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CARLA COLLINS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CARLA COLLINS on behalf of herself, and all)
others similarly situated, and all aggrieved)
employees,)

Plaintiff,

v.

NATIONAL INSURANCE INSPECTION)
SERVICES, INC.; and DOES 1 through 50,)
inclusive,)

Defendants.)

Case No: 20STCV15619

CLASS & REPRESENTATIVE ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. UNFAIR BUSINESS PRACTICES;**
- 2. VIOLATIONS OF THE LABOR CODE;**
- 3. PENALTIES; and**
- 4. ATTORNEYS' FEES.**

DEMAND FOR JURY TRIAL

By Fax

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

JUN 24 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By: Isaac Lovo, Deputy

1 Plaintiff CARLA COLLINS, on behalf of herself and all others similarly situated, and all
2 aggrieved employees, complains against Defendants NATIONAL INSURANCE INSPECTION
3 SERVICES, INC., and Does 1 through 50 (all referred to collectively as “Defendants” or “NIIS”)
4 as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has subject matter jurisdiction over Plaintiff’s claims, based on, among
7 other statutes, California Business & Professions Code §§ 17200, *et seq.*, and California Labor
8 Code §§ 201-203, 204, 221, 224, 226(a), 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198,
9 1199, 2750.3 and 2802. In particular, Plaintiff has complied with all California Labor Code §
10 2699.3 requirements for commencing a civil action under the California Private Attorneys
11 General Act of 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”).

12 2. This Court has personal jurisdiction over the parties because at all times relevant
13 hereto Plaintiff was a California resident who worked in California for Defendants and
14 Defendants have systematically and continuously conducted business in the State of California.

15 3. Venue is proper in this Court pursuant to California Code of Civil Procedure §
16 395.5 because (a) Plaintiff performed part of her duties in Los Angeles County, (b) part of the of
17 the obligations of the parties arises in Los Angeles County, (c) part of Defendants’ liability arises
18 in Los Angeles County, and (d) breaches by Defendants occurred in connection with work
19 performed partly in Los Angeles County

20 **II. PARTIES AND BACKGROUND**

21 4. Plaintiff CARLA COLLINS is an adult who worked for Defendants as a purported
22 independent contractor real property inspector from approximately October 2019 through the
23 present in Los Angeles County.

24 5. Defendant NATIONAL INSURANCE INSPECTION SERVICES, INC. is a
25 California Corporation doing business throughout California and is a “person” as defined by
26 California Labor Code § 18 and California Business and Professions Code § 17201. In addition,
27 it is an “employer” as that term is used in the California Labor Code and in the California
28 Industrial Welfare Commission’s Orders regulating wages, hours, and working conditions.

1 6. Plaintiff alleges that NIIS is a “labor contractor” and State Farm General Insurance
2 Company, Geico Insurance Agency, Inc., Pacific Specialty Insurance Company, USAA Casualty
3 Insurance Company, Arrowhead General Insurance Agency, Inc., and Berkshire Hathaway
4 Homestate Insurance Company are all “client employers” within the meaning of Labor Code §
5 2810.3. State Farm General Insurance Company, Geico Insurance Agency, Inc., Pacific
6 Specialty Insurance Company, USAA Casualty Insurance Company, Arrowhead General
7 Insurance Agency, Inc., and Berkshire Hathaway Homestate Insurance Company will be referred
8 to hereinafter collectively as “Client Employers.” Labor Code § 2810.3(b) provides that “client
9 employers” share liability for the payment of wages to all workers provided by a “labor
10 contractor.” In this case, the Client Employers all share civil legal responsibility and civil
11 liability for the payment of any wages due and owing by NIIS to Plaintiff and the putative class.
12 By letter dated April 16, 2020, Plaintiff provided the Client Employers with the 30-day notice
13 required by Labor Code § 2810.3(d).

14 7. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1
15 through 50, inclusive, and therefore sue those Defendants by those fictitious names. Plaintiff will
16 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
17 informed and believes and on that ground alleges that each of the fictitiously named Defendants is
18 responsible in some manner for the occurrences alleged and that Plaintiff’s damages and other
19 losses as alleged are proximately caused by those occurrences.

20 8. Plaintiff brings this action on behalf of a proposed state-wide class of purported
21 independent contractor real property inspectors who worked for NIIS in California to challenge
22 Defendants’ (a) policy and practice of misclassifying real property inspectors as “independent
23 contractors,” (b) policy and practice of failing to pay any wages whatsoever, including the
24 minimum wage, to real property inspectors, for all hours worked; (c) policy and practice of
25 violating California Labor Code § 510 and IWC Wage Order 4-2001 by failing to pay overtime
26 wages to employees who worked more than eight hours in a day or 40 hours in a week; (d) policy
27 and practice of violating California Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001
28 by failing to provide meal periods to real property inspectors, (e) policy and practice of violating

1 California Labor Code § 226.7 and IWC Wage Order 4-2001 by failing to authorize and permit
2 paid rest periods to real property inspectors; (f) policy and practice of violating California Labor
3 Code § 226 by failing to provide real property inspectors complete and accurate itemized wage
4 statements; (g) policy and practice of violating California Labor Code §§ 201-203 by failing to
5 pay former real property inspectors all wages due and owing at the time of discharge or voluntary
6 quit, and (h) policy and practice of failing to reimburse real property inspectors for all necessary
7 expenditures and losses incurred at the direction of Defendants.

8 9. Plaintiff brings this action on behalf of herself and a proposed class of all
9 purported independent contractor real property inspectors that performed work on behalf of NIIS
10 within the State of California at any time during the applicable limitations period preceding the
11 original filing of this Complaint up to the present and until compliance with the law. Plaintiff
12 seeks recovery of all allowable compensation and other sums for the violations described above,
13 including unpaid minimum and overtime wages, penalties/premium pay for missed meal breaks
14 and paid rest periods, reimbursement of business expenses, restitution and restoration of sums
15 owed and property unlawfully withheld, statutory penalties, declaratory and injunctive relief,
16 interest, attorneys' fees, and costs.

17 **III. FACTUAL ALLEGATIONS**

18 10. This is a putative class action seeking relief from Defendants' affirmative decision
19 to misclassify NIIS' real property inspectors as "independent contractors." By misclassifying the
20 real property inspectors as independent contractors, Defendants have sought to increase their
21 profits while avoiding various duties and obligations owed to employees under the Labor Code
22 and the applicable Industrial Welfare Commission ("IWC") Wage Order.

