

Alan Harris (SBN 146079)
Priya Mohan (SBN 228984)
Lin Zhan (SBN 317087)
655 North Central Ave., 17th Fl.
Glendale, California 91203
Telephone: (323) 962-3777
Facsimile: (323) 962-3004
aharris@harrisandruble.com
pmohan@harrisandruble.com
lzhan@harrisandruble.com
Attorneys for Plaintiff

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

MARIO ERNESTO GIL CANAS,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

ABM INDUSTRY GROUPS, LLC, a
Delaware Limited Liability Company, and
DOE ONE through and including DOE
TEN,

Defendants.

Case No. **20STCV37443**

COMPLAINT

[PAGA Law Enforcement Complaint]

1. Civil Penalties, Pursuant to Cal. Lab.
Code § 2698 *et seq.*

1 Mario Ernesto Gil Canas (“Plaintiff”), on behalf of himself as an individual and in
2 his representative capacity, and on behalf of the State of California Labor & Workforce
3 Development Agency (“LWDA”) under the Labor Code Private Attorneys General Act
4 of 2004 (“PAGA”), California Labor Code (“Labor Code”) § 2698 *et seq.*, alleges as
5 follows:

6 ***JURISDICTION AND VENUE***

7 1. This is a PAGA law enforcement action seeking civil penalties and
8 attorneys’ fees and costs, all according to proof, against Defendant ABM Industry
9 Groups, LLC (“ABM”). This action alleges that ABM, *inter alia*, ABM: (1) collected
10 unlawful deductions from employees; (2) failed to provide wage statements that supplied
11 all of the information required by Labor Code § 226(a) (the “Code”); (3) failed to pay
12 Plaintiff and Aggrieved Employees minimum and overtime wages; (4) failed to timely
13 pay Plaintiff all wages when due, Code §§ 203, 204; (5) failed to provide a proper sick
14 leave policy for employees, Code §§ 233, 234; and (6) failed to Make Security Deposits
15 Cal. Lab. Code §§ 403, 404, 405, 406 and IWC Wage Order, Sec.9(c); (7) failed to
16 Provide Employment Records, Cal. Lab. Code § 226(b); (8) failed to provide records,
17 Code §432; (9) failed to provide records, Code § 1198.5.2. On or about May 13, 2020,
18 Plaintiff provided statutory notice to the California Labor and Workforce Development
19 Agency and to Defendant of the PAGA claims set forth in this complaint. Plaintiff brings
20 this action pursuant to PAGA, which does not require class certification, on a
21 representative basis on behalf of the Labor & Workforce Development Agency of the
22 State of California (the “LWDA”). The alleged violations include failure to make timely
23 payment of earned wages, pay minimum wages, and for sick pay violations, wage
24 statement violations, continuing wages, and unfair competition.

25 2. Venue as to Defendant is proper in this District because a substantial part of
26 the events or omissions giving rise to the claims occurred in this District. Defendant
27 maintains an office, transacts business, has an agent, or is found in the County of Los
28 Angeles and is within the jurisdiction of this Court for purposes of service of process.

1 The unlawful acts alleged herein had a direct effect on and were committed within the
2 State of California.

3 3. This Court has jurisdiction over Defendants because, upon information and
4 belief, Defendants are either residents of California, have minimum contacts in
5 California, or otherwise intentionally avail themselves of the protections of California so
6 as to render California's exercise of jurisdiction over Defendants consistent with
7 traditional notions of fair play and substantial justice. This case is a law enforcement
8 action under the California Labor Code Private Attorneys General Act ("PAGA") seeking
9 unpaid wages, continuing wages, damages, civil penalties, statutory penalties and
10 attorneys' fees and costs. Emergency Rule 9 as promulgated by the Judicial Council of
11 California provides: "Notwithstanding any other law, the statutes of limitations and
12 repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until
13 October 1, 2020." The Advisory Committee Comment notes that: "Emergency rule 9 is
14 intended to apply broadly to toll any statute of limitations on the filing of a pleading in
15 court asserting a civil cause of action. The term "civil causes of action" includes special
16 proceedings. (See Code Civ. Proc., §§ 312, 363 ["action," as used in title 2 of the code
17 (Of the Time of Commencing Civil Actions), is construed "as including a special
18 proceeding of a civil nature"). . . . The rule also applies to statutes of limitations on filing
19 of causes of action in court found in codes other than the Code of Civil Procedure."

20 ***PARTIES AND SUBSTANTIVE ALLEGATIONS***

21 4. Plaintiff Mario Ernesto Gil Canas is an individual who during the time
22 periods relevant to this Complaint, was and is a resident of the County of Los Angeles,
23 State of California. Plaintiff brings this action on behalf of himself, on a representative
24 basis on behalf of the LWDA and the State of California, on behalf of all others similarly
25 situated, and pursuant to California Business and Professions Code section 17200 *et seq.*

26 5. Plaintiff is informed and believes, and based thereon alleges, that
27 Defendant ABM Industry Groups, LLC ("ABM") is a company that conducts significant
28 amounts of business within Los Angeles County. ABM touts itself as a leading provider

1 of integrated facility solutions. Among the services it provides, ABM offers parking
2 valet and transportation and janitorial contractor services to clients across the United
3 States, including throughout California. ABM is a Delaware Limited Liability Company
4 with its headquarters in Sugar Land, Texas. ABM is authorized to do and does business
5 in California. Plaintiff is informed and believes, and based thereon allege that ABM is a
6 temporary services employer as defined by Cal. Lab. Code § 201.3, which statute
7 provides, in part:

8 (a) For purposes of this section, the following definitions apply:

9 (1) “Temporary services employer” means an employing unit that contracts
10 with clients or customers to supply workers to perform services for the
11 clients or customers and that performs all of the following functions:

12 (A) Negotiates with clients and customers for matters such as the time and
13 place where the services are to be provided, the type of work, the working
14 conditions, and the quality and price of the services.

