

1/16/2025 10:26:34 AM

Clerk of the Superior Court
By A. Villasenor, Deputy Clerk

COMPLAINT FOR VIOLATION OF THE CALIFORNIA PRIVATE ATTORNEYS' GENERAL ACT OF 2004, CALIFORNIA
LABOR CODE § 2698 *ET SEQ.*

COMES NOW, the Plaintiff, EVELIA DE REYES (“PLAINTIFF”), on behalf of herself and all other aggrieved employees, hereby demands a jury trial, and alleges as follows:

INTRODUCTION

1. PLAINTIFF brings this action on behalf of herself and all other aggrieved employees of Defendant PROFESSIONAL MAINTENANCE SYSTEMS, INC. and DOES 1 through 100, inclusive (collectively, “DEFENDANTS”) to recover civil penalties arising from unpaid wages earned and due, including but not limited to unpaid and unlawfully calculated overtime compensation, unlawful meal and rest break policies and practices, failure to pay all wages due to discharged or quitting employees, failure to maintain required records, failure to provide accurate itemized wage statements, and failure to timely pay wages during employment.

THE PARTIES

2. PLAINTIFF is, and at all times relevant herein was, a resident of the State of California. At all times relevant to this action, PLAINTIFF was employed by DEFENDANTS in the County of San Diego, State of California, as an hourly, non-exempt employee
3. PLAINTIFF is informed and believes, and thereon alleges, that Defendant PROFESSIONAL MAINTENANCE SYSTEMS, INC. (Hereinafter referred to as “PMS,” or “Defendant”), is a California limited liability company doing business at all relevant times herein in the County of San Diego in the State of California.
4. At this time, the true names and capacities of DOES 1 through 100, inclusive, are unknown to PLAINTIFF, and PLAINTIFF therefore sues such DEFENDANTS under fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner responsible for the occurrences alleged herein, and that PLAINTIFF and other aggrieved employees’ injuries and damages were proximately caused by the conduct of said DOE defendants. PLAINTIFF will seek leave of the court to amend this Complaint to allege the true names and capacities of said DOE defendants when such information is ascertained.

- 1 5. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant times,
2 DEFENDANTS were joint employers of PLAINTIFF and other aggrieved employees.
3 PLAINTIFF is informed and believes, and thereon alleges, that at all times relevant to this
4 action, DEFENDANTS were the alter egos, predecessors, divisions, affiliates, integrated
5 enterprises, joint employers, subsidiaries, parents, principals, related entities, co-
6 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or
7 ostensible, of each other. Each defendant was dominated by his, her, or its codefendants, and
8 each was the alter ego of the other.
- 9 6. PLAINTIFF is informed and believes, and based thereon alleges, that in perpetrating the acts
10 and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in
11 furtherance of, their policies and practices of not paying PLAINTIFF and other aggrieved
12 employees all wages earned and due, through methods and schemes which include, but are
13 not limited to: failing to pay overtime premiums; failing to provide rest and meal periods;
14 failing to properly maintain records; failing to provide accurate itemized statements for each
15 pay period; failing to timely pay wages during employment; and requiring, permitting, or
16 suffering the employees to work off the clock, in violation of the California Labor Code
17 (“Labor Code”) and applicable Industrial Welfare Commission (“IWC”) Wage Order(s).
- 18 7. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of the
19 acts and omissions alleged herein were performed by, and/or attributable to, all
20 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and
21 control of, each of the other DEFENDANTS, and that said acts and failures to act were
22 within the course and scope of said agency, employment, and/or direction and control.
- 23 8. PLAINTIFF is informed and believes, and based thereon alleges, that in accordance with
24 Labor Code Section 558.1, DEFENDANTS and any person acting on behalf of
25 DEFENDANTS are liable for violating, or causing to violate, any provision regulating
26 minimum wages or hours and days of work in any order of the Industrial Welfare
27 Commission, or Labor Code Sections 203, 226, 226.7, 1193.6, or 1194.
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1 14. On information and belief, the LWDA will not provide notice of its intention to investigate
2 DEFENDANTS' violations within the sixty-five (65) calendar days of the submission date
3 of PLAINTIFF'S PAGA Notice. Since sixty-five (65) days has elapsed from the September
4 9, 2024 submission date of PLAINTIFF's PAGA Notice before filing this Civil Action,
5 PLAINTIFF will have complied with all of the requirements set forth in Labor Code Section
6 2699.3 to commence a representative action under the PAGA.

