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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Ines Quirarte, Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

12 **(UNLIMITED JURISDICTION)**

13 MARIA CERVANTES,

14 *Plaintiff,*

15 vs.

16 C C S PROCLEAN, a California corporation;
17 MELISA MOYA, an individual; and DOES 1
18 to 25, inclusive,

19 *Defendants.*

Case No.: 37-2024-00009794-CU-OE-CTL

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Failure to Provide Personnel Records;
- 9) Failure to Provide Pay Records;
- 10) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 11) Wrongful Constructive Discharge In Violation of Public Policy; and

12) Unfair Competition (Bus. & Prof.
Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, MARIA CERVANTES (hereafter “Plaintiff”), and complains
and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”), the Business and Professions Code, and public policy against C C S PROCLEAN; MELISA MOYA, an individual; and DOES 1 to 25, inclusive (collectively “CCS” or “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of San Diego – Central District because Defendants C C S PROCLEAN, MELISA MOYA, and DOES 1 to 25, inclusive, do business in the County of San Diego and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of San Diego is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

THE PARTIES

3. Plaintiff Maria Cervantes is a female resident of San Diego, California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11040 and an “Aggrieved Employee” within the meaning of Labor Code Section 2699(c).

4. Defendant C C S Proclean is and was a California corporation, doing business in San Diego County, and which employed Plaintiff. As such, it is a citizen of California based on Plaintiff’s information and belief.

5. Defendant MELISA MOYA is a citizen of California based on Plaintiff’s

1 information and belief.

2 6. In relevant part, Labor Code section 558.1 states:

3 (a) Any employer or other person acting on behalf of an employer, who violates,
4 or causes to be violated, any provision regulating minimum wages or hours and
5 days of work in any order of the Industrial Welfare Commission, or violates, or
6 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
7 held liable as the employer for such violation.

8 (b) For purposes of this section, the term “other person acting on behalf of an
9 employer” is limited to a natural person who is an owner, director, officer, or
10 managing agent of the employer, and the term “managing agent” has the same
11 meaning as in subdivision (b) of Section 3294 of the Civil Code.

12 7. Based on Plaintiff’s information and belief, Defendant MELISA MOYA is
13 a natural person, and an owner, director, officer, and/or managing agent of C C S Proclean,
14 who directly or indirectly, or through his agent, employed or exercised control over the wages,
15 hours, or working conditions of Plaintiff and the Aggrieved Employees (defined below).
16 Therefore, she is liable to Plaintiff and the Aggrieved Employees for her violations of, or
17 causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1194, and 2802 pursuant
18 to Labor Code section 558.1.

19 8. The “Aggrieved Employees” are all current and former non-exempt or hourly
20 paid employees who worked for Defendants in California during the relevant time period
21 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys
22 General Act of 2004 (“PAGA”).

23 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
24 participation in the conduct alleged herein, of the defendants sued as DOES 1-25, inclusive, but
25 is informed and believes and thereon alleges that said defendants are legally responsible for the
26 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
27 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
28 defendants when ascertained.

10 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times
11 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
12 remaining Defendants, and in doing the things hereinafter alleged, were acting within the

1 course and scope of such agency or employment, and with the approval and ratification of each
2 of the other Defendants.

3 11. Plaintiff is informed and believes and thereon alleges that each and every one of
4 the acts and omissions alleged herein were performed by, and/or are attributable to, all
5 Defendants, each acting as agents and/or employees, and/or under the direction and control of
6 each of the other Defendants, and that said acts and failures to act were within the course and
7 scope of said agency, employment, and/or direction and control.

8 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
9 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
10 lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved
11 Employees in accordance with applicable California labor laws as alleged herein.

12 **GENERAL ALLEGATIONS**

13 13. CCS first began to employ Plaintiff on or around May 25, 2003 as a cleaner in
14 San Diego, California. Plaintiff generally worked Monday to Friday (occasionally Saturdays)
15 and cleaned on average about two units per day. Plaintiff generally worked from approximately
16 8:00 a.m. to 4:00 p.m. or later.

