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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OMAR ZINE, individually, and on behalf of
other members of the general public similarly
situated,

Plaintiff,

vs.

NESPRESSO USA, INC., a Delaware
corporation; and DOES 1 through 10, inclusive,

Defendants.

WILLIAM BABER, an individual, on behalf of
himself and all others similarly situated and
aggrieved,

Plaintiff,

vs.

NESPRESSO USA, INC., a Delaware
corporation; NESTLE USA, INC., a Delaware
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 3:20-cv-05144-SK
Consolidated with 3:21-cv-00487-JSC

**JOINT STIPULATION OF CLASS ACTION
AND PAGA SETTLEMENT AND RELEASE**

1 Security number; dates of employment; the respective number of Workweeks that each Class Member
2 worked during the Class Period and PAGA Period; and/or any other relevant information needed to
3 calculate settlement payments.

4 5. "Class Member(s)" or "Settlement Class" means all persons employed in California by
5 Defendant as non-exempt employees at any time during the period from June 3, 2016 through January 4,
6 2022.

7 6. "Class Period" means the period from June 3, 2016 through January 4, 2022.

8 7. "Class Representative Enhancement Payments" means the amounts to be paid to
9 Plaintiffs in recognition of their effort and work in prosecuting the Actions on behalf of Class Members.
10 Subject to the Court granting final approval of this Settlement Agreement, and subject to the exhaustion
11 of any and all appeals, Plaintiffs will request Court approval of Class Representative Enhancement
12 Payments of Five Thousand Dollars (\$5,000), each.

13 8. "Court" means the United States District Court, Northern District of California.

14 9. "Defendant" means Defendant Nespresso USA, Inc.

15 10. "Effective Date" means the later of: (i) if no timely objections are filed, or are withdrawn
16 prior to Final Approval, then the date of Final Approval; or (ii) if a Class Member files an objection to
17 the Settlement, the Effective Date shall be the thirty-first (31st) calendar day after the date of Final
18 Approval, provided no appeal is initiated by an objector; or (iii) if a timely appeal is initiated by an
19 objector, then the Effective Date will be the date of final resolution of that appeal (including any requests
20 for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement.

21 11. "Final Approval" means the date on which the Court enters an order granting final
22 approval of the Settlement Agreement.

23 12. "General Release Payments" means the amounts to be paid to Plaintiffs as consideration
24 for a general release of all claims arising out of their employment with Defendant. Subject to the Court
25 granting final approval of this Settlement Agreement and subject to the exhaustion of any and all
26 appeals, Plaintiffs will request Court approval of General Release Payments of Five Thousand Dollars
27 (\$5,000), each.

28 13. "Gross Settlement Amount" means the Gross Settlement Amount of Nine Hundred

1 Fifty Thousand Dollars (\$950,000), to be paid by Defendant in full satisfaction of all Released Class
2 Claims and Released PAGA Claims, which includes all Individual Settlement Payments, Attorneys'
3 Fees and Costs, the Class Representative Enhancement Payments, the General Release Payments, the
4 PAGA Settlement Amount, and Settlement Administration Costs. This Gross Settlement Amount has
5 been agreed to by Plaintiffs and Defendant based on the aggregation of the agreed-upon settlement value
6 of individual claims. In no event will Defendant be liable for more than the Gross Settlement Amount
7 except as otherwise explicitly set forth herein. There will be no reversion of the Gross Settlement
8 Amount to Defendant. Defendant will be separately responsible for any employer payroll taxes on the
9 wage portion of the Individual Settlement Payment as required by law, including the employer FICA,
10 FUTA, and SDI contributions, which shall not be paid from the Gross Settlement Amount.

11 14. "Individual Settlement Payment" means each Participating Class Member's and PAGA
12 Member's respective shares of the Net Settlement Fund and PAGA Fund.

13 15. "Judgment" means the Court's Final Judgment.

14 16. "Net Settlement Fund" means the portion of the Gross Settlement Amount remaining
15 after deducting the Attorneys' Fees and Costs, the Class Representative Enhancement Payments, the
16 General Release Payments, the PAGA Settlement Amount, and Settlement Administration Costs. The
17 Net Settlement Fund will be distributed to all Participating Class Members. There will be no reversion of
18 the Net Settlement Fund to Defendant.

19 17. "Notice of Objection" means a Class Member's valid and timely written objection to the
20 Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector's full
21 name, signature, address, and telephone number, (ii) a written statement of all grounds for the objection
22 accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other
23 documents upon which the objection is based; and (iv) a statement whether the objector intends to appear
24 at the final fairness hearing. Any Class Member who does not submit a timely written objection to the
25 Settlement, or who fails to otherwise comply with the specific and technical requirements of this section,
26 will be foreclosed from objecting to the Settlement and seeking any adjudication or review of the
27 Settlement, by appeal or otherwise.

28 18. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form

1 attached as Exhibit A.

2 19. "PAGA Members" means all persons employed in California by Defendant as non-
3 exempt employees at any time during the period from March 6, 2019 through January 4, 2022.

4 20. "PAGA Period" means the period from March 6, 2019 through January 4, 2022.

5 21. "PAGA Settlement Amount" means the amount that the Parties have agreed to pay to
6 the Labor and Workforce Development Agency ("LWDA") and PAGA Members in connection with
7 Plaintiffs' claim under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698,
8 *et seq.*, "PAGA") ("PAGA Settlement"). The Parties have agreed that Eighty Thousand Dollars
9 (\$80,000) of the Gross Settlement Amount will be allocated to the PAGA Settlement. Pursuant to
10 PAGA, Seventy-Five Percent (75%), or Sixty Thousand Dollars (\$60,000), of the PAGA Settlement
11 Amount will be paid to the LWDA ("LWDA Payment"), and Twenty-Five Percent (25%), or Twenty
12 Thousand Dollars (\$20,000), of the PAGA Settlement will be disbursed to PAGA Members, regardless
13 of whether they request to be excluded from the Settlement Class.

14 22. "Parties" means Plaintiffs and Defendant collectively.

