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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

ESMERALDA NUNEZ and JOSE LUIS
CORRAL RODRIGUEZ

Plaintiff,

v.

JAN-PRO FRANCHISING
INTERNATIONAL, INC. and RIGHT
FIRST, INC. d/b/a JAN-PRO
CLEANING SYSTEMS OF SAN
FRANCISCO, and DOES 1 through 25
inclusive,

Defendants.

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 9/23/2020
By /s/ Una Finau
Deputy Clerk

CASE NO.: 20-CIV-02595

(UNLIMITED CIVIL CASE)

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE §2698, *et seq.*)**

DEMAND FOR JURY TRIAL

1 Plaintiffs Esmeralda Nunez and Jose Luis Corral Rodriguez complain against Defendants
2 Jan-Pro Franchising International, Inc. and Right First, Inc. d/b/a Jan-Pro Cleaning Systems of
3 San Francisco (referred to collectively as “Defendants” or “Jan-Pro”) and Does 1 through 25,
4 inclusive, as follows:

5 **INTRODUCTION**

6 1. Plaintiffs bring this action under the California Labor Code Private Attorneys
7 General Act, Labor Code § 2698, *et seq.* (“PAGA”). Through this action, Plaintiffs seek to
8 recover civil penalties on behalf of themselves and other current and former owner-operator
9 franchisees (referred to collectively as “employees” and “franchise workers” and “cleaners”) who personally performed cleaning work for Jan-Pro in California. Plaintiffs bring their PAGA
10 claim for Defendants’ violations of Cal. Labor Code §§ 201-203, 204, 221, 226, 226.3, 226.7,
11 226.8, 400-410, 432.5, 450, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1,
12 2802, 2810.3, 2750.3, and IWC Wage Order No. 5.

13
14 2. Jan-Pro Cleaning Systems of San Francisco is a commercial cleaning business
15 that specializes in the provision of janitorial services. Under its business model, Jan-Pro enters
16 into purported franchise agreements with individual workers who are assigned to provide
17 cleaning and janitorial services to Jan-Pro’s customers. Plaintiffs and other cleaners are the
18 individuals who actually perform the janitorial services for Jan-Pro’s clients.

19 3. Jan-Pro treats Plaintiffs and other aggrieved cleaners as employees within the
20 meaning of California law and is liable for various Labor Code violations, as described below, as
21 Plaintiffs and aggrieved cleaners are plainly employees under both the “ABC” test for
22 employment status and the common law *Borello* standard. The ABC test governs the
23 employment status question with respect to all PAGA penalties arising from violations that
24 occurred on or after January 1, 2020, as well as all underlying wage order violations prior to that
25 date, including Jan-Pro’s failure to pay minimum and overtime wages, provide cleaners with
26 meal breaks or paid rest breaks, and unlawful deductions from wages.

27 4. By misclassifying Plaintiffs and aggrieved cleaners as independent contractors,
28 Defendants have sought to avoid various duties and obligations owed to its workers under

1 California's Labor Code and Industrial Welfare Commission ("IWC") wage orders, including:
2 (1) properly classifying Plaintiffs and aggrieved cleaners as employees (Cal. Labor Code §
3 2750.3); (2) willful misclassification (Cal. Labor Code § 226.8(a)(1); IWC Wage Order No. 5, §
4 2); (3) unlawful charges to willfully misclassified employees (Cal. Labor Code § 226.8(a)(2);
5 IWC Wage Order No. 5, §§ 2, 8-9); (4) the duty to reimburse employees for all expenses and
6 losses necessarily incurred in connection with their employment (Cal. Labor Code § 2802); (5)
7 the duty to pay wages to workers supplied by a labor contractor (Cal. Labor Code § 2810.3); (6)
8 unlawful withholding and receipt of earned wages (Cal. Labor Code §§ 221, 400-410; IWC
9 Wage Order No. 5, §§ 8-9); (7) the duty to authorize and provide meal and rest periods (Cal.
10 Labor Code §§ 226.7, 512, 1194; IWC Wage Order No. 5, §§ 11-12); (8) the duty to furnish
11 accurate wage statements (Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 5 § 7); (9) the
12 duty to pay overtime compensation for hours worked in excess of eight hours in a day or forty
13 hours in a week and the duty to pay state and local minimum wage for all hours worked (Cal.
14 Labor Code §§ 510, 1194, 1194.2, 1194.5, 1197; IWC Wage Order No. 5, §§ 3-4); (10) unlawful
15 written restriction on competition and unlawful written requirement that employees indemnify
16 employer (Cal. Labor Code §§ 432.5, 2802); (11) the duty to pay an employee all wages owed
17 upon termination (Cal. Labor Code §§ 201-203); (12) the duty to pay wages twice during each
18 calendar month (Cal. Labor Code § 204); (13) unlawful coercing of employees to patronize their
19 employer (Cal. Labor Code § 450); and (14) unlawfully compelling employees to put up a cash
20 bond as an investment (Cal. Labor Code §§ 400-410).

21 5. Plaintiffs challenge Defendants' policy of willfully and unlawfully misclassifying
22 its cleaners as "independent contractors" and seeks civil penalties for Defendants' violations of
23 the California Labor Code.

24 **THE PARTIES**

25 6. Plaintiff Esmeralda Nunez resides in San Jose, California. She began working for
26 Jan-Pro in January 2019 as a commercial cleaner. In order to work for Jan-Pro, Plaintiff entered
27 into Jan-Pro's form Unit Franchise Agreement. Plaintiff has provided cleaning services for
28 Defendants' accounts in Palo Alto, Burlingame, San Jose, Los Gatos, Milpitas, Daly City,

1 Cupertino, Santa Clara, and Sunnyvale. In order to meet Jan-Pro's stringent policies, procedures,
2 and operational standards, Plaintiff has worked up to fourteen hours a day, five days a week
3 (Monday to Friday) and four hours a day on weekends (Saturdays and Sundays).