17 14. At all relevant times, CCS issued payments to Plaintiff and all of the other
18 Aggrieved Employees on a bi-weekly basis and paid them per unit they cleaned. CCS paid
19 Plaintiff \$90.00 for a 1x1 unit (1 room, 1 bathroom) and \$ 130.00 for 2x2 unit (2 bedrooms, 2
20 bathrooms). If the room was considered “heavy” (extremely dirty), Plaintiff would get an
21 additional \$5 per trash bag.

22 15. At all relevant times, At all relevant times, Plaintiff and all of the other
23 Aggrieved Employees were CCS’ employees, whether CCS misclassified them as independent
24 contractors or properly classified them as employees. At all relevant times, CCS willfully
25 misclassified Plaintiff and all of the other Aggrieved Employees as independent contractors in
26 violation of Labor Code section 226.8 At all relevant times with regard to Plaintiff and all of
27 the other Aggrieved Employees, CCS engaged, suffered, and permitted them to work. CCS
28 could terminate Plaintiff and all of the other Aggrieved Employees at will. CCS trained

1 Plaintiff and all of the other Aggrieved Employees how to perform some or all aspects of their
2 work. CCS assigned Plaintiff and all of the other Aggrieved Employees the clients/units they
3 serviced. CCS collected payment from the clients. CCS paid Plaintiff and all of the other
4 Aggrieved Employees a nonnegotiable rate of pay per unit cleaned. The work Plaintiff and all
5 of the other Aggrieved Employees performed was wholly within the scope of CCS's usual
6 course of business of providing cleaning/janitorial services. CCS knew or should have known
7 their actions of misclassifying Plaintiff and all of the other Aggrieved Employees as
8 independent contractors violated California law. Melisa Moya knowingly advised CCS to
9 misclassify Plaintiff and all of the other Aggrieved Employees as independent contractors.

10 16. CCS failed to pay Plaintiff and the other Aggrieved Employees for all time
11 worked or subject to its control. Plaintiff and the other Aggrieved Employees consistently
12 worked "off the clock" in that Plaintiff and the other Aggrieved Employees drove their personal
13 vehicles to their job sites and were not compensated for their travel time. Moreover, CCS
14 managers, including supervisor Michelle (last name unknown) constantly communicated with
15 Plaintiff and the others on their personal phones to provide them with their job assignments
16 and/or discuss work-related issues.

17 17. Due to the above "off the clock" violations and misclassification as independent
18 contractors, CCS failed to pay Plaintiff and the Aggrieved Employees properly-calculated
19 overtime wages. The Aggrieved Employees' actual work hours, which included the "off the
20 clock" work as described above, entitled them to overtime, however, it was not company policy
21 to keep accurate track of all hours worked and to pay employees the accurate amount of
22 overtime, especially since the "off the clock" work was not factored into the equation.
23 Furthermore, any incentive payments and/or bonus payments were not factored into employees'
24 regular rate of pay for purposes of deciphering the correct overtime rate of pay. In addition, any
25 bonus and/or incentive payments were not factored into the correct meal and rest break
26 premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

27 18. CCS failed to provide all compliant meal periods and authorize and permit all
28 compliant rest periods to which Plaintiff and the other Aggrieved Employees were entitled.

1 Plaintiff and the other Aggrieved Employees were entitled to take off-duty, uninterrupted 30-
2 minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-
3 minute rest periods for every four hours or major fraction thereof worked. Due to the workload,
4 Plaintiff and the Aggrieved Employees would not be able to take timely, uninterrupted meal
5 periods before the 5th hour or 10th hour worked. Similarly, Plaintiff and the other Aggrieved
6 Employees were not able to take their 10-minute rest breaks due to the workload. Throughout
7 her employment tenure, Plaintiff never took rest breaks due to the workload. On information
8 and belief, CCS did not provide premium wages for these meal and rest break violations; if
9 CCS did provide premium wages, they were not paid at the correct rate, as explained above.

10 19. CCS failed to reimburse Plaintiff and the other Aggrieved Employees for
11 business expenses they incurred in direct consequence of the discharge of their duties. CCS
12 required Plaintiff and the other Aggrieved Employees to use their own personal cell phones to
13 communicate with ownership/management concerning work matters. CCS also required
14 Plaintiff and the other Aggrieved Employees to purchase and use their own cleaning supplies to
15 perform their work. However, CCS did not provide Plaintiff and the others with these items and
16 did not reimburse Plaintiff and the other Aggrieved Employees for these supplies and mobile
17 phone expenses. Accordingly, CCS was in violation of California Labor Code sections 2800
18 and 2802.