7 **FACTUAL ALLEGATIONS**

8 **Failure to Provide Compliant Meal Periods and Failure to Pay Premium Wages**

9 **(Labor Code §§ 226.7, 512; IWC Wage Order No. 5, § 11)**

10 15. Labor Code Section 512 provides in relevant part, "An employer shall not employ an
11 employee for a work period of more than five hours per day without providing the employee
12 with a meal period of not less than 30 minutes, except that if the total work period per day of
13 the employee is no more than six hours, the meal period may be waived by mutual consent
14 of both the employer and employee. An employer shall not employ an employee for a work
15 period of more than 10 hours per day without providing the employee with a second meal
16 period of not less than 30 minutes, except that if the total hours worked is no more than 12
17 hours, the second meal period may be waived by mutual consent of the employer and the
18 employee only if the first meal period was not waived."

19 16. IWC Wage Order 5 § 11 states, "(A) An employer may not employ an employee for a work
20 period of more than five (5) hours without providing the employee with a meal period of not
21 less than 30 minutes, except that when a work period of not more than six (6) hours will
22 complete the day's work the meal period may be waived by mutual consent of employer and
23 employee. Unless the employee is relieved of all duty during a 30-minute meal period, the
24 meal period shall be considered an "on duty" meal period and counted as time worked. An
25 "on duty" meal period shall be permitted only when the nature of the work prevents an
26 employee from being relieved of all duty and when by written agreement between the
27 parties an on-the-job paid meal period is agreed to. (B) An employer may not employ an
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1 employee for a work period of more than ten (10) hours per day without providing the
2 employee with a second meal period of not less than 30 minutes, except that if the total
3 hours worked is no more than 12 hours, the second meal period may be waived by mutual
4 consent of the employer and the employee only if the first meal period was not waived.”

5 17. Under California law, when an employee works for a work period of more than five (5)
6 hours, a meal period must be provided no later than the end of the employee’s fifth hour of
7 work, i.e., no later than the start of the employee’s sixth hour of work. When an employee
8 works for a period of more than 10 hours, a second meal period must be provided no later
9 than the end of the employee’s tenth hour of work, i.e., no later than the start of the
10 employee’s eleventh hour of work. *See Brinker Restaurant Corp. v. Superior Court*, 53
11 Cal.4th 1004 (2012).

12 18. Labor Code Section 226.7, subdivision (a) states, “An employer shall not require an
13 employee to work during a meal or rest or recovery period mandated pursuant to an
14 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
15 Commission ”

16 19. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS have
17 a practice of altering the time records of PLAINTIFF and other aggrieved employees to
18 falsely reflect that PLAINTIFF and other aggrieved employees received timely, compliant,
19 off-duty meal periods when, in fact, PLAINTIFF and other aggrieved employees did not.

20 20. During the PAGA PENALTY PERIOD, as part of DEFENDANTS’ illegal policies,
21 procedures, and practices, DEFENDANTS failed to provide timely, compliant, off-duty
22 meal periods to PLAINTIFF and other aggrieved employees under Labor Code Sections
23 226.7 and 512 and IWC Order No. 5-2001, § 11 and otherwise required, suffered or
24 permitted PLAINTIFF and other aggrieved employees to take less than 30-minute meal
25 periods, or to work through them.

26 21. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
27 PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to meal
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1 period violations.

2 22. DEFENDANTS further violated Labor Code Sections 226.7 and 512 and IWC Wage
3 Order No. 5-2001, § 11 by failing to compensate PLAINTIFF and other aggrieved employees
4 who were not provided with a meal period, in accordance with the applicable IWC Wage
5 Order, one (1) additional hour of compensation at each employee's regular rate of pay for
6 each workday that a complaint meal period was not provided.

7 **Failure to Provide Compliant Rest Periods and Failure to Pay Premium Wages**
8 **(Labor Code §§ 226.7; IWC Wage Order No. 5-2001, § 12)**

9 23. At all relevant times, as part of DEFENDANTS' illegal policies, procedures, and
10 practices to deprive their current and former non-exempt employees all wages earned
11 and due, DEFENDANTS failed to provide compliant rest periods to PLAINTIFF and other
12 aggrieved employees as required pursuant to Labor Code Section 226.7, and IWC Wage
13 Order No. 5-2001, § 12.

14 24. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
15 PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to rest
16 break violations.

17 25. DEFENDANTS further violated Labor Code Section 226.7 and IWC Wage Order No. 5-
18 2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were not
19 provided with a compliant rest period, in accordance with the applicable IWC Wage Order,
20 one (1) additional hour of compensation at each employee's regular rate of pay for each
21 workday that a compliant rest period was not provided.

22 **Failure to Pay Overtime Wages**
23 **(Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3)**

24 26. Under Labor Code Sections 510 and 1194 and IWC Wage Order No. 5-2001, § 3,
25 DEFENDANTS are required to compensate PLAINTIFF and other aggrieved employees for
26 all overtime which is calculated at one and one-half (1 ½) times the regular rate of pay for all
27 hours worked in excess of eight (8) hours per day and for the first eight (8) hours on the
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1 seventh consecutive workday, with double time for all hours worked in excess of eight (8) on
2 the seventh (7th) day of work in the workweek.

