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CASE NUMBER:

RG20062750

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SUPERIOR COURT OF THE STATE OF CALIFORNIA**COUNTY OF ALAMEDA**

IRMA GUERRERO and ARIEL
CORTES SILVA

Plaintiffs,

v.

D&G ENTERPRISES, INC., a California
corporation doing business as CleanNet
of the Bay Area; CLEANNET USA,
INC.; and CLEANNET OF SOUTHERN
CALIFORNIA, INC., and DOES 1
through 25 inclusive,

Defendants.

CASE NO.: RG20062750**(UNLIMITED CIVIL CASE)****FIRST AMENDED COMPLAINT FOR
DAMAGES**

**(1) REIMBURSEMENT FOR BUSINESS
EXPENSES (Labor Code §2802);
(2) UNLAWFUL DEDUCTIONS FROM
WAGES (Labor Code §§221, 223, 400-410,
2810.3);
(3) FAILURE TO PROVIDE OFF-DUTY
MEAL PERIODS (Labor Code §§226.7, 512,
2810.3);
(4) FAILURE TO AUTHORIZE AND
PERMIT PAID REST PERIODS (Labor Code
§§226.7, 1194, 2810.3);
(5) FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS (Labor Code §§226,
226.3);
(6) FAILURE TO PAY CALIFORNIA (AND
LOCAL) MINIMUM WAGES (Labor Code
§§ 1182.12, 1194, 1197, 2810.3; San Jose and
Lose Angeles Minimum Wage Ordinances);
(7) CALIFORNIA UNPAID OVERTIME
COMPENSATION (Labor Code §§ 410, 1194,
et seq., 2810.3);
(8) VIOLATIONS OF UCL (Bus. & Prof.
Code §17200 *et seq.*)
(9) REPRESENTATIVE ACTION
COMPLAINT FOR CIVIL PENALTIES
UNDER LABOR CODE PRIVATE**

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**ATTORNEYS GENERAL ACT (Labor Code
§ 2698, *et seq.*)**

DEMAND FOR JURY TRIAL

1 Plaintiffs Irma Guerrero and Arial Cortes Silva (collectively, “Plaintiffs”) complain
2 against Defendants D&G Enterprises, Inc., a California corporation doing business as CleanNet
3 of the Bay Area; CleanNet USA, Inc.; and CleanNet of Southern California, Inc. (referred to
4 collectively as “Defendants” or “CleanNet”) and Does 1 through 25, inclusive, as follows:

5 INTRODUCTION

6 1. Plaintiffs bring their individual damages claims under California law for unpaid
7 minimum wage and overtime compensation, reimbursement of necessary, employment-related
8 expenses and losses, meal and rest period pay, failure to furnish accurate wage statements,
9 waiting time penalties, restitution, disgorgement, statutory penalties, interest, and attorneys’ fees
10 and costs.

11 2. Plaintiffs also bring a representative action under the California Labor Code
12 Private Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”). Through this action,
13 Plaintiffs seek to recover civil penalties on behalf of themselves and other current and former
14 owner-operator franchisees (referred to collectively as “employees,” “cleaners,” and “franchise
15 workers”) for Defendants’ violations of Cal. Labor Code §§ 201–203, 204, 221, 226, 226.3,
16 226.7, 226.8, 400–410, 432.5, 450, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
17 2802, 2810.3, 2750.3 and Industrial Welfare Commission Wage Order 5-2001.

18 3. CleanNet USA, Inc. is a commercial cleaning business that specializes in the
19 provision of janitorial services, building maintenance, and other related services. Under its
20 business model, CleanNet USA, Inc., enters into franchise agreements with so-called regional
21 subfranchisors or “area franchises,” such as D & G Enterprises and CleanNet of Southern
22 California. The area franchises then enter into purported franchise agreements with individual
23 workers (also called “unit franchises”), who perform the janitorial services. Plaintiffs and other
24 cleaners are the individuals who actually perform the janitorial services for CleanNet’s clients.

25 4. CleanNet treats Plaintiffs and other aggrieved cleaners as employees within the
26 meaning of California law and is liable for various Labor Code violations, as described below, as
27 Plaintiffs and aggrieved cleaners are plainly employees within the meaning of California law,
28 under both the “ABC” test for employment status and the common law *Borello* standard. The

1 ABC test governs the employment status question with respect to wage order violations,
2 including CleanNet's failure to pay overtime wages and provide cleaners with meal breaks and
3 paid rest breaks. The ABC test also governs Plaintiffs' individual claims and civil penalty
4 assessments for all Labor Code violations after January 1, 2020. *See* Cal. Labor Code § 2750.3.

5 5. By misclassifying Plaintiffs and aggrieved cleaners as independent contractors,
6 Defendants have sought to avoid various duties and obligations owed to them as employees
7 under California's Labor Code and Industrial Welfare Commission ("IWC") wage orders,
8 including: the duty to indemnify employees for all expenses and losses necessarily incurred in
9 connection with their employment (Cal. Labor Code § 2802); the duty to pay overtime
10 compensation for hours worked in excess of eight hours in a day or forty hours a week (Cal.
11 Labor Code §§510, 1194; IWC Wage Order No. 5, § 3); the duty to pay state and local minimum
12 wage for all hours worked (Cal. Labor Code §§1194, 1194.2, IWC Wage Order No. 5, § 4); the
13 duty to provide off-duty meal periods (Cal. Labor Code §§ 512, 226.7; IWC Wage Order No. 5,
14 § 11); the duty to authorize and permit paid rest periods (Cal. Labor Code §§ 226.7, 1194; IWC
15 Wage Order No. 5, § 12); the duty to furnish accurate wage statements (Cal. Labor Code § 226
16 and IWC Wage Order No. 5, § 7); the duty to pay an employees all wages owed upon
17 termination (Cal. Labor Code §§ 201–203); the duty to pay wages twice during each calendar
18 month (Cal. Labor Code § 204); unlawful collection and receipt of earned wages (Cal. Labor
19 Code §§ 221, 400–410; IWC Wage Order 5, §§ 8–9); unlawful written restriction on competition
20 (Cal. Labor Code § 432.5); unlawful coercing of employees to patronize their employer (Cal.
21 Labor Code § 450); failure to classify as employees (Cal. Labor Code § 2750.3); willful
22 misclassification (Cal. Labor Code § 226.8(a)(1) and IWC Wage Order 5, § 2); and unlawful
23 charges to willfully misclassified employees (Cal. Labor Code §226.8(a)(2) and IWC Wage
24 Order 5, §§ 2, 8-9).

