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22CV401053
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Attorney for Plaintiff and Similarly Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

ESMERALDA VELASCO, on behalf of herself and Similarly Aggrieved Employees,

Plaintiffs,

v.

BRIGHT MATTERS, INC., a California Corporation; ALEJANDRO NAVARRO, an individual; KELLERMEYER BERGENSONS SERVICES, LLC, a Delaware Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV401053

COMPLAINT FOR DAMAGES:

(1) PENALTIES UNDER PRIVATE ATTORNEYS GENERAL ACT ("PAGA");

(2) FAILURE TO PAY EARNED WAGES UPON DISCHARGE;

(3) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS; and

(4) FAILURE TO PROVIDE EMPLOYMENT RECORDS.

DEMAND FOR JURY TRIAL

Plaintiff Esmeralda Velasco ("Plaintiff" or "Velasco"), suing on behalf of herself and all similarly aggrieved employees, brings this action against Bright Matters, Inc. ("Bright Matters"); Alejandro Navarro ("Navarro"); Kellermeyer Bergensons Services, LLC ("KBS"); and DOES 1 through 50, inclusive, (collectively "Defendants"), as follows.

PARTIES

1. Plaintiff Esmeralda Velasco is an individual who resides in California and who worked for Defendants in California as a janitor, from approximately September 2021 until her termination in January 2022.

2. Defendant Bright Matters, Inc. ("Bright Matters"), is a California corporation with its principal place of business in Buena Park, California. Defendant Bright Matters provides cleaning and janitorial services throughout California. Bright Matters is, and at all relevant times was, an employer subject to California's wage-and-hour laws.

3. Defendant Alejandro Navarro ("Navarro") is, and at all times relevant hereto was, an individual who resides in California. Plaintiff is informed and believes and, on that basis, alleges that Defendant Navarro has, and at all relevant times herein had, an ownership interest in Defendant Bright Matters, and that he is an owner, director, officer, and/or managing agent of Bright Matters, as defined by Labor Code § 558.1. Plaintiff further alleges that Defendant Navarro acted and continues to act on behalf of Bright Matters and caused Bright Matters to violate provisions of the Labor Code and relevant IWC Wage Order with respect to Velasco and other aggrieved employees.

4. Defendant Kellermeyer Bergensons Services, LLC ("KBS"), is a Delaware company operating in California with its principal place of business in Oceanside, California. Defendant KBS provides essential facility services such as janitorial services, professional cleaning, operational support, and maintenance to customers throughout California. Plaintiff alleges that Defendant KBS was a "client employer" that obtained or was provided workers by Bright Matters and Navarro that operated as "labor contractors" under Labor Code § 2810.3 and applicable statutes.

5. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege Defendants' true names and capacities when

ascertained. Plaintiff is informed and believes and thereupon alleges that each of the fictitiously-named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as herein alleged are proximately caused by such occurrences.

6. Plaintiff is informed and believes and, on that basis, alleges that at all relevant times, Defendants, directly or indirectly, or through agents or other persons, employed Plaintiff, and exercised control, or had the ability to influence others to exercise control, over the wages, hours, and working conditions of Plaintiff. Defendants therefore jointly suffered, permitted, and engaged Plaintiff to work and acted as her joint employers.

7. Plaintiff is informed and believes and, on that basis, alleges that at all relevant times, Defendants were agents and/or successors and/or employees of each other and were acting within the course and scope of said agency and/or successorship and/or employment. Plaintiff further alleges that Defendants acted with the permission and/or consent of each other and/or ratification of such conduct.

JURISDICTION AND VENUE

8. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, §10, which grants the Superior Court original jurisdiction in all cases except those given to other trial courts. Plaintiff seeks damages in this case in an amount exceeding the jurisdictional minimum of this Court. 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. Venue in the County of Santa Clara is proper under Business & Professions Code § 17203 and California Code of Civil Procedure § 395.5 because a substantial part of Bright Matters' and KBS' unlawful conduct occurred in this County, Bright Matters and KBS provide services in this County, Bright Matters and KBS conduct substantial business in this County, and Bright Matters' and KBS' liability arose in this County. The relief requested is within the jurisdiction of this Court.

FACTUAL ALLEGATIONS

10. Bright Matters is a janitorial and grounds maintenance company that provides services to corporate clients on an ongoing contractual basis. As part of its business, Bright Matters contracts with client employers, such as KBS, to provide workers for KBS's commercial janitorial cleaning services in a broad range of industries, which includes retail, business, and hospitality, among others.

