

1 Zorik Mooradian, Esq., CSB No. 136636
2 zorik@mooradianlaw.com
3 Haik Hacopian, Esq., CSB No. 282361
4 haik@mooradianlaw.com
5 MOORADIAN LAW, APC
6 24007 Ventura Blvd., Suite 210
7 Calabasas, CA 91302
8 Telephone: (818) 487-1998
9 Facsimile: (888) 783-1030

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Merced Superior Court
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Amanda Toste
Clerk of the Superior Court
By: Patricia Palmerin, Deputy

10 Attorneys for: Plaintiff CONSTANTINA P. MENDOZA, individually and on
11 behalf of other persons similarly situated and similarly aggrieved
12 employees

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF MERCED – OLD MERCED COURTHOUSE**

15 CONSTANTINA P. MENDOZA, individually
16 and on behalf of other persons similarly
17 situated and similarly aggrieved employees,

18 Plaintiffs,

19 v.

20 CHIRO, INC. dba MR. CLEAN
21 MAINTENANCE SYSTEMS, an active
22 California Corporation; and DOES 1 through
23 10,

24 Defendants.

Case No.: 24CV-05801

Assigned to: Hon. Stephanie L.
Jamieson
Department: Courtroom 8
Complaint Filed: Oct. 23, 2024

**FIRST AMENDED COMPLAINT –
CLASS AND REPRESENTATIVE
ACTION
JURY TRIAL DEMANDED**

1. Failure to Provide Meal Periods;
2. Failure to Provide Paid Rest Periods;
3. Failure to Pay Wages;
4. Failure to Timely Pay Wages at Termination/Separation;
5. Failure to Timely Pay Vacation Wages at Termination;
6. Failure to Provide Accurate Wage Statements;

7. Failure to Reimburse Business Expenses; and
8. Violation of Unfair Business Practices Act – Bus. & Prof. Code §§ 17200, *et seq.*; and
9. Penalties Pursuant to Private Attorneys General Act (“PAGA”)

Plaintiff CONSTANTINA P. MENDOZA (“Plaintiff”), on behalf of herself and all others similarly situated, based on information and belief, complains and alleges:

I.

INTRODUCTION

1. This class and representative action lawsuit arises out of the failure of Defendant CHIRO, INC. dba MR. CLEAN MAINTENANCE SYSTEMS (referred here as “CHIRO” or “Defendant”) to provide meal periods at the proper intervals, to provide rest periods at the proper intervals, to pay all wages owed including overtime, to provide accurate wage statements, to pay all wages owed to terminated or separated employees in a timely manner, to pay all vacation pay owed to terminated or separated employees, and to reimburse employee business expenses.
2. Defendant employed Plaintiff during the applicable time period, utilizing consistent policies and procedures in violation of Labor Code §200, *et seq.*, Labor Code §500, *et seq.*, Labor Code §1194, *et seq.*, Labor Code §2800, *et seq.*, and the applicable Wage Orders issued by the California Industrial Welfare Commission.
3. Defendant is engaged in the business of cleaning and maintenance services. Plaintiff was hired in 2013 and separated on or about April 22, 2024. At all times during said employment, Plaintiff had a non-exempt classification. Plaintiff primarily worked at the “FoodMaxx” grocery store located at 1300 West Olive Avenue in Merced, CA 95348.

- 1 4. At the time of her separation, Plaintiff was not paid all her wages, including all
2 accrued and vested vacation pay.
- 3 5. Plaintiff was also deprived of lawful meal and rest periods, not paid all wages
4 she was entitled to, and failed to receive accurate and compliant itemized wage
5 statements.
- 6 6. Defendant had a consistent policy of not paying wages for all hours worked,
7 including overtime and double time wages to the extent applicable, including
8 failing to calculate overtime and double time with respect to an employee's
9 regular rate of compensation.
- 10 7. Defendant had a consistent policy of requiring its employees, including
11 Plaintiff, to work through meal periods or work without a meal period for at
12 least five (5) hours of a shift and failing to pay such employees one (1) hour of
13 pay at the employees' regular rate of compensation for each workday that the
14 meal period was not provided or as required by California state wage and hour
15 laws.
- 16 8. Defendant had a consistent policy of failing to allow its employees, including
17 Plaintiff, rest periods for at least ten (10) minutes per four (4) hours, or a major
18 fraction worked, and failing to pay such employees one (1) hour of pay at their
19 regular rate of compensation for each workday that the rest period was not
20 provided, or other compensation, as required by California state and wage and
21 hour laws.
- 22 9. Defendant knowingly provided inaccurate wage statements to its
23 employees, including Plaintiff, that did not correctly include the correct wages,
24 including compensation for meal periods not provided and rest period not
25 authorized or permitted as required by California state wage and hour laws.
- 26 10. Defendant had a consistent policy of failing to pay its employees, including
27 Plaintiff, all wages including unpaid premium wages and accrued and vested
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vacation pay, due at the termination or separation, in violation of California state wage and hour laws.

