

DEC 30 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By: Dejane Wortham, Deputy

Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
Katherine Odenbreit (SBN: 184619)
kodenbreit@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

Attorneys for Plaintiff DERRELL ANDERSON, as an individual and on behalf of all employees similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DERRELL ANDERSON, as an individual
and on behalf of all employees similarly
situated,

Plaintiff,

v.

CINDYS CLEANING SERVICES LLC
dba CYNDY'S CLEANING SERVICES
LLC; ABM INDUSTRIES
INCORPORATED; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 20STCV13371

**~~PROPOSED~~ FIRST AMENDED
COMPLAINT FOR DAMAGES AND CIVIL
PENALTIES**

Assigned for all purposes to:
Hon. Ann I. Jones, Dept. 11

1. Violation of Cal. Labor Code §§ 510, 1194 (Recovery of Unpaid Minimum Wage and Overtime);
2. Violation of Cal. Labor Code §§ 226.7, 512 (Meal Period Violations);
3. Violation of Cal. Labor Code § 226.7, IWC Wage Order 5 (Rest Period Violations);
4. Violation of Cal. Labor Code § 226 (Failure to Provide Accurate Itemized Wage Statements);
5. Violation of Cal. Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment); and
6. Violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practice); and
7. Civil Penalties under Cal. Labor Code §§ 2698 and 2699 (Private Attorneys General Act)

REQUEST FOR JURY TRIAL

1 Plaintiff DERRELL ANDERSON (“Plaintiff” or “Mr. Anderson”), on behalf of himself
2 and all employees similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
5 who were subjected to one or more of the violations alleged herein (“Plaintiff Class”) by
6 Defendants CINDYS CLEANING SERVICES LLC dba CYNDY’S CLEANING SERVICES
7 LLC and ABM INDUSTRY GROUPS, LLC (collectively referred to as “Defendants”). The term
8 “Relevant Time Period” or “Time Period” is defined as four (4) years prior to the filing of the
9 original Complaint on April 3, 2020. Plaintiff reserves the right to amend this Complaint to reflect
10 a different “Time Period” as further discovery is conducted.

11 2. Plaintiff, individually and on behalf of the Plaintiff Class, seeks relief against
12 Defendants for their: (1) failure to pay all wages due including regular and overtime wages and
13 minimum wages; (2) failure to provide meal periods or premium compensation in lieu thereof;
14 (3) failure to provide rest periods or premium compensation in lieu thereof; (4) failure to provide
15 accurate itemized wage statements; (5) failure to pay wages due upon termination of employment;
16 and (6) unfair business practices.

17 3. At all relevant times herein, Defendants have consistently maintained and enforced
18 the following unlawful policies and practices against Plaintiff and the Plaintiff Class:

- 19 a. Willfully refusing to pay all hours worked, including regular, overtime,
20 and minimum wages;
- 21 b. Willfully refusing to permit off-duty meal periods or providing
22 compensation in lieu thereof;
- 23 c. Willfully refusing to permit rest periods or providing compensation in lieu
24 thereof;
- 25 d. Willfully refusing to furnish accurate itemized wage statements upon
26 payment of wages;
- 27 e. Willfully refusing to pay all wages due upon separation of employment;
28 and

1 f. Willfully engaging in unfair business practices.

2 **THE PARTIES**

3 **The Plaintiff**

4 4. Mr. Anderson is, and at all times herein mentioned was, a resident of the County
5 of Los Angeles. Mr. Anderson began his employment with Cindys on or about August 2019 as a
6 janitor and is still currently employed as janitor by Cindys. Throughout the Relevant Time Period,
7 Plaintiff's duties included cleaning and performing various janitorial services.

8 **The Defendants**

9 5. Plaintiff is informed and believes, and based thereon alleges, that Defendant
10 Cindys Cleaning Services LLC dba Cyndy's Cleaning Services LLC ("Cindys") provides
11 cleaning and janitorial services for various venues, including event venues such as stadiums, in
12 Los Angeles County, and is and/or was the employer of Plaintiff and similarly situated employees
13 during the Relevant Time Period.

14 6. Plaintiff is informed and believes, and based thereon alleges, that Defendant ABM
15 Industry Groups, LLC ("ABM") is a Delaware corporation in the business of providing a variety
16 of services for various industries, including janitorial services, throughout the country which
17 includes California. On information and belief, ABM outsources janitorial services to third-
18 parties such as Cindys. ABM is then paid by the clients for whom the janitorial services were
19 rendered ("client(s)"), then subsequently issues payment to Cindys for the services performed.
20 Also, on information and belief, ABM keeps all timesheets signed by employees who perform
21 the janitorial services, including those directly employed by Cindys, for its records and to support
22 its claim of payment from the clients. Cindys and ABM (collectively referred herein as
23 "Defendants") are thus alleged to be Plaintiff's and similarly situated employees' joint employers
24 during the Relevant Time Period under the California Labor Code ("Labor Code") and relevant
25 case law. ((*See, e.g., Martinez v. Combs*, 49 Cal.4th 35 (2010)); (Lab. Code § 2810.3).)

