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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CLARA

11 23CV411692

12 CARLOS LEMUS RIVERA, as an
13 aggrieved employee pursuant to the
Private Attorneys General Act
14 (“PAGA”), on behalf of the State of
California and other non-party
15 Aggrieved Employees,

16 Plaintiff,

17 vs.

18 BUILDING SERVICES
19 MAINTENANCE, INC, an unknown
entity; BUILDING
20 SERVICES/SYSTEM
MAINTENANCE,
21 INCORPORATED, a California
corporation; and DOES 1 through 10,
22 inclusive,

23 Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Carlos Lemus Rivera, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in
13 this case on December 9, 2022, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ or employed persons within the County of Santa Clara and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least one (1) location within the County of Santa Clara, including Defendants' office located in Santa Clara (3064 Scott Boulevard, Santa Clara, California 95054). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Santa Clara County, and Plaintiff could bring an action filed under PAGA in any county in which an aggrieved employee worked and Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Carlos Lemus Rivera is a resident of Richmond, in Contra Costa County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately October 2018 to June 2022. Plaintiff worked as a Janitor for Defendants at their jobsite located in Richmond, California. Plaintiff typically worked five (5) hours per day or more, and five (5) days per week. At the time Plaintiff's employment with Defendants ended, he was compensated approximately \$15.54 per hour. Plaintiff's job duties included, without limitation, cleaning and disinfecting locker rooms, sweeping and mopping basketball courts, and picking up trash.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is

1 both procedurally and substantively unconscionable. Specifically, Defendants presented
2 employees with a “ACUERDO MUTIO DE ARBITRAJE OBLIGATORIO” (“Arbitration
3 Agreement”) during the onboarding process, which had to be reviewed and acknowledged
4 immediately. Specifically, the Arbitration Agreement was one of several documents presented
5 to new employees for signature during the orientation process, including Disclosure Regarding
6 Background Investigation; A Summary of Your Rights Under the Fair Credit Reporting Act;
7 and Notice Regarding Background Investigation And Credit Checks Pursuant to California
8 Law, among other documents. Also, employees did not have a meaningful opportunity to
9 negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants’
10 employees for them to sign on a take-it or leave-it basis, along with all of the other onboarding
11 documents. Further, Defendants did not set forth in the agreement or otherwise provide
12 employees with the rules which will govern the arbitration, instead forcing employees to seek
13 this information out on their own (“El Empleado puede obtener una copia de las Normas de la
14 AAA contactando a la Compania o a la AAA, o accediendo al sitio web de la AAA en
15 www.adr.org/Rules[,]”, which, translated to English, states, “The employee can obtain a copy
16 of the Rules of AAA contacting the Company or the AAA, or accessing the AAA web site at
17 www.adr.org/Rules.”).

18 8. BUILDING SERVICES MAINTENANCE, INC was and is, upon information
19 and belief, an unknown business entity, and at all times hereinafter mentioned, an employer
20 whose employees are engaged throughout this county, the State of California.

21 9. BUILDING SERVICES/SYSTEM MAINTENANCE, INCORPORATED was
22 and is, upon information and belief, a California corporation, and at all times hereinafter
23 mentioned, an employer whose employees are engaged throughout this county, the State of
24 California.

25 10. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
26 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
27 complaint and serve such fictitiously named Defendants once their names and capacities
28 become known.

1 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
2 were the partners, agents, owners, or managers of BUILDING SERVICES MAINTENANCE,
3 INC and BUILDING SERVICES/SYSTEM MAINTENANCE, INCORPORATED, at all
4 relevant times.

5 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
6 acts and omissions alleged herein was performed by, or is attributable to, BUILDING
7 SERVICES MAINTENANCE, INC; BUILDING SERVICES/SYSTEM MAINTENANCE,
8 INCORPORATED; and/or DOES 1 through 10 (collectively, “Defendants” or “BSSM”), each
9 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
10 each of the other co-Defendants and was acting within the course and scope of such agency,
11 employment, joint venture, or concerted activity with legal authority to act on the others’ behalf.
12 The acts of any and all Defendants were in accordance with, and represent, the official policy
13 of Defendants.

14 13. At all relevant times, Defendants, and each of them, ratified each and every act
15 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
16 and abetted the acts and omissions of each and all the other Defendants in proximately causing
17 the damages herein alleged.

18 14. Plaintiff is informed and believes, and thereon alleges, that each of said
19 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
20 omissions, occurrences, and transactions alleged herein.

21 15. Under California law, Defendants are jointly and severally liable as employers
22 for the violations alleged herein because they have each exercised sufficient control over the
23 wages, hours, working conditions, and employment status of Plaintiff and other non-party
24 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
25 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
26 of employment, determined their rate of pay, and maintained their employment records.
27 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
28 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a common-

1 law employment relationship. As joint employers of Plaintiff and other non-party Aggrieved
2 Employees, Defendants are jointly and severally liable for the civil penalties available to
3 Plaintiff and other non-party Aggrieved Employees under the law.

4 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
5 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
6 non-party Aggrieved Employees because Defendants have:

- 7 (a) jointly exercised meaningful control over the work performed by Plaintiff
8 and other non-party Aggrieved Employees;
- 9 (b) jointly exercised meaningful control over Plaintiff's and other non-party
10 Aggrieved Employees' wages, hours, and working conditions, including
11 the quantity, quality standards, speed, scheduling, and operative details
12 of the tasks performed by Plaintiff and other non-party Aggrieved
13 Employees;
- 14 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
15 perform work which is an integral part of Defendants' businesses; and
- 16 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
17 Employees as a matter of economic reality in that Plaintiff and other non-
18 party Aggrieved Employees were dependent on Defendants, who shared
19 the power to set the wages of Plaintiff and other non-party Aggrieved
20 Employees and determined their working conditions, and who jointly
21 reaped the benefits from the underpayment of their wages and
22 noncompliance with other statutory provisions governing their
23 employment.

24 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
25 there has existed a unity of interest and ownership between Defendants such that any
26 individuality and separateness between the entities has ceased.

27 18. BUILDING SERVICES MAINTENANCE, INC; BUILDING
28 SERVICES/SYSTEM MAINTENANCE, INCORPORATED; and/or DOES 1 through 10 are

1 therefore alter egos of each other.

2 19. Adherence to the fiction of the separate existence of Defendants would permit an
3 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
4 liability for the wrongful acts committed by them under the name BSSM.

5 20. Plaintiff further alleges, upon information and belief, that the Defendants
6 BUILDING SERVICES MAINTENANCE, INC and BUILDING SERVICES/SYSTEM
7 MAINTENANCE, INCORPORATED are alter egos of each other for the following reasons:

8 (a) According to the wage statements Defendants issued to Plaintiff and other
9 non-party Aggrieved Employees, both BUILDING SERVICES
10 MAINTENANCE, INC and BUILDING SERVICES[/]SYSTEM
11 MAINTENANCE, INCORPORATED entities are listed as the
12 employing entity; and

13 (b) On information and belief, BUILDING SERVICES MAINTENANCE,
14 INC and BUILDING SERVICES/SYSTEM MAINTENANCE,
15 INCORPORATED utilize the same standardized employment forms and
16 issue the same employment policies.

17 **PAGA REPRESENTATIVE ALLEGATIONS**

18 21. Defendants provide janitorial, maintenance and repair, construction, and
19 landscaping services in California. Upon information and belief, Defendants maintain a single,
20 centralized Human Resources (HR) department at their corporate headquarters in Concord,
21 California, for all non-exempt, hourly paid employees working for Defendants in California,
22 which is responsible for the recruiting and hiring of new employees, and communicating and
23 implementing Defendants' company-wide policies, including timekeeping policies and meal
24 and rest period policies, to employees throughout California.

25 22. In particular, Plaintiff and other non-party Aggrieved Employees, on information
26 and belief, received the same standardized documents and/or written policies. Upon
27 information and belief, the usage of standardized documents and/or written policies, including
28 new-hire documents, indicate that Defendants dictated policies at the corporate level and

1 implemented them company-wide, regardless of their employees' assigned locations or
2 positions. Upon information and belief, Defendants set forth uniform policies and procedures
3 in several documents provided at an employee's time of hire.

4 23. Upon information and belief, Defendants maintain a centralized Payroll
5 department at their corporate headquarters in Concord, California, which processes payroll for
6 all non-exempt, hourly paid employees working for Defendants at their various locations and
7 jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based
8 upon information and belief, Defendants issue the same formatted wage statements to all non-
9 exempt, hourly paid employees in California, irrespective of their work locations. Upon
10 information and belief, Defendants process payroll for departing employees in the same manner
11 throughout the State of California, regardless of the manner in which each employee's
12 employment ends.