3 27. PLAINTIFF and other aggrieved employees are current and former non-exempt employees of
4 DEFENDANTS entitled to the protections of Labor Code Sections 510 and 1194 and IWC
5 Wage Order No. 5-2001.

6 28. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
7 PENALTY PERIOD, DEFENDANTS failed to compensate PLAINTIFF and other aggrieved
8 employees for all overtime hours worked as required under the foregoing provisions of the
9 Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and
10 one-half (1 ½) or double the regular rate of pay as provided by Labor Code Sections 510,
11 1194, and IWC Wage Order No. 5-2001, § 3; requiring, suffering, or permitting PLAINTIFF
12 and other aggrieved employees to work off the clock, including for the maintenance of
13 mandatory work uniforms which, as a result of PLAINTIFF's work duties require frequent
14 cleaning and washing; and DEFENDANT's requiring, permitting, or suffering PLAINTIFF
15 and other aggrieved employees to work through meal breaks; illegally and inaccurately
16 recording time in which PLAINTIFF and other aggrieved employees worked; failing to
17 properly maintain PLAINTIFF'S and other aggrieved employees' records; failing to provide
18 accurate itemized wage statements to PLAINTIFF for each pay period; and other methods to
19 be discovered.

20 29. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS have
21 knowingly and willfully refused to perform their obligations to compensate PLAINTIFF and
22 other aggrieved employees for all wages earned and all hours worked in violation of Labor
23 Code Sections 510, 1194 and 1198 and IWC Wage Order No. 5-2001, § 3.

24 **Failure to Pay Minimum Wages**

25 **(Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4)**

26 30. Under Labor Code Sections 1194 and 1197 and IWC Wage Order No. 5-2001, § 4, payment
27 to an employee of less than the applicable minimum wage for all hours worked in a payroll
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1 period is unlawful.

2 31. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
3 PENALTY PERIOD and in violation of Labor Code Sections 1194 and 1197 and IWC Wage
4 Order No. 5-2001, § 4, DEFENDANTS failed to pay PLAINTIFF and other aggrieved
5 employees the applicable minimum wages for all hours worked in a payroll period by, among
6 other things: requiring, suffering, or permitting PLAINTIFF and other aggrieved employees
7 to work off the clock including for the maintenance of mandatory work uniforms which, as a
8 result of PLAINTIFF's work duties require frequent cleaning and washing; and
9 DEFENDANT's requiring, suffering, or permitting PLAINTIFF and other aggrieved
10 employees to work through meal breaks; illegally and inaccurately recording time in which
11 PLAINTIFF and other aggrieved employees worked; failing to properly maintain
12 PLAINTIFF'S and other aggrieved employees' records; failing to provide accurate itemized
13 wage statements to PLAINTIFF and other aggrieved employees for each pay period; and other
14 methods to be discovered.

15 **Failure to Timely Pay Wages During Employment**

16 **(Labor Code § 204)**

17 32. Under Labor Code Section 204, for all labor performed between the 1st and 15th days of any
18 calendar month, DEFENDANTS are required to pay their nonexempt employees between the
19 16th and 26th day of the month during which the labor was performed. Labor Code Section
20 204 provides that for all labor performed between the 16th and 26th days of any calendar
21 month, DEFENDANTS are required to pay their nonexempt employees between the 1st and
22 10th day of the following calendar month.

23 33. Labor Code Section 204 further provides that all wages earned for labor in excess of the
24 normal work period shall be paid no later than the payday of the next regular payroll period.

25 34. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
26 PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to timely pay
27 PLAINTIFF and other aggrieved employees all the wages for labor performed by the next
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1 regular payroll period as required by Labor Code Section 204.

2 **Failure to Pay All Wages Due Upon Separation of Employment**

3 **(Labor Code §§ 201, 202, 203)**

4 35. Under Labor Code Sections 201, 202 and 203, DEFENDANTS are required to pay all earned
5 and unpaid wages to an employee who is discharged. Labor Code Section 201 provides that
6 if an employer discharges an employee, the employee's wages accrued and unpaid at the time
7 of discharge are due and payable immediately.

8 36. Under Labor Code Section 202, DEFENDANTS are required to pay all accrued wages due to
9 an employee no later than 72 hours after the employee quits, unless the employee provided 72
10 hours previous notice of his or her intention to quit, in which case the employee is entitled to
11 his or wages at the time of quitting.

12 37. Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance with
13 Labor Code sections 201 and 202, any wages of an employee who is discharged or who quits,
14 the employer is liable for waiting time penalties in the form of continued wages to the
15 employee for up to thirty (30) days.