11. Defendants had a consistent policy of failing to reimburse their employees, including Plaintiff, for all business expenses incurred in the discharge of their duties.
12. Plaintiff, on behalf of herself and all Class Members, brings this action pursuant to Lab. Code §§ 201, 202, 203, 204, 210, 226, 226.7, 227.3, 510, 512, 1194, 1194.2, 2800, and 2802 seeking unpaid wages, penalties, equitable relief, and reasonable attorneys’ fees and costs.
13. Plaintiff, on behalf of herself and the putative class members, also brings this action pursuant to Bus. & Prof. Code §§ 17200, *et seq.*, seeking injunctive relief, restitution, and disgorgement of all benefits obtained by Defendant as a result of Labor Code and applicable Wage Order violations.
14. Plaintiff, on behalf of the State of California, himself, and other similarly aggrieved employees, also brings this action pursuant to California Private Attorney General Act (“PAGA”), Cal. Lab. Code §2698, *et seq.* seeking unpaid wages and other compensation, penalties, and reasonable attorneys’ fees and costs.

II.

JURISDICTION AND VENUE

15. Venue as to each defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The County of Merced is the proper venue, because Plaintiff, and other employees, were employed in the County of Merced.
16. The California Superior Court has jurisdiction in this matter, because Plaintiff is a resident of California, Defendant is qualified to do business in California and regularly conducts business in California.

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III.

THE PARTIES

17. Plaintiff CONSTANTINA P. MENDOZA is a resident of the State of California, and was employed by Defendant in Merced County from 2013 through on or about April 22, 2024.

18. Defendant CHIRO, INC. dba MR. CLEAN MAINTENANCE SYSTEMS was an active California Corporation at all times during the claims of Plaintiff and the putative class and was doing business in California.

19. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged, of the defendants sued herein as Does 1 through 10, but she is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will amend this First Amended Complaint to allege their true names and capacities when ascertained.

20. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

IV.

GENERAL ALLEGATIONS

21. At all times relevant here and as set forth in the following paragraphs of this First Amended Complaint, Defendant employed more than 100 people; and Plaintiff and each member of the putative class was employed by Defendant, and each of them, in the State of California.

22. The employees of Defendant have not been provided: uninterrupted thirty-minute meal periods for work periods of more than five (5) hours per day;

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second uninterrupted thirty-minute meal periods for work periods of more than ten (10) hours per day; and have not been permitted to take ten-minute (10) rest periods for work periods of four (4) hours or major fractions, pursuant to the Labor Code, and applicable IWC Wage Orders.

- 23. Defendant failed to pay employees wages owed for all hours worked, including overtime and double time hours as applicable, as well as failing to calculate any overtime wages with respect to an employee’s regular rate of compensation.
- 24. Defendant failed to pay Plaintiff and the members of her putative class upon separation the wages earned and unpaid at the time of discharge, including unpaid premium wages and accrued and vested vacation pay or “PTO.”
- 25. Defendant failed to provide Plaintiff and the putative members of her class, at the time of each payment of wages, an accurate itemized statement in writing, showing the gross wages earned and/or paid, including premium wages owed for failing to provide meal and/or rest periods at the proper intervals.
- 26. Defendants failed to fully reimburse Plaintiff and putative members of her class for all their business-related expenditures. In violation of the Labor Code, Plaintiff and putative members of her class did not receive indemnification for all business-related expenditures.
- 27. Plaintiff asserts claims for relief on behalf of herself and other similarly situated persons as a class action pursuant to Code of Civil Procedure § 382. Plaintiff and all members of her putative class are described below with specificity and fall in several categories of subclasses whose rights have been violated under the law. Defendant has made no effort as of the filing of this First Amended Complaint to correct or remedy the violations of law specified here.

V.

CLASS ACTION ALLEGATIONS

- 28. Plaintiff brings this action on behalf of herself and all other employees of CHIRO who are similarly-situated persons as a class action pursuant to

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California Code of Civil Procedure § 382. There is a well-defined common interest by and among Plaintiff and the putative class members, and it is impractical to bring all those individuals before the court under separate, different and repetitive actions. Plaintiff also reserves the right to amend or modify the class descriptions set forth below in greater specificity or clarity if required in the future in accordance with Rule 3.765 (b), California Rules of Court. The class which Plaintiff seeks to represent is composed of and defined as follows:

“Plaintiff Class” – All of Defendant’s current and former non-exempt employees who worked for Defendant in California, during the four years before the filing of the Complaint through the time of class certification.

