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HERNANDEZ DE MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

SUSANA HERNANDEZ DE MARTINEZ,
individually, and on behalf of all others similarly
situated,

Plaintiff,

vs.

FACILITY SERVICES PARTNERS, INC., a
California Corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No.: **CVRI 2304625**

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

1 Plaintiff SUSANA HERNANDEZ DE MARTINEZ (“Plaintiff”), based upon facts that
2 either have evidentiary support or are likely to have evidentiary support after a reasonable
3 opportunity for further investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendant FACILITY SERVICES
6 PARTNERS, INC. and Does 1 through 10 (FACILITY SERVICES PARTNERS, INC. and Does
7 1 through 10 are collectively referred to as “Defendants”) for civil penalties under the Private
8 Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming
9 from Defendants’ failure to pay all wages due in violation of Labor Code Sections 204, 510 and
10 1194, including both regular and overtime wages; failure to provide meal periods or
11 compensation in lieu thereof pursuant to Labor Code Sections 226.7 and 512, the applicable
12 Industrial Welfare Commission Wage Orders, and Code of Regulations, Title 8, Section 11000 *et*
13 *seq.*; failure to provide rest periods or compensation in lieu thereof pursuant to Labor Code
14 Sections 226.7 and 512, the applicable Industrial Welfare Commission Wage Orders, and Code
15 of Regulations, Title 8, Section 11000 *et seq.*; failure to provide accurate itemized wage
16 statements upon payment of wages pursuant to Labor Code Sections 226, subdivision (a), 1174,
17 and 1175; failure to reimburse for necessary expenditures pursuant to Labor Code Section 2802;
18 failure to pay wages of terminated or resigned employees pursuant to Labor Code Sections 201,
19 202, and 203.

20 2. For over 50 years, California’s courts and legislature have recognized that this
21 state’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
22 Wages are not ordinary debts. Because of the economic position of the average worker and his
23 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
24 that employees are promptly paid the minimum/overtime wages that the Legislature has required
25 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
26 criminalized certain types of violations. In extending extra protection to deter violations of these
27 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
28 other damages other than civil penalties—California has enacted the PAGA to permit an

individual to bring an action on behalf of herself and on behalf of others for PAGA penalties only, which is the precise and sole nature of this action.

3. All California employees during the relevant statutes of limitations who are or were harmed by Defendants' illegal practices are "Aggrieved Employees."

4. Plaintiff brings this action against Defendants seeking only to recover penalties for herself, on behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of California. Plaintiff does not seek to recover anything other than penalties as permitted by California Labor Code Section 2699 at this time. To the extent that statutory violations are mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages for those violations, but simply penalties as permitted by California Labor Code Section 2699, declaratory relief, and injunctive relief for herself and all aggrieved employees as permitted by the PAGA.

5. Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including Riverside County. As such and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

6. Despite these requirements, throughout the statutory period Defendants maintained a systematic, company-wide policy and practice of:

- (a) Failing to pay all wages;
 - (b) Failing to authorize and permit employees to take timely and duty-free rest and meal periods in compliance with the California Labor Code and IWC Wage Orders, and failing to pay an additional hour's pay for each workday a meal or rest period violation occurred;
 - (c) Failing to maintain accurate records of the hours employees worked;
 - (d) Failing to pay employees all meal period, rest period, all wages due within the time period specified by California law when employment terminates;
- and

(e) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders.

7. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein.

8. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of “respondeat superior”.

THE PARTIES

A. Plaintiff

9. Plaintiff SUSANA HERNANDEZ DE MARTINEZ is a California resident that worked for Defendants in Riverside County, California at 4001 Iowa Avenue, Riverside, California 92656 as a custodian from September 2021 to May 23, 2023.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant FACILITY SERVICES PARTNERS, INC. is:

- (a) A California Corporation with its corporate headquarters and principal place of business in Riverside County, California.
- (b) A business entity conducting business in Riverside County; and,
- (c) The former employer of Plaintiff, and the current and/or former employer of the Aggrieved Employees’ group. FACILITY SERVICES PARTNERS, INC. suffered and permitted Plaintiff and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

11. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by

1 Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to
2 set forth the true names and capacities of these Defendants when they have been ascertained,
3 together with appropriate charging allegations, as may be necessary.

4 12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
5 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
6 and/or injured a significant number of the Plaintiff and the Aggrieved Employees in the State of
7 California.