11. KBS exercised significant control and direction over Plaintiff and the other aggrieved employees on a daily basis. Bright Matters and Defendant Navarro sourced, hired, and provided KBS with workers, including Plaintiff, to perform janitorial services under KBS's janitorial contracts. KBS maintained direct supervisors and managerial employees at their various worksite locations, who were tasked with controlling and directing Plaintiff and the other aggrieved employees on a daily basis in the performance of their duties for KBS. In addition, Plaintiff and other janitors are required by KBS to wear KBS uniforms at all times, identifying KBS as their employer. Further, KBS had the authority to, and did in fact terminate Plaintiff Velasco and the other aggrieved employees' employment at will.

12. Plaintiff Velasco was, at all relevant times herein, a janitor for Bright Matters and KBS. During her employment with Defendants, Plaintiff and other aggrieved employees were willfully misclassified as independent contractors, were not timely paid all wages due upon termination or separation of their employment, and were not provided accurate itemized wage statements. Plaintiff and other aggrieved employees performed non-exempt duties and exercised no discretion or independent judgment in the performance of their work for Bright Matters and KBS.

13. Plaintiff and the other aggrieved employees performed janitorial work within the usual course of KBS's janitorial business. Further, Plaintiff and the other aggrieved employees were not customarily engaged in any independently established trades, occupations, or businesses of the same kind performed by KBS. Plaintiff and the other aggrieved employees

were subject to the same policies and practices alleged herein, which impermissibly denied aggrieved employees their rights pursuant to the Labor Code.

14. Labor Code § 226 provides that every employer is required, "semimonthly or at the time of each payment of wages," to give each employee an itemized wage statement, including, inter alia, the total hours worked by the employee (except for salaried employees), and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Labor Code § 226(a). Defendants had a policy and practice of failing to provide Plaintiff and the other aggrieved janitors with a properly itemized wage statement with each paycheck in compliance with California law. Because Plaintiff and the other aggrieved employees were willfully misclassified as independent contractors, they did not receive wage statements reflecting all hours worked and the hourly rate for their work, in violation of the Labor Code.

15. Furthermore, Defendants have not provided the other aggrieved employees, including Plaintiff, whose employment has ended, with all wages due and owing at the time of discharge or separation, in violation of Labor Code §§ 201, 201, and 203.

16. Labor Code § 2753 states "(a) A person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual shall be jointly and severally liable with the employer if the individual is found not to be an independent contractor."

17. In his capacity as Chief Executive Officer, Secretary, Chief Financial Officer, and only Director, Defendant Navarro knowingly advised Bright Matters to treat Plaintiff and other aggrieved janitors as independent contractors to avoid employee status and should be held jointly and severally liable with Defendant Bright Matters for relevant violations alleged herein.

18. Labor Code § 2810.3 states that "A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for … the payment of wages", which includes not only the payment of wages but all

sums payable to an employee or the state based upon any failure to pay wages, as provided by law. Labor Code § 2810.3 (a) (4).

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

20. "Client employer" is defined as a "business entity, regardless of its form, that obtains or is provided workers to perform labor within it usual course of business for a labor contractor."

21. "Wages" is defined as having the same meaning provided by Labor Code § 200 and all sums payable to an employee or the state based upon any failure to pay wages, as provided by law.

22. Defendants Bright Matters and Navarro served as labor contractors under § 2810.3 by supplying KBS with janitorial workers to provide cleaning services, which is within Defendant KBS' usual course of business.

23. Defendant KBS was client employer within the definition of Labor Code § 2810.3, and it is jointly and severally liable for all civil legal responsibility and civil liability for failure to pay all wages due, and all sums payable to an employee or the state.

24. On May 3, 2022, pursuant to Labor Code § 2810.3 (d), Plaintiff Velasco gave notice to Defendants, with a copy sent by certified mail to Bright Matters, Navarro, and KBS, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support such violations.

FIRST CAUSE OF ACTION

Civil Penalties under Private Attorneys General Act of 2004 ("PAGA")
(brought by Plaintiff on behalf of herself and all other aggrieved employees against all Defendants)

25. Plaintiff realleges and incorporates each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

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26. Plaintiff, as an aggrieved employee, brings this claim under Labor Code §§ 2698-2699 in a representative capacity on behalf of all current and former non-exempt employees of Defendants who were willfully misclassified as independent contractors.

27. The Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698 et seq., grants California employees the right to bring a civil action for violation of any provision of the Labor Code on behalf of themselves and other current or former employees in order to recover civil penalties. In passing PAGA, the California Legislature "declared that adequate financing of labor law enforcement was necessary to achieve maximum compliance with state labor laws, that staffing levels for labor law enforcement agencies had declined and were unlikely to keep pace with the future growth of the labor market, and that it was therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations." *Arias v. Sup. Ct*. (2009) 46 Cal.4th 969, 980. Because PAGA deputizes employees to act as private attorneys general, class action requirements do not apply to representative actions brought under PAGA. *Id*.

28. 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 had been established, section 2699(f) creates a private right of action for aggrieved employees and 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. Labor Code § 2699(f).

