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Attorneys for Plaintiff GLORIA MOLINA, as an individual, and on behalf of all similarly situated employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF LOS ANGELES

GLORIA MOLINA, as an individual and on behalf of all similarly situated employees,

Plaintiff,

v.

JAN-SERVE, LLC, and DOES 1 through 50, inclusive,

Defendants.

Case No.: **22STCV13588**

CLASS ACTION

COMPLAINT FOR DAMAGES

1. Failure to Pay All Wages, Including Overtime Wages (Labor Code §§ 510, 1194, 1182.12);
2. Failure to Provide Meal Periods (Labor Code §§ 226.7 And 512);
3. Failure to Provide Rest Periods (Labor Code §226.7)
4. Failure to Timely Pay Wages at Separation (Labor Code §§ 201, 202, 203);
5. Failure to Provide Accurate Itemized Wage Statements (Labor Code §§ 1174, 226 (A), (E));
6. Failure to Reimburse Necessary Business Expenditures (Labor Code § 2802)
7. Unfair Business Practices (Bus. Prof. Code Section 17200 et. seq.) and
8. Violation of Private Attorneys General Act (PAGA) (Labor Code §2698 et seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff GLORIA MOLINA ("Plaintiff"), on behalf of herself, and all others similarly
2 situated, complains and alleges, on information and belief, the following:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff and the class she seeks to
5 represent ("Plaintiff Class" or "Class Members") pursuant to California Code of Civil Procedure
6 section 382. Plaintiff Class consists of all non-exempt, hourly-paid employees currently and/or
7 formerly employed by Defendant JAN-SERVE LLC (hereinafter referred collectively as
8 "Defendant"), in the State of California during the Class Period. The term "Class Period" is
9 defined as four (4) years prior to the filing of the original complaint through the date of
10 certification. Plaintiff reserves the right to amend this complaint to reflect a different "Class
11 Period" or "Plaintiff Class" as further discovery is conducted.

12 2. Plaintiff, individually, and on behalf of the class she seeks to represent, seeks relief
13 against Defendants for Defendants' practice of violating the applicable wage orders, the
14 applicable Code of Regulations, and California Labor Codes, including: (1) failure to pay all
15 wages, including overtime wages; (2) failure to provide meal periods or compensation in lieu
16 thereof; (3) failure to provide rest periods or compensation in lieu thereof; (4) failure to pay wages
17 at separation; (5) failure to provide accurate, itemized wage statements; (6) failure to indemnify
18 for expenditures or losses in discharge of duties; (7) unfair business practices; These violations
19 concern current and past employees of Defendants.

20 3. Plaintiff brings this lawsuit seeking restitution, and monetary relief against
21 Defendants, and each of them, on behalf of Plaintiff individually, and on behalf of all similarly-
22 situated employees to recover, among other things, unpaid wages and benefits, interest, penalties,
23 liquidated damages, attorney's fees and costs pursuant to California Labor Code sections 201,
24 202, 203, 210, 218.5, 218.6, 226 (a), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
25 2802 and California Code of Civil Procedure section 1021.5, and applicable provisions of IWC
26 Wage Order 5-2001. Plaintiff reserves the right to name additional representatives throughout the
27 State of California.

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1 is a resident of California. On information and belief, Plaintiff alleges that Defendant is
2 conducting business in good standing in California.

3 8. Plaintiff is ignorant of the true names, capacities, relationships and extent of
4 participation in the conduct herein alleged of Defendant sued herein as DOES 1 through 50,
5 inclusive, but on information and belief alleges that said Defendant is legally responsible for the
6 violations alleged herein. Plaintiff will amend this complaint to allege the true names and
7 capacities of the DOE Defendants when ascertained.

8 9. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
9 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
10 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is
11 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
12 employer and/or joint employer of Plaintiff and Plaintiff Class.

13 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
14 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
15 managing agent, single enterprise, joint employer, and/or principal of the co-Defendants, and in
16 performing the actions mentioned below was acting, at least in part, within the course and scope
17 of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego,
18 managing agent, single enterprise, joint employer, and/or principal with the permission and
19 consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant are legally
20 attributable to the other Defendants.

21 **ADMINISTRATIVE PREREQUISITES**

22 11. By this complaint, Plaintiff also brings this case as a representative action seeking
23 penalties for the State of California in a representative capacity, as provided for by the Private
24 Attorneys General Act ("PAGA"), Labor Code section 2698 et seq., to the extent permitted by
25 law, as an aggrieved employee who was employed by Defendant and subject to alleged violations
26 set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in his notice to
27 the Labor Workforce Development Agency ("LWDA") and the employer: Labor Code sections
28 227.3, 510, and 1194 for failure to pay minimum wage and applicable overtime rates, Labor Code

1 sections 226.7 and 512 for failure provide meal and rest periods or premium compensation in lieu
2 thereof, Labor Code sections 226 and 1174 for failure to provide complete and accurate wage
3 statements and failure to maintain accurate payroll records, Labor Code Section 2802 for failure
4 to reimburse necessary business expenditures and Labor Code sections 201, 202, 203, and 204 for
5 failure to pay all wages earned at the time employment ended.