26 7. Plaintiff is ignorant of the true names, capacities, relationships and extent of
27 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
28 inclusive, but on information and belief alleges that said Defendants are legally responsible for

1 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
2 capacities of the DOE Defendants when ascertained.

3 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
4 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
5 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
6 are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint
7 venture and/or single business enterprise, integrated enterprise and/or are agents of one another,
8 are alter egos, joint employers and conspire with one another to increase profits by engaging in
9 the conduct described in this complaint.

10 9. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
11 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
12 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
13 below was acting, at least in part, within the course and scope of that authority as such agent,
14 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
15 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
16 are legally attributable to the other Defendants.

17 **JURISDICTION AND VENUE**

18 10. This Court has subject matter jurisdiction over the causes of action alleged in this
19 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
20 excluded from exercising subject matter jurisdiction over said causes of action. The penalties
21 recoverable for Plaintiff do not exceed seventy-five thousand dollars (\$75,000.00), and
22 collectively amongst Plaintiff Class do not exceed five million dollars (\$5,000,000.00.)

23 11. Plaintiff is a resident of the State of California. Defendant Cindys is a California
24 limited liability company doing business in the State of California, with headquarters located at
25 1016 E. 14th Place, Los Angeles, CA 90640. Defendant Cindys is thus a resident of and/or
26 domiciled in the State of California.

27 12. Additionally, Defendant ABM is a Delaware limited liability corporation doing
28 business throughout the State of California. There is no federal question at issue as the issues

herein are based solely on California statutes and law, including the California Labor Code (“Labor Code”), Industrial Welfare Commission (“IWC”) Wage Orders, California Code of Civil Procedure (“Code of Civil Procedure”), California Business and Professions Code (“Business and Professions Code”), and California Rules of Court (“Rules of Court”). By doing business in the state of California, Defendant ABM has purposefully availed itself of the state’s jurisdiction. Accordingly, as personal jurisdiction over Defendant ABM would be constitutional, California’s long-arm statute provides that California courts may exercise personal jurisdiction over Defendant ABM. (Code Civil Procedure § 410.10.)

13. Venue is proper in the County of Los Angeles, because Defendants conduct business in the County of Los Angeles, and the acts and omissions set forth herein occurred in the County of Los Angeles.

PAGA ADMINISTRATIVE PREREQUISITE

14. Pursuant to the Private Attorney Generals Act (“PAGA”), prior to filing this complaint, on January 22, 2020, Plaintiff gave written notice to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specified provisions of the Labor Code alleged to have been violated, including the facts and theories that support the alleged violation as required by Labor Code section 2699.3. (LWDA Case No. LWDA-CM-768100-20.). On January 23, 2020, Plaintiff gave an amended written notice to the LWDA containing the correct certified mail numbers on the first page of the January 22, 2020 written notice. A true and correct copy of Plaintiff’s original and amended written notices sent to the LWDA, dated January 22, 2020 and January 23, 2020 respectively, are attached hereto as **Exhibit A**. An amended notice was provided to the LWDA on October 20, 2020 notifying the LWDA of the correct named employer, hereby attached as **Exhibit B**.

FACTUAL ALLEGATIONS

15. This lawsuit arises out of an ongoing wrongful scheme by Defendants to deny its employees the benefits due under California’s wage and hour laws for work performed in California. Defendants wrongfully refused to provide Plaintiff and the Plaintiff Class minimum wages, overtime compensation, meal and rest periods, and other statutory benefits mandated by

1 California.

2 16. During the Relevant Time Period, Defendants employed Plaintiff and the Plaintiff
3 Class in non-exempt positions throughout its California locations.

4 17. Defendants failed to provide Plaintiff and the Plaintiff Class with meal periods in
5 violation of the Labor Code and IWC Wage Orders. Plaintiff and the Plaintiff Class were entitled
6 to timely, uninterrupted, thirty (30) minute meal periods with the first (5) hours worked.
7 However, these breaks were either not provided, were interrupted, or were provided late.
8 Defendants would automatically deduct a meal period for Plaintiff and the Plaintiff Class even
9 when it did not in fact provide a meal period. On various occasions, Plaintiff complained to
10 Defendants about this, but Defendants refused to correct its practices.

