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ROSA NOLASCO MONGE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

Assigned for All Purposes

Judge Randall J. Sherman

ROSA NOLASCO MONGE, as an aggrieved
employee and private attorney general;

Plaintiff,

vs.

UNIVERSAL BUILDING
MAINTENANCE, LLC, a California limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 30-2020-01140656-CU-OE-CXC

COMPLAINT FOR:

**(1) PRIVATE ATTORNEY GENERAL
ACT, LABOR CODE § 2698 ET SEQ.**

DEMAND FOR JURY TRIAL

CX-105

1 Plaintiff ROSA NOLASCO MONGE (“Plaintiff”), as an aggrieved employee and private
2 attorney general, based upon facts that either have evidentiary support or are likely to have
3 evidentiary support after a reasonable opportunity for further investigation and discovery, alleges
4 as follows:

5 **THE PARTIES, JURISDICTION AND VENUE**

6 1. Plaintiff is, and at all relevant times mentioned herein was, a resident of the County
7 of Orange, State of California.

8 2. Defendant UNIVERSAL BUILDING MAINTENANCE, LLC (“UBM” or
9 “Defendant”) is, and at all times herein mentioned was, a California limited liability company
10 organized and existing under the laws of the State of California and registered to do business in
11 the state of California.

12 3. The acts alleged herein arose in Orange County, within the State of California.

13 4. Plaintiff’s First Cause of Action is brought as a representative action on behalf of
14 herself and certain other current and former employees of Defendant against whom one or more
15 of the alleged violations was committed (hereinafter collectively referred to as the “Aggrieved
16 Employees”) pursuant to California Labor Code sections 2698, *et seq.* Plaintiff is an aggrieved
17 employee against whom one or more of the alleged violations was committed. The civil penalties
18 sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be
19 established according to proof at trial.

20 5. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive,
21 and therefore sues these defendants by such fictitious names. The Doe defendants may be
22 individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges,
23 that at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent,
24 servant, employee, co-venturer, and/or co-conspirator of each of the other defendants and was at
25 all times mentioned, acting within the scope, purpose, consent, knowledge, ratification and
26 authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this
27 Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and
28 believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in

1 some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged was
2 proximately caused by its conduct. Doe Defendants 1 through 50 and UBM are herein collectively
3 referred to as "Defendants."

4 6. Defendants are and at all times herein mentioned were, (a) conducting business in
5 the County of Orange, State of California, and (b) the employer of Plaintiff consistent with the
6 California Labor Code and Industrial Welfare Commission Wage Orders ("Wage Orders").

7 7. Plaintiff further alleges that Defendants, directly or indirectly controlled or affected
8 the working conditions, wages, working hours, and conditions of employment of Plaintiff and the
9 Aggrieved Employees so as to make each of said Defendants employers and employers liable
10 under the statutory provisions set forth herein.

11 **GENERAL ALLEGATIONS**

12 8. Defendants hired Plaintiff and classified her as a non-exempt employee from
13 approximately March 2017 to approximately April 2019.

14 9. During her employment with Defendants, Plaintiff was employed as a
15 janitorial/maintenance worker at Defendants' location in Santa Ana, California.

16 10. At all relevant times set forth herein, Defendants employed Plaintiff and the
17 Aggrieved Employees as hourly paid or non-exempt employees.

18 11. Throughout the time period involved in this case, Defendants had the authority to
19 hire and terminate Plaintiff and the Aggrieved Employees; to directly or indirectly control work
20 rules, working conditions, wages, working hours, and conditions of employment of Plaintiff and
21 the Aggrieved Employees; and to hire and terminate the employment of Plaintiff and the
22 Aggrieved Employees.

23 12. At all times herein mentioned, Defendants were subject to the Labor Code of the
24 State of California and the applicable Industrial Welfare Commission Orders.

25 13. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in
26 a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt
27 employees. As set forth in more detail below, this scheme involved, *inter alia*, requiring them to
28

1 work off-the-clock without compensation, thereby failing to pay them for all hours worked,
2 including minimum and overtime wages. In addition, Defendants did not permit Plaintiff and the
3 Aggrieved Employees to take their meal periods and rest periods in violation of California law.
4 Defendants also failed to reimburse Plaintiff and the Aggrieved Employees for all necessary
5 business-related expenses. Defendants also failed to pay Plaintiff and the Aggrieved Employees
6 all earned and unused and accrued vacation time at their final rate of pay at the time of their
7 termination.

8 14. Throughout the time period involved in this case, Defendants have implemented
9 policies and practices which failed to provide Plaintiff and the Aggrieved Employees with timely
10 and duty-free meal periods. Defendants routinely failed to relieve Plaintiff and the Aggrieved
11 Employees of all duties during their meal periods, failed to relinquish control over Plaintiff and
12 the Aggrieved Employees during their meal periods, failed to permit Plaintiff and the Aggrieved
13 Employees a reasonable opportunity to take their meal periods, and impeded or discouraged
14 Plaintiff and the Aggrieved Employees from taking thirty (30) minute uninterrupted meal breaks
15 no later than the end of their fifth hour of work and/or from taking a second thirty (30) minute
16 uninterrupted meal break no later than their tenth hour of work for shifts lasting more than ten
17 (10) hours. Defendants also failed to maintain accurate records of meal periods taken by Plaintiff
18 and the Aggrieved Employees.

19 15. Throughout the time period involved in this case, Defendants did not adequately
20 inform Plaintiff and the Aggrieved Employees of their right to take a meal periods under
21 California law. Moreover, Defendants systematically disregarded their own written policies
22 regarding the provision and timing of meal periods for Plaintiff and the Aggrieved Employees.
23 Instead, Defendants' actual policy and practice was to schedule Plaintiff and the Aggrieved
24 Employees in a way the prohibited them from taking timely and duty-free meal periods, and to
25 require Plaintiff and the Aggrieved Employees to work through their meal periods, for which they
26 were not compensated.

27 16. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
28 and the Aggrieved Employees premium wages for meal periods that were missed, late,

1 interrupted, or shortened in violation of California law. Defendants knew or should have known
2 that Plaintiff and the Aggrieved Employees were entitled to receive all meal periods or payment
3 of one additional hour of pay at their regular rate of pay when a meal period was missed, short,
4 late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to provide
5 legally compliant meal periods to Plaintiff and the Aggrieved Employees, and routinely failed
6 pay one additional hour of pay to Plaintiff and the Aggrieved Employees at their regular rate of
7 pay when a meal period was missed, short, late, and/or interrupted.

8 17. Throughout the time period involved in this case, Defendants have implemented
9 policies and practices which prohibited Plaintiff and the Aggrieved Employees from taking timely
10 and duty-free rest periods. Defendants regularly failed to provide, authorize, and permit Plaintiff
11 and the Aggrieved Employees to take full, uninterrupted, off-duty rest periods for every shift
12 lasting three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods
13 for every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize,
14 permit, and provide such rest breaks in the middle of each work period. On the rare occasions
15 Plaintiff and Aggrieved Employees were able to take a rest break, Defendants failed to
16 compensate them for said rest periods at a regular hourly rate.

17 18. Throughout the time period involved in this case, Defendants did not adequately
18 inform Plaintiff and the Aggrieved Employees of their right to take a rest periods under California
19 law. Moreover, Defendants systematically disregarded their own written policies regarding the
20 provision and timing of rest periods for Plaintiff and the Aggrieved Employees. Instead,
21 Defendants' actual policy and practice was to schedule Plaintiff and the Aggrieved Employees in
22 a way the prohibited them from taking timely and duty-free rest periods, and to require Plaintiff
23 and the Aggrieved Employees to work through their rest periods.

24 19. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
25 and the Aggrieved Employees premium wages for rest periods that were missed, late, interrupted,
26 or shortened in violation of California law. Defendants knew or should have known that Plaintiff
27 and the Aggrieved Employees were entitled to receive all rest periods or payment of one
28 additional hour of pay at their regular rate of pay when a rest period was missed, short, late, and/or

1 interrupted. Notwithstanding this knowledge, Defendants routinely failed to authorize and permit
2 Plaintiff and the Aggrieved Employees to take duty-free rest periods, and failed to pay one
3 additional hour of pay to Plaintiff and the Aggrieved Employees at their regular rate of pay when
4 a rest period was missed, short, late and/or interrupted.

5 20. Throughout the time period involved in this case, Defendants required Plaintiff
6 and the Aggrieved Employees to perform work off-the-clock. Although Defendants prohibited
7 overtime, Defendants still required Plaintiff and the Aggrieved Employees complete all of their
8 assigned duties. To do so, Plaintiff and the Aggrieved Employees were required to perform work
9 off-the-clock for which they were not compensated.

10 21. Throughout the time period involved in this case, Plaintiff and the Aggrieved
11 Employees worked more than eight (8) hours in a day, and/or forty (40) hours in a week.

12 22. Throughout the time period involved in this case, Defendants failed to pay
13 overtime compensation to Plaintiff and the Aggrieved Employees when they worked in excess of
14 eight (8) hours in a single work day and/or forty (40) hours in a single work week. Defendants
15 knew or should have known that Plaintiff and the Aggrieved Employees were entitled to receive
16 certain wages for overtime compensation and that they were not receiving wages for overtime
17 compensation.

18 23. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
19 and the Aggrieved Employees at least minimum wages for all hours worked. Defendants knew
20 or should have known that Plaintiff and the Aggrieved Employees were entitled to receive at least
21 minimum wages for compensation and that they were not receiving at least minimum wages for
22 all hours worked. Defendants' failure to pay minimum wages included, *inter alia*, failing to pay
23 Plaintiff and the Aggrieved Employees at the required minimum wage pursuant to California law
24 and requiring them to perform work off-the-clock.

25 24. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
26 and the Aggrieved Employees all wages owed to them upon discharge or resignation. Defendants
27 knew or should have known that Plaintiff and the Aggrieved Employees were entitled to receive
28 all wages owed to them upon termination within the time permissible under California Labor

Code section 202. Plaintiff and the Aggrieved Employees did not receive payment of all final wages owed to them upon discharge or resignation, including overtime compensation, minimum wages, and meal and rest period premiums, within any time permissible under California Labor Code section 202.

25. Throughout the time period involved in this case, Defendants failed to pay Plaintiff and the Aggrieved Employees all wages within any time permissible under California law, including, *inter alia*, California Labor Code section 204. Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled to receive all wages owed to them during their employment. Plaintiff and the Aggrieved Employees did not receive payment of all wages, including overtime compensation, minimum wages, and meal and rest period premiums, and vested but unused vacation time, within any time permissible under California Labor Code section 204.

26. Throughout the time period involved in this case, Defendants regularly and consistently failed to provide complete or accurate wage statements to Plaintiff and the Aggrieved Employees. Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance with California law, but, in fact, they did not receive complete and accurate wage statements from Defendants. The deficiencies included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and the Aggrieved Employees, the failure to include premium pay for missed and/or interrupted rest and meal breaks, and the failure to include the address of legal entity of Defendants.

27. Throughout the time period involved in this case, Defendants regularly and consistently failed to keep complete or accurate payroll records for Plaintiff and the Aggrieved Employees. Defendants knew or should have known that Defendants were required keep complete and accurate payroll records for Plaintiff and the Aggrieved Employees in accordance with California law, but, in fact, did not keep complete and accurate payroll records.

28. Throughout the time period involved in this case, Plaintiff and Aggrieved Employees incurred necessary business-related expenses, including but not limited to, the costs

1 of using their personal cell phones and vehicles for work-related duties. Defendants failed to
2 reimburse Plaintiff and the Aggrieved Employees for these necessary business-related expenses
3 and costs. Defendants knew or should have known that Defendants were required to reimburse
4 Plaintiff and the Aggrieved Employees for all necessary business-related expenses and costs, but,
5 in fact, failed to do so in violation of California law.

6 29. Throughout the time period involved in this case, Defendants regularly and
7 consistently failed to pay Plaintiff and the Aggrieved Employees for vested but unused vacation
8 time. Defendants knew or should have known that Plaintiff and the Aggrieved Employees were
9 entitled to receive all wages owed to them upon termination, including vested and unused vacation
10 time. Plaintiff and the Aggrieved Employees did not receive payment of all final wages owed to
11 them upon discharge or resignation, including vested and unused vacation time.

12 30. Throughout the time period involved in this case, Defendants knew or should have
13 known that they had a duty to compensate Plaintiff and the Aggrieved Employees pursuant to
14 California law. Defendants had the financial ability to pay such compensation, but willfully,
15 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the Aggrieved
16 Employees that they paid all wages owed to them, all in order to increase Defendants' profit.

17 31. On or about February 18, 2020, Plaintiff notified Defendants via certified mail and
18 filed an online PAGA claim notice with the California Labor and Workforce Development Agency
19 ("LWDA") identifying Defendants' violations of the California Labor Code identified in this
20 Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code
21 section 2698 *et seq.* in accord with Cal. Lab. Code section 2699.3. The LWDA has not responded
22 to Plaintiff's PAGA claim notice.

23 **FIRST CAUSE OF ACTION**

24 **(PAGA Claims - Against All Defendants)**

25 32. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
26 every allegation set forth above.

27 33. Plaintiff brings this claim as a representative action on behalf of herself,
28

1 individually as an aggrieved employee, and on behalf of similarly Aggrieved Employees in the
2 capacity as a private attorney general pursuant to the Private Attorneys General Act of 2004,
3 California Labor Code section 2698, *et seq.* (“PAGA”).