29. Plaintiff seeks to certify the following subclasses of employees:

- a) “Meal Period Subclass” – All members of Plaintiff Class who worked each period exceeding five (5) hours without an uninterrupted, off duty, thirty (30) minute meal period and/or periods in excess of ten (10) hours without a second uninterrupted, off duty, thirty (30) minute meal periods; and were not provided compensation of one hour’s pay at the employee’s regular rate for each day that a meal period was not provided.
- b) “Rest Period Subclass” – All members of Plaintiff Class who worked periods of four (4) hours or major fraction thereof without a duty free rest period of at least 10-minutes and who were not compensated one hour’s pay at the employee’s regular rate for each day that a rest period was not permitted.
- c) “Unpaid Wage Subclass” – All members of Plaintiff Class who were not paid their minimum/actual wages, including any time that was unlawfully rounded by Defendant or otherwise considered as off-the-

1 clock, as well as overtime wages for hours worked in excess of eight
2 hours per day at the one and a half rate (of an employee's regular rate
3 of pay) or at a double time rate (of an employee's regular rate of pay)
4 as applicable.

5 d) "Waiting Time Subclass" – All members of Plaintiff Class to whom
6 Defendant failed to pay all wages due to them upon termination or
7 resignation under Labor Code §§ 201-203.

8 e) "Vacation Pay Subclass" – All members of Plaintiff Class to whom
9 Defendant failed to pay all vacation wages owed, vested or agreed to
10 upon termination or resignation as required by Labor Code §227.3.

11 f) "Wage Statement Subclass" – All members of Plaintiff Class to whom
12 Defendant improperly failed to provide accurate itemized wage
13 statements under Labor Code §§ 226.

14 g) "Expense Reimbursement Subclass" – All members of Plaintiff Class to
15 whom Defendants failed to fully reimburse employee business
16 expenses as required by Labor Code §2802.

17 h) "UCL Subclass" – All members of the Meal Period, Rest Period,
18 Unpaid Wage, Waiting Time, Vacation Pay, Wage Statement, and
19 Expense Reimbursement Subclasses who were subject to unlawful,
20 illegal, unfair and/or deceptive business acts and practices by
21 Defendant and are entitled to disgorgement and restitution of unpaid
22 wages.

23 30. There is a well-defined community of interest among many persons who
24 comprise a readily ascertainable class:

25 a) Numerosity -The potential members of the Class and Subclasses as
26 defined here are so numerous that the individual joinder of all of them as
27 named plaintiffs is impracticable. The number of members of the Class
28 and Subclasses is unknown to Plaintiff. It is however estimated that the

members are more than 100 individuals, and their identities may readily be ascertained from Defendant's records.

- b) Typicality – The claims of Plaintiff are typical of the claims of all members of the Class and Subclasses, who sustained similar damages arising out of Defendant's common course of conduct in violation of law as alleged.
- c) Ascertainable Class – The proposed Class and Subclasses are ascertainable as the members can readily be identified and located based on the Defendant's payroll and personnel records.
- d) Adequacy – Plaintiff is an adequate representative of the Class and Subclasses: Plaintiff will fairly protect the interests of the members, she has no interest adverse to the members, and she will vigorously pursue this lawsuit on behalf of all the members of the Class and Subclasses. Plaintiff's attorneys are competent, skilled and experienced in litigating large employment law class actions.
- e) Superiority - Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. Further, the monetary amounts due to many individual members of the Class and Subclasses are likely to be relatively small, and the burden and expense of individual litigation would make it difficult or impossible for the members to seek and obtain relief. A class action will serve an important public interest by permitting employees harmed by Defendant's unlawful practices to effectively pursue recovery of the sums owed to them.
- f) Common Questions of Law and Fact – There are common questions of law and fact as to the members of the Class and Subclasses which are

1 superior to questions affecting only individual members of the Class and
2 Subclasses. The common questions of law and fact may be summarized
3 as follows and if necessary will be refined with the progress of formal
4 discovery in the case:

- 5 g) Whether Defendant failed to provide members of Plaintiff Class who
6 ceased employment with Defendant all wages owed at the time of the
7 cessation of the employee-employer relationship?
- 8 h) Whether Defendant violated California law and applicable Wage Orders
9 by failing to provide Plaintiff Class members with paid ten-minute (10)
10 rest periods for each four hours worked?
- 11 i) Whether the remedy for an employer's failure to provide rest breaks as
12 required by law is a premium wage for hardship of missing a lawful rest
13 break?
- 14 j) Whether Defendant violated California law and applicable Wage Orders
15 by failing to provide Plaintiff Class members with thirty minute (30)
16 meal period for more than five hours of work?
- 17 k) Whether Defendant violated California law and applicable Wage Orders
18 by failing to provide members of Plaintiff Class with a second meal
19 period?
- 20 l) Whether the remedy for an employer's failure to provide meal period as
21 required by law is a premium wage for hardship of missing a lawful
22 meal period?
- 23 m) Whether Defendant violated California law, including the applicable
24 wage orders by failing to properly compensate Plaintiff Class members
25 for all hours worked, including overtime and double time hours as
26 applicable?
- 27 n) Whether Plaintiff Class is entitled to waiting time penalties under Labor
28 Code § 203?