16 38. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
17 PENALTY PERIOD and in violation of Labor Code Sections 201 and 202, DEFENDANTS
18 willfully failed to timely pay accrued wages and other compensation to aggrieved employees
19 who were discharged or who quit.

20 **Failure to Furnish Accurate Itemized Wage Statements**

21 **(Labor Code § 226(a); IWC Wage Order No. 5-2001, § 7)**

22 39. During the PAGA PENALTY PERIOD, DEFENDANTS routinely failed and continue to fail
23 to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized
24 wage statements in writing showing each employee's gross wages earned, total hours worked,
25 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
26 a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for
27 which the employee is paid, the name of the employee and only the last four digits of his or
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1 her social security number or employee identification number, the name and address of the
2 legal entity or entities employing PLAINTIFF and other aggrieved employees, and all
3 applicable hourly rates in effect during each pay period and the corresponding number of
4 hours worked at each hourly rate, in violation of Labor Code Section 226, subdivision (a) and
5 IWC Wage Order No. 5-2001 § 7.

6 40. During the PAGA PENALTY PERIOD, and as a result of DEFENDANTS' unlawful policies
7 and practices and failure to pay all earned wages DEFENDANTS knowingly and intentionally
8 failed to provide PLAINTIFF and other aggrieved employees with timely and accurate
9 itemized wage statements in accordance with Labor Code Section 226, subdivision (a).

10 41. During the PAGA PENALTY PERIOD, PLAINTIFF and other aggrieved employees suffered
11 injury as a result of DEFENDANTS' failure to provide timely and accurate itemized wage
12 statements as PLAINTIFF and other aggrieved employees could not timely and easily
13 determine from the wage statement alone any of the following: gross wages earned, total hours
14 worked by the employee, the number of piece-rate units earned and any applicable piece rate
15 if the employee is paid on a piece-rate basis, all deductions, provided that all deductions made
16 on written orders of the employee may be aggregated and shown as one item, net wages
17 earned, the inclusive dates of the period for which the employee is paid, the name of the
18 employee and the last four digits of his or her social security number or an employee
19 identification number other than a social security number, the name and address of the legal
20 entity that is the employer and, all applicable hourly rates in effect during the pay period and
21 the corresponding number of hours worked at each hourly rate by the employee.

22 **Failure to Maintain Accurate Records**

23 **(Labor Code §§ 226(a), 1174(d); IWC Wage Order No. 5-2001, § 7)**

24 42. During the PAGA PENALTY PERIOD, as part of DEFENDANTS' illegal payroll policies
25 and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned and
26 due, DEFENDANTS knowingly and intentionally failed to maintain records as required under
27 Labor Code Sections 226, subdivision (a) and 1174, subdivision (d) and IWC Wage Order
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1 No. 5-2001, § 7, including but not limited to the following records: total daily hours worked
2 by each employee; applicable rates of pay; all deductions; meal periods; time records showing
3 when each employee begins and ends each work period; and accurate itemized statements.

4 **Failure to Provide Suitable Seating**

5 **(IWC Wage Order No. 5-2001, § 14(A); 8 C.C.R. § 11050(14))**

6 43. California Code of Regulations, Title 8, Section 11050, subdivision (14)(A) provides that
7 “[a]ll working employees shall be provided with suitable seats when the nature of the work
8 reasonably permits the use of seats.”

9 44. California Code of Regulations, Title 8, Section 11050, subdivision (14)(B) provides that
10 “[w]hen employees are not engaged in the active duties of their employment and the nature of
11 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
12 proximity to the work area and employees shall be permitted to use such seats when it does
13 not interfere with the performance of their duties.”

14 45. Labor Code Section 1198 also provides that “the maximum hours of work and the standard
15 conditions of labor fixed by the commission shall be the maximum hours of work and the
16 standard conditions of labor for employees. The employment of any employee for longer
17 hours than those fixed by the order or under conditions of labor prohibited by the order is
18 unlawful.”

19 46. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
20 PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to provide PLAINTIFF
21 and other aggrieved employees suitable seating when the nature of these employees’ work
22 reasonably permitted seating.

23 47. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
24 PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to provide an adequate
25 number of suitable seats in reasonable proximity to work areas so that PLAINTIFF and other
26 aggrieved employees were unable to sit when doing so did not interfere with the performance
27 of their duties.

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1 48. As a result, DEFENDANTS violated California Labor Code Section 1198 and Wage Order 5-
2 2001, Section 14 by failing to provide suitable seats.

3 **Failure to Reimburse Business Expenses**

4 **(Labor Code § 2802; IWC Wage Order No. 5-2001, § 9)**

5 49. Labor Code Section 2802 requires an employer to indemnify an employee for all necessary
6 expenditures or losses incurred by the employee in direct consequence of the discharge of his
7 or her duties, or of his or her obedience to the directions of the employer.