8 13. Plaintiff is informed and believes and thereon alleges that at all relevant times
9 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
10 the other Aggrieved Employees, and exercised control over their wages, hours, and working
11 conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each
12 Defendant was the principal, agent, partner, joint venturer, officer, director, controlling
13 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
14 interest of some or all of the other Defendants, and was engaged with some or all of the other
15 Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
16 other Defendants so as to be liable for their conduct with respect to the matters alleged below.
17 Plaintiff is informed and believes and thereon alleges that each Defendants acted pursuant to and
18 within the scope of the relationships alleged above, that each Defendants knew or should have
19 known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the
20 conduct of all other Defendants.

21 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

22 14. Plaintiff SUSANA HERNANDEZ DE MARTINEZ worked for Defendants in
23 Riverside County, California at 4001 Iowa Avenue, Riverside, California 92507 location as a
24 custodian from September 2021 to May 23, 2023. At all times Defendants classified Plaintiff as
25 non-exempt. During the statutory time period, Plaintiff was typically scheduled to work 5 days in
26 a workweek, and typically 8 to 12 hours in a single workday.

1 15. Throughout Plaintiff's employment, Defendants committed numerous labor code
2 violations under state law. As discussed below, Plaintiff's experience working for Defendants
3 was typical and illustrative.

4 16. Under California law, an employer must pay for all hours worked by an employee.
5 "Hours worked" is the time during which an employee is subject to the control of an employer
6 and includes all the time the employee is suffered or permitted to work, whether or not required
7 to do so.

8 17. In addition, Labor Code § 510 provides that employees in California shall not be
9 employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless
10 they receive additional compensation beyond their regular wages in amounts specified by law.

11 18. Labor Code §§ 1194 and 1198 also provide that employees in California shall not
12 be employed more than eight hours in any workday unless they receive additional compensation
13 beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states
14 that the employment of an employee for longer hours than those fixed by the Industrial Welfare
15 Commission is unlawful.

16 19. Throughout the statutory period, Defendants maintained a policy and practice of
17 failing to pay Plaintiff and the Aggrieved Employees for all hours. Throughout the statutory
18 period, Defendants regularly used a system of time rounding in a manner that resulted, over a
19 period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all
20 the time they have actually worked, even though the realities of Defendants' operations are such
21 that it is possible, practical, and feasible to count and pay for work time to the minute.

22 Accordingly, Defendants frequently paid Plaintiff and the Aggrieved Employees less than all
23 their work time. Some of this unpaid work also should have been paid at the overtime rate.

24 Throughout the statutory period, Defendants maintained a policy and practice of requiring
25 Plaintiff and the Aggrieved Employees to perform work "off-the-clock". Plaintiff and the
26 Aggrieved employees were required to arrive earlier than their scheduled start time to perform
27 some additional work but were only required to clock in to work ten minutes prior to the
28 scheduled start of the shift not to create overtime. Plaintiff and the Aggrieved Employees were

1 not compensated for all the time worked prior to clocking in to work. Defendants also required
2 Plaintiff and the Aggrieved Employees to clock out at the end of their shifts but continue
3 working to complete additional tasks for about twenty minutes again not to create overtime.
4 Defendant also required Plaintiff and the Aggrieved Employees to work through their meal
5 periods requiring them to clock out but continue working. Plaintiff and the Aggrieved Employees
6 were also required to use their personal cellular telephones for work purposes at home after their
7 scheduled work time to communicate with Defendants' supervisors regarding work schedules
8 and assignments. Plaintiff and the Aggrieved Employees would also spend time after the
9 scheduled shift hours to wash the uniforms provided by Defendants, but Defendants failed to
10 compensate for that time. In maintaining a practice of not paying all wages owed, Defendants
11 failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.
12 In doing so, Defendants also failed to maintain accurate records of the hours Plaintiff and the
13 Aggrieved Employees worked.

14 20. Under California law, employers have an affirmative obligation to relieve
15 employees of all duty in order to take their first 30-minute, duty-free meal periods no later than
16 the start of sixth hour of work in a workday, and to allow employees to take their second 30-
17 minute, duty-free meal period no later than the start of the eleventh hour of work in the workday.
18 Further, employees are entitled to be paid one hour of additional wages for each workday they
19 were not provided with all required meal period(s). Despite these legal requirements, Defendants
20 wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal
21 periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess
22 of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted,
23 duty-free meal period for every five hours of work, or without compensating Plaintiff and the
24 Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
25 work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Aggrieved
26 Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts
27 greater than 10 hours, by the end of the tenth hour of work. Defendant required Plaintiff and the
28 Aggrieved Employees to work through their meal periods requiring them to clock out but

1 continue working. Additionally, Plaintiff's and the Aggrieved Employees' meal periods were cut
2 short since they were required to walk to the meal break room located on another floor. Plaintiff
3 and Aggrieved Employees were disciplined for not taking their meal breaks in a specific area
4 designated for meal breaks. Therefore, Plaintiff and Aggrieved Employees were not free to have
5 their meal periods in a location of their choice. Plaintiff and the Aggrieved Employees had never
6 been authorized or taken their second meal periods when their shifts exceeded 10 hours.
7 Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and the
8 Aggrieved Employees in compliance with California law.