6 12. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
7 PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged
8 to have been violated, and after receiving notice from the LWDA of its intention not to investigate,
9 or after 65 days have passed without notice from the LWDA.

10 13. On April 22, 2022, prior to the filing of this complaint, Plaintiff gave written notice
11 of the specified provisions alleged to have been violated, including the facts and theories to support
12 the alleged violations, as required by Labor Code section 2699.3. This written notice was given
13 via certified mail to Defendant, and to the LWDA by electronically filing the notice via the
14 Department of Industrial Relations website. Plaintiff was given an LWDA case number of LWDA-
15 CM-880041-22. A true and correct copy of Plaintiff's notice to the LWDA and Defendant, dated
16 April 22, 2022, is attached hereto as Exhibit A.

17 18 **GENERAL ALLEGATIONS**

19 14. This class action lawsuit arises out of an ongoing wrongful scheme by Defendants
20 to deny their employees the benefits due under California's wage and hour laws and IWC Wage
21 Orders for work performed in California. Defendants wrongfully refused to pay Plaintiff and
22 Plaintiff Class the minimum wages and overtime compensation, failed to provide lawful meal and
23 rest periods in accordance with California law, and other statutory benefits mandated by
24 California law.

25 15. Plaintiff and Class members were employed by Defendant JAN-SERVE as
26 janitors located in 1 location in Pasadena, California.

27 16. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
28 policies and practices described herein are common in the Defendant's location.

1 17. Plaintiff was employed by Defendants from in or around June 2019 through on or
2 about May 5, 2021 in Pasadena, California as a janitor.

3 18. Plaintiff and Plaintiff Class frequently worked over eight (8) hours per day and/or
4 forty (40) hours per week. However, Defendants failed to compensate Plaintiff and Plaintiff Class
5 the legally mandated overtime rate for all work performed over eight (8) hours per day and/or
6 forty (40) hours per week by requiring Plaintiff and Plaintiff Class to clock out and continue to
7 perform work duties and not giving Plaintiff and the Plaintiff Class meal and rest breaks with no
8 work duties.

9 19. Plaintiff and Plaintiff Class were frequently required to work split shifts by the
10 Defendant without being paid a split shift premium of one hour at the state or local minimum
11 wage, whichever is greater.

12 20. By failing to pay all wages owed to Plaintiff and Plaintiff Class, including failure
13 to pay minimum wage and/or overtime wages, Defendants further failed to pay all earned and
14 unpaid wages to their employees upon separation of employment.

15 21. Defendants failed to provide Plaintiff and Plaintiff Class with lawful daily meal
16 and rest periods. Plaintiff and Plaintiff Class were provided no meal breaks as the Defendant
17 scheduled Plaintiff and the Plaintiff Class for split shifts without any breaks. Further, when
18 Plaintiff and the Plaintiff Class worked shifts in excess of 10 hours, they were not provided with
19 a second meal period.

20 22. Further, Defendants failed to provide Plaintiff and Plaintiff Class with lawful
21 timely and uninterrupted rest periods for every four hours of work or major fraction thereof. Rest
22 breaks were not provided as Defendant scheduled Plaintiff and the Plaintiff Class for split shifts
23 without any breaks. When employees worked shifts in excess of 10 hours, they were not provided
24 the opportunity for a third rest break. Even though Plaintiff and Plaintiff Class were prevented
25 from taking lawful meal and rest periods, Defendants failed to provide them with premium
26 compensation for unlawful meal and rest periods.

27 23. During the Class Period, Defendants, and each of them failed and/or refused to
28 relieve them of all duty and permit them to be completely relieved all work responsibilities for

1 the entirety of their meal and/or rest breaks. Specifically, Defendants would not allow meal and
2 rest breaks thereby failing to provide them with uninterrupted, off-duty breaks.

3 24. As such, Defendants caused Plaintiff and Plaintiff Class, to work without being
4 provided paid full ten (10) minute rest periods for every four (4) hours or major fraction thereof,
5 worked and without being provided a full thirty (30) minute meal periods for shifts of at least five
6 (5) hours and a second full thirty (30) minute meal period for shifts of at least ten (10) hours
7 during which Plaintiff Class were not relieved of all duties and free to leave the premises.
8 Furthermore, Defendants failed and/or refused to pay any Plaintiff Class one (1) hour's pay at the
9 employees' regular rate of pay as premium compensation for failure to provide rest and/or meal
10 periods or to providing such rest and/or meal periods within the statutory time frame as a result
11 of their uniform meal and rest break policy.

12 25. Defendants failed to indemnify Plaintiff and Plaintiff Class for losses and
13 expenditures in their discharge of duties. Plaintiff and Plaintiff Class were required to use their
14 personal cellphones to clock in and out of work and were required to clean their work uniforms.
15 Plaintiff and Plaintiff Class were not reimbursed for their work expenditures.

