

JESSICA RIGGIN (SBN 281712)
jriggin@rukinhyland.com
VALERIE BRENDER (SBN 298224)
vbrender@rukinhyland.com
RUKIN HYLAND & RIGGIN LLP
1939 Harrison Street, Suite 290
Oakland, CA 94612
Telephone: (415) 421-1800
Facsimile: (415) 421-1700

MATTHEW HELLAND (SBN 250451)
helland@nka.com
DANIEL BROME (SBN 278915)
dbrome@nka.com
NICHOLS KASTER, LLP
235 Montgomery St., Suite 810
San Francisco, CA 94104
Telephone: (415) 277-7235
Facsimile: (415) 277-7238

Attorneys for Plaintiffs

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

ALIDA MAZARIEGOS, PAULA
GONZALEZ, and JAIME AMAYA

Plaintiffs, on behalf of themselves
and all others similarly situated,
v.

VANGUARD CLEANING SYSTEMS,
INC.; RR FRANCHISING, INC., D/B/A
VANGUARD CLEANING SYSTEMS
OF SOUTHERN CALIFORNIA AND
D/B/A VANGUARD CLEANING
SYSTEMS OF NORTHERN
CALIFORNIA; BUDDHA CAPITAL
CORPORATION, D/B/A VANGUARD
CLEANING SYSTEMS OF
SACRAMENTO, D/B/A VANGUARD
CLEANING SYSTEMS OF THE

**Electronically
FILED**
by Superior Court of California, County of San Mateo
ON 2/5/2021
By /s/ Joel Lacey
Deputy Clerk

Case No. 20-CIV-04267

CLASS ACTION COMPLAINT FOR:

- (1) FAILURE TO PROVIDE
REIMBURSEMENT FOR BUSINESS
EXPENSES (CALIFORNIA LABOR
CODE §§ 2802, 2810.3 AND IWC
WAGE ORDER 5);**
- (2) UNLAWFUL WITHHOLDING AND
RECEIPT OF EARNED WAGES
(CALIFORNIA LABOR CODE §§ 221,
400-410, 450, 2810.3 AND IWC WAGE
ORDER NO. 5);**
- (3) FAILURE TO PROVIDE MEAL
PERIODS (CALIFORNIA LABOR
CODE §§ 226.7, 512, 2810.3 AND IWC
WAGE ORDER NO. 5);**

CENTRAL VALLEY, AND D/B/A
VANGUARD CLEANING SYSTEMS
OF THE CENTRAL COAST; AND
WINE COUNTRY VENTURES, INC.
D/B/A VANGUARD CLEANING
SYSTEMS OF THE NORTH BAY,
AND DOES 1 THROUGH 10,
INCLUSIVE,

Defendants.

**(4) FAILURE TO AUTHORIZE AND
PERMIT REST PERIODS
(CALIFORNIA LABOR CODE §§
226.7, 1194, 1194.2, 2810.3 AND IWC
WAGE ORDER NO. 5);**

**(5) FAILURE TO PAY CALIFORNIA
OVERTIME COMPENSATION
(CALIFORNIA LABOR CODE §§ 510,
1194, 2810.3, AND IWC WAGE ORDER
NO. 5);**

**(6) FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS (CALIFORNIA
LABOR CODE §§ 226, 1174 AND IWC
WAGE ORDER NO. 5);**

**(7) FAILURE TO PAY EARNED WAGES
UPON DISCHARGE – WAITING
TIME PENALTIES (CALIFORNIA
LABOR CODE §§ 201-03);**

**(8) VIOLATIONS OF THE UNFAIR
COMPETITION LAW (UCL)
(BUSINESS AND PROFESSIONS
CODE §§ 17200 *ET SEQ.*); and**

**(9) REPRESENTATIVE ACTION
PURSUANT TO PRIVATE
ATTORNEYS GENERAL ACT OF
2004 (CALIFORNIA LABOR CODE
§2698, *ET SEQ.*).**

DEMAND FOR JURY TRIAL

1 On behalf of themselves and all others similarly situated Plaintiffs ALIDA
2 MAZARIEGOS, PAULA GONZALEZ, and JAIME AMAYA (“Plaintiffs”) by their
3 undersigned attorneys, bring this action as a class action under the provisions of California Code
4 of Civil Procedure § 382 and as a representative action under the Private Attorneys General Act
5 (PAGA), California Labor Code § 2699 *et seq.*, against Defendants Vanguard Cleaning Systems,
6 Inc., RR Franchising, Inc., d/b/a Vanguard Cleaning Systems of Southern California and d/b/a
7 Vanguard Cleaning Systems of Northern California (“RR Franchising”), Wine Country
8 Ventures, Inc. d/b/a Vanguard Cleaning Systems of the North Bay (“Wine Country”), and
9 Buddha Capital Corp., d/b/a Vanguard Cleaning Systems of Sacramento, d/b/a Vanguard
10 Cleaning Systems of the Central Valley, and d/b/a Vanguard Cleaning Systems of the Central
11 Coast (“Buddha Capital”) (collectively referred to as “Vanguard” and “Defendants”), and DOES
12 1-10 as follows:

13 **INTRODUCTION**

14 1. This is an action for relief from Defendants’ misclassification of their franchisee
15 cleaners (“Class Members” or “Cleaners”) as “independent contractors.”

16 2. Vanguard offers “high-quality, consistent commercial cleaning services”
17 throughout California. To carry out Vanguard’s business in California, Defendants engage
18 hundreds of people like Plaintiffs who are assigned to provide cleaning and janitorial services to
19 Defendants’ customers.

20 3. Vanguard treats Plaintiffs and Class Members as employees within the meaning
21 of California law and is liable for various Labor Code violations, as described below, as
22 Plaintiffs and Class Members are plainly employees within the meaning of California law, under
23 both the “ABC” test for employment status and the common law *Borello* standard. The ABC test
24 governs the employment status question with respect to wage order violations, including
25 Vanguard’s failure to pay minimum and overtime wages, failure to provide cleaners with meal
26 breaks and paid rest breaks, unlawful deductions from wages, and unreimbursed expenses. The
27 ABC test also governs claims for all Labor Code violations after January 1, 2020. *See* Cal. Labor
28 Code § 2750.3, repealed and replaced by Labor Code Section 2775 *et. seq.*

1 4. By misclassifying Plaintiffs and similarly situated Cleaners as independent
2 contractors, Defendants have sought to avoid various duties and obligations owed to employees
3 under California’s Labor Code and Industrial Welfare Commission (“IWC”) wage orders,
4 including: (1) the duty to pay overtime compensation for hours worked in excess of eight hours
5 in a day or forty hours in a week and the duty to pay state minimum wage for all hours worked
6 (Cal. Labor Code §§ 510, 1194, 1194.2, 1194.5, 1197; IWC Wage Order No. 5, §§ 3-4); (2) the
7 duty to reimburse employees for all expenses and losses necessarily incurred in connection with
8 their employment (Cal. Labor Code § 2802 and IWC Wage Order 5; Wage Order No. 5, §§ 8-9);
9 (3) unlawful withholding and receipt of earned wages (Cal. Labor Code §§ 221, 400-410; IWC
10 Wage Order No. 5, §§ 8-9); (4) the duty to authorize and provide meal and rest periods (Cal.
11 Labor Code §§ 226.7, 512, 1194; IWC Wage Order No. 5, §§ 11-12); (5) the duty to furnish
12 accurate wage statements (Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 5, § 7); (6) the
13 duty to pay an employee all wages owed upon termination (Cal. Labor Code §§ 201-203); (7)
14 the duty to pay wages twice during each calendar month (Cal. Labor Code § 204); (8) unlawful
15 coercing of employees to patronize their employer (Cal. Labor Code § 450); and (9) unlawfully
16 compelling employees to put up a cash bond as an investment (Cal. Labor Code §§ 400-410).

17 5. Plaintiffs challenge Defendants’ policy of willfully and unlawfully misclassifying
18 their Cleaners as “independent contractors” and thereby refusing to reimburse them for
19 employment-related expenses and losses, wrongfully collecting compensation from wages,
20 failing to provide off-duty meal periods, failing to authorize and permit rest paid periods, failing
21 to document actual hours worked on pay statements, failing to pay them overtime compensation,
22 failing to pay them state minimum wage, wrongfully coercing them to purchase necessary
23 services and items, and wrongfully coercing them to put up a cash bond in order to be able to
24 work.

25 6. Plaintiffs bring the above-stated claims pursuant to Code of Civil Procedure §
26 382 on behalf of the following class of Cleaners: all California owner-operator franchisee
27 cleaners who signed a franchise agreement with Vanguard Cleaning Systems, Inc., or any of its
28 master franchisors, and who personally performed cleaning work during the period commencing

four years prior to April 6, 2020.¹

7. Plaintiffs will also amend their complaint upon exhaustion with the LWDA to bring a claim under the PAGA for the above-described violations and other violations described below.

JURISDICTION AND VENUE

8. 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. The Court also has jurisdiction over certain causes of action pursuant to Business & Professions Code §§ 17203 and 17204, which provide for exclusive jurisdiction for enforcement of this statute in any court of competent jurisdiction.

9. The amount in controversy herein, excluding interest, costs, penalties, and attorneys' fees, exceeds the minimum jurisdictional limit of this court.

10. Venue in San Mateo is proper under Business & Professions Code § 17203 and California Code of Civil Procedure § 395.5 because Defendants' unlawful conduct occurred in this county, Defendants conduct substantial business in this County, a substantial part of the transactions at issue took place in this County, and Defendants' liability arose in, in part, in this County.

PARTIES

11. Plaintiff Alida Mazariegos resides in San Rafael, California. She began working for Vanguard in approximately 2011. To work for Vanguard, Plaintiff Mazariegos entered into Vanguard's Unit Franchise Agreement. Plaintiff Mazariegos provided cleaning services for Defendants' accounts in Petaluma, Marin, and San Rafael. In order to meet Vanguard's stringent policies, procedures, and operational standards, Plaintiff Mazariegos has worked up to five hours a day, three to five days a week. Plaintiff Mazariegos left her work with Vanguard around

¹ Pursuant to Emergency Rule 9, the statute of limitations for civil causes of action was tolled beginning April 6, 2020, due to the emergency related to COVID-19. That tolling ends on October 1, 2020 for civil causes of action that exceed 180 days, which would encompass the civil causes of action in this case.

February of 2017.