8 50. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
9 PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to indemnify
10 PLAINTIFF and all other aggrieved employees for all business expenses and/or losses
11 incurred in direct consequence of the discharge of their duties while working under the
12 direction of DEFENDANTS including, but not limited to purchase and maintenance of a cell-
13 phone and cell-phone plan, which DEFENDANTS required PLAINTIFF and other aggrieved
14 employees to have.

15 51. DEFENDANTS' failure is a violation of Labor Code Section 2802 and IWC Wage Order 18
16 No. 5-2001, § 9(A).

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

19 **(Labor Code §§ 2698 et seq.)**

20 **(AGAINST ALL DEFENDANTS)**

21 52. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of the
22 allegations in paragraphs 1 through 54, above.

23 53. PLAINTIFF is an "aggrieved employee" within the meaning of Labor Code Section 2699,
24 subdivision (c), and a proper representative to bring a civil action on behalf of other current
25 and former non-exempt employees of DEFENDANTS under the procedures specified in
26 Labor Code sections 2699.3, because PLAINTIFF was employed by DEFENDANTS and one
27 or more of the alleged Labor Code violations was committed against PLAINTIFF during the
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1 PAGA PENALTY PERIOD.

2 54. PLAINTIFF seeks to recover civil penalties through a representative action permitted by
3 PAGA.

4 55. Pursuant to Labor Code Sections 2698 through 2699.5, PLAINTIFF seeks to recover civil
5 penalties from DEFENDANTS in a representative action for the violations set forth above
6 which include, but are not limited to, violations of Labor Code Sections 201, 202, 203, 204,
7 226, subdivision (a), 226.7, 510, 512, 551, 552, 1174, subdivision (d), 1194, 1194.2, 1197,
8 and 1198.

9 56. Under Labor Code Section 2699, subdivision (a), PLAINTIFF seeks civil penalties based on
10 DEFENDANTS' violations of Labor Code provisions for which a civil penalty is specifically
11 provided which include, but are not limited to, the following:

12 a. Under Labor Code Section 210, DEFENDANTS are subject to a civil penalty in the
13 amount of one hundred dollars (\$100.00) for the initial violation and two hundred
14 dollars (\$200.00) per employee for violations in subsequent pay periods for violations
15 of Labor Code Section 204;

16 b. Under Labor Code Section 226.3, DEFENDANTS are subject to a civil penalty in the
17 amount of two hundred and fifty dollars (\$250.00) per aggrieved employee for the
18 initial pay period where a violation occurs and one thousand dollars (\$1,000.00) per
19 aggrieved employee for violations in subsequent pay periods for violations of Labor
20 Code Section 226, subdivision (a);

21 c. Under Labor Code Section 558, subdivision (a), "[a]ny employer or other person
22 acting on behalf of an employer who violates, or causes to be violated, a Section of
23 this chapter or any provision regulating hours and days of work in any order of the
24 Industrial Welfare Commission," including Labor Code Sections 510 and 512, shall
25 be subject to a civil penalty, in addition to any other penalty provided by law, of fifty
26 dollars (\$50.00) for initial violations for each employee for each pay period for which
27 the employee was underpaid and one hundred dollars (\$100.00) for each subsequent
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violation for each employee for each pay period for which the employee was underpaid;

d. Under Labor Code Section 1197.1, an employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars (\$250.00) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether or not the initial violation was intentionally committed; and

e. Under Labor Code Section 1174.5, for violations of Labor Code Section 1174, subdivision (d), DEFENDANTS are subject to a civil penalty of five hundred dollars (\$500.00).

57. PLAINTIFF further seeks civil penalties based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is not specifically provided. Labor Code Section 2699, subdivision (f) provides that for all Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties apply: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

58. PLAINTIFF seeks such civil penalties in accordance with Labor Code Section 2699, subdivision (f) based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to Labor Code Sections 201, 202, 203, 226.7, 551, 552, 1194, 1197, and 1198, and 2802.

59. PLAINTIFF further seeks reasonable attorneys' fees and costs as allowed by law including under Labor Code Section 2699, subdivision (g)(1).

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other aggrieved employees,
3 prays for relief against DEFENDANTS, and each of them jointly and severally, as follows:

- 4 1. For civil penalties according to proof and all penalties authorized under the PAGA
5 including under Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2699,
6 subdivisions (a) and (f);
- 7 2. For interest at the legal rate as allowed by law including pursuant to Labor Code
8 Sections 218.6, 1194, Civil Code Sections 3287, 3288, 3289, and any other applicable
9 provision providing for prejudgment interest;
- 10 3. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor
11 Code Section 2699, subdivision (g) and any other applicable provisions providing for
12 attorneys' fees and costs; and
- 13 4. For such further and additional relief as allowed by law or which the Court deems just
14 and proper.

