures of the California Labor Code and the California
3 Business and Professions Code.

4 **JURISDICTION AND VENUE**

5 6. The Court has jurisdiction over the violations of the California Labor Code §§
6 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, and 2698, *et seq.*, the UCL, and the
7 applicable Wage Orders.

8 7. Venue is proper in Kern County because Defendants are located in Bakersfield,
9 California.

10 **PARTIES**

11 8. Plaintiff was employed by Defendants as a driver from on or about July 2007 to
12 on or about July 2020. Plaintiff worked as an hourly, non-exempt employee.

13 9. Plaintiff was and is the victims of the policies, practices, and customs of
14 Defendant complained of in this action in ways that have deprived him of the rights guaranteed
15 by California Labor Code §§ 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, and 2698, *et*
16 *seq.*, the applicable IWC Wage Orders, and the UCL.

17 10. Plaintiff is informed and believes, and based thereon alleges, that Nestle Waters
18 North America, Inc. was and is a Delaware corporation that maintains operations in the State of
19 California, including in Kern County, California.

20 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
21 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
22 and partnerships, licensed to do business and actually doing business in the State of California.
23 As such, and based upon all the facts and circumstances incident to Defendants' business,
24 Defendants are subject to the California Labor Code and the UCL.

25 12. Plaintiff does not know the true names or capacities, whether individual, partner
26 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
27 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
28 complaint when the true names and capacities are known. Plaintiff is informed and believes and

1 based thereon alleges that each of said fictitious defendants was responsible in some way for the
2 matters alleged herein and proximately caused Plaintiff and members of the general public and
3 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

4 13. At all times herein mentioned, each defendant participated in the doing of the acts
5 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,
6 and each of them, were the agents, servants and employees of each of the other defendants, as
7 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
8 course and scope of said agency and employment.

9 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
10 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
11 joint venturer of, or working in concert with each of the other co-Defendants and was acting
12 within the course and scope of such agency, employment, joint venture, or concerted activity. To
13 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
14 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
15 Defendants.

16 15. At all times herein mentioned, Defendants, and each of them, were members of,
17 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
18 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

19 16. At all times herein mentioned, the acts and omissions of various Defendants, and
20 each of them, concurred and contributed to the various acts and omissions of each and all of the
21 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
22 herein mentioned, Defendants, and each of them, ratified each and every act or omission
23 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
24 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
25 damages as herein alleged.

26 **CLASS ACTION ALLEGATIONS**

27 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
28 California Code of Civil Procedure section 382. Plaintiff proposes the following classes

1 (together, the “Class”):

- 2 a. All current and former non-exempt employees of Defendants in the State
3 of California, who earned non-discretionary remuneration, including but
4 not limited to incentive pay, shift differentials, and/or shift premiums, and
5 overtime wages during the same workweek, at any time from May 6,
6 2016, through the present (the “Overtime Regular Rate Class”);
- 7 b. All current and former non-exempt employees of Defendants in the State
8 of California, who worked more than 5 hours in any shift, at any time from
9 May 6, 2016, through the present (the “Meal Period Class”);
- 10 c. All current and former non-exempt employees of Defendants in the State
11 of California, who worked more than 3.5 hours in any shift, at any time
12 from May 6, 2016, through the present (the “Rest Period Class”);
- 13 d. All current and former non-exempt employees of Defendants in the State
14 of California who were paid “CA Meals/Breaks” premiums at any time
15 from May 6, 2016, through the present (the “Break Premium Regular Rate
16 Class”); and
- 17 e. All former non-exempt employees of Defendants in the State of California
18 who earned non-discretionary remuneration, including but not limited to
19 incentive pay, shift differentials, and/or shift premiums, and sick pay
20 during the same workweek, and whose employment ended at any time
21 from May 6, 2017, through the present (the “Sick Pay Class”).

22 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
23 that joinder of all members would be impractical, if not impossible. The identity of the members
24 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.
25 Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to pay
26 employees overtime wages at the correct regular rate of pay that included all non-discretionary
27 remuneration, in violation of Labor Code §§ 201-203, 510, 558, and 1194; (b) failed to provide
28 off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal

1 period premiums at the correct regular rate of pay that included all non-discretionary
2 remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (c) failed to provide off-
3 duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest
4 period premiums at the correct regular rate of pay that included all non-discretionary
5 remuneration, in violation of Labor Code §§ 201-203 and 226.7; (d) failed to pay employees sick
6 pay at the correct regular rate of pay that included all non-discretionary remuneration, in
7 violation of Labor Code §§ 201-203 and 246; (e) failed to provide accurate, itemized wage
8 statements, in violation of Labor Code § 226(a); and (f) engaged in Unfair Business Practices in
9 violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

10 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
11 necessary steps to represent fairly and adequately the interests of the Class defined above.
12 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
13 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
14 actions in the past and currently have a number of wage-and-hour class actions pending in
15 California state and federal courts.

16 20. Defendants uniformly administered a corporate policy, practice of: (a) failing to
17 pay employees overtime wages at the correct regular rate of pay that included all non-
18 discretionary remuneration, in violation of Labor Code §§ 201-203, 510, 558, and 1194; (b)
19 failing to provide off-duty meal periods to employees who worked 5 hours or longer in one shift
20 and/or pay meal period premiums at the correct regular rate of pay that included all non-
21 discretionary remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (c) failing to
22 provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or
23 pay rest period premiums at the correct regular rate of pay that included all non-discretionary
24 remuneration, in violation of Labor Code §§ 201-203 and 226.7; (d) failing to pay employees
25 sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in
26 violation of Labor Code §§ 201-203 and 246; (e) failing to provide accurate, itemized wage
27 statements, in violation of Labor Code § 226(a); and (f) engaging in Unfair Business Practices in
28 violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

1 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
2 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
3 Labor Code §§ 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, and 2698, *et seq.*, the
4 applicable IWC Wage Orders, and the UCL.

5 22. **Common Question of Law and Fact:** There are predominant common questions
6 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
7 concerning Defendants' policy and practice of: (a) failing to pay employees overtime wages at
8 the correct regular rate of pay that included all non-discretionary remuneration, in violation of
9 Labor Code §§ 201-203, 510, 558, and 1194; (b) failing to provide off-duty meal periods to
10 employees who worked 5 hours or longer in one shift and/or pay meal period premiums at the
11 correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor
12 Code §§ 201-203, 226.7, and 512; (c) failing to provide off-duty rest periods to employees who
13 worked 3.5 hours or longer in one shift and/or pay rest period premiums at the correct regular
14 rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-
15 203 and 226.7; (d) failing to pay employees sick pay at the correct regular rate of pay that
16 included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; (e)
17 failing to provide accurate, itemized wage statements, in violation of Labor Code § 226(a); and
18 (f) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code,
19 and the applicable IWC Wage Orders.

20 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
21 class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
22 manner as the Class Members. As with other non-exempt employees, Plaintiff earned non-
23 discretionary remuneration, including without limitation, incentive pay, shift differentials, and/or
24 shift premiums. During workweeks when Plaintiff worked in excess of eight hours in a workday
25 and/or forty hours in a workweek and received non-discretionary remuneration during the same
26 workweek, Defendants failed to include any non-discretionary remuneration earned into the
27 calculation of the regular rate. Thus, Plaintiff is owed additional overtime pay based on the
28 correct, higher regular rate of pay. Similarly, when Plaintiff received sick pay, it was disbursed at

1 an incorrect rate of pay. Sick pay was disbursed at the base rate of pay rather than the regular
2 rate, factoring in all non-discretionary remuneration earned during the same pay period.
3 Additionally, Defendants failed to provide proper meal and rest breaks and/or pay meal and rest
4 period premiums in lieu thereof. More specifically, as a pattern and practice, Defendants required
5 Plaintiff and other employees to carry cell phones and/or handheld computers and respond to
6 calls during meal and rest periods. Plaintiff's meal and rest periods were frequently interrupted
7 and shortened as a result of being required to respond to these work calls. Plaintiff was not
8 provided premium compensation at the regular rate of pay in lieu of these missed and/or
9 shortened breaks. To date, Plaintiff has yet to receive the underpaid overtime wages, sick pay,
10 and meal and rest premium compensation owed to him. Thus, Defendants are liable for waiting
11 time penalties under Labor Code § 203. Moreover, given the underpayment and/or nonpayment
12 of overtime wages, sick pay, and meal and rest premiums, the wage statements provided to
13 Plaintiff displayed inaccurate overtime rates of pay and net and gross wages earned. Therefore,
14 Plaintiff is a member of the Class and has suffered the alleged violations of Labor Code §§ 201-
15 203, 204, 226(a), 226.7, 246, 510, 512, 558, and 1194, and the UCL.

