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

ESMERALDA NUNEZ
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 6/22/2020
By /s/ Una Finau
Deputy Clerk

CASE NO.: 20-CIV-02595

(UNLIMITED CIVIL CASE)

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

DEMAND FOR JURY TRIAL

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

5 **INTRODUCTION**

6 1. Plaintiff Esmeralda Nunez brings this action under the California Labor Code
7 Private Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”). Through this action,
8 Plaintiff seeks to recover civil penalties on behalf of herself and other current and former owner-
9 operator franchisees (referred to collectively as “employees” and “franchise workers” and
10 “cleaners”) who personally performed cleaning work for Jan-Pro in California. Plaintiff brings
11 her PAGA claim for Defendants’ violations of Cal. Labor Code §§ 201-203, 204, 221, 226,
12 226.3, 226.7, 226.8, 400-410, 432.5, 450, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.5,
13 1197, 1197.1, 2802, 2810.3, 2750.3, and IWC Wage Order No. 5.

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. Plaintiff and other cleaners are the
18 individuals who actually perform the janitorial services for Jan-Pro’s clients.

19 3. Jan-Pro treats Plaintiff 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 Plaintiff 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 overtime wages or provide cleaners with meal breaks or
26 paid rest breaks.

27 4. By misclassifying Plaintiff 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 Plaintiff 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. Plaintiff challenges 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, San Francisco,

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

7 8. Defendant Jan-Pro Franchising International, Inc. is a Georgia corporation
8 headquartered in Alpharetta, Georgia.

9 **JURISDICTION AND VENUE**

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

13 10. Plaintiff seeks penalties in this case in an amount exceeding the jurisdictional
14 minimum of this Court.

15 11. Venue in San Mateo County is proper under California Code of Civil Procedure
16 section 395.5 because the unlawful conduct at issue in this case occurred in San Mateo County.
17 In addition, Defendants conducted and continue to conduct substantial business in this County
18 and their liability arose, in part, in this County.

19 **FACTUAL ALLEGATIONS**

20 **A. Cleaners Perform Work Within Jan-Pro’s Usual Course of Business and Are Not** 21 **Engaged in an Independent Trade, Occupation, or Business.**

22 12. Jan-Pro provides janitorial services to companies and other entities internationally
23 and in the United States, including in California. For example, Jan-Pro’s website states that Jan-
24 Pro is “the world’s largest and most trusted janitorial cleaning services brand.”¹ Jan-Pro “work[s]
25 with businesses around the world to ensure their facilities are cleaned and disinfected to the
26 highest standards.”² Its website lists its services, which include specialized general property

27 ¹ Jan-Pro Franchising International, Inc., “Janitorial Cleaning Services by JAN-PRO,” located at
28 <https://jan-pro.com><https://jan-pro.com/why-jan-pro/> (last accessed May 27, 2020).

² *Id.*

1 cleaning for a wide variety of different business types, catered to those businesses' individual
2 cleaning needs (including automotive dealerships, banks and financial institutions, business
3 offices, fitness centers, industrial and manufacturing businesses, medical centers, religious
4 facilities, restaurants, among other business types).³

5 13. To carry out its business in California, Jan-Pro engages hundreds of persons like
6 Plaintiff who provide cleaning services to Jan-Pro clients. Plaintiff – like Jan-Pro's other cleaners
7 – provides routine (and sometimes daily) services to Jan-Pro customers.

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

18 15. Cleaners do not operate truly independent cleaning companies serving many
19 different clients. Instead, Jan-Pro restricts cleaners' ability to solicit and perform independent
20 work. Jan-Pro required Plaintiff to agree to a covenant not to compete, prohibiting her from
21 soliciting *any* account that Jan-Pro has serviced in the last twelve months. Jan-Pro also prohibits
22 cleaners from “directly or indirectly ... in any manner interfer[ing] with, disturb[ing],
23 disrupt[ing], impair[ing], diminish[ing] or otherwise jeopardize[ing] [Jan-Pro] or any of [their]
24 cleaners' businesses.”

25 16. Jan-Pro further reserves for itself the right to transfer or assign all of its rights
26 under the franchise agreement, but Plaintiff cannot sell, assign, convey, or otherwise dispose of
27

28 ³ *Id.* at “Commercial Cleaning Services from JAN-PRO,” <https://jan-pro.com/industries-we-serve/>

any interest in the agreement without prior written consent.

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

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

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

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

- a. Jan-Pro requires Plaintiff and aggrieved cleaners to work according to Jan-Pro's System of policies, procedures, and operational standards. This includes compliance with Jan-Pro's System manuals (also called the "Training 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 Plaintiff 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.