15 23. "Participating Class Members" means all Class Members who do not submit timely and
16 valid Requests for Exclusion.

17 24. "Plaintiffs" means Plaintiffs Omar Zine and William Baber.

18 25. "Preliminary Approval" means the date on which the Court enters an order granting
19 preliminary approval of the Settlement Agreement.

20 26. "Released Class Claims" means all claims asserted in the Actions, reasonably arising
21 from or related to the facts and claims alleged in the Actions, or that reasonably could have been raised in
22 the Actions based on the facts and claims alleged in the operative civil complaints for each Action and all
23 amendments thereto, including all claims for unpaid wages, minimum wage, overtime compensation,
24 double-time compensation, and interest; the calculation of the regular rate of pay for overtime or for any
25 purpose; meal period and rest-period premiums, including failure to pay premiums at the regular rate of
26 compensation; reimbursement for all necessary business expenses; payment for all time spent in
27 connection with security checks and all hours worked, including off-the-clock and unrecorded work;
28 failure to pay vacation and paid time off upon termination; failure to provide accurate and timely wage

1 statements; unfair business practices; penalties, including, but not be limited to, civil penalties, statutory
2 penalties, recordkeeping penalties, and waiting-time penalties; and attorneys' fees and costs; all claims
3 related to the Released Claims arising under: the California Labor Code (including, but not limited to,
4 sections 200, 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.7, 227.3, 500, 510, 512, 516, 558, 558.1,
5 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802), the Wage
6 Orders of the California Industrial Welfare Commission; California Business and Professions Code
7 section 17200, *et seq.* This release excludes the release of claims not permitted by law.

8 27. "Released PAGA Claims" means all claims asserted through California Labor Code §§
9 2698, *et seq.*, that reasonably arise out of, or are related to, the Released Class Claims during the PAGA
10 Period.

11 28. "Released Parties" means Defendant Nespresso USA, Inc. , and each of its past, present
12 and future agents, exempt employees, servants, officers, directors, partners, trustees, representatives,
13 shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, affiliated or related
14 companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers,
15 consultants, service providers, joint venturers, joint employers, co-employers, dual employers, alleged
16 joint employers, alleged co-employers, alleged dual employers, affiliates, alteregos, and affiliated
17 organizations, and all of their respective past, present and future employees, directors, officers, agents,
18 attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns, including but not limited to Nestlé
19 USA, Inc.

20 29. "Request for Exclusion" means a timely letter submitted by a Class Member indicating a
21 request to be excluded from the Settlement Class. The Request for Exclusion must: (i) set forth the name,
22 address, telephone number and last four digits of the Social Security Number of the Class Member
23 requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement
24 Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement;
25 and (v) be faxed or postmarked on or before the Response Deadline.

26 30. "Response Deadline" means the deadline by which Class Members must postmark or
27 fax to the Settlement Administrator Requests for Exclusion, postmark or fax disputes concerning the
28 calculation of Individual Settlement Payments, or postmark Notices of Objection to the Settlement

1 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial mailing of
2 the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a
3 Sunday or State holiday, in which case the Response Deadline will be extended to the next day on which
4 the U.S. Postal Service is open.

5 31. "Settlement Administration Costs" means the costs payable from the Gross Settlement
6 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,
7 printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross
8 Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The
9 Settlement Administration Costs will be paid from the Gross Settlement Amount, including, if necessary,
10 any such costs in excess of the amount represented by the Settlement Administrator as being the
11 maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of
12 approximately five hundred and seventy-five (575) Class Members, the Settlement Administration Costs
13 are currently estimated to be Ten Thousand Dollars (\$10,000).

14 32. "Settlement Administrator" means CPT Group, Inc., or any other third-party class action
15 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
16 administering this Settlement. The Parties each represent that they do not have any financial interest in
17 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
18 could create a conflict of interest.

19 33. "Workweeks" means any week when a Class Member was engaged in any productive
20 work activity for which they were paid, not including leaves of absence or paid time off, during the Class
21 Period, All Class Members will be credited with at least one Workweek during the Class Period, and all
22 PAGA Members will be credited with at least one Workweek during the PAGA Period.

23 **TERMS OF AGREEMENT**

24 The Plaintiffs, on behalf of themselves and the Settlement Class, and Defendant agree as
25 follows:

26 34. Funding of the Gross Settlement Amount. Defendant will make a one-time deposit of
27 the Gross Settlement Amount of Nine Hundred Fifty Thousand Dollars (\$950,000) into an interest-
28 bearing Qualified Settlement Account to be established by the Settlement Administrator. Defendant will

1 pay the employer's share of payroll taxes separately. After the Effective Date, the Gross Settlement
2 Amount will be used for: (i) Individual Settlement Payments; (ii) the LWDA Payment; (iii) the Class
3 Representative Enhancement Payments; (iv) General Release Payments; (v) Attorneys' Fees and Costs;
4 and (vi) Settlement Administration Costs. Defendant will deposit the Gross Settlement Amount and the
5 employer's share of payroll taxes within fifteen (15) business days of the Effective Date ("Funding
6 Date").

7 35. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or
8 motion by Class Counsel for Attorneys' Fees and Costs of not more than Three Hundred Sixteen
9 Thousand Six Hundred Sixty Seven Dollars (\$316,667), plus the reimbursement of all out-of-pocket
10 costs and expenses associated with Class Counsel's litigation and settlement of the Actions (including
11 expert/consultant fees, investigations costs, etc.), not to exceed Forty Thousand Dollars (\$40,000), both
12 of which will be paid from the Gross Settlement Amount.

13 36. Class Representative Enhancement Payments. In recognition of their effort and work in
14 prosecuting the Actions on behalf of Class Members, Defendant agrees not to oppose or impede any
15 application or motion for Class Representative Enhancement Payments of Five Thousand Dollars
16 (\$5,000), each. The Class Representative Enhancement Payments will be paid from the Gross Settlement
17 Amount and will be in addition to Plaintiffs' Individual Settlement Payments and General Release
18 Payments. Plaintiffs will be solely and legally responsible to pay any and all applicable taxes on the
19 Class Representative Enhancement Payments. To the extent that the Court does not approve the full
20 amounts of the requested Class Representative Enhancement Payments, Defendant agrees to separately
21 makeup any shortfall, and that shortfall amount shall be paid directly to Plaintiffs, and not from the Gross
22 Settlement Amount.