16 26. Defendants also failed to keep accurate payroll records and failed to provide
17 Plaintiff and Plaintiff Class with complete and accurate itemized wage statements showing actual
18 hours worked and premium wages earned per pay period due to their failure to pay all wages
19 owed as described herein.

20 **CLASS ALLEGATIONS**

21 27. Plaintiff hereby incorporates by reference all preceding paragraphs as if fully
22 restated herein.

23 28. Plaintiff brings this action on behalf of herself and all similarly situated persons,
24 as a class action pursuant to California Code of Civil Procedure section 382.

25 29. **Proposed Class:** Plaintiff's proposed class consists of and is defined as follows:
26 all individuals who worked for Defendant at Jan-Serve LLC facilities in California as a non-
27 exempt hourly janitor, or similar position, at any time during the period from four years prior to
28 the filing of this complaint until the date of judgment (the "Class Period").

1 30. Plaintiff reserves the right under rule 3.764 of the California Rules of Court, to
2 amend or modify the class descriptions with greater specificity or further division into subclasses
3 or limitation to particular issues.

4 31. This action has been brought and may properly be maintained as a class action
5 under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined
6 community of interest in the litigation and the proposed Classes are easily ascertainable.

7 **A. Numerosity**

8 32. The potential members of each Class defined herein are so numerous that joinder
9 of all the members of the Class is impracticable. While the precise number of Class Members
10 have not been determined at this time, Plaintiff is informed and believes that Defendants currently
11 employs, and during the relevant time period employed, hundreds of employees in positions as
12 Defendants' non-exempt direct support of staff employees in California, who are or have been
13 affected by Defendants' unlawful practices as alleged herein.

14 33. Accounting for employee turnover during the relevant periods necessarily
15 increases this number substantially. Upon information and belief, Plaintiff alleges Defendants'
16 employment records would provide information as to the number and location of all Class
17 Members. Joinder of all members of the proposed Classes is not practicable.

18 **B. Commonality**

19 34. Common questions of law and fact predominate over any questions affecting only
20 individual Class Members. These common questions of law and fact include, without limitation:

- 21 (a) Whether Defendants failed to pay all wages, including minimum and
22 overtime wages, earned and due, to Plaintiff and Plaintiff Class;
23 (b) Whether Defendant violated California Labor Code Section 510 failing to
24 pay accurate wages to California Subclasses members when employees
25 worked during their meal periods;
26 (c) Whether Defendant violated the meal break provisions of Labor Code
27 Sections 226.7 and 512 by failing to afford Plaintiff and the Class Members
28 proper meal breaks;

- (d) Whether Defendant violated the rest break provisions of Labor Code Sections 226.7 and 512 by failing to afford Plaintiff Class Members proper rest periods;
- (e) Whether Defendants failed to furnish to Plaintiff and Plaintiff Class accurate itemized wage statements containing all information required by Labor Code section 226, subdivision (a);
- (f) Whether Defendants failed to pay all unpaid wages earned during the course of Plaintiff and Plaintiff Class's employment upon separation of employment pursuant to Labor Code sections 201 through 203;
- (g) Whether Defendants violated the indemnification provisions of Labor Code section 2802 when Plaintiff and Plaintiff Class were forced to use their cell phones for work purposes without compensation; and
- (h) Whether Defendants engaged in unfair/unlawful business practices.

C. Typicality

35. Plaintiff's claims are typical of the claims of the Plaintiff Class. Plaintiff and all Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

D. Adequacy of Representation

36. Plaintiff will fairly and adequately represent and protect the interests of all Class Members. Plaintiff has no known conflicts of interest with Class Members. Counsel who represents Plaintiff is competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

37. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to each Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' unlawful policies and practices alleged in the complaint.

38. Class action treatment will allow those similarly situated persons to litigate their

1 claims in the manner that is most efficient and economical for the parties and the judicial system.
2 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of
3 this action that would preclude its maintenance as a class action.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY ALL WAGES**

6 **(Plaintiff and Plaintiff Class against All Defendants)**

7 39. Plaintiff incorporates all previous paragraphs of this complaint by reference as
8 though fully set forth herein.

9 40. Upon information and belief, Defendants maintains, and has maintained
10 throughout the Class Period, a consistent policy and practice of failing to pay wages, including
11 minimum wages and overtime wages, for hours actually worked.

12 41. “[A]ny employee receiving less than the legal minimum wage or the legal
13 overtime compensation applicable to the employee is entitled to recover in a civil action the
14 unpaid balance of the full amount of this minimum wage or overtime compensation, including
15 interest thereon, reasonably attorney’s fees, and costs of suit.” (Lab. Code, § 1194, subd. (a).) An
16 employee shall be compensated at the rate of no less than one and one-half times their regular
17 rate of pay for any work performed beyond eight hours in a workday and any work performed
18 beyond 40 hours in a workweek and the first eight hours worked on the seventh day of work in
19 any one workweek. (Lab. Code, section 510, subd. (a).) An employee shall be paid at the rate of
20 no less than twice their regular rate of pay for any work performed beyond 12 hours in a day. (*Id.*)
21 Payment of any wage lower than the minimum wage is unlawful. (Lab. Code, § 1197.) When an
22 employee works a split shift, one hour’s pay at the minimum wage shall be paid in addition to the
23 minimum wage for that workday. (Wage Order 5-2001, paragraph (4) (C))

24 42. Plaintiff and Plaintiff Class regularly worked over eight (8) hours per day and/or
25 forty (40) hours per week. Defendants failed to pay Plaintiff and Plaintiff Class all minimum
26 wage, overtime premiums and/or double time premiums earned for all hours worked in excess of
27 eight (8) hours per day and/or forty (40) hours per week. Plaintiff and Plaintiff Class were not
28 paid all wages earned and/or were not paid the appropriate rate of pay for work performed for

Defendants.