12. Plaintiff Paula Gonzalez resides in La Puente, California. She began working for Vanguard in approximately 2010. To work for Vanguard, Plaintiff Gonzalez entered into Vanguard's Unit Franchise Agreement. Plaintiff provided cleaning services for Defendants' accounts in La Puente, Walnut, La Brea, Covina, Pico Rivera, Pomona, and other areas in the Los Angeles area. In order to meet Vanguard's stringent policies, procedures, and operational standards, Plaintiff Gonzalez has worked up to 10 to 12 hours a day, six days a week. While Plaintiff Gonzalez still has a contract with Vanguard, she stopped personally performing work for them in December of 2019, when she was injured at work.

13. Plaintiff Jaime Amaya resides in Sacramento, California. He began working for Vanguard in approximately 2003. To work for Vanguard, Plaintiff Amaya entered into Vanguard's Unit Franchise Agreement. Plaintiff provided cleaning services for Defendants' accounts in Sacramento. To meet Vanguard's stringent policies, procedures, and operational standards, Plaintiff Amaya has worked up to nine or ten hours a day, five to six days a week. Plaintiff Amaya still works for Vanguard.

14. Defendant Vanguard Cleaning Systems, Inc., is a California corporation with its principal place of business in San Mateo, California. Vanguard contracts with "master franchisors," who in turn contract with "unit franchises" to provide cleaning services to its customers across California. Vanguard provides the same standard contracts and training materials to all its master franchisors and requires that master franchisors use these materials with unit franchises ("Cleaners"). Vanguard is, and at all relevant times was, an employer subject to California state wage-and-hour laws.

15. Defendant RR Franchising, Inc., d/b/a Vanguard Cleaning Systems of Southern California and d/b/a Vanguard Cleaning Systems of Northern California is a California corporation with its principal place of business in Buena Park, California. Defendant RR Franchising, Inc., is a master franchisor serving various areas in Northern and Southern California, including San Mateo County. Plaintiff Gonzalez has been listed as a unit franchisee of RR Franchising, Inc. Upon information and belief, Plaintiff Gonzalez entered into a janitorial

1 franchise agreement with Vanguard Cleaning Systems, Inc., which was later transferred to RR
2 Franchising, Inc. RR Franchising Inc. is, and at all relevant times was, an employer subject to
3 California state wage-and-hour laws.

4 16. Defendant Buddha Capital Corp., d/b/a Vanguard Cleaning Systems of
5 Sacramento, d/b/a Vanguard Cleaning Systems of the Central Valley, and d/b/a Vanguard
6 Cleaning Systems of the Central Coast is a California corporation with its principal place of
7 business in Lathrop, California. Defendant Buddha Capital Corp., is a master franchisor serving
8 various areas in the Central Valley and Sacramento areas. Plaintiff Amaya has been listed as a
9 unit franchisee of Defendant Buddha Capital Corporation. Plaintiff Amaya entered into a
10 janitorial franchise agreement with Vanguard Cleaning Systems, Inc., which later transferred its
11 contracts to Buddha Capital Corp. Buddha Capital Corp. is, and at all relevant times was, an
12 employer subject to California state wage-and-hour laws.

13 17. Defendant Wine Country Ventures, Inc. d/b/a Vanguard Cleaning Systems of the
14 North Bay is a California corporation with its principal place of business in San Rafael,
15 California. Defendant Wine Country Ventures, Inc., is a master franchisor serving the North Bay.
16 Plaintiff Mazariegos has been listed as a unit franchisee of Wine Country Ventures, Inc. Upon
17 information and belief, Plaintiff Mazariegos entered into a janitorial franchise agreement with
18 Wine Country Ventures, Inc., or another Vanguard entity, which later transferred its contracts to
19 Wine Country Ventures, Inc. Wine Country Ventures, Inc., is, and at all relevant times was, an
20 employer subject to California state wage-and-hour laws.

21 **FACTUAL ALLEGATIONS**

22 **A. Cleaners Perform Work Within Vanguard's Usual Course of Business And Are Not** 23 **Engaged in An Independent Trade, Occupation, or Business.**

24 18. Vanguard provides janitorial services to commercial offices, car dealerships,
25 gyms, warehouses, and many other businesses throughout the United States, including in
26 California. On its website, Vanguard advertises its ability to provide customers with "high-
27 quality, consistent commercial cleaning services" and notes that it has provided "consistent
28 commercial cleaning services to over 18,000 satisfied customers throughout the U.S. and

Canada.”² Its advertised commercial cleaning services include green cleaning, commercial floor cleaning, cleaning for health, window washing, commercial pressure washing, among others.³

19. To carry out its business in California, Vanguard engages hundreds of persons like Plaintiffs, who provide cleaning services to Vanguard’s clients. Plaintiffs and Class Members provide routine services to Vanguard customers.

20. Vanguard establishes the contracts with Plaintiffs’ and Class Members’ cleaning accounts, decides which accounts to offer Cleaners, collects payment directly from these accounts before paying Cleaners, makes deductions from Cleaners’ pay before compensating them, and determines when Cleaners are ultimately paid. Vanguard also retains the right to handle account complaints and remove accounts from Cleaners. And while Vanguard charges Cleaners for the privilege of working these Vanguard accounts, Plaintiffs and Class Members have no rights to these accounts. For example, after paying to work an account, Vanguard can remove the account from Plaintiffs at its discretion and sell it to another Cleaner without providing Plaintiffs any compensation.

21. Cleaners do not operate truly independent cleaning companies serving many different clients. Instead, Vanguard restricts cleaners’ ability to solicit and perform independent work. Vanguard requires Plaintiffs to agree to a covenant not to compete, prohibiting them from soliciting janitorial business from accounts that are already doing business with Vanguard. It further prohibits cleaners from bidding against Vanguard for any account. For two years after the term of the franchise agreement, cleaners are prohibited from soliciting any account for which Cleaners have performed work while at Vanguard.

22. Vanguard further reserves for itself the right to transfer or assign all of its rights under the franchise agreement, but Plaintiffs cannot transfer or assign their rights without Vanguard’s prior written consent, as Vanguard views the rights under the franchise agreement as

² Vanguard Cleaning Systems, Inc., “Upgrade to Vanguard Janitorial Services,” located at <https://www.vanguardcleaning.com> (last accessed September 18, 2020).

³ Vanguard Cleaning Systems, Inc., “Commercial Cleaning Services,” located at <https://www.vanguardcleaning.com/commercial-cleaning-services/> (last accessed June 11, 2020).

1 “personal.”

2 23. Cleaners enter into a 10-year agreement with Vanguard, which is subject to
3 renewal. However, upon renewal, Vanguard retains the right to require Cleaners to sign its most
4 recent agreement, which may be materially different from Cleaners’ prior agreement. Vanguard
5 also requires, as a term of renewal, for Cleaners to sign a general release of any claims against
6 Vanguard.

7 24. Plaintiffs and Class Members’ work for Vanguard does not require any special
8 skill and is performed under the training, supervision, and instruction of Vanguard management.

9 **B. Vanguard Required Cleaners To Sign Form Agreements That Give Vanguard All**
10 **Necessary Control Over the Manner and Means by Which Plaintiffs Performs Their**
11 **Work.**

12 25. As part of their work for Vanguard, Plaintiffs and Class Members were required
13 to enter into Vanguard’s form franchise agreement. These agreements and related policy
14 documents dictate in detail how Cleaners are required to perform their work.

15 26. Vanguard requires Plaintiffs and Class Members to work according to Vanguard
16 specifications, standards, policies, and procedures, including those published in its
17 volumes/manuals on various subjects (“Manuals”). Vanguard retains the right to make additions,
18 deletions or modifications to its Manuals at any time, and cleaners are responsible for being
19 aware of these changes and implementing them. For example, the Manuals inform Cleaners
20 about chemical safety, green cleaning processes (including proper chemical usage, attention to
21 building entryways, effective vacuuming and dusting, and safeguarding indoor air quality), and
22 the quadrant system method for cleaning.

23 27. Vanguard also requires Cleaners to comply with the contracts that Vanguard
24 negotiates with Cleaners’ accounts. These contracts, which govern the work that Plaintiffs and
25 Class Members perform, dictate:

- 26 a. The days and times that Cleaners will perform cleaning work;
- 27 b. The tasks that Cleaners perform. For example, they specify whether Cleaners
28 are to dust and clean all fixtures and office furniture, empty wastepaper
receptacles and replace liners, wash internal and entrance class windows,

dust/remove cobwebs from all ceilings, clean window sills, vacuum carpeted areas, clean restroom mirrors and glass, among many other detailed instructions;

- c. The amount that the account will be charged;
- d. The days on which Vanguard will bill the account;
- e. The term limits of the contract;
- f. Whether Vanguard or the account will provide certain cleaning supplies. For example, one account serviced by Plaintiff Gonzalez required her to provide all cleaning supplies except for toiletries, liners, and paper supplies, which Vanguard stated the account could purchase through Vanguard.

28. Vanguard requires Cleaners to provide accounts with those services that Vanguard has approved and require Cleaners to obtain Vanguard's approval before providing any other services to the account.

29. Vanguard may provide equipment and supplies, such as mops, brooms, floor signs, toilet brushes, All Purpose Cleaner, among other supplies, when Cleaners begin their work for the company; however, Vanguard thereafter requires that Cleaners supply the supplies, materials, and equipment that each Vanguard account requires pursuant to the contracts that Vanguard has entered into with these accounts. Vanguard retains the right to modify its specifications and requirements for supplies and equipment.

30. Cleaners must purchase the types and amounts of insurance that Vanguard requires and name Vanguard as an additional insured.

31. Vanguard retains the right to perform a background check on Cleaners or anyone else employed by Cleaners.

32. Vanguard retains broad termination rights under its agreements with Cleaners, including, among many others, the right to terminate for providing unapproved services to accounts, for failure to service customer accounts as scheduled, and failure to comply with mandatory provisions in the Manuals.

33. Vanguard classifies Plaintiffs and Class Members as "independent contractors," a

1 designation that it made voluntarily and knowingly as a subterfuge to circumvent the
2 requirements of the California Labor Code.

3 **C. Vanguard Cleaning Systems, Inc., is liable for the violations against Plaintiffs and**
4 **all other aggrieved California Cleaners.**

5 34. Vanguard Cleaning Systems, Inc. (referred to as “VCS”) designed and
6 implemented the contractual framework under which Plaintiffs and Class Members were
7 misclassified.

8 35. Plaintiffs and other Class Members purchased “janitorial franchises” from a
9 regional “master franchisor,” which in Plaintiff Gonzalez’s case was RR Franchising, Inc., d/b/a
10 Vanguard Cleaning Systems of Northern California, and d/b/a Vanguard Cleaning Systems of
11 Southern California; in Plaintiff Amaya’s case was Buddha Capital Corp., d/b/a Vanguard
12 Cleaning Systems of Sacramento, d/b/a Vanguard Cleaning Systems of the Central Valley, and
13 d/b/a Vanguard Cleaning Systems of the Central Coast; and in Plaintiff Mazariegos’s case was
14 Wine Country Ventures, Inc., d/b/a Vanguard Cleaning Systems of the North Bay.