23 11. NIIS provides real property inspection services throughout California on behalf of
24 its insurance company customers, including the Client Employers.

25 12. At all relevant times, Plaintiff performed work on behalf of NIIS as a purported
26 independent contractor real property inspector. During her employment with NIIS, Plaintiff
27 worked approximately four to five days a week, and worked approximately 10 hours a day on the
28 weekends.

1 13. **ABC Test:** On April 30, 2018, the California Supreme Court adopted the ABC
2 test to determine whether a worker should be classified as an employee or an independent
3 contractor. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal. 5th 903. The
4 California government then codified the ABC test as Labor Code § 2750.3.

5 14. The ABC test: (1) places the burden on the hiring entity to establish that the
6 worker is an independent contractor who was not intended to be included within the wage order's
7 coverage, and (2) requires the hiring entity, in order to meet this burden, to establish each of the
8 three factors embodies in the ABC test – namely: (A) that the worker is free from the control and
9 direction of the hiring entity in connection with the performance of the work, both under the
10 contract for the performance of the work and in fact, and (B) that the worker performs work that
11 is outside the usual course of the hiring entity's business, and (C) that the worker is customarily
12 engaged in an independently established trade, occupation, or business of the same nature of the
13 work performed. *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903, 955-956
14 (2018).

15 15. Under factor A, Plaintiff and other putative class members were not free from the
16 control of NIIS. Among other things, NIIS contracts directly with its clients – including the Client
17 Employers -- for the work performed by Plaintiff and other putative class members. NIIS
18 unilaterally determines which clients – such as the Client Employers -- are served by Plaintiff and
19 putative class members. NIIS assigned Plaintiff and other putative class members work through
20 an online portal which had no “decline” button to turn down assignments. NIIS required Plaintiff
21 and other putative class members to perform the work within very specific time windows. NIIS
22 also required that Plaintiff and other putative class members upload reports through its intranet
23 system upon completion of the project. Further, NIIS supervises Plaintiff and other putative class
24 members by checking on the status of their work via email and telephone.

25 16. Under factor B, Plaintiff and other putative class members performed work that
26 was within the usual course of NIIS' business. Plaintiff and other putative class members
27 perform work that is within the usual course of the hiring entities' business. NIIS exists for the
28 sole purpose of providing real property inspection services to its clients (including the Client

Employers), Plaintiff and the other putative class members were and are the entire labor force performing such inspection services.

17. Under factor C, Plaintiff and other putative class members were not customarily engaged in an independently established trade, instead being governed in all material respects by NIIS.

18. **Borello Factors:** Further, Plaintiff and the other putative class members also were misclassified under the previous multi-factor test established by the California Supreme Court in *S.G. Borello & Sons, Inc. v Department of Industrial Relations* (1989) 48 Cal.3d 341 (“*Borello*”). Under *Borello*, a court first examines whether the alleged employer has the “right to control” the work performed. *Id.* at 350. Here, acting in accordance with its written agreements with Plaintiff and the other putative class members, NIIS exercises thorough and complete control over them as explained in the detailed discussion of the ABC test above.

19. *Borello* also held that, after examining the right to control, a court should look at “secondary factors” that include: 1) whether the person performing services is engaged in a distinct occupation or business, 2) the skill required in the particular occupation, 3) whether the work is part of the regular business of the principal, and 4) the method of payment, whether by the time spent or by the job. *Id.* at 351.

20. Here, Plaintiff and the other putative class members were not involved in a distinct occupation or business. NIIS provides real property inspection services to insurance companies, including the Client Employers. Plaintiff and the other putative class members are the labor force that provide those services. Further, inspecting property does not require any special skills. The real property inspectors take pictures of the sides of the buildings and an address verification picture. The real property inspectors then upload the pictures as well as fill out and upload a required report. This does not require any special skills or training. Moreover, the work performed by Plaintiff and the other putative class members is part of the regular business of the principal: they are simply the labor force that provides the services to NIIS’ clients. Additionally, the method of payment favors employee status as well. Plaintiff and the other putative class members are paid on a piece-rate basis; they are not paid a flat fee for their labor.

1 21. *Borello* also approvingly cited five factors adopted in other jurisdictions. Those
2 factors include (1) the alleged employee's opportunity for profit or loss depending on his
3 managerial skill, (2) the alleged employee's investment in equipment or materials required by his
4 task, or his employment of helpers, (3) whether the service rendered requires a special skill, (4)
5 the degree of permanence of the working relationship, and (5) whether the service rendered is an
6 integral part of the alleged employer's business. *Id.* at 354-355.

7 22. Here, there is no true opportunity for profit or loss, as NIIS performs all of the
8 negotiating with its clients, including the price of services as well as the schedule. With regard to
9 the other putative class members' investment in equipment and materials, NIIS provides no
10 reimbursements to Plaintiff and the other putative class members. Plaintiff and other putative
11 class members are required to use their personal vehicles to drive to NIIS' assignments and to
12 have cellular telephone service and home internet service. This is just one more example of NIIS
13 shifting its costs of doing business onto its labor force. Additionally, as noted above, performing
14 property inspections requires no special skills. Lastly, the service provided by Plaintiff and other
15 putative class members is integral to NIIS' business: NIIS must have a labor force to perform
16 inspections or it will go out of business.

17 23. **Claims:** Defendants have implemented a policy and practice of failing to pay
18 Plaintiff and other putative class members for all hours worked by failing to pay them their entire
19 hourly rate and/or premium wages and, at times, any wages at all, including the minimum wage,
20 for compensable time spent under the direction and control of NIIS. For example, NIIS does not
21 pay real property inspectors for drive time between client locations and time spent performing
22 required clerical tasks at home. Furthermore, NIIS pays merchandisers a flat rate for projects,
23 regardless of the time worked. As a result of these arbitrary policies and practices implemented
24 by Defendants, NIIS does not pay Plaintiff and other putative class members for all time spent on
25 travel, work related telephone calls, reading and responding to business emails and electronic
26 messages, scheduling, preparing and uploading mandatory reports, and uploading photographs.
27 NIIS also does not pay premium wages for any hours worked over eight in work day or 40 in a
28 work week.

24. At all times relevant hereto, Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order required employers to provide employees with a first meal period of not less than 30 minutes during which they are relieved of all duty (hereinafter referred to as “duty-free”) before working more than five hours, and a second duty-free meal period of not less than 30 minutes before working more than 10 hours per day. Defendants implemented a policy and practice of intentionally and improperly designating Plaintiff and other putative class members as independent contractors in order to avoid providing meal periods and/or paying meal period premiums for such periods not provided, in violation of the Labor Code and applicable IWC Wage Order.

