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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

VILLARREAL, MARGIE, an individual,

Plaintiff,

v.

COMPLETE OFFICE CLEANING, LLC, a
California limited liability company doing
business as SMART JANITORIAL; and
DOES 1 through 10, inclusive;

Defendants.

CASE NO.: 30-2023-1369587-CU-OE-CJC

FIRST AMENDED COMPLAINT FOR:

- (1) FAILURE TO PAY MINIMUM WAGES;**
- (2) FAILURE TO PAY OVERTIME;**
- (3) FAILURE TO PROVIDE MEAL PERIODS;**
- (4) FAILURE TO PROVIDE REST PERIODS;**
- (5) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;**
- (6) FAILURE TO PROVIDE REIMBURSEMENT OF BUSINESS EXPENSES**
- (7) WAITING TIME PENALTIES;**
- (8) FAILURE TO PRODUCE PERSONNEL FILE;**
- (9) FAILURE TO PRODUCE WAGE STATEMENTS; AND;**
- (10) VIOLATIONS OF THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT**

JURY TRIAL DEMANDED

1 Plaintiff MARGIE VILLARREAL alleges as follow:

2 **INTRODUCTION**

3 1. This action arises from Plaintiff's employment with Defendant COMPLETE
4 OFFICE CLEANING, LLC, a California limited liability company doing business as SMART
5 JANITORIAL. Defendant took gross advantage of Plaintiff and its other employees by intentionally
6 misclassifying them as "independent contractors" and failing to provide them with the protections
7 and benefits afforded to California employees. Among other things, Defendants failed to pay
8 Plaintiff minimum wages or overtime for the hours she worked and failed to provide her with meal
9 and rest periods during her employment.

10 2. Plaintiff now seeks to recover compensatory damages, statutory penalties, attorney's
11 fees and pre-judgment interest. Plaintiff further intends to amend this Complaint to assert claims
12 under the Private Attorney General Act (Labor Code § 2698 et seq.) ("PAGA") after the waiting
13 period for doing so has elapsed.

14 **JURISDICTION AND VENUE**

15 3. The amount in controversy exceeds the jurisdictional minimum of this Court.
16 Venue as to each Defendant is proper in this County pursuant to Code of Civil Procedure 395(a).
17 At all times relevant herein, Defendants resided in, and conducted business in, this County; and,
18 Defendants employed Plaintiff in, and committed the acts and omissions giving rise to this lawsuit
19 in, this County.

20 **THE PARTIES**

21 4. Plaintiff is, and at all relevant times, was a resident of this County.

22 5. Defendant COMPLETE OFFICE CLEANING, LLC, a California limited liability
23 company doing business as SMART JANITORIAL, owns and operates an office cleaning service
24 company located at 645 N Eckhoff St, Orange, CA 92868.

25 6. The true names and capacities of Defendants sued herein as DOES 1-10, inclusive,
26 are currently unknown to Plaintiff, who therefore sues them by such fictitious names under Code of
27 Civil Procedure section 474. Plaintiff is informed and believes that each of the Defendants

designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of Defendants designated as DOES when those identities become known.

7. At all relevant times, each Defendant acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venturer of the other Defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture. Each of the Defendant's acts alleged herein was done with the permission and consent of each of the other Defendants.

GENERAL ALLEGATIONS

8. Misclassification of workers occurs when an employer improperly classifies their employees as independent contractors so that they do not have to pay payroll taxes, minimum wages or overtime, or comply with other wage and hour law requirements such as providing meal periods and rest breaks. Misclassification, or labeling a worker as an independent contractor when they should be an employee, undermines businesses who play by the rules and basic worker protections like minimum wage, paid sick days, and the safety of workplaces. Additionally, the misclassified worker has no workers' compensation coverage if injured on the job, no right to family leave, no unemployment insurance, no legal right to organize or join a union, and no protection against employer retaliation. This is a form of fraud.