43. Plaintiff and Plaintiff Class regularly worked seven days in a workweek but were only paid their regular rate of pay. Defendants failed to pay Plaintiff and Plaintiff Class one and one-half times their regular rate of pay for the first eight hours worked on the seventh work day of a workweek.

44. Plaintiff and Plaintiff Class frequently worked split shifts without being paid a split shift premium of one hour's pay at the minimum wage.

45. Pursuant to Labor Code sections 510, 1182.12, 1194 and 1197, Plaintiff and Plaintiff Class seek the payment of all minimum wage, overtime pay and/or double time pay which they earned and accrued four (4) years prior to filing this complaint, according to proof.

46. Additionally, Plaintiff and Plaintiff Class are entitled to prejudgment interest, attorney's fees and costs of suit pursuant to Labor Code section 1194.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF (Plaintiff and Plaintiff Class against All Defendants)

47. Plaintiff incorporates all previous paragraphs of this complaint by reference as though fully set forth herein.

48. Labor Code sections 226.7 and 512, provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30) minutes.

49. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section.

50. As described above, and herein, Defendants, and each of them, failed to maintain a lawful meal break policy that permitted employees to be relieved of all duty and reasonably provide a full 30-minute meal period and make available to Plaintiff and Plaintiff Class such meal

1 periods within the statutory timeframe. As a result, Plaintiff and Plaintiff Class were not provided
2 off-duty meal periods. Defendants further failed to provide an additional meal period to
3 employees when they worked shifts in excess of ten hours. In so doing, Defendants has
4 intentionally and improperly denied meal periods to Plaintiff and Plaintiff Class in violation of
5 Labor Code sections 226.7 and 512 and other regulations and statutes.

6 51. Defendants failed to provide Plaintiff and Plaintiff Class with duty free meal
7 periods in violation of Labor Code sections 226.7 and 512 wherein Plaintiff and Plaintiff Class
8 were scheduled for eight (8) hour shifts and were not given a meal break and were not provided
9 a second meal period when they worked shifts in excess of ten hours.

10 52. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than
11 five (5) hours in a workday and/or more than ten (10) hours in a workday.

12 53. Plaintiff and Class Members did not voluntarily or willfully waive meal periods.

13 54. By virtue of the Defendants' failure to properly provide Plaintiff and Plaintiff
14 Class meal periods, and/or work free meal periods to Plaintiff and Plaintiff Class thereby causing
15 Plaintiff and Plaintiff Class to suffer, and will continue to suffer, damages in the amounts which
16 are presently unknown, but which exceed the jurisdictional limits of this Court and which will be
17 ascertained according to proof at trial.

18 55. Defendants failed to pay an additional hour of pay to Plaintiff and Class Members
19 when meal periods were interrupted and/or not taken as required by Labor Code section 226.7(c).

20 56. Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of
21 meal period compensation pursuant to *Labor Code* section 226.7 which they are owed beginning
22 four (4) years prior to filing this Complaint as well as the assessment of any statutory penalties
23 against these Defendants, and each of them, in a sum as provided by the Labor Code and/or other
24 statutes.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**
3 **(Plaintiff and Plaintiff Class against All Defendants)**

4 57. Plaintiff incorporates all previous paragraphs of this complaint by reference as
5 though fully set forth herein.

6 58. Labor Code section 226.7 provides that employers authorize and permit all
7 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

8 59. Labor Code section 226.7(c) provides that if an employer fails to provide an
9 employee rest period in accordance with this section, the employer shall pay the employee one
10 (1) hour of pay at the employee's regular rate of compensation for each workday that the rest
11 period is not provided.

12 60. Defendants, and each of them, failed and or refused to relieve Plaintiff and Plaintiff
13 Class of all work duties. Furthermore, due to Defendants' policy of scheduling eight (8) shifts
14 without any breaks and failing to provide an additional rest break to employees who worked shifts
15 in excess of 10 hours, Plaintiff and Plaintiff Class did not receive adequate rest periods lasting a
16 full ten (10) minutes. By and through their actions, Defendants intentionally and improperly
17 denied rest periods to the Plaintiff and Plaintiff Class in violation of *Labor Code* sections 226.7
18 and 512.

19 61. At all times relevant hereto, Plaintiff and Plaintiff Class, have worked more than
20 four (4) hours in a workday and/or more than ten (10) hours in a workday.