13 24. Defendants continue to employ non-exempt or hourly paid employees in
14 California.

15 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
17 advisors knowledgeable about California labor and wage law, employment and personnel
18 practices, and about the requirements of California law.

19 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
20 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
21 were not recorded.

22 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 receive at least minimum wages for compensation and that they were not receiving at least
25 minimum wages for work that was required to be done off-the-clock. In violation of the
26 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
27 least minimum wages for work done off-the-clock.

28 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that other non-party Aggrieved Employees were entitled to receive certain
2 wages for overtime compensation and that they were not receiving certain wages for overtime
3 compensation.

4 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 meal periods in accordance with the California Labor Code and applicable IWC Wage Order or
7 payment of one (1) additional hour of pay at their regular rates of pay when they were not
8 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other
9 non-party Aggrieved Employees were not provided with all meal periods or payment of one (1)
10 additional hour of pay at their regular rates of pay when they did not receive a timely,
11 uninterrupted, thirty (30) minute meal period.

12 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
14 periods in accordance with the California Labor Code and applicable IWC Wage Order or
15 payment of one (1) additional hour of pay at their regular rates of pay when they were not
16 authorized and permitted to take a compliant rest period. In violation of the California Labor
17 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to
18 take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
19 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
20 they were not authorized and permitted to take a compliant rest period.

21 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
23 receive complete and accurate wage statements in accordance with California law. In violation
24 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
25 provided complete and accurate wage statements.

26 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that they had a duty to maintain accurate and complete payroll records in
28 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,

1 and intentionally failed to do so.

2 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 timely payment of wages during their employment. In violation of the California Labor Code,
5 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
6 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
7 premiums, within permissible time periods.

8 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 timely payment of all wages earned upon termination of employment. In violation of the
11 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
12 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
13 and/or meal and rest period premiums, within permissible time periods.

14 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 receive reimbursement for all business-related expenses and costs they incurred during the
17 course and scope of their employment and that they did not receive reimbursement of applicable
18 business-related expenses and costs incurred.

19 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that Defendants had a duty to provide
21 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms of
22 their employment with Defendants as required by the California Wage Theft Prevention Act,
23 but failed to do so.

24 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
26 and other non-party Aggrieved Employees for all hours worked, and that Defendants had the
27 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to
28 do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they

1 were properly denied wages, all in order to increase Defendants' profits.

2 38. At all times herein set forth, PAGA provides that any provision of law under the
3 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
4 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
5 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
6 behalf of themselves and other current or former employees pursuant to procedures outlined in
7 California Labor Code section 2699.3.

8 39. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
9 person who was employed by the alleged violator and against whom one or more of the alleged
10 violations was committed."

11 40. Plaintiff and other current and former employees of Defendants are "aggrieved
12 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
13 or former employees and one or more of the alleged violations were committed against them.

14 41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
15 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
16 requirements have been met:

17 (a) The aggrieved employee shall give written notice by online filing
18 (hereinafter "Employee's Notice") to the LWDA and by certified mail to
19 the employer of the specific provisions of the California Labor Code
20 alleged to have been violated, including the facts and theories to support
21 the alleged violations.

22 (b) An aggrieved employee's notice filed with the LWDA pursuant to
23 2699.3(a) and any employer response to that notice shall be accompanied
24 by a filing fee of seventy-five dollars (\$75).

25 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
26 employer and the aggrieved employee by certified mail that it does not
27 intend to investigate the alleged violation within sixty (60) calendar days
28 of the postmark date of the Employee's Notice. Upon receipt of the

1 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
2 (65) calendar days of the postmark date of the Employee's Notice, the
3 aggrieved employee may commence a civil action pursuant to California
4 Labor Code section 2699 to recover civil penalties in addition to any other
5 penalties to which the employee may be entitled.

6 42. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
7 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
8 other than those listed in Section 2699.5 after the following requirements have been met:

9 (a) The aggrieved employee or representative shall give written notice by
10 online filing to the LWDA and by certified mail to the employer of the
11 specific provisions of the California Labor Code alleged to have been
12 violated (other than those listed in Section 2699.5), including the facts
13 and theories to support the alleged violation.

14 (b) An aggrieved employee's notice filed with the LWDA pursuant to
15 2699.3(c) and any employer response to that notice shall be accompanied
16 by a filing fee of seventy-five dollars (\$75).

17 (c) The employer may cure the alleged violation within thirty-three (33)
18 calendar days of the postmark date of the notice. The employer shall give
19 written notice by certified mail within that period of time to the aggrieved
20 employee or representative and the agency if the alleged violation is
21 cured, including a description of actions taken, and no civil action
22 pursuant to Section 2699 may commence. If the alleged violation is not
23 cured within the 33-day period, the employee may commence a civil
24 action pursuant to Section 2699.

25 43. On December 9, 2022, Plaintiff provided written notice by online filing to the
26 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
27 Code alleged to have been violated, including facts and theories to support the alleged
28 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice

1 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
2 PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff
3 PAGA Case Number LWDA-CM-923702-22. A true and correct copy of Plaintiff's written
4 notice to the LWDA and Defendants dated December 9, 2022, is attached hereto as "Exhibit 1."

5 44. As of the filing date of this complaint, over 65 days have passed since Plaintiff
6 sent the written notice described above, and the LWDA has not responded that it intends to
7 investigate Plaintiff's claims, and Defendants have not cured the violations.

8 45. Thus, Plaintiff has satisfied the administrative prerequisites under California
9 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
10 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
11 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

12 46. Labor Code section 558(a) provides "[a]ny employer or other person acting on
13 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare Commission
15 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
16 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
17 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
18 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
19 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
20 criminal penalty provided by law." Plaintiff, acting in the public interest as a private attorney
21 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
22 himself, all other non-party Aggrieved Employees, and the State of California against
23 Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the applicable
24 IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not
25 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
26 of Labor Code sections 510, 512(a), 516, and 1198, and the applicable IWC Wage Order.

27 47. Defendants, at all times relevant to this complaint, were employers or persons
28 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved

1 Employees' rights by violating various sections of the California Labor Code as set forth above.

2 48. As set forth below, Defendants have violated numerous provisions of both the
3 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
4 Order.

5 49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
6 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private
7 attorney general, seeks assessment and collection of civil penalties for himself, all other non-
8 party Aggrieved Employees, and the State of California against Defendants for violations of
9 California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
10 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

11 **FIRST CAUSE OF ACTION**

12 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

13 **(Against all Defendants)**

14 50. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
15 and every allegation set forth above.

16 51. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
17 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
18 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
19 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved
20 employees, including Plaintiff, to recover civil penalties for violations of those Labor Code
21 sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

22 52. Defendants' conduct, as alleged herein, violates numerous sections of the
23 California Labor Code, including, but not limited to, the following:

24 (a) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the
25 applicable IWC Wage Order for Defendants' failure to compensate
26 Plaintiff and other non-party Aggrieved Employees with at least
27 minimum wages for all hours worked, as set forth below;

28 (b) Violation of Labor Code sections 510 and 1198, and the applicable IWC

- 1 Wage Order for Defendants' failure to compensate other non-party
2 Aggrieved Employees with all required overtime pay, as set forth below;
- 3 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
4 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
5 and other non-party Aggrieved Employees with meal periods, as set forth
6 below;
- 7 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
8 IWC Wage Order for Defendants' failure to authorize and permit Plaintiff
9 and other non-party Aggrieved Employees to take rest periods, as set forth
10 below;
- 11 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
12 IWC Wage Order for failure to provide accurate and complete wage
13 statements to Plaintiff and other non-party Aggrieved Employees, as set
14 forth below;
- 15 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
16 IWC Wage Order for failure to maintain payroll records, as set forth
17 below;
- 18 (g) Violation of Labor Code sections 204 for failure to pay all earned wages
19 during employment, as set forth below;
- 20 (h) Violation of Labor Code section 201 and 202 for failure to pay all earned
21 wages upon termination, as set forth below;
- 22 (i) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff
23 and other non-party Aggrieved Employees for all business expenses
24 necessarily incurred, as set forth below; and
- 25 (j) Violation of Labor Code section 2810.5 for failure to provide notice of
26 material terms of employment, as set forth below.

27 ///

28 ///

1 **FAILURE TO PAY MINIMUM WAGES**

2 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

3 53. Labor Code section 1198 makes it illegal to employ an employee under
4 conditions of labor that are prohibited by the applicable wage order. California Labor Code
5 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
6 be the . . . standard conditions of labor for employees. The employment of any employee . . .
7 under conditions of labor prohibited by the order is unlawful.”