20. 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.

21. 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.

22. 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."

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

24. Jan-Pro requires cleaners to "offer for sale all approved services and products for which [cleaners] have been certified and for which [cleaners] have all necessary equipment" and requires cleaners to "comply with all of Jan-Pro's System customer warranty programs and customer service programs."

25. If a franchise worker wishes to obtain assistance in performing their work, Jan-

1 Pro requires them to run “a background check meeting the Jan-Pro specifications” before
2 allowing additional help on any customer’s premises.

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

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

12 28. Jan-Pro markets and sells cleaning services. Jan-Pro engages hundreds of persons
13 like Plaintiff who are assigned to provide cleaning services to designated Accounts.

14 29. Jan-Pro classifies Plaintiff and aggrieved cleaners as “independent contractors,” a
15 designation that it made voluntarily and knowingly as a subterfuge to circumvent the
16 requirements of the California Labor Code.

17 **C. Jan-Pro Franchising International, Inc., Is Liable for the Violations Against**
18 **Plaintiff and All Other Aggrieved California Cleaners.**

19 30. Jan-Pro Franchising International, Inc., designed and implemented the contractual
20 framework under which Plaintiff and aggrieved cleaners were misclassified.

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

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

27 33. Plaintiff seeks to recover PAGA penalties against Jan-Pro Franchising
28 International on behalf of all California aggrieved cleaners, regardless of their “master

1 franchisor” entity.

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

6 [R]egional master franchisees must use the “Jan-Pro” name, logo, and trademark;
7 maintain specific amounts of insurance; attend training sessions hosted by Jan-Pro;
8 provide training for unit franchisees; and allow Jan-Pro to inspect the regional master
9 franchisees’ books, records, and premises. Regional master franchisees must also sell a
10 specified number of unit franchises....[f]ranchise agreements between Jan-Pro and the
11 regional master franchisees give Jan-Pro authority to enforce any agreement between the
12 regional master franchisee and its respective unit franchisees. If the franchise agreement
13 between Jan-Pro and a regional master franchisee terminates, the agreement allows Jan-
14 Pro to assume the regional master franchisee’s rights and obligations to its unit
15 franchisees. Similarly, in the event that a regional master franchisee defaults on its
16 obligations to cleaning customers, the agreement provides that Jan-Pro may assume all of
17 the regional master franchisee’s rights and obligations to those customers. Moreover, Jan-
18 Pro requires that regional master franchisees specify in their contracts with unit
19 franchisees that Jan-Pro is a third-party beneficiary of those contracts. Finally, Jan-Pro
20 reserves the right to unilaterally promulgate binding “policies and procedures” that
21 pertain both to the businesses of the regional master franchisees and that of the unit
22 franchisees.⁵

23 35. Jan-Pro Franchising International provides the “template” form that they require
24 master franchisors to use with unit franchise workers, like Plaintiff. Any changes to these
25 template forms are subject to Jan-Pro Franchising International’s approval. These agreements
26

27 ⁴ *Vazquez v. Jan-Pro Franchising International, Inc.* (9th Cir. 2019) 923 F.3d 575, 590, *reh’g*
28 *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.

⁵ *Id.* at 590-91.

1 include classifying Plaintiff and other aggrieved cleaners as independent contractors.

2 36. Jan-Pro's business ultimately depends on someone performing the cleaning,
3 which in this case is the unit franchise workers. It relies on unit franchise workers to
4 continuously perform cleaning services.⁶

5 37. Jan-Pro's websites and advertisements promote Jan-Pro as being in the business
6 of cleaning.

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

12 **CLAIM FOR RELIEF**

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

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

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

26 41. 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

⁶ *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 42. 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)*. Plaintiff hereby seeks 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 43. 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 44. Plaintiff 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 Plaintiff and aggrieved cleaners are not involved in an
28 independently established trade, occupation, or business. Thus, Plaintiff and aggrieved cleaners

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

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

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

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

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

48. Under California Labor Code §226.8(a)(1) and (c), Plaintiff seeks a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars

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

5 49. Additionally, as a result of violations under California Labor Code § 226.8(a),
6 Plaintiff requests 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 50. 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 51. Jan-Pro has charged Plaintiff 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 52. Under California Labor Code § 226.8(a)(2) and (c), Plaintiff seeks 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 Plaintiff and each aggrieved employee, and if the Court finds
22 that Defendants have engaged in a pattern or practice of violating § 226.8(a)(1), a civil penalty of
23 not less than ten thousand dollars (\$10,000) and nor more than twenty-five thousand dollars
24 (\$25,000) for each violation.