4 7. Plaintiff Jose Luis Corral Rodriguez resides in San Jose, California. He began
5 working for Jan-Pro in January 2019 as a commercial cleaner. In order to work for Jan-Pro,
6 Plaintiff worked under Jan-Pro's Unit Franchise Agreement.¹ Plaintiff has provided cleaning
7 services for Defendants' accounts in Palo Alto, Burlingame, San Jose, Los Gatos, Milpitas, Daly
8 City, Cupertino, Santa Clara, and Sunnyvale. In order to meet Jan-Pro's stringent policies,
9 procedures, and operational standards, Plaintiff has worked up to fourteen hours a day, five days
10 a week (Monday to Friday) and four hours a day on weekends (Saturdays and Sundays).

11 8. Defendant Right First, Inc. d/b/a Jan-Pro Cleaning Systems of San Francisco is a
12 California corporation. During the PAGA period, Right First, Inc., has maintained its principal
13 place of business in South San Francisco, California and San Jose, California.

14 9. Defendant Jan-Pro Franchising International, Inc. is a Georgia corporation
15 headquartered in Alpharetta, Georgia.

16 **JURISDICTION AND VENUE**

17 10. This Court has jurisdiction over all causes of action asserted herein pursuant to
18 the California Constitution, Article VI, Section 10, which grants the Superior Court original
19 jurisdiction in all cases except those given to other trial courts.

20 11. Plaintiffs seek penalties in this case in an amount exceeding the jurisdictional
21 minimum of this Court.

22 12. Venue in San Mateo County is proper under California Code of Civil Procedure
23 section 395.5 because the unlawful conduct at issue in this case occurred in San Mateo County.
24 In addition, Defendants conducted and continue to conduct substantial business in this County
25 and their liability arose, in part, in this County.

26 //

27
28 ¹ While Jan-Pro only permitted Plaintiff Nunez to sign the the 2019 Unit Franchise Agreement, Plaintiffs began working for Jan-Pro together, and Plaintiff Corral Rodriguez later became a co-signatory on the Jan-Pro Accounts.

1 **FACTUAL ALLEGATIONS**

2 **A. Cleaners Perform Work Within Jan-Pro’s Usual Course of Business and Are Not**
3 **Engaged in an Independent Trade, Occupation, or Business.**

4 13. Jan-Pro provides janitorial services to companies and other entities internationally
5 and in the United States, including in California. For example, Jan-Pro’s website states that Jan-
6 Pro is “the world’s largest and most trusted janitorial cleaning services brand.”² Jan-Pro “work[s]
7 with businesses around the world to ensure their facilities are cleaned and disinfected to the
8 highest standards.”³ Its website lists its services, which include specialized general property
9 cleaning for a wide variety of different business types, catered to those businesses’ individual
10 cleaning needs (including automotive dealerships, banks and financial institutions, business
11 offices, fitness centers, industrial and manufacturing businesses, medical centers, religious
12 facilities, restaurants, among other business types).⁴

13 14. To carry out its business in California, Jan-Pro engages hundreds of persons like
14 Plaintiffs who provide cleaning services to Jan-Pro clients. Plaintiffs – like Jan-Pro’s other
15 cleaners – provide routine (and sometimes daily) services to Jan-Pro customers.

16 15. Jan-Pro establishes the contracts with Plaintiffs’ and other cleaners’ cleaning
17 accounts, sets the pricing for these accounts, decides which accounts to offer cleaners, collects
18 payment directly from these accounts before paying cleaners, makes deductions from cleaners’
19 pay before compensating cleaners, and determines when cleaners are ultimately paid. Jan-Pro
20 also handles account complaints and decides whether to remove an account from cleaners. And
21 while Jan-Pro charges cleaners for the privilege of working these Jan-Pro accounts, Plaintiffs and
22 other aggrieved cleaners have no rights to these accounts. For example, after paying to work an
23 account, Jan-Pro can remove the account from cleaners at its discretion and sell it to another
24 cleaner without providing cleaners any compensation. If cleaners return any of their accounts to
25 Jan-Pro, they are similarly not compensated.

26 _____
27 ² Jan-Pro Franchising International, Inc., “Janitorial Cleaning Services by JAN-PRO,” located at
<https://jan-pro.com><https://jan-pro.com/why-jan-pro/> (last accessed May 27, 2020).

28 ³ *Id.*

⁴ *Id.* at “Commercial Cleaning Services from JAN-PRO,” <https://jan-pro.com/industries-we-serve/>

1 16. Cleaners do not operate truly independent cleaning companies serving many
2 different clients. Instead, Jan-Pro restricts cleaners’ ability to solicit and perform independent
3 work. Jan-Pro required Plaintiffs to agree to a covenant not to compete, prohibiting her from
4 soliciting *any* account that Jan-Pro has serviced in the last twelve months. Jan-Pro also prohibits
5 cleaners from “directly or indirectly ... in any manner interfer[ing] with, disturb[ing],
6 disrupt[ing], impair[ing], diminish[ing] or otherwise jeopardize[ing] [Jan-Pro] or any of [their]
7 cleaners’ businesses.”

8 17. Jan-Pro further reserves for itself the right to transfer or assign all of its rights
9 under the franchise agreement, but Plaintiffs cannot sell, assign, convey, or otherwise dispose of
10 any interest in the agreement without prior written consent.

11 18. Plaintiffs entered into a 10-year agreement with Jan-Pro, which is subject to
12 renewal. However, upon renewal, Jan-Pro retains the right to require Plaintiffs to meet the
13 standards for new cleaners in effect at the time of renewal.

14 19. Plaintiffs and aggrieved cleaners’ work for Jan-Pro does not require any special
15 skill and is performed under the training, supervision, and instruction of Jan-Pro management.
16 While workers must pay for much of their own equipment, such as cleaning supplies, cleaning
17 equipment, uniforms, and other items, most of these items are required to be purchased through
18 Jan-Pro or a Jan-Pro-approved vendor.