11 18. Defendants also failed to make reasonably available legally compliant rest periods.
12 Mr. Anderson is informed and believes that Defendants did not have either written or verbal
13 policies regarding meal and rest breaks. This resulted in employees taking meal and rest breaks
14 only sporadically and often given at the verbal direction of a supervisor who did not always inform
15 employees it was time to take their respective meal or rest breaks. In order to efficiently clean
16 venues and/or facilities, employees were assigned to different sections, some of which were
17 distant from the entrance or area where a supervisor is located. Even in circumstances where a
18 supervisor might announce that it is time for employees to take a meal or rest break, many
19 employees are not within earshot and thus miss their respective meal or rest breaks. Due to
20 Defendants' policy and practices which prioritized work tasks over rest and meal period
21 compliance, Plaintiff and Plaintiff Class missed meal and rest periods, or received them untimely.

22 19. Mr. Anderson alleges he and the Plaintiff Class were not compensated with
23 premium pay for every meal period and rest period that was not provided, as required by Labor
24 Code sections 226.7 and 512 and the applicable IWC Wage Order.

25 20. Mr. Anderson further alleges that Defendants failed to compensate him and the
26 Plaintiff Class at the legally mandated wage rates for all hours worked. Mr. Anderson and Plaintiff
27 Class performed work off-the-clock, during overtime periods and during meal periods and
28 regularly and frequently worked beyond the eighth-hour of the shift. For example, Mr. Anderson

1 and Plaintiff Class were required to arrive thirty (30) minutes prior to the beginning of a work
2 shift only for Defendants to make them wait to sign-in and/or commence work up to two (2) hours
3 after the time they were informed the shift would begin. Mr. Anderson and Plaintiff Class were
4 also required to stay in the premises even after signing-out and wait until all other employees had
5 signed out before they could leave.

6 21. Further, to the extent the total hours worked exceeded eight (8) in one day, or forty
7 (40) in one week, all excess hours were required to be compensated at a rate of one-and-a-half
8 times the employee's base rate of pay. Defendants' failure to provide Plaintiff and the Plaintiff
9 Class any pay whatsoever for off-the-clock hours worked therefore necessarily resulted in
10 overtime violations as well.

11 22. Defendants failed to keep accurate time records reflecting the time Mr. Anderson
12 and Plaintiff Class started their shift, the time they began and ended their meal periods, and the
13 time they ended their shifts. Defendants required Plaintiff and Plaintiff Class to physically sign
14 in and out on a sheet that bore Defendant ABM's name and insignia. However, insofar as
15 Defendants required the employees to work before and/or after signing in/out, and deducted meal
16 period times even when no meal period was actually taken, the timekeeping by Defendants was
17 non-compliant as required under the Labor Code and Code of Regulations.

18 23. By failing to include on Plaintiff and the Plaintiff Class's paystubs all owed meal
19 and rest premium pay, and all minimum wage and overtime owed, Defendants failed to keep
20 accurate payroll records and failed to provide Plaintiff and the Plaintiff Class with complete and
21 accurate wage statements.

22 24. Defendants also failed to keep accurate wage statements by failing to include the
23 accurate name and address of the legal entity that is the employer. In particular, Plaintiff's and
24 Plaintiff Class's wage statements list the employer as "Cyndy's Cleaning Services LLC" with a
25 business address of "1016 East 14th Place, Los Angeles, CA 90640" although no such entity
26 appears in the California Secretary of State's ("SOS") online records. (SOS Business Search,
27 *available at* <https://businesssearch.sos.ca.gov/>.) Rather, two business entities with similar names
28 but with slight differences in spelling, owned and/or managed by the same person, Cynthia Perich,

are registered LLCs with SOS. Their respective Statements of Information provide the following:

- a. Cyndy's Cleaning Service LLC (SOS File No. 201807310316)
Business Address: 700 Rio Del Sol Ave, Montebello, CA 90640
- b. Cindys Cleaning Services LLC (SOS File No. 201814310215)
Business Address: 1016 E 14th Place, Los Angeles, CA 90640

25. Further, to the extent the above violations caused outstanding wages to be owed to Plaintiff and the Plaintiff Class, Defendants failed to pay all wages earned to Plaintiff and the Plaintiff Class upon the termination of their employment.

CLASS ALLEGATIONS

26. Plaintiff brings this action on behalf of himself, the general public, and the Plaintiff Class, as a class action pursuant to Code of Civil Procedure section 382. The Plaintiff Class consists of all individuals who worked for Defendants in a California location in a non-exempt janitorial position through Defendant Cindys during the Relevant Time Period. Plaintiff reserves the right under Rules of Court, rule 3.765, to amend or modify the Plaintiff Class description, or to further divide the Plaintiff Class into subclasses by limitation to particular issues or by other means.

27. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation, and because the Plaintiff Class is easily ascertained by Defendants' personnel and payroll records.

Numerosity

28. The potential members of the class as defined are so numerous that joinder of all class members is impracticable. While the precise number of the Plaintiff Class is unknown, Plaintiff is informed and believes that Defendants employed around four hundred (400) employees during the Relevant Time Period within the state of California, and alleges on information and belief that a large enough portion of those so-employed held non-exempt positions so as to be part of the Plaintiff Class.

///

Commonality

29. There are common questions of law and fact arising out of Defendants' conduct as described herein, including, but not limited to:

- a. Whether Defendants failed to pay all wages, including minimum and overtime wages, due to Plaintiff and the Plaintiff Class;
- b. Whether Defendants failed, and continues to fail, to provide meal periods or premium compensation in lieu thereof to Plaintiff and the Plaintiff Class;
- c. Whether Defendants failed, and continues to fail, to authorize and permit Plaintiff and the Plaintiff Class to take rest breaks, or pay premium compensation in lieu thereof;
- d. Whether Defendants failed to furnish wage statements to Plaintiff and the Plaintiff Class containing all information required by Labor Code section 226, subdivision (a);
- e. Whether Defendants failed to pay all unpaid wages earned during the course of employment to Plaintiff and the Plaintiff Class upon the separation of their employment; and
- f. Whether Defendants engaged in unlawful or unfair business practices.

Typicality

30. Plaintiff's claims are typical of the Plaintiff Class' claims, all of whom have incurred and/or will incur damages, as a result of Defendants' common course of conduct and common policies and practices. The claims of Plaintiff are typical because Defendants subjected all of its non-exempt employees to identical violations of the IWC Wage Orders, Code of Regulations, Labor Code, and Business and Professions Code, among other statutes.

Adequacy of Representation

31. Plaintiff will fairly and adequately represent and protect the interests of the Plaintiff Class. Plaintiff's interests are not in conflict with those of the Plaintiff Class. Plaintiff's attorneys are competent, well-versed, and experienced in litigating employment class actions and

1 other complex litigation matters.

2 **Superiority of Class Action**

3 32. Under the facts and circumstances set forth above, a class action is superior to any
4 other method available for both the fair and efficient adjudication of the rights of each class
5 members inasmuch as joinder of individual relatively small claims of each member of the Plaintiff
6 Class is not practical, and if each employee were required to file an individual lawsuit, the
7 Defendants would necessarily gain an unconscionable advantage since they would be able to
8 exploit and overwhelm the limited resources of each individual plaintiff. Requiring each member
9 of the Plaintiff Class to pursue an individual remedy would also discourage the assertion of lawful
10 claims by employees fearful of retaliation and permanent damage to their careers at present and/or
11 subsequent employment. Further, the substantial risk of inconsistent or varying verdicts or
12 adjudications with respect to the individual members of the Plaintiff Class against Defendants
13 herein further support class certification.

14 **FIRST CAUSE OF ACTION**

15 **Failure to Pay All Wages Owed, Including Minimum Wage and Overtime**

16 **(Plaintiff Against Defendants)**

17 33. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
18 fully alleged herein.

19 34. Labor Code section 1182.12 provides that on and after July 1, 2014, the minimum
20 wage for all industries shall not be less than nine dollars (\$9.00) per hour, and on and after January
21 1, 2016, the minimum wage for all industries shall not be less than ten (\$10.00) per hour. For
22 employers who employed twenty-six (26) or more people from January 1, 2017 to December 31,
23 2017, the minimum wage rate in California was ten dollars and fifty cents (\$10.50) per hour.
24 From January 1, 2018 to December 31, 2018, the minimum wage rate in California was eleven
25 dollars (\$11.00) per hour. From January 1, 2019 to December 31, 2019, the minimum wage rate
26 in California was twelve dollars (\$12.00) per hour. As of January 1, 2020, through December 31,
27 2020, the minimum wage rate in California is thirteen dollars (\$13.00) per hour. Plaintiff is
28 informed and believes Defendants employ more than twenty-six (26) employees and thus fall

1 within all requirements of section 1182.12.

2 35. Additionally, many California cities and counties impose a separate minimum
3 wage higher than that set by section 1182.12, which may be applicable to Plaintiff and the Plaintiff
4 Class. For example, Los Angeles County, where Plaintiff is employed, had a minimum wage of
5 ten dollars and fifty cents (\$10.50) per hour effective July 1, 2016, twelve dollars (\$12.00)
6 effective July 1, 2017, thirteen dollars and twenty-five cents (\$13.25) effective July 1, 2018, and
7 fourteen dollars and twenty-five cents (\$14.25) as of July 1, 2019. (County of Los Angeles
8 Minimum Wage Ordinance, *available at* <http://lacounty.gov/minimum-wage/>.)