15 (B) Determines assignments or reassignments of workers, even if workers
16 retain the right to refuse specific assignments.

17 (C) Retains the authority to assign or reassign a worker to another client or
18 customer when the worker is determined unacceptable by a specific client or
19 customer.

20 (D) Assigns or reassigns workers to perform services for clients or
21 customers.

22 (E) Sets the rate of pay of workers, whether or not through negotiation.

23 (F) Pays workers from its own account or accounts.

24 (G) Retains the right to hire and terminate workers.

25 Cal. Lab. Code § 201.3(a)(1)(A)-(G). As a temporary services employer, Defendant
26 contracts with clients or customers to supply workers to perform services.

27 6. Defendant and/or its affiliates have been repeatedly charged with PAGA
28 violations, commencing soon after the statute became effective. E.g., Augustus v.

1 American Commercial Security Services, Inc. (L.A.Super.Ct., 2006, No. BC347914)
2 (settled for up to \$2,500,000, including civil penalties of \$730,000). Accordingly, it is
3 appropriate to draw an inference that Defendant's conduct as described herein is
4 intentional, resulting in part from a continuing practice of devoting insufficient resources
5 to the payroll accounting and related human resources and compliance functions.

6 7. The true names and/or capacities, whether individual, corporate, associate or
7 otherwise, of defendants Does 1 to 10 inclusive, are unknown to Plaintiff at this time,
8 who therefore sues said defendants by such fictitious names. When the true names and
9 capacities of said defendants have been ascertained, Plaintiff will amend this complaint
10 accordingly. Plaintiff is informed and believes and thereupon alleges that each defendant
11 designated herein as a Doe is responsible, negligently, intentionally, contractually, or in
12 some other actionable manner, for the events and happenings hereinafter referred to, and
13 caused injuries and damages proximately thereby to Plaintiff as is hereinafter alleged,
14 either through said defendants' own wrongful conduct or through the conduct of their
15 agents, servants, employees, representatives, officers or attorneys, or in some other
16 manner.

17 **GENERAL ALLEGATIONS**

18 8. Beginning on or about December 27, 2018 until on or about November 15,
19 2019, Plaintiff was employed by ABM as a parking attendant in various locations in Los
20 Angeles County.

21 9. Plaintiff contends that Defendant failed to provide him and other Aggrieved
22 Employees with adequate pay stubs. In this regard, section 226 of the California Labor
23 Code provides:

24 (a) Every employer shall, semimonthly or at the time of each
25 payment of wages, furnish each of his or her employees, either as a
26 detachable part of the check, draft, or voucher paying the employee's wages,
27 or separately when wages are paid by personal check or cash, an itemized
28 statement in writing showing (1) gross wages earned, (2) total hours worked

1 by the employee, except for any employee whose compensation is solely
2 based on a salary and who is exempt from payment of overtime under
3 subdivision (a) of Section 515 or any applicable order of the Industrial
4 Welfare Commission, (3) the number of piece-rate units earned and any
5 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
6 deductions, provided, that all deductions made on written orders of the
7 employee may be aggregated and shown as one item, (5) net wages earned,
8 (6) the inclusive dates of the period for which the employee is paid, (7) the
9 name of the employee and his or her social security number, (8) the name
10 and address of the legal entity that is the employer, and (9) all applicable
11 hourly rates in effect during the pay period and the corresponding number of
12 hours worked at each hourly rate by the employee and . . . if the employer is
13 a temporary services employer as defined in Section 201.3, the rate of pay
14 and the total hours worked for each temporary services assignment. The
15 deductions made from payments of wages shall be recorded in ink or other
16 indelible form, properly dated, showing the month, day, and year, and a copy
17 of the statement or a record of the deductions shall be kept on file by the
18 employer for at least three years at the place of employment or at a central
19 location within the State of California.

20

21 (e) An employee suffering injury as a result of a knowing and
22 intentional failure by an employer to comply with subdivision (a) is entitled
23 to recover the greater of all actual damages or fifty dollars (\$50) for the
24 initial pay period in which a violation occurs and one hundred dollars (\$100)
25 per employee for each violation in a subsequent pay period, not exceeding
26 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
27 award of costs and reasonable attorney's fees.

28 Cal. Lab. Code § 226.

1 10. On information and belief, Plaintiff contend that Defendant failed to
2 provide Plaintiff and Aggrieved Employees with the data required by section 226 of the
3 California Labor Code. ABM's failure to provide the correct information on wage
4 statements has caused confusion and harm to Plaintiff by, among other things making it
5 impossible for Plaintiff to determine whether or not he has been paid correctly. Further,
6 although ABM is a temporary service provider. Wage statements issued to Plaintiff show
7 that ABM's wage statements fail to provide the rate of pay and total hours worked for
8 each temporary services assignment. In addition to subjecting ABM to the damages
9 specified in section 226(e), ABM's failure to provide such information to Plaintiff and
10 Aggrieved Employees subjects it to civil penalties. See Cal. Lab. Code §§ 226.3, 2698 *et*
11 *seq.*

12 11. At all times relevant herein, sections 226 (b), (c), and (f) of the California
13 Labor Code further provided in part:

14 (b) An employer that is required by this code or any regulation adopted pursuant to
15 this code to keep the information required by subdivision (a) shall afford current
16 and former employees the right to inspect or copy records pertaining to their
17 employment, upon reasonable request to the employer.

18 ...

19 (c) An employer who receives a written or oral request to inspect or copy records
20 pursuant to subdivision (b) pertaining to a current or former employee shall
21 comply with the request as soon as practicable, but no later than 21 calendar days
22 from the date of the request.

23 ...

24 (f) A failure by an employer to permit a current or former employee to inspect or
25 copy records within the time set forth in subdivision (c) entitles the current or
26 former employee or the Labor Commissioner to recover a seven-hundred-fifty-
27 dollar (\$750) penalty from the employer.

28 12. At all times relevant herein, section 432 of the California Labor Code

1 provided that: "If an employee or applicant signs any instrument relating to the obtaining
2 or holding of employment, he shall be given a copy of the instrument upon request." Cal.
3 Lab. Code § 432.

4 13. At all times relevant herein, section 1198.5 of the California Labor Code
5 provided in part:

6 (a) Every current and former employee, or his or her representative, has the right to
7 inspect and receive a copy of the personnel records that the employer maintains
8 relating to the employee's performance or to any grievance concerning the
9 employee.

10 (b) (1) The employer shall make the contents of those personnel records available
11 for inspection to the current or former employee, or his or her representative, at
12 reasonable intervals and at reasonable times, but not later than 30 calendar days
13 from the date the employer receives a written request . . .

14 14. On November 12, 2019 Plaintiff requested his employment records from
15 Defendant pursuant to sections 226(c), 432 and 1198.5. However, Defendant failed to
16 provide complete records within the time period required by statute.

17 15. On information and belief, Plaintiff contends that Defendant failed to
18 provide Plaintiff and Aggrieved Employees with payment of the required minimum
19 wage. For instance, Plaintiff was required to attend a new-hire training session for which
20 he has never received any compensation. Plaintiff, as well as other Aggrieved
21 Employees were required to attend new-hire training sessions, without pay. At these
22 unpaid sessions, held for the benefit of ABM, the new employees was required, *inter alia*,
23 to review the rules set forth in the Employee Handbook, review employer policies dealing
24 with all manner of matters that the employers had to communicate to the new employees,
25 payroll procedures, safety procedures and more. Plaintiff and Aggrieved Employees
26 performed this work without any compensation at all by Defendant.

27 16. At all relevant times mentioned herein, section 204 of the California Labor
28 Code provided, in relevant part:

1 All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2,
2 earned by any person in any employment are due and payable twice during
3 each calendar month, on days designated in advance by the employer as the
4 regular paydays. Labor performed between the 1st and 15th days, inclusive,
5 of any calendar month shall be paid for between the 16th and the 26th day of
6 the month during which the labor was performed, and labor performed
7 between the 16th and the last day, inclusive, of any calendar month, shall be
8 paid for between the 1st and 10th day of the following month.

9 Cal. Lab. Code § 204.

10 17. To date, Defendant has failed to compensate Plaintiff and Aggrieved
11 Employees for all of their earned wages in accordance with the California Labor Code.

12 18. Plaintiff also contends that Defendant failed to put certain monies in
13 segregated, interest bearing accounts and accordingly unlawfully deducted uniform
14 deposits from his paycheck and the paychecks of other Aggrieved Employees, all in
15 violation of California Labor Code section 221 and otherwise as hereinafter described. In
16 addition to subjecting ABM to damages, ABM's unlawful deductions subject it to civil
17 penalties. See Cal. Lab. Code § 225.5.

18 19. Defendant is liable to Plaintiff and former employees for continuing wages
19 pursuant to sections 201 through 203 of the Labor Code. Section 201 of the Labor Code
20 states that, "[i]f an employer discharges an employee, the wages earned and unpaid at the
21 time of discharge are due and payable immediately." Cal. Lab. Code § 201(a). Similarly,
22 section 202 of the Labor Code provides that, "[i]f an employee . . . quits his or her
23 employment, his or her wages shall become due and payable not later than 72 hours
24 thereafter, unless the employee has given 72 hours previous notice of his or her intention
25 to quit, in which case the employee is entitled to his or her wages at the time of quitting."
26 Id. § 202(a). According to section 203 of the Labor Code, "[i]f an employer willfully
27 fails to pay, without abatement or reduction, in accordance with Sections 201[or] 202. . .
28 any wages of an employee who is discharged or who quits, the wages of the employee

1 shall continue as a penalty from the due date thereof at the same rate until paid or until an
2 action therefor is commenced; but the wages shall not continue for more than 30 days.”
3 Id. § 203(a). In addition to subjecting Defendant to damages or penalties, Defendant’s
4 failure to timely pay all outstanding wages upon the termination of employment subjects
5 it to civil penalties. See Cal. Lab. Code § 2698 *et seq.* Defendant did not pay all wages
6 due and owing to Plaintiff within the statutorily required time period.

7 20. Further, Defendant’s sick pay policy violates sections 233 and 234 of the
8 Labor Code. Section 233 of the California Labor Code states:

9 a) Any employer who provides sick leave for employees shall permit an
10 employee to use in any calendar year the employee’s accrued and available
11 sick leave entitlement, in an amount not less than the sick leave that would
12 be accrued during six months at the employee’s then current rate of
13 entitlement, for the reasons specified in subdivision (a) of Section 246.5.

14 This section does not extend the maximum period of leave to which an
15 employee is entitled under Section 12945.2 of the Government Code or
16 under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec.
17 2601 *et seq.*), regardless of whether the employee receives sick leave
18 compensation during that leave.

19 . . .

20 (c) An employer shall not deny an employee the right to use sick leave or
21 discharge, threaten to discharge, demote, suspend, or in any manner
22 discriminate against an employee for using, or attempting to exercise the
23 right to use, sick leave to attend to an illness or the preventive care of a
24 family member, or for any other reason specified in subdivision (a) of
25 Section 246.5.

26 (d) Any employee aggrieved by a violation of this section shall be entitled to
27 reinstatement and actual damages or one day’s pay, whichever is greater,
28 and to appropriate equitable relief.

1 Cal. Lab. Code § 233. Section 234 of the Labor Code states:

2 An employer absence control policy that counts sick leave taken pursuant to
3 Section 233 as an absence that may lead to or result in discipline, discharge,
4 demotion, or suspension is a per se violation of Section 233. An employee
5 working under this policy is entitled to appropriate legal and equitable relief
6 pursuant to Section 233.

7 Cal. Lab. Code § 234. Defendant's sick leave policy, which *inter alia* does not include
8 leave for care of grandchildren or grandparents, as referenced in Code section 245.5, is in
9 violation of sections 233 and 234 of the Labor Code, a violation which gives rise to
10 PAGA civil penalties.

11 21. Plaintiff and Aggrieved Employees were injured by such actions and are
12 therefore entitled to seek the amounts as set forth in Labor Code section 226 subsections
13 (e)–(f), and penalties pursuant to Cal. Lab. Code § 558. Present section 558.1 of the
14 California Labor Code in part provides:

15 (a) Any employer or other person acting on behalf of an employer, who
16 violates, or causes to be violated, any provision regulating minimum wages
17 or hours and days of work in any order of the Industrial Welfare
18 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7,
19 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

20 (b) For purposes of this section, the term “other person acting on behalf of
21 an employer” is limited to a natural person who is an owner, director,
22 officer, or managing agent of the employer, and the term “managing agent”
23 has the same meaning as in subdivision (b) of Section 3294 of the Civil
24 Code.

25 22. At all times relevant hereto, section 1194 of the California Labor Code
26 required (1) the payment of at least the minimum wage. At all relevant times mentioned
27 herein, California Labor Code section 1194 provided, in relevant part:

28 Notwithstanding any agreement to work for a lesser wage, any employee

1 receiving less than the legal minimum wage or the legal overtime
2 compensation applicable to the employee is entitled to recover in a civil
3 action the unpaid balance of the full amount of this minimum wage or
4 overtime compensation, including interest thereon, reasonable attorney's
5 fees, and costs of suit.

6 Cal. Lab. Code § 1194(a).

7 23. At all relevant times mentioned herein, section 1198 of the California
8 Labor Code provided:

9 The maximum hours of work and the standard conditions of labor fixed by
10 the commission shall be the maximum hours of work and the standard
11 conditions of labor for employees. The employment of any employee for
12 longer hours than those fixed by the order or under conditions of labor
13 prohibited by the order is unlawful.

14 Cal. Lab. Code § 1198. Section 1198 refers to “conditions of labor prohibited by the
15 order [of the IWC]” and therefore incorporates by reference IWC Wage Order
16 Number 16. To date, Plaintiff has not been paid for all of the hours he worked for
17 Defendant. By failing to pay Plaintiff for all of his hours of work, Defendant violated
18 section 1198 by employing Plaintiff “under conditions of labor prohibited by the order.”
19 Cal. Lab. Code § 1198.

20 24. At all relevant times mentioned herein, section 1194 of the California Labor
21 Code provided, in relevant part:

22 Notwithstanding any agreement to work for a lesser wage, any employee
23 receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil
25 action the unpaid balance of the full amount of this minimum wage or
26 overtime compensation, including interest thereon, reasonable attorney's
27 fees, and costs of suit.

28 Id. § 1194(a).

1 25. Plaintiff is informed and believes, and based thereon allege, that Defendant's
2 labor practices and all other aspects of its operations, as well as the job duties of
3 Aggrieved Employees, are stringently controlled and monitored pursuant to uniform
4 standards established by Defendant that apply throughout the company and certainly
5 throughout California. Plaintiff is informed and believes, and based thereon alleges, that
6 Defendant requires compliance with detailed standards for completing assigned tasks and
7 running its operations. As a result, Plaintiff and Defendant's Aggrieved Employees in
8 California have been subject to uniform policies with respect to the violations alleged
9 herein and cause Aggrieved Employees to be similarly situated regardless of location and
10 position.

11 26. Plaintiff is further informed and believes that Defendant uniformly applies
12 policies and procedures to all Aggrieved Employees with respect to the maintenance of
13 employment records. As a direct and proximate result of the unlawful actions of
14 Defendant, as alleged herein above and below, Plaintiff and Aggrieved Employees have
15 suffered and continue to suffer damages.

16 27. Section 2699 of the California Labor Code, the Labor Code Private
17 Attorneys General Act of 2004, provides in subpart (a) and subparts (f) through (g):

18 (a) Notwithstanding any other provision of law, any provision of this code
19 that provides for a civil penalty to be assessed and collected by the Labor
20 and Workforce Development Agency or any of its departments, divisions,
21 boards, agencies or employees, for a violation of this code, may, as an
22 alternative, be recovered through a civil action brought by an aggrieved
23 employee on behalf of himself or herself and other current or former
24 employees.

25

26 (f) For all provisions of this code except those for which a civil penalty is
27 specifically provided, there is established a civil penalty for a violation of
28 these provisions, as follows . . . (2) If, at the time of the alleged violation, the

1 person employs one or more employees, the civil penalty is one hundred
2 dollars (\$100) for each aggrieved employee per pay period for the initial
3 violation and two hundred dollars (\$200) for each aggrieved employee per
4 pay period for each subsequent violation.

5

6 (g) Except as provided in paragraph (2), an aggrieved employee may recover
7 the civil penalty described in subdivision (f) in a civil action pursuant to the
8 procedures specified in Section 2699.3 filed on behalf of himself or herself
9 and other current or former employees against whom one or more of the
10 alleged violations was committed. Any employee who prevails in any action
11 shall be entitled to an award of reasonable attorney's fees and costs. Nothing
12 in this part shall operate to limit an employee's right to pursue or recover
13 other remedies available under state or federal law, either separately or
14 concurrently with an action taken under this part.

15 Cal. Lab. Code § 2699.

16 28. At all times relevant herein, section 226.3 of the California Labor Code
17 provided, in relevant part:

18 Any employer who violates subdivision (a) of Section 226 shall be subject
19 to a civil penalty in the amount of two hundred fifty dollars (\$ 250) per
20 employee per violation in an initial citation and one thousand dollars (\$
21 1,000) per employee for each violation in a subsequent citation, for which
22 the employer fails to provide the employee a wage deduction statement or
23 fails to keep the records required in subdivision (a) of Section 226. The civil
24 penalties provided for in this section are in addition to any other penalty
25 provided by law.

26 Cal. Lab. Code § 226.3.

27 29. At all times relevant herein, section 210 of the California Labor Code
28 provided, in relevant part:

1 (a) In addition to, and entirely independent and apart from, any other
2 penalty provided in this article, every person who fails to pay the wages of
3 each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,
4 205.5, and 1197.5, shall be subject to a civil penalty as follows:

5 (1) For any initial violation, one hundred dollars (\$100) for each failure to
6 pay each employee.

7 (2) For each subsequent violation, or any willful or intentional violation,
8 two hundred dollars (\$200) for each failure to pay each employee, plus 25
9 percent of the amount unlawfully withheld.

10 Cal. Lab. Code § 210.

11 30. At all times relevant herein, section 558 of the California Labor Code
12 provided, in relevant part:

13 (a) Any employer or other person acting on behalf of an employer who
14 violates, or causes to be violated, a section of this chapter or any provision
15 regulating hours and days of work in any order of the Industrial Welfare
16 Commission shall be subject to a civil penalty as follows:

17 (1) For any initial violation, fifty dollars (\$50) for each underpaid
18 employee for each pay period for which the employee was underpaid in
19 addition to an amount sufficient to recover underpaid wages.

20 (2) For each subsequent violation, one hundred dollars (\$100) for each
21 underpaid employee for each pay period for which the employee was
22 underpaid in addition to an amount sufficient to recover underpaid wages.

23 (3) Wages recovered pursuant to this section shall be paid to the affected
24 employee.

25

26 (c) The civil penalties provided for in this section are in addition to any
27 other civil or criminal penalty provided by law.

28 Cal. Lab. Code § 558.

31. At all times relevant herein, section 1197.1 of the California Labor Code provided, in relevant part:

(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Cal. Lab. Code § 1197.1.

32. The Wage Order also provides for civil penalties with respect to violations of the Wage Order.

33. ***Unfair Competition.*** Through the violations described in this Complaint, Defendant has gained a decided advantage over competitors that abide by California's laws relating to wage statements, timely payment of final wages, and minimum wage and overtime laws. Defendant's unlawful practices constitute unfair competition. Section 17200 *et seq.* of the California Business and Professions Code prohibits such unfair competition.

34. Plaintiff and other workers were not paid at least the minimum wage for all hours worked pursuant to the relevant minimum wage requirements. Accordingly, Plaintiff and other workers are entitled to payment of civil penalties.

35. Defendant, as to Plaintiff and other workers who were issued Wage Statements, also failed to accurately provide the data required by section 226(a) of the California Labor Code and, accordingly, Defendant's failure to provide such data entitles

1 Plaintiff and each Aggrieved Employee to civil penalties, along with the LWDA. As a
2 Temporary Services Employer within the meaning of Labor Code section 201.3,
3 Defendant is required to show on employee wage statements, “the rate of pay and the
4 total hours worked for each temporary services assignment.” Cal. Lab. Code § 226(a)(9).
5 The failure to provide Plaintiff and others with the required data, caused Plaintiff and
6 others injury by depriving them of information to which they were legally entitled.
7 Despite the requirements of the statute, it is not possible for the employee “from the wage
8 statement alone” to ascertain “(i) The amount of the gross wages or net wages paid to the
9 employee during the pay period or any of the other information required to be provided
10 on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
11 subdivision (a).” Cal. Lab. Code §226(e)(2)(B).

12 36. Defendant failed to provide a compliant sick leave policy pursuant to the
13 California Labor Code, the policy, inter alia, excluding grandparents and grandchildren
14 from the status of family members. This entitles Plaintiff and Aggrieved Employees to
15 damages, including interest thereon, and they request such relief as well as civil penalties.

16 37. Defendant’s failure to make payments within the time provided by sections
17 201, 201.3, or 202 of the California Labor Code has been and is “willful” within the
18 meaning of section 203 of the California Labor Code and, accordingly, Plaintiff and
19 others who quit or was discharged and was not paid in accordance with the law is entitled
20 to the continuing wages for which provision is made by section 203 of the California
21 Labor Code.

22 38. The disposition of the claims will provide substantial benefits to both the
23 parties and the Court.

24 39. The identity of the Aggrieved Employees is readily ascertainable through an
25 examination of the records that Defendant is required by law to keep. Likewise, the
26 dollar amount owed to each Aggrieved Employee is readily ascertainable by an
27 examination of those same records.
28

1 40. The provisions of the California Labor Code upon which Plaintiff bases his
2 claims are broadly remedial in nature. These laws and labor standards serve an important
3 public interest in establishing minimum working conditions and standards in California.
4 These laws and labor standards protect the average working employee from exploitation
5 by employers who may seek to take advantage of superior economic and bargaining
6 power in setting onerous terms and conditions on employment.

7 41. The nature of this action and the laws available to Plaintiff and Aggrieved
8 Employees make this case a particularly efficient and appropriate procedure to redress the
9 wrongs alleged herein. Further, this case involves a large corporate defendant and a large
10 number of individual employees with many relatively small claims. If each employee
11 were required to file an individual lawsuit, ABM would necessarily gain an
12 unconscionable advantage because it would be able to exploit and overwhelm the limited
13 resources of each individual plaintiff with its vastly superior legal and financial
14 resources.

15 42. Requiring each to pursue an individual remedy would also discourage the
16 assertion of lawful claims by employees who would be disinclined to file an action
17 against their former and/or current employer for real and justifiable fear of retaliation and
18 permanent damage to their careers with respect to subsequent employment.

19 43. Moreover, the prosecution of separate actions by individual Aggrieved
20 Employees would create a substantial risk of inconsistent or varying adjudications with
21 respect to individual Aggrieved Employees against the Defendant.

22 44. There is a well-defined community of interest in the questions of law and
23 fact involved affecting the parties to be represented. The questions of law and fact
24 common predominate over questions that may impact individual Aggrieved Employees.
25 These common questions include but are not limited to, the following:

26 (a) Whether Defendant's practice of deducting uniform deposits from the
27 paychecks of employees and failing to hold those funds in a segregated, interest bearing
28 account is unlawful;

1 (b) Whether Defendant failed to pay minimum wage under California Labor Code
2 § 1194(a);

3 (c) Whether Defendant utilized and enforced a sick leave policy that violated
4 Labor Code sections 233 and 234;

5 (d) Whether Defendant failed to provide employees with adequate paystubs in
6 accordance with California Labor Code § 226(a);

7 (e) Whether Defendant failed to timely provide quitting or terminated employees
8 their final wages;

9 (f) Whether Defendant's conduct constituted an illegal, unfair, or deceptive
10 business practice;

11 (g) Whether Plaintiff and Aggrieved Employees are entitled to relief.

12 45. Proof of a common business practice or factual pattern that Plaintiff
13 experienced is representative of that experienced by the Aggrieved Employees.

14 46. Such a pattern, practice, and uniform administration of illegal corporate
15 policies with respect to employee compensation, as described herein, creates an
16 entitlement in common for Plaintiff and Aggrieved Employees to recover in a civil action
17 including reasonable attorney's fees, and costs of suit according to the mandate of the
18 California Labor Code.

19 47. Plaintiff asserts claims that are typical of those of the Aggrieved Employees
20 because they were employed by ABM in California, they were subjected to ABM's
21 uniform policies and procedures, and they were similarly injured as a result of ABM's
22 actions.

23 48. Plaintiff will fairly and adequately represent and protect the interests of the
24 Aggrieved Employees in that they have no disabling conflicts of interest that would be
25 antagonistic to them. Moreover, Plaintiff seeks relief that is not antagonistic or adverse
26 to the Aggrieved Employees in that the infringement of their rights and the damages that
27 they suffered are typical of all other Aggrieved Employees. Additionally,
28 Plaintiff has retained counsel who are competent and experienced in PAGA litigation.

1 49. Plaintiff and Aggrieved Employees have all similarly suffered irreparable
2 harm and damages as a result of Defendant's unlawful and wrongful conduct. This
3 action will provide substantial benefits to both the Aggrieved Employees and the public
4 because, absent this action, Defendant's unlawful conduct will continue un-remedied and
5 uncorrected.

6 50. On or about May 13, 2020, Plaintiff gave written notice by certified mail and
7 online filing of Defendant's violations of various provisions of the California Labor Code
8 as alleged in this Complaint to the Labor and Workforce Development Agency
9 ("LWDA") and Defendant.

10 51. More than sixty-five days have passed from the date of Plaintiff's notice to
11 the LWDA and Plaintiff has not been notified by the LWDA that it intends to investigate
12 Plaintiff's allegations. Therefore, pursuant to section 2699.3(a)(2)(A), Plaintiff "may
13 commence a civil action pursuant to Section 2699." Cal. Lab. Code § 2699.3(a)(2)(A).

14 52. Plaintiff is informed and believes and thereon alleges that Defendant has
15 routinely failed to provide Plaintiff and other Aggrieved Employees with the prompt
16 payment of wages and vacation pay upon termination of employment, reporting time pay,
17 and proper itemized wage statements.

18 53. Plaintiff alleges that Defendant violated PAGA in the following ways: (1)
19 failing to timely pay all wages, including minimum wages in violation of Labor Code §§
20 201, 202, 203, 204 and 1194; (2) willfully failing to provide Aggrieved Employees with
21 proper itemized wage statements in violation of Labor Code § 226(a); (3) failing to
22 timely and properly respond to Labor Code section 226(b) and 1198.5 requests for
23 employment records; 4) failing to make security deposits pursuant to Cal. Lab. Code §§
24 403, 404 and 405; and 5) failing to provide a proper sick leave policy pursuant to Cal.
25 Lab. Code §§ 233 and 234. "PAGA actions can serve to *indirectly* enforce certain wage
26 order provisions by enforcing *statutes* that require compliance with wage orders (e.g., §
27 1198, which prohibits longer work hours than those fixed by wage order or employment
28 under conditions prohibited by a wage order)." Thurman v. Bayshore Transit Mgmt.,

1 Inc., 203 Cal. App. 4th 1112, 1132 (2012).

2 ***FIRST CLAIM FOR RELIEF***

3 *(Civil Penalties Pursuant to California Labor Code § 2698 et seq. Claim by Plaintiff and*
4 *Aggrieved Employees against Defendant ABM)*

5 54. Plaintiff repeat and re-allege the preceding paragraphs as if fully set forth
6 herein.

7 55. The applicable Wage Order provides, in part:

8 (C) A reasonable deposit may be required as security for the return of the
9 items furnished by the employer under provisions of subsections (A) and (B)
10 of this section upon issuance of a receipt to the employee for such deposit.

11 Such deposits shall be made pursuant to Section 400 and following of the
12 Labor Code or an employer with the prior written authorization of the

13 employee may deduct from the employee's last check the cost of an item
14 furnished pursuant to (A) and (B) above in the event said item is not

15 returned. No deduction shall be made at any time for normal wear and tear.

16 All items furnished by the employer shall be returned by the employee upon
17 completion of the job.

18 IWC Wage Order 9, ¶ 9(C). Defendant ABM's practice of taking uniform deductions
19 from Plaintiff and Aggrieved Employee's paychecks violates California Labor Code §
20 403, 404, and 405. Plaintiff is informed and believes and based thereon alleges that
21 Defendant ABM commingled the earned but unpaid wages of Plaintiff and the Aggrieved
22 Employees with other funds of ABM in violation of Labor Code § 405. ABM failed and
23 refused to pay interest to workers on the return of such deposits.

24 56. Defendant ABM's practices violate Labor Code §§ 403, 404 and 405 and
25 any associated penalties.

26 57. The California Labor Code requires employers to furnish each employee
27 with an itemized statement on a semi-monthly basis or with each paycheck showing the
28 gross wages earned, net wages earned, and all applicable deductions. See Cal. Lab. Code

1 § 226(a).

2 58. Defendant failed to timely provide Plaintiff and Aggrieved Employees
3 Members with wage statements conforming to the requirements of section 226(a) of the
4 California Labor Code. Despite the requirements of the statute, Defendant did not
5 provide accurate information to Plaintiff and/or Aggrieved Employees regarding the
6 wage rates, inclusive dates of the pay period and hours worked. It is not possible for
7 Plaintiff and/or others “from the wage statement alone” to ascertain information required
8 to be provided on the itemized wage statements pursuant to section 226(a). ABM’s
9 failure to provide the correct information on these wage statements has caused confusion
10 by making it impossible for Plaintiff or others to determine whether or not they have been
11 paid correctly. In addition, although ABM was a temporary services employer during the
12 time period relevant to this complaint, ABM failed to comply with the requirements of
13 Cal. Lab. Code § 226(a)(9) and provide “the rate of pay and the total hours worked for
14 each temporary services assignment.” Cal. Lab. Code § 226(a)(9).

15 59. Plaintiff and others were injured by Defendant’s failure to maintain and
16 provide adequate payroll records, and they are therefore entitled to seek the amounts set
17 forth in Labor Code section 226(e), including reasonable attorney’s fees and costs of suit.

18 60. Section 1197 of the Labor Code states:

19 The minimum wage for employees fixed by the commission or by any
20 applicable state or local law, is the minimum wage to be paid to employees,
21 and the payment of a lower wage than the minimum so fixed is unlawful.

22 This section does not change the applicability of local minimum wage laws
23 to any entity.

24 Labor Code § 1197.

25 61. Defendant, by failing to pay Plaintiff and Aggrieved Employees, at
26 least the minimum wage for all of their hours worked, as required by and in violation of
27 sections 1194 and 1197 of the California Labor Code.

28 62. Plaintiff and Aggrieved Employees are accordingly entitled to the payment

1 of civil penalties to each employee whose rights were violated and reasonable attorney's
2 fees and costs.

3 63. Section 203 of the Labor Code states that, "[i]f an employer willfully fails to
4 pay, without abatement or reduction, in accordance with Sections 201, . . . [or] 202, . . .
5 any wages of an employee who is discharged or who quits, the wages of the employee
6 shall continue as a penalty from the due date thereof at the same rate until paid or until an
7 action therefor is commenced; but the wages shall not continue for more than 30 days."
8 Cal. Lab. Code § 203(a). By failing to pay minimum wages as alleged above, as well as
9 by failing to provide Plaintiff and Aggrieved Employees their final paychecks within the
10 time specified by sections 201, 202 and 203 of the California Labor Code, Defendant has
11 willfully failed to pay all wages due and owing to those Aggrieved Employees who are
12 no longer employed by Defendant. For example, although Plaintiff was told by
13 Defendant's representative that his last day of work was November 15, 2019, he was not
14 provided his final paycheck on that day and only received a paycheck some days later.

15 64. Plaintiff and Former Employees are therefore entitled to seek the amounts
16 set forth in Labor Code section 203(e).

17 65. Pursuant to Labor Code section 226(b), an employer shall afford current and
18 former employees the right to inspect or copy the records pertaining to that current or
19 former employee, upon reasonable request to the employer.

20 66. Plaintiff requested that Defendant permit inspection or copying of his
21 employment records pursuant to Labor Code section 226(b). Defendant has failed to
22 provide Plaintiff with an opportunity to inspect or copy all of the required employment
23 records within 21 days of his request.

24 67. Pursuant to Labor Code Section 226(f), Plaintiff is entitled, and hereby seeks
25 to recover from Defendant a seven-hundred-fifty dollar (\$750) penalty for each violation,
26 reasonable attorney's fees, and the costs of bringing this cause of action.

27 68. Pursuant to Labor Code section 1198.5, an employer shall afford current and
28 former employees the right to inspect or copy the records pertaining to that current or

1 former employee, upon reasonable request to the employer.

2 69. Plaintiff has requested that Defendant permit inspection or copying of his
3 employment records pursuant to Labor Code section 1198.5. Defendant failed to provide
4 Plaintiff with complete records.

5 70. Pursuant to Labor Code Section 1198.5(k), Plaintiff is entitled, and hereby
6 seeks to recover from Defendant a seven-hundred-fifty dollar (\$750) penalty for each
7 violation, reasonable attorney's fees, and the costs of bringing this cause of action.