19 20. CCS failed to pay its employees all wages due to them within any time period
20 specified by California Labor Code section 204, including the minimum wages and overtime as
21 described above as well as meal/rest break premiums.

22 21. CCS did not provide Plaintiff and the other Aggrieved Employees accurate,
23 itemized wage statements. Wage statements must include all hours worked, overtime hours
24 worked, all applicable hourly rates, the correct legal name and correct address of employer
25 entity, gross wages earned, all deductions, net wages earned, reimbursement for business
26 expenses, the correct start and end of the applicable pay period, the employee ID numbers or
27 social security numbers, among other items. Labor Code § 226(a)(2). CCS issued wage
28 statements that inaccurately reflected total hours worked, gross and net wages earned, and the

1 number of hours worked at each hourly rate because of CCS's failure to properly pay wages as
2 explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). CCS's failure to maintain accurate
3 records as to the hours worked daily by employees also constitutes a violation of Labor Code
4 section 1174(d).

5 22. CCS failed to separately compensate Plaintiff and all of the other Aggrieved
6 Employees for rest and recovery periods and other nonproductive time in violation of Labor
7 Code section 226.2. CCS failed to provide Plaintiff and all of the other Aggrieved Employees
8 with statements of the total hours of compensable rest and recovery periods, the rate of
9 compensation, and the gross and net wages paid for those activities during the pay period.

10 23. Finally, because CCS did not properly pay all wages earned as explained herein,
11 CCS also failed to pay final wages owed to Plaintiff and the other Aggrieved Employees in
12 violation of Labor Code section 203. These earned but unpaid wages include minimum wages
13 and compensation for all hours worked, overtime compensation, premium pay for missed meal
14 and rest breaks, and business expense reimbursement, among others.

15 24. CCS failed to provide paid sick leave to Plaintiff and all of the other Aggrieved
16 Employees. CCS failed to provide Plaintiff and all of the other Aggrieved Employees with
17 statements of sick leave available, or paid time off in lieu of sick leave.

18 25. CCS has also violated Labor Code section 558 and engaged in business practices
19 which violate Business and Professions Code Section 17200.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

22 **(Lab. Code §§ 226.2, 510, 1194, 1197, and 1198)**

23 **(By Plaintiff against all Defendants)**

24 26. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

25 27. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
26 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,
27 and the Wage Order.

28 28. Section 2(G) of the Wage Order defines "hours worked" as "the time during

1 which an employee is subject to the control of an employer, and includes all the time the
2 employee is suffered or permitted to work, whether or not required to do so.”

3 29. Section 3 of the Wage Order states:

4 (A) Daily Overtime - General Provisions

5 (1) The following overtime provisions are applicable to
6 employees 18 years of age or over and to employees 16 or
7 17 years of age who are not required by law to attend
8 school and are not otherwise prohibited by law from
9 engaging in the subject work. Such employees shall not
10 be employed more than eight (8) hours in any workday or
11 more than 40 hours in any workweek unless the employee
12 receives one and one-half (1 ½) times such employee’s
13 regular rate of pay for all hours worked over 40 hours in
14 the workweek. Eight (8) hours of labor constitutes a day’s
15 work. Employment beyond eight (8) hours in any
16 workday or more than six (6) days in any workweek is
17 permissible provided the employee is compensated for
18 such overtime at not less than:

14 (a) One and one-half (1 ½) times the employee’s
15 regular rate of pay for all hours worked in excess
16 of eight (8) hours up to and including 12 hours in
17 any workday, and for the first eight (8) hours
18 worked on the seventh (7th) consecutive day of
19 work in a workweek.

18 (b) Double the employee’s regular rate of pay for
19 all hours worked in excess of 12 hours in any
20 workday and for all hours worked in excess of
21 eight (8) hours on the seventh (7th) consecutive
22 day of work in a workweek.

22 (c) The overtime rate of compensation required to
23 be paid to a nonexempt full-time salaried
24 employee shall be computed by using the
25 employee’s regular hourly salary as one-fortieth
26 (1/40) of the employee’s weekly salary.