9. In approximately April 2022, Plaintiff began working for Defendants as a custodian.

10. Defendants intentionally misclassified Plaintiff and its other workers as “independent contractors.”

11. As a result, Defendants did not pay Plaintiff minimum wages or overtime for the hours that she worked.

12. Similarly, Defendants did not afford Plaintiff the opportunity to take compliant meal and rest periods.

13. In connection with her employment, Plaintiff had to purchase cleaning supplies and use her own personal cellular phone for work for which Defendants failed to reimburse her.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **(Failure to Pay Minimum Wages)**

4 14. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

5 15. California Labor Code section 1194 provides that “[n]otwithstanding any
6 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or
7 the legal overtime compensation applicable to the employee is entitled to recover in a civil action
8 the unpaid balance of the full amount of this minimum wage or overtime compensation, including
9 interest thereon, reasonable attorney’s fees, and costs of suit.”

10 16. Labor Code section 1197.1 provides in relevant part that “[i]n any action under
11 Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than
12 the minimum wage fixed by an order of the commission or by statute, an employee shall be
13 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
14 interest thereon.”

15 17. Defendants failed to pay Plaintiff minimum wages for the hours that she worked.
16 Among other things, Defendants did not record Plaintiff’s hours, engaged in time shaving and/or
17 rounding, and did not otherwise capture all of the hours that Plaintiff spent working.

18 18. As a result, Plaintiff has been injured and seeks damages and liquidated damages.

19 **SECOND CAUSE OF ACTION**
20 **(Failure to Pay Overtime)**

21 19. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

22 20. California Labor Code section 510(a) provides in relevant part that “[e]ight hours
23 of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work
24 in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of
25 work in any one workweek shall be compensated at the rate of no less than one and one-half times
26 the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
27 compensated at the rate of no less than twice the regular rate of pay for an employee. In addition,
28 any work in excess of eight hours on any seventh day of a workweek shall be compensated at the

1 rate of no less than twice the regular rate of pay of an employee.”

2 21. California Labor Code section 1198 provides that “[t]he maximum hours of work
3 and the standard conditions of labor fixed by the commission shall be the maximum hours of work
4 and the standard conditions of labor for employees. The employment of any employee for longer
5 hours than those fixed by the order or under conditions of labor prohibited by the order is
6 unlawful.”

7 22. The applicable IWC Wage Order, Section 3(A) requires employers to pay non-
8 exempt employees (1) one and one half times the employee’s regular rate of pay for all hours
9 worked in excess of eight hours up to and including twelve hours in any workday, and for the first
10 eight hours worked on the seventh consecutive day of work in a workweek, and (2) double the
11 employee’s regular rate of pay for all hours worked in excess of twelve hours in any workday and
12 for all hours worked in excess of eight hours on the seventh consecutive day of work in a
13 workweek.

14 23. Defendants failed to pay Plaintiff overtime for the overtime hours she worked.

15 24. As a result, Plaintiff has been injured and has not been paid overtime for all of the
16 overtime hours that he worked.

17 **THIRD CAUSE OF ACTION**
18 **(Failure to Provide Meal Periods)**

19 25. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

20 26. Labor Code section 512(a) provides “[a]n employer shall not employ an employee
21 for a work period of more than five hours per day without providing the employee with a meal
22 period of not less than 30 minutes, except that if the total work period per day of the employee is
23 no more than six hours, the meal period may be waived by mutual consent of both the employer
24 and employee. An employer shall not employ an employee for a work period of more than 10
25 hours per day without providing the employee with a second meal period of not less than 30
26 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
27 may be waived by mutual consent of the employer and the employee only if the first meal period
28 was not waived.”

1 27. The applicable IWC Wage Order, section 11(A) similarly provides that “[n]o
2 employer shall employ any person for a work period of more than five (5) hours without a meal
3 period of not less than 30 minutes, except that when a work period of not more than six (6) hours
4 will complete the day’s work the meal period may be waived by mutual consent of the employer
5 and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the
6 meal period shall be considered an “on duty” meal period and counted as time worked. An “on
7 duty” meal period shall be permitted only when the nature of the work prevents an employee from
8 being relieved of all duty and when by written agreement between the parties an on-the- job paid
9 meal period is agreed to. The written agreement shall state that the employee may, in writing,
10 revoke the agreement at any time.”

11 28. The applicable IWC Wage Order, section 11(B) provides that “[i]f an employer
12 fails to provide an employee a meal period in accordance with the applicable provisions of this
13 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
14 compensation for each workday that the meal period is not provided.”