25. At all times relevant hereto, Labor Code § 226.7 and the applicable IWC Wage Order required employers to authorize and permit a paid rest break of at least 10 minutes for every four hours of work performed or major fraction thereof. An employee working over ten hours in a single day workday is owed three paid rest breaks of at least 10 minutes. Defendants implemented a policy and practice of intentionally and improperly designating Plaintiff and other putative class members as independent contractors in order to avoid permitting and authorizing paid rest breaks and/or paying rest break premiums for such breaks not provided, in violation of the Labor Code and applicable IWC Wage Order.

26. Labor Code § 226 provides that every employer is required, “semimonthly or at the time of each payment of wages,” to provide each employee an itemized wage statement, including, *inter alia*, the total hours worked by the employee (except for salaried employees), and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Lab. Code § 226(a). Defendants implemented a policy and practice of failing to provide complete and accurate itemized wage statements to Plaintiff and other putative class members as required by Labor Code § 226 in that the wage statements provided did not, among other things, display the total hours worked during the payroll period and the piece rate units earned and the applicable piece rate. Labor Code § 226(a).

27. Defendants implemented a policy and practice of violating California Labor Code §§ 201- 203 by failing to pay Plaintiff and other putative class members all wages due and owing

at the time of discharge or voluntary quit.

28. Defendants implemented a policy and practice of failing to reimburse Plaintiff and other putative class members for necessary expenditures and losses as required by Labor Code § 2802. During the course of their employment with NIIS, Plaintiff and other putative class members have been required to use their personal vehicles for business purposes. Plaintiff and other putative class members have also been required to make purchases of office-related items such as paper and printer ink to conduct company business from home. Plaintiff and other putative class members have also been required to have a cellular telephone and home internet service. Plaintiff and other putative class members have not received full reimbursement and/or indemnity for all necessary expenditures or losses incurred in connection with the purchase of the items above.

IV. CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action on behalf of herself and as a class action under Code of Civil Procedure § 382 on behalf of a class of similar situated real property inspectors classified by Defendants as independent contractors that performed work for Defendants in the State of California. Specifically, Plaintiff seeks to represent the class of similar situated real property inspectors and other workers in substantially similar positions classified by Defendants as independent contractors that performed work for Defendants in the State of California at any time during the applicable limitations period preceding the original filing of this Complaint and up to the present and until compliance with the law. Plaintiff also seeks to represent the following subclasses of employees who worked for NIIS at job sites within the State of California:

- (a) All similar situated real property inspectors classified by Defendants as independent contractors that performed work for Defendants in the State of California at any time during the applicable limitations period preceding the original filing of this Complaint and up to the present and until compliance with the law, inclusive, who were not paid any wages whatsoever, including minimum wage, for certain hours worked, including time spent on work related travel, and uploading mandatory reports and

1 photographs;

2 (b) All similar situated real property inspectors classified by Defendants as
3 independent contractors that performed work for Defendants in the State of
4 California at any time during the applicable limitations period preceding
5 the original filing of this Complaint and up to the present and until
6 compliance with the law, inclusive, who were not paid in accordance with
7 Labor Code § 510 when they worked more than eight hours in a day;

8 (c) All similar situated real property inspectors classified by Defendants as
9 independent contractors that performed work for Defendants in the State of
10 California at any time during the applicable limitations period preceding
11 the original filing of this Complaint and up to the present and until
12 compliance with the law, inclusive, who worked more than six hours in a
13 day and were not provided all meal periods;

14 (d) All similar situated real property inspectors classified by Defendants as
15 independent contractors that performed work for Defendants in the State of
16 California at any time during the applicable limitations period preceding
17 the original filing of this Complaint and up to the present and until
18 compliance with the law, inclusive, who were not provided with required
19 rest periods;

20 (e) All similar situated real property inspectors classified by Defendants as
21 independent contractors that performed work for Defendants in the State of
22 California at any time during the applicable limitations period preceding
23 the original filing of this Complaint and up to the present and until
24 compliance with the law, who did not receive complete and accurate wage
25 statements;

26 (f) All similar situated real property inspectors classified by Defendants as
27 independent contractors that performed work for Defendants in the State of
28 California at any time during the applicable limitations period preceding

the original filing of this Complaint and up to the present and until compliance with the law, inclusive, who were not paid all wages due upon discharge or voluntary quit as required by Labor Code §§ 201-203; and

(g) All similar situated real property inspectors classified by Defendants as independent contractors that performed work for Defendants in the State of California at any time during the applicable limitations period preceding the original filing of this Complaint and up to the present and until compliance with the law, who were not reimbursed for necessary expenditures and losses incurred at the direction of Defendants;

30. The class and sub-classes Plaintiff seeks to represent contain numerous members and are clearly ascertainable. Plaintiff reserves the right under Rule 3.765 of the California Rules of Court to amend or modify the class and sub-class descriptions with greater specificity or further division into additional sub-classes or limitation to particular issues.

31. By their unlawful practices and policies, Defendants have violated the rights of employees under the laws and regulations of the State of California. The questions raised are, therefore, of common or general interest to the class members, who have a well-defined community of interest in the questions of law and fact raised in this action.

32. Plaintiff's claims are typical of those of the class, as Plaintiff now suffers and has suffered in the past from the same violations of the law as other members of the proposed class. Plaintiff has retained competent counsel to represent her and the class, and Plaintiff will fairly and adequately represent the interests of the class.

33. This action may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed class and sub-classes are easily ascertainable.

Numerosity

34. The members of the proposed class are so numerous that joinder of all class members is impracticable. While the precise number of class members has not been determined at this time, Plaintiff is informed and believes that Defendants have employed as many as 200 or

more real property inspectors in the relevant time period.

35. Plaintiff alleges that Defendants' employment records would contain relevant information as to the number of members of the proposed class.