23 37. General Release Payments. In exchange for the general release set forth in Paragraph 72,
24 Defendant agrees not to oppose or impede any application or motion by Plaintiffs for General Release
25 Payments of Five Thousand Dollars (\$5,000), each. The General Release Payments will be paid from the
26 Gross Settlement Amount and will be in addition to Plaintiffs' Individual Settlement Payments and Class
27 Representative Enhancement Payments. Plaintiffs will be solely and legally responsible to pay any and
28 all applicable taxes on the General Release Payments. To the extent that the Court does not approve the

1 full amounts of the requested General Release Payments, Defendant agrees to separately makeup any
2 shortfall, and that shortfall amount shall be paid directly to Plaintiffs and not from the Gross Settlement
3 Amount.

4 38. Settlement Administration Costs. The Settlement Administrator will be paid for the
5 reasonable costs of administration of the Settlement and distribution of payments from the Gross
6 Settlement Amount, which is currently estimated to be \$10,000. These costs, which will be paid from the
7 Gross Settlement Amount, will include, *inter alia*, the required tax reporting on the Individual Settlement
8 Payments, the issuing of 1099 and W-2 IRS Forms, distributing Notice Packets, calculating and
9 distributing the Gross Settlement Amount, and providing necessary reports and declarations.

10 39. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount
11 of Eighty Thousand Dollars (\$80,000) from the Gross Settlement Amount will be designated for
12 satisfaction of Plaintiffs' PAGA claim. Pursuant to PAGA, Seventy-Five Percent (75%), or Sixty
13 Thousand Dollars (\$60,000), of this sum will be paid to the LWDA and Twenty-Five Percent (25%), or
14 Twenty Thousand Dollars (\$20,000), will be paid to PAGA Members in proportion to the number of
15 Workweeks worked during the PAGA Period.

16 40. Net Settlement Fund. The entire Net Settlement Fund will be distributed to Participating Class
17 Members. No portion of the Net Settlement Fund will revert to or be retained by Defendant.

18 41. PAGA Fund. The entire PAGA Fund will be distributed to all PAGA Members. No
19 portion of the PAGA Fund will revert to or be retained by Defendant.

20 42. Individual Settlement Payment Calculations. Individual Settlement Payments will be
21 calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of
22 Workweeks a Class Member worked during the Class Period and PAGA Period. Specific calculations of
23 Individual Settlement Payments will be made as follows:

24
25 42(a) Payments from the Net Settlement Fund. Defendant will provide the total
26 number of Workweeks worked by each Class Member during the Class
27 Period. To determine each Class Member's estimated "Individual
28 Settlement Payment" from the Net Settlement Fund, the Settlement

1 Administrator will aggregate the total number of Workweeks worked by
2 Class Members during the Class Period and use the following formula: The
3 Net Settlement Fund will be divided by the aggregate total number of
4 Workweeks, resulting in the “Workweek Value.” Each Class Member’s
5 “Individual Settlement Payment” will be calculated by multiplying each
6 individual Class Member’s total number of Workweeks by the Workweek
7 Value. The Individual Settlement Payment will be reduced by any required
8 deductions for each Participating Class Member as specifically set forth
9 herein, including employee-side tax withholdings, garnishments, or other
10 lawful deductions. The entire Net Settlement Fund will be disbursed to all
11 Participating Class Members. If there are any valid and timely Requests for
12 Exclusion, the Settlement Administrator shall proportionately increase the
13 Individual Settlement Payment for each Participating Class Member
14 according to the number of Workweeks worked, so that the amount actually
15 distributed to the Settlement Class equals 100% of the Net Settlement Fund.

16 42(b) Payments from the PAGA Fund. Defendant will provide the total number of
17 Workweeks worked by each PAGA Member during the PAGA Period. To
18 determine each PAGA Member’s estimated “Individual Settlement
19 Payment,” the Settlement Administrator aggregate total number of
20 Workweeks worked by all PAGA Members during the PAGA Period and
21 will use the following formula: The PAGA Fund will be divided by the
22 aggregate total number of Workweeks, resulting in the “PAGA Workweek
23 Value.” Each PAGA Member’s “Individual Settlement Payment” will be
24 calculated by multiplying each individual PAGA Member’s total number of
25 Workweeks by the PAGA Workweek Value. The entire PAGA Fund will
26 be disbursed to all PAGA Members.

27 42(c) Workweek Recitals. At the time of the Parties’ mediation, Defendant
28 represented that there were an estimated Five Hundred and Thirteen (513)

1 total Class Members who worked during an aggregate total of Thirty-Nine
2 Thousand Nine Hundred and Seven (39,907) Workweeks during the Class
3 Period. As of January 4, 2022, Defendant further represented that there were
4 an estimated Five Hundred and Seventy-Five (575) total Class Members
5 who worked during an aggregate total of Forty-Two Thousand Seven
6 Hundred Forty-Three (42,743) Workweeks. These are material terms upon
7 which Plaintiffs decided to settle this case at the value of Gross Settlement
8 Amount.

9 43. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
10 Participating Class Members under this Settlement, as well as any other payments made pursuant to this
11 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any
12 Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k)
13 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
14 Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions,
15 or amounts to which any Class Members may be entitled under any benefit plans.

16 44. Administration Process. The Parties agree to cooperate in the administration of the
17 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
18 administration of the Settlement.

19 45. Delivery of the Class List. Within thirty (30) calendar days of Preliminary Approval,
20 Defendant will provide the Class List to the Settlement Administrator and to Class Counsel.

21 46. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class
22 List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via
23 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class
24 List.