21 62. By virtue of the Defendants' unlawful failure to provide rest periods to Plaintiff
22 and Plaintiff Class as a result of their requirement that employees perform work duties during rest
23 periods and/or forego rest periods, Plaintiff and Plaintiff Class have suffered, and will continue
24 to suffer, damages, in amounts which are presently unknown, but which exceed the jurisdictional
25 limits of this Court and which will be ascertained according to proof at trial.

26 63. Plaintiff, himself and on behalf of employees similarly situated, request recovery
27 of rest period compensation pursuant to *Labor Code* section 226.7, which they are owed
28 beginning four (4) years prior to filing this Complaint as well as the assessment of any statutory

1 penalties against Defendant, and each of them, in a sum as provided by the Labor Code and/or
2 any other statute.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO TIMELY PAY WAGES AT SEPARATION**

5 **(Plaintiff and Plaintiff Class against All Defendants)**

6 64. Plaintiff incorporates all previous paragraphs of this complaint by reference as
7 though fully set forth herein.

8 65. Sections 201 and 202 of the California Labor Code require Defendants to pay its
9 employees all wages due within 72 hours of termination of employment. Section 203 of the Labor
10 Code provides that if an employer willfully fails to timely pay such wages the employer must, as
11 a penalty, continue to pay the subject employees' wages until the back wages are paid in full or
12 an action is commenced. The penalty cannot exceed 30 days of wages.

13 66. Plaintiff and formerly employed members of the Plaintiff Class are entitled to
14 compensation for all forms of wages earned, including, but not limited to, minimum wages,
15 overtime wages and/or double-time wages earned but not paid, compensation for unprovided rest
16 periods and unprovided meal periods, but to date have not received such compensation, therefore
17 entitling them Labor Code section 203 penalties.

18 67. As detailed above, Plaintiff is informed and believes, and thereon alleges, that
19 Defendants failed to pay all wages earned during Plaintiff and formerly employed members of
20 the Plaintiff Class's employment at the time of their separation as Defendants required Plaintiff
21 and Plaintiff Class to work seven days in a workweek but failed to compensate Plaintiff and
22 Plaintiff Class one and one half times the regular rate of pay for all hours worked during the
23 seventh day of a workweek and for premium pay for meal and rest breaks not provided to Plaintiff
24 and formerly employed members of the Plaintiff Class.

25 68. More than thirty (30) days have passed since Plaintiff and formerly employed
26 Plaintiff Class Members have left Defendants' employ, and on information and belief, they have
27 not received payment pursuant to Labor Code section 203. As a consequence of Defendants'
28 willful conduct in not paying all earned wages, Plaintiff and the affected Class Members are

entitled to thirty (30) days wages as a penalty under Labor Code section 203 for failure to pay legal wages.

69. Plaintiff and the affected Class Members are also entitled to thirty (30) days wages as a penalty under Labor Code section 203 for willful failure to pay one hour's wages in lieu thereof for denied rest and meal periods, together with interest thereon and attorneys' fees and costs.

70. Plaintiff and members of the Plaintiff Class who terminated employment with Defendants within four (4) years of the filing of the complaint until the date of entry of judgment, without being paid the proper payments are entitled to thirty (30) days of pay at their regular rate of pay as waiting time penalties. Pursuant to Labor Code sections 203, Plaintiff and Plaintiff Class seek to recover in a civil action all remedies to the fullest extent permissible including attorney's fees, costs of litigation and interest.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS AND MAINTAIN RECORDS

(Plaintiff and Plaintiff Class against All Defendants)

71. Plaintiff incorporates all previous paragraphs of this complaint by reference as though fully set forth herein.

72. Labor Code section 1174, subdivision (d), requires an employer to keep at a central location in California or at the plant or establishment at which the employees are employed, payroll records showing the hours worked daily and the wages paid to each employee. (Lab. Code § 1174, subd. (d).)

73. Labor Code section 226, subdivision (a) states that an employer "shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the

1 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
2 of the period for which the employee is paid, (7) the name of the employee and only the last four
3 digits of his or her social security number or an employee identification number other than a social
4 security number, (8) the name and address of the legal entity that is the employer, and (9) all
5 applicable hourly rates in effect during the pay period and the corresponding number of hours
6 worked at each hourly rate by the employee.” (Lab. Code, § 226, subd. (a).)

7 74. Labor Code section, 226 subdivision (e) provides that if an employer knowingly
8 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
9 the total hours worked by the employee and the applicable hourly overtime rates, causing the
10 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty
11 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent
12 violation, up to four thousand dollars (\$4,000.00).

13 75. Industrial Welfare Commission (“IWC”) Wage Order Number 5-2001, paragraph
14 (7)(3) requires that every employer shall keep accurate information with respect to each
15 employee, including time records showing when each employee begins and ends each work
16 period, the total daily hours worked by each employee and the total hours worked in each payroll
17 period, and applicable rates of pay. Plaintiff is informed and believes that Defendant willfully and
18 intentionally failed to make and/or keep records which accurately reflect the hours and wages
19 worked by Plaintiff and Plaintiff Class. Specifically, Plaintiff believes that Defendant’s records
20 do not accurately reflect the wages owed in the form of the lawful minimum wage, overtime pay
21 and statutory premiums for non-compliant meal and rest periods.