19 **B. Jan-Pro Requires Plaintiffs and Aggrieved Cleaners to Sign Form Agreements**
20 **That Give Jan-Pro All Necessary Control Over the Manner and Means by Which**
21 **Cleaners Performs Their Work.**

22 20. As part of their work for Jan-Pro, Plaintiffs and aggrieved cleaners were required
23 to enter into Jan-Pro’s form franchise agreement. These agreements and related policy
24 documents dictate in detail how cleaners are required to perform their work. For example:

- 25 a. Jan-Pro requires Plaintiffs and aggrieved cleaners to work according to Jan-
26 Pro’s System of policies, procedures, and operational standards. This includes
27 compliance with Jan-Pro’s System manuals (also called the “Training
28 Manual” or “Operations Manual”). Jan-Pro’s Training Manual includes
detailed instructions on how to perform cleanings, including, for example:

- i. How to clean in an efficient and profitable way;
- ii. How to clean room by room;
- iii. Following cleaning schedules;
- iv. How to handle different types of dirt and soil; and
- v. How to handle different flooring types.

b. Jan-Pro retains the right to require Plaintiffs and aggrieved cleaners to attend Jan-Pro's training program, which can include video, classroom, and on-site consultation. If Jan-Pro determines that the franchise worker "has failed to adequately familiarize [themselves] with the System," Jan-Pro may require the franchise worker to retake the training program, or it may terminate the franchise worker's employment.

21. As mentioned above, Jan-Pro establishes the contracts with cleaners' cleaning accounts, sets the pricing for cleaners' accounts, decides which accounts to offer to cleaners, collects payment directly from these accounts before paying cleaners, and determines when cleaners are ultimately paid.

22. Jan-Pro retains the right to detail how cleaners maintain their records, including requiring that cleaners submit each month on Jan-Pro's form the previous month's entire gross billings and other information that Jan-Pro requires. Jan-Pro also retains the right to require cleaners to submit copies of their federal and state income tax returns within 90 days of the end of the fiscal year.

23. Jan-Pro requires that cleaners "purchase or lease equipment, chemicals, supplies, inventory, and any other products and services used to operate the Franchise only under [Jan-Pro's] written specifications," which Jan-Pro has an absolute right to alter. Jan-Pro requires that each cleaner purchase Jan-Pro's "Initial Equipment Package" before their start date. If cleaners wish to "purchase or lease any equipment, supplies, inventory or other products or services from an unapproved supplier, or that does not comply with [Jan-Pro's] specifications, [the franchise worker] must submit to [Jan-Pro] a written request for [its] approval" which "[Jan-Pro] may grant or withhold or revoke in [its] sole discretion."

1 24. Jan-Pro also requires cleaners to purchase the types and amounts of insurance that
2 Jan-Pro requires, and if the franchise worker does not purchase the required insurance, Jan-Pro
3 retains the right to purchase this insurance on behalf of the franchise worker and bill the
4 franchise worker for it.

5 25. Jan-Pro requires cleaners to “offer for sale all approved services and products for
6 which [cleaners] have been certified and for which [cleaners] have all necessary equipment” and
7 requires cleaners to “comply with all of Jan-Pro’s System customer warranty programs and
8 customer service programs.”

9 26. If a franchise worker wishes to obtain assistance in performing their work, Jan-
10 Pro requires them to run “a background check meeting the Jan-Pro specifications” before
11 allowing additional help on any customer’s premises.

12 27. Jan-Pro retains broad termination rights under its agreements with cleaners,
13 including, among others, the right to terminate for failure to complete Jan-Pro’s training program
14 to Jan-Pro’s satisfaction, for failure to comply with Jan-Pro’s Operations/Training Manual, and
15 any other conduct by the franchise worker that Jan-Pro believes “reflects unfavorably” on the
16 franchise worker or Jan-Pro.

17 28. Jan-Pro prohibits cleaners from “talk[ing] or writ[ing] negatively about Master
18 Franchisor, [Jan-Pro] or any of [their] affiliates, or any of [either of their] respective officers,
19 directors, stockholders, employees, or representatives, or any aspect of the JAN-PRO System, or
20 the Marks” both during and after the franchise term.

21 29. Jan-Pro markets and sells cleaning services. Jan-Pro engages hundreds of persons
22 like Plaintiffs who are assigned to provide cleaning services to designated Accounts.

23 30. Jan-Pro classifies Plaintiffs and aggrieved cleaners as “independent contractors,”
24 a designation that it made voluntarily and knowingly as a subterfuge to circumvent the
25 requirements of the California Labor Code.

26 **C. Jan-Pro Franchising International, Inc., Is Liable for the Violations Against**
27 **Plaintiffs and All Other Aggrieved California Cleaners.**

28 31. Jan-Pro Franchising International, Inc. designed and implemented the contractual
framework under which Plaintiffs and aggrieved cleaners were misclassified.

32. Plaintiffs and other aggrieved cleaners purchased “unit franchises” from a regional “master franchisor,” which in Plaintiffs’ case was Right First, Inc. d/b/a Jan-Pro Cleaning Systems of San Francisco.

33. Other “master franchisors” in California include P&D Ventures, Inc., Shibro, LLC, New Venture San Bernardino, LLC, Commercial Cleaning Solutions, Inc., Joranda Marketing, Inc., and Kevco, Inc.

34. Plaintiffs seeks to recover PAGA penalties against Jan-Pro Franchising International on behalf of all California aggrieved cleaners, regardless of their “master franchisor” entity.

35. Master franchisors are “obligated to pay 10% of the franchise fee paid to them by unit franchisees to Jan-Pro” and are “required to pay Jan-Pro 4% of the revenues which they collect from unit franchisees’ customers for their cleaning services.”⁵ The Ninth Circuit recently found:

[R]egional master franchisees must use the “Jan-Pro” name, logo, and trademark; maintain specific amounts of insurance; attend training sessions hosted by Jan-Pro; provide training for unit franchisees; and allow Jan-Pro to inspect the regional master franchisees’ books, records, and premises. Regional master franchisees must also sell a specified number of unit franchises....[f]ranchise agreements between Jan-Pro and the regional master franchisees give Jan-Pro authority to enforce any agreement between the regional master franchisee and its respective unit franchisees. If the franchise agreement between Jan-Pro and a regional master franchisee terminates, the agreement allows Jan-Pro to assume the regional master franchisee’s rights and obligations to its unit franchisees. Similarly, in the event that a regional master franchisee defaults on its obligations to cleaning customers, the agreement provides that Jan-Pro may assume all of the regional master franchisee’s rights and obligations to those customers. Moreover, Jan-Pro requires that regional master franchisees specify in their contracts with unit franchisees that Jan-Pro is a third-party beneficiary of those contracts. Finally, Jan-Pro reserves the right to unilaterally promulgate binding “policies and procedures” that pertain both to the businesses of the regional master franchisees and that of the unit franchisees.⁶

36. Jan-Pro Franchising International provides the “template” form that they require master franchisors to use with unit franchise workers, like Plaintiffs. Any changes to these

⁵ *Vazquez v. Jan-Pro Franchising International, Inc.* (9th Cir. 2019) 923 F.3d 575, 590, *reh’g granted, opinion withdrawn* (9th Cir. 2019) 930 F.3d 1107, and *on reh’g* (9th Cir. 2019) 939 F.3d 1045, and *opinion reinstated in part on reh’g* (9th Cir. 2019) 939 F.3d 1050.

⁶ *Id.* at 590-91.

1 template forms are subject to Jan-Pro Franchising International’s approval. These agreements
2 include classifying Plaintiffs and other aggrieved cleaners as independent contractors.

3 37. Jan-Pro’s business ultimately depends on someone performing the cleaning,
4 which in this case is the unit franchise workers. It relies on unit franchise workers to
5 continuously perform cleaning services.⁷

6 38. Jan-Pro’s websites and advertisements promote Jan-Pro as being in the business
7 of cleaning.

8 39. Jan-Pro Franchising International is directly liable as an employer for the PAGA
9 violations described below. Jan-Pro Franchising International is also liable to Plaintiffs and other
10 aggrieved cleaners under Labor Code § 2810.3 as a “client employer” who “obtains or is
11 provided workers to perform labor within its usual course of business from a labor contractor” –
12 here, the master franchisor. In Plaintiffs’ case, the master franchisor is Right First, Inc.

13 **CLAIM FOR RELIEF**
14 **CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
15 **(PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE § 2698, *ET SEQ.*)**
(REPRESENTATIVE ACTION)

16 40. The allegations of each of the preceding paragraphs are re-alleged and
17 incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of
18 herself and all aggrieved cleaners, as described below.

19 41. Plaintiffs, as aggrieved cleaners, bring this claim under California Labor Code §§
20 2698–2699 in a representative capacity on behalf of all owner-operator franchisees in California
21 who have personally performed cleaning work for any Jan-Pro “master franchisor,” including Right
22 First, Inc., P&D Ventures, Inc., Shibro, LLC, New Venture San Bernardino, LLC, Commercial
23 Cleaning Solutions, Inc., Joranda Marketing, Inc., and Kevco, Inc. Plaintiffs contend that each of the
24 franchise workers/cleaners for these “master franchises” was an employee of Jan-Pro Franchising
25 International, making Jan-Pro Franchising International also liable for the penalties described below.

26 42. The California Labor Code Private Attorneys General Act of 2004 (“PAGA”),
27 California Labor Code § 2698 et seq., grants California employees the right to bring a civil
28

⁷ *Id.* at 598.

1 action for the violation of any provision of the Labor Code on behalf of themselves and other
2 current or former employees in order to recover civil penalties. PAGA is intended to assist in the
3 achievement of maximum compliance with state labor laws by empowering aggrieved
4 employees to act as private attorneys general in order to recover civil penalties for Labor Code
5 violations that would otherwise be prosecuted by the state. *See Arias v. Super. Ct.* (2009) 46 Cal.
6 4th 969, 980.

7 43. PAGA permits an aggrieved employee to collect the civil penalty authorized by
8 law and normally collectible by the California Labor and Workforce Development Agency. To
9 address violations for which no penalty has been established, § 2699(f) creates a private right of
10 action for aggrieved employees and a default penalty in the amount of \$100 for each aggrieved
11 employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay
12 period for each subsequent violation. *See* Cal. Lab. Code § 2699(f). Plaintiffs hereby seek to
13 collect these civil penalties for Jan-Pro’s Labor Code violations, as described below.

14 **Labor Code §§ 2750.3: Misclassification of an Employee as an Independent Contractor**

15 44. Labor Code § 2750.3, which codified the ABC test, provides that “a person
16 providing labor or services . . . shall be considered an employee rather than an independent
17 contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

18 (A) The person is free from the control and direction of the hiring entity in connection
19 with the performance of the work, both under the contract for the performance of the
20 work and in fact.

21 (B) The person performs work that is outside the usual course of the hiring entity’s
22 business.

23 (C) The person is customarily engaged in an independently established trade,
24 occupation, or business of the same nature as that involved in the work performed.”

25 45. Plaintiffs and aggrieved cleaners are not free from Jan-Pro’s control in the
26 performance of their work either in contract or in fact, their cleaning work is within Jan-Pro’s
27 usual course of business, and Plaintiffs and aggrieved cleaners are not involved in an
28 independently established trade, occupation, or business. Thus, Plaintiffs and aggrieved cleaners

1 are employees under Labor Code § 2750.3. However, Jan-Pro has failed to classify Plaintiffs and
2 aggrieved cleaners as employees in accordance with § 2750.3.

3 46. Under California Labor Code §2699(f)(2), Plaintiffs seek a civil penalty of one
4 hundred dollars (\$100) for each Plaintiff and each aggrieved employee per pay period for the
5 initial violation of Labor Code § 2750.3, for failure to classify aggrieved cleaners as employees
6 under § 2750.3, and two hundred dollars (\$200) for each Plaintiff and each aggrieved employee
7 per pay period for each subsequent violation of Labor Code § 2750.3.

8 **Labor Code § 226.8(a)(1), (c) and IWC Wage Order No. 5, § 2: Willful Misclassification**

9 47. As described above, Jan-Pro holds itself out as a commercial cleaning service that
10 offers “an above and beyond approach” to commercial cleaning. Jan-Pro engages hundreds of
11 persons like Plaintiffs who are assigned to Jan-Pro commercial cleaning accounts. Jan-Pro
12 classifies Plaintiffs and aggrieved employees as “independent contractors,” a designation that it
13 made voluntarily and knowingly as a subterfuge to circumvent the requirements of the California
14 Labor Code. Indeed, even after the Ninth Circuit found several cleaners to be employees of Jan-
15 Pro under the ABC test, and not independent contractors, Jan-Pro continued to classify its
16 cleaners as independent contractors.