15 29. Labor Code section 226.7(a) provides that “[n]o employer shall require any
16 employee to work during any meal or rest period mandated by an applicable order of the Industrial
17 Welfare Commission.”

18 30. Labor Code section 226.7(b) provides that “[i]f an employer fails to provide an
19 employee a meal period or rest period in accordance with an applicable order of the Industrial
20 Welfare Commission, the employer shall pay the employee one additional hour of pay at the
21 employee s regular rate of compensation for each workday that the meal or rest period is not
22 provided.”

23 31. Defendants failed to provide Plaintiff with an opportunity to take compliant meal
24 periods. Plaintiff typically received shortened, interrupted, late or no meal periods.

25 32. Defendants did not pay Plaintiff premium pay for these non-compliant meal
26 periods.

27 33. As a result, Plaintiff has been injured and did not receive the meal period premium
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1 pay to which she is entitled.

2 **FOURTH CAUSE OF ACTION**
3 **(Failure to Provide Rest Periods)**

4 34. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

5 35. The applicable IWC Wage Order section 12(A) provides that “[e]very employer
6 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
7 in the middle of each work period. The authorized rest period time shall be based on the total
8 hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction
9 thereof. However, a rest period need not be authorized for employees whose total daily work time
10 is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours
11 worked for which there shall be no deduction from wages.”

12 36. The applicable IWC Wage Order section 12(B) provides that “[i]f an employer fails
13 to provide an employee a rest period in accordance with the applicable provisions of this order, the
14 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
15 compensation for each workday that the rest period is not provided.”

16 37. Labor Code section 226.7(a) provides that “[n]o employer shall require any
17 employee to work during any meal or rest period mandated by an applicable order of the Industrial
18 Welfare Commission.”

19 38. Labor Code section 226.7(b) provides that “[i]f an employer fails to provide an
20 employee a meal period or rest period in accordance with an applicable order of the Industrial
21 Welfare Commission, the employer shall pay the employee one additional hour of pay at the
22 employee s regular rate of compensation for each workday that the meal or rest period is not
23 provided.”

24 39. Defendants failed to provide Plaintiff with an opportunity to take compliant rest
25 periods. Plaintiff routinely received shortened, interrupted or no rest periods due to the nature of
26 the work and the fact that Defendants intentionally misclassified her.

27 40. Defendants did not pay Plaintiff premium pay for these non-compliant rest periods.

28 41. As a result, Plaintiff has been injured and did not receive the rest period premium

1 pay to which he is entitled.

2 **FIFTH CAUSE OF ACTION**
3 **(Failure to Provide Accurate Wage Statements)**

4 42. Plaintiff incorporates the preceding paragraphs of the Complaint.

5 43. An employer, semimonthly or at the time of each payment of wages, shall furnish
6 to his or her employee, either as a detachable part of the check, draft, or voucher paying the
7 employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized
8 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
9 except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable
10 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
11 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
12 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
13 name of the employee and only the last four digits of his or her social security number or an
14 employee identification number other than a social security number, (8) the name and address of
15 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
16 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
17 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the employee and, beginning July 1,
19 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay
20 and the total hours worked for each temporary services assignment. (Labor Code § 226(a).)

21 44. An employee suffering injury as a result of a knowing and intentional failure by an
22 employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or
23 fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars
24 (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate
25 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
26 attorney's fees. (Labor Code § 226(e).)

27 45. Defendants failed to provide Plaintiff with wage statements in violation of Labor
28 Code section 226(a). Defendants provided none of the information required Labor Code section

1 226(a).

2 46. Plaintiff suffered an injury in that she was not able to promptly and easily
3 determine any of the information required by Labor Code section 226(a).

4 47. Plaintiff is therefore entitled to penalties under Labor Code section 226(e).

5 **SIXTH CAUSE OF ACTION**
6 **(Failure to Reimburse Business Expenses)**

7 48. Plaintiff incorporates the preceding paragraphs of the Complaint.

8 49. Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence
10 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
11 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
12 be unlawful.”

13 50. Defendants failed to reimburse Plaintiff for business expenses, including for
14 cleaning supplies and use of her cellular phone for work.

15 51. As a result, Plaintiff has suffered damages in amount to be determined at trial.