25 47. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
26 Administrator will perform a search based on the National Change of Address Database for information
27 to update and correct for any known or identifiable address changes. Any Notice Packets returned to the
28 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly

1 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
2 Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is
3 provided, the Settlement Administrator will promptly attempt to determine the correct address using a
4 skip-trace, or other search using the name, address and/or Social Security number of the Class Member
5 involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed
6 Notice Packet, whether by skip-trace or by request, will have either (i) an additional fifteen (15) calendar
7 days or (ii) until the Response Deadline, whichever is later, to submit a Request for Exclusion,
8 Workweek dispute, or an objection to the Settlement.

9 48. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet
10 will provide: (i) information regarding the nature of the Actions; (ii) a summary of the Settlement's
11 principal terms; (iii) the Settlement Class and PAGA Member definitions; (iv) the total number of
12 Workweeks each respective Class Member and PAGA Member worked for Defendant during the Class
13 Period and PAGA Period; (v) each Class Member's and PAGA Member's estimated Individual
14 Settlement Payment and the formula for calculating Individual Settlement Payments; (vi) the dates which
15 comprise the Class Period and PAGA Period; (vii) instructions on how to submit Requests for Exclusion
16 or Notices of Objection; (viii) the deadlines by which the Class Member must postmark or fax Request
17 for Exclusions, or postmark Notices of Objection to the Settlement; and (ix) the claims to be released.

18 49. Disputed Information on Notice Packets. Class Members will have an opportunity to
19 dispute the information provided in their Notice Packets. To the extent Class Members dispute their
20 employment dates or the number of Workweeks on record, Class Members may produce evidence to the
21 Settlement Administrator showing that such information is inaccurate. Defendant's records will be
22 presumed correct, but the Settlement Administrator shall contact the Parties regarding the dispute and the
23 Parties will work in good faith to resolve it. All disputes must be submitted by the Response Deadline,
24 and will be decided within ten (10) business days after the Response Deadline.

25 50. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
26 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
27 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
28 receiving the defective submission to advise the Class Member that his or her submission is defective

1 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have
2 until (i) the Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter,
3 whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for
4 Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

5 51. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
6 Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement
7 Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the
8 Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request
9 for Exclusion has been timely submitted.

10 52. No Right to Exclusion or Objections to the PAGA Settlement. Because this settlement
11 resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as proxies and as Private
12 Attorneys General of, and for, the State of California and the LWDA, the Parties agree that no PAGA
13 Member has the right to exclude himself or herself from the release of the Released PAGA Claims, and
14 all PAGA Members will receive their shares of the PAGA Fund. The Parties also agree that no PAGA
15 Member has the right to object to the PAGA Settlement Amount.

16 53. Objection Procedures. To object to the Settlement Agreement, a Class Member may
17 postmark a valid Notice of Objection to the Settlement Administrator on or before the Response
18 Deadline and/or appear in person at the Final Approval Hearing. Class Members who fail to object either
19 by submitting a valid Notice of Objection or appearing in person at the Final Approval Hearing will be
20 deemed to have waived all objections to the Settlement and will be foreclosed from making any
21 objections, whether by appeal or otherwise, to the Settlement Agreement. At no time will any of the
22 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written
23 objections to the Settlement Agreement or appeal from the final approval order and judgment. Class
24 Counsel will not represent any Class Members with respect to any such objections to this Settlement. If
25 a Class Member submits a timely Objection and a timely Request for Exclusion, the Settlement
26 Administrator shall contact the Settlement Class Member to determine whether the Settlement Class
27 Member wishes to participate in the Settlement but interpose an Objection or whether the Class Member
28 wishes to be excluded from the Settlement. In the event the Settlement Administrator cannot reach the

1 Class Member to clarify the situation, the later-postmarked Request for Exclusion or Objection shall be
2 deemed valid and operative; and if the Request for Exclusion and Objection bear the same postmark
3 date, the Objection shall be deemed valid and operative.

4 54. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
5 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
6 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class
7 Claims, as well as any judgment that may be entered by the Court if it grants final approval to the
8 Settlement.

9 55. Releases by Participating Class Members. Upon the Funding Date, and except as to such
10 rights or claims as may be created by this Settlement Agreement, each Participating Class Member,
11 together and individually, on their behalf and on behalf of their respective heirs, executors,
12 administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released
13 Parties, or any of them, from each of the Released Class Claims arising during the Class Period.

14 56. Releases by PAGA Members. Upon the Funding Date, and except as to such rights or
15 claims as may be created by this Settlement Agreement, each PAGA Member, together and individually,
16 on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys,
17 shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the
18 Released PAGA Claims during the PAGA Period.

19 57. Defendant's Right to Rescind. Defendant will have, in its sole discretion, the right to
20 void and withdraw from the Settlement if Eight Percent (8%) or more of Class Members submit valid
21 and timely Requests for Exclusion from the settlement. Defendant must exercise this right of rescission
22 in writing to Class Counsel within fourteen (14) calendar days after the Response Deadline or extensions
23 thereto, whichever is later. If the option to rescind is exercised, then Defendant will be solely responsible
24 for all Settlement Administration Costs incurred to the date of rescission.

25 58. Omitted Class Members. If any additional individuals not originally included on the
26 Class List provided to the Settlement Administrator are discovered after Class Notices have been
27 distributed and no later than thirty-five (35) calendar days before the Effective Date, Defendant shall, in
28 good faith, make a determination as to whether that individual should be deemed a Class Member and,

1 therefore, entitled to participate in the Settlement. If Defendant determines that the omitted individual is
2 a Class Member, the Settlement Administrator shall mail the individual a Class Notice as provided in
3 paragraph 47 and recalculate the Individual Settlement Payments of all Settlement Class Members by the
4 formula set forth herein to include any additional Workweeks pertaining to each Omitted Class Member.
5 The Omitted Class Member will have until the calendar day before Individual Settlement Payments are
6 mailed by the Settlement Administrator to submit a Request for Exclusion, Workweek dispute, or
7 Objection. If additional individuals not originally included on the Class List are discovered later than
8 thirty-five (35 days) before the Effective Date, those individuals shall not be deemed Settlement Class
9 Members, will not receive payment, and will not release claims against Defendants or Released Parties.
10 In the event there is a dispute regarding the Workweeks worked by the Omitted Class Member, the
11 provisions of paragraph 48 of this Agreement shall govern the dispute.