25 6. Plaintiffs challenge Defendants' policy of willfully and unlawfully misclassifying
26 their cleaners as "independent contractors" and seek declaratory relief, as well as individual
27 damages and civil penalties, for Defendants' violations of the California Labor Code.

28 //

THE PARTIES

7. Plaintiff Irma Guerrero works in Los Angeles, California and resides in Whittier, California. She began working for CleanNet in 2006 as a janitorial service cleaner. In order to work for CleanNet, Plaintiff Guerrero entered into CleanNet's form Franchise Agreement with CleanNet of Southern California, Inc.. She entered into a second Franchise Agreement in 2017 after her 2006 agreement expired. In order to meet the requirements of CleanNet's customers, Plaintiff Guerrero normally works approximately 50 to 60 hours per week for CleanNet.

8. Plaintiff Ariel Cortes Silva works and resides in San Jose, California. He began working for CleanNet in 2011 as a cleaner. In order to work for CleanNet, Plaintiff Silva entered into CleanNet's form Franchise Agreement with D & G Enterprises. In order to meet the requirements of CleanNet's customers, Plaintiff Silva normally works approximately 35 to 40 hours per week for CleanNet, including one day per week (Thursdays) when he works between nine and ten hours. In the past, Plaintiff Silva has worked as much as ten to twelve hours on Thursdays.

9. Defendant D & G Enterprises is a California corporation and area franchise for CleanNet USA, Inc., doing business as CleanNet of the Bay Area. Defendant D & G Enterprises maintains its principal place of business is in Oakland, California.

10. Defendant CleanNet of Southern California, Inc., is a California corporation and area franchise for CleanNet USA, Inc.. Defendant CleanNet of Southern California, Inc., maintains its principal place of business in Santa Fe Springs, California.

11. Defendant CleanNet USA, Inc., is a Virginia corporation with its principal place of business in McLean, Virginia.

JURISDICTION AND VENUE

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

13. Plaintiffs seek damages and penalties in this case in an amount exceeding the jurisdictional minimum of this Court.

1 14. Venue in Alameda County is proper under California Code of Civil Procedure
2 section 395.5 because the unlawful conduct at issue in this case occurred in part in Alameda
3 County. In addition, Defendants conducted and continue to conduct substantial business in this
4 County and their liability arose, in part, in this County.

5 **FACTUAL ALLEGATIONS**

6 **A. Plaintiffs And Aggrieved Cleaners Perform Work Within CleanNet’s Usual Course**
7 **of Business And Are Not Engaged In An Independent Trade, Occupation, or**
8 **Business.**

9 15. CleanNet provides janitorial services to companies and other entities throughout
10 the United States, including in California. For example, CleanNet USA’s website states that
11 CleanNet “brings superior commercial cleaning services to local businesses, multi-location
12 facilities, and National Accounts.”¹ “CleanNet sets standards for quality processes, safety and
13 green cleaning.”² Its website lists its standard services, which include green cleaning, general
14 property cleaning (including offices, lobbies, and public areas), detailed elevator cleaning
15 (including tracks, walls, and switches), carpet cleaning and shampooing, among many other
16 services.

17 16. To carry out its business in California, CleanNet engages hundreds of persons like
18 Plaintiffs, who are assigned by CleanNet to provide janitorial services to CleanNet customers.
19 Plaintiffs—like CleanNet’s other cleaners—provide routine (and sometimes daily) services to
20 CleanNet customers.

21 17. CleanNet establishes the contracts with cleaners’ cleaning accounts, sets the
22 pricing for cleaners’ accounts, decides which accounts to offer to cleaners, collects payment
23 directly from these accounts before paying cleaners, makes deductions from cleaners’ pay before
24 compensating them, and determines when cleaners are ultimately paid. CleanNet also handles
25 account complaints and decides whether to remove an account from cleaners. And while
26 CleanNet charges cleaners for the privilege of working these CleanNet accounts, cleaners have

27 ¹ CleanNet USA, “Commercial Cleaning,” located at [https://www.cleannetusa.com/commercial-](https://www.cleannetusa.com/commercial-cleaning/)
28 cleaning/ (last accessed April 10, 2020).

² *Id.*

1 no rights to these accounts. For example, after paying to work an account, CleanNet can remove
2 the account from Plaintiffs at its discretion and sell it to another cleaner without providing
3 Plaintiffs with any compensation.

4 18. Cleaners do not operate truly independent cleaning companies serving many
5 different clients. Indeed, Plaintiffs work for CleanNet full-time and do not have cleaning
6 customers outside of their work for CleanNet. And CleanNet requires cleaners to agree to a
7 covenant not to compete, restricting their ability to provide janitorial services that compete for
8 CleanNet customers for one to two years following the end of their employment. CleanNet also
9 requires cleaners to agree not to solicit any other employees away from CleanNet's employ, or
10 otherwise incude anyone to leave CleanNet's employ.

11 19. CleanNet further reserves for itself the right to transfer or assign all of its rights
12 under the franchise agreement, but cleaners cannot sell, assign, or transfer any interest in the
13 agreement without CleanNet's prior written consent.

14 20. Cleaners enter into 10-year agreements with CleanNet, which are subject to
15 renewal. However, upon renewal, CleanNet retains the right to require cleaners to meet the
16 standards for new franchisees in effect at the time of renewal.

17 **B. CleanNet Requires Plaintiffs And Aggrieved Cleaners To Sign Form Agreements**
18 **That Give CleanNet All Necessary Control Over The Manner And Means By Which**
19 **Cleaners Perform Their Work.**

20 21. As part of their work for CleanNet, cleaners are required to enter into CleanNet's
21 form franchise agreement. This agreement and related policy documents dictate in detail how
22 cleaners are required to perform their work. For example:

23 a. CleanNet retains the right to require cleaners to attend CleanNet's store
24 management training program before beginning their work for CleanNet.

25 CleanNet also retains the right to require that cleaners take and pass a test at
26 the conclusion of each training session and to retake the test until achieving a
27 passing score.