25 30. Section 4 of the Wage Order requires an employer to pay non-exempt employees
26 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
27 an employer has actual or constructive knowledge that employees are working.

28 31. Labor Code section 226.2 states:

1 (a) For employees compensated on a piece-rate basis during a pay period, the
2 following shall apply for that pay period:

3 (1) Employees shall be compensated for rest and recovery periods and other
4 nonproductive time separate from any piece-rate compensation.

5 ...

6 (3) (A) Employees shall be compensated for rest and recovery periods at a
7 regular hourly rate that is no less than the higher of:

8 (i) An average hourly rate determined by dividing the total compensation for the
9 workweek, exclusive of compensation for rest and recovery periods and any
10 premium compensation for overtime, by the total hours worked during the
11 workweek, exclusive of rest and recovery periods.

12 (ii) The applicable minimum wage.

13 32. Labor Code section 510 states:

14 Eight hours of labor constitutes a day's work. Any work in excess
15 of eight hours in one workday and any work in excess of 40
16 hours in any one workweek and the first eight hours worked on
17 the seventh day of work in any one workweek shall be
18 compensated at the rate of no less than one and one-half times the
19 regular rate of pay for an employee. Any work in excess of 12
20 hours in one day shall be compensated at the rate of no less than
21 twice the regular rate of pay for an employee. In addition, any
22 work in excess of eight hours on any seventh day of a workweek
23 shall be compensated at the rate of no less than twice the regular
24 rate of pay of an employee. Nothing in this section requires an
25 employer to combine more than one rate of overtime
26 compensation in order to calculate the amount to be paid to an
27 employee for any hour of overtime work.

28 33. California Labor Code § 1194 invalidates any agreement between an employer
and an employee to work for less than the minimum wage required under the applicable Wage
Order.

34. California Labor Code § 1197 makes it unlawful for an employer to pay an
employee less than the minimum wage required under the applicable Wage Order for all hours
worked during a payroll period.

35. California Labor Code § 1198 makes it unlawful for an employer to employ an
employee under conditions that violate the Wage Order.

1 36. In conjunction, these provisions of the California Labor Code require employers
2 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
3 for all hours worked, including unrecorded hours when the employer knew or reasonably should
4 have known that employees were working during those hours. (*See Morillion v. Royal Packing*
5 *Co.* (2000) 22 Cal.4th 575, 585.)

6 37. At all relevant times during the applicable limitations period, Defendants
7 compensated Plaintiff on a piece rate basis and failed to separately compensate her for rest and
8 recovery periods and other nonproductive time. Moreover, Defendants required Plaintiff to
9 work in excess of eight (8) hours in one workday and forty (40) hours in one workweek without
10 compensating her for such time worked at the premium rates required by California law.

11 38. As described more fully above, Defendants failed to pay all minimum, regular,
12 overtime, and double time wages to Plaintiff because Defendants paid wages based on rounded
13 times, did not pay for off-the-clock work, and failed to pay overtime and double time wages
14 based on correct regular rates of pay.

15 39. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
16 amount, subject to proof, to the extent that she was not paid the full amount of wages earned
17 during each pay period during the applicable limitations period, including minimum, overtime,
18 and double-time wages.

19 40. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for
20 unpaid wages which Defendants failed to pay her at the rates set forth herein, interest thereon,
21 and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REST BREAKS**

24 **(Lab. Code §§ 226.7 and 1198)**

25 **(By Plaintiff against all Defendants)**

26 41. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

27 42. At all relevant times during the applicable limitations period, Plaintiff was a
28 non-exempt employee of Defendants and entitled to the benefits and protections of California

1 Labor Code §§ 226.7, 1198, and the Wage Order.

2 43. Labor Code § 1198 states,

3 “The maximum hours of work and the standard conditions of labor
4 fixed by the commission shall be the maximum hours of work and the
5 standard conditions of labor for employees. The employment of any
employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful.”

6 44. In relevant part, Section 12 of the Wage Order states:

7 Rest Periods:

8 (A) Every employer shall authorize and permit all employees
9 to take rest periods, which insofar as practicable shall be in the
10 middle of each work period. The authorized rest period time
11 shall be based on the total hours worked daily at the rate often
12 (10) minutes net rest time per four (4) hours or major fraction
13 thereof. However, a rest period need not be authorized for
employees whose total daily work time is less than three and
one-half (3 1/2) hours. Authorized rest period time shall be
counted as hours worked for which there shall be no deduction
from wages.