12 59. Certification Reports Regarding Individual Settlement Payment Calculations. The
13 Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that
14 certifies the number of Class Members who have submitted valid Requests for Exclusion or objections to
15 the Settlement, and whether any Class Member has submitted a challenge to any information contained
16 in their Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties
17 any updated reports regarding the administration of the Settlement Agreement as needed or requested.
18 No later than sixteen (16) court days before the Settlement Fairness Hearing, the Settlement
19 Administrator shall provide counsel for the Parties with complete copies of all objections received,
20 including the postmark dates for each objection.

21 60. Distribution Timing of Individual Settlement Payments. Within ten (10) calendar days
22 of the Funding Date, the Settlement Administrator will issue payments to: (i) Participating Class
23 Members and PAGA Members; (ii) the LWDA; (iii) Plaintiffs; and (iv) Class Counsel. The Settlement
24 Administrator will also issue a payment to itself for Court-approved services performed in connection
25 with the Settlement.

26 61. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
27 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for
28 more than one hundred and eighty (180) calendar days after issuance, plus any accrued interest in the

1 Settlement Administrator's qualified settlement fund that has not otherwise been distributed, will be
2 tendered to the California State Controller's Office's Unclaimed Property Division in the name of the
3 Participating Class Member .

4 62. Certification of Completion. Upon completion of administration of the Settlement, the
5 Settlement Administrator will provide a written declaration under oath to certify such completion to the
6 Court and counsel for all Parties.

7 63. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
8 be allocated as follows: (i) Twenty-Five Percent (25%) of each Individual Settlement Payment will be
9 allocated as wages for which IRS Forms W-2 will be issued; and (ii) Seventy-Five (75%) will be
10 allocated as non-wages for penalties, interest, and unreimbursed business expenses for which IRS Forms
11 1099-MISC will be issued.

12 64. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
13 will be responsible for issuing to Plaintiffs, Participating Class Members, PAGA Members, and Class
14 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to
15 this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes
16 and penalties to the appropriate government authorities.

17 65. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect
18 of the payments called for hereunder, and Plaintiffs and Participating Class Members are not relying on
19 any statement, representation, or calculation by Defendant or by the Settlement Administrator in this
20 regard.

21 66. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
22 OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
23 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")
24 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
25 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
26 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
27 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED
28 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES

1 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
2 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
3 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
4 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
5 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
6 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
7 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
8 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
9 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
10 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
11 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
12 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
13 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
14 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
15 AGREEMENT.

16 67. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
17 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
18 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
19 action or right herein released and discharged.

20 68. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally
21 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other
22 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null
23 and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
24 likewise be treated as void from the beginning.

25 69. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before the Court to
26 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval
27 Order for: (i) conditional certification of the Settlement Class for settlement purposes only, (ii)
28 preliminary approval of the proposed Settlement Agreement, (iii) setting a date for a final fairness

1 hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class
2 Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiffs will
3 submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
4 proposed Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible for
5 drafting all documents necessary to obtain preliminary approval.

6 70. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
7 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
8 Court’s permission, a final fairness hearing will be conducted to determine the Final Approval of the
9 Settlement Agreement along with the amounts properly payable for: (i) Attorneys’ Fees and Costs; (ii)
10 the Class Representative Enhancement Payments and General Release Payments; (iii) Individual
11 Settlement Payments; (iv) the LWDA Payment; (v) all Settlement Administration Costs. The final
12 fairness hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class
13 Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel
14 will also be responsible for drafting the attorneys’ fees and costs application to be heard at the final
15 approval hearing.

16 71. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
17 Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its
18 approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of
19 addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement
20 administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or
21 as set forth in this Settlement Agreement. A copy of the Judgment will be posted to the Settlement
22 Administrator’s website.

23 72. Release by Plaintiffs. Upon the Funding Date, in addition to the claims being released by
24 all Participating Class Members, Plaintiffs will release and forever discharge the Released Parties, to the
25 fullest extent permitted by law, of and from any and all claims, known and unknown, under federal, state
26 and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not
27 limited to claims arising from or related to their employment with Defendant and their compensation
28 while employees of Defendant (“Plaintiffs’ Released Claims”). Plaintiffs’ Released Claims include, but

1 are not limited to, all claims arising from or related to the Actions. Plaintiffs' Released Claims include all
2 claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time
3 compensation, overtime compensation, double-time compensation, and interest; the calculation of the
4 regular rate of pay for overtime or any purpose; missed meal period and rest-period premiums, including
5 failure to pay premiums at the regular rate of compensation; reimbursement for all necessary business
6 expenses; payment for all time spent in connection with security checks and all hours worked, including
7 off-the-clock work; wage statements; failure to pay vacation and paid time off upon termination;
8 deductions; failure to keep accurate records; unfair business practices; penalties, including, but not
9 limited to, civil penalties, statutory penalties, recordkeeping penalties, wage statement penalties,
10 minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. Plaintiffs' Released
11 Claims include all claims arising under the California Labor Code (including, but not limited to, sections
12 90.5, 201, 202, 203, 204, 210, 213, 218.5, 221, 223, 226, 226.3, 226.7, 227.3, 246, 500, 510, 512, 516,
13 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1670.5, 2698 *et seq.*,
14 2699 *et seq.*, 2699.3, 2800, and 2802); all claims arising under: the Wage Orders of the California
15 Industrial Welfare Commission; the California Private Attorneys General Act of 2004; California
16 Business and Professions Code section 17200, *et seq.*; the California Civil Code, to include but not be
17 limited to, sections 3287, 3336 and 3294; California Code of Civil Procedure § 1021.5; the California
18 common law of contract; the FLSA, 29 U.S.C. § 201, *et seq.*; federal common law; and the Employee
19 Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* ("ERISA"). Plaintiffs' Released Claims also
20 include all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and
21 attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment,
22 retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C. section
23 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age
24 Discrimination in Employment Act, and the California Fair Employment and Housing Act; and the law
25 of contract and tort.