15 36. Plaintiffs seek to recover damages and penalties against VCS on behalf of all
16 Class Members, regardless of their “master franchisor” entity.

17 37. Master franchisors are required to use their best efforts to actively recruit and
18 maintain unit franchises, like Plaintiffs and Class Members. VCS requires master franchisors to
19 solicit, generate, and maintain sufficient janitorial accounts in their area and sets a minimum
20 monthly account volume for master franchisors.

21 38. VCS requires master franchisors to investigate the qualifications of each unit
22 franchise pursuant to VCS’s standards, policies and procedures and requires the master
23 franchisor to provide VCS with any documentation and information relating to the unit
24 franchises that it requires.

25 39. VCS requires master franchisors to adapt its form franchise disclosure document,
26 and it further requires the master franchisor to enter into an agreement with the unit franchise
27 upon VCS’s then-current unit franchise form. VCS prohibits master franchisors from modifying
28 or offering to modify these agreements without VCS’s prior written approval.

1 40. VCS requires master franchisors to provide initial training to unit franchises and
2 make available billing and collections of accounts according to VCS’s specifications.

3 41. VCS provides master franchisors with a copy of its Manuals and requires that
4 master franchisors provide these Manuals to unit franchisees, like Plaintiffs and Class Members.
5 VCS further requires master franchisors to ensure that unit franchises will perform their work in
6 accordance with the Manuals, the unit franchise agreement, and all other mandatory operating
7 procedures. VCS also requires master franchisors to comply with the terms of the Subfranchisor
8 Manual that it provides master franchisors.

9 42. Master franchisors are obligated to pay VCS up to 5% of the revenues which they
10 collect from Cleaners’ customers for their cleaning services, which include revenue received
11 from the sale of unit franchises to Cleaners, revenue from the accounts serviced by Cleaners, and
12 any other revenue received from the Vanguard system.

13 43. VCS prohibits master franchisors from permitting unit franchises to contract
14 directly with any customer. Instead, VCS requires that all accounts contract with the master
15 franchisor, and VCS reserves the right to require the master franchisor to use required forms and
16 mandatory language for customer contracts and invoices.

17 44. In a similar case against VCS in Massachusetts, the trial court found that
18 Vanguard could not satisfy two of the three prongs of the ABC test.⁴

19 45. That court also found that VCS was liable for violations against aggrieved
20 cleaners because “Vanguard’s revenue is derived from initial franchise fees, [some] percent of
21 the gross billings from work performed by unit franchisees, and various fees imposed on unit
22 franchisees. Vanguard’s revenue, therefore, is directly dependent on commercial cleaning work
23 of the plaintiffs and other [cleaners].”⁵

24 46. VCS’s business ultimately depends on someone performing the cleaning, which
25 in this case is janitorial franchise Cleaners. It relies on these Cleaners to continuously perform

26
27 ⁴ *Da Costa v. Vanguard Cleaning Systems, Inc.* (Mass. Super., Sept. 29, 2017) 34 Mass.L.Rptr.
483.

28 ⁵ *Id.*

1 cleaning services.

2 47. VCS is directly liable for the violations described herein. See *Vazquez v. Jan-Pro*
3 *Franchising International, Inc.* (9th Cir. 2019) 923 F.3d 575, 598, *reh’g granted, opinion*
4 *withdrawn* (9th Cir. 2019) 930 F.3d 1107, and *on reh’g* (9th Cir. 2019) 939 F.3d 1045, and
5 *opinion reinstated in part on reh’g* (9th Cir. 2019) 939 F.3d 1050 (finding that in a three-tiered
6 cleaning franchise model, the top-tier franchise could be held liable as an employer under the
7 ABC test even though it was not a party to any of the contracts with the alleged employees).
8 VCS is also liable to Plaintiffs and Class Members under Labor Code § 2810.3 as a “client
9 employer” who “obtains or is provided workers to perform labor within its usual course of
10 business from a labor contractor” – here, master franchisors like RR Franchising, Buddha
11 Capital, and Wine Country Ventures, Inc.

12 **CLASS ACTION ALLEGATIONS**

13 48. Plaintiffs bring this action individually and as a class action on behalf of a class
14 defined as follows: all California owner-operator franchisee cleaners who signed a franchise
15 agreement with Vanguard Cleaning Systems, Inc., or any of its master franchisors, and who
16 personally performed cleaning work during the period commencing four years prior to April 6,
17 2020 (individually referred to as “Class Members” and collectively as the “Class”).

18 49. This action is brought, and may properly be maintained, as a class action pursuant
19 to California Code of Civil Procedure § 382 because there is a well-defined community of
20 interest in the litigation and the proposed class is easily ascertainable. This action presents
21 questions of common interest and satisfies the numerosity, commonality, typicality, adequacy,
22 predominance, and superiority requirements of this provision.

23 **Numerosity:**

24 50. The size of the proposed Class makes individual joinder of all members
25 impracticable. While Plaintiffs do not presently know the exact number of Class Members,
26 Plaintiffs are informed and believe, and thereon allege, that as many as 700 persons have been
27 subjected to the unlawful practices alleged herein during the class period.
28

1 **Commonality:**

2 51. Common questions of law and fact exist as to all members of the Class and
3 predominate over any questions that affect only individual members of the Class. These common
4 questions of law and fact include, without limitation:

- 5 a. Whether Defendants have retained sufficient rights to control Class Members’
6 work so as to render the Class Members employees under California law;
7 b. Whether Cleaners are free from Defendants’ control and direction in
8 connection with the performance of their work, both under Defendants’
9 contract and in fact;
10 c. Whether Cleaners perform work that is outside the usual course of
11 Defendants’ business;
12 d. Whether Cleaners are customarily engaged in an independently established
13 trade, occupation, or business;
14 e. Whether Class Members have incurred employment-related expenses and
15 losses in carrying out their duties for Defendants;
16 f. Whether Defendants have failed to indemnify Class Members for their
17 necessary employment-related expenses and losses in violation of California
18 Labor Code § 2802 and IWC Wage Order No. 5;
19 g. Whether Defendants’ collection and deduction of fees and requiring a cash
20 bond violated California Labor Code §§ 221, 400-410, and IWC Wage Order
21 No. 5;
22 h. Whether Defendants have violated California Labor Code § 1174 and IWC
23 Wage Order No. 5 by failing to maintain documentation of actual hours that
24 Class Members worked each day;
25 i. Whether Defendants knew or should have known that Class Members
26 regularly worked for over 40 hours per week and/or eight hours per day;
27 j. Whether Defendants failed to pay Class Members overtime wages for time
28 worked in excess of 40 hours per week or eight hours per day;

- 1 k. Whether Defendants failed to provide Class Members with adequate off-duty
2 meal periods and compensation for missed meal periods in violation of
3 California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5;
- 4 l. Whether Defendants have failed to provide Class Members with adequate rest
5 periods and failed to separately compensate Class Members for each hour
6 worked in violation of California Labor Code §§ 226.7, 1194, and IWC Wage
7 Order No. 5;
- 8 m. Whether Defendants had a policy or practice of not paying meal and rest
9 period premiums when meal and rest periods were not provided;
- 10 n. Whether Defendants have violated California Labor Code §§ 201-203 by
11 failing, upon termination, to timely pay Class Members wages that were due
12 for overtime and missed meal periods;
- 13 o. Whether Defendants' misclassification of Class Members was willful and in
14 violation of California Labor Code § 226.8;
- 15 p. Whether Defendants, in violation of California Labor Code § 226 failed to
16 provide accurate, itemized wage statements reflecting, among other items,
17 Class Members' hours of work and rates of pay;
- 18 q. Whether Defendants' failures to: (a) indemnify and reimburse Class Members
19 for necessary employment-related expenses, (b) pay Class Members for all
20 hours worked; (c) pay Class Members overtime compensation; (d) provide
21 Class Members with adequate off-duty meal periods and meal period
22 compensation; (e) provide Class Members with rest periods, separately
23 compensated Class Members for rest periods, and provide compensation for
24 missed rest periods; (f) provide Class Members with accurate itemized wage
25 statements; (g) maintain documentation of the actual hours worked each day;
26 and (h) timely pay Class Members all wages that were due upon termination,
27 along with Defendants' collection and deduction of fees and expenses from
28 Class Members' compensation and their misclassification of Class Members

as independent contractors, and their charging fees and/or making deductions from Plaintiffs' and Class Members' compensation constitute unlawful, unfair, and/or fraudulent business practices under Cal. Business & Professions Code § 17200, *et seq.*;

- r. What amounts Plaintiffs and Class Members are entitled to receive in interest on unpaid compensation due and owed to them.

Typicality:

52. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of law as alleged herein.

Adequacy of Representation:

53. Plaintiffs are adequate representatives of the Class in that their claims are typical of those of the Class. Plaintiffs have the same interests in the litigation of this case as the Class Members; they are committed to vigorous prosecution of this case and have retained competent counsel experienced in class action and wage and hour litigation of this nature. Plaintiffs are not subject to any individual defenses unique from those conceivably applicable to the Class as a whole and anticipate no management difficulties in this litigation.

Predominance:

54. Defendants have engaged in a common course of wage-and-hour abuse toward Plaintiffs and Class Members. The common issues arising from this conduct that affect Plaintiffs and Class Members predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

Superiority of Class Action:

55. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class Members is impracticable. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to

1 all parties and to the court system resulting from multiple trials of the same complex factual
2 issues. Moreover, individual actions by Class Members may establish inconsistent standards of
3 conduct for Defendants. By contrast, the conduct of this action as a class action, with respect to
4 some or all of the issues presented herein, presents fewer management difficulties, conserves the
5 resources of the parties and the court system, and protects the rights of each Class Member.

6 56. Defendants have acted or refused to act in respects generally applicable to the
7 class, thereby making appropriate relief with regard to the members of the Class as a whole, as
8 requested herein.

9 **FIRST CAUSE OF ACTION**
10 **FAILURE TO PROVIDE REIMBURSEMENT FOR BUSINESS EXPENSES**
11 **(CALIFORNIA LABOR CODE §§ 2802, 2810.3 AND IWC WAGE ORDER 5, §§ 8-9)**
(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS)

12 57. The allegations of each of the preceding paragraphs are re-alleged and
13 incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of
14 themselves and all Class Members.