28 b. CleanNet also gave cleaners a Franchise Manual. CleanNet requires cleaners

1 to comply with the Manual, which sets out specific requirements on various
2 topics and requires strict compliance with CleanNet's operational systems,
3 procedures, policies, and methods. CleanNet retains the right to add or delete
4 any information from the Manual. The Manual standards include but are not
5 limited to:

- 6 i. Instructions on interior office cleaning;
- 7 ii. Ground rules for custodians;
- 8 iii. Safety procedures for custodians;
- 9 iv. Basic restroom cleaning;
- 10 v. Daily floor maintenance and highspeed floor maintenance manual
11 method and machine method;
- 12 vi. Stripping and finishing floors;
- 13 vii. Basic carpet cleaning.
- 14 c. CleanNet requires that cleaners provide contact information so that CleanNet
15 can contact them or their managers, at all times.
- 16 d. CleanNet retains the right to perform billing services for all customers and, in
17 Mr. Silva's case, required that CleanNet bill all customers.
- 18 e. CleanNet requires that cleaners maintain supply levels as required by the
19 CleanNet Manuals.
- 20 f. CleanNet requires that cleaners offer all services that have been approved by
21 CleanNet.
- 22 g. CleanNet requires that cleaners sign a non-competition clause.
- 23 h. CleanNet retains broad termination rights under the franchise agreement.

24 **C. Plaintiffs And Aggrieved Cleaners Have Suffered Damages As a Result of**
25 **CleanNet's Misclassification.**

26 22. CleanNet classifies Plaintiffs and aggrieved cleaners as "independent
27 contractors," a designation that it made voluntarily and knowingly as a subterfuge to circumvent
28 the requirements of the California Labor Code. Specifically, CleanNet has a policy and practice

1 of willfully misclassifying cleaners that has resulted in significant wage and hour violations.

2 23. CleanNet assigns Plaintiffs and other aggrieved cleaners work that requires them
3 to work more than eight hours in a day or 40 hours in a week, but CleanNet does not provide
4 overtime compensation for these hours. CleanNet further assigns work without regard for meal
5 and rest breaks that are mandated by law. CleanNet does not provide cleaners with thirty minute
6 off-duty meal periods after working five hours and does not permit or authorize ten-minute paid
7 rest periods after work four hours (or every major fraction thereof). Nor does CleanNet
8 separately compensate cleaners for rest breaks. Finally, CleanNet does not pay the required
9 premium pay when it fails to provide breaks.

10 24. CleanNet has a policy and practice of deducting substantial fees from cleaners'
11 earnings, including royalty fees, management fees, franchise fees, insurance cost and direct
12 deposit fees, among other fees.

13 25. CleanNet also has a policy and practice of requiring that cleaners purchase other
14 work-related expenses including, but not limited to, cleaning supplies and transportation costs.
15 CleanNet does not reimburse Plaintiffs for these expenses.

16
17 **D. CleanNet USA, Inc., Is Liable for the Violations Against Plaintiffs And Aggrieved
Cleaners.**

18 26. Upon information and belief, CleanNet USA, Inc., designed and implemented the
19 contractual framework under which Plaintiffs and aggrieved cleaners were misclassified.

20 27. Plaintiffs and aggrieved cleaners purchased "unit franchises" from a regional
21 subfranchisor (also sometimes called an "area franchise") which, in Plaintiff Silva's case, was
22 D&G Enterprises, Inc., d/b/a CleanNet of the Bay Area and, in Plaintiff Guerrero's case, was
23 CleanNet of Southern California, Inc.. Other "regional subfranchisors" in California include
24 CleanNet of Northern California, CleanNet of San Diego, CleanNet of San Jose, and CleanNet of
25 Sacramento.

26 28. CleanNet USA establishes the system policies, procedures, and franchise
27 agreements under which unit franchise workers work, including the classification of franchise
28 workers as independent contractors.

29. As mentioned above, CleanNet USA's website claims that that CleanNet "brings superior commercial cleaning services to local businesses, multi-location facilities, and National Accounts." Indeed, CleanNet USA's business ultimately depends on someone performing the cleaning, which in this case are Plaintiffs and other California cleaners.

30. As such, CleanNet USA is directly liable for the herein-described violations as Plaintiffs' and aggrieved cleaners' employer. CleanNet USA is also liable to Plaintiffs and aggrieved cleaners pursuant to Labor Code Section 2810.3 as a "client employer" who "obtains or is provided workers to perform labor within its usual course of business from a labor contractor"—here the regional subfranchisor.

FIRST CAUSE OF ACTION
REIMBURSEMENT FOR BUSINESS EXPENSES
(CALIFORNIA LABOR CODE § 2802)
(By Plaintiff Guerrero Against Defendants CleanNet of Southern California, Inc.
and CleanNet USA, Inc. and By Plaintiff Silva Against Defendants D&G Enterprises, Inc.
and CleanNet USA, Inc.)

31. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference as though fully set forth herein.

32. While working for CleanNet, Plaintiffs have incurred and paid work-related expenses. Such expenses include, but are not limited to, transportation costs, franchising fees, royalty fees, administrative fees, insurance cost, direct deposit fees, cleaning supplies, CleanNet account fees, and other necessary expenses.

33. Defendants failed to indemnify or reimburse Plaintiffs for these expenses and losses. In failing to indemnify or reimburse Plaintiffs for necessary expenditures or losses that were incurred as a direct consequence of their discharge of duties for Defendants and/or obedience of Defendants' direction, Defendants violated California Labor Code § 2802.

34. Defendants' actions were willful, in bad faith, and in knowing violation of the California Labor Code.

35. By unlawfully failing to reimburse Plaintiffs for necessary expenditures or losses, Defendants have caused Plaintiffs to suffer losses in an amount to be determined at trial.

36. Under California Labor Code §§ 2802 and 218.5, Defendants are also liable to

1 Plaintiffs for reasonable attorney's fees and costs.

2 37. Plaintiffs request relief as described below.

3 **SECOND CAUSE OF ACTION**

4 **UNLAWFUL WITHHOLDING AND RECEIPT OF EARNED WAGES**
5 **(CALIFORNIA LABOR CODE §§ 221, 400-410, 2810.3, IWC WAGE ORDER NO. 5)**
6 **(By Plaintiff Guerrero Against Defendants CleanNet of Southern California, Inc.**
7 **and CleanNet USA, Inc. and By Plaintiff Silva Against Defendants D&G Enterprises, Inc.**
8 **and CleanNet USA, Inc.)**

9 38. The allegations of each of the preceding paragraphs are re-alleged and
10 incorporated herein by reference as though fully set forth herein.

11 39. California Labor Code § 221 makes it unlawful for an employer to collect or
12 receive from an employee any part of wages paid to the employee.