14 (B) If an employer fails to provide an employee a rest period
15 in accordance with the applicable provisions of this Order, the
16 employer shall pay the employee one (1) hour of pay at the
17 employee’s regular rate of compensation for each work day that
the rest period is not provided.

18 45. In addition, Labor Code Section 226.7 states

19 (b) An employer shall not require an employee to work during a
20 meal or rest or recovery period mandated pursuant to an applicable
21 statute, or applicable regulation, standard, or order of the Industrial
Welfare Commission, the Occupational Safety and Health Standards
Board, or the Division of Occupational Safety and Health.

22 (c) If an employer fails to provide an employee a meal or rest or
23 recovery period in accordance with a state law, including, but not
24 limited to, an applicable statute or applicable regulation, standard, or
25 order of the Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of Occupational Safety and
26 Health, the employer shall pay the employee one additional hour of pay
27 at the employee's regular rate of compensation for each workday that
the meal or rest or recovery period is not provided.

28 46. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest

breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

47. Defendants failed to authorize and permit Plaintiff to take compliant rest periods and failed to pay one hour of correctly-calculated premium pay for each day such a rest period was not provided.

48. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount subject to proof to the extent she was not paid additional wages owed for all rest breaks not provided to her.

49. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more rest breaks were not provided to her pursuant to California Labor Code § 226.7, plus interest and costs.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff against all Defendants)

50. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

51. At all relevant times during the applicable limitations period, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

52. Labor Code § 1198 states,

"The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

53. In relevant part, Labor Code Section 512 states

"An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked

1 is no more than 12 hours, the second meal period may be waived by
2 mutual consent of the employer and the employee only if the first meal
period was not waived.”

3 54. In relevant part, Section 11 of the Wage Order states:

4 Meal Periods:

5 (A) No employer shall employ any person for a work period of more
6 than five (5) hours without a meal period of not less than 30
7 minutes, except that when a work period of not more than six (6)
hours will complete the day’s work the meal period may be
waived by mutual consent of the employer and the employee...

8
9 (B) If an employer fails to provide an employee a meal period in
10 accordance with the applicable provisions of this order, the
11 employer shall pay the employee one (1) hour of pay at the
employee’s regular rate of compensation for each workday that
the meal period is not provided.

12 55. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was
13 entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day she
14 worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also
15 entitled to a second 30-minute meal period when she worked more than ten (10) hours in a
16 workday.

17 56. During the relevant time period, Defendants failed to provide Plaintiff with
18 compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-
19 calculated premium pay for each day such a meal period was not provided.

20 57. As a result of Defendants’ unlawful conduct, Plaintiff has suffered damages in
21 an amount subject to proof to the extent she was not paid additional wages owed for all meal
22 periods not provided to her.

23 58. By reason of the above, Plaintiff is entitled to premium wages for workdays in
24 which one or more meal periods were not provided to her pursuant to California Labor Code §
25 226.7, plus interest and costs.

26 ///

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO INDEMNIFY**

3 **(Lab. Code §§ 1198 & 2802)**

4 **(By Plaintiff against all Defendants)**

5 59. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 60. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
7 entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the
8 Wage Order.

9 61. In pertinent part, California Labor Code § 2802(a) states:
10 An employer shall indemnify his or her employee[s] for all
11 necessary expenditures incurred by the employee in direct
consequence of the discharge of his or her duties.

12 62. California Labor Code § 1198 prohibits employers from employing their
13 employees under conditions prohibited by the Wage Order.

14 63. CCS failed to reimburse Plaintiff for business expenses she incurred in direct
15 consequence of the discharge of her duties. CCS required Plaintiff purchase and use her own
16 cleaning supplies and use her own personal cell phone to communicate with office staff
17 concerning work matters. However, CCS did not provide Plaintiff with a mobile phone and did
18 not reimburse Plaintiff for these supply and mobile phone expenses. Accordingly, CCS was in
19 violation of California Labor Code sections 2800 and 2802.