- 1 o) Whether Defendant violated Labor Code §227.3 by its failure to provide
2 Plaintiff Class with all vacation wages or PTO owed, vested or agreed to
3 upon termination or separation?
- 4 p) Whether Defendant violated California law by its failure to provide
5 Plaintiff Class with accurate and itemized wage statements?
- 6 q) Whether Defendants have violated Labor Code §2802 by failing to
7 reimburse Plaintiff and the Plaintiff Class for all business expenses
8 incurred by them in direct consequence of the discharge of their duties?
- 9 r) Whether Defendant violated Business and Professions Code §§ 17200 et.
10 seq., Labor Code §§ 201, 202, 203, 204, 210, 212, 213, 226, 226.7, 227.3, 510,
11 512, 1194, 1194.2, 2800, 2802, and applicable Wage Orders which
12 constitute violations of the public policy?
- 13 s) Whether Plaintiff Class is entitled to an equitable relief in accordance
14 with Business and Professions Code §§ 17200 et. seq.
- 15 t) Whether Defendant's affirmative defenses, if any, raise common issues
16 of law and fact as to Plaintiff Class as a whole and/or Subclasses in
17 particular?

18 **VI.**

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIOD OR**
21 **COMPENSATION IN LIEU THEREOF**

22 **(Labor Code §§ 226.7, 512)**

23 **(By Plaintiff and Meal Period Subclass against Defendant)**

- 24 31. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
25 as if fully alleged herein.
- 26 32. By its failure to provide thirty minute (30) uninterrupted meal period as well as
27 second meal period, if applicable, to Plaintiff and members of Meal Period
28 Subclass, Defendant willfully violated the provisions of Labor Code §§ 226.7,
512 and applicable IWC Wage Orders.

1 33. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
2 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
3 below, and fully incorporated here as applicable.

4 **VII.**

5 **SECOND CAUSE OF ACTION**
6 **FAILURE TO PROVIDE REST PERIODS OR**
7 **COMPENSATION IN LIEU THEREOF**

8 **(Labor Code § 226.7)**

9 **(By Plaintiff and Rest Period Subclass against Defendant)**

10 34. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
11 as if fully alleged herein.

12 35. By its failure to provide ten-minute (10) rest periods for every four (4) hours of
13 work or major fraction thereof per day to Plaintiff and Rest Period Subclass,
14 Defendant willfully violated Labor Code § 226.7 and applicable Wage Orders.

15 36. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
16 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
17 below, and fully incorporated here as applicable.

18 **VIII.**

19 **THIRD CAUSE OF ACTION**
20 **FAILURE TO PAY WAGES**

21 **(Labor Code §§ 204, 210, 510, 1194, 1194.2)**

22 **(By Plaintiff and the Unpaid Wage Subclass against Defendant)**

23 37. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
24 as if fully alleged herein.

25 38. At all relevant times, Plaintiff and the other members of the Unpaid Wage Class
26 were employees of Defendant covered by Labor Code §§ 204, 210, 510, 1194,
27 1194.2 and applicable Wage Orders, and they were entitled to receive minimum
28 and overtime wages for all hours worked and liquidated damages equal to
unlawfully unpaid minimum wages with interest.

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39. Defendant has violated California law and the specified provisions of the Labor Code and applicable Wage Orders by its failure to pay all wages due in accordance, including minimum wages, wrongfully classified off-the-clock wages, overtime pay and double time pay as based on an employee’s regular rate of compensation. Notably, any wages that were paid were not effectively paid within seven (7) days of the close of any applicable payroll period. As a result of Defendant’s unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

IX.

FOURTH CAUSE OF ACTION
FAILURE TO PAY WAGES DUE AT TERMINATION
(Labor Code §§ 201, 202, 203)
(By Plaintiff and Waiting Time Subclass against Defendant)

40. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.

41. By its failure to timely pay Plaintiff and Waiting Time Subclass, Defendant willfully violated the provisions of Labor Code §§ 201, 202, 203 and applicable Wage Orders. Sec. 203 of Labor Code provides that if an employer willfully fails to timely pay such wages, the employer must, as penalty, continue to pay the employee’s wages until the back wages are paid in full or an action is commenced.

42. As a result of Defendant’s unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

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X.

FIFTH CAUSE OF ACTION
FAILURE TO PAY VACATION WAGES DUE AT TERMINATION
(Labor Code §227.3)
(By Plaintiff and Vacation Pay Subclass against Defendant)

43. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
44. By its failure to timely pay Plaintiff and Vacation Pay Subclass, Defendant willfully violated the provisions of Labor Code §227.3. Section 227.3 of Labor Code provides that whenever a contract of employment or employer policy provides for paid vacation, and an employee is terminated without having taken off his or her vested vacation time, all vested vacation shall be paid to him as wages at his or her final rate in accordance with such contract of employment or employer policy respecting eligibility of time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.
45. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

XI.

SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS
(Labor Code §226)
(By Plaintiff and Wage Statement Subclass against Defendant)

46. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
47. By its failure to provide accurate itemized wage statements, semimonthly or at the time of each payment of wages, Defendant willfully violated the provisions of Labor Code §226 and applicable Wage Orders.

1 48. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
2 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
3 below, and fully incorporated here as applicable.

4 **XII.**

5 **SEVENTH CAUSE OF ACTION**
6 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**
7 **(Labor Code §§2800, 2802)**

8 **(By Plaintiff and Expense Reimbursement Subclass against Defendants)**

9 49. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
10 as if fully alleged herein.

11 50. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases
12 indemnify her employee for losses caused by the employer's want of ordinary
13 care."

14 51. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify
15 his or her employee for all necessary expenditures or losses incurred by the
16 employee in direct consequence of the discharge of his or her duties..."

17 52. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the
18 term 'necessary expenditures or losses' shall include all reasonable costs,
19 including but not limited to, attorney's fees incurred by the employee enforcing
20 the rights granted by this section."

21 53. During the relevant time period, Defendants were required to reimburse
22 Plaintiff and class members for all expenditures or losses caused by the
23 employer's want of ordinary care and/or incurred in direct consequence of the
24 discharge of their duties, but failed to indemnify and reimburse Plaintiff and
25 class members in violation of Labor Codes §§ 2800 and 2802.

26 54. As a direct and proximate result, Plaintiff and class members have suffered, and
27 continue to suffer, substantial losses, related to the use and enjoyment of such
28 monies to be reimbursed, lost interest on such monies, and expenses and
attorney's fees in seeking to compel Defendants to fully perform their

obligations under California law, all of their damage in amounts according to proof at the time of trial.

XIII.

EIGHTH CAUSE OF ACTION
VIOLATION OF UNFAIR BUSINESS PRACTICES ACT
(Bus. & Prof. Code §§ 17200, *et seq.*)
(By Plaintiff, Plaintiff Class and All Subclasses against Defendant)

55. Plaintiff incorporates paragraphs 1 through 54 of this First Amended Complaint as if fully alleged herein.

56. The alleged unlawful conduct of Defendant constitutes unfair competition pursuant to Business and Professions Code §§ 17200 *et seq.*, and this cause of action is brought as a cumulative remedy under Bus. & Prof. Code § 17205 for the time period starting four (4) years before the filing of the Complaint.

57. As a result, Plaintiff and other members of Plaintiff Class and Subclasses have suffered injury in fact and lost money or property. Plaintiff and said members have been deprived of their rights as set forth in this First Amended Complaint, including, but not limited to, payment of minimum and/or actual wages for all hours worked.

58. Pursuant to Business and Professions Code § 17203, Plaintiff and other members of Plaintiff Class and Subclasses are entitled to restitution of all wages owed to them under the Labor Code, and interest thereon, in which they had a property interest, which Defendant failed to pay to them but withheld and retained for itself. Restitution of the money owed to Plaintiff, Plaintiff Class and Subclasses is necessary to prevent Defendant from becoming unjustly enriched by its failure to comply with the Labor Code provisions.

59. Plaintiff and members of Plaintiff Class and Subclasses are entitled to recover reasonable attorney's fees in connection with their unfair competition claims pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

1 60. Plaintiff requests the court to issue a preliminary and permanent injunction
2 prohibiting defendants from committing the Labor Code and applicable Wage
3 Order violations set forth in this First Amended Complaint, and Plaintiff and
4 the members of Plaintiff Class and Subclasses have suffered further damages as
5 articulated in the Prayer for Relief, set forth below, also incorporated here fully
6 as applicable.

7 **XIV.**

8 **NINTH CAUSE OF ACTION**
9 **VIOLATION OF CALIFORNIA'S PRIVATE ATTORNEY GENERAL ACT**
10 **(LABOR CODE § 2699 *et seq.*)**
11 **(By Plaintiff and Aggrieved Employees Against Defendants)**

12 61. Plaintiff incorporates paragraphs 1 through 60 of this First Amended Complaint
13 as if fully alleged herein.

14 62. Under the Private Attorney General Act, Labor Code §§ 2698-99 ("PAGA"),
15 private parties may recover civil penalties for violations of the California Labor
16 Code. PAGA penalties are in addition to any other relief available under the
17 Labor Code.

18 63. As set forth above, Defendants violated the California Labor Code by
19 consistently failing to employ Plaintiff and other similarly situated employees
20 in compliance with California law.

21 64. Plaintiff provided written notice by certified mail to Defendants on November
22 1, 2024, and electronic notice to the State Labor & Workforce Development
23 Agency ("LWDA"), of the legal claims and theories of this case. To date, and
24 after 65 days from the date of mailing of notice, the LWDA has not notified
25 Plaintiff that the LWDA intends to exercise jurisdiction over the claim for civil
26 penalties under the PAGA. Accordingly, Plaintiff exhausted administrative
27 remedies as required by Labor Code § 2699.3. Plaintiff's PAGA claim was
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assigned case number LWDA-CM-1059684-24 by the LWDA. Appended hereto is a copy of the notice communicated by Plaintiff.