9 21. Employers are required by California law to authorize and permit breaks of 10
10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
11 two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the
12 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is
13 itself a violation of California's rest break laws.

14 22. Defendants, however, wrongfully failed to authorize and permit Plaintiff and the
15 Aggrieved Employees to take timely and duty-free rest periods. Defendants regularly required
16 Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without
17 Defendants authorizing and permitting them to take a 10 minute, continuous and uninterrupted,
18 rest period for every four hours of work (or major fraction of four hours), or without
19 compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or
20 permitted. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their
21 right to take a rest period. Moreover, Defendants did not have adequate policies or practices
22 permitting or authorizing rest periods for Plaintiffs and the Aggrieved Employees. Plaintiff's and
23 the Aggrieved Employees' rest periods were often times missed, interrupted or short.
24 Additionally, Plaintiff and the Aggrieved Employees have never been authorized and taken their
25 second rest periods. Accordingly, Defendants' policy and practice was for Plaintiff and the
26 Aggrieved Employees to work through rest periods and to not authorize or permit them to take
27 any rest periods.
28

1 23. California Labor Code § 2802 requires employers to reimburse employees for
2 their necessary expenditures and losses incurred in direct consequence of the discharge of their
3 duties or of their obedience to directions of the employer.

4 24. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
5 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
6 Defendants without reimbursement. Defendants required Plaintiff and the Aggrieved Employees
7 to purchase some materials necessary for performing their work such as doorstoppers, special
8 towels, keys but failed to reimburse them for those expenses. Further, Plaintiff and the Aggrieved
9 Employees were required to use their cellular telephones for work purposes to communicate with
10 supervisors regarding the work schedules and assignments, but they were not reimbursed for cell
11 phone usage. Plaintiff and the Aggrieved Employees were also required to wash and maintain the
12 uniforms provided by Defendants but were not reimbursed for that. Plaintiff and the Aggrieved
13 Employees incurred these substantial expenses as a direct result of performing their job duties for
14 Defendants, and Defendants have failed to indemnify Plaintiff and the Aggrieved Employees for
15 these employment-related expenses.

16 25. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
17 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
18 if an employee voluntarily leaves his or her employment, his or her wages shall become due and
19 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
20 two (72) hours previous notice of his or her intention to quit, in which case the employee is
21 entitled to his or her wages at the time of quitting.

22 26. Throughout the statutory period, the employment of Plaintiff and many other
23 Aggrieved Employees ended, i.e. were terminated by quitting or discharge, and the employment
24 of others will be. However, during the relevant time period, Defendants failed, and continues to
25 fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required
26 to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-
27 two (72) hours of their leaving Defendants' employ. These unpaid wages include wages for
28 unpaid work time, missed meal periods, and missed rest periods.

1 27. Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203
2 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201
3 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and
4 at the same rate until paid or until an action is commenced; but the wages shall not continue for
5 more than thirty (30) days.

6 28. Labor Code § 204 requires employers to pay employees all earned wages two
7 times per month on days designated in advance by the employer as the regular paydays. Labor
8 performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
9 between the 16th and the 26th day of the month during which the labor was performed, and labor
10 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
11 between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of
12 this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or
13 semimonthly payroll if the wages are paid not more than seven calendar days following the close
14 of the payroll period. Lab. Code § 204(d).

15 29. Throughout the statutory period, employees were also entitled to be paid twice a
16 month at their regular rates, including all meal period premium wages owed, rest period premium
17 wages owed, and wages owed for hours worked. However, during all such times, Defendants
18 systematically failed and refused to pay the employees all wages due, and failed to pay those
19 wages twice a month, in that employees were not paid all wages for all meal periods not provided
20 by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all
21 wages for all hours worked. As a result, Defendants owe employees the legally required wages
22 for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those
23 amounts. Additionally, Defendants included the vacation and sick pay in the total hours worked.

24 30. During the statutory period, Defendants failed to furnish Plaintiff and the
25 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
26 rates, and all gross and net wages earned (including wages for meal periods that were not
27 provided in accordance with California law, wages for rest periods that were not authorized and
28 permitted to take in accordance with California law, and correct wages earned for hours worked).

