

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
THOMAS R. KAUFMAN, Cal. Bar No. 177936
2 tkaufman@sheppardmullin.com
MICHAEL T. CAMPBELL, Cal. Bar No. 293376
3 mcampbell@sheppardmullin.com
1901 Avenue of the Stars, Suite 1600
4 Los Angeles, California 90067-6055
Telephone: 310.228.3700
5 Facsimile: 310.228.3701

6 Attorneys for Defendant
YOSHINOYA AMERICA, INC.

7 **ROSEN ♦ SABA, LLP**

8 RYAN D. SABA, ESQ. (State Bar No. 192370)
rsaba@rosensaba.com
9 TYLER C. VANDERPOOL, ESQ. (State Bar No. 279175)
tvanderpool@rosensaba.com
10 9350 Wilshire Boulevard, Suite 250
11 Beverly Hills, California 90212
Telephone: (310) 285-1727
12 Facsimile: (310) 285-1728

13 Attorneys for Plaintiffs,
14 ERICK MONROY and ILSE ASCENSIO

15 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

16 **COUNTY OF LOS ANGELES**

17 ERICK MONROY, an individual, and ILSE
18 ASCENSIO, an individual

19 Plaintiffs,

20 v.

21 YOSHINOYA AMERICA, INC., a California
corporation, YOSHINOYA HOLDINGS CO.,
22 LTD., a Japanese corporation, and DOES 1 to
100, inclusive, et al.,

23 Defendants.
24

Case No. BC 653419

Assigned to Hon. James Buckley

**STIPULATION TO CLASS NOTICE AND
BRIEFING SCHEDULE ON CROSS-
BRIEFINGS ON LIABILITY ISSUES;
[PROPOSED] ORDER**

Complaint Filed: March 7, 2017

1 Counsel for the parties have met and conferred and agreed upon a class notice to be issued
2 to the putative class. The parties hereby stipulate to the proposed notice attached as Exhibit A
3 being mailed to the putative class members by May 10, 2019 or within ten business (10) days of
4 the Court's approval of this stipulation, whichever date is later. The putative class members will
5 have thirty (30) days from the mailing of the notice to postmark a request for exclusion form,
6 except that if a notice is returned to the administrator, KCC Class Action Services, LLC as
7 undeliverable, the administrator will perform a skip trace and mail a second notice. That putative
8 class member will then have twenty (20) days from the re-mailing date to postmark a request for
9 exclusion form. The class will then consist of all putative class members who did not submit a
10 timely request for exclusion form. The parties expect that the class will be fully formed by the end
11 of June 2019.

12 Per the Court's ruling at the April 22, 2019 Case Management Conference, the parties will
13 then file simultaneous opening briefs on July 12, 2019 that shall be no longer than 20 pages
14 addressing the underlying liability issues concerning the application of reporting time pay rules to
15 a set of stipulated facts the parties will submit with the briefing. The parties will file simultaneous
16 reply briefs on July 26, 2019, which shall be no longer than 15 pages, responding to the other
17 party's opening brief. The parties will then argue the matter on August 9, 2019 at 10:30 a.m.

18 Dated: April 29, 2019

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

19
20 By

/s/ Thomas R. Kaufman

THOMAS R. KAUFMAN

Attorneys for Defendant

YOSHINOYA AMERICA, INC.

21
22
23 Dated: April 29, 2019

ROSEN SABA, LLP

24
25 By

/s/ Ryan Saba

RYAN SABA

Attorneys for Plaintiffs

ERICK MONROY AND ILSE ASCENSIO

1 **IT IS SO ORDERED.**

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3 Dated: _____

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Los Angeles Superior Court Judge

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EXHIBIT A

IMPORTANT LEGAL NOTICE

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ERICK MONROY, an individual, and ILSE
ASCENSIO, an individual

Plaintiffs,

v.

YOSHINOYA AMERICA, INC., a California
corporation, YOSHINOYA HOLDINGS CO.,
LTD., a Japanese corporation, and DOES 1 to
100, inclusive, et al.,

Defendants.

Case No. BC 653419

**NOTICE OF PENDENCY OF CLASS
ACTION AND RIGHT TO OPT OUT**

**THIS NOTICE AFFECTS YOUR
RIGHTS - PLEASE READ IT
CAREFULLY.**

*A California court authorized this notice. This is not a solicitation from a lawyer.
Your legal rights are affected whether or not you act. Please read this notice carefully.*

TO: All non-exempt employees of Yoshinoya America, Inc. ("Yoshinoya") in California, who at any time during the period from March 7, 2013 to November 1, 2017, were scheduled to work at least one "on-call shift" and did not receive any pay for the on-call shift.