20 64. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
21 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
22 Defendants' failure to indemnify Plaintiff for the reasonable expenses she incurred in the course
23 of performing her duties.

24 65. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
25 expenditures and losses and interest due and owing to within three years (3) of the date of the
26 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §
27 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(California Labor Code Section 226)**

4 **(By Plaintiff against all Defendants)**

5 66. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 67. Pursuant to California Labor Code Section 226, every employer must furnish
7 each employee an itemized statement of wages and deductions at the time of payment of wages.

8 68. Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs
9 that accurately reflected all information required by Labor Code Section 226, including but not
10 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
11 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
12 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed
13 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with
14 California Labor Code Section 226(a).

15 69. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover
16 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
17 violation occurs and one hundred dollars (\$100) per employee for each violation in a
18 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),
19 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of
20 action pursuant to the 1-year period immediately preceding the date this lawsuit was filed.

21 70. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
22 sustained damages, including loss of earnings, in an amount to be established at trial. As a
23 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
24 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
25 and attorney's fees pursuant to statute.

26 71. Under this cause of action, Plaintiff prays for penalties due under the statutes
27 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
28 proof at trial.

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

3 **(California Labor Code Section 204)**

4 **(By Plaintiff against all Defendants)**

5 80. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

6 81. California Labor Code Section 204 establishes the fundamental right of all
7 employees in the State of California to be paid wages in a timely fashion for their work.

8 82. At all times relevant during the liability period, Defendants failed to pay
9 Plaintiff the full amount of all owed wages when due as required by California Labor Code
10 Section 204.

11 83. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
12 informed, believes, and thereon alleges, that all times relevant during the applicable limitations
13 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
14 worked, including the minimum wage, overtime hours, double time hours, and premium pay
15 for missed meal and rest breaks.

16 84. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
17 an amount, subject to proof, to the extent she was not paid all wages each pay period. The
18 precise amount of unpaid wages is not presently known to Plaintiff but can be determined
19 directly from Defendants' records or indirectly based on information from Defendants' records.

20 85. Under this cause of action, Plaintiff prays for penalties due under the statutes
21 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
22 proof at trial.

23 **EIGHTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE PERSONNEL RECORDS**

25 **(Plaintiff against Defendants)**

26 86. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

27 87. Labor Code section 1198.5 dictates "every current and former employee, or his
28

1 or her representative, has the right to inspect and receive a copy of the personnel records that
2 the employer maintains relating to the employee's performance or to any grievance concerning
3 the employee."

4 88. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the
5 employer shall make the contents of those personnel records available for inspection to the
6 current or former employee, or his or her representative, at reasonable intervals and at
7 reasonable times..." On information and belief, Defendants intentionally failed to provide
8 Plaintiff with personnel records when requested by Plaintiff via letter on September 15, 2023,
9 as required by law. Plaintiff requested her personnel records in accordance with California
10 Labor Code section 1198.5(k) on September 15, 2023 via certified U.S. mail.

11 89. Defendants failed to provide Plaintiff with an opportunity to inspect or copy her
12 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has
13 suffered and continues to suffer substantial losses related to Defendants' failure to provide
14 personnel records.

15 90. Plaintiff seeks all available remedies for Defendants' violations including, but
16 not limited to penalties, and costs to the extent permitted by law and according to proof at trial.
17 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
18 amount of \$750.00, along with costs and attorney's fees.

19 **NINTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE PAY RECORDS**

21 **(Plaintiff against all Defendants)**

22 91. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 92. Labor Code section 226 sub-section (b) dictates "an employer...shall afford
24 current and former employees the right to inspect or copy records pertaining to their
25 employment, upon reasonable request to the employer..."

26 93. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
27 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
28 pertaining to a current or former employee shall comply with the request as soon as practicable,

1 but no later than 21 calendar days from the date of the request.” On information and belief,
2 Defendants intentionally failed to provide Plaintiff with pay records when requested by
3 Plaintiff via letter, on September 15, 2023, and as required by law. Plaintiff requested her pay
4 records in accordance with California Labor Code section 226 on September 15, 2023, via U.S.
5 certified mail. Defendants failed to provide Plaintiff with an opportunity to inspect or copy her
6 pay records within 21 days.

7 94. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered
8 and continues to suffer substantial losses related to Defendants’ failure to provide pay records.
9 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
10 amount of \$750.00, along with costs and attorney’s fees.