1 As a result of these violations of California Labor Code § 226(a), the Plaintiff and the Aggrieved
2 Employees suffered injury because, among other things:

- 3 (a) the violations led them to believe that they were not entitled to be paid
4 overtime wages, meal period premium wages, and rest period premium
5 wages, even though they were entitled;
- 6 (b) the violations led them to believe that they had been paid the overtime,
7 meal period premium, and rest period premium wages to which they were
8 entitled, even though they had not been;
- 9 (c) the violations led them to believe they were not entitled to be paid
10 overtime, meal period premium, and rest period premium wages at the
11 correct California rate even though they were;
- 12 (d) the violations led them to believe they had been paid overtime, meal period
13 premium, and rest period premium wages at the correct California rate
14 even though they had not been;
- 15 (e) the violations hindered them from determining the amounts of overtime,
16 meal period premium, and rest period premium wages owed to them;
- 17 (f) in connection with their employment before and during this action, and in
18 connection with prosecuting this action, the violations caused them to have
19 to perform mathematical computations to determine the amounts of wages
20 owed to them, computations they would not have to make if the wage
21 statements contained the required accurate information;
- 22 (g) by understating the wages truly due them, the violations caused them to
23 lose entitlement and/or accrual of the full amount of Social Security,
24 disability, unemployment, and other governmental benefits;
- 25 (h) the wage statements inaccurately understated the wages, hours, and wages
26 rates to which Plaintiff and the Aggrieved Employees were entitled, and
27 Plaintiff and the Aggrieved Employees were paid less than the wages and
28 wage rates to which they were entitled.

1 Thus, Plaintiff and the Aggrieved Employees are owed the amounts provided for in California
2 Labor Code § 226(e).

3 **FIRST CAUSE OF ACTION**

4 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
5 **2004, Cal. Lab. Code § 2698 et seq.)**

6 31. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as
7 though fully set forth herein.

8 32. At all times herein mentioned, Defendants were subject to the Labor Code of the
9 State of California and the applicable Industrial Welfare Commission Orders.

10 33. California Labor Code § 2699(a) specifically provides for a private right of action
11 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
12 law, any provision of this code that provides for a civil penalty to be assessed and collected by
13 the Labor and Workforce Development Agency or any of its departments, divisions,
14 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
15 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
16 herself and other current or former employees pursuant to the procedures specified in Section
17 2699.3.”

18 34. Plaintiff has exhausted her administrative remedies pursuant to California Labor
19 Code § 2699.3. On June 26, 2023, she gave written notice by online filing to the Labor and
20 Workforce Development Agency and by certified mail to Defendants of the specific provisions
21 of the Labor Code that Defendants have violated against Plaintiff and current and former
22 aggrieved employees, including the facts and theories to support the violations. Plaintiff also
23 paid the filing fee on or about June 5, 2023. Plaintiff’s PAGA case number is LWDA-CM-
24 964541-23. A true and correct copy of Plaintiff’s letter sent to the LWDA and Defendants, is
25 attached hereto as **“Exhibit A”**.

26 35. The statute of limitations is tolled while a plaintiff exhausts his/her administrative
27 remedies with California’s Labor and Workforce Development Agency (LWDA) prior to suit,
28 which is required by the statute. See Cal. Lab. Code § 2699.3(d).

36. More than 65 days has elapsed since Plaintiff provided notice, but the Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants' Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 1197.1, and 2699(f)(2).

37. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods, and total hours worked daily shall also be recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall keep total hours worked in the payroll period and applicable rates of pay.

38. Based on the conduct described in this Complaint, Plaintiff is entitled to an award of civil penalties on behalf of herself, the State of California, and similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial.

39. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Aggrieved Employees pray for judgment as follows:

1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as provided by law, including, but not limited to, those civil penalties provided by statute, provided by PAGA;

2. For costs of suit and expenses incurred herein pursuant to Labor Code sections 2699, subdivision (g) and any other statutory basis or pursuant to the California Rules of Court;

1 3. For reasonable attorneys' fees pursuant to Labor Code sections 2699, subdivision
2 (g), 2802, Code of Civil Procedure section 1021.5, and any other statutory basis; and

3 4. For all such other and further relief as the Court may deem just and proper.
4

5 Dated: September 5, 2023

Respectfully submitted,

6 **TUNYAN LAW, APC**

7 By: 
8 _____

9 Lilit Tunyan
Artur Tunyan

10 Attorneys for Plaintiff SUSANA HERNANDEZ
11 DE MARTINEZ
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Exhibit “A”



Lilit Tunyan, Esq.
1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

March 15, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Agent for Service of Process for
Facility Services Partners, Inc.
LegalZoom.Com, Inc.
101 N Brand Boulevard, 11th Floor
Glendale, CA 91203