16 24. The California Labor Code upon which Plaintiff bases these claims are broadly
17 remedial in nature. These laws and labor standards serve an important public interest in
18 establishing minimum working conditions and standards in California. These laws and labor
19 standards protect the average working employee from exploitation by employers who may seek
20 to take advantage of superior economic and bargaining power in setting onerous terms and
21 conditions of employment.

22 25. The nature of this action and the format of laws available to Plaintiff and
23 members of the Class identified herein make the class action format a particularly efficient and
24 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
25 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable
26 advantage since it would be able to exploit and overwhelm the limited resources of each
27 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
28 Member to pursue an individual remedy would also discourage the assertion of lawful claims by

1 employees who would be disinclined to file an action against their former and/or current
2 employer for real and justifiable fear of retaliation and permanent damage to their careers at
3 subsequent employment.

4 26. The prosecution of separate actions by the individual class members, even if
5 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
6 to individual Class members against the Defendants and which would establish potentially
7 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
8 individual Class members which would, as a practical matter, be dispositive of the interest of the
9 other Class members not parties to the adjudications or which would substantially impair or
10 impede the ability of the Class members to protect their interests. Further, the claims of the
11 individual members of the Class are not sufficiently large to warrant vigorous individual
12 prosecution considering all of the concomitant costs and expenses.

13 27. Such a pattern, practice and uniform administration of corporate policy regarding
14 illegal employee compensation described herein is unlawful and creates an entitlement to
15 recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages,
16 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
17 according to the mandate of California Labor Code §§ 218.5, 226(a), and 1194, the applicable
18 IWC Wage Orders, and Code of Civil Procedure § 1021.5.

19 28. Proof of a common business practice or factual pattern, which the named Plaintiff
20 experienced and is representative of, will establish the right of each of the members of the
21 Plaintiff Class to recovery on the causes of action alleged herein.

22 29. The Class is commonly entitled to a specific fund with respect to the
23 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
24 restitution of those funds being improperly withheld by Defendants. This action is brought for
25 the benefit of the entire class and will result in the creation of a common fund.

26 //

27 //

28 //

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 510, 558, AND 1194

**(~~BY PLAINTIFF AND THE OVERTIME REGULAR RATE CLASS AGAINST ALL~~
DEFENDANTS)**

1
2
3
4
5 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set forth herein.

7 31. This cause of action is brought pursuant to Labor Code § 510, which requires an
8 employer to pay employees overtime at a rate of one and one-half the employee's regular rate of
9 pay for any work in excess of eight hours in a workday or forty hours in a workweek.

10 32. As a pattern and practice, Defendants suffered and permitted employees to work
11 in excess of eight hours in a workday and/or over forty hours in a workweek without proper
12 overtime pay. During workweeks when Plaintiff and Class Members worked overtime and
13 earned non-discretionary remuneration such as incentive pay, shift differentials, and/or shift
14 premiums, Defendants failed to properly calculate the regular rate of pay for purposes of paying
15 overtime. Specifically, Defendants failed to factor any non-discretionary remuneration earned
16 into the calculation of the regular rate of pay for purposes of paying overtime wages. As a result
17 of such policy and practice, Defendants underpaid overtime wages to Plaintiff and the Class and
18 thus owe additional overtime wages.

19 33. Such a pattern, practice, and uniform administration of corporate policy regarding
20 illegal employee compensation as described herein is unlawful and creates an entitlement to
21 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
22 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
23 to the mandate of California Labor Code §§ 218.5, 510, 558, and 1194.

24 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
25 willful failure to provide all overtime wages due and owing to Plaintiff and Class Members upon
26 separation from employment results in a continued payment of wages up to thirty (30) days from
27 the time the wages were due. Therefore, Plaintiff and other members of the Class who have
28 separated from employment from Defendants are entitled to compensation pursuant to Labor

1 Code § 203.

2 **SECOND CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

4 **(BY PLAINTIFF, THE MEAL PERIOD CLASS, AND THE BREAK PREMIUM**
5 **REGULAR RATE CLASS AGAINST ALL DEFENDANTS)**

6 35. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
7 though fully set forth herein.

8 36. At all relevant times, Defendants failed in its affirmative obligation to ensure that
9 Plaintiff and the Class had the opportunity to take and were provided with off-duty 30-minute
10 meal periods in accordance with the mandates of the California Labor Code and the applicable
11 IWC Wage Order. Specifically, as a pattern and practice, Defendants required Plaintiff and other
12 employees to carry cell phones and/or handheld computers and respond to calls during meal
13 periods. As a result, Plaintiff and Class Member's meal periods were frequently interrupted and
14 shortened by these work calls.

15 37. Defendants further failed to pay Plaintiff and the Class meal period premium
16 compensation at the regular rate of pay, as mandated by Labor Code § 226.7. For each workday
17 that a meal period is not provided, employees are entitled to one additional hour of pay at the
18 employee's regular rate of pay/compensation. Throughout their employment, Plaintiff and Class
19 Members earned non-discretionary remuneration such as incentive pay, shift differentials, and/or
20 shift premiums. Such non-discretionary remuneration, however, were not included in the regular
21 rate of pay for purposes of paying meal period premium pay. Instead, the meal period premiums
22 were paid at the base rate of pay. As such, Plaintiff and the Class are owed additional meal
23 period premium pay.

24 38. Such a pattern, practice and uniform administration of corporate policy as
25 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
26 identified herein, in a civil action, for the unpaid balance of the premium compensation pursuant
27 to Labor Code § 226.7, and the applicable IWC Wage Order, including interest thereon,
28 penalties, reasonable attorneys' fees, and costs of suit.

1 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
2 willful failure to provide all meal period premium wages due and owing to Plaintiff and the Class
3 upon separation from employment results in a continued payment of wages up to thirty (30) days
4 from the time the wages were due. Therefore, Plaintiff and members of the Class who have
5 separated from employment are entitled to compensation pursuant to Labor Code § 203.

6 **THIRD CAUSE OF ACTION**

7 **VIOLATION OF LABOR CODE § 226.7**

8 **(BY PLAINTIFF, THE REST PERIOD CLASS, AND THE BREAK PREMIUM**
9 **REGULAR RATE CLASS AGAINST ALL DEFENDANTS)**

10 40. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
11 though fully set forth herein.

12 41. At all relevant times, Defendants failed in their affirmative obligation to ensure
13 that Plaintiff and the Class had the opportunity to take and were provided with off-duty 10-
14 minute rest periods in accordance with the mandates of the California Labor Code and the
15 applicable IWC Wage Order. Specifically, as a pattern and practice, Defendants required
16 Plaintiff and other employees to carry cell phones and/or handheld computers and respond to
17 calls during rest periods. As a result, Plaintiff and Class Member's rest periods were frequently
18 interrupted and shortened by these work calls.

19 42. Defendants further failed to pay Plaintiff and the Class rest period premium
20 compensation, as mandated by Labor Code § 226.7. For each workday that a rest period is not
21 provided, employees are entitled to one additional hour of pay at the employee's regular rate of
22 pay/compensation. Throughout their employment, Plaintiff and Class Members earned non-
23 discretionary remuneration such as incentive pay, shift differentials, and/or shift premiums. Such
24 non-discretionary remuneration, however, were not included in the regular rate of pay for
25 purposes of paying rest period premium pay. Instead, the rest period premiums were paid at the
26 base rate of pay. As such, Plaintiff and the Class are owed additional rest period premium pay.

27 43. Such a pattern, practice and uniform administration of corporate policy as
28 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class

1 identified herein, in a civil action, for the unpaid balance of the premium compensation pursuant
2 to Labor Code § 226.7, and the applicable IWC Wage Order, including interest thereon,
3 penalties, reasonable attorneys' fees, and costs of suit.

4 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
5 willful failure to provide all meal period premium wages due and owing to Plaintiff and the Class
6 upon separation from employment results in a continued payment of wages up to thirty (30) days
7 from the time the wages were due. Therefore, Plaintiff and members of the Class who have
8 separated from employment are entitled to compensation pursuant to Labor Code § 203.

9 **FOURTH CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE §§ 201-203**

11 **(BY PLAINTIFF AND THE SICK PAY CLASS AGAINST ALL DEFENDANTS)**

12 45. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
13 though fully set forth herein.

14 46. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
15 in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue
16 as a penalty from the due date, and at the same rate until paid, but the wages shall not continue
17 for more than thirty (30) days.

18 47. Labor Code § 201 provides if an employer discharges an employee, the wages
19 earned and unpaid at the time of discharge are due and payable immediately.

20 48. Labor Code § 202 provides that an employee is entitled to receive all unpaid
21 wages no later than 72 hours after an employee quits his or her employment, unless the employee
22 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
23 employee is entitled to his or her wages at the time of quitting.