16 **SEVENTH CAUSE OF ACTION**
17 **(Waiting Time Penalties)**

18 52. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

19 53. California Labor Code section 201(a) provides in relevant part that “if an employer
20 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
immediately.”

21 54. California Labor Code section 202(a) provides in relevant part that “if an employee
22 not having a written contract for a definite period quits his or her employment, his or her wages
23 shall become due and payable not later than 72 hours thereafter, unless the employee has given 72
24 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
25 or her wages at the time of quitting.”

26 55. California Labor Code section 203(a) provides that where an employer willfully
27 fails to timely pay an employee his or her final wages in compliance with these statutes, the wages
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1 of the employee shall continue as a penalty from the due date thereof at the same rate until paid or
2 until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

3 56. Defendants failed to timely pay Plaintiff all wages that she earned upon separation
4 of employment. Among other things, Defendants failed to pay Plaintiff for the minimum wages,
5 overtime, and meal and rest period premiums as discussed herein.

6 57. Plaintiff is informed and believes that Defendants acted willfully in failing to
7 timely pay Plaintiff her final wages as Defendants did so intentionally without any good faith
8 dispute regarding the timing or amount of such final wages.

9 58. As a result, Plaintiff is entitled to recover waiting time penalties pursuant to Labor
10 Code section 203.

11 **EIGHTH CAUSE OF ACTION**
12 **(Failure to Timely Produce Wage Statements)**

13 59. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

14 60. California Labor Code section 226(c) provides that an employer, who receives a
15 request by a current or former employee to receive copies of his or her wage statements, shall
16 produce the records as soon as practicable and in no event later than 21 calendar days from the
17 date of the request. Where the employer fails to do, the employee is entitled to recover a penalty
18 of seven hundred and fifty dollars. (Labor Code § 226(f).)

19 61. On September 28, 2023, Plaintiff requested copies of her wage statements from
20 Defendants pursuant to Section 226(c). Defendants failed to produce the records.

21 62. Accordingly, Plaintiff is entitled to recover penalties as set forth in Labor Code
22 section 226(f).

23 **NINTH CAUSE OF ACTION**
24 **(Failure to Timely Produce Personnel File)**

25 63. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

26 64. Labor Code section 1198.5(a) provides that “[e]very current and former employee,
27 or his or her representative, has the right to inspect and receive a copy of the personnel records
28 that the employer maintains relating to the employee's performance or to any grievance concerning

1 the employee.” An employer must produce the employee’s personnel file within thirty days of a
2 written request. (Labor Code § 11985(b).) Where an employer fails to timely do so, the employee
3 is entitled to recover a penalty of seven hundred and fifty dollars. (Labor Code § 1198.5(k).)

4 65. On September 28, 2023, Plaintiff requested copies of her personnel file from
5 Defendants pursuant to Section 1198.5. Defendants failed to produce the records.

6 66. Accordingly, Plaintiff is entitled to recover penalties as set forth in Labor Code
7 section 1198.5(k).

8 **TENTH CAUSE OF ACTION**
9 **(Violation of the Private Attorneys General Act)**

10 67. Plaintiff incorporates the preceding paragraphs of the Complaint.

11 68. During the PAGA period (one year and sixty-five days from the filing of this
12 Complaint), Defendants subjected Plaintiff and similarly situated non-exempt Aggrieved
13 Employees to the same unlawful Labor Code/Wage Order practices as discussed herein.
14 Defendants committed the same violations discussed above against the Aggrieved Employees.

15 69. Under California law, it is unlawful for an employer to willfully misclassify an
16 individual as an independent contractor; or to charge a person who as been willfully misclassified
17 a fee, or making any deductions from compensation, for any purpose, including for goods,
18 materials, space rental, services, government licenses, repairs, equipment maintenance, or fines
19 arising from the individual's employment where any of the acts described in this paragraph would
20 have violated the law if the individual had not been misclassified. (Labor Code § 226.8)(a).)

21 70. Defendants violated this statute by willfully misclassifying Plaintiff and the
22 Aggrieved Employees as “independent contractors” and making unlawful deductions from their
23 compensation. Accordingly, Employer is liable for penalties under Labor Code section 226.8(b) or
24 (c).