8 54. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
9 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
10 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
11 Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which
12 an employee is subject to the control of an employer, and includes all the time the employee is
13 suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8,
14 § 11050(2)(K) (defining “Hours Worked”).

15 55. First, during the relevant time period, Defendants had a policy and/or practice of
16 discouraging and impeding Plaintiff and other non-party Aggrieved Employees from recording
17 hours worked that were outside of their scheduled shifts, pursuant to their labor budget
18 limitations (*see infra*). In doing so, Defendants failed to implement a timekeeping system at
19 their clients’ jobsites and do not provide employees with any mechanism, such as a time clock
20 or electronic timekeeping system, to accurately track and record their hours worked. Instead,
21 Defendants’ policy and/or practice is to require employees, including Plaintiff and other non-
22 party Aggrieved Employees, to sign timesheets that were already pre-filled by management
23 and/or fill out handwritten timesheets and submit them to management at the end of each pay
24 period for review and approval. Further, Defendants pressure employees, on threat of
25 discipline, to falsify these handwritten timesheets and/or have Defendants’ managers falsify or
26 pre-fill the employee timesheets, to reflect their scheduled shifts rather than hours actually
27 worked, thereby shorting Plaintiff and other non-party Aggrieved Employees for work
28 performed outside their scheduled shifts. For example, at the end of every pay period,

1 Defendants' managers would present Plaintiff with one (1) pre-filled timesheet that only
2 included his scheduled hours for him to sign, and one (1) blank timesheet that he was required
3 to fill out by hand and only include his scheduled shift start-times and shift end-times, instead
4 of his actual hours worked.

5 56. Additionally, pursuant to this timekeeping policy and/or practice, Defendants had,
6 and continue to have, a company-wide policy and/or practice of requiring Plaintiff and other non-
7 party Aggrieved Employees to perform tasks off-the-clock before and after their shifts. For
8 example, Plaintiff was often required to arrive about 30 minutes prior to his scheduled shift-start
9 time and begin working—preparing his cart with cleaning supplies and washing windows, in order
10 to meet Defendants' expectations of completing daily tasks within his scheduled hours. For the
11 same reasons, about five (5) times per week, Plaintiff was required to continue working after his
12 scheduled shift end-time, completing tasks such as sanitizing locker rooms and mopping
13 basketball courts, before he could leave for the day. Because Defendants did not provide him
14 with a mechanism to record this time worked, Plaintiff was never paid for this time. As another
15 example, at the instruction of his manager, Plaintiff was often required to arrive to work before
16 his scheduled shift start-time to unlock a storage closet for his manager so she could replace
17 cleaning supplies for the jobsite, or to discuss work-related issues with his manager, who would
18 instruct him on specific areas of the jobsite to focus on, which could take up to one (1) hour, time
19 for which he was not paid. Because Defendants prohibited Plaintiff and other non-party
20 Aggrieved Employees from recording their actual hours worked, Plaintiff and other non-party
21 Aggrieved Employees were not paid for all hours worked.

22 57. Alternatively, on information and belief, Defendants rounded clock-in and clock-
23 out times to the nearest full hour to limit the time employees were eligible to be compensated for.
24 Taken together, Defendants' timekeeping policies are, and continue to be, unfair and have, over
25 time, resulted in the underpayment of wages to Plaintiff and other non-party Aggrieved
26 Employees. Thus, Plaintiff and other non-party Aggrieved Employees have been denied
27 minimum wages for all hours worked.

28 58. Second, on information and belief, Defendants had, and continue to have, a

1 company-wide policy and/or practice of strictly staffing their jobsite locations based on the labor
2 hours allocated by each location's labor or payroll budget set by corporate. Defendants' uniform
3 use of labor budgets, combined with the assignment of heavy workloads, resulted in chronic
4 understaffing, such that there were too few employees on duty to handle the workload. Also,
5 Defendants have systematically, and on a company-wide basis, understaffed some of their jobsite
6 locations by adopting a single-staffing model, whereby only one employee was scheduled to work
7 at certain times, thereby failing to provide adequate meal period coverage to permit those
8 employees to take compliant meal periods. Defendants also had a practice of failing to schedule
9 meal periods at all, which further caused Plaintiff and other non-party Aggrieved Employees to
10 not be relieved of their duties for compliant meal periods. For example, on information and belief,
11 Plaintiff worked through his meal periods because he did not have adequate meal period coverage
12 when he worked alone. Consequently, Plaintiff and other non-party Aggrieved Employees were
13 required to work through and/or had their unpaid meal periods interrupted in order to complete
14 their assigned duties, time for which they were not paid.

15 59. Third, during the relevant time period, as stated, Defendants pressured Plaintiff
16 and/or other non-party Aggrieved Employees to falsify their handwritten timesheets and/or had
17 Defendants' managers falsify or pre-fill the employee timesheets, to reflect their scheduled shifts
18 rather than hours actually worked, *i.e.*, that they had worked less than five (5) hours in a day, in
19 order to limit their eligibility for meal periods they otherwise would have received. As stated,
20 Defendants required Plaintiff to only record his scheduled shifts and continue working to
21 complete tasks before he could leave for the day. In conjunction with this policy, on information
22 and belief, because Defendants frowned upon employees accruing meal period penalties,
23 Defendants' management pressured other non-party Aggrieved Employees to record compliant
24 meal periods on their timesheets regardless of whether they had received a compliant meal period
25 or not, in order to strictly limit meal penalties that would need to be paid by Defendants. Thus,
26 Plaintiff and/or other non-party Aggrieved Employees were required to perform their assigned
27 tasks off-the-clock because Defendants wanted to avoid paying penalties for missed meal periods.
28 Thus, Defendants did not record all hours worked during meal periods, and Plaintiff and/or other

1 non-party Aggrieved Employees performed work during meal periods for which they were not
2 paid.

3 60. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
4 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
5 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
6 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
7 1197, and 1198.

8 61. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
9 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
10 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
11 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

12 **FAILURE TO PAY OVERTIME**

13 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

14 62. California Labor Code section 1198 and the applicable IWC Wage Order provide
15 that it is unlawful to employ persons without compensating them at a rate of pay either time-
16 and-one-half or two-times that person's regular rate of pay, depending on the number of hours
17 worked by the person on a daily or weekly basis.

18 63. Specifically, the applicable IWC Wage Order provides that Defendants are and
19 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
20 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
21 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
22 hours in a workweek.

23 64. The applicable IWC Wage Order further provides that Defendants are and were
24 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
25 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
26 An employee's regular rate of pay includes all remuneration for employment paid to, or on
27 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

28 65. California Labor Code section 510 codifies the right to overtime compensation

1 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
2 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
3 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
4 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
5 the seventh (7th) day of work.

6 66. During the relevant time period, Defendants willfully failed to pay all overtime
7 wages owed to other non-party Aggrieved Employees. During the relevant time period, other
8 non-party Aggrieved Employees were not paid overtime premiums for all of the hours they
9 worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in
10 excess of forty (40) hours in a week, because all hours worked were not recorded.

11 67. As set forth above, during the relevant time period, Defendants failed to provide
12 other non-party Aggrieved Employees with an appropriate timekeeping mechanism, such as a
13 time clock or electronic timekeeping system, to accurately track and record their hours worked.
14 Instead, Defendants maintained a policy and/or practice of pressuring employees, on threat of
15 discipline, to falsify their handwritten timesheets and/or have their managers falsify or pre-fill
16 employee timesheets to reflect scheduled hours rather than hours actually worked, thereby
17 shorting other non-party Aggrieved Employees for work performed outside their scheduled shifts.
18 As stated, pursuant to this policy, other non-party Aggrieved Employees performed tasks off-the-
19 clock before and after their shifts in order to be able to complete the daily tasks that Defendants
20 expected their employees to complete within their scheduled hours. Moreover, due to
21 Defendants' policy of rounding or underreporting other non-party Aggrieved Employees' clock-
22 in and clock-out times in their timekeeping system to the nearest hour, Defendants failed to
23 compensate other non-party Aggrieved Employees fully for all hours worked.