24 49. Labor Code § 246 provides that an employee is entitled to receive sick time pay.
25 The employer shall calculate paid sick leave by using one of two calculations: (1) "Paid sick time
26 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
27 the workweek in which the employee uses paid sick time, whether or not the employee actually
28 works overtime in that workweek;" or (2) "Paid sick time for nonexempt employees shall be

1 calculated by dividing the employee's total wages, not including overtime premium pay, by the
2 employee's total hours worked in the full pay periods of the prior 90 days of employment."

3 50. ~~Whenever Defendants paid Plaintiff and the Class Members sick time pursuant to~~
4 California Labor Code § 246, Defendants did so at the incorrect rate of pay. Defendants paid
5 Plaintiff and the Class Members at the base hourly rate of pay, as opposed to the regular rate of
6 pay, which would take into account all non-discretionary remuneration, or by dividing the
7 employees' total wages, not including overtime premium pay, by the employees' total hours
8 worked in the full pay periods of the prior 90 days of employment, as required by Labor Code §
9 246. This resulted in the employees being underpaid for sick time, and resulted in violations of
10 California Labor Code §§ 201, 202, and 203, and other derivative Labor Code violations,
11 because Defendants did not pay, or timely pay, Plaintiff and the Class Members all owing and
12 unpaid wages for work performed by them during their employment and at the end of their
13 employment.

14 51. Defendants willfully failed to pay Plaintiff and the Class Members all their wages
15 due, as alleged hereinabove and hereinafter, upon the termination of their employment within the
16 times prescribed by Labor Code §§ 201 and 202 and are therefore subject to a waiting time
17 penalty. Plaintiff and the Class Members are entitled to recover from Defendants the statutory
18 penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day
19 maximum pursuant to California Labor Code § 203.

20 **FIFTH CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE § 226(a)**

22 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

23 52. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
24 though fully set forth herein.

25 53. Defendants failed in their affirmative obligation to provide accurate itemized
26 wage statements. Defendants, as a matter of policy and practice, did not provide accurate records
27 in violation of Labor Code § 226(a) by failing to provide accurate payroll records to employees.

28 54. Here, Plaintiff and the Class were paid hourly. As such, the wage statements

1 should have reflected the applicable hourly rates of pay and gross and net wages earned, pursuant
2 to Labor Code section 226(a). However, the wage statements provided to Plaintiff and other
3 employees failed to identify such information. More specifically, as a result of the
4 aforementioned violations of the Labor Code the wages statements identified incorrect wage
5 rates and net and gross wages earned, in violation of Labor Code § 226(a).

6 55. Such a pattern, practice and uniform administration of corporate policy as
7 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
8 in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest
9 thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code
10 § 226.

11 **SIXTH CAUSE OF ACTION**

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

13 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

14 56. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
15 though fully set forth herein.

16 57. Defendants, and each of them, have engaged and continue to engage in unfair and
17 unlawful business practices in California by practicing, employing, and utilizing the employment
18 practices outlined above, including by: (a) failing to pay employees overtime wages at the
19 correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor
20 Code §§ 201-203, 510, 558, and 1194; (b) failing to provide off-duty meal periods to employees
21 who worked 5 hours or longer in one shift and/or pay meal period premiums at the correct
22 regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code
23 §§ 201-203, 226.7, and 512; (c) failing to provide off-duty rest periods to employees who
24 worked 3.5 hours or longer in one shift and/or pay rest period premiums at the correct regular
25 rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-
26 203 and 226.7; (d) failing to pay employees sick pay at the correct regular rate of pay that
27 included all non-discretionary remuneration..

28 58. Defendants' utilization of such unfair and unlawful business practices constitutes

1 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

2 59. Plaintiff seeks, individually and on behalf of other members of the Class similarly
3 situated, full restitution of monies, as necessary and according to proof, to restore any and all
4 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
5 complained of herein.

6 60. Plaintiff is informed and believes, and based thereon alleges, that at all times
7 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
8 as proscribed by California Business & Professions Code § 17200, *et seq.*, including those set
9 forth herein above thereby depriving Plaintiff and other members of the Class the minimum
10 working condition standards and conditions due to them under the California laws as specifically
11 described therein.

12 **SEVENTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

14 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
15 **AGAINST ALL DEFENDANTS)**

16 61. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
17 though fully set forth herein.

18 62. Plaintiff brings this cause of action as a proxy for the State of California and in
19 this capacity, seeks penalties on behalf of all Aggrieved Employees from May 5***, 2019,
20 through the present, for Defendants' violations of Labor Code §§ 201-203, 204, 226(a), 226.7,
21 246, 510, 512, 558, 1194, arising from Defendants' policy and practice of: (a) failing to pay
22 employees overtime wages at the correct regular rate of pay that included all non-discretionary
23 remuneration, in violation of Labor Code §§ 201-203, 510, 558, and 1194; (b) failing to provide
24 off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal
25 period premiums at the correct regular rate of pay that included all non-discretionary
26 remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (c) failing to provide off-
27 duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest
28 period premiums at the correct regular rate of pay that included all non-discretionary

1 remuneration, in violation of Labor Code §§ 201-203 and 226.7; (d) failing to pay employees
2 sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in
3 violation of Labor Code §§ 201-203 and 246; and (e) failing to provide accurate, itemized wage
4 statements, in violation of Labor Code § 226(a).

5 63. On or about October 16, 2020, Plaintiff sent written notice to the California Labor
6 & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-
7 203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, pursuant to Labor Code § 2698, *et seq.*, the
8 Private Attorneys General Act (“PAGA”). To date, the LWDA has not responded to Plaintiff’s
9 written notice.

10 64. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
11 and all applicable civil penalties for Defendants’ violation of Labor Code §§ 201-203, 204,
12 226(a), 226.7, 246, 510, 512, 558, 1194, for the time period described above, on behalf of
13 himself and other Aggrieved Employees.

14 **PRAAYER FOR RELIEF**

15 1. WHEREFORE, Plaintiff prays for judgment for himself and all others on whose
16 behalf this suit is brought against Defendants, jointly and severally, as follows:

17 2. For an order certifying the proposed Class;

18 3. For an order appointing Plaintiff as the representative of the Class as described
19 herein;

20 4. For an order appointing counsel for Plaintiff as class counsel;

21 5. Upon the First Cause of Action, for damages and/or penalties pursuant to
22 California Labor Code §§ 201-203, 510, 558, and 1194, and for costs and attorneys’ fees;

23 6. Upon the Second Cause of Action, for damages and/or penalties pursuant to
24 California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys’ fees;

25 7. Upon the Third Cause of Action, for damages and/or penalties pursuant to
26 California Labor Code §§ 201-203 and 226.7, and for costs and attorneys’ fees;

27 8. Upon the Fourth Cause of Action, for damages and/or penalties pursuant to
28 California Labor Code §§ 201, 202, and 203, and for costs and attorneys’ fees pursuant to Labor

1 Code § 218.5;

2 9. Upon the Fifth Cause of Action, for damages or penalties pursuant to California
3 ~~Labor Code § 226(a), and for costs and attorneys' fees;~~

4 10. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
5 affected members of the general public of all funds unlawfully acquired by Defendants by means
6 of any acts or practices declared by this Court to be in violation of Business & Professions Code
7 § 17200, *et seq.*, and for costs and attorneys' fees;

8 11. Upon the Seventh Cause of Action, for civil penalties according to proof pursuant
9 to Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

10 12. On all causes of action for attorneys' fees and costs as provided by California
11 Labor Code §§ 218.5, 226(a), 1194, and 2699, and Code of Civil Procedure § 1021.5; and

12 13. For such other and further relief the Court may deem just and proper.

13
14 DATED: November 2, 2020

DIVERSITY LAW GROUP, P.C.