15 58. While acting on the instructions of Defendants and discharging their duties for
16 them, Plaintiffs and Class Members have incurred and paid work-related expenses. Such
17 expenses include, but are not limited to, cleaning supplies, cleaning equipment, mandatory
18 insurance, gas and vehicle maintenance, and other necessary expenses. Plaintiffs and Class
19 Members were also required to pay thousands of dollars in franchise fees and business support
20 and service fees to perform their work.

21 59. Defendants failed to indemnify or in any manner reimburse Plaintiffs and Class
22 Members for these expenditures and losses even though these necessary expenditures were
23 incurred as a direct consequence of their work requirements, either as a de facto cost (e.g. gas
24 and cleaning supplies) or a requirement of the agreements Defendants force cleaners to accept as
25 a condition of employment.

26 60. California Labor Code § 2810.3, effective January 1, 2015, states that “A client
27 employer shall share with a labor contractor all civil legal responsibility and civil liability for all
28 workers supplied by that labor contractor for...the payment of wages.”

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

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

6 63. Defendants RR Franchising, Inc., Wine Country Ventures, Inc., and Buddha Capital
7 Corp. served as labor contractors under § 2810.3 by providing workers to provide cleaning services,
8 which is part of the usual course of business for Vanguard Cleaning Systems, Inc. As a result,
9 Defendant Vanguard Cleaning Systems, Inc. was a client employer within the definition of Labor
10 Code § 2810.3.

11 64. In addition to being liable as an employer, Vanguard Cleaning Systems, Inc. is
12 also liable to Plaintiffs as a client employer for the violations detailed herein under Labor Code §
13 2810.3.

14 65. Defendants have violated and continue to violate California Labor Code § 2802
15 and IWC Wage Order 5, §§ 8-9. As a direct and proximate result of Defendants’ conduct,
16 Plaintiffs and Class Members have suffered substantial losses according to proof, as well as pre-
17 judgment interest, costs, penalties, and attorneys’ fees for the prosecution of this action, as
18 described below.

19 **SECOND CAUSE OF ACTION**
20 **UNLAWFUL WITHHOLDING AND RECEIPT OF EARNED WAGES**
21 **(CALIFORNIA LABOR CODE §§ 221, 400-410, 450, 2810.3 AND IWC WAGE ORDER**
22 **NO. 5, §§ 8-9)**
23 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS)**

24 66. The allegations of each of the preceding paragraphs are re-alleged and
25 incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of
26 themselves and all Class Members.

27 67. Labor Code § 221 provides: “It shall be unlawful for any employer to collect or
28 receive from an employee any part of wages theretofore paid by said employer to said
employee.”

 68. Labor Code § 223 provides: “Where any statute or contract requires an employer

1 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
2 purporting to pay the wage designated by statute or by contract.”

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

7 70. Labor Code § 450 states “No employer, or agent or officer thereof, or other
8 person, may compel or coerce any employee, or applicant for employment, to patronize his or
9 her employer, or any other person, in the purchase of any thing of value.”

10 71. IWC Wage Order No. 5, § 8 provides that the only circumstance under which an
11 employer can make a deduction from an employee’s wage for cash shortage, breakage, or loss of
12 equipment is if the employer can show that the shortage, breakage, or loss was the result of the
13 employee’s gross negligence or dishonest or willful act.

14 72. IWC Wage Order No. 5, § 9 provides that when tools or equipment are required
15 by the employer or are necessary to the performance of a job, such tools and equipment shall be
16 provided and maintained by the employer

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

25 74. Defendants have violated Cal. Labor Code §§ 221, 223, 400-410, 450 and IWC
26 wage order No. 5, §§ 8-9 by unlawfully taking deductions from Plaintiffs’ and Class Members’
27 compensation to cover certain ordinary business expenses of Defendants, including but not
28 limited to franchise fees, fees for new accounts, business support and service fees, insurance, and

1 a number of other fees.

2 75. In addition to being liable as an employer, Vanguard Cleaning Systems, Inc. is
3 also liable to Plaintiffs as a client employer for the violations detailed herein under Labor Code §
4 2810.3.

5 76. Because Defendants took unlawful deductions from Plaintiffs' and Class
6 Members' compensation, they are liable to Plaintiffs for the compensation that should have been
7 paid but for the unlawful deductions, pursuant to Cal. Labor Code §§ 221, 223, 400-410, 450 and
8 IWC Wage Order No. 5, §§ 8-9.

9 77. By unlawfully deducting wages and failing to pay Plaintiffs and Class Members,
10 Defendants are also liable for penalties, reasonable attorneys' fees, and costs as described below.

11 **THIRD CAUSE OF ACTION**
12 **FAILURE TO PROVIDE MEAL PERIODS**
13 **(CALIFORNIA LABOR CODE §§ 226.7, 512, 2810.3 AND IWC WAGE ORDER NO. 5, § 11)**
14 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS)**

15 78. The allegations of each of the preceding paragraphs are re-alleged and
16 incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of
17 themselves and all Class Members.

18 79. Labor Code § 226.7 states in pertinent part: "An employer shall not require an
19 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
20 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission."

21 80. Labor Code § 512 likewise states: "An employer may not employ an employee
22 for a work period of more than five hours per day without providing the employee with a meal
23 period of not less than 30 minutes," and "[a]n employer may not employ an employee for a work
24 period of more than 10 hours per day without providing the employee with a second meal period
25 of not less than 30 minutes."

26 81. IWC Wage Order No. 5, § 11 provides in part that "[n]o employer shall employ
27 any person for a work period of more than five (5) hours without a meal period of not less than
28 30 minutes," and "[a]n employer may not employ an employee for a work period of more than
ten (10) hours per day without providing the employee with a second meal period of not less than

30 minutes.”

82. Defendants have not promulgated a policy for the provision of meal breaks for employees like Plaintiffs and Class Members. Plaintiffs and Class Members have regularly worked in excess of five hours a day without being provided a half-hour meal break in which they are relieved of all duties.

83. Plaintiffs are informed and believe, and on that basis allege, that Defendants have never paid the one hour of compensation as a premium payment to any Class Member pursuant to California Labor Code § 226.7 for not providing proper meal periods.

84. In addition to being liable as an employer, Vanguard Cleaning Systems, Inc. is also liable to Plaintiffs as a client employer for the violations detailed herein under Labor Code § 2810.3.

85. Because Defendants failed to afford proper and timely meal periods, they are liable to Plaintiffs and Class Members for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, pursuant to Cal. Labor Code § 226.7(b) and IWC Wage Order No. 5, § 11(B).

86. By violating Cal Labor Code §§ 226.7 and 512, and IWC Wage Order No. 5, § 11, Defendants are also liable for penalties, reasonable attorneys’ fees, and costs as described below.

FOURTH CAUSE OF ACTION
FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
(CALIFORNIA LABOR CODE §§ 226.7, 1194, 1194.2, 2810.3 AND IWC WAGE ORDER
NO. 5, § 12)
(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS)

87. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and all Class Members.

88. IWC Wage Order No. 5, § 12 provides in relevant part: “(A) Every employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hour or major fraction

1 thereof. However, a rest period need not be authorized for employees whose total daily work
2 time is less than three and one-half (3 ½) hours). Authorized rest period time shall be counted as
3 hours worked for which there shall be no deduction of wages.”

4 89. Defendants are legally required to compensate Plaintiffs and other employees for
5 non-productive rest periods; however, Defendants’ piece rate compensation system only
6 compensates employees for productive work time spent cleaning for Accounts. *See Bluford v.*
7 *Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 870-71.

8 90. On information and belief, Defendants have not promulgated a compliant rest
9 break policy.

10 91. Plaintiffs and Class Members have regularly worked in excess of three and one-
11 half hours without Defendants authorizing and permitting them to take at least a 10-minute rest
12 period or paying them separately for rest periods, as required by Labor Code §§ 226.7 and 1194
13 and IWC Wage Order No. 5. Plaintiffs and Class Members have also worked in excess of six
14 hours a day without being provided a second, paid 10-minute rest period in which they were
15 relieved of all duties, as required by Labor Code §§ 226.7 and 1194 and IWC Wage Order No. 5.

16 92. In addition to being liable as an employer, Vanguard Cleaning Systems, Inc. is
17 also liable to Plaintiffs as a client employer for the violations detailed herein under Labor Code §
18 2810.3.

19 93. Because Defendants failed to authorize and permit Plaintiffs and Class Members
20 compliant rest periods, they are liable to Plaintiffs and Class Members for one hour of additional
21 pay at the regular rate of compensation for each workday that the compliant rest periods were not
22 provided, minimum wages and liquidated for not being separately compensated for their rest
23 periods, attorneys’ fees, penalties, and interest, as described below.

24 **FIFTH CAUSE OF ACTION**
25 **FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION**
26 **(CALIFORNIA LABOR CODE §§ 510, 1194, 2810.3, AND IWC WAGE ORDER NO. 5, § 3)**
27 **(ON BEHALF OF PLAINTIFFS GONZALEZ, AMAYA, AND CLASS MEMBERS)**

28 94. The allegations of each of the preceding paragraphs are re-alleged and
incorporated herein by reference, and Plaintiffs Gonzalez and Amaya allege as follows a claim of

1 relief on behalf of themselves and all Class Members who worked overtime.

2 95. Defendants maintained a policy and practice of giving many Class Members
3 Accounts that required them to work in excess of eight hours in a day or forty hours in a week.

4 96. Plaintiffs Gonzalez and Amaya estimate that they have worked up to sixty hours a
5 week or more, well in excess of eight hours in a workday and/or forty hours in a work week in
6 violation of California Labor Code §§ 510, 1194, and IWC Wage Order No. 5, § 3, which require
7 overtime compensation for non-exempt employees. The precise number of unpaid overtime
8 hours will be proven at trial.

9 97. In addition to being liable as an employer, Vanguard Cleaning Systems, Inc. is
10 also liable to Plaintiffs as a client employer for the violations detailed herein under Labor Code §
11 2810.3.

12 98. Defendants' actions were willful and in knowing violation of the California Labor
13 Code. As a direct and proximate result of Defendants' unlawful conduct as set forth herein,
14 Plaintiffs and Class Members have sustained damages, including loss of earnings for hours of
15 overtime work, in an amount to be determined at trial. Pursuant to California Labor Code §
16 1194(a), Plaintiffs and Class Members are entitled to recover their unpaid overtime and double
17 time compensation, including interest thereon. Plaintiffs and Class Members are also entitled to
18 recover reasonable attorneys' fees and costs and penalties as described below.

19 **SIXTH CAUSE OF ACTION**
20 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
21 **(CALIFORNIA LABOR CODE § 226, 1174 AND IWC WAGE ORDER NO. 5, § 7)**
22 **(ON BEHALF OF PLAINTIFFS GONZALEZ, AMAYA, AND CLASS**
23 **MEMBERS)**

24 99. The allegations of each of the preceding paragraphs are re-alleged and
25 incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of
26 themselves and all Class Members.