24 68. Additionally, as stated above, due to Defendants' company-wide practices of
25 utilizing labor budgets, understaffing and/or single-staffing, assignment of heavy workloads,
26 failure to schedule meal periods, and subsequent lack of meal period coverage, other non-party
27 Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they
28 were entitled and were required to work during their meal periods, time for which they were not

1 paid. As also stated, Defendants falsified timesheets to reflect other non-party Aggrieved
2 Employees' scheduled shifts rather than hours actually worked, *i.e.*, that they had worked less
3 than five (5) hours in a day, in order to limit their eligibility for meal periods they otherwise would
4 have received. In conjunction with this policy, on information and belief, because Defendants
5 frowned upon employees accruing meal period penalties, Defendants' management pressured
6 other non-party Aggrieved Employees to record compliant meal periods on their timesheets
7 regardless of whether they had received a compliant meal period or not. Thus, Defendants
8 systematically failed to pay other non-party Aggrieved Employees for actual hours worked during
9 unpaid meal periods because these hours were not always correctly recorded.

10 69. Defendants knew or should have known that, as a result of these company-wide
11 practices and/or policies, other non-party Aggrieved Employees were performing their assigned
12 duties off-the-clock before and after their shifts and during meal periods, and were suffered or
13 permitted to perform work for which they were not paid. Because other non-party Aggrieved
14 Employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more,
15 some of this off-the-clock work qualified for overtime premium pay. Therefore, other non-
16 party Aggrieved Employees were not paid overtime wages for all of the overtime hours they
17 actually worked.

18 70. Defendants' failure to pay other non-party Aggrieved Employees the balance of
19 overtime compensation as required by California law, violates the provisions of California
20 Labor Code sections 510 and 1198. Other non-party Aggrieved Employees are therefore
21 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
22 (g).

23 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
24 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

25 71. At all relevant times herein set forth, the applicable IWC Wage Order and
26 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
27 non-party Aggrieved Employees' employment by Defendants.

28 72. At all relevant times herein set forth, California Labor Code section 512(a)

1 provides that an employer may not require, cause, or permit an employee to work for a period
2 of more than five (5) hours per day without providing the employee with a meal period of not
3 less than thirty (30) minutes, except that if the total work period per day of the employee is not
4 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
5 and the employee. Under California law, first meal periods must start after no more than five
6 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

7 73. At all relevant times herein set forth, California Labor Code sections 226.7,
8 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
9 meal period mandated by an applicable order of the IWC.

10 74. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
11 1198, and the applicable IWC Wage Order also require employers to provide a second meal
12 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
13 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
14 the total hours worked is no more than twelve (12) hours, the second meal period may be waived
15 by mutual consent of the employer and the employee only if the first meal period was not
16 waived.

17 75. As stated above, Defendants had, and continue to have, company-wide policies
18 and/or practices of utilizing labor budgets, understaffing and/or single-staffing their jobsite
19 locations, assigning heavy workloads, and failing to schedule meal periods, which has resulted in
20 a lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees
21 from taking all timely, uninterrupted meal periods to which they were entitled. As a result,
22 Plaintiff and other non-party Aggrieved Employees had to work through all or part of their meal
23 periods, had their meal periods interrupted, and/or had to wait extended periods of time before
24 taking meal periods. For example, as stated, Plaintiff had to forego his meal periods, due to the
25 lack of coverage and in order to meet Defendants' expectations.

26 76. Moreover, as set forth above, on information and belief, Defendants pressured
27 Plaintiff and/or other non-party Aggrieved Employees to falsify their handwritten timesheets
28 and/or have Defendants' managers falsify or pre-fill the employee timesheets, to reflect their

1 scheduled shifts rather than hours actually worked, *i.e.*, that they had worked less than five (5)
2 hours in a day, in order to limit their eligibility for meal periods they otherwise would have
3 received. As stated, Defendants required Plaintiff to only record his scheduled shifts in order to
4 limit his eligibility for meal periods, even though he continued working to complete tasks before
5 he could leave for the day. Thus, Defendants failed to provide Plaintiff and/or other non-party
6 Aggrieved Employees with compliant, 30-minute meal periods altogether when they worked five-
7 hour shifts. In conjunction with this policy, as stated, on information and belief, because
8 Defendants frowned upon employees accruing meal period penalties, Defendants' management
9 pressured other non-party Aggrieved Employees to record that they took meal periods on their
10 timesheets regardless of whether they had received a compliant meal period or not, in order to
11 strictly limit meal penalties that would need to be paid by Defendants. Further, to the extent that
12 Defendants' rounding policy reported that Plaintiff and other non-party Aggrieved Employees
13 were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken
14 after the fifth hour of work or were less than 30 minutes, Plaintiff and other non-party Aggrieved
15 Employees did not receive meal period penalties for these improperly rounded meal periods.

16 77. Also, Defendants did not provide other non-party Aggrieved Employees with
17 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.
18 Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on
19 days that they were entitled to meal periods and were not relieved of all duties.

20 78. At all times mentioned herein, Defendants knew or should have known that as a
21 result of their policies, Plaintiff and other non-party Aggrieved Employees were not actually
22 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
23 should have known that they did not pay Plaintiff and other non-party Aggrieved Employees
24 meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

25 79. Furthermore, Defendants engaged in a company-wide practice and/or policy of
26 not paying meal period premiums owed when compliant meal periods are not provided.
27 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have
28 not received premium pay for missed, late, and interrupted meal periods.

1 80. Defendants’ conduct violates the applicable IWC Wage Order, and California
2 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
3 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
4 and/or 2699(a), (f), and (g).

5 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

6 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

7 81. At all relevant times herein set forth, the applicable IWC Wage Order and
8 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff’s and other
9 non-party Aggrieved Employees’ employment by Defendants.

10 82. At all relevant times, the applicable IWC Wage Order provides that “[e]very
11 employer shall authorize and permit all employees to take rest periods, which insofar as
12 practicable shall be in the middle of each work period” and that the “rest period time shall be
13 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
14 hours or major fraction thereof” unless the total daily work time is less than three and one-half
15 (3 ½) hours.

16 83. At all relevant times, California Labor Code section 226.7 provides that no
17 employer shall require an employee to work during any rest period mandated by an applicable
18 order of the California IWC. To comply with its obligation to authorize and permit rest periods
19 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
20 must “relinquish any control over how employees spend their break time, and relieve their
21 employees of all duties—including the obligation that an employee remain on call. A rest
22 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
23 257, 273 (2016).

24 84. Pursuant to the applicable IWC Wage Order and California Labor Code section
25 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
26 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
27 required rest period was not authorized and permitted.

28 85. During the relevant time period, Defendants regularly failed to authorize and

1 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period
2 per each four (4) hour period worked or major fraction thereof. As with meal periods,
3 Defendants' company-wide policies and/or practices of understaffing and/or single-staffing and
4 assignment of heavy workloads prevented Plaintiff and other non-party Aggrieved Employees
5 from being relieved of all duty in order to take their rest periods. Defendants also failed to
6 schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period
7 coverage, further led to Plaintiff and other non-party Aggrieved Employees not being authorized
8 and permitted to take compliant rest periods.

9 86. Furthermore, upon information and belief, Defendants maintained a company-
10 wide on-premises rest period policy, which effectively required that Plaintiff and other non-
11 party Aggrieved Employees remain on Defendants' clients' jobsites during their rest periods.
12 Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving jobsite
13 premises during rest periods, they were denied the ability to use their rest periods freely for their
14 own purposes, such as running personal errands. Thus, Defendants effectively maintained
15 control over Plaintiff and other non-party Aggrieved Employees during rest periods.

16 87. As a result of Defendants' practices and policies, Plaintiff and other non-party
17 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
18 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
19 entitled. For example, Plaintiff had to forego his rest periods altogether, due to Defendants'
20 policy of assigning heavy workloads and management's expectation that all employees would
21 work through their rest periods.

22 88. Defendants have also engaged in a systematic, company-wide practice and/or
23 policy of not paying rest period premiums owed when rest periods are not authorized and
24 permitted. Because Defendants frowned upon employees accruing rest period penalties,
25 Defendants pressured Plaintiff and other non-party Aggrieved Employees to falsify that rest
26 periods were taken and/or adjusted employee records to reflect compliant and/or timely rest
27 periods, regardless of whether Plaintiff and other non-party Aggrieved Employees had received a
28 compliant rest period or not, in order to strictly limit rest period penalties that Defendants would

1 otherwise owe. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
2 Employees have not received premium pay for all missed rest periods.

3 89. Accordingly, Defendants failed to authorize and permit all compliant rest periods
4 and failed to pay the full rest period premiums due. Defendants' conduct violates the applicable
5 IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and other
6 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
7 Labor Code sections 558 and/or 2699(a), (f), and (g).