13 40. Labor Code §§ 400-410 ("Employee Bond Law") provide the limited
14 circumstances under which an employer can exact a cash bond from its employees. These
15 provisions are designed to protect employees against the very real danger of an employer taking
16 or misappropriating employee funds held by the employer in trust. IWC Wage Order No. 5, § 8
17 provides that the only circumstance under which an employer can make a deduction from an
18 employee's wage due to cash shortage, breakage, or loss of equipment is if the employer can
19 show that the shortage, breakage, or loss was the result of the employee's gross negligence or
20 dishonest or willful act.

21 41. These and related statutes, along with California's fundamental public policy
22 protecting wages and wage scales, prohibit employers from subjecting employees to
23 unanticipated or unpredicted reductions in their wages; making employees the insurers of their
24 employer's business losses; otherwise passing the ordinary business losses of the employer onto
25 the employee; taking deductions from wages for business losses unless the employer can
26 establish that the loss was caused by a dishonest or willful act, or gross negligence of the
27 employee; or taking other unpredictable deductions that may impose a special hardship on
28 employees.

42. California Labor Code § 2810.3, effective January 1, 2015, states that "A client
employer shall share with a labor contractor all civil legal responsibility and civil liability for all

workers supplied by that labor contractor for...the payment of wages.”

43. A “labor contractor” is defined as “an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business.”

44. “Client employer” is defined as “a business entity, regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor.”

45. Defendants D & G Enterprises and CleanNet of Southern California, Inc., served as labor contractors under § 2810.3 by providing workers to provide cleaning services, which is part of the usual course of business for CleanNet USA, Inc.

46. Upon information and belief, Defendant CleanNet USA, Inc., was a client employer within the definition of Labor Code § 2810.3.

47. Defendants’ policy and practice of deducting franchise fees, royalty fees, administrative fees, insurance costs, direct deposit fees and other expenses from Plaintiffs’ compensation violates the above-referenced sections of the California Labor Code and IWC Wage Order.

48. Plaintiffs are entitled to a return of the monies paid as well as interest that has accrued, reasonable attorneys’ fees, and costs.

49. Plaintiffs request relief as described below.

THIRD CAUSE OF ACTION
FAILURE TO AUTHORIZE AND PROVIDE MEAL PERIODS
(CALIFORNIA LABOR CODE §§ 226.7, 512, 2810.3; IWC WAGE ORDER NO. 5)
(By Plaintiff Guerrero Against Defendants CleanNet of Southern California, Inc.
and CleanNet USA, Inc. and By Plaintiff Silva Against Defendants D&G Enterprises, Inc.
and CleanNet USA, Inc.)

50. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference as though fully set forth herein.

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

52. California Labor Code § 512 states in part, “An employer may not employ an

1 employee for a work period of more than five hours per day without providing the employee
2 with a meal period of not less than 30 minutes,” and “[a]n employer may not employ an
3 employee for a work period of more than 10 hours per day without providing the employee with
4 a second meal period of not less than 30 minutes.”

5 53. IWC Wage Order No. 5, § 11 provides in part that “[n]o employer shall employ
6 any person for a work period of more than five (5) hours without a meal period of not less than
7 30 minutes.”

8 54. If an employer fails to provide an employee with a meal period in accordance
9 with these provisions, the employer shall pay the employee one additional hour of pay at the
10 employee’s regular rate of compensation for each workday that the meal period is not provided.

11 55. Defendants have not promulgated a policy for the provision of meal breaks to
12 Plaintiffs.

13 56. Plaintiffs have regularly worked in excess of five hours a day without being
14 provided at least a half-hour meal period in which they were relieved of all duties, as required by
15 California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5, § 11.

16 57. By failing to provide Plaintiffs an uninterrupted, thirty-minute meal period within
17 the first five hours of work each day, Defendants have violated the California Labor Code and
18 applicable IWC Wage Order provisions.

19 58. Plaintiffs are informed and believe, and on that basis allege, that Defendants have
20 never paid the one hour of compensation as a premium payment to other cleaners pursuant to
21 California Labor Code § 226.7 for not providing proper meal periods.

22 59. In addition to being liable as an employer, CleanNet USA, Inc., is also liable to
23 Plaintiffs as a client employer for the violations detailed herein under Labor Code § 2810.3.

24 60. Because Defendants failed to afford proper and timely meal periods, they are
25 liable to Plaintiffs for one hour of additional pay at the regular rate of compensation for each
26 workday that the proper meal periods were not provided, pursuant to Cal. Labor Code § 226.7(b)
27 and IWC wage order No. 5.

28 61. By violating Cal Labor Code §§ 226.7 and 512, and IWC wage order No. 5,

1 Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Cal. Labor
2 Code §§ 218.5 and 1194.

3 62. Plaintiffs request relief as described below.

4 **FOURTH CAUSE OF ACTION**
5 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**
6 **(CALIFORNIA LABOR CODE §§ 226.7, 1194, 2810.3, and IWC WAGE ORDER NO. 5)**
7 **(By Plaintiff Guerrero Against Defendants CleanNet of Southern California, Inc.**
8 **and CleanNet USA, Inc. and By Plaintiff Silva Against Defendants D&G Enterprises, Inc.**
9 **and CleanNet USA, Inc.)**

10 63. The allegations of each of the preceding paragraphs are re-alleged and
11 incorporated herein by reference as though fully set forth herein.

12 64. California Labor Code § 226.7 states in relevant part, "An employer shall not
13 require an employee to work during a meal or rest or recovery period mandated pursuant to an
14 applicable ... order of the Industrial Welfare Commission."

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

22 66. If an employer fails to provide an employee a rest period in accordance with the
23 applicable provisions of this order, the employer shall pay the employee one hour of pay at the
24 employee's regular rate of compensation for each work day that the rest period is not provided.

25 67. Upon information and belief, Defendants did not promulgate a compliant rest
26 break policy.

27 68. Plaintiffs have regularly worked in excess of four hours a day without Defendants
28 authorizing and permitting them to take at least a 10 minute paid rest period or have failed to
separately pay him for the rest periods taken, as required by Labor Code § 226.7 and IWC Wage
Order No. 7.

69. Furthermore, CleanNet is legally required to compensate Plaintiff Silva and Plaintiff Guerrero and other employees for non-productive rest periods, while CleanNet's piece rate compensation system only compensates employees for productive work time spent performing services. *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 870-71 (2013).

70. In addition to being liable as an employer, CleanNet USA, Inc., is also liable to Plaintiffs as a client employer for the violations detailed herein under Labor Code § 2810.3.