25 71. Under California law, an employer must maintain accurate time and pay records,
26 including (1) time records showing when employees begin and ends each work periods, meal
27 periods, split shift intervals, and total hours worked, and (2) pay records showing its employees’
28 hours worked and applicable rates of pay during each pay period. (Labor Code § 1174 and IWC

1 Wage Orders § 7). Defendant failed to maintain these records. Defendant failed to keep records of
2 all hours worked for Plaintiff and similarly situated Aggrieved Employees, including meal periods
3 and hours worked.

4 72. Labor Code section 204 requires an employer to pay all wages that are due and
5 owing to employees twice during each calendar month on days designated in advance by the
6 employer as regular paydays. Defendants violated this statute by failing to pay Plaintiff and
7 Aggrieved Employees all wages that are due and owing during their employment, including wages
8 for “off-the-clock” work and meal and rest period premiums. Defendants are therefore subject to
9 civil penalties under labor Code section 2699.

10 73. California law requires an employer to provide paid sick days to employees. (Labor
11 Code § 246.) Paid sick leave must be calculated as set forth in Labor Code § 246(l).

12 74. Defendants failed to provide Plaintiff and the Aggrieved Employees with required
13 sick days or to accrue sick days for them at the required rate. Defendants also failed to pay
14 Plaintiff and the Aggrieved Employees sick pay at the correct rates. Defendant are therefore
15 subject to penalties under Labor Code §§2699(a)/(f) and or/ 558.

16 75. Labor Code section 432.5 provides that no employer shall require an employee to
17 agree in writing to a term or condition which is known by the employer to be prohibited by the
18 law.

19 76. Defendants required Plaintiff and the Aggrieved Employees to enter into unlawful
20 agreements that purport to classify them as “independent contractors.” Defendants knew these
21 agreements were illegal. Defendants are therefore liable for civil penalties under Labor Code §
22 2699.

23 77. In sum, during the PAGA period, Defendants violated Labor Code sections 201-
24 203, 204, 210, 226, 226.3, 226.7, 226.8, 246, 510, 512, 516, 558, 1174, 1174.5, 1194, 1197,
25 1197.1, 1198, 2802 and the applicable Wage Order, Sections 3, 4, 7, 11, 12, and 20. These
26 violations subject Defendants to civil penalties as set forth in, *inter alia*, Labor Code section 2699.

27 78. Plaintiff complied with the procedures for bringing suit specified in Labor Code
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1 sections 2699.3 and 2699.5 by letter dated November 30, 2023. Plaintiff gave written notice to the
2 LWDA via electronic submission, and via certified mail to all Defendants, of the specific provisions
3 of the Labor Code and applicable Wage Order allegedly violated, including the facts and theories to
4 support the alleged violations.

5 79. Under Labor Code section 2699.3, the LWDA must give written notice to the
6 parties it intends to investigate the alleged violations within 60 days of the date of the Plaintiff's
7 written notice. As of the filing of this complaint, the LWDA has not provided the parties with any
8 notice of its intention to investigate these claims.

9 80. Under Labor Code section 2699.3, Defendants has 33 days after the date of written
10 notice to cure the alleged violations. As of the filing of this complaint, Defendant has not
11 responded to Plaintiff's PAGA notice in an attempt to cure.

12 81. Plaintiff seeks civil penalties in the amounts set forth in the Labor Code for each of
13 the aforesaid violations and/or default penalties as provided by Labor Code section 2699.

14 82. Under Labor Code section 2699(g), Plaintiff is also entitled to an award of
15 reasonable attorney's fees and costs in connection with his claims for civil penalties.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for relief as follows:

- 18 (1) for compensatory damages according to proof;
19 (2) for statutory and other available penalties according to proof;
20 (3) for civil penalties according to proof;
21 (4) for punitive and exemplary damages according to proof;
22 (5) for prejudgment interest as permitted by law;
23 (6) for attorney's fees and costs incurred in prosecuting this action; and,

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(7) for such further relief that the Court deems appropriate.

Dated: February 5, 2024

BLAKE JONES LAW, PC.

By: 
Blake R. Jones
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on claims where a jury is allowed.

Dated: February 5, 2024

BLAKE JONES LAW, PC.

By: 
Blake R. Jones
Attorneys for Plaintiff