8 71. At all times relevant to this Complaint, Labor Code §§ 233, 234 were in full
9 force and effect and binding on Defendant. Under California law, for purposes of
10 compliance with sections 233 and 234 of the Code, a "family member" includes both a
11 grandparent and a grandchild. Code § 245.5 (c)(5) and (6). Under ABM's sick leave
12 policies, neither a grandparent nor a grandchild is deemed a covered "family member."
13 Maintaining such an illegal policy is a per se violation of Section 233. An employee
14 working under this policy is entitled to appropriate legal and equitable relief pursuant to
15 Section 233." Cal. Labor Code § 234.

16 72. Plaintiff is informed and believes, and thereon allege that the sick leave
17 policy of Defendant is unlawful under of the California Labor Code. Plaintiff and the
18 Aggrieved Employees are therefore entitled to the recovery of "actual damages or one
19 day's pay, whichever is greater, and to appropriate equitable relief." Cal. Lab. Code §
20 233, as well as an award of reasonable attorneys' fees.

21 73. California Business and Professions Code section 17200 *et seq.* prohibits
22 acts of unfair competition, including any "unlawful, unfair, or fraudulent business act or
23 practice." Cal. Bus. & Prof. Code § 17200. Plaintiff alleges that ABM has engaged in
24 unfair business practices in California by the above-described failure to pay minimum
25 wages to employees, failure to maintain accurate payroll records, failure to provide
26 adequate paystubs, failure to pay final wages to quitting and/or discharged employees and
27 through its unlawful deductions from employee paychecks and failure to keep those funds
28 in a segregated, interest-bearing account, and failure to provide a lawful sick pay policy.

1 74. ABM’s actions entitle Plaintiff and Aggrieved Employees to seek the
2 remedies available pursuant to section 17200 *et seq.* Plaintiff seeks full restitution of said
3 amounts from ABM, as necessary and according to proof, to restore any and all
4 amounts—including interest—withheld, acquired, or converted by ABM by means of the
5 unfair practices complained of herein. Plaintiff, on behalf of himself and other similarly
6 situated employees, as well as on behalf of the general public, further seek attorney’s fees
7 and costs pursuant to sections 218.5 of the California Labor Code and 1021.5 of the
8 California Code of Civil Procedure. In addition, Plaintiff seeks the appointment of a
9 receiver as necessary.

10 75. Plaintiff is an “aggrieved employee” under PAGA, as he were employed by
11 Defendant during the applicable statutory period and suffered one or more of the Labor
12 Code Violation set forth herein. Accordingly, he seeks to recover on behalf of himself,
13 the California Labor and Workforce Development Agency (“LWDA”) and all other
14 current and former Aggrieved Employees of Defendant, the civil penalties for which
15 provision is made by PAGA, as well as reasonable attorney’s fees and costs.

16 76. Pursuant to section 2699.3(a)(1) of the Labor Code, on or about May 6,
17 2020, Plaintiff gave written notice by online filing to the LWDA of the specific
18 provisions of the Labor Code alleged to have been violated, including the theories set
19 forth in this Complaint. Also on that day, Plaintiff gave written notice by certified mail
20 to Defendant of the specific provisions of the Labor Code alleged to have been violated
21 by Defendant.

22 77. Under PAGA, “[t]he agency shall notify the employer and the aggrieved
23 employee or representative by certified mail that it does not intend to investigate the
24 alleged violation within 60 calendar days of the postmark date of the notice received
25 pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within
26 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the
27 aggrieved employee may commence a civil action pursuant to Section 2699.” Cal. Lab.
28 Code § 2699.3(a)(2)(A). More than 65 calendar days have passed since PAGA notice

1 was sent by Plaintiff, and Plaintiff therefore may commence a civil action pursuant to
2 Section 2699.

3 78. Plaintiff seeks to recover the PAGA civil penalties through a representative
4 action permitted by PAGA and the California Supreme Court in Arias v. Superior Court,
5 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

6 79. Plaintiff seeks civil penalties pursuant to PAGA for violations of the IWC
7 Wage Order and the following Labor Code provisions: sections 201, 202, 203, 204, 226,
8 233, 234, 403, 404, 405, 406, 1194, 1197, and 1198.5.

9 80. Plaintiff also specifically seeks civil penalties pursuant to PAGA for
10 violations of California Labor Code section 221. Said section prohibits Defendant ABM
11 from collecting any part of wages paid by the employer to the employee. Notwithstanding
12 the requirements of Labor Code § 221, Defendant ABM deducted amounts from Plaintiff
13 and Aggrieved Employees for the maintenance of their uniforms. Plaintiff is informed
14 and believes, and thereon alleges that the deductions made by Defendant ABM are an
15 unlawful attempt at passing on business loses and/or expenses to employees and
16 constitutes an unlawful collection of wages previously paid in violation of Labor Code §
17 221. Plaintiff and Aggrieved Employees are entitled to the recovery of all improper
18 deductions and civil penalties pursuant to Labor Code § 225.5.

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1 ***PRAYER FOR RELIEF***

2 **WHEREFORE**, Plaintiff pray for judgment as follows:

3 1. With respect to the first claim for relief, that the Court enter judgment in
4 favor of Plaintiff and the Aggrieved Employees for all civil penalties, reasonable
5 attorney's fees, and costs of suit, against Defendant ABM, all according to proof,
6 pursuant to section 2699 of the Labor Code, against Defendant ABM.

7 2. For such further relief as the Court may order, including reasonable
8 attorney's fees, costs of suit, and interest pursuant to sections 218.5 and 218.6 of the
9 California Labor Code, as well as section 1021.5 of the California Code of Civil
10 Procedure.

11
12 DATED: September 30, 2020

HARRIS & RUBLE

13 

14 Alan Harris

15 *Attorneys for Plaintiffs*
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