22 76. As described above, Plaintiff is informed and believes that Defendant willfully
23 failed to make or keep accurate records for Plaintiff and Plaintiff Class by failing to pay all wages
24 owed, including minimum wage, overtime premiums and/or double time premiums, for worked
25 performed off-the-clock and thereby failing to maintain accurate records.

26 77. Plaintiff is informed and believes that Defendant’s failure to keep and maintain
27 accurate records and information and to provide Plaintiff and Plaintiff Class accurate itemized
28 wage statements, as described above, was knowing and intentional, and Plaintiff and Plaintiff

1 Class are entitled to statutory penalties for each pay period in which a violation occurred. As
2 such, Plaintiff seeks penalties under Labor Code section 226, subdivision (e). Plaintiff further
3 seeks recovery of attorneys' fees and costs pursuant to Labor Code section 226, subdivision (e),
4 and as otherwise permitted by law.

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6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENDITURES**

8 **(Plaintiff and Plaintiff Class against all Defendants)**

9 78. Plaintiff and Plaintiff Class reallege and incorporate by reference, as though fully
10 set forth herein, paragraphs 1 through 77 of this Complaint.

11 79. Labor Code section 2802 states, "An employer shall indemnify his or her employee
12 for all necessary expenditures or losses incurred by the employee in direct consequence of the
13 discharge of his or her duties"

14 80. Plaintiff and the Plaintiff Class were not reimbursed by Defendant for necessary
15 expenditures as a direct consequence of the discharge of their duties.

16 81. Defendant knowingly, willingly and intentionally attempted to offset the cost of
17 doing business on the Plaintiff and Plaintiff Class.

18 82. Defendant had a corporate practice and policy of requiring Plaintiff and Plaintiff
19 Class to shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiff
20 and Plaintiff Class for necessary expenditures. Specifically, Defendant had a policy and/or practice
21 of requiring Plaintiff and Class Members to use their cell phones to clock in and out of work and
22 to clean their work uniforms.

23 83. Accordingly, Plaintiff and Plaintiff Class are entitled to an award of "necessary
24 expenditures or losses" in accordance with Cal. Labor Code § 2802, which shall also include all
25 reasonable costs, including, but not limited to, attorneys' fees and interest.

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1 **SEVENTH CAUSE OF ACTION**

2 **VIOLATION OF UNFAIR COMPETITION LAW/UNFAIR-UNLAWFUL BUSINESS**
3 **PRACTICES**

4 **(Plaintiff and Plaintiff Class against All Defendants)**

5 84. Plaintiff incorporates all previous paragraphs of this complaint as though fully set
6 forth herein.

7 85. Plaintiff brings this claim individually and on behalf of Class Members.

8 86. Business and Professions Code section 17204 allows “any person who has suffered
9 injury in fact and has lost money or property as a result of such unfair competition” to prosecute
10 a civil action for violation of the UCL.

11 87. Labor Code section 90.5, subdivision (a), states it is the public policy of California
12 to vigorously enforce minimum labor standards in order to ensure employees are not required to
13 work under substandard and unlawful conditions, and to protect employers who comply with the
14 law from those who attempt to gain competitive advantage at the expense of their workers by
15 failing to comply with minimum labor standards.

16 88. Beginning at an exact date unknown to Plaintiff, but at least since the date four
17 years prior to the filing of this suit, Defendants have committed acts of unfair competition as
18 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent
19 business practices and acts described in this complaint including but not limited to violations of
20 Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1174.5, 1175, 1182.12, 1194 and
21 1197, IWC Wage Order 5-2001, as well as other statutes.

22 89. The violations of these laws and regulations, as well as of the fundamental
23 California public policies protecting workers, serve as unlawful predicate acts and practices for
24 purposes of Business and Professions Code sections 17200 et seq.

25 90. As a result of these actions, Plaintiff, on information and belief, alleges that
26 Defendants are able to unfairly compete with other comparable companies in the State of
27 California in violation of Business and Professions Code sections 17000 et seq. and 17200 et seq.
28 Due to these unlawful, unfair and/or fraudulent business practices, Defendants has gained a

competitive advantage over other comparable companies doing business in the State of California.

91. Plaintiff's success in this action will enforce important rights affecting the public interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf of himself.

92. Business and Professions Code section 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition.

93. Business and Professions Code section 17203 provides that the Court may restore to any person in interest any money or property that may have been acquired by means of such unfair competition. Plaintiff and the Plaintiff Class are entitled to restitution pursuant to Business and Professions Code section 17203 for wages and payments unlawfully withheld from employees, including the fair value of the meal and rest periods and other losses alleged herein, during the four-year period prior to the filing of this complaint. All remedies are cumulative pursuant to Business and Professions Code section 17205.

94. Business and Professions Code section 17202 provides: "Notwithstanding section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code section 17202.

95. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action. This action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to pay attorney's fees from the recovery in this action. Attorney's fees are appropriate pursuant to Code of Civil Procedure section 1021.5 and otherwise.

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EIGHTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004

(Labor Code §§ 2698 *et seq.*)

(Plaintiff Against All Defendants)

96. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

97. Plaintiff seeks recovery of penalties under the Labor Code Private Attorney General Act of 2004 (PAGA), Labor Code sections 2698 *et seq.*

98. Pursuant to Labor Code section 2699.3, subdivision (a)(1), on April 22, 2022, Plaintiff gave written notice to the LWDA and Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. A true and correct copy of Plaintiff's notice dated April 22, 2022 is attached hereto as Exhibit A.

99. The LWDA has not provided Plaintiff with any notice that it intends to investigate the alleged violations, and more than sixty-five (65) calendar days have elapsed since the postmark date on Plaintiff's notice.

100. Pursuant to Labor Code section 2699, subdivision (I)(1), Plaintiff will provide the LWDA with a file-stamped copy of this complaint within ten (10) days of the filing thereof.

101. Plaintiff has therefore complied with all administrative requirements.

102. PAGA permits an "aggrieved employee" to recover penalties on behalf of himself and other employees subject to violations of the Labor Code.

103. Section 2699, subdivision (f) of the Labor Code provides for civil penalties for violations the California Labor Code, for which a specific civil penalty is not provided, which here includes sections 204, 226.7, 510, 512, 1182.12, 1194, 1194.2, and 2802, and the applicable Wage Order. Plaintiff also seeks recovery of civil penalties for any section of the Labor Code included in this action, including sections 201, 202, 203, and 226.

104. Section 558 of the Labor Code provides for civil penalties for violations of the Labor Code by "any employer or other person," which in this case includes Defendants Jan-Serve

1 LLC, and DOES 1 through 50. Labor Code section 558 provides for the award of civil penalties
2 that includes the amount each employee was underpaid and those outstanding wages are paid to
3 the aggrieved employees.

4 105. Plaintiff is informed and believes Defendant at all relevant times employed one or
5 more employees.

6 106. For code sections that provide for recovery of civil penalties, Plaintiff will seek said
7 penalties on behalf of all aggrieved employees. For code sections that do not specifically provide
8 for civil penalties, Plaintiff will seek civil penalties of one hundred dollars (\$100) for each
9 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
10 each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code
11 section 2699, subdivision (f). The “initial violation” occurs during the first pay period following
12 notice of such violations served on Defendant through the letter to the LWDA.

13 107. Code of Civil Procedure section 2699, subdivision (a), provides that civil penalties
14 may be “recovered through a civil action brought by an aggrieved employee on behalf of himself
15 or herself and other current or former employees.” Code of Civil Procedure section 2699,
16 subdivision (g), provides that an employee who prevails in a civil action under section 2699 shall
17 be entitled to an award of reasonable attorney fees and costs.

18 108. Accordingly, the State of California, Plaintiff, and aggrieved employees are entitled
19 to civil penalties, attorney fees, and costs according to proof.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff and Class Members pray for judgment as follows:

- 22 1. That the Court determine that this action may be maintained as a class action;
- 23 2. That Plaintiff be appointed the representative of the Class, as appropriate;
- 24 3. That the attorneys of record for Plaintiff whose name appears in this complaint be
25 appointed class counsel;
- 26 4. For compensatory damages in an amount according to proof with interest thereon;
- 27 5. For economic and/or special damages in an amount according to proof with interest
28 thereon;

6. For civil penalties;
7. That Defendants be found to have engaged in unfair competition in violation of Business and Professions Code section 17200 *et seq.*;
8. That Defendants be ordered and enjoined to make restitution to each Class due to its unfair competition, pursuant to Business and Professions Code sections 17203 and 17204;
9. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission including, but not limited to, waiting time penalties under Labor Code section 203, and penalties under Labor Code section 226, subdivision (e), 226.3, 210, 226.7, and 1174.5;
10. For attorneys' fees, interest, and costs of suit under Labor Code sections 218.5, 1194, California Code of Civil Procedure section 1021.5 and other applicable provisions of law outside the Labor Code; and
11. For such other and further relief as the Court deems just and proper.

Dated: April 22, 2022

MAHONEY LAW GROUP, APC



Kevin Mahoney, Esq.
Robert Costa, Esq.
Attorneys for Plaintiff GLORIA MOLINA and on
behalf of all employees similarly situated

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Dated: April 22, 2022

Robert Costa

Attorneys for Plaintiff GLORIA MOLINA and on
behalf of all employees similarly situated

EXHIBIT A



Robert L. Costa, Esq.
(562) 590-5550 phone
(562) 590-8400 facsimile
rcosta@mahoney-law.net

April 22, 2022

VIA CERTIFIED ELECTRONIC MAIL

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL # 7019 0950 0001 6447 5155

Return Receipt Requested

Jan-Serve LLC

c/o Latiff Chagpar, Agent for Service of Process

465 E. Union Street, Suite 207

Pasadena, CA 91101

Re: Gloria Molina v. Jan-Serve LLC

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency, Jan-Serve LLC

From: Gloria Molina, on behalf of himself and other aggrieved employees who were subject to the Employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Gloria Molina ("Ms. Molina" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Jan-Serve LLC ("Employer") is a cleaning company headquartered in Pasadena, CA. Ms. Molina was an hourly-paid, non-exempt employee for Employer.