Commonality

36. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. Those common questions of law and fact include, without limitation, the following:

- (a) Whether Defendants had a policy or practice of failing to pay class members for all straight and overtime hours worked;
- (b) Whether Defendants had a policy and practice of failing to provide class members with all of their required meal periods;
- (c) Whether Defendants had a policy and practice of failing to provide class members with all of their required paid rest periods;
- (d) Whether Defendants had a policy and practice of violating Labor Code § 226 by failing to provide required information on wage statements, such as pay rates, hours worked, piece rates, and piece rate units;
- (e) Whether Defendants had a policy and practice of violating Labor Code §§ 201-203 by failing to pay departing class members all wages due at the time of discharge or voluntary quit;
- (f) Whether Defendants violated Labor Code section 2802 by failing to reimburse merchandisers for all necessary expenditures and losses incurred in the direct consequence of the discharge of their duties; and
- (g) Whether Plaintiff and the members of the class are entitled to equitable relief under Business and Professions Code §§ 17200, *et seq.*

Typicality and Adequacy of Representation

37. Plaintiff's claims are typical of the claims of the proposed class. Plaintiff and all members of the proposed class sustained injuries and economic loss arising out of and caused by Defendants' common course of conduct in violation of laws and regulations alleged in this

1 complaint.

2 38. Plaintiff will fairly and adequately protect the interests of all proposed class
3 members. Plaintiff has no interests that are antagonistic to those of the proposed class and is not
4 subject to any unique defenses. Plaintiff also has retained counsel experienced in class actions
5 and in representing employees and protecting employees' rights.

6 **Superiority of Class Action**

7 39. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy. Individual joinder of all proposed class members is not
9 practicable, and questions of law and fact common to the class predominate over any questions
10 affecting only individual members of the class. Each member of the class has been damaged and
11 is entitled to recovery by reason of Defendants' illegal policies and/or practices.

12 40. Class action treatment will allow those similarly-situated persons to litigate their
13 claims in the manner that is most effective and economical for the parties and the judicial system.
14 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
15 action that would preclude its maintenance as a class action.

16 41. A class action is superior to other available methods for the fair and efficient
17 adjudication of this controversy because individual litigation of the claims of all proposed class
18 members is impractical. Even if every proposed class member could afford individual litigation,
19 the court system could not. It would be unduly burdensome to the courts if individual litigation
20 of numerous cases were to be required. Individualized litigation also would present the potential
21 for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to
22 all parties and to the court system resulting from multiple trials of the same complex factual
23 issues. By contrast, the conduct of this action as a class action with respect to some or all of the
24 issues presented herein gives rise to fewer management difficulties, conserves the resources of the
25 court system and the parties and protects the rights of each proposed class member. Further, it
26 prevents the very real harm that would be suffered by numerous putative class members who
27 simply will be unable to enforce individual claims of this size on their own, and by Defendants'
28 competitors, who will be placed at an unfair competitive disadvantage as their punishment for

obeying the law. Plaintiff does not anticipate difficulties in the management of this action.

V. REPRESENTATIVE ACTION ALLEGATIONS

42. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor Code §§ 2698, *et seq.* who performed work for NIIS as independent contractor real property inspector in California within the applicable limitations period, up to the present and until compliance with the law. Plaintiff alleges that NIIS willfully misclassified these aggrieved employees as independent contractors.

43. On behalf of all aggrieved employees, Plaintiff seeks PAGA penalties pursuant to Labor Code §§ 226.3, 226.8(b) and (c), and 2699(f), as applicable, for each violation of Labor Code, including:

- (a) § 226.8 (willful misclassification of employees as independent contractors);
- (b) §§ 1194, 1198 and 1999 (failure to pay minimum wages and overtime);
- (c) §§ 226.7, 512(a), 1198 and 1199 (failure to provide meal periods);
- (d) §§ 226.7, 1198 and 1199 (failure to provide rest breaks);
- (e) § 226(a) (failure to provide itemized wage statements);
- (f) §§ 201-203 (failure to pay wages upon termination);
- (g) § 204 (failure to pay wages in a timely manner)
- (h) § 2802 (failure to reimburse business expenses); and
- (i) § 432.5 (requiring employees to agree to unlawful terms and conditions).

44. There is a well-defined community of interest in the questions of law and fact affecting the aggrieved employees whom Plaintiff seeks to represent. The aggrieved employees' claims against Defendants involve questions of common or general interest, including, but not limited to: (1) willfully improperly classified real property inspectors as independent contractors in violation of the Labor Code; (2) violated the Labor Code and applicable IWC Wage Order by failing to pay real property inspectors their proper wage rate for all straight time and overtime hours worked; (3) violated the Labor Code and applicable IWC Wage Order by failing to pay any wages, including minimum wages, to real property inspectors for various hours worked, including

1 their dive time and time spent performing administrative tasks at home; (4) violated the Labor
2 Code and applicable IWC Wage Order by failing to provide real property inspectors with all of
3 their required off-duty meal periods, nor paying the required meal period premiums for each meal
4 period not provided; (5) violated the Labor Code and applicable IWC Wage Order by failing to
5 authorize and permit real property inspectors with all of their required paid rest breaks, nor
6 paying the required rest break premium for each paid rest break not allowed or permitted; (6)
7 violated Labor Code § 226 by failing to provide real property inspectors with accurate and
8 itemized wage statements; (7) violated Labor Code §§ 201-203 by failing to pay departing real
9 property inspectors all wages due at the time of discharge or voluntary quit; (8) violated Labor
10 Code § 204 by failing to pay real property inspectors their wages in a timely manner as required
11 by this section; (9) violated Labor Code § 2802 by failing to reimburse real property inspectors
12 for all necessary expenditures and losses incurred in the direct consequence of the discharge of
13 their duties; and (10) violated Labor Code § 432.5 by requiring aggrieved employees to agree in
14 writing to unlawful terms and conditions.

15 45. Plaintiff's claims are typical of the claims of the aggrieved employees whom
16 Plaintiff seeks to represent on a representative basis and their interests are consistent with, and not
17 antagonistic to, those of the other aggrieved employees. Plaintiff will fairly and adequately
18 represent the interests of the aggrieved employees whom she seeks to represent because Plaintiff
19 is also an aggrieved employee and her claims are typical of those of the aggrieved employees.
20 Plaintiff has retained attorneys who are experienced in the prosecution of representative actions,
21 and Plaintiff intends to prosecute this action vigorously.

22 46. Common questions of law and fact exist as to all aggrieved employees that
23 predominate over any other questions affecting only individual aggrieved employees.

24 47. Plaintiff requests permission to amend the Complaint to include additional
25 representatives if Plaintiff is deemed not to be an adequate representative of the aggrieved
26 employees.

27 //

28 //

VI. FIRST CAUSE OF ACTION

(UNFAIR BUSINESS PRACTICES – CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)

48. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

49. California Business and Professions Code §§ 17200, *et seq.*, prohibit unfair competition in the form of any unlawful, unfair, deceptive, or fraudulent business act or practice.