9 36. Notwithstanding any other provision of the Labor Code, hourly minimum wage
10 rates are set for all industries according to statute. (Labor Code § 1182.12). Employers must pay
11 employees no less than minimum wage for each hour worked. (Labor Code § 1194; IWC Wage
12 Order 5-2001, Sect. 4.)

13 37. Any work in excess of eight hours in any workday and any work in excess of forty
14 (40) hours in a workweek shall be compensated at a rate of no less than one and one-half times
15 the regular rate of pay for an employee. (Labor Code § 510(a); IWC Wage Order 5-2001, Sect.
16 3(A).) Any work in excess of twelve (12) hours in a workday shall be compensated at the rate of
17 twice the regular rate of pay for an employee. (*Ibid.*)

18 38. Any employee receiving less than the legal minimum wage or legal overtime
19 compensation is entitled to recover in a civil action the amount of unpaid wages and interests
20 thereon, attorneys' fees, and costs of suit. (Labor Code § 1194(a).)

21 39. All wages earned in employment are due and payable twice during each calendar
22 month on dates designated in advance by the employer. (Labor Code § 204.)

23 40. Plaintiff and the Plaintiff Class regularly worked over eight (8) hours per day and
24 forty (40) hours per week. Defendants failed to pay Plaintiff and the Plaintiff Class all minimum
25 wage, overtime premiums, and/or double-time premiums for all hours worked in excess of eight
26 (8) hours per day and/or forty (40) hours per week for work performed for Defendants. Pursuant
27 to Labor Code sections 510, 1182.12, 1194, and section 3 of IWC Wage Order 5-2001, Plaintiff
28 and the Plaintiff Class seek the payment of all minimum wage, overtime, and/or double-time

1 compensation, and reporting time pay earned and accrued beginning four (4) years prior to filing
2 this complaint, according to proof.

3 41. Plaintiff and the Plaintiff Class were also frequently required to work through meal
4 periods for which Defendants required at least thirty (30) minutes be deducted from the time
5 recorded, resulting in additional unpaid wages. Additional time was worked by Plaintiff and the
6 Plaintiff Class that employees were not permitted to record on time records also resulting in
7 unpaid wages.

8 42. Plaintiff and the Plaintiff Class are entitled to liquidated damages, attorneys' fees,
9 and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
10 interest.

11 **SECOND CAUSE OF ACTION**

12 **Failure to Provide Meal Periods or Premium Compensation in Lieu thereof**
13 **(Plaintiff against Defendants)**

14 43. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
15 fully set forth herein.

16 44. Labor Code sections 226.7 and 512 and IWC Wage Order 5-2001, Sect. 11 provide
17 that no employer shall employ any person for a work period of more than five (5) hours without
18 providing a meal period uninterrupted by work duties of not less than thirty (30) minutes or
19 employ any person for a work period of more than ten (10) hours without a second meal period
20 of not less than thirty (30) minutes.

21 45. Labor Code section 226.7 provides that if an employer fails to provide an
22 employee a meal period in accordance with this section, the employer shall pay the employee one
23 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
24 period is not provided in accordance with this section. Plaintiff alleges Defendants failed to
25 provide legally compliant meal periods in addition to impeding, discouraging, dissuading and/or
26 not relieving employees from all work duties during meal periods thereby preventing employees
27 from taking legally compliant meal periods.

28 ///

1 46. At all relevant times, Plaintiff and the Plaintiff Class have worked shifts of more
2 than five (5) hours in a workday.

3 47. Pursuant to Labor Code section 226.7, Plaintiff and the Plaintiff Class are entitled
4 to damages equal to one (1) hour of wages at their regular rate of pay for each missed meal break,
5 in an amount according to proof.

6 48. At varying times relevant hereto, Plaintiff and the Plaintiff Class have worked
7 shifts of more than ten (10) hours in a workday.

8 49. Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of
9 meal period premium compensation pursuant to Labor Code section 226.7 which they are owed
10 beginning four (4) years prior to filing this complaint, as well as the assessment of any statutory
11 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and/or
12 other statutes.

13 50. Pursuant to Labor Code sections 218.5, Code of Civil Procedure section 1021.5
14 and any other applicable provision of law, Plaintiff requests the court award reasonable attorneys'
15 fees and costs incurred in this action.

16 **THIRD CAUSE OF ACTION**

17 **Failure to Provide Rest Periods or Premium Compensation in Lieu Thereof**
18 **(Plaintiff against Defendants)**

19 51. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
20 fully set forth herein.