26 However, notwithstanding the foregoing nothing in this Memorandum shall be construed to
27 waive any right that is not subject to waiver by private agreement, including, without limitation, any
28 claims arising under state unemployment insurance or workers compensation laws and the release of

1 claims not permitted by law.

2 With the exception of those claims that cannot be released by law, as specifically identified
3 above, Plaintiffs' Released Claims include all claims, whether known or unknown. Even if Plaintiffs
4 discover facts in addition to or different from those that they now know or believe to be true with respect
5 to the subject matter of Plaintiffs' Released Claims, those claims will remain released and forever barred.
6 Thus, Plaintiffs Zine and Baber expressly waive and relinquish the provisions, rights and benefits of
7 section 1542 of the California Civil Code, which reads: A general release does not extend to claims that
8 the creditor or releasing party does not know or suspect to exist in his or her favor at the time of
9 executing the release and that, if known by him or her, would have materially affected his or her
10 settlement with the debtor or released party.

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
12 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
13 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
14 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
15 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
16 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

17 73. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
18 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
19 herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

20 74. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
21 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
22 may be deemed binding on the Parties.

23 75. Amendment or Modification. No amendment, change, or modification to this Settlement
24 Agreement will be valid unless in writing and signed, either by all Parties or their counsel.

25 76. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
26 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
27 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
28 to this Settlement Agreement to effectuate its terms and to execute any other documents required to

1 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
2 other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to
3 reach agreement on the form or content of any document needed to implement the Settlement, or on any
4 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
5 may seek the assistance of the Court to resolve such disagreement.

6 77. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
7 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

8 78. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
9 will be governed by and interpreted according to the laws of the State of California.

10 79. Execution and Counterparts. This Settlement Agreement is subject only to the execution
11 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
12 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
13 copies of the signature page, will be deemed to be one and the same instrument.

14 80. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
15 Settlement Agreement is a fair, adequate and reasonable settlement of the Actions and have arrived at
16 this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
17 account all relevant factors, present and potential. The Parties further acknowledge that they are each
18 represented by competent counsel and that they have had an opportunity to consult with their counsel
19 regarding the fairness and reasonableness of this Settlement.

20 81. Invalidity of Any Provision. Before declaring any provision of this Settlement
21 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
22 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
23 valid and enforceable.

24 82. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
25 certification for purposes of this Settlement only; except, however, that Plaintiffs or Class Counsel may
26 appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court,
27 and either party may appeal any court order that materially alters the Settlement Agreement's terms.

28 83. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to

1 class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not
2 approved, the stipulation to certification will be void. The Parties further agree that certification for
3 purposes of the Settlement is not an admission that class action certification is proper under the standards
4 applied to contested certification motions and that this Settlement Agreement will not be admissible in
5 this or any other proceeding as evidence that either (i) a class action should be certified or (ii) Defendant
6 is liable to Plaintiffs or any Class Member, other than according to the Settlement's terms.

7 84. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
8 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
9 entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any
10 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or
11 any other applicable laws, regulations or legal requirements; breached any contract; violated or breached
12 any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
13 respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any
14 of the negotiations connected with it, will be construed as an admission or concession by Defendant of
15 any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to
16 enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be
17 offered or received as evidence in any action or proceeding to establish any liability or admission on the
18 part of Defendant or to establish the existence of any condition constituting a violation of, or a non-
19 compliance with, federal, state, local or other applicable law.

20 85. No Public Comment: Neither Plaintiffs nor Class Counsel shall issue any press release
21 or public announcement of any kind related in any way to the Settlement. Plaintiffs and Class Counsel
22 agree that, prior to Preliminary Approval of the Settlement, they will keep the terms of this Settlement
23 confidential except for purposes of communicating with Plaintiffs only. Plaintiffs shall be informed that
24 the Settlement is confidential and shall be advised to keep the settlement confidential. From and after
25 Preliminary Approval of the settlement, Plaintiffs and Class Counsel may: (1) as required by law; (2) as
26 required under the terms of the settlement; or (3) as required under counsel's duties and responsibilities
27 as Class Counsel, comment regarding the specific terms of the settlement. In all other cases, Plaintiffs
28 and Class Counsel agree to limit their statements regarding the terms of the Settlement, whether oral,

1 written or electronic (including the world wide web), to say the Actions have been resolved and that
2 Plaintiffs and Class Counsel are satisfied with the settlement terms. Nothing in this Paragraph is intended
3 to interfere with either Plaintiffs' or Class Counsel's duties and obligations to faithfully discharge their
4 obligations to Class Members, including but not limited to, communicating with Class Members
5 regarding the Settlement.

6 86. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
7 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
8 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

9 87. Enforcement Actions. In the event that one or more of the Parties institutes any legal
10 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
11 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
12 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, under the
13 standards set forth within the meaning of applicable law.

14 88. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
15 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
16 more strictly against one party than another merely by virtue of the fact that it may have been prepared
17 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
18 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

19 89. Representation By Counsel. The Parties acknowledge that they have been represented
20 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
21 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,
22 Plaintiffs and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

23 90. All Terms Subject to Final Court Approval. All amounts and procedures described in
24 this Settlement Agreement herein will be subject to final Court approval.

25 91. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
26 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
27 Settlement Agreement.

28 92. Binding Agreement. The Parties warrant that they understand and have full authority to

1 enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully
2 enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in
3 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
4 otherwise might apply under federal or state law.

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READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 8/18/2022

DocuSigned by:

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Omar Zine

PLAINTIFF

Dated: _____

William Baber

DEFENDANT NESPRESSO USA, INC.

Dated: _____

Douglas Besman - Senior Counsel, Head of
Litigation

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: 8/18/2022

By: 
Raul Perez
Attorneys for Plaintiff Omar Zine

SHEGERIAN & ASSOCIATES, INC.