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

26 53. 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 54. 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 55. 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 56. 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 57. Under California Labor Code §2699(f)(2), Plaintiff seeks a civil penalty of one
19 hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay period for the initial
20 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 Plaintiff and each aggrieved
22 employee per pay period for each subsequent violation of Labor Code § 2810.3.

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

24 58. While working for Jan-Pro, Plaintiff and aggrieved cleaners have incurred and
25 paid work-related expenses. Such expenses include, but are not limited to, cleaning supplies,
26 cleaning equipment, uniforms, mandatory insurance, gas and vehicle maintenance, and other
27 necessary expenses. Jan-Pro also charged Plaintiff and aggrieved cleaners for the cleaning
28 accounts they worked, including charging them to obtain the account or requiring them to work

1 for free for months to pay for the account.

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

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

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

13 61. Labor Code § 221 makes it unlawful for an employer to collect or receive from
14 any employee any part of wages paid to the employee.

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

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

25 64. Under California Labor Code § 2699(f)(2), Plaintiff seeks a civil penalty of one
26 hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay period for the initial
27 violation of Labor Code § 221, for withholding or collecting wages from employees, and two
28 hundred dollars (\$200) for Plaintiff and each aggrieved employee per pay period for each

1 subsequent violation of labor code § 221.

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

3 **Periods**

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

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

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

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

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

26 **Labor Code §§ 226.7, 1194 and IWC Wage Order No. 5, § 12: Failure to Authorize and**

27 **Permit Rest Periods**

28 70. IWC Wage Order No. 5, § 12 provides in relevant part: “(A) Every employer shall

1 authorize and permit employees to take rest periods, which insofar as practicable shall be in the
2 middle of each work period. The authorized rest period time shall be based on the total hours
3 worked daily at the rate of ten (10) minutes net rest time per four (4) hour or major fraction
4 thereof. However, a rest period need not be authorized for employees whose total daily work
5 time is less than three and one-half (3 ½) hours). Authorized rest period time shall be counted as
6 hours worked for which there shall be no deduction of wages.”

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

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

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

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

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

24 75. Pursuant to Labor Code § 226(a) and Wage Order No. 5, § 7, Jan-Pro is required
25 to provide – semimonthly or at the time of each payment of wages – itemized written statements
26 containing all information described in § 226 and IWC Wage Order No. 5, including, but not
27 limited to, the total hours worked by the employee.

28 76. Jan-Pro has failed to comply with the Labor Code by knowingly and intentionally

1 failing to provide Plaintiff and aggrieved cleaners with accurate written statements showing their
2 actual and total hours worked. In fact, Jan-Pro neither maintains records of the hours worked by
3 its cleaners, nor does it remit any semimonthly, itemized statement of hours worked and wages
4 earned.

5 77. Under California Labor Code § 226.3, which provides for civil penalties for
6 violations of the California Labor Code § 226(a), Plaintiff seeks a civil penalty of two hundred
7 fifty dollars (\$250) for Plaintiff and each aggrieved employee per violation for the initial
8 violation, and one thousand dollars (\$1,000) for Plaintiff and each aggrieved employee per
9 violation for each subsequent violation of Labor Code § 226(a) for failure to provide timely,
10 accurate, itemized wage statements.

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

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

19 79. Under California Labor Code § 558, Plaintiff seeks a civil penalty of fifty dollars
20 (\$50) for Plaintiff and each aggrieved employee per pay period for the initial violation of Labor
21 Code § 510 for Defendants' failure to pay overtime premiums, and one hundred dollars (\$100)
22 for Plaintiff and each aggrieved employee per pay period for each subsequent violation of Labor
23 Code § 510.

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

26 80. California Labor Code § 432.5 states that “[n]o employer... shall require any
27 employee or applicant for employment to agree, in writing, to any term or condition which is
28

⁷ Plaintiff's hours have been more limited in recent months due to COVID-19.

1 known by such employer... to be prohibited by law.”

2 81. Labor Code § 2802 requires employers to indemnify employees “for all necessary
3 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
4 her duties.” In violation of § 2802, Jan-Pro requires its employees to indemnify Jan-Pro for those
5 same expenditures.

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

9 83. As a condition of employment, however, Jan-Pro required Plaintiff and aggrieved
10 cleaners to agree to an unlawful covenant not to compete.

11 84. Both provisions in the signed agreements between Jan-Pro and its cleaners
12 described above violate § 432.5.

13 85. Under California Labor Code § 2699(f)(2), Plaintiff seeks a civil penalty of one
14 hundred dollars (\$100) for Plaintiff and each aggrieved employee per day period for the initial
15 violation of Labor Code § 432.5, for requiring Plaintiff and aggrieved employees to agree to
16 terms and conditions known to Defendants to be prohibited by law (including non-compete
17 provisions) and two hundred dollars (\$200) for Plaintiff and each aggrieved employee per pay
18 period for each subsequent violation of Labor Code § 432.5.

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

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

22 87. California Labor Code § 202 states that an employer is required to provide an
23 employee who resigns all unpaid wages within 72 hours of their resignation, or upon resignation
24 if the employee has provided at least 72 hours’ notice.

25 88. California Labor Code § 203 states that if an employer willfully fails to pay
26 compensation promptly upon discharge, as required by § 201 and § 202, then the employer is
27 liable for waiting time penalties equivalent to the employee’s daily wage, for a maximum of 30
28 days.

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

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

7 91. Under California Labor Code § 2699(f)(2), Plaintiff seeks a civil penalty of one
8 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of
9 Labor Code §§ 201, 202, and 203 for Defendants' failure to pay earned wages upon discharge,
10 and two hundred dollars (\$200) for each aggrieved employee per day period for each subsequent
11 violation of Labor Code §§ 201, 202, and 203.

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

13 92. California Labor Code § 204 states that an employer is required to pay all wages
14 "twice during each calendar month, on days designated in advance by the employer as the
15 regular paydays."

16 93. Jan-Pro paid cleaners once a month, not twice a month as required by law. Indeed,
17 Jan-Pro waited an entire month before paying cleaners for their work, such that cleaners were,
18 for example, paid on January 31, 2020, for the cleaning work that they performed during the
19 month of December 2019. Jan-Pro also required Plaintiff and aggrieved cleaners to work for free
20 to acquire new accounts, never paying them at all for the months that they worked to acquire
21 these new accounts. Jan-Pro further made unlawful deductions from cleaners' wages, and
22 therefore failed to pay cleaners' full wages.

23 94. Plaintiff alleges that Jan-Pro's actions were willful, as Jan-Pro knew that it was
24 misclassifying its cleaners and it continued to do so, and as a result knew that its pay practices,
25 including failing to pay all wages twice during each calendar month, were unlawful.

26 95. Under California Labor Code § 210, Plaintiff seeks a civil penalty of one hundred
27 dollars (\$100) for Plaintiff and each aggrieved employee for each initial failure to pay each
28 employee in violation of Labor Code § 204, and two hundred dollars (\$200) plus 25 percent

(25%) of the amount unlawfully withheld for Plaintiff and each aggrieved employee if the Court finds that Defendants' violations were willful or intentional, or for each subsequent violation of Labor Code § 204.

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

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

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

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

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

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

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

1 101. Under California Labor Code § 2699(f)(2), Plaintiff seeks a civil penalty of one
2 hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay period for the initial
3 violation of Labor Code §§ 400-407, for Defendants' unlawful requirement that Plaintiff and
4 aggrieved employees put up a cash bond as part of their employment contracts, and two hundred
5 dollars (\$200) for Plaintiff and each aggrieved employee per pay period for each subsequent
6 violation of Labor Code §§ 400-407.

7 **Attorneys' Fees and Exhaustion**

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

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

18 **PRAYER FOR RELIEF**

19 Based on the above allegations, Plaintiff respectfully requests entry of judgment on
20 behalf of herself and other current and former employees against Defendants, as follows:

- 21 1. For civil penalties under Labor Code §§ 210, 226.3, 226.8, 558, 1197.1, 1174.5, and
22 2699(f) for Defendants' violations of §§ 201-203, 204, 221, 226, 226.3, 226.7, 226.8,
23 400-410, 432.5, 450, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197,
24 1197.1, 2802, 2810.3, 2750.3, and IWC Wage Order No. 5, in an amount according to
25 proof;
26 2. For civil penalties assessed, liquidated damages, and prejudgment and post-judgment
27 interest due as allowed by law;
28 3. For attorneys' fees and costs, as authorized under Labor Code § 2699(g)(1);

1 4. For such other and further relief as this Court deems just and proper.

2
3 **DEMAND FOR JURY TRIAL**

4 Plaintiff Esmeralda Nunez demands a trial by jury.

5
6 Dated: June 18, 2020

RUKIN HYLAND & RIGGIN LLP

7
8 By: Valerie Brender
9 Valerie Brender
10 Attorneys for Plaintiff Esmeralda Nunez
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