21 52. Labor Code section 226.7 provides that employers authorize and permit all
22 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours, or
23 major fraction thereof.

24 53. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
25 provide and employee rest periods in accordance with this section, the employer shall pay the
26 employee one (1) hour of pay at the employees' regular rate of compensation for each workday
27 that the rest period is not provided. Plaintiff and the Plaintiff Class consistently worked over four
28 (4) hours per shift with no rest breaks, due to Defendants' uniform policies and practices.

1 employee...

2 60. Labor Code section 226, subdivision (e), provides that if an employer knowingly
3 and intentionally fails to provide a statement itemizing, *inter alia*, the gross and net wages earned,
4 the total hours worked by the employee and the applicable hourly overtime rates, causing the
5 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty
6 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent
7 violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes that
8 Defendants willfully failed to make or keep accurate records for Plaintiff and Plaintiff Class.

9 61. IWC Wage Orders require that every employer shall keep accurate information
10 with respect to each employee, including time records showing when each employee begins and
11 ends each work periods, the total daily hours worked by each employee and the total hours worked
12 in each payroll period, and applicable rates of pay. Plaintiff is informed and believes that
13 Defendants willfully and intentionally failed to make and/or keep records which accurately reflect
14 the hours worked by Plaintiff and the Plaintiff Class. Specifically, Plaintiff believes that
15 Defendants did not maintain records for Plaintiff and the Plaintiff Class reflecting their time
16 actually worked and applicable rate of pay.

17 62. An employee is deemed to suffer injury if the employer fails to provide a wage
18 statement containing all of the required information set forth in Labor Code section 226,
19 subdivision (a). (Labor Code § 226(e)(2).) In addition, the omission of time worked, proper rates
20 of pay, records of missed meal and rest breaks and/or premium pay make it difficult for employees
21 to determine whether they were paid all wages due without complicated calculations and/or
22 reconstruction of records required to be maintained by the employer.

23 63. For each employee suffering an injury as a result of Defendants' knowing and
24 intentional failure to provide an accurate, itemized wage statement the employee is entitled to
25 recover the greater of actual damages or fifty dollars (\$50.00) for the initial pay period in which
26 a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a
27 subsequent pay period.

28 ///

1 64. Plaintiff is informed and believes that Defendants' failure to keep accurate payroll
2 records, as described above, violated Labor Code sections 1174, subdivision (d) and 226,
3 subdivision (a), and the applicable Wage Order. Plaintiff intends to seek penalties under Labor
4 Code section 2699, subdivision (f)(2). Plaintiffs and the Plaintiff Class are entitled to penalties of
5 one hundred (\$100.00) for the initial violation, and two hundred (\$200.00) for each subsequent
6 violation for every pay period during which these records and information were not kept by
7 Defendants.

8 65. Plaintiff is informed and believes that Defendants' failure to keep and maintain
9 accurate records and information and provide to Plaintiff and the Plaintiff Class itemized wage
10 statements containing all of the information mandated by the Labor Code, as described above,
11 was knowing and intentional, and Plaintiff and the Plaintiff Class are entitled to statutory penalties
12 for each pay period in which a violation occurred. Plaintiff further seeks recovery of attorneys'
13 fees and costs pursuant to Labor Code section 226, subdivision (e), and as otherwise permitted
14 by law.

15 **FIFTH CAUSE OF ACTION**

16 **Failure to Pay Wages Due upon Termination of Employment**

17 **(Plaintiff against Defendants)**

18 66. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
19 fully set forth herein.

20 67. Plaintiff is informed and believes, and based thereon alleges, that as part of
21 Defendants' ongoing unfair business practices, Defendants failed to pay all employees all wages
22 earned during their employment at the time of their separation in violation of Labor Code sections
23 201, 202, and 203.

24 68. Labor Code section 201 provides that employers are required to pay an employee
25 whose employment is terminated by the employer all wages earned throughout their employment
26 and unpaid immediately upon termination.

27 69. Labor Code section 202 requires employers to pay an employee who quits his or
28 his employment all wages earned and unpaid no later than seventy-two (72) hours thereafter.

70. Labor Code section 203 provides that when an employer who fails to pay all wages earned and due to an employee who is discharged or quits within the appropriate timeframes set forth in sections 201 and 202, the wages of the employee shall continue as a penalty at the employee's regular rate of daily pay for each day the full amount of unpaid wages is not paid, up to thirty (30) days.

SIXTH CAUSE OF ACTION

72. Plaintiff realleges and incorporates by reference all preceding paragraphs herein as if fully alleged herein.

74. Business and Professions Code sections 17200, *et seq.*, known as California’s Unfair Competition Law (“UCL”), prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

76. Labor Code section 90.5, subdivision (a), states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

1 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent
2 business practices and acts described in this complaint, including but not limited to violations of
3 Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1182.12, 1194, and
4 1197, as well as other statutes as described above.