Dated: _____

By: _____
Cheryl A. Kenner
Attorneys for Plaintiff William Baber

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**

Dated: _____

By: _____
Tracey A. Kennedy
Attorneys for Defendant Nespresso USA, Inc.

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READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____

Omar Zine

PLAINTIFF

Dated: 8/15/22

William Baber
William Baber

DEFENDANT NESPRESSO USA, INC.

Dated: _____

Douglas Besman - Senior Counsel, Head of
Litigation

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: _____

By: _____
Raul Perez
Attorneys for Plaintiff Omar Zine

SHEGERIAN & ASSOCIATES, INC.

Dated: August 16, 2022

By: *Cheryl Kenner*

Cheryl A. Kenner
Attorneys for Plaintiff William Baber

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**

Dated: _____

By: _____
Tracey A. Kennedy
Attorneys for Defendant Nespresso USA, Inc.

1 **READ CAREFULLY BEFORE SIGNING**

2 **PLAINTIFF**

3
4 Dated: _____

5 _____
Omar Zine

6 **PLAINTIFF**

7
8 Dated: _____

9 _____
William Baber

10 **DEFENDANT NESPRESSO USA, INC.**

11 Dated: 10/15/2022

DocuSigned by:

Douglas Besman

12 _____
13 Douglas Besman - Senior Counsel, Head of
14 Litigation

15 **APPROVED AS TO FORM**

16 **CAPSTONE LAW APC**

17 Dated: _____

18 By: _____
Raul Perez
Attorneys for Plaintiff Omar Zine

19 **SHEGERIAN & ASSOCIATES, INC.**

20 Dated: _____

21 By: _____
Cheryl A. Kenner
Attorneys for Plaintiff William Baber

22 **SHEPPARD, MULLIN, RICHTER &
23 HAMPTON LLP**

24 Dated: 10/19/22

25 By: _____
Tracey A. Kennedy
Attorneys for Defendant Nespresso USA, Inc.

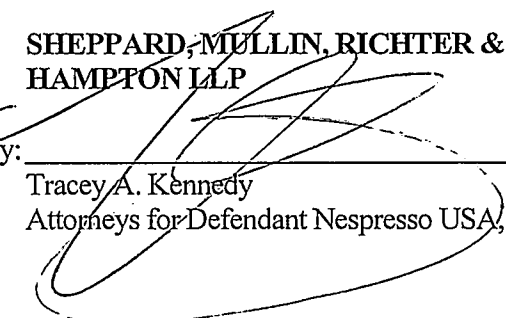


Exhibit A

LEGAL NOTICE:

If you worked for Nespresso USA, Inc. (“Defendant”) in California as non-exempt employee at any time during the period June 3, 2016 through January 4, 2022, a class and representative action settlement will affect your rights.

A court authorized this notice. You are not being sued. This notice affects your rights. Please read it carefully.

Zine v. Nespresso USA, Inc., Case No. 3:20-cv-051440SK (N.D. Cal.)
Baber v. Nespresso USA, Inc., 3:21-cv-00487-JSC (N.D. Cal.)
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA
NOTICE OF CLASS ACTION SETTLEMENT

To: All persons employed in California by Defendant Nespresso USA, Inc. (“Defendant”) as non-exempt employees at any time during the period from June 3, 2016 through January 4, 2022 (“Class Members”).

All persons employed in California by Defendant as non-exempt employees at any time during the period from March 6, 2019 through January 4, 2022 (“PAGA Members”).

On _____, the Honorable Sallie Kim of the United States District Court, Northern District of California granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 9:30 a.m. on _____, 2022 in Courtroom C of the United States District Court, Northern District of California located at 450 Golden Gate Avenue, San Francisco, California 94102.

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at http://_____, by contacting class counsel at _____, by accessing the Court docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit the settlement website, http://_____, or the Court’s PACER site, to confirm that the date has not changed.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

SUMMARY OF THE LAWSUITS

Plaintiffs Omar Zine and William Baber, on their behalf and on behalf of other current and former non-exempt employees, allege in their separate class action lawsuits (“Actions”) that Defendant violated California state labor laws as a result of its alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks or pay premium payments; (3) timely pay all wages owed to employees during each pay period and upon termination of their employment; (4) reimburse employees for necessary business expenses; (5) pay vested vacation time and paid time off upon termination; and (6) provide employees with accurate, itemized wage statements. Defendant has denied these allegations.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On October 4, 2021, the parties participated in a mediation with Jeffrey Krivis, Esq. an experienced and well-respected class action mediator. With Mr. Krivis’ guidance, the parties were able to negotiate at arm’s length a complete settlement of Plaintiffs’ claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class in this settlement, Capstone Law APC and Shegerian & Associates, Inc. (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendant has denied, and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiffs’ claims and that it has paid all wages due its employees legally and fairly. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Defendant has already spent substantial amounts of time, energy and resources defending this case and, unless this settlement is agreed to, will have to continue to devote time, energy and resources to the defense of the claims asserted by the Class. Defendant has also taken into account the risks of further litigation in reaching its decision. Defendant has, therefore, agreed to settle in the manner and upon the terms set forth in the Settlement Agreement to put to rest the claims as set forth in the Action.

SUMMARY OF THE PROPOSED SETTLEMENT TERMS

Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for a Gross Settlement Amount of \$950,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) Class Representative Enhancement Payments of \$5,000, each, to Omar Zine and William Baber for their services on behalf of the class, and additional General Release Payments of \$5,000, each, for a release of all claims arising out of their employment with

Defendant; (3) \$316,667 in attorneys' fees and up to \$40,000 in litigation costs and expenses; (4) an \$80,000 settlement of claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), inclusive of a \$60,000 payment to the California Labor and Workforce Development Agency ("LWDA") in connection with the PAGA, and a \$20,000 payment ("PAGA Fund") to all PAGA Members; and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$_. After deducting the above payments, a total of approximately \$_ will be allocated to Class Members who do not opt out of the Settlement Class ("Net Settlement Fund"). Additionally, all PAGA Members will receive a proportional share of the \$20,000 PAGA Fund, regardless whether they opt out of the Settlement Class.