15
16 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Larry W. Lee (SBN 228175) / Kristen M. Agnew (SBN 247656) DIVERSITY LAW GROUP 515 S. Figueroa Street, Suite 1250 Los Angeles, California 90071 TELEPHONE NO.: (213) 488-6555 FAX NO.: (213) 488-6554 ATTORNEY FOR (Name): Plaintiff Jose Pablo Jimenez	FOR COURT USE ONLY ELECTRONICALLY FILED 11/2/2020 11:21 AM Kern County Superior Court By Sophia Munoz Alvarez, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN STREET ADDRESS: 1415 Truxtun Ave. MAILING ADDRESS: CITY AND ZIP CODE: Bakersfield, CA 93301 BRANCH NAME: Metropolitan Division	CASE NUMBER: BCV-20-102561 JUDGE: DEPT:
CASE NAME: Jose Pablo Jimenez v. Nestle Waters North America, Inc.	CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Seven (7)
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 2, 2020
 Larry W. Lee

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

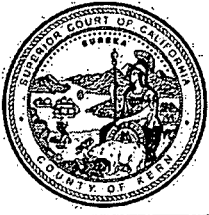
Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

FOR COURT USE ONLY



SUPERIOR COURT OF CALIFORNIA
 COUNTY OF KERN
 BAKERSFIELD COURT
 1415 TRUXTUN AVENUE
 BAKERSFIELD CA 93301

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF KERN

NOVEMBER 03, 2020

By Sophia Munoz Alvarez DEPUTY**PLAINTIFF/PETITIONER:****JOSE PABLO JIMENEZ****JOSE PABLO JIMENEZ, AS AN INDIVIDUAL AND ON BEHALF
OF ALL OTHERS SIMILARLY SITUATED****DEFENDANT/RESPONDENT:****NESTLE WATERS NORTH AMERICA, INC. A DELAWARE
CORPORATION**

**NOTICE OF ASSIGNMENT TO JUDGE FOR ALL PURPOSES AND
 NOTICE OF ORDER TO SHOW CAUSE RE CRC RULE 3.110 AND
 NOTICE OF CASE MANAGEMENT CONFERENCE**

CASE NUMBER:

BCV-20-102561

By order of the presiding judge, the above entitled case is assigned to the Honorable David R. Lampe for all purposes. It will be managed on the direct calendar program in Bakersfield Department 11 until its conclusion. Peremptory challenges, if any, must be made within the times set out in CCP §170.6. Please include the initials **DRL** after the case number on all future pleadings filed in this case.

TO PLAINTIFF AND PLAINTIFF'S COUNSEL:

You are ordered to appear on **February 16, 2021** in **Bakersfield Department 11** at **8:30 AM** in the above entitled court to give any legal reason why sanctions shall not be imposed for failure to serve the complaint on all named defendants and file proof(s) of service with the court within sixty (60) days after the filing of the complaint pursuant to California Rules of Court, Rule 3.110. All appearances are mandatory, unless the court receives the required proof(s) of service five (5) court days prior to the hearing date, and then no appearance is necessary.

TO EACH PARTY AND THEIR RESPECTIVE ATTORNEY(S) OF RECORD:

This case is set for Case Management Conference, by the Honorable David R. Lampe on **May 03, 2021** at **8:30AM** in **Bakersfield Department 11** of the above entitled court. Case management statements are to be filed at least fifteen (15) days prior to the conference in accordance with California Rules of Court, Rules 3.720 – 3.730. All parties shall comply with California Rules of Court, Rules 3.720 – 3.730.

NOTICE TO PLAINTIFF'S COUNSEL

IMPORTANT: You are required to serve this Notice of Assignment and Notice of Order to Show Cause Date and Notice of Case Management Conference Date with the Summons, Complaint [Local Rule 3.7(a)], Alternative Dispute Resolution (ADR) Information Packet, and ADR Stipulation and Order Form (California Rules of Court, Rule 3.221).

NOTICE TO CROSS COMPLAINANT'S COUNSEL

IMPORTANT: If you are bringing a cross complaint against new parties, you are, likewise, required to serve this Notice of Assignment pursuant to California Rules of Court, Rule 3.110 and Notice of Order to Show Cause date and Notice of Case Management Conference date on the new cross defendants.

**TAMARAH HARBER-PICKENS
 CLERK OF THE SUPERIOR COURT**

Date: November 03, 2020

By: Sophia Munoz Alvarez
 Sophia Munoz Alvarez, Deputy Clerk

JIMENEZ ET AL VS NESTLE WATERS NORTH AMERICA, INC. A DELAWARE CORPORATION
BCV-20-102561

The Clerk of the Superior Court's office has received a civil complaint from you for filing. Pursuant to the Trial Court Delay Reduction Act, your case has been assigned to the Honorable David R. Lampe as monitoring judge.

Judge David R. Lampe has instituted a direct calendaring system for all cases assigned to him/her as the monitoring judge.

All law and motion, case management and trial setting conferences, ex parte matters and trials will be scheduled before him/her in Bakersfield Department 11. This will involve all cases in which the clerk has assigned the initials DRL to the complaint at the time of filing. Counsel is expected to make the initials of the monitoring judge a part of the case number on all pleadings and papers.

Law & Motion and Ex-Parte hearing dates must be pre-cleared by contacting the Direct Calendaring Clerk at 661-868-5303. Tentative rulings can be located by visiting "<http://www.kern.courts.ca.gov/>", after 4:00 pm. Click on the Non-Criminal Case Information link to enter the case number. Please note, not all departments provide tentative rulings.

At the time of filing the complaint, plaintiff's counsel will be given a Notice of Case Management Conference which sets a conference approximately one hundred eighty (180) days after filing of the complaint. This notice must be served with the summons and complaint on all defendants. Defendants must serve the notice on all cross-defendants named. The notice must also be served on interveners and lien claimants.

Telephonic appearances for case management conferences and law and motion hearings are available through Court Call. The toll free telephone number for Court Call is (888) 88-COURT. Proper procedures must be complied with under California Rules of Court, Rule 3.670. Arrangements to make appearances through Court Call must be made at least five (5) court days prior to the hearing date.

Another judge will hear settlement conferences in cases assigned to Judge David R. Lampe. However, those cases that do not settle will be set for trial before him/her.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN
SPECIAL RULES RELATING TO CASE MANAGEMENT CONFERENCES**

At least fifteen (15) days prior to the case management conference, each party shall prepare, file and serve on each other party a case management conference statement providing the Court with the following information:

1. The "at-issue" status of the case including any new parties that may be contemplated;
2. A brief statement of the type of case and the general facts or contentions;
3. A description of the discovery done to date and that contemplated to be done;
4. Estimated time for trial and whether a jury is demanded;
5. Whether or not the case is entitled to priority in trial setting and if so, the legal authority thereof;
6. An evaluation of the case for alternative dispute resolution, including arbitration (judicial or binding), mediation or private judge handling;
7. If a person injury action, a description of the injuries sustained by each plaintiff and the elements of claimed damage;
8. A statement of any settlement negotiations undertaken thus far;
9. The name of the attorney primary responsible for the case on behalf of the party filing the statement.

More than one party may join in the filing of a single statement.

The case management conference shall be attended by the attorney primarily responsible for the case on behalf of each party or a member of his or her firm or counsel formally associated in the case. The attorney attending shall be thoroughly familiar with the case, and be able to engage in meaningful discussions with court and counsel, and to enter into agreements on behalf of his or her client on the following subjects:

1. The "at-issue" status of the case including the dismissal of the unnamed doe defendants or cross-defendants by agreement of all parties;
2. Discovery conducted and remaining to be done;
3. Amenability of the case to alternative dispute resolution including, but no limited to, arbitration (judicial or binding), mediation, and private judge handling.
4. Delineation of issues including stipulation of facts not in substantial controversy;
5. Settlement prospects;
6. Setting the matter for trial, pre-trial conferences, settlement conference or further case management conference;
7. Any other matters relevant to the processing of the case to a final resolution.

Any violation of these rules shall result in the imposition of substantial sanctions which may include monetary, issue, termination, or other appropriate sanctions.

JIMENEZ ET AL VS NESTLE WATERS NORTH AMERICA, INC. A DELAWARE CORPORATION
BCV-20-102561

CERTIFICATE OF POSTING

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, and not a party to the within action, that I served the *Notice of Assignment/Notice of Order to Show Cause-Re-CRC-3-110/Notice of Case Management Conference* attached hereto on all interested parties and any respective counsel of record in the within action by posting true copies thereof, to the Superior Court of California, County of Kern, Non-Criminal Case Information Portal (<https://odyprodportal.kern.courts.ca.gov/portalprod>).

Date of Posting: November 03, 2020

Place of Posting: Bakersfield, CA

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

TAMARAH HARBER-PICKENS
CLERK OF THE SUPERIOR COURT

Date: November 03, 2020

By: Sophia Munoz Alvarez
Sophia Munoz Alvarez, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN
ALTERNATIVE DISPUTE RESOLUTION (ADR)
INFORMATION PACKET



Kern County Superior Court encourages, and under certain circumstances, may require parties to try ADR before trial. Courts have also found ADR to be beneficial when used early in the case process. The courts, community organizations and private providers offer a variety of ADR processes to help people resolve disputes without a trial. Below is information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local arbitrator, mediator or neutral evaluator. You may find more information about these ADR processes at www.courts.ca.gov/programs/adr.

Possible Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial depending on the type of ADR process used as well as the particular type of case involved.

Possible Advantages: Saves time; saves money; gives the parties more control over the dispute resolution process and outcome; helps to preserve and/or improve party relationships.