11 95. Plaintiff seeks all available remedies for Defendants’ violations including, but
12 not limited to, penalties and costs to the extent permitted by law and according to proof at trial.

13 **TENTH CAUSE OF ACTION**

14 **CIVIL PENALTIES**

15 **(Lab. Code §§ 2698, *et seq.*)**

16 **(By Plaintiff against all Defendants)**

17 96. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 97. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of
19 2004 (“PAGA”) because she was employed by Defendants during the applicable statutory
20 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
21 Plaintiff seeks to recover on her own behalf, on behalf of the State of California, and on behalf
22 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
23 PAGA, plus reasonable attorney’s fees and costs.

24 98. During the applicable time period, Defendants violated California Labor Code
25 §§ 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 233, 246, 246.5, 510, 512, 558, 558.1, 1174,
26 1194, 1197, 1198, 2753, and 2802.

27 99. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
28 behalf of themselves and other current or former employees, to bring a civil action to recover

1 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 100. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
3 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants'
4 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 233, 246,
5 246.5, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 2753, and 2802 during the applicable
6 limitations period in the following amounts:

7 A. For violations of California Labor Code § 204, one hundred dollars
8 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
9 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
10 established by California Labor Code § 210).

11 B. For violations of California Labor Code § 226(a), two hundred fifty
12 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
13 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
14 established by California Labor Code § 226.3).

15 C. For violations of California Labor Code § 226.8, twenty-five thousand
16 dollars (\$25,000) for each aggrieved employee for each violation as part of a pattern or practice
17 (based on Defendants' pattern and/or practice of committing such violations) in addition to any
18 other penalties or fines permitted by law (penalties set by Labor Code section 226.8(c), or
19 alternatively, fifteen thousand dollars (\$15,000) for each aggrieved employee for each violation
20 in addition to any other penalties or fines permitted by law (penalties set by Labor Code section
21 226.8(b)).

22 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
23 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
24 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
25 California Labor Code § 558).

26 E. For violations of California Labor Code § 1174, five hundred dollars
27 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
28 California Labor Code § 1174.5).

1 F. For violations of California Labor Code § 1197, one hundred dollars
2 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
3 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
4 per pay period (regardless of whether the initial violations were intentionally committed)
5 (penalty amounts established by California Labor Code § 1197.1).

6 G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
7 1198, 2802, 6400, 6402, and 6404, one hundred dollars (\$100.00) for each Aggrieved
8 Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each
9 Aggrieved Employee per pay period for each subsequent violation (penalty amounts
10 established by California Labor Code § 2699(f)(2)).

11 101. Plaintiff has complied with the procedures for bringing suit specified in
12 California Labor Code § 2699.3. By letter dated September 15, 2023, Plaintiff filed written
13 notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written
14 notice by certified mail to Defendants of the specific provisions of the California Labor Code
15 alleged to have been violated, including the facts and theories to support the alleged violations.
16 Plaintiff accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has
17 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice.

18 102. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
19 Employees are entitled to an award of civil penalties and reasonable attorney’s fees and costs in
20 connection with their claims for civil penalties.

21 **ELEVENTH CAUSE OF ACTION**
22 **WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY**
23 **(By Plaintiff against all Defendants except Melisa Moya)**

24 103. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 104. At all times during her employment with Defendants, Plaintiff performed her
26 duties with the utmost diligence and competence.

27 105. Defendants intentionally created an illegal work environment and atmosphere
28

1 by misclassifying Plaintiff, not properly compensating her, and not providing her with her
2 statutory meal and rest breaks. This situation became intolerable for Plaintiff and Plaintiff had
3 no alternative but to quit her job.

4 106. The employment of Plaintiff was constructively wrongfully terminated on or
5 around September 1, 2023 in violation of the fundamental public policy of the State of
6 California with respect to properly compensating Plaintiff for all wages owed at the correct
7 rates of pay. Moreover, Plaintiff was forced to hire an attorney to assist her to end these illegal
8 activities. Said conduct violated statutory and constitutional expressions of public policy
9 including, FEHA, the California Labor Code and the California Constitution, Article 1 section
10 8.