71. Plaintiffs were not paid for all hours worked, and Defendants maintained no system for the recording of rest periods.

72. Because Defendants failed to authorize and permit Plaintiffs compliant rest periods, they are liable to Plaintiffs for one hour of additional pay at the regular rate of compensation for each workday that the compliant rest periods were not provided, attorneys' fees, penalties, and interest, pursuant to Labor Code §§ 226.7(b), 218.5, and 1194, and IWC wage order No. 5.

73. Plaintiffs request relief as described below.

FIFTH CAUSE OF ACTION
FAILURE TO FURNISH ACCURATE WAGE STATEMENTS
(CALIFORNIA LABOR CODE § 226 & IWC WAGE ORDER NO. 5)
(By Plaintiff Guerrero Against Defendants CleanNet of Southern California, Inc.
and CleanNet USA, Inc. and By Plaintiff Silva Against Defendants D&G Enterprises, Inc.
and CleanNet USA, Inc.)

74. The allegations of each of the preceding paragraphs are re-alleged and incorporated by reference as though fully set forth herein.

75. Pursuant to California Labor Code § 226(a) and IWC Wage Order No. 5, Defendants have at all relevant times been required, semimonthly or at the time of each payment of wages, to furnish Plaintiffs accurate, itemized written statements containing all the information described in § 226 and Wage Order No. 5, § 7, including, but not limited to, the total hours worked by the employees.

76. Defendants have knowingly and intentionally failed to comply with § 226 by knowingly and intentionally failing to furnish Plaintiffs with accurate, itemized written statements showing their actual and total hours worked.

1 77. Defendants have also failed to accurately record meal periods as detailed above,
2 to pay meal period premium wages for missed meal periods, and to report those meal period
3 premium payments on wage statements.

4 78. Under California Labor Code § 226(e), an employee suffering injury as a result of
5 knowing and intentional failure of an employer to comply with § 226(a) is entitled to recover the
6 greater of all actual damages or fifty (\$50) for the initial pay period in which a violation occurs
7 and one hundred dollars (\$100) for each violation in a subsequent pay period, up to a maximum
8 amount of \$4,000.

9 79. In addition, upon information and belief, and in violation of IWC Wage Order No.
10 5, Defendants have failed to keep the required payroll records showing the actual hours worked
11 each day by Plaintiffs. As a direct and proximate result of Defendants' actions, Plaintiffs
12 suffered economic harm as they have been precluded from accurately monitoring the number of
13 hours worked and thus seeking all accrued overtime pay.

14 80. As a direct and proximate result of Defendants' unlawful conduct as set forth
15 herein, Plaintiffs have been injured by not receiving the information required by California Labor
16 Code § 226(a), not being paid their overtime hours, not having records showing their total hours
17 worked, not being able to ascertain from their wage statements whether or how they have been
18 lawfully compensated for all hours worked, among other things, in an amount to be determined
19 at trial.

20 81. Plaintiffs may recover damages and penalties provided for under California Labor
21 Code § 226(e), plus interest thereon, reasonable attorneys' fees, and costs.

22 82. Plaintiffs request relief as described below.

23 **SIXTH CAUSE OF ACTION**
24 **FAILURE TO PAY CALIFORNIA (AND LOCAL) MINIMUM WAGES**
25 **(CALIFORNIA LABOR CODE §§ 1182.12, 1194, 1197, 2810.3; IWC WAGE**
26 **ORDER NO. 5; SAN JOSE AND LOS ANGELES MINIMUM WAGE**
27 **ORDINANCES)**

28 **(By Plaintiff Guerrero Against Defendants CleanNet of Southern California, Inc.**
 and CleanNet USA, Inc. and By Plaintiff Silva Against Defendants D&G Enterprises, Inc.
 and CleanNet USA, Inc.)

83. The allegations of each of the preceding paragraphs are re-alleged and

1 incorporated by reference as though fully set forth herein.

2 84. IWC Wage Order No. 5 and California Labor Code §§ 1194 and 1197 require
3 employers to pay employees at least the minimum wage for all hours worked.

4 85. California Labor Code § 1182.12 and the IWC Wage Order No. 5 provide that the
5 California minimum wage was \$10.00/hour effective January 1, 2016; \$10.50/hour effective
6 January 1, 2017; \$11.00/hour effective January 1, 2018; \$12.00/hour effective January 1, 2019;
7 and \$13.00/hour effective January 1, 2020.

8 86. Plaintiff Silva was additionally covered by a local minimum wage ordinance
9 requiring a higher minimum wage than that set out in the Minimum Wage Order. The San Jose
10 minimum wage was \$10.30/hour effective January 1, 2016; \$10.50/hour effective January 1,
11 2017; \$12.00/hour effective July 1, 2017; \$13.50/hour effective January 1, 2018; \$15.00/hour
12 effective January 1, 2019; and \$15.25/hour effective January 1, 2020.

13 87. Plaintiff Guerrero was likewise covered by a local minimum wage ordinance
14 requiring a higher minimum wage than that set out in the Minimum Wage Order. The Los
15 Angeles minimum wage was \$10.00/hour effective January 1, 2016; \$10.50/hour effective July
16 1, 2016; \$12.00/hour effective July 1, 2017; \$13.25/hour effective July 1, 2018; and \$14.25/hour
17 effective July 1, 2019.

18 88. Defendants have a policy and practice of willfully and intentionally
19 misclassifying Plaintiffs and aggrieved cleaners as independent contractors and, as a result, have
20 failed to pay the applicable minimum wages for all hours worked.

21 89. In addition to being liable as an employer, CleanNet USA, Inc. is also liable to
22 Plaintiffs as a client employer for the violations detailed herein under Labor Code § 2810.3.

23 90. Defendants' actions were willful, in bad faith, and without reasonable grounds for
24 believing that the acts or omissions were not in violation of state law.

25 91. Accordingly, Plaintiffs are entitled to recover the unpaid wages in amount to be
26 determined at trial.

27 92. In addition to recovering unpaid wages, Plaintiffs are entitled to recover interest,
28 liquidated damages, and reasonable attorneys' fees and costs pursuant to California Labor Code

1 §§ 1194(a) and 1194.2(a).

2 93. Plaintiffs request relief as described below.