Possible Disadvantages: May add additional time and costs to the litigation if ADR does not resolve the dispute; procedures such as discovery, jury trial, appeals, and other legal protections may be limited or unavailable.

Most Common Types of ADR

Mediation: A neutral person or "mediator" helps the parties communicate in an effective and constructive manner so the parties can try to resolve their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is generally confidential and may be particularly useful where ongoing relationships are involved, such as between family members, neighbors, employers/employees or business partners.

Settlement Conferences: A judge or another neutral person assigned by the court helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement conference neutral does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different views about the likely outcome of a trial in their case.

Neutral Evaluation: The parties briefly and informally present their facts and arguments to a neutral person who is often an expert in the subject matter of the dispute. The neutral does not decide the outcome of the dispute, but helps the parties to do so by providing them with a non-binding opinion about the strengths, weaknesses and likely outcome of their case. Depending on the neutral evaluation process, and with the parties' consent, the neutral may then help the parties try to negotiate a settlement. Neutral evaluation may be appropriate when the parties desire a neutral's opinion about how the case might be resolved at trial; and, if the primary dispute is about the amount of damages or technical issues, the parties would like a neutral expert to resolve those disputes.

Arbitration: The parties present evidence and arguments to a neutral person or “arbitrator” who then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are generally more relaxed. If the parties agree to *binding* arbitration, they waive their right to a jury trial and agree to accept the arbitrator's decision. With *nonbinding* arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time and expense of a trial, or desire an expert in the subject matter of their dispute to make a decision.

Local Court ADR Programs

The Superior Court, County of Kern offers two types of ADR: Arbitration in cases in which the amount in controversy as to each plaintiff is \$50,000 or less; and DRPA mediation services on the day of the hearing, settlement conference or trial.

Arbitration: The Superior Court of California, County of Kern does use Arbitrators in civil cases where the amount in controversy as to each individual plaintiff is \$50,000 or less. The Court may order the parties to Arbitration or the parties may agree to Arbitration any time before the first case management conference statement is filed.

See Local Rule 3.14 at www.kern.courts.ca.gov/local_rules_of_court.

Dispute Resolution Program Act (DRPA): The Superior Court of California, County of Kern also offers mediation services in small claims and unlawful detainer, civil harassment, family law and probate matters. The Court has contracted with the Better Business Bureau (BBB) under the Dispute Resolution Programs Act (DRPA) to provide these mediation services. For more information about BBB Mediation Services go to <http://go.bbb.org/ccie-mediation>.

ADR Coordinator:

Although complaints about arbitrators and mediators are rare, the Superior Court of California, County of Kern does provide a complaint procedure in our Local Rules, Rule 3.14.7. If you have a complaint or a concern with any of this Court's ADR programs, or simply have a question about ADR, please contact the ADR Administrator at ADRAdministrator@kern.courts.ca.gov or 661-868-5695.

Resources:

California Department of Consumer Affairs: www.dca.ca.gov/consumer/mediation_guides

Judicial Branch California Courts – ADR: www.courts.ca.gov/selfhelp-adr.htm

ADR Stipulation Form: www.kern.courts.ca.gov/documents/stipulation_and_order_form

Exhibit 2



**Service of Process
Transmittal**

11/13/2020
CT Log Number 538590675

TO: Charles Broll
Nestle Waters North America Holdings Inc.
900 Long Ridge Road, Building 2
Stamford, CT 06902

RE: Process Served in California

FOR: Nestle Waters North America Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: JOSE PABLO JIMENEZ, as an individual and on behalf of all others similarly situated, Pltf. vs. NESTLE WATERS NORTH AMERICA, INC., etc., et al., Dfts.

DOCUMENT(S) SERVED: -

COURT/AGENCY: None Specified
Case # BCV20102561

NATURE OF ACTION: Employee Litigation

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 11/13/2020 at 02:26

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: CT has retained the current log, Retain Date: 11/13/2020, Expected Purge Date: 11/18/2020

Image SOP

Email Notification, David Herman david.herman@us.nestle.com

Email Notification, Olajumoke Adeyemo Olajumoke.Adeyemo@waters.nestle.com

Email Notification, Alda Braccia Alda.Braccia@waters.nestle.com

Email Notification, Charles Broll Charles.Broll@Waters.Nestle.com

Email Notification, Jaclyn Leung jaclyn.leung@waters.nestle.com

Email Notification, Giancarlo Cullaro Giancarlo.cullaro@waters.nestle.com

Email Notification, Anna Marciano anna.marciano@waters.nestle.com

Email Notification, Simona Hanna simona.hanna@waters.nestle.com

SIGNED: C T Corporation System

ADDRESS: 1999 Bryan St Ste 900



**Service of Process
Transmittal**

11/13/2020

CT Log Number 538590675

TO: Charles Broll
Nestle Waters North America Holdings Inc.
900 Long Ridge Road, Building 2
Stamford, CT 06902

RE: Process Served in California

FOR: Nestle Waters North America Inc. (Domestic State: DE)

Dallas, TX 75201-3140

For Questions:

877-564-7529
MajorAccountTeam2@wolterskluwer.com

PROCESS SERVER DELIVERY DETAILS

Date: Fri, Nov 13, 2020

Server Name: DROP SERVICE

Entity Served: NESTLE WATERS NORTH AMERICA INC.

Agent Name: C T CORPORATION SYSTEM

Case Number: BCV20102561

Jurisdiction: CA

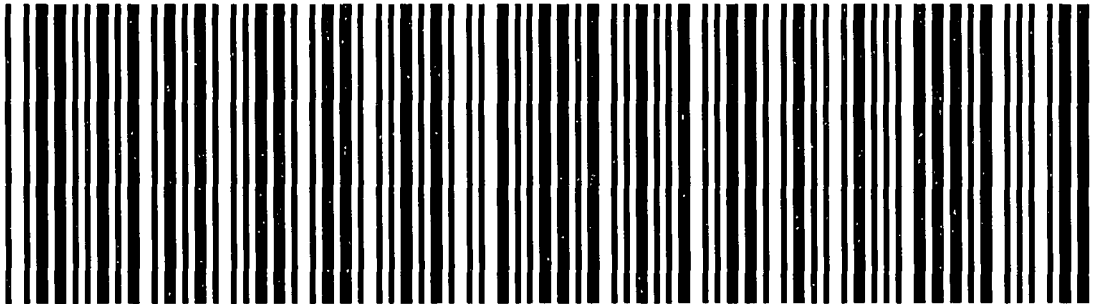


Exhibit 3

ELECTRONICALLY FILED
12/11/2020 12:03 PM
Kern County Superior Court
By Vanesa Jackson, Deputy

1 Spencer C. Skeen, CA Bar No. 182216
spencer.skeen@ogletree.com
2 Jesse C. Ferrantella, CA Bar No. 279131
jesse.ferrantella@ogletree.com
3 Cameron O. Flynn, CA Bar No. 301830
cameron.flynn@ogletree.com
4 **OGLETRÉE, DEAKINS, NASH, SMOAK &**
STEWART, P.C.
5 4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122
6 Telephone: 858-652-3100
Facsimile: 858-652-3101
7

8 Attorneys for Defendant NESTLE WATERS
NORTH AMERICA, INC.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF KERN**
11 **METROPOLITAN DIVISION**

12 JOSE PABLO JIMENEZ, as an individual and
on behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 NESTLE WATERS NORTH AMERICA, INC.,
16 a Delaware corporation; and DOES 1 through
50, inclusive,

17 Defendant.
18

Case No. BCV-20-102561

*[Assigned for all purposes to The Honorable
David R. Lampe, Dept. 11]*

**ANSWER TO CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

Action Filed: November 2, 2020
Trial Date: Not Set

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22
23 Defendant NESTLE WATERS NORTH AMERICA, INC. (“Defendant”) respond to the
24 Class and Representative Action Complaint (“Complaint”) filed by Plaintiff JOSE PABLO
25 JIMENEZ (“Plaintiff”) as follows:

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GENERAL DENIAL

Under Code of Civil Procedure § 431.30, Defendant denies, generally and specifically, every allegation contained in the Complaint. Defendant denies that Plaintiff or the employees he seeks to represent, were injured and/or damaged in any sum or sums, and denies it committed the alleged acts intentionally, negligently, carelessly, recklessly, or otherwise acted unlawfully or committed any other wrongful act whatsoever.

Defendant further denies that by reason of any act or omission on its part, or by their agents, servants or employees, or any of them, Plaintiff or the employees he seeks to represent were injured or damaged in the amount alleged, or in any other manner or amount whatsoever, and denies that Defendant, its agents, servants or employees, or any of them, acted unlawfully.