29. Labor Code § 226.8 provides that it is unlawful for any employer to engage in willful misclassification of an individual as an independent contractor.

30. Labor Code § 226.8 (b) provides that an employer that has engaged in willful misclassification shall be subject to a civil penalty of not less than $5,000 and not more than $15,000 for each violation, in addition to any other penalties or fines permitted by law.

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31. Labor Code § 226.8 (c) further provides that if the court issues a determination that an employer has engaged in willful misclassification in a pattern or practice of these violations, the employer shall be subject to a civil penalty of not less than $10,000 and not more than $25,000 for each violation, in addition to any other penalties or fines permitted by law.

32. Defendants knowingly and intentionally violated Labor Code § 226.8 by willfully misclassifying Plaintiff and other aggrieved employees as independent contractors.

33. As a consequence of Defendants' willful conduct in misclassifying Plaintiff and other aggrieved employees, Defendants are liable for civil penalties pursuant to Labor Code §§ 226.8(b) and (c).

34. Plaintiff, in her representative capacity, hereby seeks to collect these civil penalties from Defendants for the above-described Labor Code violations including:

(a) Under Labor Code § 226.8, a civil penalty of not less than five thousand dollars ($5,000) and not more than fifteen thousand dollars ($15,000) for each violation against Plaintiff and each aggrieved employee, and if the court finds that Defendants have engaged in a pattern or practice of violating § 226.8 (a), a civil penalty of not less than ten thousand dollars ($10,000) and not more than twenty-five thousand dollars ($25,000) for each violation.

(b) Under Labor Code § 2699 (f)(2), a civil penalty of one hundred dollars ($100) for Plaintiff and each aggrieved employee per pay period for the initial violation of Labor Code §§ 201, 202, and 203 for their failure to pay earned wages upon discharge, and two hundred dollars ($200) for Plaintiff and each aggrieved employee per pay period for each subsequent violation of Labor Code §§ 201 and 202.

(c) Under Labor Code § 226.3, which provides for civil penalties for violations of Labor Code § 226 (a), a civil penalty of two hundred and fifty dollars ($250) for Plaintiff and each aggrieved employee for each subsequent violation of Labor Code § 226 (a) for failure to provide timely, accurate, itemized wage statements.

35. Labor Code § 2699(g) further provides that any employee who prevails in an action for civil penalties is entitled to an award of reasonable attorneys' fees and costs. Plaintiff hereby seeks to recover her attorneys' fees and costs under this one-way fee and cost-shifting statute, along with pre-judgment and post-judgment interest.

36. On May 3, 2022, pursuant to Labor Code § 2699.3, Plaintiff filed notice with the Labor and Workforce Development Agency ("LWDA"), with a copy sent by certified mail to all Defendants, Bright Matters, Navarro, and KBS, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support such violations. Plaintiff has complied with the Private Attorneys General Act notice requirements because the 60-day time limit for the Labor and Workforce Development Agency's response has passed with no response.

SECOND CAUSE OF ACTION

Failure to Pay Earned Wages Upon Discharge (Waiting Time Penalties)
(brought by Plaintiff against all Defendants)

37. Plaintiff incorporates by reference in this cause of action each allegation of all preceding paragraphs, as though fully set forth herein.

38. Labor Code § 201 requires Defendants to pay its discharged employees all wages due immediately upon discharge.

39. Labor Code § 202 requires that if an employee quits his or her employment, "his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address."

40. Labor Code § 203 provides that if an employer willfully fails to timely pay any wages that are due to an employee who quits or is discharged, the employer must, as a penalty,

continue to pay the employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

41. Plaintiff was discharged directly by KBS and is entitled to all unpaid compensation, pursuant to Labor Code § 203, but, as alleged above, to date has not received such compensation.

42. As a consequence of Defendants' willful conduct in not paying compensation for all wages due, Plaintiff is entitled to one day of wages for each day that Defendants failed to pay Plaintiff's compensation as a penalty under Labor Code § 203, together with interest thereon, and reasonable attorneys' fees and costs.

43. Defendant Navarro should be held jointly and severally liable with Defendant Bright Matters under Labor Code § 2753. Further, Defendant Navarro is liable for violations of the corresponding Wage Order, Labor Code § 203, and the California Code of Regulations pursuant to Labor Code § 558.1.

THIRD CAUSE OF ACTION

Failure to Provide Accurate Wage Statements
(brought by Plaintiff against all Defendants)

44. Plaintiff incorporates by reference in this cause of action each allegation of all preceding paragraphs, as though fully set forth herein.

45. Labor Code § 226 (a) provides that, at the time of each payment of wages, an employer shall provide each employee with a wage statement itemizing, among other things, the total hours worked by the employee in the pay period.