3 **SEVENTH CAUSE OF ACTION**
4 **FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION**
5 **(CALIFORNIA LABOR CODE §§ 510, 1194, 2810.3, IWC WAGE ORDER NO. 5)**
6 **(By Plaintiff Guerrero Against Defendants CleanNet of Southern California, Inc.**
7 **and CleanNet USA, Inc. and By Plaintiff Silva Against Defendants D&G Enterprises, Inc.**
8 **and CleanNet USA, Inc.)**

7 94. The allegations of each of the preceding paragraphs are re-alleged and
8 incorporated herein by reference as though fully set forth herein.

9 95. During the Class Period, Plaintiffs worked on many occasions in excess of eight
10 hours in a workday and/or 40 hours in a work week in violation of California Labor Code §§
11 510, 1194 and IWC Wage Order No. 5, § 3, which require overtime compensation for non-
12 exempt employees. The precise number of overtime hours will be proven at trial.

13 96. In addition to being liable as an employer, CleanNet USA, Inc., is also liable to
14 Plaintiffs as a client employer for the violations detailed herein under Labor Code § 2810.3.

15 97. Defendants' actions were willful, in bad faith, and in knowing violation of the
16 California Labor Code.

17 98. As a direct and proximate result of Defendants' unlawful conduct as set forth
18 herein, Plaintiffs sustained damages, including loss of earnings for hours of overtime work, in an
19 amount to be determined at trial. Pursuant to California Labor Code § 1194(a), Plaintiffs are
20 entitled to recover their unpaid overtime and double time compensation, including interest
21 thereon. Plaintiffs are also entitled to recover reasonable attorneys' fees and costs.

22 99. Plaintiffs request relief as described below.

23 **EIGHTH CAUSE OF ACTION**
24 **VIOLATIONS OF THE UNFAIR COMPETITION LAW (UCL)**
25 **(CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200-09)**
26 **(By Plaintiff Guerrero Against Defendants CleanNet of Southern California, Inc.**
27 **and CleanNet USA, Inc. and By Plaintiff Silva Against Defendants D&G Enterprises, Inc.**
28 **and CleanNet USA, Inc.)**

27 100. The allegations of each of the preceding paragraphs are re-alleged and
28 incorporated herein by reference as though fully set forth herein.

1 101. California Business & Professions Code § 17200, *et seq.* (“UCL”) prohibits
2 “unfair competition” in the form of any unlawful, unfair, or fraudulent business act or practice.

3 102. Defendants have engaged in unfair competition as defined by the UCL by, and as
4 further described above: (1) failing to indemnify Plaintiffs for employment-related business
5 expenses and losses in violation of Labor Code § 2802 & and IWC Wage Order No. 5; (2) failing
6 and refusing to provide meal and rest periods to Plaintiffs in violation of California Labor Code
7 §§ 226.7 and 512 and IWC Wage Order No. 5; (3) failing to provide complete and accurate
8 itemized wage statements in violation of California Labor Code §§ 226 & 1174 and IWC Wage
9 Order No. 5; (4) failing to pay minimum wage and overtime compensation to Plaintiffs in
10 violation of California Labor Code §§ 510, 1194 *et seq.*, and IWC Wage Order No. 5, §§ 3 and 4;
11 (5) willfully and unlawfully misclassifying Plaintiffs as independent contractors in violation of
12 California Labor Code §§ 226.8, 2750.3 & and IWC Wage Order No. 5; (6) charging Plaintiffs
13 and/or making deductions from compensation for goods, materials, services, and equipment
14 maintenance arising from their employment in violation of Labor Code § 226.8; (7) unlawfully
15 collecting or receiving wages from Plaintiffs in violation of Labor Code § 221 and IWC Wage
16 Order No. 5; (8) unlawfully requiring Plaintiffs to put up a cash bond as an investment in
17 Defendants’ business in violation of Labor Code §§ 401 *et seq.*; (9) compelling or coercing
18 Plaintiffs to patronize Defendants in the purchase of a thing of value in violation of Labor Code
19 § 450; (10) requiring Plaintiffs to agree to terms and conditions (including a non-compete
20 provision) known to Defendants to be prohibited by law in violation of Labor Code § 432.5.

21 103. CleanNet USA, Inc. has also engaged in unfair competition as described above by
22 failing to pay all wages owed, as required by Labor Code Section 2810.3.

23 104. Defendants’ knowing failure to adopt policies in accordance with and/or to adhere
24 to these laws, all of which are binding upon and burdensome to its competitors, engenders an
25 unfair competitive advantage to Defendants thereby constituting an unfair business practice
26 under California Business & Professions Code §§ 17200-17208.

27 105. Plaintiffs suffered injury in fact and have lost money as a direct and proximate
28 result of Defendants’ unfair competition, including, but not limited to, money due to them as

1 overtime compensation, minimum wages, necessary expenditures or losses, unlawful fees arising
2 from his employment, compensation for missed meal periods, and waiting time penalties, which
3 money has been acquired by Defendants by means of their unfair competition within the
4 meaning of the UCL.

5 106. Pursuant to California Business & Professions Code §§ 17200 et seq., Plaintiffs
6 are entitled to (i) restitution of all fees, wages, and compensation alleged herein that Defendants
7 collected, withheld, and retained during the period commencing four years preceding the filing
8 of this action, (ii) an award of reasonable attorneys' fees pursuant to Cal. Civ. Proc. Code §
9 1021.5 and other applicable law, and (iii) costs. All remedies are cumulative pursuant to
10 California Business & Professions Code § 17205.

11 107. Plaintiffs request relief as described below.

12
13 **REPRESENTATIVE ACTION PURSUANT TO PRIVATE ATTORNEYS GENERAL**
14 **ACT OF 2004**
15 **CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
16 **(CALIFORNIA LABOR CODE §2698, ET SEQ.)**

17 108. The allegations of each of the preceding paragraphs are re-alleged and
18 incorporated herein by reference as though fully set forth herein.

19 109. Plaintiffs bring a claim under California Labor Code §§ 2698–99 in a
20 representative capacity on behalf of current and former cleaners/franchise workers of Defendants
21 who were subjected to the unlawful wage and hour practices alleged herein and below.

22 110. The California Labor Code Private Attorneys General Act of 2004 (“PAGA”),
23 California Labor Code § 2698 et seq., grants California employees the right to bring a civil
24 action for the violation of any provision of the Labor Code on behalf of themselves and other
25 current or former employees in order to recover civil penalties. PAGA is intended to assist in the
26 achievement of maximum compliance with state labor laws by empowering aggrieved
27 employees to act as private attorneys general in order to recover civil penalties for Labor Code
28 violations that would otherwise be prosecuted by the state. *See Arias v. Super. Ct.* (2009) 46 Cal.
4th 969, 980.

111. PAGA permits an aggrieved employee to collect the civil penalty authorized by law and normally collectible by the California Labor and Workforce Development Agency. To address violations for which no penalty has been established, § 2699(f) creates a private right of action for aggrieved employees and a default penalty in the amount of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation. *See* Cal. Lab. Code § 2699(f). Plaintiffs will seek to collect these civil penalties for CleanNet’s Labor Code violations under California Labor Code §§ 201-203, 204, 221, 226, 226.3, 226.7, 226.8, 400-410, 432.5, 450, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1174.5, 2802, 2810.3, 2750.3, and IWC Wage Order No. 5.

112. Specifically, Plaintiffs allege that while CleanNet classifies Plaintiffs and aggrieved employees as “independent contractors,” this designation was made voluntarily, knowingly, and willfully as a subterfuge to circumvent the requirements of the California Labor Code. As described above, cleaners are not free from CleanNet’s control and direction, either under their contract or in fact. CleanNet cleaners perform work that is within CleanNet’s usual course of business. And cleaners are not engaged in an independently established trade, occupation, or business. There is no reasonable dispute that CleanNet’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 Los Angeles* (2018) 4 Cal.5th 903. *See also* Labor Code Section 2750.3. Additionally, CleanNet exercises comprehensive control over the manner and means by which Plaintiffs 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.

113. Plaintiffs are “aggrieved employees” as defined by PAGA and seek to represent all other owner-operator cleaners/franchise workers in California who have personally performed cleaning work for any CleanNet “regional subfranchisor,” including D&G Enterprises, Inc. d/b/a CleanNet of the Bay Area, CleanNet of Southern California, Inc., CleanNet of Northern California, CleanNet of San Diego, CleanNet of San Jose, and CleanNet of Sacramento. Plaintiffs contend that each of the franchise workers for these regional subfranchisors was an employee of CleanNet USA, Inc., making CleanNet USA, Inc., also liable for the alleged PAGA

1 penalties.

2 114. Plaintiffs hereby seek to collect civil penalties for the above-described Labor
3 Code violations, including:

- 4 a. Under California Labor Code §2699(f)(2), Plaintiffs seek a civil penalty of
5 one hundred dollars (\$100) for each Plaintiff and each aggrieved employee
6 per pay period for the initial violation of Labor Code § 2750.3, for failure to
7 classify aggrieved cleaners as employees under § 2750.3, and two hundred
8 dollars (\$200) for each Plaintiff and each aggrieved employee per pay period
9 for each subsequent violation of Labor Code § 2750.3.
- 10 b. Under California Labor Code §226.8(a)(1) and (c), Plaintiffs seek a civil
11 penalty of not less than five thousand dollars (\$5,000) and not more than
12 fifteen thousand dollars (\$15,000) for each violation against each Plaintiff and
13 each aggrieved employee for willful misclassification of Plaintiffs and
14 aggrieved employees as independent contractors, and if the Court finds that
15 Defendants have engaged in a pattern or practice of violating § 226.8(a)(1), a
16 civil penalty of not less than ten thousand dollars (\$10,000) and nor more than
17 twenty-five thousand dollars (\$25,000) for each violation.
- 18 c. Under California Labor Code § 226.8(a)(2) and (c), Plaintiff seeks a civil
19 penalty of not less than five thousand dollars (\$5,000) and not more than
20 fifteen thousand dollars (\$15,000) for each violation against each Plaintiff and
21 each aggrieved employee for the CleanNet charging Plaintiffs and aggrieved
22 employees fees such as royalty fees, management fees, franchise fees,
23 insurance cost and direct deposit fees, among other fees, and if the Court finds
24 that Defendants have engaged in a pattern or practice of violating §
25 226.8(a)(2), a civil penalty of not less than ten thousand dollars (\$10,000) and
26 nor more than twenty-five thousand dollars (\$25,000) for each violation.
- 27 d. Under California Labor Code §2699(f)(2), Plaintiffs seek a civil penalty of
28 one hundred dollars (\$100) for each Plaintiff and each aggrieved employee

1 per pay period for the initial violation of Labor Code § 2810.3, for CleanNet
2 USA's failure to share all legal responsibility with its labor contractors under
3 § 2810.3, and two hundred dollars (\$200) for each Plaintiff and each
4 aggrieved employee per pay period for each subsequent violation of Labor
5 Code § 2810.3.

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

12 b. Under California Labor Code § 2699(f)(2), Plaintiffs seek a civil penalty of
13 one hundred dollars (\$100) for each Plaintiff and each aggrieved employee
14 per pay period for the initial violation of Labor Code § 221, for withholding or
15 collecting wages from employees, and two hundred dollars (\$200) for each
16 Plaintiff and each aggrieved employee per pay period for each subsequent
17 violation of labor code § 221.

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

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

1 for each Plaintiff and each aggrieved employee per pay period for each
2 subsequent violation of Labor Code § 226.7 for failing to authorize and permit
3 rest periods.

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

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

17 g. Under California Labor Code § 2699(f)(2), Plaintiffs seek a civil penalty of
18 one hundred dollars (\$100) for each Plaintiff and each aggrieved employee
19 per pay period for the initial violation of Labor Code § 432.5, for requiring
20 Plaintiffs and aggrieved employees to agree to terms and conditions known to
21 Defendants to be prohibited by law (including non-compete provisions) and
22 two hundred dollars (\$200) for each Plaintiff and each aggrieved employee
23 per pay period for each subsequent violation of Labor Code § 432.5.

24 h. Under California Labor Code § 2699(f)(2), Plaintiffs seek a civil penalty of
25 one hundred dollars (\$100) for each aggrieved employee per pay period for
26 the initial violation of Labor Code §§ 201, 202, and 203 for Defendants'
27 failure to pay earned wages upon discharge, and two hundred dollars (\$200)
28 for each aggrieved employee per day period for each subsequent violation of

1 Labor Code §§ 201, 202, and 203.

2 i. Under California Labor Code § 210, Plaintiffs seek a civil penalty of one
3 hundred dollars (\$100) for each Plaintiff and each aggrieved employee for
4 each initial failure to pay each employee twice per months (and instead only
5 paying them once per month) in violation of Labor Code § 204, and two
6 hundred dollars (\$200) plus 25 percent (25%) of the amount unlawfully
7 withheld for each Plaintiff and each aggrieved employee if the Court finds that
8 Defendants' violations were willful or intentional, or for each subsequent
9 violation of Labor Code § 204.