50. Beginning at an exact date unknown to Plaintiff, but at least during the four-year period preceding the filing of this Complaint and up to the present, Defendants committed unlawful acts and practices as defined by California Business and Professions Code §§ 17200, *et seq.* Defendants have had a policy and practice of engaging in unlawful and unfair business practices including, but not limited to, violations of:

- (a) Labor Code § 1194 (failure to pay all wages due, including minimum, overtime, and double-time wages);
- (b) Labor Code §§ 226.7 and 512 (failure to provide meal periods and authorize and permit paid rest breaks);
- (c) Labor Code § 226 (failure to provide accurate itemized wage statements);
- (d) Labor Code §§ 201-203 (failure to pay all wages at time of discharge);
- (e) Labor Code § 2802 (failure to reimburse business expenses); and
- (f) Industrial Welfare Commission IWC Wage Order No. 4-2001.

51. The violations of those laws and the acts and practices described in this Complaint constitute unlawful, unfair, deceptive and fraudulent business acts and practices and unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*

52. As a direct and proximate result of those acts and practices, Defendants have received and continue to hold as ill-gotten gains money and property belonging to Plaintiff and the class, in that Defendants have profited in those amounts from their unlawful practices.

53. Business and Professions Code § 17203 provides that the Court may restore to any person in interest any money or property which may have been acquired by means of unfair competition and order restitution by Defendants to Plaintiff for the practices alleged in this

1 complaint. Plaintiff and putative class members are entitled under Business and Professions Code
2 §§ 17203 and 17208 to restitution and restoration of all wages unlawfully withheld at any time
3 during the four-year period preceding the filing of this Complaint and up through the present and
4 until the violations have been corrected, together with all civil penalties owed in connection with
5 those violations. Plaintiff will, upon leave of the Court, amend this Complaint to state those
6 amounts when they are ascertained.

7 54. Plaintiff's success in this action will enforce important rights affecting the public
8 interest and, in that regard, Plaintiff sues on behalf of the proposed class as well as on behalf of
9 herself and the general public. Plaintiff seeks and is entitled to unpaid wages, injunctive relief,
10 and any other remedy owing to Plaintiff and all others similarly situated.

11 55. Injunctive relief is necessary and appropriate to prevent Defendants from repeating
12 or continuing their wrongful business practices alleged above.

13 56. In order to prevent Defendants from profiting and benefiting from their wrongful
14 and illegal policies and practices, an order requiring Defendants to restore to Plaintiff all monies
15 and property unlawfully gained through Defendants' unlawful practices is appropriate and
16 necessary.

17 57. Plaintiff takes upon herself enforcement of these laws and lawful claims. There is
18 a financial burden incurred in pursuing this action and it would be against the interests of justice
19 to penalize Plaintiff by forcing her to pay attorneys' fees from the recovery in this action.
20 Therefore, an award of attorneys' fees is appropriate under California Code of Civil Procedure §
21 1021.5.

22 Wherefore, Plaintiff prays for relief as set forth below.

23 **VII. SECOND CAUSE OF ACTION**

24 **(UNPAID WAGES, OVERTIME PAY, MINIMUM WAGES AND LIQUIDATED**

25 **DAMAGES – LABOR CODE §§ 510, 1194 AND 1194.2,**

26 **Los Angeles Citywide Minimum Wage Ordinance, Los Angeles County Minimum Wage**
27 **Ordinance, San Francisco City and County Minimum Wage Ordinance)**

28 58. Plaintiff repeats and realleges each and every paragraph above as though fully set

1 forth herein.

2 59. Labor Code § 1194 allows an individual a private right of action to pursue unpaid
3 wages, including unpaid minimum wages and overtime. If an employer does not pay an
4 employee at least the minimum wage for all hours worked, Labor Code § 1194.2 allows an
5 employee to recover liquidated damages equal to the amount up unpaid wages.

6 60. Labor Code § 510 and IWC Wage Order 4-2001, require, among other things:

7 (a) One and one-half times the employee's regular rate of pay for all hours
8 worked in excess of eight hours and up to and including 12 hours in any
9 workday, and for the first eight hours worked on the seventh consecutive
10 day of work in a workweek; and

11 (b) Double the employee's regular rate of pay for all hours worked in excess of
12 12 hours in any workday and for all hours worked in excess of eight hours
13 on the seventh consecutive day of work in a workweek.

14 61. Defendants had a policy and practice of failing to pay Plaintiff and other putative
15 class members for all hours worked by failing to pay them any wages, including minimum wages
16 and overtime pay, for any hours worked, including time spent on travel and uploading mandatory
17 reports and photographs.

18 62. Plaintiff seeks to recover all unpaid wages and overtime pay due to Plaintiff and
19 other putative class members, as well as minimum wages and liquidated damages, if appropriate,
20 and interest, under Labor Code §§ 218.6, 1194 and 1194.2 (as well as the higher minimum wage
21 rates established by the Los Angeles Citywide Minimum Wage Ordinance, and the Los Angeles
22 County Minimum Wage Ordinance, and the San Francisco City and County Minimum Wage
23 Ordinance, for those real property inspectors who worked in those jurisdictions).

24 63. Plaintiff seeks attorneys' fees and costs under Labor Code § 1194, which provides
25 for a private right of action to recover unpaid minimum wage and overtime compensation and
26 also provides for the recovery of attorneys' fees and costs.

27 Wherefore, Plaintiff prays for relief as set forth below.

28 //

VIII. THIRD CAUSE OF ACTION

**(UNPAID WAGES, OVERTIME PAY AND MINIMUM WAGES –
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

64. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

65. California Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

66. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations were committed.

67. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 1194.

68. By the actions alleged herein, Defendants misclassified Plaintiff and other aggrieved employees as independent contractors and failed to pay Plaintiff and other aggrieved employees any wages, including minimum wages and overtime pay, for certain hours worked, all in violation of Labor Code §§ 1194, 1198 and 1199.

69. Therefore, Plaintiff and all current and former aggrieved employees demand the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 1194, 1198 and 1199.

70. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

IX. FOURTH CAUSE OF ACTION

(FAILURE TO PROVIDE MEAL PERIODS)

71. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

72. At all relevant times, the Defendants were “employers” of Plaintiff and members of the proposed class within the meaning of Labor Code §§ 226.7 and 512, and IWC Wage Order

1 4-2001, § 2(H).

2 73. At all relevant times, Plaintiff and members of the proposed class were
3 “employees” of Defendants within the meaning of Labor Code §§ 226.7 and 512, and IWC Wage
4 Order 4-2001, § 2(F). Plaintiff and members of the proposed class also were employed by
5 Defendants in “Professional, Technical, Clerical, Mechanical, and Similar Occupations” as
6 defined in and within the meaning of IWC Wage Order 4-2001, § 2(O).

7 74. At all relevant times, Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001,
8 § 11 provide that employees must receive a first meal period of not less than 30 minutes before
9 working more than five hours, and a second meal period of not less than 30 minutes before
10 working more than 10 hours in a day.

11 75. As alleged above, Defendants had a policy and practice of refusing and/or failing
12 to provide employees all of their required duty-free meal periods as mandated by Labor Code §§
13 226.7 and 512, and IWC Wage Order 4-2001, § 11(B). Plaintiff alleges that she and, on
14 information and belief, other members of the proposed class did not waive their rights to their
15 meal periods.

16 76. Defendants’ practices of failing to provide employees timely and uninterrupted
17 meal periods of not less than 30 minutes and of requiring employees to work through those meal
18 periods, violate Labor Code §§ 226.7 and 512(a), and IWC Wage Order 4-2001, § 11(B).

19 77. Plaintiff and members of proposed class have lost money as a direct result of
20 Defendants’ unlawful practices as alleged above in that they were not provided their required
21 meal periods, and were not compensated correctly for not having been provided such meal
22 periods, respectively. Accordingly, Plaintiff and members of the proposed class are entitled to
23 proper compensation, restitution and premium pay for each meal period that was not provided as
24 required by law and to the waiting time penalties attached to those violations.

25 78. Plaintiff is entitled to an award of attorneys’ fees and costs and expenses incurred
26 in this action under Code of Civil Procedure § 1021.5.

27 Wherefore, Plaintiff prays for relief as set forth below.

28 //

X. FIFTH CAUSE OF ACTION

(FAILURE TO PROVIDE MEAL PERIODS –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

79. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

80. California Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

81. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

82. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 226.7, 1198 and 1199.

83. By the actions alleged herein, Defendants misclassified Plaintiff and other aggrieved employees as independent contractors and failed to authorize and permit the required meal periods in violation of Labor Code §§ 226.7, 1198 and 1199.

84. Therefore, Plaintiff and all current and former aggrieved employees demand the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 1198 and 1199.

85. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XI. SIXTH CAUSE OF ACTION

(FAILURE TO AUTHORIZE AND PERMIT PAID REST PERIODS)

86. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

87. As alleged above, Defendants had a policy and practice of failing to authorize and permit Plaintiff and other putative class member to take discrete paid rest breaks of at least 10 minutes for every four hours worked or major fraction thereof as required by Labor Code § 226.7

1 and IWC Wage Order 41-2001, § 12(A).

2 88. Defendants' practices of failing to authorize and permit employees to take discrete
3 paid rest breaks of not less than 10 minutes for every four hours worked or major fraction thereof,
4 and of requiring employees to work through their rest breaks, violate Labor Code § 226.7 and
5 IWC Wage Order 4-2001, § 12(A).

6 89. Plaintiff and other putative class members lost money as a direct result of
7 Defendants' unlawful practices as alleged above in that they were not provided adequate paid rest
8 breaks and were not compensated correctly for not having been provided their paid rest breaks.
9 Accordingly, Plaintiff and other putative class members are entitled to proper compensation,
10 restitution and premium pay for each rest period that was not provided as required by Labor Code
11 § 226.7.

12 90. Plaintiff is entitled to an award of attorneys' fees and costs and expenses incurred
13 in this action under Code of Civil Procedure § 1021.5.

14 Wherefore, Plaintiff prays for relief as set forth below.

15 **XII. SEVENTH CAUSE OF ACTION**

16 **(FAILURE TO AUTHORIZE AND PERMIT THIRD REST PERIODS –**
17 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

18 91. Plaintiff repeats and realleges each and every paragraph above as though fully set
19 forth herein.

20 92. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain
21 penalties on their own behalf and on behalf of other current and former employees.

22 93. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code
23 Private Attorneys General Act of 2004 because she is a person who was employed by the alleged
24 violators and against whom one or more of the alleged violations was committed.

25 94. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil
26 action against Defendants for violations of Labor Code §§ 226.7, 1198 and 1199.

27 95. By the actions alleged herein, Defendants misclassified Plaintiff and other
28 aggrieved employees as independent contractors and failed to authorize and permit the required

rest periods in violation of Labor Code §§ 226.7, 1198 and 1199.

96. Therefore, Plaintiff and all current and former aggrieved employees demand the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 1198 and 1199.

97. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below

XIII. EIGHTH CAUSE OF ACTION
(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)

98. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

99. As alleged above, during all or some portion of the proposed class period, Defendants violated Labor Code § 226 through their practice of failing to provide their employees, including Plaintiff and members of the proposed class, with complete and accurate itemized wage statements. Among other things, the wage statements provided by Defendants violated Labor Code § 226(a) by failing to state the total hours worked as well as the applicable piece rate units earned and the applicable piece rates.

100. Under Labor Code § 226(e), Plaintiff and members of the proposed class are entitled to recover the greater of actual damages or \$50 for the initial pay period in which a violation occurred and \$100 for each subsequent pay period in which Defendants failed to comply with the statute, up to a maximum of \$4,000 per employee.

101. Under Labor Code § 226(g), Plaintiff is entitled to injunctive relief and an order of this Court requiring Defendants to comply with all provisions of Labor Code § 226. Plaintiff also is entitled under Labor Code § 226(g) to an award of attorneys' fees and costs incurred in bringing this action.

Wherefore, Plaintiff prays for relief as set forth below.

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XIV. NINTH CAUSE OF ACTION

**(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS –
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

102. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

103. California Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

104. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

105. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 226(a) and 226.3.

106. By the actions alleged herein, Defendants misclassified Plaintiff and other aggrieved employees as independent contractors and failed to comply with Labor Code §§ 226(a) and 226.3 as it relates to Plaintiff and the other aggrieved employees. As alleged above, NIIS implemented a policy and practice of failing to provide complete and accurate itemized wage statements to Plaintiff and other aggrieved employees as required by Labor Code § 226 in that the wage statements provided did not, among other things, display the total hours worked during the payroll period and the piece rate units earned and the applicable piece rate. In doing so, Defendants have violated Labor Code § 226(a) and 226.3.

107. Therefore, Plaintiff, for herself and all current and former aggrieved employees, demands the penalties provided by Labor code § 2699(f) for violations of Labor Code §§ 226(a) and 226.3.

108. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

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XV. TENTH CAUSE OF ACTION

(LABOR CODE §§ 201-203)

109. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

110. Labor Code §§ 201 and 202 require an employer to pay its employees all wages due within the time specified by law. Labor Code § 203 provides that if an employer willfully fails to pay those wages within the time specified by Labor Code §§ 201 or 202, the employer must continue to pay the subject employees' wages day-by-day, weekends included, until the back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

111. Defendants unfairly and unlawfully have had a policy and practice of violating Labor Code §§ 201 and 202 by failing to pay Plaintiff and the class all wages earned in their employment within the time specified by those sections.

112. Plaintiff and all other putative class members who ceased employment with Defendants are entitled to unpaid compensation but thus far have not received that compensation.

113. More than 30 days have passed since Plaintiff and certain class members left Defendants' employ.

114. As a consequence of Defendants' willful failure to compensate Plaintiff and putative class members timely for all hours worked, Plaintiff and class members whose employment ended at any time the during the four-year period preceding the filing of this Complaint and up through the present and until compliance with the law are entitled to 30 days' wages under Labor Code § 203, together with interest.

Wherefore, Plaintiff prays for relief as set forth below.

XVI. TWELFTH CAUSE OF ACTION

(LABOR CODE §§ 201-203 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

115. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

116. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain

penalties on their own behalf and on behalf of other current and former employees.

117. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

118. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 201-203.

119. By the actions alleged herein, Defendants misclassified Plaintiff and other aggrieved employees as independent contractors and failed to comply with Labor Code §§ 201-203 as they relate to Plaintiff and the other aggrieved employees.

120. Therefore, Plaintiff, for herself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 201-203.

121. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XVII. THIRTEENTH CAUSE OF ACTION

(FAILURE TO REIMBURSE BUSINESS EXPENSES – LABOR CODE § 2802)

122. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

123. At all relevant times, Labor Code § 2802 has required an employer to reimburse an employee for necessary expenditures and losses incurred by an employee in the direct consequence of the discharge of his or her duties.

124. As alleged above, during all or some portion of the proposed class period, NIIS violated Labor Code § 2802 through its practice of failing to reimburse Plaintiff and proposed class members for all necessary expenditure and losses.

125. Defendants’ failure to comply with Labor Code § 2802 has damaged Plaintiff and proposed class members. Plaintiff and proposed class members seek reimbursement for the expenditure and losses incurred in the discharge of their respective duties and/or on behalf of

Defendants, together with interest and attorneys' fees as provided by Labor Code §§ 218.6 and 2802(c).

126. Defendants' violations of Labor Code § 2802 as alleged above are ongoing and will continue unless and until the Court enter an injunction barring those violations.

Wherefore, Plaintiff prays for relief as set forth below.

XVIII. FOURTEENTH CAUSE OF ACTION

(LABOR CODE § 2802 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

127. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

128. Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

129. Plaintiff is an "aggrieved employee" as that term is defined in PAGA because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

130. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 2802.

131. By their actions as alleged herein, Defendants have failed to comply with Labor Code § 2802 as it relates to Plaintiff and other aggrieved employees.

132. Plaintiff, for herself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 2802.

133. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XIX. FIFTEENTH CAUSE OF ACTION

(LABOR CODE § 204 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

134. Plaintiff repeats and realleges each and every paragraph above as though fully set

1 forth herein.

2 135. California Labor Code § 2699(f) permits “aggrieved employees” to recover certain
3 penalties on their own behalf and on behalf of other current and former employees.

4 136. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code
5 Private Attorneys General Act of 2004 because she is a person who was employed by the alleged
6 violators and against whom one or more of the alleged violations was committed.

7 137. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil
8 action against Defendants for violations of Labor Code § 204.

9 138. By the actions alleged herein, Defendants misclassified Plaintiff and other
10 aggrieved employees as independent contractors and Defendants have failed to comply with
11 Labor Code § 204 as they relate to Plaintiff and the other aggrieved employees.

12 139. Therefore, Plaintiff, for herself and all current and former aggrieved employees,
13 demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code § 204

14 140. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code §
15 2699(g)(1).

16 Wherefore, Plaintiff prays for relief as set forth below.

17 **XX. SIXTEENTH CAUSE OF ACTION**

18 **(WILLFUL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT**
19 **CONTRACTORS- LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF**
20 **2004)**

21 141. Plaintiff repeats and realleges each and every paragraph above as though fully set
22 forth herein.

23 142. PAGA provides that, any provision of law under the Labor Code that provides for
24 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency for
25 violation of the Labor Code, may, as an alternative, be recovered through a civil action brought
26 by an aggrieved employee pursuant to the procedures outlined in Labor Code § 2699.3.

27 143. Plaintiff is an “aggrieved employee” as that term is defined in PAGA because she
28 is a person who was employed by the alleged violators and against whom one or more of the

alleged violations was committed.

144. Labor Code Labor Code § 226.8(a)(1) makes it unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Labor Code § 226.8(a)(2) makes it unlawful for any person or employer to charge an individual who has been willfully misclassified as an independent contractor a fee, or make any deductions from their compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment when any of those acts would have violated the law if the individual had not been misclassified.

145. At all relevant times, Defendants violated Labor Code § 226.8 by willfully misclassifying Plaintiff and other aggrieved employees as independent contractors.

146. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 226.8.

147. Therefore, Plaintiff, for herself and all current and former aggrieved employees, demands the maximum penalties provided by Labor Code §§ 226.8(b) and (c) and 2699(f) for violations of Labor Code § 226.8.

148. Plaintiff, for herself and all current and former aggrieved employees, requests the Court order Defendants to place the notice required by Labor Code § 226.8(e) on NIIS' websites.

149. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XXI. SEVENTEENTH CAUSE OF ACTION

**(REQUIRING EMPLOYEES TO AGREE TO UNLAWFUL TERMS AND
CONDITIONS - LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF
2004)**

150. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

151. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

152. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

153. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 432.5.

154. By the actions alleged herein, Defendants misclassified Plaintiff and other aggrieved employees as independent contractors and Defendants have failed to comply with Labor Code § 432.5 as they relate to Plaintiff and the other aggrieved employees.