Ms. Molina alleges Employers violated various sections of the Labor Code, including sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 2802, by failing to

provide Ms. Molina and all other aggrieved employees with all wages for all hours worked, including, but not limited to, regular and minimum wage, overtime and double-time pay, meal and rest period premium pay and reimbursement for necessary business expenditures. Ms. Molina and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employers as a non-exempt janitor, or similar positions, in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Employers Failed to Provide Ms. Molina and Other Aggrieved Employees with Meal and Rest Periods, or Premium Compensation in Lieu Thereof, in Violation of California Law

Ms. Molina alleges that she and other aggrieved employees were routinely not provided with timely, 30-minute off-duty meal periods, as required by the Labor Code. Ms. Molina and other aggrieved employees were typically not allowed to take their meal periods within the first five hours worked. Employer failed to maintain a policy or practice of providing meal and rest periods for Employees as they were not always allowed to take their meal and rest periods in a timely manner. Ms. Molina and other aggrieved employees allege that they did not receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.) When employees failed to receive their meal break, they did not receive premium pay as compensation for the missed meal breaks. Specifically, Employers' policy provided that Ms. Molina and other aggrieved employees were not allowed to take meal breaks within the first five hours worked.

Ms. Molina further alleges that she and other aggrieved employees did not receive duty-free, uninterrupted rest periods for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Employers prevented Ms. Molina and other aggrieved employees from taking rest breaks throughout their shifts. This was due to Employers' policy of not telling Employees to take their rest periods. Ms. Molina and other aggrieved employees were also not told to take a second rest period, on shifts exceeding six hours of work.

When employees were prevented from taking rest breaks, they did not receive premium pay for the missed rest breaks. Employers' conduct, which is in violation of the Labor Code, is also actionable under PAGA.

B. Employers Failed to Pay Ms. Molina and Other Aggrieved Employees for all Hours Worked, Including Minimum Wage and Overtime, in Violation of California Law

Employers failed to pay Ms. Molina and other aggrieved employees for all hours worked at the legally mandated wage rates for all hours worked. Specifically, Ms. Molina and other aggrieved employees regularly worked seven days in a workweek, but Employer only compensated Ms. Molina and aggrieved employees at their regular rate of pay and did not compensate Ms. Molina and similarly aggrieved employees for all time worked on their seventh work day of a workweek at one and one-half times the employees' regular rate of pay. As a result,

Employers failed to compensate Ms. Molina and other aggrieved employees for all time actually worked at the proper rate of pay. Employers was obligated to pay Ms. Molina and other aggrieved employees one and one-half times the employees' regular rate of pay for all hours worked on their seventh work day of a workweek. Employers' conduct is in violation of Labor Code sections 510, 1194 and 1197, and is actionable under PAGA.

C. Employers Failed to Provide Ms. Molina and Other Aggrieved Employees with Compliant Wage Statements, and Failed to Timely Pay All Wages Owed Upon Severance of Employment, in Violation of California Law

Based on currently available information and records, Employers did not keep accurate time records in violation of the Labor Code, the applicable wage order, and actionable under PAGA. By failing to include on Ms. Molina's and other aggrieved employees' pay stubs all rest and meal break premium wages and full compensation for all hours worked including proper overtime and double-time wages as set forth above, Employers failed to keep accurate payroll records and failed to provide Ms. Molina and other aggrieved employees with complete and accurate wage statements. This conduct is in violation of Labor Code sections 226 and 1174, and is actionable under PAGA.

As a further result of Employers' failure to pay all wages owed as described herein, Employers also violated Labor Code sections 201, 202, 203, and 204 due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

D. Employers Failed to Reimburse Ms. Molina and Other Aggrieved Employees for Necessary Business Expenditures, in Violation of California Law

Based on currently available information and records, Employer did not reimburse Ms. Molina and other aggrieved employees for necessary business expenditures, including, but not limited to, the cost of cleaning work uniforms and the cost of a cellular phone monthly plan, which is in violation of Labor Code section 2802, the applicable wage order, and actionable under PAGA. Ms. Molina and aggrieved employees were required to use their personal cell phones to clock in and out of work and were required to clean their work uniforms. Employers did not have a policy or practice to reimburse employees for the required use of their personal cell phones and the cleaning of work uniforms.

E. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Ms. Molina becomes aware of additional compensation owed or losses incurred by Ms. Molina or by any other aggrieved employee of the Employers, Ms. Molina expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Kevin Mahoney, Esq.
Robert L. Costa, Esq.
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: rcosta@mahoney-law.net

Sincerely,



Robert L. Costa, Esq.
MAHONEY LAW GROUP, APC