5 78. The violations of these laws and regulations, as well as of the fundamental
6 California public policies protecting workers, serve as unlawful predicate acts and practices for
7 purposes of Business and Professions Code sections 17200 *et seq.*

8 79. As a result of these actions, Plaintiff, on information and belief, alleges that
9 Defendants are able to unfairly compete with other comparable companies in the State of
10 California in violation of Business & Professions Code sections 17000 *et. Seq.* Due to these
11 unlawful, unfair and/or fraudulent business practices, Defendants have gained a competitive
12 advantage over other comparable companies doing business in the State of California.

13 80. The victims of these unlawful, unfair and/or fraudulent business practices include,
14 but are not limited to, Plaintiff, the Plaintiff Class, competing cleaning and janitorial service
15 companies in the State of California, and the general public. Plaintiff is informed and believes,
16 and based thereon alleges, that Defendants performed the above-mentioned acts with the intent
17 of gaining an unfair competitive advantage and thereby injuring Plaintiff, the Plaintiff Class, other
18 competitors, and the general public.

19 81. Plaintiff's success in this action will enforce important rights affecting the public
20 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
21 of himself.

22 82. Business and Professions Code section 17203 provides that a court may make such
23 orders or judgments as may be necessary to prevent the use or employment by any person of any
24 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
25 prevent Defendants from repeating their unlawful, unfair, and fraudulent business acts and
26 business practices alleged above.

27 83. Business and Professions Code section 17203 provides that the Court may restore
28 to any person in interest any money or property that may have been acquired by means of such

1 unfair competition. Plaintiff and Plaintiff Class are entitled to restitution pursuant to Business and
2 Professions Code section 17203 for wages and payments unlawfully withheld from employees,
3 including the fair value of the meal and rest periods and other losses alleged herein, during the
4 four-year period prior to the filing of this complaint. All remedies are cumulative pursuant to
5 Business and Professions Code section 17205.

6 84. Business and Professions Code section 17202 provides: “Notwithstanding Section
7 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
8 forfeiture, or penal law in a case of unfair competition.” Plaintiff and Plaintiff Class are entitled
9 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
10 Professions Code section 17202.

11 85. Plaintiff requests injunctive relief pursuant to Business and Professions Code
12 section 17203 to enjoin Defendants from continuing the unfair/unlawful business practices
13 alleged herein.

14 86. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is
15 a financial burden involved in pursuing this action. The action is seeking to vindicate a public
16 right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to
17 pay attorneys’ fees from the recovery in this action. Attorneys’ fees are appropriate pursuant to
18 Code of Civil Procedure section 1021.5 and otherwise.

19 **SEVENTH CAUSE OF ACTION**

20 **Violation of the Private Attorneys General Act**

21 **(Plaintiff against Defendants)**

22 87. Plaintiff realleges and incorporates by reference all preceding paragraphs herein
23 as if fully alleged herein.

24 88. Labor Code sections 2698 through 2699 - The Labor Code Private Attorney’s
25 General Act of 2004 provides for a civil penalty to be assessed and collected by the Labor and
26 Workforce Development Agency, or any of its departments, divisions, commissions, boards,
27 agencies or employees for a violation of the Labor Code, may be recovered through a civil action
28 by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other

1 current or former employees.

2 89. Whenever the Labor and Workforce Development Agency, or any of its
3 departments, divisions, commissions, boards agencies or employees has discretion to assess a
4 civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the
5 same limitations and conditions to assess a civil penalty.

6 90. Plaintiff and Plaintiff Class are “aggrieved employees” as defined by Labor Code
7 section 2699 in that they are all current or former employees of Defendants, and one or more of
8 the alleged violations was committed against them.

9 91. Pursuant to the Private Attorney Generals Act (“PAGA”), prior to filing this
10 complaint, on January 22, 2020, Plaintiff gave written notice to the Labor and Workforce
11 Development Agency (“LWDA”) and by certified mail to Defendants of the specified provisions
12 of the Labor Code alleged to have been violated, including the facts and theories that support the
13 alleged violation as required by Labor Code section 2699.3. (LWDA Case No. LWDA-CM-
14 768100-20.) On January 23, 2020, Plaintiff gave an amended written notice to the LWDA
15 containing the correct certified mail numbers on the first page of the January 22, 2020 written
16 notice. A true and correct copy of Plaintiff’s original and amended written notices sent to the
17 LWDA, dated January 22, 2020 and January 23, 2020 respectively, are attached hereto as **Exhibit**



19 92. Plaintiff asserts all of the claims in this complaint against Defendants, individually
20 and on behalf of all aggrieved employees of the Plaintiff Class, in his capacity as private attorney
21 general, and seeks all statutory penalties available under the Labor Code.