155. Therefore, Plaintiff, for herself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code § 432.5

156. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

- i. For an order certifying this action as a class action;
- ii. For disgorgement of profits and restitution and restoration of all costs incurred, sums or property unlawfully withheld and/or losses caused by the policy and practice of failing to pay all minimum wage, overtime and double-time compensation owed to Plaintiff and the class members in violation of Business and Professions Code §§ 17200, *et seq.*;
- iii. For disgorgement of profits and restitution and restoration of all costs incurred, sums or property unlawfully withheld and/or losses caused by the policy and practice of violating Business and Professions Code §§ 17200, *et seq.* by failing to provide proper meal periods and paid rest breaks and to pay all wages due and owing for those failures;
- iv. For disgorgement of profits and restitution and restoration of all costs incurred, sums or property unlawfully withheld and/or losses caused by the

- 1 policy and practice of violating Business and Professions Code §§ 17200,
2 *et seq.* by failing to reimburse employees for their expenditures and losses
3 incurred in the discharge of their respective duties on behalf of Defendants;
4 v. For compensatory damages in amounts according to proof at time of trial
5 representing the amount of unpaid minimum wage, overtime and double-
6 time compensation owed to Plaintiff and the class members for the policy
7 and practice of failing to pay all wages due and owing (as well as the
8 higher minimum wage rates established by the Los Angeles Citywide
9 Minimum Wage Ordinance, and the Los Angeles County Minimum Wage
10 Ordinance, and the San Francisco City and County Minimum Wage
11 Ordinance, for those real property inspectors who worked in those
12 jurisdictions), as well as liquidated damages as appropriate, during the
13 applicable limitations period preceding the original filing of the Complaint
14 and up to and including the present and until the date of compliance with
15 the law;
16 vi. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and
17 each current and former aggrieved employee for each violation of Labor
18 Code § 1194, 1198 and 1199 (failure to pay wages, including minimum
19 wages and overtime, for all hours worked) during the applicable limitations
20 period preceding the filing of the Complaint and up to and including the
21 present and until the date of compliance with the law; For compensatory
22 damages in amounts according to proof at time of trial representing the
23 amount of unpaid compensation owed to Plaintiff and class members for
24 missed meal periods and paid rest breaks due and owing during the
25 applicable limitations period preceding the original filing of the Complaint
26 and up to and including the present and until the date of compliance with
27 the law;
28

- vii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 226.7, 512(a), 1198 and 1199 (missed meal periods) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- viii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 226.7, 1198 and 1199 (missed rest periods) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- ix. For compensatory damages in amounts according to proof at trial owed to Plaintiff and class members representing the amount of unpaid reimbursement for the expenditures and losses incurred in the discharge of their respective duties on behalf of Defendants in violation of Labor Code § 2802 during the applicable limitations period preceding the original filing of the Complaint and up to and including the present and until the date of compliance with the law;
- x. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code § 2802 (unreimbursed business expenses) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- xi. For compensatory damages to Plaintiff and class members in an amount according to proof at time of trial for the policy and practice of failing to provide accurate, itemized wage statements during the applicable limitations period preceding the original filing of this Complaint and up through the present and until the date of compliance with the law;

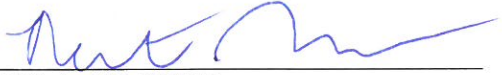
- xii. For the statutory amounts provided by Labor Code § 226(e) for Plaintiff and class members during the applicable limitations period preceding the original filing of this Complaint and up through and including the present and until the date of compliance with the law;
- xiii. For civil penalties as specified by Labor Code § 226.3 for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint. (Should Labor Code § 226.3 be found not to apply to Defendants' violations of Labor Code § 226(a), Plaintiff alternatively seeks the civil penalties specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint.)
- xiv. For waiting time penalties as provided by Labor Code § 203 for Plaintiff and class members;
- xv. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 201-203 (failure to pay departing employees all wages due and owing) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law
- xvi. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code § 204 (failure to pay wages in a timely manner) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

- xvii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current and former aggrieved employee for each violation of Labor Code § 226.8 (willful misclassification of employees as independent contractors) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- xviii. For civil penalties as allowed by Labor Code § 226.8 for Plaintiff and each current and former aggrieved employee during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- xix. For an order by the Court commanding Defendants to place the notice required by Labor Code § 226.8(e) on applicable websites.
- xx. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code § 432.5 (requiring employees to agree to unlawful terms and conditions) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- xxi. For reasonable attorneys' fees and costs as allowed by Labor Code §§ 226(e), 226(g), 1194(a), Labor Code § 2699(g)(1) and Code of Civil Procedure § 1021.5;
- xxii. For all interest as required by Labor Code § 218.6 and other applicable law;
- xxiii. For all costs of this suit as allowed by law, including Labor Code §§ 226(e), 226(g), and 1194; and
- xxiv. For such other and further relief as the Court may deem proper.

1 Dated: June 23, 2020

2 Respectfully submitted,

3 **KELLER GROVER LLP**

4
5 By: 

6 ERIC A. GROVER

7 ROBERT SPENCER

8 Attorneys for Plaintiff and the Proposed Class

9 **JURY TRIAL DEMAND**

10 Plaintiff demands a trial by jury as to all issues so triable.

11 Dated: June 23, 2020

12 **KELLER GROVER LLP**

13
14 By: 

15 ERIC A. GROVER

16 ROBERT SPENCER

17 Attorneys for Plaintiff and the Proposed Class

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **June 23, 2020** in the case of *Collins v. National Insurance Inspection Services, Inc.* Los Angeles Superior Court Case Number 20STCV15619, I served the foregoing document(s):

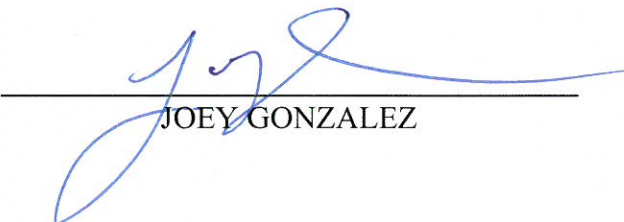
FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) below, using the following means:

Jeffrey McClure, Esq.
DAVENPORT GERSTNER &
MCCLURE, APC
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Services, Inc.**

☒	(BY UNITED STATES MAIL) I sealed the envelope(s), with postage thereon fully prepaid, and on the date below, following ordinary business practices, I placed it for collection and mailing in the United States Postal Service, in San Francisco, California.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



JOEY GONZALEZ