8 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
9 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

10 90. At all relevant times herein, California Labor Code section 226(a) provides that
11 every employer shall furnish each of his or her employees an accurate and complete itemized
12 wage statement in writing, including, but not limited to, the name and address of the legal entity
13 that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable
14 rates of pay.

15 91. During the relevant time period, Defendants have knowingly and intentionally
16 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
17 inaccurate wage statements. For example, Defendants issued uniform wage statements to
18 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
19 earned; total hours worked; net wages earned; the name and address of the legal entity that is
20 the employer; and all applicable hourly rates in effect during the pay period, including rates of
21 pay for overtime wages and/or meal and rest period premiums, and the corresponding number
22 of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
23 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

24 92. Because Defendants did not record the time Plaintiff and other non-party
25 Aggrieved Employees spent working off-the-clock, improperly rounded their total hours
26 worked, and deducted time from their records for meal periods that were interrupted and/or
27 missed (and therefore time for which they should have been paid), Defendants did not list the
28 correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved

1 Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the
2 same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff
3 and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list
4 the applicable hourly rates of pay in effect during the pay period and the corresponding accurate
5 number of hours worked at each hourly rate, in violation of section 226(a)(9).

6 93. Third, and separate from these violations, Defendants issued uniform wage
7 statements to Plaintiff and other non-party Aggrieved Employees that failed to correctly list the
8 name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose
9 of section 226(a)(8) is to provide California employees with transparency as to the true identity
10 of their employer, to allow the employee to contact their employer during employment or in the
11 future for various reasons, including filing an administrative claim, judicial claim, or other action
12 to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant
13 time period, Defendants systematically, and on a company-wide basis, issued wage statements to
14 Plaintiff and other non-party Aggrieved Employees that incorrectly list two (2) entities as the
15 employer, including “Building Services Maintenance, Inc” and “Building Services System
16 Maintenance, Inc[.]” Moreover, the wage statements incorrectly and incompletely list the
17 employer’s address as “CA 94520, 2575 Stanwell Drive,” but according to the California
18 Secretary of State’s website, there is no such entity by these exact names or this address. For
19 example, Defendants incorrectly listed the employing entity’s name and address on Plaintiff’s and
20 other non-party Aggrieved Employees’ wage statements, including Plaintiff’s wage statements
21 dated January 5, 2022; January 20, 2022; February 4, 2022; February 18, 2022; March 4, 2022;
22 March 21, 2022; April 5, 2022; and April 20, 2022. On information and belief, the correct spelling
23 of the employing entity is **BUILDING SERVICES/SYSTEM MAINTENANCE,**
24 **INCORPORATED.**

25 94. The wage statement deficiencies also include, among other things, failing to list
26 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
27 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
28 which aggrieved employees were paid; failing to list the name of the employee and only the last

four digits of his or her social security number or an employee identification number other than a social security number; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

95. California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Plaintiff’s and other non-party Aggrieved Employees’ total hours worked.

96. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. Furthermore, in light of Defendants’ failure to provide other non-

1 party Aggrieved Employees with second 30-minute meal periods to which they were entitled,
2 Defendants kept no records of meal start and end times for second meal periods.

3 97. Defendants' conduct violates California Labor Code 226(a), 1174(d), and 1198.
4 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
5 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

6 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

7 **VIOLATION OF LABOR CODE SECTION 204**

8 98. At all relevant times herein set forth, California Labor Code section 204 requires
9 that all wages earned by any person in any employment between the 1st and the 15th days,
10 inclusive, of any calendar month, other than those wages due upon termination of an employee,
11 are due and payable between the 16th and the 26th day of the month during which the labor was
12 performed. Labor Code section 204 further provides that all wages earned by any person in any
13 employment between the 16th and the last day, inclusive, of any calendar month, other than
14 those wages due upon termination of an employee, are due and payable between the 1st and the
15 10th day of the following month.

16 99. At all relevant times herein, California Labor Code section 204 also requires that
17 all wages earned for labor in excess of the normal work period shall be paid no later than the
18 payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor
19 Code section 204 provides that the requirements of this section are deemed satisfied by the
20 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
21 than seven (7) calendar days following the close of the payroll period.

22 100. During the relevant time period, Defendants willfully failed to pay Plaintiff and
23 other non-party Aggrieved Employees all wages due to them within any time period specified
24 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
25 wages, and/or meal and rest period premiums.

26 101. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
27 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

28 ///

1 **FAILURE TO PAY WAGES UPON TERMINATION**

2 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

3 102. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
4 that if an employer discharges an employee, the wages earned and unpaid at the time of
5 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
6 her employment, his or her wages shall become due and payable not later than seventy-two (72)
7 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
8 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
9 quitting.

10 103. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
11 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
12 above, including but not limited to, overtime wages, minimum wages, and/or meal and rest
13 period premiums, either at the time of discharge, or within seventy-two (72) hours of their
14 leaving Defendants' employ.

15 104. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
16 who are no longer employed by Defendants their wages earned and unpaid at the time of
17 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor
18 Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore
19 entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and
20 (g).

21 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

22 **VIOLATION OF LABOR CODE SECTION 2802**

23 105. At all times herein set forth, California Labor Code section 2802 provides that
24 an employer must reimburse employees for all necessary expenditures and losses incurred by
25 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
26 to prevent employers from passing off their cost of doing business and operating expenses on
27 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
28 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools

1 or equipment are required by the employer or are necessary to the performance of a job, such
2 tools and equipment shall be provided and maintained by the employer, except that an employee
3 whose wages are at least two (2) times the minimum wage provided herein may be required to
4 provide and maintain hand tools and equipment customarily required by the trade or craft.”
5 IWC Wage Order No. 5-2001 further provides that: “[w]hen uniforms are required by the
6 employer to be worn by the employee as a condition of employment, such uniforms shall be
7 provided and maintained by the employer.”

8 106. First, during the relevant time period, Defendants, on a company-wide basis,
9 required that Plaintiff and other non-party Aggrieved Employees use their own personal mobile
10 devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job
11 duties, but failed to reimburse them for the costs of their work-related mobile device expenses.
12 For example, Plaintiff was required to use his personal cellular phone to respond to calls from
13 his manager to discuss work-related matters, such as instructions on job duties or opening up a
14 storage closet for his manager. Although Defendants required Plaintiff and other non-party
15 Aggrieved Employees to utilize their personal mobile devices and/or mobile data to carry out
16 their work-related responsibilities, Defendants failed to reimburse them for these costs.

17 107. Second, Defendants had a company-wide policy of requiring Plaintiff and other
18 non-party Aggrieved Employees to utilize their own personal vehicles or obtain alternate
19 transportation to carry out company business, but failed to reimburse them for all costs of travel,
20 including mileage. For example, Plaintiff was required use his personal vehicle to run errands
21 during his shifts, such as dropping off trash at a disposal facility, about a two-minute drive from
22 his assigned jobsite. Although Defendants required Plaintiff and other non-party Aggrieved
23 Employees to utilize their own vehicles or obtain alternate transportation to carry out their work-
24 related responsibilities, Defendants did not reimburse them for their travel expenses.

25 108. Third, during the relevant time period, Defendants required Plaintiff and other
26 non-party Aggrieved Employees to purchase supplies and equipment necessary for the
27 performance of their duties, but failed to reimburse them for their out-of-pocket costs. For
28 example, Plaintiff spent approximately \$50 per month on cleaning supplies such as bleach and

1 rags, because Defendants failed to provide him with the necessary supplies which were required
2 for him to complete his assigned duties. Although Defendants required Plaintiff and other non-
3 party Aggrieved Employees to purchase supplies and equipment to carry out their work-related
4 responsibilities, Defendants failed to reimburse them for their out-of-pocket costs.

5 109. Fourth, during the relevant time period, Defendants expected Plaintiff and other
6 non-party Aggrieved Employees to wear uniforms bearing the company logo, including uniform
7 polo t-shirts. However, Defendants did not provide their employees with sufficient uniforms to
8 wear for their shifts throughout the week. For example, Defendants only provided Plaintiff with
9 one (1) shirt at the time of hire. Because Defendants failed to provide Plaintiff with an adequate
10 number of uniform items, Plaintiff had to wash his uniform more frequently than he would
11 otherwise do laundry, and incur expenses in doing so. For example, due to the nature of custodial
12 work, Plaintiff's uniform would become covered in chemicals or grime, and/or acquire an
13 unpleasant odor such that he was unable to mix these clothes in with his other laundry. As a
14 result, Plaintiff had to wash his uniform items separately from his regular clothing, thus incurring
15 additional laundry expenses for the upkeep of his uniforms. Thus, Defendants failed to maintain
16 the uniforms they required Plaintiff and other non-party Aggrieved Employees to wear during
17 their shifts and forced them to incur the cost of maintaining employee uniforms.