65. Under the PAGA, Plaintiff and all other aggrieved employees are entitled to recover the maximum civil penalties permitted by law from Defendants for the violations of Labor Code alleged in this First Amended Complaint and the notice communicated by Plaintiff.

66. Plaintiff and all other aggrieved employees are also entitled to recover their attorneys’ fees and costs under Labor Code § 2699.

XV.

PRAYER FOR RELIEF

WHEREFORE, on behalf of herself and all others similarly situated, Plaintiff prays for relief and judgment against Defendant as follows:

- A. An order certifying that Plaintiff may pursue her claims as a class action under Section 382 of the Code of Civil Procedure; and it is further requested that Plaintiff Class and each Plaintiff Subclass be certified;
- B. An order appointing Plaintiff as Class representative;
- C. An order appointing Plaintiff’s counsel as Class counsel;
- D. Disgorgement of Defendant’s wrongfully obtained profits and restitution of unpaid wages under Business and Professions Code §§ 17203, 17204;
- E. Damages for unpaid additional compensation for failing to provide timely or uninterrupted or lawful meal periods and rest periods;
- F. Damages for unpaid minimum and overtime wages under Labor Code §§ 1194 and 510;
- G. Liquidated damages under Labor Code § 1194.2;
- H. Statutory penalties under Labor Code § 226(e);
- I. Damages for unpaid penalty wages under Labor Code § 203;
- J. Reimbursement of business expenses under Labor Code § 2802;

1 K. Damages for unpaid vacation wages at the time of discharge under
2 Labor Code § 227.3;

3 L. Reasonable attorney's fees and costs pursuant to statute, including, but
4 not limited to Labor Code § 218.5 and Code of Civ. Proc. § 1021.5;

5 M. Enjoinment of Defendant from further acts of unfair competition and
6 continuous violations of the Labor Code and applicable Wage Orders; \

7 N. Civil penalties under Labor Code Section 2699 (75% payable to the
8 LWDA and 25% payable to aggrieved employees); and

9 N. For such other relief that the Court may deem just and proper, including
10 prejudgment interest and costs.
11

12 DATED: MAR. 20, 2025

MOORADIAN LAW, APC

13
14 By: /s/Haik Hacopian

15 **Zorik Mooradian,**

16 **Haik Hacopian,**

17 Attorneys for Plaintiff and the putative class

18 **DEMAND FOR A JURY TRIAL**

19 Plaintiff CONSTANTINA P. MENDOZA hereby demands a jury trial in the
20 above case.
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23 DATED: MAR. 20, 2025

MOORADIAN LAW, APC

24
25 By: /s/Haik Hacopian

26 **Zorik Mooradian,**

27 **Haik Hacopian,**

28 Attorneys for Plaintiff and the putative class

MOORADIAN LAW, APC

24007 Ventura Blvd., Suite 210

Calabasas, California 91302

Mooradianlaw.com

Telephone 1-818-487-1998

Facsimile 1-888-783-1030

HAIK HACOPIAN

E-mail: haik@mooradianlaw.com

NOVEMBER 1, 2024

VIA USPS CERTIFIED MAIL

Chiro, LLC dba Mr. Clean Maintenance
Systems
P.O. Box 31
Colton, CA 92324
9589 0710 5270 0726 6280 42

Ariana Flores
Agent for Service of Proceed for Chiro, LLC
dba Mr. Clean Maintenance Systems
1834 Business Center Drive
San Bernardino, CA 92408
7022 3330 0002 3350 7734

VIA ONLINE SUBMISSION

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
www.dir.ca.gov

Re: *California Wage & Hour Violations*
Chiro, LLC dba Mr. Clean Maintenance Systems

To Whom It May Concern:

This office represents Constantina P. Mendoza with respect to Private Attorneys General Act (“PAGA”) claims that she intends to pursue against Chiro, LLC dba Mr. Clean Maintenance Systems (hereinafter “Mr. Clean”) based upon its illegal wage and hour practices in the State of California as to its non-exempt employees. This letter constitutes the notice required by Labor Code Section 2699.3.

Facts

Mr. Clean is engaged in the business of cleaning and maintenance services. Ms. Mendoza worked as a non-exempt employee of Mr. Clean, primarily at the “FoodMaxx” grocery store located at 1300 West Olive Avenue in Merced, California 95348. Mr. Clean employs numerous non-exempt, hourly paid employees such as Ms. Mendoza (“Aggrieved Employees”). Unfortunately, Mr. Clean has engaged in the following practices with respect to its Aggrieved Employees:

Identity and Capacity of Employers/Joint Employers

Ms. Mendoza intends to pursue a PAGA action against Mr. Clean and its parent companies, subsidiaries, successors, owners, officers, directors, and managing agents (collectively referred to as “Mr. Clean” as well). Ms. Mendoza will seek to hold all owners, directors, officers and managing agents of Mr. Clean personally liable for said violations to the extent permitted under Labor Code § 558 and/or Labor Code § 558.1.