22 93. Pursuant to Labor Code section 2699 Plaintiff, individually and on behalf of all
23 aggrieved employees, request and are entitled to recover from Defendants: unpaid wages,
24 overtime compensation, rest and meal period compensation and penalties, waiting period wages
25 and penalties according to proof, penalties for failure to keep accurate payroll records, interest,
26 attorney’s fees and costs pursuant to Labor Code sections 218.5, 1194, subdivision (a), and 1174,
27 as well as all statutory penalties, and attorneys’ fees against Defendants, including but not limited
28 to:

- 1 (a) Penalties under Labor Code section 2699 in the amount of one hundred
2 dollars (\$100.00) for each aggrieved employee per pay period for each
3 initial violation, and two hundred dollars (\$200.00) for each aggrieved
4 employee per pay period for each subsequent violation;
- 5 (b) Penalties under Code of Regulations Title 8 section 11050 in the amount
6 of fifty dollars (\$50.00) for each aggrieved employee per pay period for
7 the initial violation, and two hundred dollars (\$200.00) for each aggrieved
8 employee per pay period for each subsequent violation; and
- 9 (c) Any and all additional penalties and sums are provided by the Labor Code
10 and/or other statutes.

11 94. In addition, thereto, Plaintiff seeks and is entitled to fifty percent (50%) of all
12 penalties obtained under Labor Code section 2699 to be allocated to the general fund, and twenty
13 five percent (25%) of all penalties obtained to be allocated to the Labor and Workforce
14 Development Agency, for education of employers and employees about their rights and
15 responsibilities under the Labor Code and twenty five percent (25%) to all aggrieved employee.

16 95. Further, Plaintiff is entitled to seek and recover reasonable attorney's fees and
17 costs pursuant to Labor Code sections 2699, 218.5, 226, 1174, and 1194, and any other applicable
18 statute.

19 **PRAYER FOR RELIEF**

20 **WHISEFORE**, Plaintiff prays for judgment as follows:

- 21 1. That the Court determine that this action may be maintained as a class action under
22 Code of Civil Procedure section 382;
- 23 2. That the Court appoint Plaintiff as Class Representative;
- 24 3. That the Court appoint Mahoney Law Group, APC as class counsel;
- 25 4. For compensatory and statutory damages;
- 26 5. For waiting time penalties pursuant to Labor Code section 203, on behalf of the
27 terminated or resigned employees;

28 ///

- 1 6. For penalties pursuant to Labor Code sections 226, 226, subdivision (e), 226.7, 512,
2 1174 and 1194.2 and as provided for by Labor Code section 2699;
3 7. For interest accrued to date;
4 8. For restitution of all monies due to Plaintiff and the Plaintiff Class from the unlawful
5 business practices of Defendants;
6 9. For statutory and civil penalties according to proof;
7 10. For injunctive relief, enjoining Defendant from engaging in the unlawful and unfair
8 business practices complained herein;
9 11. For declaratory relief, enjoining Defendant's practices as being unlawful and unfair
10 business practices within the meaning of Business and Professions Code sections
11 17200, et seq., and declaring Defendant has unlawfully treated Plaintiff and Plaintiff
12 Class, failed to pay all wages and overtime compensation in violation of California
13 law, failed to pay wages to former employees, Plaintiff and other certain members of
14 Plaintiff Class, failed to provide Plaintiff and Plaintiff Class accurate itemized wage
15 statements upon payment of wages, and declaring the amounts of damages, penalties,
16 equitable relief, costs, and attorneys' fees Plaintiff and Plaintiff Class are entitled to;
17 12. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226
18 and 1194;
19 13. For reasonable attorneys' fees and costs pursuant to Labor Code sections 226,
20 subdivision (e), 218.5, and 1194, Code of Civil Procedure section 1021.5, and/or other
21 applicable laws and/or statutes; and
22 14. For all such other and further relief as the Court may deem just and proper.

23 Dated: November 19, 2020

24 **MAHONEY LAW GROUP, APC**

25 

27 By: _____

28 Kevin Mahoney, Esq.
Katherine J. Odenbreit, Esq.

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff DERRELL ANDERSON hereby demands a jury trial on all issues so triable.

3
4 Dated: November 19, 2020

5 **MAHONEY LAW GROUP, APC**

6 

7
8 By: _____

9 Kevin Mahoney, Esq.

10 Katherine J. Odenbreit, Esq.

11 Attorneys for Plaintiff DERRELL ANDERSON,
12 as an individual and on behalf of all employees
13 similarly situated