10 j. Under California Labor Code § 2699(f)(2), Plaintiffs seek a civil penalty of
11 one hundred dollars (\$100) for each Plaintiff and each employee per pay
12 period for the initial violation of Labor Code § 450, for compelling or
13 coercing Plaintiffs and aggrieved employees to patronize Defendants in the
14 purchase of royalty fees, management fees, franchise fees, insurance cost and
15 direct deposit fees, among other fees, and two hundred dollars (\$200) for each
16 Plaintiff and each aggrieved employee per pay period for each subsequent
17 violation of Labor Code § 450.

18 k. Under California Labor Code § 2699(f)(2), Plaintiffs seek a civil penalty of
19 one hundred dollars (\$100) for each Plaintiff and each aggrieved employee
20 per pay period for the initial violation of Labor Code §§ 400-407, for
21 Defendants' unlawful requirement that Plaintiffs and aggrieved employees put
22 up a cash bond for royalty fees, management fees, franchise fees, insurance
23 cost and direct deposit fees, among other fees as part of their employment
24 contracts, and two hundred dollars (\$200) for Plaintiffs and each aggrieved
25 employee per pay period for each subsequent violation of Labor Code §§ 400-
26 407.

27 115. California Labor Code § 2699(g) further provides that any employee who prevails
28 in an action for civil penalties is entitled to an award of reasonable attorneys' fees and costs.

1 Plaintiffs hereby seek to recover their attorneys' fees and costs under this fee and cost shifting
2 statute.

3 116. On April 13, 2020 pursuant to California Labor Code § 2699.3, Plaintiffs sent
4 notice by certified mail to the Labor and Workforce Development Agency (LWDA) and
5 Defendants of the specific provisions of the Labor Code that Plaintiffs allege Defendants have
6 violated, including the facts and theories to support the violations. The LWDA received
7 Plaintiffs' notice that same day: April 13, 2020. The sixty-five-day time limit for the agency to
8 respond has expired, and as such Plaintiffs have exhausted their administrative remedies.

9
10 **PRAYER FOR RELIEF**

11 Based on the above allegations, Plaintiffs respectfully request entry of judgment against
12 Defendants, as follows:

13 1. A declaratory judgment that Defendants have knowingly and intentionally violated
14 the following provisions of law:

15 a. Cal. Labor Code § 2802 by failing to indemnify Plaintiffs for all necessarily
16 incurred business expenses and losses;

17 b. Cal. Labor Code §§ 221, 2810.3 and 400-410 and IWC wage order No. 5, by
18 making unlawful deductions from the compensation paid to Plaintiffs for ordinary
19 business expenses and losses without a showing that the expenses and/or losses were
20 due to Plaintiffs' dishonest or willful act, or to their gross negligence;

21 c. Cal. Labor Code §§ 226.7, 512, 2810.3, and IWC wage order No. 5 by failure to
22 provide off-duty meal periods to Plaintiffs;

23 d. Cal. Labor Code §§ 226.7, 1194, 2810.3, and IWC wage order No. 5 by failure to
24 authorize and permit paid rest periods to Plaintiffs;

25 e. Cal. Labor Code § 226, 2810.3, and IWC wage order No. 5, by failing to provide
26 Plaintiffs with itemized statements of total hours worked with each payment of
27 wages;

1 f. Cal. Labor Code §§ 1182.12, 1194, 1197, 2810.3, IWC wage order 5 and San Jose
2 and Los Angeles Minimum Wage Ordinances, by failing to pay minimum wage to
3 Plaintiffs;

4 g. Cal. Labor Code §§ 510, 1194, et seq., 2810.3, and IWC wage order No. 5, by
5 failing to pay proper overtime compensation to Plaintiffs;

6 h. Cal. Business and Professions Code §§ 17200-17208, by failing to reimburse
7 Plaintiffs for necessarily incurred business expenses, by requiring Plaintiffs to
8 indemnify Defendants for ordinary business losses, by failing to provide off-duty
9 meal periods and/or pay meal period compensation to Plaintiffs, by failing to
10 authorize and permit paid rest breaks and/or missed rest break compensation to
11 Plaintiffs, by failing to provide Plaintiffs with itemized wage statements showing all
12 hours worked by Plaintiffs; by failing to pay Plaintiffs minimum wage; and by failing
13 to pay Plaintiffs overtime premium pay;

14 2. A declaratory judgment that Defendants' violations as described above were
15 willful and/or knowing and intentional;

16 3. An award to Plaintiffs of statutory penalties because of Defendants' failure to
17 provide Plaintiffs with itemized wage statements that comply with the requirements of Cal.
18 Labor Code section 226, subject to proof at trial;

19 4. An award to Plaintiffs of damages in the amount of unpaid overtime and
20 minimum wage compensation, necessary business expenses, unlawful deduction, and meal and
21 rest period compensation, including interest thereon subject to proof at trial;

22 5. An order requiring Defendants to pay restitution of all amounts owed to Plaintiffs
23 for Defendants' failure to reimburse for business expenses, amounts unlawfully deducted from
24 wages, failure to pay legally required meal and rest period pay, unpaid minimum wages, unpaid
25 overtime, and interest thereon, in an amount according to proof, pursuant to Business &
26 Professions Code section 17203;

27 6. For civil penalties under Labor Code §§ 210, 226.3, 226.8, 558, 1197.1, 1174.5,
28 and 2699(f) for Defendants' violations of §§ 201-203, 204, 221, 226, 226.3, 226.7, 226.8, 400-

1 410, 432.5, 450, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 2802, 2810.3,
2 2750.3, and IWC Wage Order No. 5, in an amount according to proof;

3 7. An award to Plaintiffs of reasonable attorneys' fees and costs, pursuant to Cal.
4 Code of Civil Procedure section 1021.5 and Cal. Labor Code sections 218.5, 226, 1194, 2802,
5 2699(g), and/or other applicable law; and

6 8. For interest on all sums at the maximum legal rate;

7 9. For such other and further relief as this Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs Irma Guerrero and Ariel Cortes Silva demand a trial by jury.

10
11 Dated: June 24, 2020

RUKIN HYLAND & RIGGIN LLP

12 By: _____

Valerie Brender

Valerie Brender

Jessica Riggin

Attorneys for Plaintiffs