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17 Date: January 16, 2025

PANCER LAW CORPORATION

18
19 /s/Joe Virgilio

20 Joe Virgilio
21 Attorney for Plaintiff
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EXHIBIT A

PANCER LAW CORPORATION

4603 Mission Blvd. Suite 220
San Diego, CA 92109

Telephone (619) 955-6644

Facsimile (619) 374-7410

September 9, 2024

VIA CERTIFIED MAIL

KAREN L BERRY
ASOP Professional Maintenance Systems, Inc.
4912 NAPLES ST
SAN DIEGO, CA 92110

VIA ONLINE FILING SYSTEM

PAGA Administrator
California Labor & Workforce Development
Agency (LWDA) pagafilings@dir.ca.gov

Re: Evalia De Reyes

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE § 2699.3

Dear PAGA Administrator at California Labor & Workforce Development Agency:

This firm represents Evalia De Reyes (“Ms. De Reyes”) in connection with claims arising from her employment with Professional Maintenance Systems, Inc., and any other employer(s) or person(s) acting on behalf of either Professional Maintenance Systems, Inc., pursuant to Labor Code Sections 558, subdivision (a), and 558.1 (collectively, “Employer”). Ms. De Reyes is an “aggrieved employee” as defined by Labor Code Section 2699 *et seq.* due to Employer’s violations of the Labor Code as set forth below. The purpose of this Notice is to comply with Labor Code Section 2699.3 which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

Ms. De Reyes was employed by Professional Maintenance Systems, Inc. from approximately 2000 to approximately May 2024. Ms. De Reyes was an hourly, non-exempt employee of Employer. Ms. De Reyes was employed by Employer as a maid service lead. Ms. De Reyes’s was assigned to a large residential building in Downtown San Diego name the Harbor Club. She was assigned to maintain the cleanliness of the property and coordinate with the building’s property management when issues would arise.

Throughout Ms. De Reyes’s employment she never received a legally compliant meal break, because she remained under the control of Employer throughout her breaks. In addition, she was only able to take one legally compliant rest period per day. Beginning in approximately 2023, individuals

from the Harbor Club began calling Ms. De Reyes after her work hours were completed and demanded work be performed. This pattern of behavior was prompted and facilitated by Employer who, for example and at minimum, advertise that their clients have 24/7 access to their management in case of concerns or emergencies. Ms. De Reyes frequently worked in excess of the 40 hours she was scheduled and paid for because she did not receive legally compliant rest or meal breaks, and was required to work hours without pay outside of her regularly scheduled work time.

Of particular concern, when Ms. De Reyes reported to Employer that she was being caused to work outside of her scheduled hours and was not being paid for the additional hours, Employer retaliated against her by reducing her pay approximately \$6 per hour. Additionally, Employer required Ms. De Reyes to continue her employment subject to the additional work time without reimbursement. As a direct result of Employer's behavior, Ms. De Reyes was wrongfully constructively discharged on or about May 2024.

Pursuant to the California Private Attorneys' General Act ("PAGA"), Ms. De Reyes seeks to represent and recover civil penalties on behalf of herself and other non-exempt "aggrieved employees" who were subject to the Labor Code violations alleged herein. For purposes of this Notice, "aggrieved employees" includes all of Employer's current and former non-exempt employees in California who were subject to the following alleged policies and practices within one-year preceding the date of this Notice.

On information and belief, Employer committed the following violations of the Labor Code and the applicable Industrial Welfare Commission Wage Order(s), including Industrial Welfare Commission Wage Order No. 5-2001 ("IWC Wage Order No. 5).

Meal Period Violations

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 thirty 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. A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived. LABOR CODE § 512. In general, when an employee works for a work period of more than five hours, a meal period must be provided no later than the end of the employee's fifth hour of work, *i.e.*, no later than the start of the employee's sixth hour of work). When an employee works for a period of more than 10 hours, a second meal period must be provided no later than the end of the employee's tenth hour of work, *i.e.*, no later than the start of the employee's eleventh hour of work. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

Due to Employer's meal period policies and/or practices, Employer failed to provide Ms. De Reyes and all other aggrieved employees all required timely, duty-free 30-minute meal periods. *See* LABOR CODE §§ 226.7 and 512; Wage Order No. 5. Ms. De Reyes and other aggrieved employees regularly worked periods of more than five hours without being provided a timely, complete, and duty-free meal period of at least 30 minutes at the required intervals including before the end of each employees' fifth hour of work. The nature of the work performed by Ms. De Reyes and all other aggrieved employees did not prevent them from being relieved of all duties during meal periods and

Employer apparently did not have any policy or practice pertaining to meal period violations.