11 107. As set forth above, said actions by Defendants were wrongful and in violation
12 of the fundamental principles of the public policy of the State of California as reflected in its
13 laws, objectives and policies. Said statutes and constitutional expressions of public policy
14 include, but are not limited to, the California Labor Code. These laws inure to the benefit of
15 the public at large, and not just the private interests of the employers and employees whom
16 they govern or protect.

17 108. As a direct and proximate result of the aforementioned acts and omissions of
18 Defendants, Plaintiff suffered general and compensatory damages, including but not limited
19 to, loss of income (past and future), loss of employment benefits (past and future), general and
20 compensatory damages (past and future), mental pain and anguish and emotional distress (past
21 and future), and will continue to suffer in the future, in an amount to be proved at trial.

22 109. The foregoing conduct engaged in by Defendants and each of their directors,
23 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
24 ratified, and carried on with a conscious and willful disregard of their workers' right to work
25 in an environment free of retaliation, so as to justify the imposition of punitive damages to
26 punish and set an example of said Defendants.

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1 **TWELFTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

4 **(By Plaintiff against all Defendants except Melisa Moya)**

5 110. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 111. At all relevant times during the applicable limitations period, Plaintiff has been
7 an employee of Defendants and entitled to the benefits and protections of the Business and
8 Professions Code §§ 17200, *et seq.*

9 112. Defendants engaged in unfair competition by failing to 1) pay Plaintiff for all
10 hours worked at the correct rates of pay and 2) pay Plaintiff premium wages for workdays
11 during which one or more meal or rest periods were not provided, and 3) reimburse Plaintiff
12 for necessary business expenses incurred in the course of performing her duties.

13 113. The unlawful conduct of Defendants alleged herein amounts to and constitutes
14 unfair competition within the meaning of California Business & Professions Code §§ 17200,
15 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
16 unfairly gained a competitive advantage over other comparable companies doing business in
17 California that comply with their legal obligations to, among other things, pay their employees
18 premium wages for workdays in which they did not provide employees with one or more meal
19 and rest periods, indemnify them for all business expenses incurred during the course of
20 performing their duties, including, but not limited to, cleaning supplies and mobile phone
21 expenses, and pay them all wages earned.

22 114. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
23 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
24 hours worked, failed to provide her with premium wages for missed meal and rest periods, and
25 failed to reimburse Plaintiff for all expenses she incurred in the course of performing her
26 duties.

27 115. Pursuant to California Business & Professions Code § 17203, Plaintiff is
28 entitled to restitution of all monies rightfully belonging to her that Defendants did not pay her

1 or otherwise retained by means of their unlawful and unfair business practices.

2 116. Plaintiff is entitled to reasonable attorneys' fees in connection with her unfair
3 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
4 benefit doctrine and/or the common fund doctrine.

5 117. Accordingly, with respect to this cause of action, Plaintiff prays for the herein
6 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
7 thereon, as permitted by law, all in amounts subject to proof.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 10 1. For compensatory damages including lost past and future wages, commissions, and all
11 other sums of money, including employment benefits, together with interest on said
12 amounts, and any other economic injury to Plaintiff, according to proof;
- 13 2. For general damages according to proof;
- 14 3. For special and consequential damages to the extent allowed by law;
- 15 4. For punitive and exemplary damages against corporate Defendant in an amount subject
16 to proof;
- 17 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
18 subject to proof at trial;
- 19 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
20 7. proof at trial;
- 21 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
22 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 23 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
24 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 25 10. For maximum civil penalties available under the Labor Code and applicable Wage
26 Order against Defendants as described more particularly in the Complaint;
- 27 11. For restitution and disgorgement for all unfair business practices by corporate
28 Defendants against Plaintiff in an amount according to proof;

12. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
14. For the imposition of civil penalties and/or statutory penalties;
15. For all interest as allowed by law;
16. For all costs and disbursements incurred in this suit;
17. Reasonable attorney's fees where available by law, including but not limited to, pursuant to, Labor Code section 2698 *et seq.*, Code of Civil Procedure section 1021.5, and/or other applicable laws; and
18. For such other and further relief as this Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

Dated: March 1, 2024

MM LAW, APC

By Maralle Messrelan
Maralle Messrelan, Esq.
Attorney for Plaintiff,
MARIA CERVANTES