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

1 101. Defendants have failed to comply with the Labor Code by knowingly and
2 intentionally failing to provide Plaintiffs and Class Members with accurate written statements
3 showing their actual and total hours worked and their applicable hourly rates.

4 102. Defendants also failed to accurately record meal periods as detailed above, to pay
5 meal and rest period premium wages for missed meal and rest periods, and to report those meal
6 period premium payments on wage statements.

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

12 104. Under California Labor Code § 226(e)(2)(B), an employee is deemed to have
13 suffered injury if a wage statement does not include the information required by California Labor
14 Code § 226(a)(1)-(9) and the employee cannot promptly and easily determine from the face of
15 the wage statement any of the following: the total hours worked; all rates of pay in effect in the
16 pay period; or the hours worked at each rate of pay.

17 105. In addition, upon information and belief, and in violation of IWC Wage Order No.
18 5, Defendants failed to keep the required payroll records showing the actual hours worked each
19 day by Plaintiffs and Class Members.

20 106. As a direct and proximate result of Defendants' actions, Plaintiffs and Class
21 Members have suffered economic harm as they have been precluded from accurately monitoring
22 the number of hours worked and thus seeking all accrued pay.

23 107. As a direct and proximate result of Defendants' unlawful conduct as set forth
24 herein, Plaintiffs and Class Members have been injured by not receiving the information required
25 by California Labor Code § 226(a), not being paid for their overtime hours, not having records
26 showing their total hours worked, not being able to ascertain from their wage statements whether
27 or how they have been lawfully compensated for all hours worked, among other injuries, in an
28 amount to be determined at trial.

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

SEVENTH CAUSE OF ACTION
FAILURE TO PAY EARNED WAGES UPON DISCHARGE – WAITING TIME
PENALTIES
(CALIFORNIA LABOR CODE §§ 201-03)
(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS WHO HAVE TERMINATED
EMPLOYMENT WITH DEFENDANTS)

109. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference, and Plaintiffs Gonzalez and Mazariegos allege as follows a claim of relief on behalf of themselves and all Class Members.

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

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

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

113. Plaintiffs Mazariegos, Gonzalez, and numerous Class Members who were employed by Defendants during the Class Period have resigned or were terminated. Upon resignation or termination, however, they were not paid all wages due within the statutory time period. Defendants willfully failed and refused to pay timely compensation and wages for, among other things, unpaid overtime and unpaid meal and rest periods.

114. As a direct and proximate result of Defendants' willful conduct in failing to pay Plaintiffs and former employee Class Members for all hours worked, Plaintiffs Gonzalez and Mazariegos and affected members of the Class are entitled to recover "waiting time" penalties of up to thirty (30) days' wages pursuant to § 203, with interest thereon, and reasonable attorneys'

1 fees and costs.

2 **EIGHTH CAUSE OF ACTION**
3 **VIOLATIONS OF THE UNFAIR COMPETITION LAW (UCL)**
4 **(CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ*)**
5 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS)**

6 115. The allegations of each of the preceding paragraphs are re-alleged and
7 incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of
8 themselves and all Class Members.

9 116. California Business & Professions Code § 17200, et. seq. (“UCL”) prohibits
10 “unfair competition” in the form of any unlawful, unfair, or fraudulent business practice.

11 117. Beginning at an exact date unknown to Plaintiffs but within four years preceding
12 April 6, 2020, Defendants have engaged in unfair competition as defined by the UCL by, and as
13 described above: (1) misclassifying Plaintiffs and Class Members as independent contractors in
14 violation of Labor Code § 2750.3 and § 2775; (2) willfully misclassifying Plaintiffs and Class
15 Members in violation of Labor Code § 226.8(a)(1) and IWC Wage Order No. 5, § 2; (3)
16 unlawfully charging Plaintiffs and Class Members, who are willfully misclassified employees, in
17 violation of Labor Code § 226.8(a)(2) and IWC Wage Order No. 5, §§ 2, 8-9; (4) failing to
18 reimburse Plaintiffs and Class Members for all expenses and losses necessarily incurred in
19 connection with their employment in violation of Labor Code § 2802 & IWC Wage Order No. 5;
20 (5) failing to pay wages to Plaintiffs and Class Members, who were supplied by a labor
21 contractor in violation of Labor Code § 2810.3; (6) unlawfully withholding and receiving
22 Plaintiffs’ and Class Members’ earned wages in violation of Labor Code §§ 221, 400-410, 450
23 and IWC Wage Order No. 5, §§ 8-9; (7) failing to authorize and provide meal and rest periods
24 and separately compensate rest periods for Plaintiffs and Class Members in violation of Labor
25 Code §§ 226.7, 512, 1194 and IWC Wage Order No. 5, §§ 11-12; (8) failing to furnish accurate
26 wage statements to Plaintiffs and Class Members in violation of Labor Code §§ 226, 1174 and
27 IWC Wage Order No. 5 § 7; (9) failing to pay Plaintiffs and Class Members overtime
28 compensation for hours worked in excess of eight hours in a day or forty hours in a week in
violation of Labor Code §§ 510, 1194, 1194.2, 1194.5, 1197 and IWC Wage Order No. 5, §§ 3-

4; (10) failing to pay Plaintiffs and Class Members all wages owed upon termination in violation of Labor Code §§ 201-203; (11) failing to pay Plaintiffs and Class Members wages twice during each calendar month in violation of Labor Code § 204.

118. Defendants' knowing failure to adopt policies in accordance with and/or to adhere to these laws, all of which are binding upon and burdensome to its competitors, engenders an unfair competitive advantage to Defendants thereby constituting an unfair business practice under California Business & Professions Code §§ 17200-17208. Plaintiffs and Class Members have suffered injury in fact and have lost money as a direct and proximate result of Defendants' unfair competition, including, but not limited to, money due to them as overtime compensation, unlawful collection or receipt of wages, unreimbursed necessary expenses, compensation for missed meal and rest periods, and waiting time penalties, which money has been acquired by Defendants by means of their unfair competition within the meaning of the UCL.

119. In addition to being liable as an employer, Vanguard Cleaning Systems, Inc. is also liable to Plaintiffs as a client employer for the violations detailed herein under Labor Code § 2810.3.

120. Pursuant to California Business & Professions Code §§ 17200 et seq., Plaintiffs and Class Members are entitled to (i) restitution of all wages and compensation alleged herein that Defendants withheld and retained during the period commencing four years preceding April 6, 2020, (ii) an award of reasonable attorneys' fees pursuant to Cal. Civ. Proc. Code § 1021.5 and other applicable law, and (iii) an award of costs. All remedies are cumulative pursuant to California Business & Professions Code § 17205.

NINTH CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
(CALIFORNIA LABOR CODE §2698, ET SEQ.)
(ON BEHALF OF PLAINTIFFS AND OTHER AGGRIEVED EMPLOYEES)

121. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference, and Plaintiffs allege as follows a claim under California Labor Code §§ 2698–99 in a representative capacity on behalf of current and former Cleaners/franchise

workers of Defendants who were subjected to the unlawful wage and hour practices alleged herein and below.

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

123. On October 1, 2020 pursuant to California Labor Code § 2699.3, Plaintiffs filed their PAGA letter online with the Labor and Workforce Development Agency (LWDA), accompanied by the \$75 filing fee, and sent notice by certified mail to the Defendants of the specific provisions of the Labor Code that Plaintiffs allege Defendants have violated, including the facts and theories to support the violations. The LWDA received Plaintiffs’ notice that same day: October 1, 2020. A copy of this PAGA letter is attached hereto as **Exhibit A**. The sixty-five-day time limit for the agency to respond has expired, and the LWDA has not notified Plaintiffs that it intends to investigate Plaintiffs’ allegations.

124. 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)*. Additionally, certain Labor Code provisions specify other penalty amounts for initial and subsequent violations, including Section 558 (\$50/ \$100), Section 226.8 (\$5,000 to \$15,000, or \$10,000 to \$25,000 if the employer engaged in a pattern or practice of violations), and Section 1197 (\$100/ \$250). Plaintiffs will seek to collect these civil penalties for Vanguard’s Labor Code violations under

1 California Labor Code §§ 201- 203, 204, 221, 226, 226.3, 226.7, 226.8, 400-410, 432.5, 450,
2 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1174.5, 2802, 2810.3, 2750.3, and IWC Wage
3 Order No. 5.

4 125. Specifically, Plaintiffs allege that while Vanguard classifies Plaintiffs and
5 aggrieved employees as “independent contractors,” this designation was made voluntarily and
6 knowingly as a subterfuge to circumvent the requirements of the California Labor Code.
7 Cleaners are not free from Vanguard’s control and direction, either under their contract or in fact.
8 Vanguard’s cleaners perform work that is within Vanguard’s usual course of business. And
9 Vanguard’s cleaners are not engaged in an independently established trade, occupation, or
10 business. There is no reasonable dispute that Vanguard’s cleaners are employees under the Labor
11 Code and the corresponding IWC Wage Order No. 5. *See Dynamex Operations W., Inc. v. Super.*
12 *Ct. of Los Angeles* (2018) 4 Cal.5th 903. *See also* Labor Code section 2750.3. Additionally,
13 Vanguard exercises comprehensive control over the manner and means by which Plaintiffs and
14 cleaners perform their work, such that they are also employees under *S. G. Borello & Sons, Inc.*
15 *v. Dep’t of Indus. Relations* (1989) 48 Cal.3d 341, 357. California Labor Code § 2699(g) further
16 provides that any employee who prevails in an action for civil penalties is entitled to an award of
17 reasonable attorneys’ fees and costs. Plaintiffs hereby seek to recover attorneys’ fees and costs
18 under this fee and cost provision.

19 126. Plaintiffs are “aggrieved employees” as defined by PAGA and seek to represent
20 all other owner-operator cleaners/franchise workers in California who have personally performed
21 cleaning work for any CleanNet “regional subfranchisor,” including RR Franchising, Inc., d/b/a
22 Vanguard Cleaning Systems of Southern California and d/b/a Vanguard Cleaning Systems of
23 Northern California, Wine Country Ventures, Inc. d/b/a Vanguard Cleaning Systems of the
24 North Bay, Buddha Capital Corp., d/b/a Vanguard Cleaning Systems of Sacramento, and d/b/a
25 Vanguard Cleaning Systems of the Central Valley, and d/b/a Vanguard Cleaning Systems of the
26 Central Coast, and Prestige Worldwide d/b/a Vanguard Cleaning Systems of the Southern
27 Valley.

RELIEF SOUGHT

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class, pray for judgment against Defendants, and each of them, as follows:

- 1) That the Court determine that this action may be maintained as a class action under California Code of Civil Procedure § 382;
- 2) Appointment of Plaintiffs as Class representatives;
- 3) Appointment of Plaintiffs' Counsel as Class Counsel;
- 4) Provision of Notice to all Class Members;
- 5) A declaratory judgment that Defendants have violated the following provisions of law, among others:
 - a. California Labor Code §§ 2750.3 and 2775 and IWC Wage Order 5 by misclassifying Plaintiffs and the Class as independent contractors;
 - b. California Labor Code § 226.8(a)(a) and IWC Wage Order 5 by willfully misclassifying Plaintiffs and the Class as independent contractors to circumvent California wage and hour laws;
 - c. California Labor Code § 226.8(a)(2) and IWC Wage Order 5 by making unlawful charges to Plaintiffs and the Class, who were willfully misclassified employees;
 - d. California Labor Code § 2802 and IWC Wage Order 5 by failing to provide reimbursement for necessary expenses to Plaintiffs and the Class;
 - e. California Labor Code § 221 and IWC Wage Order 5 by unlawfully collecting and deducting wages from Plaintiffs and the Class;
 - f. California Labor Code §§ 226.7, 512, 1194, and IWC Wage Order 5 by failing to authorize and provide meal and rest breaks to Plaintiffs and the Class and by failing to separately compensate Plaintiffs and the Class for rest breaks;
 - g. California Labor Code §§ 226, 1174, and IWC Wage Orders 5 by failing to furnish accurate wage statements to Plaintiffs and the Class;
 - h. California Labor Code § 510 and IWC Wage Order 5 by failing to pay Plaintiffs and the Class for all overtime hours worked;

- i. California Labor Code §§ 1194, 1197, and IWC Wage Order 5 by failing to pay Plaintiffs and Class at least minimum wage for all of their hours worked;
- j. California Labor Code §§ 432.5 and 2802 by including in their contracts with Plaintiffs and Class Members unlawful written restrictions on competition and unlawful written requirements that employees indemnify their employer;
- k. California Labor Code §§ 201-03 by failing to pay Plaintiffs and the Class earned wages upon discharge;
- l. California Labor Code § 204 by failing to pay wages to Plaintiffs and the Class twice during each calendar month;
- m. California Labor Code § 450 by compelling Plaintiff and Class to patronize Defendants' businesses;
- n. California Labor Code §§ 400-410 by compelling Plaintiff and the Class to put up a cash bond as an investment in exchange for the ability to work;
- o. Cal. Business and Professions Code §§ 17200-17208, by failing to reimburse Plaintiffs and the Class for necessarily incurred business expenses, by requiring Plaintiffs and the Class to indemnify Defendants for ordinary business losses, by requiring Plaintiffs and the Class to patronize their employer and put up a cash bond, by failing to provide off-duty meal periods and/or pay meal period compensation to Plaintiffs and the Class, by failing to authorize and permit paid rest breaks and/or missed rest break compensation to Plaintiffs and the Class, by failing to provide Plaintiffs and the Class with itemized wage statements showing all hours worked, by failing to maintain payroll records that document all hours worked by Plaintiffs and the Class; by failing to pay Plaintiffs and the Class overtime premium pay; by willfully misclassifying Plaintiffs and the Class under Labor Code §§ 2750.3 and 226.8; and by charging willfully misclassified employees fees in violation of 226.8.

6) A declaratory judgment that Defendants' violations as described above were willful and/or knowing and intentional;

1 7) A declaratory judgment that Vanguard Cleaning Systems, Inc., is the employer and
2 client employer of Plaintiffs and the Class pursuant to Labor Code § 2810.3 and California law.

3 8) An equitable accounting to identify, locate, and restore to all current and former Class
4 Members the overtime wages due, their wages that were unlawfully deduction, and their
5 unreimbursed necessary expenses;

6 9) An order requiring Defendants to pay damages to Plaintiffs and the Class for all
7 amounts owed for Defendants' failure to reimburse for necessary expenses, amounts unlawfully
8 deducted from wages, failure to pay legally required meal and rest period pay, unpaid overtime,
9 unpaid minimum wages, in an amount according to proof at trial;

10 10) An award of penalties owed, pursuant to California Labor Code § 203, to Plaintiffs
11 and all Class Members who resigned or whose employment was terminated by Defendants
12 without receiving all compensation owed at the time of separation;

13 11) An award to Plaintiffs and the Class Members of premium wages for meal and rest
14 periods, according to proof;

15 12) An award to Plaintiffs and the Class of statutory penalties because of Defendants'
16 failure to provide Plaintiffs with itemized wage statements that comply with the requirements of
17 Cal. Labor Code § 226, subject to proof at trial;

18 13) An order requiring Defendants to pay restitution of all amounts owed to Plaintiffs and
19 similarly situated Class Members for Defendants' misclassification and willful misclassification
20 of Plaintiffs and the Class under California Labor Code §§ 2750.3, 2775, and 226.8; failure to
21 pay legally required overtime pay, meal and rest period pay, out-of-pocket employment related
22 necessary expenditures or losses, unlawful deductions and withholdings, unpaid minimum
23 wages, waiting time penalties, and interest thereon, in an amount according to proof, pursuant to
24 California Business & Professions Code § 17203 and other applicable law;

25 14) An award of penalties under California's Private Attorneys General Act ("PAGA"),
26 Cal. Labor Code § 2698, *et seq.*;

27 15) An award to Plaintiffs and Class Members of reasonable attorneys' fees and costs,
28 pursuant to California Code of Civil Procedure § 1021.5, California Labor Code §§ 218.5,

226(e), 2802, 1194, 203, 2699(g) and/or other applicable law;

16) An award of other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury.

Dated: February 5, 2021

RUKIN HYLAND & RIGGIN LLP

By: Valerie Brender
Valerie Brender

JESSICA RIGGIN
VALERIE BRENDER
RUKIN HYLAND & RIGGIN LLP
MATTHEW HELLAND
DANIEL BROME
NICHOLS KASTER, LLP

Attorneys for Plaintiffs

EXHIBIT A



October 1, 2020

VIA ONLINE FILING SYSTEM

California Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Re: *Violations of California Labor Code by Vanguard Cleaning Systems, Inc., et al. (Vanguard)*

Dear Sir/Madam:

Pursuant to California Labor Code sections 2699 and 2699.3, and on behalf of our clients, Jaime Amaya and Paula Gonzalez ("Plaintiffs"), we submit to the Agency notice of certain violations of the California Labor Code by Vanguard Cleaning Systems, Inc.; RR Franchising, Inc., d/b/a Vanguard Cleaning Systems of Southern California and d/b/a Vanguard Cleaning Systems of Northern California; Buddha Capital Corp., d/b/a Vanguard Cleaning Systems of Sacramento, d/b/a Vanguard Cleaning Systems of the Central Valley, and d/b/a Vanguard Cleaning Systems of the Central Coast (collectively "Vanguard," unless otherwise noted). Plaintiffs will file claims under the Private Attorneys General Act (PAGA). We write to provide notice of the statutory violations described below, including 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, 2775, and IWC Wage Order No. 5.

The claims for civil penalties are based on the following facts. Vanguard provides janitorial services to commercial offices, car dealerships, gyms, warehouses, and many other businesses throughout the United States, including in California. On its website, Vanguard advertises its ability to provide customers with "high-quality, consistent commercial cleaning services" and notes that it has provided "consistent commercial cleaning services to over 18,000 satisfied customers throughout the U.S. and Canada."¹ Its advertised commercial cleaning services include green cleaning, commercial floor cleaning, cleaning for health, window washing, commercial pressure washing, among others.²

Plaintiffs and aggrieved cleaners (referred to collectively as "cleaners" and "employees") have provided services that are an integral part of Vanguard's business enterprise. To carry out its business in California, Vanguard engages hundreds of persons like Plaintiffs who are assigned to provide cleaning and janitorial services to Vanguard's customers. Although Vanguard classifies most of these individuals as so-called "franchisee" independent contractors, that designation is a subterfuge. Vanguard treats Plaintiffs and aggrieved cleaners as employees within the meaning of California law and is liable for various Labor Code violations, as described below.

¹ Vanguard Cleaning Systems, Inc., "Upgrade to Vanguard Janitorial Services," located at <https://www.vanguardcleaning.com> (last accessed September 18, 2020).

² Vanguard Cleaning Systems, Inc., "Commercial Cleaning Services," located at <https://www.vanguardcleaning.com/commercial-cleaning-services/> (last accessed June 11, 2020).

Vanguard's cleaners, including Plaintiffs, are plainly employees within the meaning of California law, under both the "ABC" test for employment status and the common law *Borello* standard. The ABC test governs the employment status question with respect to PAGA penalties arising from underlying wage order violations, including Vanguard's failure to pay overtime wages, provide cleaners with meal breaks and paid rest breaks, reimburse necessary expenses, and taking unlawful deductions from cleaners' wages. *Johnson v. VGC-IS, LLC*, Case No. 30-20015-00802813 (Orange County Sup., July 18, 2018) ("The court's holding that the 'ABC' test should be applied to determine employee status under the wage orders can only mean that that test also had to be applied to labor code claims seeking to enforce the wage order requirements. . . . The court concludes that the Dynamex 'ABC' test should be utilized to determine the employee/independent contractor issues in this case. The fact that the case is brought under PAGA does not compel a different result."). The ABC test will also indisputably govern all civil penalty assessments for all Labor Code violations after January 1, 2020. *See* Cal. Labor Code § 2750.3, repealed and replaced by Labor Code § 2775 et seq. However, Vanguard cannot meet any prong of the ABC test. Part B is not satisfied because the work performed by cleaners is not outside the usual course of Vanguard's business—rather, it is essential to that business. Nor is Part C satisfied, since Vanguard cannot show that cleaners are customarily engaged in an independently established trade, occupation, or business. Finally, the right of control that Vanguard retains over cleaners renders them employees under Part A of the ABC test and the control prong of the *Borello* statutory purpose test.

- 1. Under the *Borello* right-to-control employment analysis, Vanguard retains all necessary control over the work that Plaintiffs and aggrieved cleaners perform; and under the *Dynamex*/AB 5 ABC test, Vanguard cleaners are not free from Vanguard's control and direction in connection with the performance of their work, either under their contracts or in fact.**

Plaintiff Gonzalez began working for Vanguard as a commercial cleaner in 2010, and Plaintiff Amaya began working for Vanguard as a commercial cleaner around 2003. As part of their work for Vanguard, Plaintiffs were required to work under Vanguard's form franchise agreement. This agreement and related policy documents dictate in detail how Plaintiffs and aggrieved cleaners are to perform their work. For example:

- Vanguard requires Plaintiffs and aggrieved cleaners to work according to Vanguard specifications, standards, policies, and procedures, including those published in its volumes/manuals on various subjects ("Manuals"). Vanguard retains the right to make additions, deletions or modifications to its Manuals at any time, and cleaners are responsible for being aware of these changes and implementing them. For example, the Manuals inform cleaners about chemical safety, green cleaning processes (including proper chemical usage, attention to building entryways, effective vacuuming and dusting, and safeguarding indoor air quality), and the quadrant system method for cleaning.
- Vanguard also requires cleaners to comply with the contracts that Vanguard negotiates with cleaners' accounts. These contracts, which govern the work that Plaintiffs and aggrieved cleaners perform, dictate:
 - The days and times that cleaners will perform cleaning work;
 - The tasks that cleaners perform. For example, they specify whether cleaners are to dust and clean all fixtures and office furniture, empty wastepaper receptacles and replace liners, wash internal and entrance class windows, dust/remove cobwebs from

- all ceilings, clean window sills, vacuum carpeted areas, clean restroom mirrors and glass, among many other detailed instructions;
 - The amount that the Account will be charged;
 - The days on which Vanguard will bill the Account;
 - The term limits of the contract;
 - Whether Vanguard or the Account will provide certain cleaning supplies. For example, one account serviced by Plaintiff Gonzalez required her to provide all cleaning supplies except for toiletries, liners, and paper supplies, which Vanguard stated the Account could purchase through Vanguard.
- Vanguard requires cleaners to provide Accounts with those services that Vanguard has approved and requires cleaners to obtain Vanguard's approval before providing any other services to the Account.
 - Vanguard may provide equipment and supplies, such as mops, brooms, floor signs, toilet brushes, All Purpose Cleaner, among other supplies, when cleaners begin their work for the company; however, Vanguard thereafter requires that cleaners supply the supplies, materials, and equipment that each Vanguard account requires pursuant to the contracts that Vanguard has entered into with these Accounts. Vanguard retains the right to modify its specifications and requirements for supplies and equipment.
 - Cleaners must purchase the types and amounts of insurance that Vanguard requires and name Vanguard as an additional insured.
 - Vanguard retains the right to perform a background check on cleaners or anyone else employed by cleaners.
 - Vanguard retains broad termination rights under its agreements with cleaners, including, among many others, the right to terminate for providing unapproved services to Accounts, for failure to service customer accounts as scheduled, and for failure to comply with mandatory provisions in the Manuals.
2. **Plaintiffs and aggrieved cleaners perform work within Vanguard's usual course of business and are not engaged in an independent trade, occupation, or business, such that they are Vanguard's employees under the *Dynamex*/AB 5 ABC test; and the secondary *Borello* factors also favor employment status under the *Borello* employment analysis.**

Despite being labeled "independent contractors," Vanguard expects Plaintiffs and aggrieved cleaners to follow its extensive work policies and practices as described in its contract, training documents, and operating manual. Vanguard also retains near complete control over cleaning Accounts by establishing the cleaning contracts with the Account, determining which accounts are offered to the franchise worker, the amount those Accounts are charged, the total dollar amount the cleaner receives from the Account, and whether to remove the Account from a cleaner.

Cleaners do not operate truly independent cleaning companies serving many different clients. Instead, Vanguard restricts cleaners' ability to solicit and perform independent work. Vanguard requires Plaintiffs to agree to a covenant not to compete, prohibiting them from soliciting janitorial business from Accounts that are already doing business with Vanguard. It further prohibits cleaners from bidding against Vanguard for any account. For two years after the term of the franchise agreement, cleaners are prohibited from soliciting any Account for which cleaners have performed work while at Vanguard.

Vanguard further reserves for itself the right to transfer or assign all of its rights under the franchise agreement, but Plaintiffs cannot sell, assign, convey, or otherwise dispose of any interest in the agreement without prior written consent, as Vanguard views the rights under the franchise agreement as “personal.”

Cleaners enter into a 10-year agreement with Vanguard, which are subject to renewal. However, upon renewal, Vanguard retains the right to require cleaners to sign its most recent agreement, which may be materially different from Cleaners’ prior agreement. Vanguard also requires, as a term of renewal, for Cleaners to sign a general release of any claims against Vanguard.

Plaintiffs and aggrieved cleaners’ work for Vanguard does not require any special skill and is performed under the training, supervision, and instruction of Vanguard management.

For the reasons stated above, Vanguard retains “all *necessary* control” over the work that cleaners perform. *S. G. Borello & Sons, Inc. v. Dep’t of Indus. Relations*, 48 Cal. 3d 341, 357 (1989). Furthermore, Vanguard has “suffered or permitted” its cleaners to work, such that they are employees under the ABC test for employment status. *See Dynamex Operations W., Inc. v. Super. Ct. of Los Angeles* (2018) 4 Cal.5th 903. Finally, Vanguard is an employer under AB 5, which codified the ABC Test. *See* Cal. Lab. Code, §§ 2750.3 and 2775.

3. Vanguard Cleaning Systems, Inc. is liable for the violations against Plaintiffs and all other aggrieved California cleaners.

Vanguard Cleaning Systems, Inc. (referred to as “VCS”) designed and implemented the contractual framework under which Plaintiffs and aggrieved cleaners were misclassified.

Plaintiffs and aggrieved cleaners purchased “janitorial franchises” from a regional “master franchisor,” or had their agreements transferred to such “master franchisors” after contracting directly with Vanguard Cleaning Systems, Inc. In Plaintiff Gonzalez’s case, the master franchisor has been RR Franchising, Inc., d/b/a Vanguard Cleaning Systems of Northern California, and d/b/a Vanguard Cleaning Systems of Southern California, and in Plaintiff Amaya’s case the master franchisor has been Buddha Capital Corp., d/b/a Vanguard Cleaning Systems of Sacramento, d/b/a Vanguard Cleaning Systems of the Central Valley, and d/b/a Vanguard Cleaning Systems of the Central Coast.

Plaintiffs seek to recover damages and penalties against VCS on behalf of all aggrieved cleaners, regardless of their “master franchisor” entity.

Master franchisors are required to use their best efforts to actively recruit and maintain unit franchises, like Plaintiffs and aggrieved cleaners. VCS requires master franchisors to solicit, generate, and maintain sufficient janitorial accounts in their area and sets a minimum monthly account volumes for master franchisors.

VCS requires master franchisors to investigate the qualifications of each unit franchise pursuant to VCS’s standards, policies and procedures and requires the master franchisor to provide VCS with any documentation and information relating to the unit franchises that it requires.

VCS requires master franchisors to adapt its form franchise disclosure document, and it further requires the master franchisor to enter into an agreement with the unit franchise upon VCS's then-current unit franchise form. VCS prohibits master franchisors from modifying or offering to modify these agreements without VCS's prior written approval.

VCS requires master franchisors to provide initial training to unit franchises and make available billing and collections of accounts according to VCS's specifications.

VCS provides master franchisors with a copy of its Manuals and requires that master franchisors provide these Manuals to unit franchisees, like Plaintiffs and Aggrieved cleaners. VCS further requires master franchisors to ensure that unit franchises will perform their work in accordance with the Manuals, the unit franchise agreement, and all other mandatory operating procedures. VCS also requires master franchisors to comply with the terms of the Subfranchisor Manual that it provides master franchisors.

Master franchisors are obligated to pay VCS up to 5% of the revenues which they collect from cleaners' customers for their cleaning services, which include revenue received from the sale of unit franchises to cleaners, revenue from the accounts serviced by cleaners, and any other revenue received from the Vanguard system.

VCS prohibits master franchisors from permitting unit franchises to contract directly with any customer. Instead, VCS requires that all Accounts contract with the master franchisor, and VCS reserves the right to require the master franchisor to use required forms and mandatory language for customer contracts and invoices.

In a similar case against Vanguard in Massachusetts, the trial court found that Vanguard could not satisfy two of the three prongs of the ABC test.³

That court also found that VCS was liable for violations against Massachusetts cleaners because "Vanguard's revenue is derived from initial franchise fees, [some] percent of the gross billings from work performed by unit franchisees, and various fees imposed on unit franchisees. Vanguard's revenue, therefore, is directly dependent on commercial cleaning work of the plaintiffs and other [cleaners]."⁶

Indeed, Vanguard's business ultimately depends on someone performing the cleaning, which in this case is janitorial franchise cleaners. It relies on these cleaners to continuously perform cleaning services.

VCS is directly liable for the violations described herein. *See Vazquez v. Jan-Pro Franchising International, Inc.* (9th Cir. 2019) 923 F.3d 575, 598, *reh'g granted, opinion withdrawn* (9th Cir. 2019) 930 F.3d 1107, and *on reh'g* (9th Cir. 2019) 939 F.3d 1045, and *opinion reinstated in part on reh'g* (9th Cir. 2019) 939 F.3d 1050 (finding that in a three-tiered cleaning franchise model, the top-tier franchise could be held liable as an employer under the ABC test even though it was not a party to any of the contracts with the alleged employees). VCS is also liable to Plaintiffs and aggrieved cleaners under Labor Code § 2810.3 as a "client employer" who "obtains or is provided workers to perform labor within its

³ *Da Costa v. Vanguard Cleaning Systems, Inc.* (Mass. Super., Sept. 29, 2017) 34 Mass.L.Rptr. 483.

usual course of business from a labor contractor” – here, master franchisors like RR Franchising, Inc., Buddha Capital Corp., Wine Country Ventures, Inc., and Prestige Worldwide, Inc.

Finally, Vanguard’s websites and advertisements promote Vanguard as being in the business of cleaning.

As such, Vanguard Cleaning Systems Inc. is directly liable for the below-described PAGA violations. VCS is also liable to Plaintiffs and aggrieved cleaners under 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 master franchisor.

PAGA Liability

As a worker engaged for the benefit of Vanguard while Vanguard was violating—and continues to violate—pertinent sections of the California Labor Code, Plaintiffs are an “aggrieved employees” for the purposes of PAGA. *See* California Labor Code § 2699(c). We hereby notify you of those violations, specifically the Labor Code violations described below. Plaintiffs seek to represent all owner-operator franchisees in California who have personally performed cleaning work for any Vanguard “master franchisor,” including RR Franchising, Inc., Buddha Capital, Corp., Wine Country Ventures, Inc., and Prestige Worldwide, Inc. Plaintiffs contend that each of the cleaners for these “master franchises” was an employee of Vanguard Cleaning Systems, Inc., making Vanguard Cleaning Systems, Inc. also liable for the penalties described below.