On information and belief, Employer has in place internal policies, practices, and procedures aimed at increasing revenue and lowering labor costs while at the same time demanding a limited number of employees to complete customer transactions within unreasonably short amounts of time. As a result, Ms. De Reyes and other aggrieved employees have been repeatedly denied timely, complete, and duty-free meal breaks because, on information and belief, it is Employer's practice to prioritize revenue over compliance with Labor Code Section 226.7. Ms. De Reyes and other aggrieved employees did not receive lawful meal periods because Employer required employees to work through their meal periods and/or caused them to not be able to take all meal periods at the required intervals by failing to provide coverage for meal periods. Despite its violations, Employer did not pay an additional hour of premium pay to Ms. De Reyes and all other aggrieved employees at their respective regular rates of pay for each meal period violation in accordance with Labor Code § 226.7. As a result, Ms. De Reyes and all other aggrieved employees are owed an additional hour of wages at their respective regular rate of compensation for each workday they experienced a meal period violation. LABOR CODE § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

As a further result of Employer's failure to pay meal period premium wages, Employer failed to timely pay all aggrieved employees all wages owed at the time of their separations from employment.

Rest Period Violations

Wage Order No. 5, § 12 and Labor Code §§ 226.7, 516, and 558 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. On information and belief, Employer did not authorize and permit Ms. De Reyes and all other aggrieved employees to take all paid and duty-free rest periods to which they are legally entitled. On information and belief, Employer has in place internal policies, practices, and procedures which are aimed at reducing labor costs while demanding a limited number of employees to complete customer transactions within unreasonably short amounts of time. As a result, Ms. De Reyes and other aggrieved employees have been repeatedly denied timely, complete, and duty-free rest breaks because, on information and belief, it is Employer's practice to prioritize revenue over compliance with Labor Code Section 226.7. Ms. De Reyes and other aggrieved employees did not receive lawful rest periods because Employer required employees to work through their rest periods and/or caused them to not be able to take all rest periods at the required intervals by failing to provide coverage for rest periods.

Despite its violations, Employer did not pay an additional hour of premium to all aggrieved employees at their respective regular rates of pay for each rest period violation in accordance with Labor Code § 226.7. LABOR CODE § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided."). Employer apparently also did not have any policy or practice pertaining to rest period violations. As a result, Ms. De Reyes and all other aggrieved employees are owed an additional hour of premium wages at their regular rate of compensation for each workday they experienced a rest period violation.

As a further result of Employer's failure to pay rest period premium wages, Employer failed to timely pay all aggrieved employees all wages owed at the time of their separations from employment.

Overtime Wage Violations

All persons employed in the public housekeeping industry are entitled to overtime pay as set forth in IWC Wage Order No. 5, § 3 which provides the following overtime schedule for employers who are 18 years of age or over. Wage Order 4 § 3 states employees: "shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek". *See also*, LABOR CODE § 510.

Employer failed to pay Ms. De Reyes and all other aggrieved employees overtime pay in accordance with Wage Order No. 5, § 3. Ms. De Reyes and other aggrieved employees regularly worked more than forty (40) hours per workweek without being compensated for the overtime hours worked during that workweek. Employer also failed to pay Ms. De Reyes and all other aggrieved employees double overtime in accordance with Wage Order No. 5, § 3.

As a result of Employer's unlawful policies and/or practices, Ms. De Reyes and all other aggrieved employees were deprived of all required overtime wages including double overtime. As a further result of Employer's failure to pay all overtime wages, Employer failed to timely pay Ms. De Reyes and all other aggrieved employees all wages owed at the time of their separations from employment.

Failure to Reimburse Necessary Business Expenses

California Labor Code Section 2802 subdivision (a) requires an employer to indemnify an employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties. The applicable Wage Order further provides, "when uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. California Industrial Welfare Commission Order No. 5-2001 § 9A.

During the relevant time period, Ms. De Reyes and other aggrieved employees incurred necessary business expenses and costs that were not reimbursed by Employer. These expenses and costs include costs purchasing and maintaining required uniforms. Employer requires Ms. De Reyes and all other aggrieved employees to wear uniforms while at their work site. Employer does not have a policy or practice in place for reimbursing purchase and maintenance of the uniforms. As a result, Ms. De Reyes and other aggrieved employees have been required to spend uncompensated income on purchasing and maintaining their required uniforms.

Employer had the obligation to reimburse Ms. De Reyes and other aggrieved employees for costs incurred for purchase and maintenance of uniforms and because of its failure to do so, Employer is subject to penalties, interest, and attorneys' fees. LABOR CODE § 2802 (b)-(d).