Payments from Net Settlement Fund. To determine the amount of the Net Settlement Fund to which each Class Member is entitled, the Settlement Administrator used the workweek information provided by Defendant and agreed to by Plaintiff to calculate the total number of workweeks worked by each Class Member ("during the Class Period ("Individual Workweeks") and the total number of workweeks worked by all Class Members ("Total Class Workweeks") during the Class Period.

To then calculate the Individual Payments, Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of Workweeks, resulting in the "Workweek Value." Each Class Member's share of the Net Settlement Fund will be calculated by multiplying each individual Class Member's total number of Workweeks by the Workweek Value. The Individual Settlement Payment will be reduced by any required deductions for each Class Members as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member's share of the Net Settlement Fund according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

According to Defendant's records, you worked during the Class Period in a non-exempt position for a total of ____ Workweeks. Accordingly, your estimated payment from the Net Settlement Fund is approximately \$_____.

Payments from PAGA Fund. To determine the amount of the PAGA Fund to which each PAGA Member is entitled, the Settlement Administrator used the workweek information provided by Defendant and agreed to by Plaintiff to calculate the total number of workweeks worked by each PAGA Member from March 6, 2019 through January 4, 2022 ("PAGA Period") and the aggregate total number of Workweeks worked by all PAGA Members during the PAGA Period.

To determine each PAGA Member's estimated share of the PAGA Fund, the Settlement Administrator will use the following formula: The PAGA Fund will be divided by the aggregate total number of Workweeks, resulting in the "PAGA Workweek Value." Each PAGA Member's share of the PAGA Fund will be calculated by multiplying each individual Participating PAGA Member's total number of Workweeks by the PAGA Workweek Value. A Request for Exclusion does not exclude a PAGA Member from the release of claims under California Labor Code §§ 2698, *et seq.* and the PAGA Member will receive their portion of the PAGA fund even if he or she submits a valid Request for Exclusion.

According to Defendant's records, you worked during the PAGA Period in a non-exempt position for a total of ____ Workweeks. Accordingly, your estimated payment from the PAGA Fund is approximately \$_____.

Your Estimated Payment: Based on the above, **your estimated payment from the settlement is approximately \$_____**. If you believe the Workweek information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator
c/o _____
Fax No. _____

If you dispute the information stated above, Defendant's records will control unless you are able to provide documentation that establishes otherwise.

Taxes on Settlement Payments. IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 25% of each settlement payment will be allocated as wages for which IRS Forms W-2 will be issued, and 75% will be allocated as non-wages for interest, penalties, and unreimbursed business expenses for which IRS Forms 1099-MISC will be issued.

HOW WILL THE LAWYERS BE PAID?

From the Class Settlement Amount, Plaintiffs will ask the Court to approve up to \$316,667 in attorneys' fees, \$40,000 in litigation costs and expenses, and \$5,000 to each Plaintiff for Class Representative Enhancement Payments, and \$5,000 to each Plaintiff for General Release Payments. Plaintiffs will file a motion for Court approval of the above amounts by [date]. The motion will be available for download at http:_____.

YOUR OPTIONS UNDER THE SETTLEMENT

Option 1 – *Automatically Receive a Payment from the Settlement*

If want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the Released Class Claims that accrued during the Class Period and the Released PAGA Claims that accrued during the PAGA Period:

Released Class Claims: All claims asserted in the Actions, reasonably arising from or related to the facts and claims alleged in the Actions, or that reasonably could have been raised in the Actions based on the facts and claims alleged in the operative civil complaints for each Action and all amendments thereto, including all claims for unpaid wages, minimum wage, overtime

compensation, double-time compensation, and interest; the calculation of the regular rate of pay for overtime or for any purpose; meal period and rest-period premiums, including failure to pay premiums at the regular rate of compensation; reimbursement for all necessary business expenses; payment for all time spent in connection with security checks and all hours worked, including off-the-clock and unrecorded work; failure to pay vacation and paid time off upon termination; failure to provide accurate and timely wage statements; unfair business practices; penalties, including, but not be limited to, civil penalties, statutory penalties, recordkeeping penalties, and waiting-time penalties; and attorneys' fees and costs; all claims related to the Released Claims arising under: the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.7, 227.3, 500, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802), the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200, *et seq.* This release excludes the release of claims not permitted by law.

Released PAGA Claims: all claims asserted through California Labor Code §§ 2698, *et seq.*, that reasonably arise out of, or are related to, the Released Class Claims during the PAGA Period.

Option 2 – Opt-Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator
c/o _____

The Request for Exclusion must be postmarked or faxed not later than _____, 2022. If you submit a Request for Exclusion which is not postmarked or faxed by _____, 2022, your Request for Exclusion will be rejected, and you will be included in the settlement class. To fax your request for exclusion, the Settlement Administrator's fax number is: _____.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not Receive a Payment from the Net Settlement Fund.
- Not release the Released Class Claims.
- If you are a PAGA Member, you will, however, release the Released PAGA Claims and will receive a payment from the PAGA Fund.

Option 3 – Object to the Settlement

You may object to the terms of the settlement before the Final Approval Hearing. However, if the Court rejects your objection, you will still be bound by the terms of the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Zine v. Nespresso USA, Inc.*, Case No. 3.20-cv-051440SK (N.D. Cal.)), (b) be filed with the Court and served on the Parties on or before [Date].

By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Approval Hearing set for _____ at 9:30 a.m. in the United States District Court, Northern District of California and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, and if the Court approves the settlement, you will still be entitled to the money from the settlement and you will be deemed to have released the Released Claims.

ADDITIONAL INFORMATION

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case.

**If you have any questions, you can call the Settlement Administrator at (800) _____
or counsel of record.**

The Settlement Administrator's complete contact information is as follows:

Settlement Administrator c/o _____

Phone: _____

Fax: _____

Case Website: _____

ATTORNEYS – COUNSEL OF RECORD

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**PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE OFFICE OF THE
CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM
PROCESS.**