18 110. Defendants could have provided Plaintiff and other non-party Aggrieved
19 Employees with the actual equipment for use on the job, such as company mobile devices,
20 company vehicles, supplies and equipment, and an adequate number of uniform items or access
21 to laundering services. Or, Defendants could have reimbursed employees for their mobile
22 device usage, mileage and travel expenses, supply and equipment expenses, and costs of their
23 laundering expenses or provided a uniform maintenance allowance. Instead, Defendants passed
24 these operating costs off onto Plaintiff and other non-party Aggrieved Employees. At all
25 relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

26 111. Defendants' company-wide policy and/or practice of not reimbursing employees
27 for expenses necessarily incurred and passing on their operating costs to Plaintiff and other non-
28 party Aggrieved Employees violates California Labor Code section 2802. Plaintiff and other

1 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
2 Labor Code sections 2699(a), (f), and (g).

3 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
4 **EMPLOYMENT**

5 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

6 112. California's Wage Theft Prevention Act was enacted to ensure that employers
7 provide employees with basic information material to their employment relationship at the time
8 of hiring, and to ensure that employees are given written and timely notice of any changes to
9 basic information material to their employment. Codified at California Labor Code section
10 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must
11 provide written notice to employees containing basic and material payroll information,
12 including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour,
13 shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the
14 regular payday designated by the employer, and any allowances claims as part of the minimum
15 wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

16 113. During the relevant time period, Defendants failed to provide Plaintiff and other
17 non-party Aggrieved Employees with written notice that lists all the requisite information set
18 forth in Labor Code section 2810.5(a)(1)(A)-(C).

19 114. Defendants' failure to provide Plaintiff and other non-party Aggrieved
20 Employees with written notice of basic information regarding their employment with
21 Defendants is in violation of California Labor Code section 2810.5. Plaintiff and other non-
22 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
23 Code sections 2699(a), (f), and (g).

24 **REQUEST FOR JURY TRIAL**

25 Plaintiff requests a trial by jury.

26 **PRAYER FOR RELIEF**

27 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
28 judgment against Defendants, jointly and severally, as follows:

1 1. For civil penalties and attorneys’ fees in excess of twenty-five thousand dollars
2 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

3 **As to the First Cause of Action**

4 2. That the Court declare, adjudge and decree that Defendants violated the
5 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
6 Employees: 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all
7 hours worked); 510 and 1198 (by failing to pay all overtime compensation); 226.7, 512(a), 516,
8 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
9 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
10 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages
11 during employment); 201 and 202 (by failing to timely pay all earned wages upon termination);
12 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written
13 notice of information material to employment);

14 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
15 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
16 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

17 4. For attorneys’ fees and costs pursuant to California Labor Code section
18 2699(g)(1), and any and all other relevant statutes, for Defendants’ violations of California
19 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
20 1197, 1198, 2802, and 2810.5;

21 5. For pre-judgment and post-judgment interest as provided by law; and

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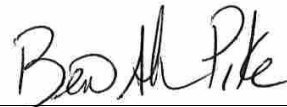
28 ///

1 6. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: February 14, 2023,

Respectfully submitted,

5 Capstone Law APC

6
7 By: 
8 Bevin Pike
9 Daniel Jonathan
Trisha Monesi

10 Attorneys for Plaintiff Carlos Lemus Rivera
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EXHIBIT “1”



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ALEXANDER LIMA
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Alexander.Lima@capstonelawyers.com

December 9, 2022

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Carlos Lemus Rivera v. Building Services Maintenance, Inc, et al.*

Dear PAGA Administrator:

This office represents Carlos Lemus Rivera in connection with his claims under the California Labor Code. Mr. Lemus Rivera was an employee of BUILDING SERVICES MAINTENANCE, INC and/or BUILDING SERVICES/SYSTEM MAINTENANCE, INCORPORATED. For the purpose of this letter, Mr. Lemus Rivera collectively refers to these entities as "BSSM."

The employers may be contacted directly at the addresses below:

BUILDING SERVICES MAINTENANCE, INC	BUILDING SERVICES/SYSTEM
2575 STANWELL DRIVE, SECOND FLOOR	MAINTENANCE, INCORPORATED
CONCORD, CA 94520	2575 STANWELL DRIVE, SECOND FLOOR
	CONCORD, CA 94520

Mr. Lemus Rivera intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Lemus Rivera seeks relief on behalf of himself, the State of California, and other persons who are or were employed by BSSM as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

BSSM employed Mr. Lemus Rivera as an hourly paid, non-exempt Janitor from approximately October 2018 to June 2022. During his employment, Mr. Lemus Rivera typically worked five (5) or more hours per day and five (5) days per week. By the end of his employment, Mr. Lemus Rivera was compensated approximately \$15.54 per hour. His job duties included, without limitation, cleaning and disinfecting locker rooms, sweeping and mopping basketball courts, and picking up trash.

BSSM committed one or more of the following Labor Code violations against Mr. Lemus Rivera, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

BSSM’s Company-Wide and Uniform Payroll and HR Practices

BUILDING SERVICES MAINTENANCE, INC is an entity of unknown origin and BUILDING SERVICES/SYSTEM MAINTENANCE, INCORPORATED is a California corporation. Together, they provide janitorial, maintenance and repair, construction, and landscaping services for clients. Upon information and belief, BSSM maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Concord, California, for all non-exempt, hourly paid employees working for BSSM in California, including Mr. Lemus Rivera and other aggrieved employees. At all relevant times, BSSM issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Lemus Rivera and other aggrieved employees, regardless of their location or position.

Upon information and belief, BSSM maintains a centralized Payroll department at its corporate headquarters in Concord, California, which processes payroll for all non-exempt, hourly paid employees working for BSSM in California, including Mr. Lemus Rivera and other aggrieved employees. Further, BSSM issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Lemus Rivera and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, BSSM utilized the same methods and formulas when calculating wages due to Mr. Lemus Rivera and other aggrieved employees in California.

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission (“IWC”). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

First, during the relevant period, BSSM had a policy and/or practice of discouraging and impeding Mr. Lemus Rivera and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, pursuant to its labor budget limitations (*see infra*). In doing so, BSSM failed to implement a timekeeping system at its clients’ jobsites and does not provide employees with any mechanism, such as a time clock or electronic timekeeping system, to accurately track and record

¹ These facts, theories, and claims are based on Mr. Lemus Rivera’s experience and counsel’s review of those records currently available relating to Mr. Lemus Rivera’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Lemus Rivera reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

their hours worked. Instead, BSSM's policy and/or practice is to require employees, including Mr. Lemus Rivera and other aggrieved employees, to sign timesheets that were already pre-filled by management and/or fill out handwritten timesheets and submit them to management at the end of each pay period for review and approval. Further, BSSM pressures employees, on threat of discipline, to falsify these handwritten timesheets and/or have BSSM's managers falsify or pre-fill the employee timesheets, to reflect their scheduled shifts rather than hours actually worked, thereby shorting Mr. Lemus Rivera and other aggrieved employees for work performed outside their scheduled shifts. For example, at the end of every pay period, BSSM's managers would present Mr. Lemus Rivera with one (1) pre-filled timesheet that only included his scheduled hours for him to sign, and one (1) blank timesheet that he was required to fill out by hand and only include his scheduled shift start-times and shift end-times, instead of his actual hours worked.

Additionally, pursuant to this timekeeping policy and/or practice, BSSM had, and continues to have, a company-wide policy and/or practice of requiring Mr. Lemus Rivera and other aggrieved employees to perform tasks off-the-clock before and after their shifts. For example, Mr. Lemus Rivera was often required to arrive about 30 minutes prior to his scheduled shift-start time and begin working—preparing his cart with cleaning supplies and washing windows, in order to meet BSSM's expectations of completing daily tasks within his scheduled hours. For the same reasons, about five (5) times per week, Mr. Lemus Rivera was required to continue working after his scheduled shift end-time, completing tasks such as sanitizing locker rooms and mopping basketball courts, before he could leave for the day. Because BSSM did not provide him with a mechanism to record this time worked, Mr. Lemus Rivera was never paid for this time. As another example, at the instruction of his manager, Mr. Lemus Rivera was often required to arrive to work before his scheduled shift start-time to unlock a storage closet for his manager so she could replace cleaning supplies for the jobsite, or to discuss work-related issues with his manager, who would instruct him on specific areas of the jobsite to focus on, which could take up to one (1) hour, time for which he was not paid. Because BSSM prohibited Mr. Lemus Rivera and other aggrieved employees from recording their actual hours worked, Mr. Lemus Rivera and other aggrieved employees were not paid for all hours worked.