All business entities referenced herein were the alter-egos of each and every other entity and individual referenced herein and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between said entities and individuals such that any separateness between them ceased to exist in that said individuals and other entities have completely controlled, dominated, managed, and operated the business entities and have intermingled the assets of each to suit convenience. Further, each of the business entities are, and at all times mentioned herein were, mere shells, instrumentalities, and conduits through which the other above-referenced entities/individuals carried out their business while exercising complete control and dominance of the business such that individuality or separateness did not truly exist. Therefore, in the PAGA action, Ms. Mendoza will seek to hold each said individual and/or entity jointly and severally liable for any and/or all violations committed by the other above-referenced individuals and/or entities.

It should further be noted that Mr. Clean and its parent companies, subsidiaries, successors, owners, officers, directors, and/or managing agents have been engaged in a joint enterprise. Moreover, said persons/individuals are joint employers of Aggrieved Employees for the following reasons: 1) Said entities/individuals directly and/or indirectly exercised control over the wages, hours or working conditions of Aggrieved Employees; 2) Said entities/individuals had knowledge (either personally or through officers, directors and/or managing agents) of the work Aggrieved Employees were doing for them while supposedly being employed by another entity/individual and failed to prevent the work from occurring; and 3) Said entities retained or assumed a general right of control over hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of Aggrieved Employees.

Failure to Pay Wages

Mr. Clean implemented the policy and practice of failing to pay Aggrieved Employees for all hours worked. Aggrieved Employees, such as Ms. Mendoza, were not always paid for time they were clocked in as they received paychecks that reflected less time than actually worked. This would be in addition to any time that was otherwise considered off the clock. Additionally,

Aggrieved Employees continued working despite being clocked out for meal breaks. The foregoing resulted in underpayment of wages, including underpayment of overtime, and double-time to the extent applicable. This is in addition to the underpayment of overtime and/or double-time due to misapplication of an Aggrieved Employee's regular rate of compensation.

Meal Breaks

Mr. Clean engages in the practice of not allowing mandated meal breaks. Due to understaffing, no break relief was available and Aggrieved Employees, such as Ms. Mendoza, were forced to work through meal breaks, or take them at later times. Aggrieved Employees did not receive premium pay for all such missed, late, or short meal periods. Moreover, Aggrieved Employees are owed wages for off-the-clock work resulting from meal periods being on-duty as described above. To the extent any premium wages were paid, they were not calculated in accordance with an Aggrieved Employee's correct regular rate of compensation.

Rest Breaks

Mr. Clean engages in the practice of not allowing mandated rest breaks and not compensating Aggrieved Employees, such as Ms. Mendoza, for any missed, late, or short rest breaks. Specifically, Aggrieved Employees were never afforded an opportunity to take rest breaks every four hours, or major fraction thereof, they worked. Due to understaffing, no break relief was available and Aggrieved Employees, including Ms. Mendoza, were forced to work through rest breaks. Moreover, Aggrieved Employees did not receive premium pay for all such missed rest breaks. To the extent any premium wages were paid, they were not calculated in accordance with an Aggrieved Employee's correct regular rate of compensation.

Waiting Time and Unpaid Vacation

At the time of an Aggrieved Employee's separation (whether it be by termination or resignation) Mr. Clean has failed to provide the employee with all monies owed, including meal break premiums, rest break premiums, and unpaid wages for work performed, including overtime and double-time wages to the extent applicable.

Mr. Clean maintained a separate vacation/PTO benefit for Aggrieved Employees and vacation wages would be owed to the extent that the benefit was not properly effectuated and/or any unpaid compensation was not factored into the accrual of the benefit. Correspondingly, a vacation balance would be owed and/or any vacation balance paid to an Aggrieved Employee upon separation would not be full and complete.

Sick Leave

Mr. Clean was required to maintain a sick leave benefit with mandated amounts of accrual of sick time but failed to allow Aggrieved Employees to accrue sick time in the amount required by law. As well, Mr. Clean failed to permit Aggrieved Employees from using their accrued sick time for the purposes set forth under California law

Noncompliant Wage Statements

Mr. Clean has adopted a custom and practice of failing to provide wage statements which reflect all hours worked during any pay period, whether or not Aggrieved Employees all wages entitled to, including meal and rest break premiums, other premiums, and payment of vacation and sick leave benefits.

Failure to Fully Reimburse Employee Expenses

Aggrieved Employees, such as Ms. Mendoza, used their personal vehicles for required work related driving, including driving to other located serviced by Mr. Clean, but never received any type of mileage reimbursement. Aggrieved employees also used their personal cellular phones for word related communications but were never fully reimbursed for same.