DEFENSES

Without admitting any facts alleged by Plaintiff, Defendant also pleads the following separate defenses to the Complaint. The pleading of a defense as an affirmative defense is not an admission or acknowledgement that Defendant bears the burden of proof on such defense, or waiver of any argument that Plaintiff bears such burden.

FIRST DEFENSE

1. The Complaint, and each of its causes of action, fails to state facts sufficient to constitute any cause of action against Defendant upon which relief can be granted.

SECOND DEFENSE

2. The Complaint, and each of its causes of action, is barred in whole or in part by the applicable statute of limitations, including but not limited to Code of Civil Procedure §§ 335.1, 337, 338, 339, 340, and 343, Labor Code §§ 203 and 2698 *et seq.*, and Business and Professions Code § 17208.

THIRD DEFENSE

3. The Complaint, and each of its causes of action, is barred by the doctrine of *res judicata* and collateral estoppel.

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FOURTH DEFENSE

4. The Complaint, and each of its causes of action, is barred in whole or in part because Plaintiff has waived or released the right, if any, to pursue the Complaint, and each of its causes of action, by way of his own actions and course of conduct.

FIFTH DEFENSE

5. The Complaint, and each of its causes of action, is barred in whole or in part because Plaintiff is estopped from pursuing the Complaint, and each of its causes of action, by way of his actions and course of conduct.

SIXTH DEFENSE

6. The Complaint, and each of its causes of action, is barred in whole or in part by the doctrine of laches.

SEVENTH DEFENSE

7. The Complaint, and each of its causes of action, is barred in whole or in part by the doctrine of unclean hands.

EIGHTH DEFENSE

8. The Complaint, and each of its causes of action, and its requests for any civil penalty or liquidated damages award, is barred in whole or in part, because at all times, Defendant was acting in good faith and had reasonable grounds for believing its actions did not violate the law, that it paid Plaintiff and the employees he seeks to represent properly for all hours worked, and any failure to comply with the compensation provisions of the California Labor Code or the applicable Wage Order, which Defendant denies, was not knowing or intentional, but rather was done in good faith and with reasonable grounds.

NINTH DEFENSE

9. The Complaint, and each of its causes of action, is barred in whole or in part because any loss, injury, damage, or detriment alleged in the Complaint resulted from the acts or omissions of Plaintiff, and was not due to any action or omission of Defendant.

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1 **TENTH DEFENSE**

2 10. The Complaint, and each of its causes of action, is barred in whole or in part by
3 Plaintiff's respective failures to comply with employee obligations and pertinent duties under
4 California Labor Code, including but not limited to Labor Code §§ 2854, 2856-2859, 2922, and
5 2924.

6 **ELEVENTH DEFENSE**

7 11. Plaintiff's claims are barred, in whole or in part, on the basis the wages (including
8 minimum and overtime wages) he seeks to recover are *de minimis*.

9 **TWELFTH DEFENSE**

10 12. Plaintiff's claims for failure to pay wages (including minimum and overtime wages)
11 are barred, in whole or in part, to the extent he seeks to recover wages for work not performed
12 primarily for the benefit of Defendant.

13 **THIRTEENTH DEFENSE**

14 13. Plaintiff's claims for failure to pay wages (including minimum and overtime wages)
15 are barred, in whole or in part, to the extent he seeks to recover wages for work that Defendant did
16 not suffer or permit, or that was not performed while under the direction and control of Defendant.

17 **FOURTEENTH DEFENSE**

18 14. Plaintiff's claims for failure to pay wages (including minimum and overtime wages)
19 are barred, in whole or in part, to the extent he worked without Defendant's actual or constructive
20 knowledge.

21 **FIFTEENTH DEFENSE**

22 15. Plaintiff's claims are barred, in whole or in part, because the applicable Labor Code
23 provisions and/or Wage Order do not support a private right of action, and Plaintiff's exclusive
24 remedies are an action before the Labor Commissioner.

25 **SIXTEENTH DEFENSE**

26 16. To the extent Plaintiff owes money to Defendant, Defendant is entitled to offset or
27 recoup such amounts against any damages awarded.

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1 **SEVENTEENTH DEFENSE**

2 17. Plaintiff's claims for failure to provide meal and rest periods are barred because he
3 was provided meal and rest periods under the law; Plaintiff did not have to work during any meal
4 or rest period; and any failure by Plaintiff to take a meal or rest period was due to Plaintiff's own
5 election and not any acts or omissions by Defendant.

6 **EIGHTEENTH DEFENSE**

7 18. Plaintiff's claims for failure to provide meal and rest periods are barred to the extent
8 Plaintiff consented to the waiver of his meal and rest periods.

9 **NINETEENTH DEFENSE**

10 19. Plaintiff's claims for failure to provide meal and rest periods are barred to the extent
11 Defendant paid Plaintiff any applicable premiums at the correct rate of compensation. (See *Ferra v.*
12 *Loews Hollywood Hotel* (2019) 40 Cal.App.5th 1239 [review granted]; *Bradescu v. Hillstone*
13 *Restaurant Group, Inc.* (C.D.Cal., Sept. 18, 2014, SACV No. 13-1289-GW) 2014 WL 5312546;
14 *Wert v. United States Bancorp* (S.D.Cal., Dec. 18, 2014, No. 13-cv-3130-BAS) 2014 U.S. Dist.
15 LEXIS 175735; *Brum v. MarketSource, Inc.* (E.D.Cal., June 19, 2017, No. 2:17-cv-241-JAM-EFB)
16 2017 WL 2633414; *Frausto v. Bank of America* (N.D.Cal., Aug. 2, 2018, No. 18-cv-01983-MEJ)
17 2018 WL 3659251.)

18 **TWENTIETH DEFENSE**

19 20. To the extent Plaintiff seeks premium pay or penalties for alleged meal and rest
20 period violations for the same working day, or for more than such violation in a single working
21 day, those claims are barred because such wages and/or penalties are duplicative and improper.

22 **TWENTY-FIRST DEFENSE**

23 21. Plaintiff's claims premised on a failure to provide meal and rest period premium pay
24 will not support an award of unpaid wages, or any other recovery (including restitution or penalties
25 or waiting time penalties) based on an award of unpaid wages, because such actions are not an
26 action to recover unpaid wages. (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244;
27 *Naranjo v. Spectrum Security Servs.* (2019) 40 Cal.App.5th 444.)

28 ///

TWENTY-SECOND DEFENSE

22. The meal and rest period claims fail because Plaintiff was authorized and permitted to take meal and rest periods as required by the applicable Wage Order of the Industrial Welfare Commission and any other applicable laws.

TWENTY-THIRD DEFENSE

23. Plaintiff's claim for inaccurate wage statements is barred, in whole or in part, because Defendant did not knowingly or intentionally fail to provide accurate wage statements; and any failure to provide such wage statements was inadvertent or due to clerical error.

TWENTY-FOURTH DEFENSE

24. Plaintiff's claim for inaccurate wage statements is barred, in whole or in part, because he has suffered no actual injury from the alleged failure to provide accurate wage statements.

TWENTY-FIFTH DEFENSE

25. Plaintiff's claim for inaccurate wage statements is barred because his wage statements accurately listed the hours and rates of pay at which they were paid, and derivative claims based on what they should have been paid are barred. (*Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal. App. 5th 1308, 1337, review denied (Aug. 22, 2018); *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal. App. 5th 385, 393.)

TWENTY-SIXTH DEFENSE

26. To the extent Plaintiff's claim for inaccurate wage statements is premised on a failure to provide meal and rest period premium pay, such claim is barred because it does not give rise to any wage statement violation. (*Naranjo v. Spectrum Security Servs.* (2019) 40 Cal.App.5th 444.)

TWENTY-SEVENTH DEFENSE

27. Plaintiff's claims premised on a failure to pay timely all wages due at termination are barred because there was no willful failure to pay final wages due at termination.

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1 **TWENTH-EIGHTH DEFENSE**

2 28. Plaintiff's claims premised on a failure to pay timely all wages due at termination
3 are barred because at the time of termination Defendant had a good-faith belief, based in fact and
4 law, that all wages earned by Plaintiff were being calculated properly and paid timely, and that no
5 other wages were due.

6 **TWENTY-NINTH DEFENSE**

7 29. Plaintiff's claims premised on a failure to pay timely all wages due at termination
8 are barred to the extent Plaintiff secreted or absented himself to avoid payment, or refused payment
9 when fully tendered.

10 **THIRTIETH DEFENSE**

11 30. Plaintiff's claims are barred, in whole or in part, because Defendant provided
12 Plaintiff with all sick leave pay as required by law and in accordance with the calculations set forth
13 in California Labor Code § 246 *et seq.*

14 **THIRTY-FIRST DEFENSE**

15 31. Defendant's business actions or practices were not unfair, unlawful, misleading,
16 fraudulent or deceptive within the meaning of Business and Professions Code §§ 17200, *et seq.*

17 **THIRTY-SECOND DEFENSE**

18 32. Plaintiff's claims are barred, in whole or in part, because Defendant at all applicable
19 times exercised reasonable business judgment.