Alternatively, on information and belief, BSSM rounded clock-in and clock-out times to the nearest full hour to limit the time employees were eligible to be compensated for. Taken together, BSSM's timekeeping policies are, and continue to be, unfair and have, over time, resulted in the underpayment of wages to Mr. Lemus Rivera and other aggrieved employees. Thus, Mr. Lemus Rivera and other aggrieved employees have been denied minimum wages for all hours worked.

Second, on information and belief, BSSM had, and continues to have, a company-wide policy and/or practice of strictly staffing its jobsite locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. BSSM's uniform use of labor budgets, combined with the assignment of heavy workloads, resulted in chronic understaffing, such that there were too few employees on duty to handle the workload. Also, BSSM has systematically, and on a company-wide basis, understaffed some of its jobsite locations by adopting a single-staffing model, whereby only one employee was scheduled to work at certain times, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. BSSM also had a practice of failing to schedule meal periods at all, which further caused Mr. Lemus Rivera and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, on information and belief, Mr. Lemus Rivera worked through his meal periods because he did not have adequate meal period coverage when he worked alone. Consequently, Mr. Lemus Rivera and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties, time for which they were not paid.

Third, during the relevant time period, as stated, BSSM pressured Mr. Lemus Rivera and/or other aggrieved employees to falsify their handwritten timesheets and/or had BSSM's managers falsify or pre-fill the employee timesheets, to reflect their scheduled shifts rather than hours actually worked, *i.e.*, that they had worked less than five (5) hours in a day, in order to limit their eligibility for meal periods they otherwise would have received. As stated, BSSM required Mr. Lemus Rivera to only record his scheduled shifts and continue working to complete tasks before he could leave for the day. In conjunction with this policy, on information and belief, because BSSM frowned upon employees accruing meal period penalties, BSSM's management pressured other aggrieved employees to record compliant meal periods on their timesheets regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by BSSM. Thus, Mr. Lemus Rivera and/or other aggrieved employees were required to perform their assigned tasks off-the-clock because BSSM wanted to avoid paying penalties for missed meal periods. Thus, BSSM did not record all hours worked during meal periods, and Mr. Lemus Rivera and/or other aggrieved employees performed work during meal periods for which they were not paid.

BSSM knew or should have known that as a result of these company-wide practices and/or policies, Mr. Lemus Rivera and other aggrieved employees were performing their assigned duties off-the-clock and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Thus, BSSM did not pay at least minimum wages for all hours worked by Mr. Lemus Rivera and other aggrieved employees in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, BSSM regularly failed to pay at least minimum wages to Mr. Lemus Rivera and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Lemus Rivera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

BSSM willfully failed to pay all overtime wages owed to other aggrieved employees. During the relevant time period, other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

As set forth above, during the relevant time period, BSSM failed to provide other aggrieved employees with an appropriate timekeeping mechanism, such as a time clock or electronic timekeeping system, to accurately track and record their hours worked. Instead, BSSM maintained a policy and/or practice of pressuring employees, on threat of discipline, to falsify their handwritten timesheets and/or have its managers falsify or pre-fill employee timesheets to reflect scheduled hours

rather than hours actually worked, thereby shorting other aggrieved employees for work performed outside their scheduled shifts. As stated, pursuant to this policy, other aggrieved employees performed tasks off-the-clock before and after their shifts in order to be able to complete the daily tasks that BSSM expected its employees to complete within their scheduled hours. Moreover, due to BSSM's policy of rounding or underreporting other aggrieved employees' clock-in and clock-out times in its timekeeping system to the nearest hour, BSSM failed to compensate other aggrieved employees fully for all hours worked.

Additionally, as stated above, due to BSSM's company-wide practices of utilizing labor budgets, understaffing and/or single-staffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid. As also stated, BSSM falsified timesheets to reflect other aggrieved employees' scheduled shifts rather than hours actually worked, *i.e.*, that they had worked less than five (5) hours in a day, in order to limit their eligibility for meal periods they otherwise would have received. In conjunction with this policy, on information and belief, because BSSM frowned upon employees accruing meal period penalties, BSSM's management pressured other aggrieved employees to record compliant meal periods on their timesheets regardless of whether they had received a compliant meal period or not. Thus, BSSM systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Because other aggrieved employees worked shifts of eight (8) hours or more a day or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, BSSM did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, BSSM paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, BSSM failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, BSSM failed to pay all overtime wages by paying a lower overtime rate than required.

BSSM's failure to pay other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without

providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, BSSM had, and continues to have, company-wide policies and/or practices of utilizing labor budgets, understaffing and/or single-staffing its jobsite locations, assigning heavy workloads, and failing to schedule meal periods, which has resulted in a lack of meal period coverage and prevented Mr. Lemus Rivera and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Lemus Rivera and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Mr. Lemus Rivera had to forego his meal periods, due to the lack of coverage and in order to meet BSSM's expectations.

Moreover, as set forth above, on information and belief, BSSM pressured Mr. Lemus Rivera and/or other aggrieved employees to falsify their handwritten timesheets and/or have BSSM's managers falsify or pre-fill the employee timesheets, to reflect their scheduled shifts rather than hours actually worked, *i.e.*, that they had worked less than five (5) hours in a day, in order to limit their eligibility for meal periods they otherwise would have received. As stated, BSSM required Mr. Lemus Rivera to only record his scheduled shifts in order to limit his eligibility for meal periods, even though he continued working to complete tasks before he could leave for the day. Thus, BSSM failed to provide Mr. Lemus Rivera and/or other aggrieved employees with compliant, 30-minute meal periods altogether when they worked five-hour shifts. In conjunction with this policy, as stated, on information and belief, because BSSM frowned upon employees accruing meal period penalties, BSSM's management pressured other aggrieved employees to record that they took meal periods on their timesheets regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by BSSM. Further, to the extent that BSSM's rounding policy reported that Mr. Lemus Rivera and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, Mr. Lemus Rivera and other aggrieved employees did not receive meal period penalties for these improperly rounded meal periods.

BSSM also did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Lemus Rivera and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, BSSM knew or should have known that, as a result of these policies, Mr. Lemus Rivera and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. BSSM further knew or should have known that BSSM did not pay Mr. Lemus Rivera and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

Moreover, BSSM engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Lemus Rivera and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that BSSM did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, BSSM did not pay other aggrieved employees at the correct rate of pay for premiums because BSSM systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, BSSM failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Lemus Rivera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, BSSM regularly failed to authorize and permit Mr. Lemus Rivera and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, BSSM's company-wide policies and/or practices of understaffing and/or single-staffing and assignment of heavy workloads prevented Mr. Lemus Rivera and other aggrieved employees from being relieved of all duty in order to take their rest periods. BSSM also failed to schedule rest periods, which, coupled with BSSM's failure to provide adequate rest period coverage, further led to Mr. Lemus Rivera and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, upon information and belief, BSSM maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Lemus Rivera and other aggrieved employees remain on BSSM's clients' jobsites during their rest periods. Because Mr. Lemus Rivera and other aggrieved employees were restricted from leaving jobsite premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal

errands. Thus, BSSM effectively maintained control over Mr. Lemus Rivera and other aggrieved employees during rest periods.

As a result of BSSM's practices and policies, Mr. Lemus Rivera and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Lemus Rivera had to forego his rest periods altogether, due to BSSM's policy of assigning heavy workloads and management's expectation that all employees would work through their rest periods.

BSSM has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because BSSM frowned upon employees accruing rest period penalties, BSSM pressured Mr. Lemus Rivera and other aggrieved employees to falsify that rest periods were taken and/or adjusted employee records to reflect compliant and/or timely rest periods, regardless of whether Mr. Lemus Rivera and other aggrieved employees had received a compliant rest period or not, in order to strictly limit rest period penalties that BSSM would otherwise owe. As a result of this practice and/or policy, Mr. Lemus Rivera and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that BSSM did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, BSSM did not pay other aggrieved employees at the correct rate of pay for premiums because BSSM failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, BSSM failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Lemus Rivera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. BSSM has not provided Mr. Lemus Rivera and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, BSSM has knowingly and intentionally provided Mr. Lemus Rivera and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BSSM issued uniform wage statements to Mr. Lemus Rivera and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period

premiums, and the corresponding number of hours worked at each hourly rate. Specifically, BSSM violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because BSSM did not record the time Mr. Lemus Rivera and other aggrieved employees spent working off-the-clock, improperly rounded their total hours worked, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), BSSM did not list the correct amount of gross wages and net wages earned by Mr. Lemus Rivera and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BSSM failed to accurately list the total number of hours worked by Mr. Lemus Rivera and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

Second, because BSSM did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, BSSM did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, BSSM failed to list the correct amount of net wages in violation of section 226(a)(5). BSSM also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, and/or meal and rest premiums, in violation of section 226(a)(9).

Third, and separate from these violations, BSSM issued uniform wage statements to Mr. Lemus Rivera and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, BSSM systematically, and on a company-wide basis, issued wage statements to Mr. Lemus Rivera and other aggrieved employees that incorrectly list two entities as the employer, including "Building Services Maintenance, Inc" and "Building Services System Maintenance, Inc[.]" Moreover, the wage statements incorrectly list the employer's address as "CA 94520, 2575 Stanwell Drive," but according to the California Secretary of State's website, there is no such entity by these names or this address. For example, BSSM incorrectly listed the employing entity's name and address on Mr. Lemus Rivera's and other aggrieved employees' wage statements, including Mr. Lemus Rivera's wage statements dated January 5, 2022; January 20, 2022; February 4, 2022; February 18, 2022; March 4, 2022; March 21, 2022; April 5, 2022; and April 20, 2022. On information and belief, the correct spelling of the employing entity is BUILDING SERVICES/SYSTEM MAINTENANCE, INCORPORATED. *See example paystub below.*

Building Services Maintenance, Inc, CA 94520, 2575 Stanwell Drive, Building Services System Maintenance, Inc.

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and/or

failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), BSSM willfully failed to maintain accurate payroll records for Mr. Lemus Rivera and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Lemus Rivera’s and other aggrieved employees’ total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, BSSM engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Lemus Rivera and other aggrieved employees, in violation of section 1198. Furthermore, in light of BSSM’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, BSSM kept no records of meal start and end times for second meal periods.

Because BSSM failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Lemus Rivera and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Lemus Rivera and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Lemus Rivera and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of

the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, BSSM willfully failed to pay Mr. Lemus Rivera and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

Mr. Lemus Rivera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

BSSM willfully failed to pay Mr. Lemus Rivera and other aggrieved employees who are no longer employed by BSSM the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving BSSM's employ.

Mr. Lemus Rivera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order No. 5-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

First, during the relevant time period, Mr. Lemus Rivera and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but BSSM failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Lemus Rivera was required to use his

personal cellular phone to respond to calls from his manager to discuss work-related matters, such as instructions on job duties or opening up a storage closet for his manager. Although BSSM required Mr. Lemus Rivera and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, BSSM failed to reimburse them for these costs.

Second, during the relevant time period, BSSM, on a company-wide basis, required that Mr. Lemus Rivera and other aggrieved employees use their own personal vehicles to run company errands. For example, Mr. Lemus Rivera was required to use his personal vehicle to run errands during his shifts, such as dropping off trash at a disposal facility, about a two-minute drive from his assigned jobsite. Although BSSM required Mr. Lemus Rivera and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, BSSM failed to reimburse them for their mileage or travel expenses.

Third, during the relevant time period, BSSM required Mr. Lemus Rivera and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Lemus Rivera spent approximately \$50 per month on cleaning supplies such as bleach and rags, because BSSM failed to provide him with the necessary supplies which were required for him to complete his assigned duties. Although BSSM required Mr. Lemus Rivera and other aggrieved employees to purchase supplies and equipment to carry out their work-related responsibilities, BSSM failed to reimburse them for their out-of-pocket costs.

Fourth, during the relevant time period, BSSM, on a company-wide basis, expected Mr. Lemus Rivera and other aggrieved employees to wear uniform polo t-shirts bearing the company logo. However, BSSM did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, BSSM only provided Mr. Lemus Rivera with one (1) shirt at the time of hire. Because BSSM failed to provide Mr. Lemus Rivera with an adequate number of uniform items, Mr. Lemus Rivera had to wash his uniform more frequently than he would otherwise do laundry, and incur expenses in doing so. For example, due to the nature of custodial work, Mr. Lemus Rivera's uniform would become covered in chemicals or grime, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with his other laundry. As a result, Mr. Lemus Rivera had to wash his uniform items separately from his regular clothing, thus incurring additional laundry expenses for the upkeep of his uniforms. Thus, BSSM failed to maintain the uniforms it required Mr. Lemus Rivera and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

BSSM could have provided Mr. Lemus Rivera and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, company vehicles, supplies and equipment, and an adequate number of uniform items or access to laundering services. Or, BSSM could have reimbursed employees for the costs of their mobile device usage, mileage and travel expenses, supply and equipment expenses, and laundering expenses or provided a uniform maintenance allowance. Instead, BSSM passed these operating costs off onto Mr. Lemus Rivera and other aggrieved employees. At all relevant times, Mr. Lemus Rivera did not earn at least two (2) times the minimum wage.

Thus, BSSM had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr.

Lemus Rivera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, on information and belief, BSSM failed, on a company-wide basis, to provide written notice to Mr. Lemus Rivera and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). BSSM's failure to provide Mr. Lemus Rivera and other aggrieved employees with written notice of basic information regarding their employment with BSSM is in violation of Labor Code section 2810.5.

Mr. Lemus Rivera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." AI, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Lemus Rivera's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Lemus Rivera seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Lemus Rivera, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California

against BSSM for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Lemus Rivera seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Lemus Rivera's reasonable attempt to settle his dispute with BSSM prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform BSSM of Mr. Lemus Rivera's aforementioned grievances and the proposed remedies as detailed below, while affording BSSM a reasonable opportunity to satisfy Mr. Lemus Rivera's demands.

Demand is hereby made that BSSM shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. BSSM shall pay Mr. Lemus Rivera and all other aggrieved employees employed by BSSM at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. BSSM shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. BSSM shall conduct a survey or interview all current and former aggrieved employees in California who worked for BSSM in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device expenses, travel expenses, mileage, supply and equipment expenses, uniform maintenance expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. BSSM shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. BSSM also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. BSSM shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for BSSM's benefit, including, but not limited to, costs of mobile device usage, travel expenses, mileage, supply and equipment expenses, uniform maintenance expenses, or other expenditures, as required by Labor Code section 2802.
6. BSSM shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.

7. BSSM shall provide all aggrieved employees employed by BSSM at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. BSSM shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. BSSM shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 5-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', followed by three dots.

Alexander Lima

Copy: BUILDING SERVICES MAINTENANCE, INC (via U.S. Certified Mail), BUILDING SERVICES/SYSTEM, INCORPORATED (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067



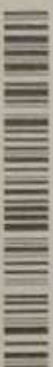
7022 2410 0000 2406 4260

BUILDING SERVICES
MAINTENANCE, INC
2575 STANWELL DRIVE, 2nd FL.
CONCORD, CA 94520

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- Complete items 1, 2, and 3.
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A. Signature

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☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

1. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
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| ☐ Insured Mail | |
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Signature of Addressee or Agent
Postmark

BUILDING SERVICES
MAINTENANCE, INC
2575 STANWELL DRIVE, 2nd FL.
CONCORD, CA 94520

7022 2410 0000 2406 4260

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA, 90067

7022 2410 0000 2406 4239



BUILDING SERVICES/SYSTEM
MAINTENANCE, INCORPORATED
2575 STANWELL DRIVE, 2nd FL.
CONCORD, CA 94520

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CONCORD, CA 94520

9590 9402 1512 5362 2475 94



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☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ First-Class Mail
- ☐ First-Class Mail International
- ☐ First-Class Mail International Restricted Delivery
- ☐ Priority Mail Express
- ☐ Registered Mail™
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Date

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MAINTENANCE, INCORPORATED
2575 STANWELL DRIVE, 2nd FL.
CONCORD, CA 94520

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MAINTENANCE, INC**
2575 STANWELL DRIVE, 2nd Fl.
CONCORD, CA 94520



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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X V.G. Labourdet

☐ Agent

☐ Addressee

B. Received by (Printed Name)

V Labourdet

C. Date of Delivery

12/12/22

D. Is delivery address different from item 1?

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☐ No

J. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☐ Certified Mail®

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☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

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2575 STANWELL DRIVE, 2nd FL.
CONCORD, CA 94520



9590 9402 1512 5362 2475 94

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4239

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Vlabordet

C. Date of Delivery

12/12/22

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted

Delivery

☐ Return Receipt for

Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation

Restricted Delivery

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