17 48. As described above, cleaners are not free from Jan-Pro’s control and direction,
18 either under their contract or in fact. Jan-Pro cleaners perform work that is within Jan-Pro’s usual
19 course of business. And Jan-Pro cleaners are not engaged in an independently established trade,
20 occupation, or business. There is no reasonable dispute that Jan-Pro’s cleaners are employees
21 under the Labor Code and the corresponding IWC Wage Order No. 5. *See Dynamex Operations*
22 *W., Inc. v. Super. Ct. of L.A.* (2018) 4 Cal. 5th 903. As described above, Plaintiffs and other
23 aggrieved cleaners are also employees under AB 5, which codified the ABC test. *See Cal. Lab.*
24 *Code, § 2750.3.* Additionally, Jan-Pro exercises comprehensive control over the manner and
25 means by which Plaintiffs and cleaners perform their work, such that they are also employees
26 under *S.G. Borello & Sons, Inc. v. Dep’t of Indus. Relations* (1989) 48 Cal. 3d 341, 357.

27 49. Under California Labor Code §226.8(a)(1) and (c), Plaintiffs seek a civil penalty
28 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars

1 (\$15,000) for each violation against each Plaintiff and each aggrieved employee, and if the Court
2 finds that Defendants have engaged in a pattern or practice of violating § 226.8(a)(1), a civil
3 penalty of not less than ten thousand dollars (\$10,000) and nor more than twenty-five thousand
4 dollars (\$25,000) for each violation.

5 50. Additionally, as a result of violations under California Labor Code § 226.8(a),
6 Plaintiffs request that the Court order Defendants to take certain steps to notify employees and
7 the general public of the determination that they have violated § 226.8, pursuant to §226.8(e).

8 **Labor Code § 226.8(a)(2), (c) and IWC Wage Order No. 5, §§2, 8-9: Unlawful Charges to**
9 **Willfully Misclassified Employees**

10 51. Labor Code § 226.8(a)(2) states that it shall be unlawful to charge “an individual
11 who has been willfully misclassified as an independent contractor a fee, or mak[e] any
12 deductions from compensation, for any purpose, including for goods, materials, space rental,
13 services, government licenses, repairs, equipment maintenance, or fines arising from the
14 individual’s employment where any of the acts described in this paragraph would have violated
15 the law if the individual had not been misclassified.”

16 52. Jan-Pro has charged Plaintiffs and cleaners franchise fees, royalty fees,
17 management fees, “finders fees,” business protection plan fees, A/R assurance fees, and
18 equipment fees, among other charges, in violation of Labor Code § 226.8(a)(2).

19 53. Under California Labor Code § 226.8(a)(2) and (c), Plaintiffs seek a civil penalty
20 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars
21 (\$15,000) for each violation against each Plaintiff and each aggrieved employee, and if the Court
22 finds that Defendants have engaged in a pattern or practice of violating § 226.8(a)(1), a civil
23 penalty of not less than ten thousand dollars (\$10,000) and nor more than twenty-five thousand
24 dollars (\$25,000) for each violation.

25 **Labor Code § 2810.3: Failure to Pay Wages of Workers Supplied by a Labor Contractor**

26 54. Labor Code § 2810.3 defines a “client employer” as a “business entity . . . that
27 obtains or is provided workers to perform labor within its usual course of business from a labor
28 contractor.” It defines a “labor contractor” as “an individual or entity that supplies, either with or

1 without a contract, a client employer with workers to perform labor within the client employer's
2 usual course of business."

3 55. Right First, Inc. and other master franchisors provide cleaners to Jan-Pro
4 Franchising International to perform janitorial services within its usual course of business. Under
5 the definitions in Labor Code § 2810.3, Jan-Pro Franchising International is a client employer
6 and Right First, Inc., and other master franchisors are its labor contractors.

7 56. Labor Code § 2810.3 also provides that "a client employer shall share with a labor
8 contractor all civil responsibility and civil liability for all workers supplied by that labor
9 contractor for ... the payment of wages."

10 57. As a client employer, Jan-Pro Franchising International shares all civil
11 responsibility and civil liability for all workers supplied by any labor contractors for the payment
12 of wages and cannot shift these responsibilities or liabilities to those labor contractors. Labor
13 contractors with whom Jan-Pro Franchising International shares these responsibilities and
14 liabilities include Right First, Inc, P&D Ventures, Inc., Shibro, LLC, New Venture San
15 Bernadino, LLC, Commercial Cleaning Solutions, Inc., Joranda Marketing, Inc., and Kevco, Inc.
16 However, Jan-Pro Franchising International has not shared in all civil legal responsibility for the
17 payment of wages with its labor contractors, in violation of § 2810.3.

18 58. Under California Labor Code §2699(f)(2), Plaintiffs seek a civil penalty of one
19 hundred dollars (\$100) for each Plaintiff and each aggrieved employee per pay period for the
20 initial violation of Labor Code § 2810.3, for failure to share all legal responsibility with its labor
21 contractors under § 2810.3, and two hundred dollars (\$200) for each Plaintiff and each aggrieved
22 employee per pay period for each subsequent violation of Labor Code § 2810.3.

23 59. Furthermore, Jan-Pro Franchising International shares all civil liability for civil
24 penalties for the nonpayment of wages, as described herein.

25 **Labor Code § 2802: Failure to Provide Reimbursement for Business Expenses**

26 60. While working for Jan-Pro, Plaintiffs and aggrieved cleaners have incurred and
27 paid work-related expenses. Such expenses include, but are not limited to, cleaning supplies,
28 cleaning equipment, uniforms, mandatory insurance, gas and vehicle maintenance, and other

1 necessary expenses. Jan-Pro also charged Plaintiffs and aggrieved cleaners for the cleaning
2 accounts they worked, including charging them to obtain the account or requiring them to work
3 for free for months to pay for the account.

4 61. Jan-Pro failed to reimburse Plaintiffs and aggrieved cleaners for these expenses
5 even though these necessary expenditures were incurred as a direct consequence of their work
6 requirements, either as a de facto cost (e.g. vehicle fuel and maintenance) or a requirement of the
7 many agreements Jan-Pro forces cleaners to accept as a condition of employment.

8 62. Under California Labor Code §2699(f)(2), Plaintiffs seek a civil penalty of one
9 hundred dollars (\$100) for each Plaintiff and each aggrieved employee per pay period for the
10 initial violation of Labor Code § 2802, for failure to indemnify employees for business expenses,
11 and two hundred dollars (\$200) for each Plaintiff and each aggrieved employee per pay period
12 for each subsequent violation of Labor Code § 2802.

13 **Labor Code § 221, and IWC Wage Order No. 5, §§ 8-9: Unlawful Withholding and Receipt**
14 **of Earned Wages**

15 63. Labor Code § 221 makes it unlawful for an employer to collect or receive from
16 any employee any part of wages paid to the employee.

17 64. IWC Wage Order No. 5, § 8 provides that the only circumstance under which an
18 employer can make a deduction from an employee's wage for cash shortage, breakage, or loss of
19 equipment is if the employer can show that the shortage, breakage, or loss was the result of the
20 employee's gross negligence or dishonest or willful act.

21 65. Jan-Pro's policy and practice of deducting franchise fees, royalty fees,
22 management fees, "finders fees," business protection plan fees, A/R assurance fees, and
23 equipment fees, among other charges, among other fees from employees' compensation violates
24 Section 221 and IWC Wage Order No. 5. Jan-Pro also charged Plaintiffs and aggrieved
25 employees for the cleaning accounts they worked, including charging them to obtain the account
26 or requiring them to work for free for approximately four months to pay for the account.

27 66. Under California Labor Code § 2699(f)(2), Plaintiffs seek a civil penalty of one
28 hundred dollars (\$100) for each Plaintiff and each aggrieved employee per pay period for the

1 initial violation of Labor Code § 221, for withholding or collecting wages from employees, and
2 two hundred dollars (\$200) for each Plaintiff and each aggrieved employee per pay period for
3 each subsequent violation of labor code § 221.

4 **Labor Code §§ 226.7, 512, and IWC Wage Order No. 5, § 11: Failure to Provide Meal**

5 **Periods**

6 67. Labor Code § 226.7 states in pertinent part: “An employer shall not require an
7 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
8 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

9 68. Labor Code § 512 likewise states: “An employer may not employ an employee
10 for a work period of more than five hours per day without providing the employee with a meal
11 period of not less than 30 minutes,” and “[a]n employer may not employ an employee for a work
12 period of more than 10 hours per day without providing the employee with a second meal period
13 of not less than 30 minutes.”

14 69. IWC Wage Order No. 5, § 11 provides in part that “[n]o employer shall employ
15 any person for a work period of more than five (5) hours without a meal period of not less than
16 30 minutes,” and “[a]n employer may not employ an employee for a work period of more than
17 ten (10) hours per day without providing the employee with a second meal period of not less than
18 30 minutes.”

19 70. Jan-Pro has not promulgated a policy for the provision of meal breaks for
20 employees like Plaintiffs and aggrieved employees. Plaintiffs and aggrieved employees have
21 regularly worked in excess of five hours a day without being provided a half-hour meal break in
22 which they are relieved of all duties.

23 71. Under California Labor Code § 2669(f)(2), Plaintiffs seek to recover a civil
24 penalty of one hundred dollars (\$100) for each Plaintiff and each aggrieved employee per pay
25 period for the initial violation of Labor Code § 226.7 for failing to provide meal periods, and two
26 hundred dollars (\$200) for each Plaintiff and each aggrieved employee per pay period for each
27 subsequent violation of Labor Code § 226.7 for failing to authorize and provide meal periods.
28

Labor Code §§ 226.7, 1194 and IWC Wage Order No. 5, § 12: Failure to Authorize and Permit Rest Periods

72. IWC Wage Order No. 5, § 12 provides in relevant part: “(A) Every employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hour or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours). Authorized rest period time shall be counted as hours worked for which there shall be no deduction of wages.”

73. Jan-Pro is legally required to compensate Plaintiffs and other employees for non-productive rest periods, while Jan-Pro’s piece rate compensation system only compensates employees for productive work time spent cleaning for Accounts. *See Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 870-71 (2013).

74. On information and belief, Jan-Pro has not promulgated a compliant rest break policy.

75. Plaintiffs and aggrieved cleaners have regularly worked in excess of three and one-half hours without Jan-Pro authorizing and permitting them to take at least a 10-minute rest period or paying them separately for rest periods, as required by Labor Code §§ 226.7 and 1194 and IWC Wage Order No. 5.

76. Under California Labor Code § 2699(f)(2), Plaintiffs seek to recover a civil penalty of one hundred dollars (\$100) for each Plaintiff and each aggrieved employee per pay period for the initial violation of Labor Code § 226.7 for failing to authorize and permit rest periods, and two hundred dollars (\$200) for each Plaintiff and each aggrieved employee per pay period for each subsequent violation of Labor Code § 226.7 for failing to authorize and permit rest periods.

Labor Code § 226, 1174 and IWC Wage Order No. 5, § 7: Failure to Furnish Accurate Wage Statements

77. Pursuant to Labor Code § 226(a) and Wage Order No. 5, § 7, Jan-Pro is required

1 to provide – semimonthly or at the time of each payment of wages – itemized written statements
2 containing all information described in § 226 and IWC Wage Order No. 5, including, but not
3 limited to, the total hours worked by the employee.

4 78. Jan-Pro has failed to comply with the Labor Code by knowingly and intentionally
5 failing to provide Plaintiffs and aggrieved cleaners with accurate written statements showing
6 their actual and total hours worked. In fact, Jan-Pro neither maintains records of the hours
7 worked by its cleaners, nor does it remit any semimonthly, itemized statement of hours worked
8 and wages earned.

9 79. Under California Labor Code § 226.3, which provides for civil penalties for
10 violations of the California Labor Code § 226(a), Plaintiffs seek a civil penalty of two hundred
11 fifty dollars (\$250) for each Plaintiff and each aggrieved employee per violation for the initial
12 violation, and one thousand dollars (\$1,000) for each Plaintiff and each aggrieved employee per
13 violation for each subsequent violation of Labor Code § 226(a) for failure to provide timely,
14 accurate, itemized wage statements.

15 **Labor Code §§ 1194, 1197 and IWC Wage Order No. 5, § 4: Failure to Pay California State**

16 **Minimum Wage for All Hours Worked**

17 80. Jan-Pro has a policy and practice of requiring Plaintiffs and other cleaners to either
18 pay for each new Jan-Pro cleaning opportunity or work for free for several months (in Plaintiffs’
19 case, typically about four months) to “buy” the account with their labor. However, Plaintiffs and
20 aggrieved cleaners have no equity in these accounts, as Jan-Pro retains the right to, and does,
21 remove accounts from Plaintiffs and aggrieved cleaners at their discretion and without
22 compensation.

23 81. Additionally, while Plaintiffs and aggrieved cleaners worked without pay, Jan-Pro
24 deducted fees for these accounts, resulting in a situation where Plaintiffs and aggrieved cleaners
25 *paid Jan-Pro to work.*

26 82. As a result, Plaintiffs and aggrieved cleaners worked many months without receiving
27 the minimum wage for all hours worked in violation of California Labor Code §§ 1182.12 and
28

1 1194 and Industrial Wage Commission Order 5, §4. Plaintiffs seek penalties for Jan-Pro's
2 unlawful failure to pay the minimum wage for all hours worked.

3 **Labor Code §§ 510, 1194, 1194.5 and IWC Wage Order No. 5, § 3: Failure to Pay**
4 **California Overtime Compensation**

5 83. Plaintiffs estimates that they have typically worked from 4:00 p.m. to 6:00 a.m.,
6 Monday through Friday, and from 1:00 a.m. to 5:00 a.m. Saturday and Sunday—well in excess
7 of eight hours in a workday and/or forty hours in a work week.⁸ However, Plaintiffs and
8 aggrieved cleaners were not paid overtime compensation for the overtime hours that they
9 worked, in violation of California Labor Code §§ 510, 1194, and IWC Wage Order No. 5, § 3,
10 which require overtime compensation for non-exempt employees.

11 84. Under California Labor Code § 558, Plaintiffs seek a civil penalty of fifty dollars
12 (\$50) for each Plaintiff and each aggrieved employee per pay period for the initial violation of
13 Labor Code § 510 for Defendants' failure to pay overtime premiums, and one hundred dollars
14 (\$100) for each Plaintiff and each aggrieved employee per pay period for each subsequent
15 violation of Labor Code § 510.

16 **Labor Code § 432.5: Unlawful Written Restriction on Competition and Unlawful Written**
17 **Requirement that Employees Indemnify Employer**

18 85. California Labor Code § 432.5 states that “[n]o employer... shall require any
19 employee or applicant for employment to agree, in writing, to any term or condition which is
20 known by such employer... to be prohibited by law.”

21 86. Labor Code § 2802 requires employers to indemnify employees “for all necessary
22 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
23 her duties.” In violation of § 2802, Jan-Pro requires its employees to indemnify Jan-Pro for those
24 same expenditures.

25 87. Business and Professions Code § 16600 declares that “every contract by which
26 anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to
27 that extent void.”

28 _____
⁸ Plaintiffs hours have been more limited in recent months due to COVID-19.

1 88. As a condition of employment, however, Jan-Pro required Plaintiffs and
2 aggrieved cleaners to agree to an unlawful covenant not to compete.

3 89. Both provisions in the signed agreements between Jan-Pro and its cleaners
4 described above violate § 432.5.

5 90. Under California Labor Code § 2699(f)(2), Plaintiffs seek a civil penalty of one
6 hundred dollars (\$100) for each Plaintiff and each aggrieved employee per day period for the
7 initial violation of Labor Code § 432.5, for requiring Plaintiffs and aggrieved employees to agree
8 to terms and conditions known to Defendants to be prohibited by law (including non-compete
9 provisions) and two hundred dollars (\$200) for each Plaintiff and each aggrieved employee per
10 pay period for each subsequent violation of Labor Code § 432.5.

11 **Labor Code §§ 201–03: Failure to Pay Earned Wages Upon Discharge**

12 91. California Labor Code § 201 states that an employer is required to provide an
13 employee who is terminated all accrued wages and compensation at the time of termination.

14 92. California Labor Code § 202 states that an employer is required to provide an
15 employee who resigns all unpaid wages within 72 hours of their resignation, or upon resignation
16 if the employee has provided at least 72 hours' notice.

17 93. California Labor Code § 203 states that if an employer willfully fails to pay
18 compensation promptly upon discharge, as required by § 201 and § 202, then the employer is
19 liable for waiting time penalties equivalent to the employee's daily wage, for a maximum of 30
20 days.

21 94. Upon resignation or termination, cleaners were not paid all wages due within the
22 statutory time period. Jan-Pro willfully failed and refused to pay timely compensation and wages
23 for, among other things, unpaid overtime, unpaid meal and rest periods, and unlawful fees.

24 95. As a direct and proximate result of Jan-Pro's willful conduct in failing to pay
25 cleaners for all hours worked, former cleaners are entitled to recover penalties under California
26 Labor Code § 203.

27 96. Under California Labor Code § 2699(f)(2), Plaintiffs seek a civil penalty of one
28 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of

1 Labor Code §§ 201, 202, and 203 for Defendants’ failure to pay earned wages upon discharge,
2 and two hundred dollars (\$200) for each aggrieved employee per day period for each subsequent
3 violation of Labor Code §§ 201, 202, and 203.

4 **Labor Code § 204: Failure to Pay Wages Twice During Each Calendar Month**

5 97. California Labor Code § 204 states that an employer is required to pay all wages
6 “twice during each calendar month, on days designated in advance by the employer as the
7 regular paydays.”

8 98. Jan-Pro paid cleaners once a month, not twice a month as required by law. Indeed,
9 Jan-Pro waited an entire month before paying cleaners for their work, such that cleaners were,
10 for example, paid on January 31, 2020, for the cleaning work that they performed during the
11 month of December 2019. Jan-Pro also required Plaintiffs and aggrieved cleaners to work for
12 free to acquire new accounts, never paying them at all for the months that they worked to acquire
13 these new accounts. Jan-Pro further made unlawful deductions from cleaners’ wages, and
14 therefore failed to pay cleaners’ full wages.

15 99. Plaintiffs allege that Jan-Pro’s actions were willful, as Jan-Pro knew that it was
16 misclassifying its cleaners and it continued to do so, and as a result knew that its pay practices,
17 including failing to pay all wages twice during each calendar month, were unlawful.

18 100. Under California Labor Code § 210, Plaintiffs seek a civil penalty of one hundred
19 dollars (\$100) for each Plaintiff and each aggrieved employee for each initial failure to pay each
20 employee in violation of Labor Code § 204, and two hundred dollars (\$200) plus 25 percent
21 (25%) of the amount unlawfully withheld for each Plaintiff and each aggrieved employee if the
22 Court finds that Defendants’ violations were willful or intentional, or for each subsequent
23 violation of Labor Code § 204.

24 **Labor Code § 450: Unlawful Coercing of Employees to Patronize Their Employer**

25 101. Labor Code § 450 states that “No employer... may compel or coerce any
26 employee... to patronize his or her employer, or any other person, in the purchase of anything of
27 value... [including] instances where an employer requires payment of a fee or consideration of
28 any type...”

1 102. Jan-Pro requires significant purchases as a condition of employment, including
2 but not limited to: initial franchise fees, royalty, support, administrative, and “negotiation” fees,
3 among others. Jan-Pro also requires Plaintiffs and other cleaners to patronize Jan-Pro or Jan-Pro-
4 approved suppliers for cleaning supplies and equipment. These requirements violate § 450.

5 103. Under California Labor Code § 2699(f)(2), Plaintiffs seek a civil penalty of one
6 hundred dollars (\$100) for each Plaintiff and each employee per pay period for the initial
7 violation of Labor Code § 450, for compelling or coercing Plaintiff and aggrieved employees to
8 patronize Defendants in the purchase of a thing of value, and two hundred dollars (\$200) for
9 each Plaintiff and each aggrieved employee per pay period for each subsequent violation of
10 Labor Code § 450.

11 **Labor Code §§ 400-410: Compelling Employees to Put up a Cash Bond as an Investment**

12 104. Labor Code §§ 400-410 (“Employee Bond Law”) provides the limited
13 circumstances under which an employer can exact a cash bond from its employees. These
14 provisions are designed to protect employees against the very real danger of an employer taking
15 or misappropriating employee funds held by the employer in trust.

16 105. Jan-Pro requires aggrieved employees to make substantial payments to, and
17 investments in, Jan-Pro in exchange for the ability to work. These include initial franchising fees,
18 royalty fees, support fees, administrative fees, among others. Jan-Pro also retains for itself a
19 security interest in all of aggrieved employees’ assets, including all equipment, inventory,
20 agreements, contracts, accounts, and accounts receivable, and all other property related to the
21 franchise. These requirements violate Labor Code §§ 400-407.

22 106. Under California Labor Code § 2699(f)(2), Plaintiffs seek a civil penalty of one
23 hundred dollars (\$100) for each Plaintiff and each aggrieved employee per pay period for the
24 initial violation of Labor Code §§ 400-407, for Defendants’ unlawful requirement that Plaintiffs
25 and aggrieved employees put up a cash bond as part of their employment contracts, and two
26 hundred dollars (\$200) for each Plaintiff and each aggrieved employee per pay period for each
27 subsequent violation of Labor Code §§ 400-407.

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107. California Labor Code § 2699(g) further provides that any employee who prevails in an action for civil penalties is entitled to an award of reasonable attorneys' fees and costs. Plaintiffs hereby seek to recover her attorneys' fees and costs under this fee and cost shifting statute.

108. On April 13, 2020, pursuant to California Labor Code § 2699.3, Plaintiff Emeraldalda Nunez sent notice to the Labor and Workforce Development Agency (LWDA) via the LWDA's online filing system and by certified mail to Defendants of the specific provisions of the Labor Code that have been violated, including the facts and theories to support the violations. The LWDA received this notice on the same day, April 13, 2020. The sixty-five-day time limit for the agency to respond has expired, such that Plaintiff Nunez has exhausted her administrative remedies.

109. On July 20, 2020, pursuant to California Labor Code § 2699.3, Plaintiff Jose Luis Corral Rodriguez sent notice to the LWDA via the LWDA's online filing system and by certified mail to Defendants of the specific provisions of the Labor Code that have been violated, including the facts and theories to support the violations. The LWDA received this notice on the same day, July 20, 2020. The sixty-five-day time limit for the agency to respond has expired, such that Plaintiff Corral Rodriguez has exhausted his administrative remedies.

9 **PRAYER FOR RELIEF**

Based on the above allegations, Plaintiffs respectfully request entry of judgment on behalf of themselves and other current and former employees against Defendants, as follows:

1. For civil penalties under Labor Code §§ 210, 226.3, 226.8, 558, 1197.1, 1174.5, and 2699(f) for Defendants' violations of §§ 201-203, 204, 221, 226, 226.3, 226.7, 226.8, 400-410, 432.5, 450, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 2802, 2810.3, 2750.3, and IWC Wage Order No. 5, in an amount according to proof;
2. For civil penalties assessed, liquidated damages, and prejudgment and post-judgment interest due as allowed by law;

- 1 3. For attorneys' fees and costs, as authorized under Labor Code § 2699(g)(1);
2 4. For such other and further relief as this Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs demand a trial by jury.

5
6 Dated: September 23, 2020

RUKIN HYLAND & RIGGIN LLP

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8 By: Valerie Brender
9 Valerie Brender
10 Attorneys for Plaintiffs Esmeralda Nunez and Jose
11 Luis Corral Rodriguez
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