20 **THIRTY-THIRD DEFENSE**

21 33. Any finding of liability under Business and Professions Code §§ 17200, *et seq.*,
22 would violate the Due Process and Equal Protection Clauses of the United States and California
23 Constitutions because the standards of liability under California's Unfair Competition Law are
24 unduly vague and subjective.

25 **THIRTY-FOURTH DEFENSE**

26 34. Plaintiff's claims for unfair business practices or injunctive and/or declaratory relief
27 are barred he has adequate remedies at law for the alleged violations, and the requirements for
28 equitable relief have not been met, including but not limited to his being not a current employee.

THIRTY-FIFTH DEFENSE

35. Plaintiff's claims for unfair business practices are barred, in whole or in part, because he has suffered no injury-in-fact because of any alleged violation of California's Unfair Competition law.

THIRTY-SIXTH DEFENSE

36. Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff was exempt from the provisions of the applicable laws, including the California Labor Code, the applicable California Industrial Welfare Commission Wage Orders, or as further provided by regulation, statute, or judicial decision, including any applicable exemption or under the Department of Transportation and Federal Motor Carrier Safety Act ("FMCSA") law and regulations.

THIRTY-SEVENTH DEFENSE

37. Plaintiff's claims are preempted, in whole or in part, by federal and state law, including, but not limited to, the Federal Aviation Administration Authorization Act and the FMCSA.

THIRTY-EIGHTH DEFENSE

38. The claims alleged by Plaintiff on behalf of himself and the members of the putative class are neither common to nor typical of those, if any, of the group of employees he seeks to represent.

THIRTY-NINTH DEFENSE

39. The claims alleged by Plaintiff on behalf of himself and the members of the putative class are matters in which individual questions predominate and lack commonality, and accordingly, are unmanageable and are not appropriate for class treatment.

FORTIETH DEFENSE

40. Plaintiff and/or his counsel are inadequate representatives of the putative class they seek to represent.

FORTY-FIRST DEFENSE

41. Plaintiff has not shown and cannot show that class treatment of the claims alleged in the Complaint is superior to other methods of adjudicating the controversy.

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FORTY-SECOND DEFENSE

42. Because liability or damages, if any, to each member of the class Plaintiff seeks to represent may not be determined by a single jury or on a group-wide basis, allowing this action to proceed as a class and/or representative action would violate Defendant’s rights under the Seventh and Fourteenth Amendments to the United States Constitution.

FORTY-THIRD DEFENSE

43. Plaintiff is barred from pursuing relief on a class-wide or representative basis to the extent he is not a member of the putative class or subclasses alleged, lacks standing to pursue claims against Defendant, or lacks cognizable claims for injuries they allege were sustained by the putative class and thus lack standing to pursue such claims.

FORTY-FOURTH DEFENSE

44. Recovery of civil penalties or liquidated damages is barred to the extent the accumulation of penalties would be so disproportionate to the harm alleged to violate due process under the Constitutions of the United States and the State of California.

FORTY-FIFTH DEFENSE

45. Imposition of any civil penalty award against Defendant would be unjust, arbitrary and capricious, and confiscatory.

FORTY-SIXTH DEFENSE

46. Plaintiff’s claims for PAGA penalties are barred to the extent that the Labor Code sections under which Plaintiff seeks recovery do not give rise to civil penalties under PAGA.

FORTY-SEVENTH DEFENSE

47. Plaintiff’s claims for PAGA penalties are barred because Plaintiff is not an aggrieved employee.

FORTY-EIGHTH DEFENSE

48. Plaintiff’s claims for PAGA penalties are barred because Plaintiff has failed to satisfy and cannot satisfy the requirements of California Labor Code section 2699.3 before bringing the claim for penalties under PAGA.

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1 **FORTY-NINTH DEFENSE**

2 49. Plaintiff's claims for PAGA penalties are barred because Plaintiff did not timely
3 exhaust his administrative remedies as required or otherwise failed to comply with all the statutory
4 prerequisites to bringing suit pursuant to PAGA.

5 **FIFTIETH DEFENSE**

6 50. Plaintiff's claims for PAGA penalties are barred because the recovery of penalties
7 under PAGA is unconstitutional under the separation of powers doctrine under the Constitution of
8 the State of California, including but not limited to the separation of powers of the executive
9 branch of government and the separation of powers of the judicial branch of government.

10 **FIFTY-FIRST DEFENSE**

11 51. Any award of penalties that otherwise could be made under PAGA must not be
12 made, or must be made in a lesser amount, pursuant to California Labor Code section 2699(e)(2).

13 **FIFTY-SECOND DEFENSE**

14 52. Plaintiff's claims for PAGA penalties are barred because Plaintiff is not similarly
15 situated to other allegedly aggrieved employees and cannot adequately represent the interests of
16 others.

17 **FIFTY-THIRD DEFENSE**

18 53. Plaintiff's claims for PAGA penalties are barred because Plaintiff's PAGA claims
19 are not manageable, or would otherwise fail to satisfy the standards applicable to representative
20 PAGA claims. *See, e.g., Brown v. Am. Airlines, Inc.*, 2015 WL 6735217, at *3-4 (C.D. Cal. Oct. 5,
21 2015); *Ortiz v. CVS Caremark Corp.*, 2014 WL 1117614, at *3-4 (N.D. Cal. Mar. 19, 2014).

22 **FIFTY-FOURTH DEFENSE**

23 54. To the extent Plaintiff seeks the recovery of wages under PAGA, Plaintiff's claims
24 for PAGA penalties are barred because the recovery of such wages are not civil penalties.

25 **FIFTY-FIFTH DEFENSE**

26 55. The Complaint and each of its causes of action is barred in whole or in part because
27 any recovery from Defendant would result in Plaintiff's unjust enrichment.

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FIFTY-SIXTH DEFENSE

56. The Complaint, and each of its causes of action, is barred in whole or in part because any recovery from Defendant would result in unjust enrichment to Plaintiff.

FIFTY-SEVENTH DEFENSE

57. The Complaint is barred, in whole or in part, to the extent Plaintiff and/or members of the putative class have executed agreements or releases releasing or waiving their claims, or were a part of prior class or PAGA settlements releasing or waiving the claims at issue.

FIFTY-EIGHTH DEFENSE

58. If any class or representative action should be certified or otherwise allowed to proceed in this matter, Defendant incorporates by reference, and re-alleges as to the causes of action of each member of that class, all of the defenses as set forth above.

RESERVATION OF RIGHTS

Defendant presently has insufficient knowledge or information upon which to form a belief as to whether there may be additional, and as yet unstated, affirmative defenses. Defendant reserves the right to assert any additional defenses and matters in avoidance that may be disclosed during additional investigation and discovery, when and if the same have been ascertained.

RELIEF REQUESTED

WHEREFORE, Defendant requests as follows:

- 1. That Plaintiff take nothing by the Complaint;
 - 2. That the Court deny Plaintiff’s request to proceed on a class, representative or any other group basis;
 - 3. That the Complaint be dismissed in its entirety with prejudice;
 - 4. That Defendant recovers its costs of suit herein, including reasonable attorney fees;
- and
- 5. That the Court award such other and further relief as it deems appropriate.

JURY DEMAND

Defendant hereby demands a trial by jury on all issues, if any, triable to a jury.

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DATED: December 11, 2020

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: _____
Spencer C. Skeen
Jesse C. Ferrantella
Cameron O. Flynn
Attorneys for Defendant NESTLE
WATERS NORTH AMERICA, INC.

PROOF OF SERVICE

Jose Pablo Jimenez, et al. v. Nestle Waters North America, Inc., et al
Case No. BCV-20-102561

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of San Diego, in the office of a member of the bar of this court at whose direction the service was made. My business address is 4370 La Jolla Village Drive, Suite 990, San Diego, CA 92122.

On December 11, 2020, I served the following document(s):

1. ANSWER TO CLASS AND REPRESENTATIVE ACTION COMPLAINT

by placing (the original) (a true copy thereof) in a sealed envelope addressed as stated on the attached mailing list.

BY MAIL: I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY MAIL: I deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid at 4370 La Jolla Village Drive, Suite 990, San Diego, CA 92122.

BY OVERNIGHT DELIVERY: I placed the sealed envelope(s) or package(s) designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Ogletree, Deakins, Nash, Smoak & Stewart P.C., San Diego, California. I am readily familiar with Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery.