Notice is hereby given that a certified class action lawsuit is now pending in the Los Angeles County Superior Court entitled *Eric Monroy v. Yoshinoya America, Inc., et al.* The class representatives who has brought this action are Eric Monroy and Ilse Ascensio ("Plaintiffs"). Plaintiffs are suing on their own behalf and on behalf of the following class:

"All non-exempt employees of Yoshinoya in California, who at any time during the period from March 7, 2013 to November 1, 2017, were scheduled to work at least one on-call shift and did not receive any pay for the on-call shift."

Your Legal Rights and Options in this Case	
PARTICIPATE AS A MEMBER OF THE CERTIFIED CLASS	If you come within the definition of the class set forth above in this notice, you will be automatically included in the class unless you elect to exclude yourself from the class in accordance with the procedures described below. If you wish to remain in the class, you do not need to take any action at this time.
ASK TO BE EXCLUDED/OPT OUT	If you do not want to participate in this lawsuit, you can exclude yourself by "opting out." By electing to opt out of this litigation, you will not receive the benefits of any judgment or settlement in this class action nor will you be bound by any decision in this lawsuit favorable to Yoshinoya.

1. WHY AM I GETTING THIS NOTICE?

You are getting this notice because you have been identified from Yoshinoya's records as a member of the class that may be affected by this litigation.

2. WHY SHOULD I READ THIS NOTICE?

On April 8, 2019, the Court certified this case as a class action and you are a member of the class. This notice describes the case and the monetary relief that will be sought. Your rights and options, and the deadlines to exercise them, are explained in this notice. Your legal rights are affected regardless of whether or not you act.

3. WHAT IS THIS CASE ABOUT?

On March 7, 2017, Plaintiffs filed a Class Action Complaint against Yoshinoya in the Los Angeles County Superior Court. Plaintiffs alleged multiple claims in this action arising from an allegation that Yoshinoya had allegedly failed to comply with California's "Reporting Time Pay" requirement set forth in Section 5 of Wage Order 5-2001. That requirement provides that "Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay."

As applied to this case, Plaintiffs allege that Yoshinoya had in place an on-call policy under which it assigned certain non-exempt employees "on call" shifts. For those shifts, the assigned employees were allegedly required to call in to the store two hours before the scheduled start time for the work shift to ask whether they were required to come into the store and work the shift. Plaintiffs allege that when employees called in to the store in this manner and were told they were *not* required to come to work that day (in which case they were not paid any wages), this violated the Reporting Time Pay requirement because the law allegedly required Yoshinoya to pay the employees who called in for half the time they would have been scheduled to work if they had not been told they were excused from coming into work. Plaintiffs also alleged that the failure to pay this Reporting Time Pay triggered additional penalties under Labor Code Sections 203, 226 and 2699 for failure to provide accurate wage statements and failure to pay all wages owed to class members who are now former employees.

Yoshinoya denies that it has violated California law in any way. Yoshinoya contends that, at least during the period between 2014 and 2017 when Yoshinoya utilized on call shifts, California

law did not require an employer to pay Reporting Time Pay to an employee who was merely asked to call in to work two hours before a scheduled shift to ask whether the employee needed to physically report to work that day. Rather, Yoshinoya contends that Reporting Time Pay was owed only when an employee actually was required physically to “report” to work for a scheduled shift but was sent home without being provided at least half of the hours of the shift. Because Yoshinoya does not believe it violated the Reporting Time Pay rules, it further denies that it owes any of the penalties that Plaintiffs are seeking, all of which depend upon a finding that Yoshinoya violated the Reporting Time Pay rules in the first instance.

4. YOUR OPTIONS

If you come within the definitions of the class set forth above in this notice, you will be automatically included in the class, unless you elect to exclude yourself from the class in accordance with the procedures described below. If you wish to remain in the class, you do not need to take any action at this time. Your choice to stay in the class or exclude yourself from the class has certain consequences, detailed below.

5. YOU CAN REMAIN A MEMBER OF THE CLASS.

If you wish to remain a member of the class, you need not do anything. If you remain a member of the class, you will be represented by Plaintiffs and their attorneys (hereinafter "Class Counsel"). However, you may choose to enter an appearance through another attorney if you so desire by mailing a Notice of Appearance to the Notice Administrator at the address for the Notice Administrator set forth below.

As a class member, you will be bound by the class judgment or settlement, whether favorable or unfavorable, including any judgment issued in connection with the litigation or settlement between the parties. However, no judgment will be entered without Court approval and further notice to the class. You may be required as a condition to participate in any recovery through settlement or trial to present evidence concerning your claim. If a judgment is entered in favor of the class, you may be eligible to share in any benefit awarded to the class. You will not be responsible for Class Counsel's attorneys' fees and costs, as Class Counsel represents all class members on a contingent basis and reimbursement to Class Counsel for its costs and fees incurred in litigating this lawsuit will be deducted from any class recovery or paid by Defendant directly, as the Court deems appropriate.