4 34. PAGA specifically provides for a private right of action to recover civil penalties
5 for violations of the Labor Code as follows: “Notwithstanding any other provision of law, any
6 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
7 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
8 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
9 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
10 or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code §
11 2699(a).

12 35. Plaintiff was employed by Defendants and the Labor Code violations alleged
13 above were committed against her during her time of employment. Plaintiff is therefore, an
14 “aggrieved employee” under PAGA. Plaintiff and the other employees are “aggrieved
15 employees” as defined by California Labor Code section 2699(c) in that they are all current or
16 former employees of Defendants, and one or more of the alleged violations were committed
17 against them.

18 36. As set forth in detail above, during all times relevant to this Action, Defendants
19 have routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor
20 Codes by:

- 21 a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
22 compensation in violation of Labor Code §§ 1194 and 1198, *et seq.*;
- 23 b. Failing to pay Plaintiff and the Aggrieved Employees all earned overtime
24 compensation in violation of Labor Code §§ 204, 510, 1194, and 1198, *et seq.*;
- 25 c. Failing to provide legally required meal periods to Plaintiff and the Aggrieved
26 Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional
27 hour of premium pay for meal period violations in violation of Labor Code §§
28 226.7 and 512;

- d. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to take duty-free rest periods, and failing to pay Plaintiff and the Aggrieved Employees an additional hour of premium pay for rest period violations in violation of Labor Code §§ 226.7 and 512;
- e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at end of their employment in violation of Labor Code § 203;
- f. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during employment in violation of Labor Code § 204;
- g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226; and
- h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved Employees' work periods, meal periods, total daily hours, hours per pay period, and applicable pay rates in violation of Labor Code § 1174;
- i. Failing to reimburse Plaintiff and the Aggrieved Employees for all necessary business-related expenses and costs in violation of Labor Code §§ 2800 and 2802; and
- j. Failing to pay accrued but unused vacation time in violation of California Labor Code section 227.3.

37. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff, individually as an aggrieved employee, and on behalf of other Aggrieved Employees and the State of California, requests and is entitled to recover penalties against Defendants for the Labor Code violations described above, including but not limited to penalties under California Code of Regulations Title section 11050, penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3, 227.3, and 1174.5, and any and all additional penalties and sums as provided by the California Labor Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial.

38. Plaintiff has exhausted her administrative remedies pursuant to Labor Code § 2699.3. On February 18, 2020, Plaintiff, through her counsel of record, by online filing with the

1 Labor and Workforce Development Agency (“LWDA”) and by certified mail to the Defendants,
2 notified Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage
3 Orders that Defendants have violated, including the facts and theories to support the violations,
4 and of Plaintiff’s intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the
5 filing fee required under Labor Code § 2699.3. As of the filing of this Complaint, more than 65
6 days have elapsed since the mailing of Plaintiff’s February 18, 2020 notice, and the Labor and
7 Workforce Development Agency has not indicated that it intends to investigate the violations
8 discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties
9 for herself and other Aggrieved Employees pursuant to Labor Code § 2699.3.

10 39. Plaintiff was compelled to retain the services of counsel to file this court action to
11 protect her interests and the Aggrieved Employees, and to assess and collect the civil penalties
12 owed by Defendants. Plaintiff therefore seeks an award of reasonable attorneys’ fees and costs
13 pursuant to Labor Code § 2699(g)(1), and any other applicable statute.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff individually and as a private attorney general, prays for relief and
16 judgment against Defendants, jointly and severally, as follows:

- 17 1. For statutory attorneys’ fees and costs pursuant to 2699(g)(1) of California Labor Code;
- 18 2. Prejudgment interest at the legal rate pursuant to California Labor Code Section 218.6;
- 19 3. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210,
20 558, 226, 226.3, 227.3, 1174.5, 1197.1, and all other penalties allowed by the California Labor
21 Code and/or other applicable statutes; and
- 22 4. For such other relief as the Court deems just and proper.

23 DATED: April 24, 2020

PROTECTION LAW GROUP, LLP

25 By: 

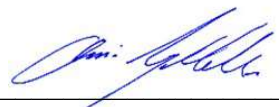
26 Heather Davis
27 Amir Nayebdadash
28 *Attorneys for Plaintiff*
ROSA NOLASCO MONGE

DEMAND FOR A JURY TRIAL

Plaintiff ROSA NOLASCO MONGE hereby demands a trial by jury.

DATED: April 24, 2020

PROTECTION LAW GROUP, LLP

By: 

Heather Davis

Amir Nayebdadash

Attorneys for Plaintiff

ROSA NOLASCO MONGE