Additional Penalties

Ms. Mendoza and all other similarly aggrieved California employees intend to seek all civil penalties for the violations described above.

Code Provisions Violated and Legal Theories

The specific provisions of the California Labor Code which Mr. Clean has violated, and applicable legal theories which establish the violations, are as follows:

Labor Code Section 201: Mr. Clean violated, and continues to violate, Labor Code Section 201 or other applicable law, wage order, regulation, by failing to pay the Aggrieved Employees it has discharged the complete and correct amount of all wages owing at the time of termination. The wages earned but not paid at termination include uncompensated work time, including overtime and double-time as applicable, and premium wages for missed meal and rest breaks.

Labor Code Section 202: Mr. Clean violated, and continues to violate, Labor Code Section 202 or other applicable law, wage order, regulation, by failing to pay Aggrieved Employees who

quit the correct amount of all wages, within 72 hours of the termination. As already stated, the wages earned but not paid at termination include the above.

Labor Code Section 203: Mr. Clean violated, and continues to violate, Labor Code Section 203 or other applicable law, wage order, regulation, by failing to pay 30 days of continuing wages to Aggrieved Employees owed wages (explained above) whose employment ended.

Labor Code Sections 204 and 210: Mr. Clean violated, and continues to violate, Labor Code Sections 204 and 210 or other applicable law, wage order, regulation, by failing to pay wages to Aggrieved Employees for all hours worked as explained above including failing timely pay regular wages after the close of applicable payroll periods.

Labor Code Section 226: Mr. Clean violated, and continues to violate, Labor Code Section 226(a), or other applicable law, wage order, regulation by failing to provide Aggrieved Employees with accurate and compliant itemized wage statements.

Labor Code Section 226.7: Mr. Clean violated, and continues to violate, Labor Code Section 226.7 or other applicable law, wage order, regulation, by failing to provide meal periods and/or rest periods to Aggrieved Employees that are in accordance and in compliance with the IWC's applicable wage order.

Labor Code Section 227.3: Mr. Clean violated, and continues to violate, Labor Code Section 227.3 by failing to promptly pay all vested vacation or PTO benefits to Aggrieved Employees upon their separation.

Labor Code Sections 245.5, 246, and 246.5: Mr. Clean violated and continues to violate Labor Code § 245.5 (definition of employee) and § 246 (mandated amounts of accrual of sick time) by failing to allow Aggrieved Employees to accrue sick time in the amount required by law. As well, the Mr. Clean have violated and continue to violate Labor Code § 246.5 by failing to permit Aggrieved Employees from using their accrued sick time for the purposes set forth under California law.

Labor Code Sections 500, 510 and 1198: Mr. Clean violated, and continues to violate, Labor Code Sections 500, 510, 1198, or other applicable law, wage order, regulation by failing to pay minimum wage or overtime compensation to Aggrieved Employees required by law.

Labor Code Section 512: Mr. Clean violated, and continues to violate, Labor Code Section 512 or other applicable law, wage order, regulation by not providing Aggrieved Employees with legally compliant meal periods.

Labor Code Sections 1182.12, 1194, and 1198: Mr. Clean has violated and continues to violate Labor Code §§ 1182.12, 1194, 1198 or other applicable law, wage order, regulation by failing to pay Aggrieved Employees at least the minimum wage required under the law.

Labor Code Sections 2800 and 2802: Mr. Clean violated and continues to violate, Labor Code Sections 2800 and 2802 by failing to indemnify employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties.

Conclusion

Please inform us if you intend to investigate this matter. We look forward to prompt administrative action so that the identified unlawful practices can be rectified. In the absence of such action, we intend to file an appropriate action pursuant to Labor Code Section 2698 *et seq.* Should you require any additional information, do not hesitate to contact the undersigned.

Very truly yours,

MOORADIAN LAW, APC

A handwritten signature in black ink that reads "Haik Hacopian". The signature is written in a cursive, flowing style.

HAIK HACOPIAN

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Sent To CHIRO, LLC dba M. CLEAN MAINTENANCE SYSTEMS Street and Apt. No., or PO Box No. PO Box 31 City, State, ZIP+4® COLTON, CA 92324	
PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions	

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Sent To JRIANA FLORES, AGENT FOR SERVICE OF PROCESS FOR M. CLEAN MAINT. SYS. Street and Apt. No., or PO Box No. 1834 BUSINESS CENTER DRIVE City, State, ZIP+4® SAN BERNARDINO, CA 92408	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	



Haik Hacopian <haik.hacopian@gmail.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "haik.hacopian@gmail.com" <haik.hacopian@gmail.com>

Fri, Nov 1, 2024 at 5:44 PM

11/1/2024

LWDA Case No. LWDA-CM-1059684-24
Law Firm : Mooradian Law, APC
Plaintiff Name : Constantina P. Mendoza
Employer: Chiro, LLC dba Mr. Clean Maintenance Systems
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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