6. YOU CAN REQUEST EXCLUSION FROM THE CLASS.

If you do not want to participate in this lawsuit, you can exclude yourself by "opting out." By electing to opt out of this litigation, you will not receive the benefits of any judgment or settlement in this class action nor will you be bound by any decision in this lawsuit favorable to Yoshinoya. Rather, you will remain free to pursue individually any legal rights you may have against Yoshinoya. In determining whether you want to be excluded from the class, you may want to consult your own attorney, as there are legal issues which may require consideration.

To opt out, you must send the enclosed “Opt-Out Form” to the Notice Administrator (at the address set forth below). The request must include your name, address, signature and date and be postmarked and mailed no later than [DATE]. If the Notice Administrator does not receive your request with a postmark on the request of [DATE] or earlier, then you will be included in the class and bound by any settlement or judgment. The Request for Exclusion must be sent to the

following address:

KCC Class Action Services, LLC
[Administrator Address]

If this Notice was sent to you at your current address, you do not have to do anything further to receive any further notices concerning this case. If it was forwarded by the postal service, or if it was otherwise sent to you at an address that is not current, you should immediately send a letter to the Notice Administrator at the address above stating your past and current addresses. If you elect to remain a member of the class and your address changes after you receive this Notice, please promptly notify the Notice Administrator.

7. ADDITIONAL INFORMATION

This Notice is a summary description of the lawsuit. You may inspect the full court files at the Office of the Clerk of Los Angeles Superior Court, 312 N. Spring Street, Los Angeles, California 90012. Any questions regarding this Notice or this lawsuit should be sent to the Notice Administrator at the above address and telephone number. Do not contact the court directly. You should receive a response to your questions within 10 days of its receipt.

If you decide to remain a member of the class and wish to communicate with Class Counsel as your attorneys in this litigation, you may do so by writing or calling:

Ryan Saba
Tyler C. Vanderpool
ROSEN SABA, LLP
9350 Wilshire Boulevard, Suite 250
Beverly Hills, California 90212
Telephone: (310) 285-1727
Facsimile: (310) 285-1728
Email: tvanderpool@rosensaba.com

**PLEASE DO NOT CONTACT THE COURT OR THE COURT'S STAFF WITH
QUESTIONS ABOUT THE CASE.**

Dated: _____

BY ORDER OF THE COURT

MONROY v. YOSHINOYA CLASS ACTION OPT-OUT FORM

Complete and return this form via First Class Mail postmarked by **[DATE]** only if you wish to be excluded from participating in the *Monroy* Class Action. Please print clearly in black or blue ink.

UNLESS YOU PROPERLY COMPLETE AND RETURN THIS OPT-OUT FORM, YOU WILL BE BOUND BY ANY JUDGMENT IN THE LITIGATION AND YOU WILL NOT BE PERMITTED TO PURSUE ANY PENDING OR FUTURE LITIGATION ON MATTERS RESOLVED IN THIS LITIGATION.

Your Name and Contact Information

Name: _____

Address: _____

City: _____ State/Province: _____

Zip/Postal Code: _____

Last 4 Digits of Social Security Number _____

Dated: _____

Submitted By:

_____ (Printed)

Signed:

_____ (Signature)

1 PROOF OF SERVICE

2 Monroy v. Yoshinoya

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 At the time of service, I was over 18 years of age and **not a party to this action**. I
5 am employed in the County of Los Angeles, State of California. My business address is
1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067-6055.

6 On April 29, 2019, I served true copies of the following document(s) described as

7 **STIPULATION TO CLASS NOTICE AND BRIEFING SCHEDULE ON CROSS**
8 **BRIEFINGS ON LIABILITY ISSUES; [PROPOSED] ORDER**

9 on the interested parties in this action as follows:

10 Rosen Saba LLP
11 Ryan D. Saba, Esq.
12 Tyler C. Vanderppol, Esq
9350 Wilshire Blvd., Suite 250
Beverly Hills, CA 90212

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14 **BY ELECTRONIC SERVICE:** Pursuant to Court Order Authorizing Electronic
15 Service, dated July 17, 2017, I provided the document(s) listed above electronically on the
16 CASE ANYWHERE Website to the parties on the Service List maintained on the CASE
ANYWHERE Website for this case, or on the attached Service List. Case Anywhere is the
on-line e-service provider designated in this case.

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

18 Executed on April 29, 2019, at Los Angeles, California.

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20 Gina E. Schemerhorn

21 Gina E. Schemerhorn