46. Labor Code § 226 (e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226 (a) is entitled to recover the greater of his or her actual damages or a penalty of $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period (up to a maximum of $4,000), in addition to attorney's fees and costs.

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47. Defendants knowingly and intentionally failed to provide timely, accurate, and itemized wage statements to Plaintiff in accordance with Labor Code § 226.

48. As a direct and proximate result of Defendants' unlawful conduct as set forth herein, Plaintiff has been injured by not receiving the information required by Labor Code § 226 (a), not having records reflecting her total hours worked, not being able to ascertain from her wage statements whether or how she has been compensated for all hours worked, among other things, in an amount to be determined at trial. Plaintiff is therefore entitled to the damages and penalties provided for under Labor Code § 226 (e), plus interest thereon, reasonable attorneys' fees and costs.

49. Defendant Navarro should be held jointly and severally liable with Defendant Bright Matters under Labor Code § 2753. Further, Defendant Navarro is liable for violations of the corresponding Wage Order, Labor Code § 226, and the California Code of Regulations pursuant to Labor Code § 558.1.

FOURTH CAUSE OF ACTION
Failure to Provide Employment Records
(brought by Plaintiff against all Defendants)

50. Plaintiff realleges and incorporates each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

51. On May 3, 2022, Plaintiff's counsel made a written request to all Defendants, Bright Matters, Navarro, and KBS for Plaintiff's employment records pursuant to Labor Code §§226 (b) and 1198.5. This request was sent to Defendants Bright Matters, Navarro, and KBS via U.S. Certified Mail, at the addresses registered with the California Secretary of State.

52. Pursuant to Labor Code §§ 226 (b) and 1198.5, these records were due within 21 and 30 days of the request, respectively. To date, Defendants Bright Matters, Navarro, and KBS have not provided any responsive records.

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53. Pursuant to Labor Code § 226 (f), Plaintiff is entitled to receive a penalty in the sum of $750 due to Defendants' failure to timely respond to Plaintiff's request for employment records within 21 days of such request, pursuant to Labor Code § 226 (c).

54. Pursuant to Labor Code § 1198.5 (k), Plaintiff is also entitled to receive a second penalty in the sum of $750 for failure to timely respond to this request within 30 days.

55. As a result of Defendants' failure to provide Plaintiff's records, Plaintiff is entitled to reasonable attorneys' fees and costs, which are hereby demanded, in an amount to be proved according to law.

56. Defendant Navarro should be held jointly and severally liable with Defendant Bright Matters under Labor Code § 2753. Further, Defendant Navarro is liable for violations of the corresponding Wage Order, Labor Code § 226, and the California Code of Regulations pursuant to Labor Code § 558.1.

RELIEF SOUGHT

WHEREFORE, Plaintiff, on behalf of herself and similarly aggrieved employees, pray for judgment and the following specific relief against Defendants as follows:

A. That Defendants are found to have violated Labor Code § 226.8 for willfully misclassifying Plaintiff and the other aggrieved employees as independent contractors;

B. That Defendants are found to have violated Labor Code §§ 201, 202, and 203 for failing to pay Plaintiff and the other aggrieved employees all wages due upon termination or separation of employment;

C. That Defendants are found to have violated Labor Code § 226 for failing to provide Plaintiff and the other aggrieved employees accurate itemized wage statements;

D. That Defendants are found to have violated Labor Code §§ 1198.5(f) and § 226(f) for failing to provide Plaintiff's employment records;

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E. That Plaintiff, in her representative capacity on behalf of herself, all aggrieved employees, and the state of California, be awarded civil penalties pursuant to California Labor Code sections 2698 et seq.;

F. That Plaintiff be awarded attorney's fees and costs, including pre-judgment and post-judgment interest thereon, pursuant to California Labor Code sections 2698 et seq. for Defendants' violations of the Labor Code as alleged herein;

G. That Plaintiff be awarded attorney's fees and costs, including pre-judgment and post-judgment interest thereon, for Defendants' violations of Labor Code §§ 201, 202, 203, § 226, § 226(f) and 1198.5(f);

H. That Plaintiff be awarded attorney's fees and costs, including pre-judgment and post-judgment interest thereon, under California Code of Civil Procedure § 1021.5; and

I. An award of such other and further relief as this Court may deem appropriate.

Dated: July 21, 2022

MOLTENI EMPLOYMENT LAW
THE BYRNE LAW GROUP

By:____________________

Cristina Molteni
Adrian Byrne

Attorneys for Plaintiff ESMERALDA VELASCO, on behalf of herself and Similarly Aggrieved Employees

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself, hereby requests a jury trial on the claims so triable.

Dated: July 21, 2022

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THE BYRNE LAW GROUP

By:______________________________
Cristina Molteni
Adrian Byrne

Attorneys for Plaintiff ESMERALDA VELASCO, on behalf of herself and Similarly Aggrieved Employees