VIA CERTIFIED MAIL

Return Receipt Requested

Facility Services Partners, Inc.
1 University Drive
Aliso Viejo, CA 92656

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

Re: *Susana Hernandez De Martinez v. Facility Services Partners, Inc.*

To Whom It May Concern:

Please be advised that my office has been retained by Susana Hernandez De Martinez ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer Facility Services Partners, Inc. ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which she alleges Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Riverside County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a cleaner from approximately June 2021 to May 23, 2023, primarily in Riverside County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and between 8 to 12 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is 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.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked including straight time wages and overtime wages. Throughout the statutory period, Defendant regularly used a system

of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. Throughout the statutory period, Defendant maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work "off-the-clock". Plaintiff and the Aggrieved employees were required to arrive earlier than their scheduled start time to perform some additional work but were only required to clock in to work ten minutes prior to the scheduled start of the shift not to create overtime. Plaintiff and the Aggrieved Employees were not compensated for all the time worked prior to clocking in to work. Defendant also regularly required Plaintiff and the Aggrieved Employees to clock out at the end of their shifts but continue working to complete additional tasks for about twenty minutes again not to create overtime. Defendant also required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to clock out but continue working. Plaintiff and the Aggrieved Employees were also required to use their personal cellular telephones for work purposes at home after their scheduled work time to communicate with Defendant's supervisors regarding work schedules and assignments. Plaintiff and the Aggrieved Employees would also spend time after the scheduled shift hours to wash the uniforms provided by Defendant but Defendant failed to compensate for that time. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that

were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees. Plaintiff and the Aggrieved Employees would often times miss their meal periods, have interrupted, late or short meal periods. Defendant required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to clock out but continue working. Additionally, Plaintiff's and the Aggrieved Employees' meal periods were cut short since they were required to walk to the meal break area located on another floor. Plaintiff and the Aggrieved Employees had never been authorized or taken their second meal periods when their shifts exceeded 10 hours. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit periods of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest periods. Each failure to authorize rest periods as so required is itself a violation of California's rest period laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees. Plaintiff and the Aggrieved Employees would mostly miss their first, second and third rest periods or have interrupted or short rest periods. Defendant required Plaintiff and the Aggrieved Employees to interrupt their

rest periods and continue working to finish the assignments. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. Defendant required Plaintiff and the Aggrieved Employees to purchase some materials necessary for performing their work such as doorstoppers, special towers, keys but failed to reimburse them for those expenses. Further, Plaintiff and the Aggrieved Employees were required to use their cellular telephones for work purposes to communicate with supervisors regarding the work schedules and assignments, but they were not reimbursed for cell phone usage. Plaintiff and the Aggrieved Employees were also required to wash and maintain the uniforms provided by Defendant but were not reimbursed for that. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 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.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly list gross wages earned, the failure to list the true net wages earned, wages for meal and rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Additionally, Defendant included vacation and sick pay in the total hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. Additionally, Defendant included vacation and sick pay in the total hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;

3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

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

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

USPS TRACKING#



9590 9402 8114 2349 9465 02

United States
Postal ServiceFirst-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box*

TUNYAN LAW, APC
1336 Rossmoyne Avenue
Glendale, CA 91207

185335

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Facility Services Partners, Inc.
1 University Drive
Aliso Viejo, CA 92656

9590 9402 8114 2349 9465 02

2. Article Number (Transfer from service label)

9589 0710 5270 0112 6455 09

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Maribel Marquez*☐ Agent☐ Addressee

B. Received by (Printed Name)

MARIBEL MARQUEZ

C. Date of Delivery

6/29/23

D. Is delivery address different from item 1? ☐ YesIf 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

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail
Restricted Delivery
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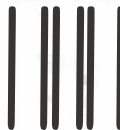
PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

USPS TRACKING #



9590 9402 8114 2349 9465 19



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•



TUNYAN LAW, APC
1336 Rossmoyne Avenue
Glendale, CA 91207



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1.

LegalZoom.Com, Inc.
Agent for Service of Process for
Facility Services Partners, Inc.
101 N Brand Boulevard, 11th Floor
Glendale, CA 91203



9590 9402 8114 2349 9465 19

2. Article Number (Transfer from service label)

9589 0710 5270 0112 6454 93

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ 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

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail
Restrictions
(00)

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Monday, June 26, 2023 5:18:13 PM

6/26/2023

LWDA Case No. LWDA-CM-964541-23
Law Firm : Tunyan Law, APC
Plaintiff Name : Susana Hernandez De Martinez
Employer: Facility Services Partners, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm