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Attorneys for MARIA REYES and DANIEL MIRANDA, individually and on
behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

MARIA REYES, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

DMS BUILDING MAINTENANCE, INC., a
California Corporation, and DOES 1-50,
inclusive,

Defendants.

Case No. 30-2019-01077939-CU-OE-CXC
Assigned for all Purposes to:
Hon. Melissa McCormick
Dept. CX105

**SECOND AMENDED CLASS ACTION
COMPLAINT PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE §382 FOR:**

- (1) FAILURE TO PAY MINIMUM WAGES;**
- (2) FAILURE TO PAY OVERTIME WAGES;**
- (3) FAILURE TO PROVIDE MEAL PERIODS;**
- (4) FAILURE TO AUTHORIZE AND PERMIT
REST BREAKS;**
- (5) FAILURE TO INDEMNIFY NECESSARY
BUSINESS EXPENSES;**
- (6) FAILURE TO TIMELY PAY WAGES;**

(7) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS;

(8) UNFAIR COMPETITION; AND

(9) CIVIL PENALTIES UNDER PAGA

DEMAND FOR JURY TRIAL

COMES NOW plaintiffs MARIA REYES and DANIEL MIRANDA (“Plaintiffs”), individually and on behalf of others similarly situated, asserts claims against Defendants DMS BUILDING MAINTENANCE, INC., a California Corporation, and Does 1-50, inclusive (collectively “Defendants”) as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to California Code of Civil Procedure §382. The monetary damages and restitution sought by Plaintiffs exceed the minimum jurisdiction limits of the California Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution Article VI §10, which grants the California Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action is brought do not give jurisdiction to any other court.

3. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant is either a resident of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California Courts consistent with traditional notions of fair play and substantial justice.

4. The California Superior Court also has jurisdiction in this matter because the individual claims of the members of the Classes herein are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate claim, including attorneys’ fees, is under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005. Further, there is no federal question at issue, as the issues herein are based solely on

1 California statutes and law, including the Labor Code, IWC Wage Orders 5-2001, CCP, California
2 Civil Code (“CC”) and B&PC.

3 5. Venue is proper in this Court because upon information and belief, one or more of
4 the Defendants, reside, transact business, or have offices in this County and the acts or omissions
5 alleged herein took place in this County.

6 **PARTIES**

7 6. Plaintiff, MARIA REYES is, and at all times relevant to this action, a resident of
8 Corona, California. Plaintiff was employed by Defendants approximately in 2006 through
9 approximately September 2017 as a Non-Exempt Janitor Employee, and was assigned to various
10 locations throughout Huntington Beach, Buena Park, and Westminster, including churches and
11 corporate office buildings, performing duties relating Defendant’s contract cleaning and facility
12 support services business.

13 7. Plaintiff, DANIEL MIRANDA is, and at all times relevant to this action, a
14 California resident that worked for Defendants in the County of Orange, State of California.
15 Plaintiff was employed by Defendants as a Non-Exempt Janitor and Supervisor Employee from
16 approximately 2007 to March 2024.

17 8. Defendants, DMS BUILDING MAINTENANCE, INC., own and operate a facility
18 services business, providing contract cleaning and janitorial services as well as other support
19 services to various retailers and commercial businesses across California.

20 9. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
21 mentioned herein, Defendants are organized and existing under the laws of California, and were
22 at all times mentioned herein licensed and qualified to do business in California. On information
23 and belief, Plaintiffs allege that at all relevant times referenced herein Defendants did and
24 continue to transact business throughout California.

25 10. Whenever in this complaint reference is made to any act, deed, or conduct of
26 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
27 through one or more of its officers, directors, agents, employees, or representatives, who was
28 actively engaged in the management, direction, control, or transaction of the ordinary business

1 and affairs of Defendants.

2 11. Plaintiffs are ignorant of the true names and capacities, whether individual,
3 corporate, associate, or otherwise, of the Defendants sued herein as Does 1 through 50, inclusive
4 and therefore sues said Defendants (the “Doe Defendants”) by such fictitious names. Plaintiffs
5 will amend this complaint to insert the true names and capacities of the Doe Defendants at such
6 time as the identities of the Doe Defendants have been ascertained.

7 12. Plaintiffs are informed and believe, and thereon allege, that the Doe Defendants
8 are the partners, agents, or principals and co-conspirators of Defendants, and of each other; that
9 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
10 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
11 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent
12 of the liability of the Defendants as alleged herein.

13 13. Plaintiffs are further informed and believe, and thereon allege, that at all times
14 herein material, each Defendant was completely dominated and controlled by its co-Defendants
15 and each was the alter ego of the other. Whenever and wherever reference is made in this
16 complaint to any conduct by Defendant or Defendants, such allegations and references shall also
17 be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and
18 severally. Whenever and wherever reference is made to individuals who are not named as
19 Defendants in this complaint, but were employees and/or agents of Defendants, such individuals,
20 at all relevant times acted on behalf of Defendants named in this complaint within the scope of
21 their respective employments.

22 **CLASS ACTION ALLEGATIONS**

23 14. Plaintiffs bring this action individually as well as on behalf of each and all other
24 persons similarly situated, and thus, seeks class certification under California Code of Civil
25 Procedure §382.

26 15. All claims alleged herein arise under California law for which Plaintiffs seek relief
27 as authorized by California law.

28 16. The proposed class is comprised of and defined as:

1 Any and all persons who are or were employed in non-exempt supervisor or
2 janitorial positions, however titled, by Defendants in the state of California within
3 four (4) years prior to the filing of the complaint in this action until resolution of
4 this lawsuit (hereinafter collectively referred to as the "Class" or "Class
Members").

5 17. Plaintiffs also seek to represent the Subclass(es) composed of and defined as
6 follows:

7 **Sub-Class 1:** All Class Members who have been employed by Defendants at
8 any time between June 2016 and the present and have separated their
9 employment (hereinafter collectively referred to as the "Waiting Time Penalty
Subclass").

10 **Sub-Class 2:** All Class Members who are or were employed by Defendants and subject to
11 Defendants' Unfair Business Practices (hereinafter collectively referred to as the "Unfair
Business Practice Subclass").

12 18. Plaintiffs reserve the right under California Rule of Court 3.765(b) and other
13 applicable laws to amend or modify the class definition with respect to issues or in any other
14 ways.

15 19. The term "Class" includes Plaintiffs and all members of the Class and each of the
16 subclasses, if applicable. Plaintiffs seek class-wide recovery based on the allegations set forth in
17 this complaint.

18 20. There is a well-defined community of interest in this litigation and the members of
19 the Class are easily ascertainable as set forth below:

20 a. Numerosity: The members of the Class and Subclass are so numerous that
21 joinder of all members of the Class and/or Subclass would be unfeasible and impractical. The
22 membership of the entire Class and/or Subclass is unknown to Plaintiffs at this time, however, the
23 Class is estimated to be greater than one hundred (100) individuals, and the identity of such
24 membership is readily ascertainable by inspection of Defendants' employment records.

25 b. Typicality: Plaintiffs' claims herein alleged are typical of those claims
26 which could be alleged by any member of the Class and/or Subclass, and the relief sought is
27 typical of the relief which would be sought by each member of the Class and/or Subclass in
28

1 separate actions. Plaintiffs and all members of the Class and or Subclass sustained injuries and
2 damages arising out of and caused by Defendants' common course of conduct in violation of
3 California laws, regulations, and statutes as alleged herein.

4 c. Adequacy: Plaintiffs are qualified to, and will fairly and adequately protect
5 the interests of each member of the Class and/or Subclass with whom she has a well defined
6 community of interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledge
7 an obligation to make known to the Court any relationships, conflicts, or differences with any
8 member of the Class and/or Subclass. Plaintiffs' attorneys and the proposed Counsel for the
9 Class and Subclass are versed in the rules governing class action discovery, certification,
10 litigation, and settlement and experienced in handling such matters. Other former and current
11 employees of Defendants may also serve as representatives of the Class and Subclass if needed.

12 d. Superiority: The nature of this action makes the use of class action
13 adjudication superior to other methods. A class action will achieve economies of time, effort,
14 judicial resources, and expense compared to separate lawsuits. The prosecution of separate
15 actions by individual members of the Class and/or Subclass would create a risk of inconsistent
16 and/or varying adjudications with respect to the individual members of the Class and/or Subclass,
17 establishing incompatible standards of conduct for the Defendants, and resulting in the
18 impairment of the rights of the members of the Class and/or Subclass and the disposition of their
19 interests through actions to which they were not parties.

20 e. Public Policy Considerations: Employers in the state of California violate
21 employment and labor laws everyday. Current employees are often afraid to assert their rights
22 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
23 because they believe their former employers may damage their future endeavors through negative
24 references and/or other means. The nature of this action allows for the protection of current and
25 former employees' rights without fear or retaliation or damage.

26 f. Commonality: There are common questions of law and fact as to the Class
27 that predominate over questions affecting only individual members including, but not limited to:

28 i. Whether Defendants failed to pay Plaintiffs and members of the Class all wages

earned either at the time of discharge, or within seventy-two (72) hours of their voluntarily leaving Defendants' employ;

ii. Whether Defendants failed to pay minimum wage compensation to Plaintiffs and Class Members for all hours worked;

iii. Whether Defendants failed to pay overtime wage compensation to Plaintiffs and Class Members for all hours worked;

iv. Whether Defendants failed to provide meal periods to Plaintiffs and Class Members;

v. Whether Defendants failed to authorize and permit rest breaks to Plaintiffs and Class Members;

vi. Whether Defendants failed to indemnify necessary business expenses to Plaintiffs and Class Members;

vii. Whether Defendants failed to provide accurate, itemized wage statements to Plaintiffs and Class Members;

viii. Whether Defendants engaged in unfair competition in violation of California Business & Professions Code §§17200, et seq.; and

ix. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violations of California law.

FACTUAL ALLEGATIONS

21. At all times set forth herein, Defendants employed Plaintiffs and other persons in the capacity of non-exempt positions, however titled, throughout the state of California.

22. Specifically, Plaintiff DANIEL MIRANDA was paid at two separate rates. One was for his supervisor duties, and the other rate was when Plaintiff worked non-exempt job duties such as cleaning up and janitorial work.

23. Defendants continue to employ non-exempt supervisor and janitor employees, however titled, throughout the state of California and implement a uniform set of policies and practices to all non-exempt employees regardless of the various locations (i.e. corporate offices,

1 churches, and schools) Defendants assigned them as they were all engaged in the generic job
2 duties of providing contract cleaning, janitorial and other facility maintenance services to
3 Defendant's clients.

4 24. Plaintiffs are informed and believe, and thereon alleges, that Defendants are and
5 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
6 of the requirements of California's wage and employment laws.

7 25. Throughout the statutory period, Defendants failed to pay Plaintiffs for all hours
8 worked (including minimum wages and overtime wages), failed to provide Plaintiffs with
9 uninterrupted meal periods, failed to authorize and permit Plaintiffs to take uninterrupted rest
10 periods, failed to indemnify Plaintiffs for necessary business expenses, failed to timely pay all
11 final wages to Plaintiffs when Defendants terminated Plaintiffs' employment, and failed to
12 furnish accurate wage statements to Plaintiffs. As discussed below, Plaintiffs' experience
13 working for Defendants was typical and illustrative.

14 26. During the relevant time frame, Defendants compensated Plaintiffs and Class
15 Members with various flat rates based upon the cleaning services requested by Defendants'
16 customers. For instance, Plaintiff MARIA REYES was paid in an amount of approximately \$180
17 every 2 weeks, no matter how many hours Plaintiff MARIA REYES worked. On information and
18 belief Class Members were compensated with similar flat rate(s). On information and belief,
19 during the relevant time frame, Plaintiff MARIA REYES and Class Members frequently worked
20 seven (7) days a week of approximately 3 to 4 hours a day. This resulted in Plaintiff MARIA
21 REYES and Class Members working approximately 42 to 56 hours every two weeks, yet
22 Defendants only compensated Plaintiff MARIA REYES and Class Members a flat rate amount
23 which in some instances was \$180 bi-weekly. As a result, Defendants' pay practices failed to
24 compensate Plaintiffs and Class Members at least minimum wage for all hours worked.

25 27. Plaintiff DANIEL MIRANDA and the Class worked split shifts without being paid
26 split shift premiums.

27 28. Also, Plaintiffs and the Class were required to work off the clock and
28 uncompensated. For example, Plaintiffs and the Class were required to clean the vehicle prior to

1 clocking into work and after clocking out of work, all off the clock and uncompensated. Also
2 throughout the statutory period, Plaintiffs and the Class received non-discretionary bonuses and
3 other remuneration. However, Defendants failed to incorporate all remuneration when calculating
4 the correct overtime rate of pay, meal break premium rate of pay, and sick day rate of pay,
5 leading to underpayment to Plaintiffs and the Class.

6 29. Throughout the statutory period, Defendants have wrongfully failed to provide
7 Plaintiffs and the Class with legally compliant meal periods. Defendants sometimes, but not
8 always, required Plaintiffs and the Class to work in excess of five consecutive hours a day
9 without providing 30-minute, continuous and uninterrupted, duty-free meal period for every five
10 hours of work, or without compensating Plaintiffs and the Class for meal periods that were not
11 provided by the end of the fifth hour of work or tenth hour of work. Defendants also did not
12 adequately inform Plaintiffs and the Class of their right to take a meal period by the end of the
13 fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work.
14 Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiffs and
15 the Class in compliance with California law.

16 30. Throughout the statutory period, Defendants have wrongfully failed to authorize
17 and permit Plaintiffs and the Class to take timely and duty-free rest periods. Defendants
18 sometimes, but not always, required Plaintiffs and the Class to work in excess of four consecutive
19 hours a day without Defendants authorizing and permitting them to take a 10-minute, continuous
20 and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or
21 without compensating Plaintiffs and the Class for rest periods that were not authorized or
22 permitted. Defendants also did not adequately inform Plaintiffs and the Class of their right to
23 take a rest period. Moreover, Defendants did not have adequate policies or practices permitting
24 or authorizing rest periods for Plaintiffs and the Class, nor did Defendants have adequate policies
25 or practices regarding the timing of rest periods. Defendants also did not have adequate policies
26 or practices to verify whether Plaintiffs and the Class were taking their required rest periods.
27 Further, Defendants did not maintain accurate records of employee work periods, and therefore
28 Defendants cannot demonstrate that Plaintiffs and the Class took rest periods during the middle of

1 each work period. Accordingly, Defendants' policy and practice was to not authorize and permit
2 Plaintiffs and the Class to take rest periods in compliance with California law.

3 31. Throughout the statutory period, Defendant wrongfully required Plaintiffs and the
4 Class to pay expenses that they incurred in direct discharge of their duties for Defendant without
5 reimbursement, which included the purchase of gloves, sanitation wipes and cleaning materials,
6 specific types of clothing, masks, and the use of their personal cellular telephones for work
7 purposes.

8 32. During the relevant time frame, Plaintiffs, and on information and belief the Class
9 Members, were not paid all wages due and owing at the time of separation.

10 33. Throughout the statutory period, Defendants failed to furnish Plaintiffs and the
11 Class with accurate, itemized wage statements showing all applicable hourly rates, and all gross
12 and net wages earned (including correct hours worked, correct wages earned for hours worked,
13 correct overtime hours worked, correct wages for meal periods that were not provided in
14 accordance with California law, correct wages for rest periods that were not authorized and
15 permitted to take in accordance with California law, and Defendant's address). Further, the
16 wage statements do not show Defendant's address as required by California law. As a result of
17 these violations of California Labor Code § 226(a), the Plaintiffs and the Class suffered injury
18 because, among other things:

- 19 a. the violations led them to believe that they were not entitled to be
20 paid minimum wages, overtime wages, meal period premium
21 wages, and rest period premium wages to which they were
22 entitled, even though they were entitled;
- 23 b. the violations led them to believe that they had been paid the
24 minimum, overtime, meal period premium, and rest period
25 premium wages, even though they had not been;
- 26 c. the violations led them to believe they were not entitled to be paid
27 minimum, overtime, meal period premium, and rest period
28

premium wages at the correct California rate even though they were;

- d. the violations led them to believe they had been paid minimum, overtime, meal period premium, and rest period premium wages at the correct California rate even though they had not been;
- e. the violations hindered them from determining the amounts of minimum, overtime, meal period premium, and rest period premium owed to them;
- f. in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;
- g. by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;
- h. the wage statements inaccurately understated the wages, hours, and wages rates to which Plaintiffs and the Class were entitled, and Plaintiffs and the Class were paid less than the wages and wage rates to which they were entitled.

34. Plaintiffs and Class Members they seek to represent are covered by, and Defendants are required to comply with, applicable California Labor Codes, IWC Wage Orders and corresponding applicable provisions of California Code of Regulations, Title 8, 11000 et seq.

1 **CLASS ACTION CLAIMS**

2 **FIRST CAUSE OF ACTION FOR FAILURE TO PAY MINIMUM WAGES**

3 **By Plaintiffs and Class Against All Defendants**

4 35. Plaintiffs repeat and incorporate herein by reference each and every allegation set
5 forth above, as though fully set forth herein.

6 36. At all times relevant, the IWC wage orders applicable to Plaintiffs' and the Class
7 require employers to pay its employees for each hour worked at least minimum wage. "Hours
8 worked" means the time during which an employee is subject to the control of an employer, and
9 includes all the time the employee is suffered or permitted to work, whether or not required to do
10 so, and in the case of an employee who is required to reside on the employment premises, that
11 time spent carrying out assigned duties shall be counted as hours worked.

12 37. At all relevant times, Labor Code §1197 provides that the minimum wage for
13 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a
14 lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order
15 and Labor Code, Plaintiffs and Class Members are to be paid minimum wage for each hour
16 worked, and cannot be averaged.

17 38. During the relevant time period, Plaintiffs and on information and belief, Class
18 Members would work approximately 42 to 56 hours every two weeks but were only paid a bi-
19 weekly flat rate amount , as discussed above, resulting in Defendants failing to pay Plaintiffs and
20 Class Members at least minimum wage for all work time.

21 39. Defendants policies and practices failed to pay at least minimum wages for all
22 hours worked, as required pursuant to Labor Code §§ 200, 1194, and 1197.

23 40. Thus, Plaintiffs and Class Members are entitled to recover the unpaid balance of
24 their minimum wage compensation as well as interest, costs, and attorneys' fees pursuant to Labor
25 Code §§ 1194, 1197 and liquidated damages in an amount equal to the wages unlawfully unpaid
26 and interest thereon pursuant to Labor Code §1194.2.

1 **SECOND CAUSE OF ACTION FOR FAILURE TO PAY OVERTIME WAGES**

2 **By Plaintiffs and Class Against All Defendants**

3 41. Plaintiffs repeat and incorporate herein by reference each and every allegation set
4 forth above, as though fully set forth here in.

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

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

13 44. At all times relevant hereto, Plaintiffs and the Class have worked more than eight
14 hours in a workday, as employees of Defendants.

15 45. At all times relevant hereto, Defendants failed to pay Plaintiffs and the Class
16 overtime compensation for the hours they have worked in excess of the maximum hours
17 permissible by law as required by California Labor Code § 510 and 1198. Plaintiffs and the
18 Class are regularly required to work overtime hours.

19 46. By virtue of Defendants' unlawful failure to pay additional premium rate
20 compensation to the Plaintiffs and the Class for their overtime hours worked, Plaintiffs and the
21 Class have suffered, and will continue to suffer, damages in amounts which are presently
22 unknown to them but which exceed the jurisdictional minimum of this Court and which will be
23 ascertained according to proof at trial.

24 47. By failing to keep adequate time records required by Labor Code § 1174(d),
25 Defendants have made it difficult to calculate the full extent of overtime compensation due to
26 Plaintiffs and the Class.

27 48. Plaintiffs and the Class also request recovery of overtime compensation
28 according to proof, interest, attorneys' fees and costs pursuant to California Labor Code §

1 1194(a), as well as the assessment of any statutory penalties against Defendants, in a sum as
2 provided by the California Labor Code and/or other statutes.

3 49. California Labor Code § 204 requires employers to provide employees with all
4 wages due and payable twice a month. The Wage Orders also provide that every employer shall
5 pay to each employee, on the established payday for the period involved, overtime wages for all
6 overtime hours worked in the payroll period. Defendants failed to provide Plaintiffs and the
7 Class with all compensation due, in violation of California Labor Code § 204.

8 **THIRD CAUSE OF ACTION FOR FAILURE TO PROVIDE MEAL PERIODS**

9 **By Plaintiffs and Class Against All Defendants**

10 50. Plaintiffs repeat and incorporate herein by reference each and every allegation set
11 forth above, as though fully set forth herein.

12 51. Under California law, Defendants have an affirmative obligation to relieve the
13 Plaintiffs and the Class of all duty in order to take their first daily meal periods no later than the
14 start of Plaintiffs and the Class's sixth hour of work in a workday, and to take their second meal
15 periods no later than the start of the eleventh hour of work in the workday. Section 512 of the
16 California Labor Code, and Section 11 of the applicable Wage Orders require that an employer
17 provide unpaid meal periods of at least 30 minutes for each five-hour period worked. It is a
18 violation of Section 226.7 of the California Labor Code for an employer to require any
19 employee to work during any meal period mandated under any Wage Order.

20 52. Despite these legal requirements, Defendants regularly failed to provide
21 Plaintiffs and the Class with both meal periods as required by California law. By their failure
22 to permit and authorize Plaintiffs and the Class to take all meal periods as alleged above (or due
23 to the fact that Defendants made it impossible or impracticable to take these uninterrupted meal
24 periods), Defendants willfully violated the provisions of Section 226.7 of the California Labor
25 Code and the applicable Wage Orders.

26 53. Under California law, Plaintiffs and the Class are entitled to be paid one hour of
27 additional wages for each workday he or she was not provided with all required meal period(s),
28 plus interest thereon.

1 **FOURTH CAUSE OF ACTION FOR FAILURE TO AUTHORIZE AND PERMIT REST**
2 **PERIODS**

3 **By Plaintiffs and Class Against All Defendants**

4 54. Plaintiffs repeat and incorporate herein by reference each and every allegation set
5 forth above, as though fully set forth herein.

6 55. Defendants are required by California law to authorize and permit breaks of 10
7 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more
8 than two hours). Section 512 of the California Labor Code, the applicable Wage Orders require
9 that the employer permit and authorize all employees to take paid rest periods of 10 minutes
10 each for each 4-hour period worked. Thus, for example, if an employee's work time is 6 hours
11 and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest
12 breaks as so required is itself a violation of California's rest break laws. It is a violation of
13 Section 226.7 of the California Labor Code for an employer to require any employee to work
14 during any rest period mandated under any Wage Order.

15 56. Despite these legal requirements, Defendants failed to authorize Plaintiffs and
16 the Class to take rest breaks, regardless of whether employees worked more than 4 hours in a
17 workday. By their failure to permit and authorize Plaintiffs and the Class to take rest periods as
18 alleged above (or due to the fact that Defendants made it impossible or impracticable to take
19 these uninterrupted rest periods), Defendants willfully violated the provisions of Section 226.7
20 of the California Labor Code and the applicable Wage Orders.

21 57. Under California law, Plaintiffs and the Class are entitled to be paid one hour of
22 premium wages rate for each workday he or she was not provided with all required rest break(s),
23 plus interest thereon.

24 **FIFTH CAUSE OF ACTION FOR FAILURE TO INDEMNIFY NECESSARY BUSINESS**
25 **EXPENSES**

26 **By Plaintiffs and Class Against All Defendants**

27 58. Plaintiffs repeat and incorporate herein by reference each and every allegation set
28 forth above, as though fully set forth herein.

1 59. Defendants violated Labor Code section 2802 and the IWC Wage Orders, by
2 failing to pay and indemnify the Plaintiffs and the Class for their necessary expenditures and
3 losses incurred in direct consequence of the discharge of their duties or of their obedience to
4 directions of Defendants.

5 60. As a result, Plaintiffs and the Class were damaged at least in the amounts of the
6 expenses they paid, or which were deducted by Defendants from their wages.

7 61. Plaintiffs and the Class they represent are entitled to attorney's fees, expenses, and
8 costs of suit pursuant to Labor Code section 2802(c) and interest pursuant to Labor Code section
9 2802(b).

10 **SIXTH CAUSE OF ACTION FOR FAILURE TO TIMELY PAY WAGES DUE**

11 **By Plaintiffs and Class Against All Defendants**

12 62. Plaintiffs repeat and incorporate herein by reference each and every allegation set
13 forth above, as though fully set forth herein.

14 63. Labor Code §§201-202 requires an employer who discharges an employee to pay
15 compensation due and owing to said employee immediately upon discharge and that if an
16 employee voluntarily leaves his or her employment, his or her wages shall become due and
17 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
18 two (72) hours previous notice of his or her intention to quit, in which case the employee is
19 entitled to his or her wages on their last day of work.

20 64. Labor Code §203 provides that if an employer willfully fails to pay compensation
21 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for
22 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

23 65. During the relevant time period, Defendants willfully failed and refused, and
24 continues to willfully fail and refuse, to pay Plaintiffs and Class Members their wages, earned and
25 unpaid wages, either at the time of discharge, or within seventy-two (72) hours of their
26 voluntarily leaving Defendants' employ. These wages include minimum wages for all work
27 performed.

28 66. Defendants' willful failure to pay Plaintiffs and Class Members their wages earned

1 and unpaid at the time of discharge, or within seventy-two (72) hours of their voluntarily leaving
2 Defendants' employ, violates Labor Code §§201-202.

3 67. As a result, Defendants are liable to Plaintiffs and members of the Class for
4 waiting time penalties pursuant to Labor Code §203, in an amount according to proof at the time
5 of trial.

6 **SEVENTH CAUSE OF ACTION FOR FAILURE TO PROVIDE AND MAINTAIN**
7 **ACCURATE AND COMPLIANT WAGE RECORDS**

8 **By Plaintiffs and Class Against All Defendants**

9 68. Plaintiffs repeat and incorporate herein by reference each and every allegation set
10 forth above, as though fully set forth herein.

11 69. At all material times set forth herein, California Labor Code § 226(a) provides
12 that every employer shall furnish each of his or her employees an accurate itemized wage
13 statement in writing showing nine pieces of information, including: (1) gross wages earned, (2)
14 total hours worked by the employee, (3) the number of piece-rate units earned and any
15 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
16 that all deductions made on written orders of the employee may be aggregated and shown as
17 one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
18 paid, (7) the name of the employee and the last four digits of his or her social security number
19 or an employee identification number other than a social security number, (8) the name and
20 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
21 during the pay period and the corresponding number of hours worked at each hourly rate by the
22 employee.

23 70. Defendants have intentionally and willfully failed to provide employees with
24 complete and accurate wage statements. The deficiencies include, among other things, the
25 failure to correctly identify the gross wages earned by Plaintiffs and the Class, the failure to list
26 the true "total hours worked by the employee," and the failure to list the true net wages earned.

27 71. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiffs
28 and the Class have suffered injury and damage to their statutorily-protected rights.

1 72. Specifically, Plaintiffs and the members of the Class have been injured by
2 Defendants' intentional violation of California Labor Code § 226(a) because they were denied
3 both their legal right to receive, and their protected interest in receiving, accurate, itemized
4 wage statements under California Labor Code § 226(a).

5 73. Calculation of the true wage entitlement for Plaintiffs and the Class is difficult
6 and time consuming. As a result of this unlawful burden, Plaintiffs and the Class were also
7 injured as a result of having to bring this action to attempt to obtain correct wage information
8 following Defendants' refusal to comply with many of the mandates of California's Labor Code
9 and related laws and regulations.

10 74. Plaintiffs and the Class are entitled to recover from Defendants their actual
11 damages caused by Defendants' failure to comply with California Labor Code § 226(a).

12 75. Plaintiffs and the Class are also entitled to injunctive relief, as well as an award of
13 attorney's fees and costs to ensure compliance with this section, pursuant to California Labor
14 Code § 226(h).

15 **EIGHTH CAUSE OF ACTION FOR UNFAIR COMPETITION**

16 **By Plaintiffs and Class Against All Defendants**

17 76. Plaintiffs repeat and incorporate herein by reference each and every allegation set
18 forth above, as though fully set forth herein.

19 77. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
20 unfair, unlawful, and harmful to Plaintiffs and Class Members, Defendants' competitors, and the
21 general public. Plaintiffs seek to enforce important rights affecting the public interest within the
22 meaning of the California Code of Civil Procedure §1021.5.

23 78. Defendants' policies, activities, and actions as alleged herein, are violations of
24 California law and constitute unlawful business acts and practices in violation of California
25 Business and Professions Code §§17200, et seq.

26 79. A violation of California Business and Professions Code §§17200, *et seq.*, may be
27 predicated on the violation of any state or federal law. In the instant case, Defendants' policy and
28 practice of failing to pay Plaintiffs and Class Members minimum wages over the past four (4)

1 years violates provisions of the California Labor Code, including but not limited to, Labor Code
2 §1194, and §1197.

3 80. Plaintiffs and Class Members have been personally aggrieved by Defendants'
4 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
5 property.

6 81. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiffs
7 and Class Members are entitled to restitution of the wages withheld and retained by Defendants
8 during a period that commences four (4) years prior to the filing of this complaint; an award of
9 attorneys' fees, interest; and an award of costs.

10 **NINTH CAUSE OF ACTION FOR CIVIL PENALTIES UNDER THER PRIVATE**
11 **ATTORNEYS GENERAL ACT OF 2004**

12 **By Plaintiffs and Class Against All Defendants**

13 82. Plaintiffs repeat and incorporate herein by reference each and every allegation set
14 forth above, as though fully set forth herein.

15 83. At all times herein mentioned, Defendants were subject to the Labor Code of the
16 State of California and the applicable Industrial Welfare Commission Orders.

17 84. California Labor Code § 2699(a) specifically provides for a private right of
18 action to recover penalties for violations of the Labor Code: "Notwithstanding any other
19 provision of law, any provision of this code that provides for a civil penalty to be assessed and
20 collected by the Labor and Workforce Development Agency or any of its departments,
21 divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an
22 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
23 himself or himself and other current or former employees pursuant to the procedures specified
24 in Section 2699.3."

25 85. Plaintiff DANIEL MIRANDA has exhausted his administrative remedies
26 pursuant to California Labor Code § 2699.3. On June 22, 2024, he gave written notice by
27 online filing to the Labor and Workforce Development Agency and by certified mail to
28 Defendants of the specific provisions of the Labor Code that Defendants have violated against

1 Plaintiff DANIEL MIRANDA and current and former aggrieved employees, including the facts
2 and theories to support the violations. Plaintiff DANIEL MIRANDA also paid the filing fee
3 shortly after June 22, 2024. Plaintiff DANIEL MIRANDA's PAGA case number is LWDA-
4 CM- 1035876-24. Attached hereto as **Exhibit 1** and incorporated by reference is a true and
5 correct copy of the written notice to the LWDA.

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

9 87. More than 65 days have elapsed since Plaintiff DANIEL MIRANDA provided
10 notice, but the Labor and Workforce Development Agency has not indicated that it intends to
11 investigate Defendants' Labor Code violations discussed in the notice. Accordingly, Plaintiff
12 DANIEL MIRANDA may commence a civil action to recover penalties under Labor Code §
13 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint.
14 These penalties include, but are not limited to, penalties under California Labor Code §§ 210,
15 226.3, 1197.1, and 2699(f)(2).

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

24 89. During the time period of employment for Plaintiffs and the Aggrieved
25 Employees, Defendants failed to maintain records pursuant to the Labor Code and IWC Orders
26 by failing to maintain accurate records showing meal periods, and accurate records showing
27 when employees begin and end each work period. Defendants' failure to provide and maintain
28 records required by the Labor Code IWC Wage Orders deprived Plaintiffs and the Aggrieved

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

12 90. Based on the conduct described in this Complaint, Plaintiff DANIEL MIRANDA
13 is entitled to an award of civil penalties on behalf of himself, the State of California, and
14 similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in
15 all, is in an amount to be shown according to proof at trial. These penalties are in addition to all
16 other remedies permitted by law.

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

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray for judgment against Defendants, as follows:

22 Class Certification

- 23 1. That this action be certified as a class action;
- 24 2. That Plaintiffs be appointed as the representatives of the Class;
- 25 3. That Plaintiffs be appointed as the representatives of the Subclass; and
- 26 4. That counsel for Plaintiffs is appointed as counsel for the Class and Subclass.

27 On the First Cause of Action

- 28 1. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all
2 minimum wages due;

3 2. For compensatory damages equal to the unpaid balance of minimum wage
4 compensation owed to Plaintiffs and Class members as well as interest and costs;

5 3. For reasonable attorneys' fees and costs pursuant to Labor Code § 1194;

6 4. For liquidated damages in an amount equal to the wages unlawfully unpaid and
7 interest thereon pursuant to Labor Code § 1194.2;

8 5. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
9 California Labor Code § 1194(a); and,

10 6. For such other and further relief as the Court deems proper.

11 On the Second Cause of Action

12 1. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
14 overtime wages due;

15 2. For general unpaid wages at overtime wage rates as may be appropriate;

16 3. For pre-judgment interest on any unpaid overtime compensation commencing
17 from the date such amounts were due;

18 4. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
19 California Labor Code § 1194(a); and,

20 5. For such other and further relief as the Court may deem equitable and appropriate.

21 6. For such other and further relief as the Court deems proper.

22 On the Third Cause of Action

23 1. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

25 2. For unpaid meal period premium wages as may be appropriate;

26 3. For pre-judgment interest on any unpaid compensation commencing from the
27 date such amounts were due;

1 4. For reasonable attorneys' fees under California Code of Civil Procedure §
2 1021.5, and for costs of suit incurred herein; and

3 5. For such other and further relief as the Court may deem equitable and appropriate.

4 6. For such other and further relief as the Court deems proper.

5 On the Fourth Cause of Action

6 1. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

8 2. For unpaid rest period premium wages as may be appropriate;

9 3. For pre-judgment interest on any unpaid compensation commencing from the
10 date such amounts were due;

11 4. For reasonable attorneys' fees under California Code of Civil Procedure §
12 1021.5, and for costs of suit incurred herein; and

13 5. For such other and further relief as the Court may deem equitable and appropriate.

14 6. For such other and further relief as the Court deems proper.

15 On the Fifth Cause of Action

16 1. That the Court declare, adjudge and decree that Defendants violated Labor Code
17 § 2802 and the IWC Wage Orders;

18 2. For general unpaid wages and reimbursement of business expenses as may be
19 appropriate;

20 3. For pre-judgment interest on any unpaid compensation commencing from the
21 date such amounts were due;

22 4. For reasonable attorneys' fees and for costs of suit incurred herein; and

23 5. For such other and further relief as the Court may deem equitable and appropriate.

24 6. For such other and further relief as the Court deems proper.

25 On the Sixth Cause of Action

26 1. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
28 termination of the employment;

2. For statutory penalties pursuant to Labor Code §203;
3. For interest for wages untimely paid; and
4. For reasonable attorneys' fees and for costs of suit incurred herein; and
5. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

1. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;

2. For penalties and actual damages pursuant to California Labor Code § 226(e);
3. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(h);
4. For reasonable attorneys' fees and for costs of suit incurred herein; and
5. For such other and further relief as the Court may deem equitable and appropriate.
6. For such other and further relief as the Court deems proper.

On the Eighth Cause of Action

1. That Defendants, jointly and/or severally, pay restitution of sums to Plaintiffs and Class Members for their past failure to pay minimum wages over the last four (4) years in an amount according to proof;

2. For pre-judgment interest on any unpaid wages due from the day that such amounts were due;

4. For reasonable attorneys' fees that Plaintiffs and Class Members are entitled to recover under Labor Code §1194;

5. For costs of suit incurred herein that Plaintiffs and Class Members are entitled to recover under Labor Code §1194; and

6. For such other and further relief as the Court deems proper.

On the Ninth Cause of Action

1. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay wages for all hours worked (including minimum, straight time,

1 and overtime wages), failing to provide meal periods, failing to authorize and permit rest
2 periods, failing to furnish accurate wage statements, failing to reimburse for necessary business
3 expenses incurred by Plaintiffs and the Aggrieved Employees, and failing to maintain accurate
4 records of all hours worked and meal periods;

5 2. An award of civil penalties on behalf of himself and all similarly aggrieved
6 employees pursuant to PAGA;

7 3. Pre-judgment and post-judgment interest at the maximum rate allowed;

8 4. Attorneys' fees and costs reasonably incurred;

9 5. Injunctive and declaratory relief to the extent allowed by PAGA; and

10 6. Such other and further relief that the Court deems proper. That the Court declare,
11 adjudge and decree that Defendants violated the California Labor Code by failing to pay wages
12 for all hours worked (including minimum, straight time, and overtime wages), failing to provide
13 meal periods, failing to authorize and permit rest periods, failing to furnish accurate wage
14 statements, failing to reimburse for necessary business expenses incurred by Plaintiffs and the
15 Aggrieved Employees, and failing to maintain accurate records of all hours worked and meal
16 periods;

17 7. An award of civil penalties on behalf of himself and all similarly aggrieved
18 employees pursuant to PAGA;

19 8. Pre-judgment and post-judgment interest at the maximum rate allowed;

20 9. Attorneys' fees and costs reasonably incurred;

21 10. Injunctive and declaratory relief to the extent allowed by PAGA; and

22 Such other and further relief that the Court deems proper.

23 11. For such other and further relief as the Court deems proper.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiffs and members of the Class and Subclass request a jury trial in this matter.
26
27
28

1 Dated: January 21, 2026

JAMES HAWKINS APLC
MOON LAW GROUP, PC

4 By: _____

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DANIEL MIRANDA, individually and on
behalf of all others similarly situated.