BY FACSIMILE by transmitting a facsimile transmission a copy of said document(s) to the following addressee(s) at the following number(s), in accordance with:

- the written confirmation of counsel in this action:
- [State Court motion, opposition or reply only] Code of Civil Procedure section 1005(b):
- [Federal Court] the written confirmation of counsel in this action and order of the court:

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person[s] at the e-mail addresses listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

1 **BY PERSONAL SERVICE:** I caused to be delivered the documents to the persons at the
2 addresses listed below. (1) For a party represented by an attorney, delivery was made to the
3 attorney or at the attorney’s office by leaving the documents, in an envelope or package
4 clearly labeled to identify the attorney being served, with a receptionist or an individual in
5 charge of the office, between the hours of nine in the morning and five in the evening. (2)
6 For a party, delivery was made to the party or by leaving the documents at the party’s
7 residence with some person not younger than 18 years of age between the hours of eight in
8 the morning and six in the evening.

9 Addressee(s)

10 Larry W. Lee
11 Kristen M. Agnew
12 Nicholas Rosenthal
13 DIVERSITY LAW GROUP
14 515 S. Figueroa Street, Suite 1250
15 Los Angeles, CA 90071-3316
16 Phone: (213) 488-6555
17 Fax: (213) 488-6554
18 Email: lwlee@diversitylaw.com
19 kagnew@diversitylaw.com
20 nrosenthal@diversitylaw.com
21 Counsel for Plaintiff, JOSE PABLO JIMENEZ
22 and THE CLASS

23 (State) I declare under penalty of perjury under the laws of the State of California that
24 the above is true and correct.

25 (Federal) I declare that I am employed in the office of a member of the State Bar of this
26 Court at whose direction the service was made. I declare under penalty of
27 perjury under the laws of the United States of America that the above is true and
28 correct.

Executed on December 11, 2020, at San Diego, California.

Mariana DeSaracho

Type or Print Name

Signature

1 Spencer C. Skeen CA Bar No. 182216
spencer.skeen@ogletree.com
2 Jesse C. Ferrantella CA Bar No. 279131
jesse.ferrantella@ogletree.com
3 OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
4 4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122
5 Telephone: 858-652-3100
Facsimile: 858-652-3101
6

7 ATTORNEYS FOR DEFENDANT NESTLÉ
WATERS NORTH AMERICA, INC.

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

11 JOSE PABLO JIMENEZ, as an individual and
on behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 NESTLE WATERS NORTH AMERICA,
15 INC., a Delaware corporation; and DOES 1
through 50, inclusive,

16 Defendant.
17

Case No. _____

CLASS ACTION

**DECLARATION OF JESSE C.
FERRANTELLA IN SUPPORT OF
DEFENDANT'S NOTICE OF REMOVAL
OF CIVIL ACTION TO UNITED STATES
DISTRICT COURT**

[28 U.S.C. § 1332(d) (Class Action Fairness Act)]

[Filed concurrently with Notice, Civil Cover Sheet; Notice of Party with Financial Interest; and Declaration of Nancy DiRienzo]

Complaint Filed: November 2, 2020
Trial Date: Not Set

1 I, Jesse C. Ferrantella, declare:

2 1. I am an attorney at law duly licensed and admitted to the United States District
3 Court for the Eastern District of California. I am a Shareholder with the law firm of Ogletree,
4 Deakins, Nash, Smoak & Stewart, P.C., counsel of record for Defendant Nestlé Waters North
5 America, Inc. I am familiar with the facts and circumstances reflected below and surrounding this
6 litigation. If called as witness, I could and would competently testify to the following.

7 2. Plaintiff filed his Class Action Complaint on or about on November 2, 2020 in the
8 Superior Court of California, County of Kern Superior Court (“Action”). The Action was assigned
9 Case No. BCV-20-102561. Attached to the accompanying Notice of Removal as “**Exhibit 1**” is a
10 true and correct copy of the Complaint, Summons, Civil Case Cover Sheet, Alternative Dispute
11 Resolution (ADR) Information, Notice of Case Assignment and Case Management Conference,
12 and Special Rules Relating to Case Management Conferences.

13 3. Plaintiff served Defendant Nestlé Waters North America, Inc. (“Nestlé Waters”) on
14 November 13, 2020. Attached to the accompanying Notice of Removal as “**Exhibit 2**” is a true and
15 correct copy of the proof of service.

16 4. On or about December 11, 2020, Nestlé Waters filed an Answer to Plaintiff’s Class
17 Action Complaint in the Kern County Superior Court. Attached to the accompanying Notice of
18 Removal as “**Exhibit 3**” is a true and accurate copy of the Answer to Plaintiff’s Class Action
19 Complaint.

20 5. To the best of my knowledge, attached to this Notice of Removal as Exhibits 1 – 3
21 are true and correct copies of all process, pleadings, and orders provided to Defendant.

22 6. I declare under penalty of perjury under the laws of the United States of America
23 that the foregoing is true and correct and this declaration was executed on December 14, 2020 in
24 San Diego, California.

25
26 */s/ Jesse C. Ferrantella*

27 _____
28 Jesse C. Ferrantella

1 Spencer C. Skeen CA Bar No. 182216
spencer.skeen@ogletree.com
2 Jesse C. Ferrantella CA Bar No. 279131
jesse.ferrantella@ogletree.com
3 OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
4 4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122
5 Telephone: 858-652-3100
Facsimile: 858-652-3101
6

7 Attorneys for Defendant NESTLE WATERS
NORTH AMERICA, INC.

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

11 JOSE PABLO JIMENEZ, as an individual and
on behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 NESTLE WATERS NORTH AMERICA,
15 INC., a Delaware corporation; and DOES 1
through 50, inclusive,

16 Defendant.

Case No. _____

CLASS ACTION

**DECLARATION OF NANCY DIRIENZO IN
SUPPORT OF DEFENDANT'S NOTICE OF
REMOVAL OF CIVIL ACTION TO
UNITED STATES DISTRICT COURT**

[28 U.S.C. § 1332(d) (Class Action Fairness
Act)]

*[Filed concurrently with Notice, Civil Cover
Sheet; Notice of Party with Financial Interest;
and Declaration of Jesse C. Ferrantella]*

Complaint Filed: November 2, 2020
Trial Date: Not Set

1 I, Nancy DiRienzo, declare:

2 1. I am employed by Nestlé Waters North America, Inc. (“Nestlé Waters”). My current
3 position is Senior Director, Human Resources.

4 2. In this role, I am familiar with Nestlé Waters’ corporate and business records. I have
5 access to, personal knowledge, possession, and/or control over such records. In preparing this
6 declaration, I directed the review of personnel and employment data for Plaintiff Jose Pablo
7 Jimenez (“Plaintiff”) and the putative class members. The facts stated in this declaration are known
8 to me based on my own personal knowledge and based on Nestlé Waters’ business records. It is the
9 regular practice of Nestlé Waters to maintain such records. If called upon as a witness, I could and
10 would competently testify to the following.

11 3. Nestlé Waters is a public company incorporated under the laws of Delaware, with
12 its principal place of business in Connecticut.

13 4. Nestlé Waters’ corporate headquarters are located in Stamford, Connecticut, and the
14 majority of Nestlé Waters’ executive functions occur in Connecticut. To the extent Nestlé Waters’
15 officers direct, control, and/or influence Nestlé Waters’ activities, such conduct and decisions take
16 place from its headquarters in Connecticut.

17 5. Nestlé Waters has not been incorporated in California and has not had its
18 headquarters, executive offices, or principal place of business there.

19 6. During the alleged class period, from May 6, 2016 to the present, Nestlé Waters
20 employed, in the aggregate, at least 861 non-exempt employees in California. Those employees
21 worked approximately 75,226 workweeks or 37,832 pay periods; and had an average hourly rate of
22 approximately \$21.02. During this period, non-exempt employees were issued wage statements on
23 a bi-weekly basis.

24 7. From May 6, 2017 to the present, Nestlé Waters terminated at least 448 non-exempt
25 employees in California, and their average hourly rate was approximately \$21.25. This equals an
26 average daily rate (8 hours) of approximately \$170.00. Of these 448 employees, 440 were
27 discharged at least thirty days prior to the date of this declaration.

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8. From May 6, 2019 to the present, Nestlé Waters issued at least 14,927 wage statements to at least 577 non-exempt employees in California. For this declaration, any pay periods above 40 for a given employee were excluded, so as to not exceed the maximum statutory penalty alleged by Plaintiff (which Nestlé Waters denies).

9. Throughout his employment, Plaintiff's personnel records indicate he resided in California.

I declare under penalty of perjury, under the laws of the United States of America, California, and New York that the foregoing is true and correct.

Executed on December 14, 2020 in Ossining, New York.

Nancy DiRienzo

45271698.1

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Nestle Waters Failed to Properly Calculate California Drivers' Wages](#)