Failure to Pay Wages

California law requires employers to compensate employees for all hours worked. Employer was required to pay all aggrieved employees an hourly rate at least equal to the minimum wage for each hour worked. See LABOR CODE §§ 1182.12, 1194, 1194.2, 1197; Wage Order No. 5, § 4. On information and belief, as a result of Employer's unlawful practices and failure to pay employees for time spent maintaining their mandatory work uniforms, Ms. De Reyes and all other aggrieved employees were deprived of all required minimum wages. As a further result of Employer's failure to pay all minimum wages, Employer failed to timely pay Ms. De Reyes and all other aggrieved employees all wages owed at the time of their separations from employment. Employer failed to pay wages due pursuant to LABOR CODE §§ 201, 202, 203 and 204, as a result of deducting time for meal and rest periods that were not actually taken or were interrupted and failure to compensate for time worked off the clock and after hours.

Wage Statement Violations

Employer was required to furnish Ms. De Reyes and all other aggrieved employees with timely, complete, and accurate itemized wage statements that showed, among other things: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. LABOR CODE § 226(a); *see also*, LABOR CODE § 1174, subd. (d).

As a result of Employer's unlawful policies and practices and its failure to pay all overtime wages, all minimum wages, and all meal premium and rest premium pay, Employer maintained inaccurate payroll records and issued inaccurate wage statements to Ms. De Reyes and other aggrieved employees in violation Labor Code § 226. Employer's failure to comply with its wage statement obligations was knowing and intentional and Ms. De Reyes and other aggrieved employees have suffered injury as a result.

Suitable Seating Violations

Wage Order No. 5, § 14 (A) states that "all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Additionally, Wage Order No. 5 § 14 (B) states that "when employees are not engaged in the active duties of their employment and the

nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.” Additionally, Labor Code Section 1198 also provides that “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.” See LABOR CODE § 1198.

California Code of Regulations, Title 8, Section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” California Code of Regulations, Title 8, Section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

Employer failed to provide Ms. De Reyes and other aggrieved employees suitable seating when the nature of these employees’ work reasonably permits seating. Employer also fails to provide an adequate number of suitable seats in reasonable proximity to work areas so that Ms. De Reyes and other aggrieved employees are unable to sit when doing so does not interfere with the performance of their duties. As a result, Employer has violated California Labor Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable seats.

Failure to Maintain Accurate Records

Despite its record-keeping obligations, Employer failed to maintain accurate records on behalf of Ms. De Reyes and all other aggrieved employees. LABOR CODE § 1174.

Waiting Time Penalties

Labor Code Sections 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. On information and belief, Employer failed to timely pay aggrieved employees all of their final wages at the time of their separation, which final pay was to include, but did not include, all overtime and minimum wages and meal and rest period premiums. Employer’s failure to pay all final wages due was willful and thus entitles aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Employer failed to pay their final wages after separation, up to a maximum of thirty (30) days.

As an “aggrieved employee” Ms. De Reyes intends to initiate a civil action on behalf of herself and all other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations described above.

Based on information and belief and investigation to date, Employer has committed the following alleged Labor Code violations:

1. Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. De Reyes and all other aggrieved employees all overtime compensation;
2. Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Ms. De Reyes and all other aggrieved employees the statutory minimum wage for all hours worked;

3. Labor Code §§ 226.7, 512, and 558 by failing to provide Ms. De Reyes and all other aggrieved employees with lawful, complete, timely, and duty-free meal first 30- minute meal period;
4. Labor Code §§ 226.7, 516, and 558 by failing to provide all aggrieved employees with all lawful, timely, complete, duty-free rest periods;
5. Labor Code §§ 226 *et seq.*, by failing to furnish Ms. De Reyes and all other aggrieved employees with timely, accurate and compliant itemized wage statements;
6. Labor Code §§ 201-203 by failing to timely pay all final wages due to Ms. De Reyes and all other aggrieved employees upon their separation of employment;
7. Labor Code § 204 by failing to pay Ms. De Reyes and all other aggrieved employees all wages earned at least twice during each calendar month;
8. Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Ms. De Reyes and all other aggrieved employees;
9. Labor Code § 2802 by failing to reimburse Ms. De Reyes and other aggrieved employees for necessary business-related expenses; and
10. Labor Code § 1198 for failure to provide suitable seating for Ms. De Reyes and all other aggrieved employees.

Pursuant to Labor Code Section 2699.3, subdivision (a)(2)(A), please notify us within the statutorily required time whether the LWDA intends to investigate these alleged violations..

This Notice sets forth the basis of Ms. De Reyes's grievances, rights, and remedies under the Labor Code and the PAGA. We appreciate your attention to this matter.

Please do not hesitate to contact us if you require any additional information.

Very truly yours,

PANCER LAW CORPORATION

/s/ Joe Virgilio

Joe Virgilio, Esq.