Labor Code Violations

1. Labor Code § 2750.3, repealed and replaced by Labor Code § 2775 et seq.: Misclassification of an Employee as an Independent Contractor.

Labor Code § 2750.3 codified the ABC test providing that “a person providing labor or services . . . shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied: (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (B) The person performs work that is outside the usual course of the hiring entity’s business; (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.” As of September 4, 2020, Labor Code § 2775 repealed and replaced § 2750.3. While § 2775 changed some of the exemptions from the ABC Test, the basic definition of this test remains the same.

Plaintiffs and aggrieved cleaners are not free from Vanguard’s control in the performance of their work either in contract or in fact, their cleaning work is within Vanguard’s usual course of business, and Plaintiffs and aggrieved cleaners are not involved in an independently established trade, occupation, or business such that she and aggrieved cleaners are employees under Labor Code §§ 2750.3 and 2775. As a result, Plaintiffs seek penalties under Labor Code § 2750.3 and 2775 et seq., for Vanguard’s failure to properly classify aggrieved cleaners as employees under the ABC Test.

2. Labor Code § 226.8(a)(1) and IWC Wage Order No. 5: Vanguard's Cleaners are Willfully Misclassified as Independent Contractors to Circumvent California Wage and Hour Laws.

As described above, Vanguard holds itself out as a commercial cleaning service that offers janitorial services to commercial offices, car dealerships, gyms, warehouses, and many other businesses throughout the United States. Vanguard engages hundreds of persons like Plaintiffs who are assigned to Vanguard commercial cleaning accounts. Vanguard classifies Plaintiffs and aggrieved franchise worker employees as “independent contractors,” a designation that it made voluntarily and knowingly as a subterfuge to circumvent the requirements of the California Labor Code. Indeed, a court in Massachusetts found Vanguard's cleaners to be its employees under the ABC test for employment status. Furthermore, Vanguard exercises comprehensive control over the manner and means by which Plaintiffs and aggrieved cleaners/employees perform their work, such that there is no reasonable dispute that Vanguard's cleaners are employees under the California Labor Code.

3. Labor Code § 226.8(a)(2) and IWC Wage Order No. 5: Unlawful Charges to Willfully Misclassified Employees.

Labor Code § 226.8(a)(2) states that it shall be unlawful to charge “an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.” Vanguard has charged Plaintiffs and aggrieved employees franchise fees, fees for new accounts, business support and service fees, insurance, administrative fees, royalty fees, special service fees, and other charges, in violation of Labor Code § 226.8(a)(2).

4. Labor Code § 2810.3: Failure to Pay Wages of Workers Supplied by a Labor Contractor.

As described above, Vanguard Cleaning Systems, Inc. is a client employer and RR Franchising, Buddha Capital Corp., and other master franchisors are Vanguard's labor contractors, supplying Vanguard with workers to perform labor within Vanguard Cleaning Systems Inc.'s usual course of business. As a client employer, Vanguard Cleaning Systems Inc. shares all civil responsibility and civil liability for all workers supplied by any labor contractors for the payment of wages. Labor contractors with whom Vanguard Cleaning Systems Inc. shares these responsibilities and liabilities include RR Franchising, Buddha Capital Corp., Wine Country Ventures, and Prestige Worldwide. However, Vanguard has not shared all civil legal responsibility for the payment of wages, as required by law, and is therefore liable for civil penalties.

5. Labor Code § 2802: Failure to Provide Reimbursement for Business Expenses.

While working for Vanguard, Plaintiffs and aggrieved employees have incurred and paid work-related expenses. Such expenses include, but are not limited to, cleaning supplies, cleaning equipment, uniforms, mandatory insurance, gas and vehicle maintenance, and other necessary expenses. Vanguard failed to reimburse Plaintiffs and aggrieved employees for these expenses even though these necessary expenditures were incurred as a direct consequence of their work requirements, either as a de facto cost (e.g. gas and maintenance) or a requirement of the many

agreements Vanguard forces franchise worker employees to accept as a condition of employment.

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

Labor Code § 221 makes it unlawful for an employer to collect or receive from an employee any part of wages paid to the employee. IWC Wage Order No. 5, § 8 provides that the only circumstance under which an employer can make a deduction from an employee's wage due to cash shortage, breakage, or loss of equipment is if the employer can show that the shortage, breakage, or loss was the result of the employee's gross negligence or dishonest or willful act.

Vanguard's policy and practice of deducting franchise fees, fees for new accounts, business support and service fees, insurance, administrative fees, royalty fees, special service fees, and other charges, from employees' compensation violates Section 221 and IWC Wage Order No. 5.

7. Labor Code §§ 226.7, 512, 1194 and IWC Wage Order No. 5, §§ 11-12: Failure to Authorize and Provide Meal and Rest Periods.

Labor Code § 226.7 states in pertinent 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."

Labor Code § 512 likewise states: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes: and "[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes." IWC Wage Order No. 5, § 11 provides in part that "[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes," and "[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes."

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

IWC Wage Order No. 5, § 12 provides in relevant part: "(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages." Additionally, Vanguard is legally required to compensate Plaintiffs and other employees for non-productive rest periods, while Vanguard's piece rate compensation system only compensates employees for productive work time spent cleaning for Accounts. *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 870-71 (2013).

On information and belief, Vanguard has not promulgated a compliant rest break policy. Plaintiffs and aggrieved employees have regularly worked in excess of three and one-half hours without

Vanguard authorizing and permitting them to take at least a 10-minute paid rest period or paying them separately for rest periods, as required by Labor Code §§ 226.7 and 1194 and IWC Wage Order 5.

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

Pursuant to Labor Code § 226(a) and Wage Order No. 5, § 7, Vanguard is required to provide—semimonthly or at the time of each payment of wages—itemized written statements containing all information described in § 226 and IWC Wage Order No. 5, including, but not limited to, the total hours worked by the employee. Vanguard has failed to comply with the Labor Code by knowingly and intentionally failing to provide Plaintiffs and aggrieved employees with accurate written statements showing their actual and total hours worked. In fact, Vanguard neither maintains records of the hours the worked by its employees, nor does it remit *any* semimonthly, itemized statement of hours worked and wages earned.

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

Ms. Paula Gonzalez began working for Vanguard in approximately 2010 and stopped personally performing work in December of 2019, when she was injured at work. In order to meet Vanguard's stringent policies, procedures, and operational standards, Ms. Gonzalez has worked up to 10 to 12 hours a day, six days a week.

Mr. Jaime Amaya began working for Vanguard in approximately 2002 or 2004 and currently still works for the company. To meet Vanguard's stringent policies, procedures, and operational standards, Plaintiff Amaya has worked up to nine or ten hours a day, five to six days a week.

Vanguard's payment system, which compensates Plaintiffs and other employees on a flat, per Account basis based on the number of times they cleaned for the Account, does not provide Plaintiffs and aggrieved employees with overtime compensation for working more than eight hours per day and 40 hours in a workweek.

10. Labor Code §§ 432.5, 2802: Unlawful Written Restriction on Competition and Unlawful Written Requirement that Employees Indemnify Employer.

California Labor Code § 432.5 states that “[n]o employer. . . shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer. . . to be prohibited by law. Labor Code § 2802 requires employers to indemnify employees “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” In direct contradiction with § 2802, Vanguard requires its employees to indemnify Vanguard for those same expenditures. Likewise, Business and Professions Code § 16600 declares that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.” As a condition of employment, however, Vanguard required Plaintiffs and all aggrieved employees to agree to an unlawful covenant not to compete. Both of these provisions in the signed agreements between Vanguard and its employees violate Section 432.5.

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

California Labor Code § 201 states that an employer is required to provide an employee who is terminated all accrued wages and compensation at the time of termination. California Labor Code § 202 states that an employer is required to provide an employee who resigns all unpaid wages within 72 hours of their resignation, or upon resignation if the employee has provided at least 72 hours' notice. California Labor Code § 203 states that if an employer willfully fails to pay compensation promptly upon discharge, as required by § 201 and § 202, then the employer is liable for waiting time penalties equivalent to the employee's daily wage, for a maximum of 30 days. Upon resignation or termination, employees were not paid all wages due within the statutory time period. Vanguard willfully failed and refused to pay timely compensation and wages for, among other things, unpaid overtime, unpaid meal and rest periods, and unlawful fees. As a direct and proximate result of Vanguard's willful conduct in failing to pay employees for all hours worked, former employees are entitled to recover penalties under California Labor Code § 203.

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

California Labor Code § 204 states that an employer is required to pay all wages "twice during each calendar month, on days designated in advance by the employer as the regular paydays." Vanguard paid cleaners once a month, not every two weeks as required by law. As a result, cleaners are entitled to recover penalties under Labor Code § 210.

13. Labor Code § 450: Compelling or Coercing Employees to Patronize Employer.

Labor Code § 450 states that "No employer . . . may compel or coerce any employee . . . to patronize his or her employer, or any other person, in the purchase of anything of value . . . [including] instances where an employer requires payment of a fee or consideration of any type . . ." Vanguard requires significant purchases as a condition of employment, including but not limited to: franchise fees, fees for new accounts, business support and service fees, insurance, administrative fees, royalty fees, special service fees, and other charges.

14. Labor Code §§ 400-410: Compelling Employees to put up a cash bond as an investment.

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

Vanguard requires aggrieved employees to make substantial payments to and investments in Vanguard in exchange for the ability to work. These include franchise fees, fees for new accounts, business support and service fees, insurance, administrative fees, royalty fees, special service fees, and other charges. These requirements violated Labor Code §§ 400-410.

Plaintiffs seek enforcement of the above-noted Labor Code provisions for themselves and aggrieved

franchise worker employees, and assessment of penalties pursuant to Cal. Labor Code §§ 210, 226.3, 226.8, 1174.5, 2699(f); as well as penalties pursuant to Cal. Labor Code §§ 558 and 1197.1, including civil penalties assessed, liquidated damages, and interest due in connection with the violations, as applicable; and all other applicable penalties provided by the Labor Code.

Attached hereto is Plaintiffs' Complaint, filed in Superior Court on October 1, 2020, which Plaintiffs hereby incorporate by reference.

Very truly yours,



Valerie Brender
RUKIN HYLAND & RIGGIN LLP

Enc.
cc (Via Certified Mail):

Vanguard Cleaning Systems, Inc.
Raymond C Lee
655 Mariners Island Blvd, Ste 303
San Mateo, CA 94404

RR Franchising, Inc.
Rob Dusthimer
6281 Beach Blvd, Ste 225
Buena Park, CA 90621

Buddha Capital Corporation
Edward Lee Gong
91 D'Arcy Parkway
Lathrop, CA 95330