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ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 18 2009

CLERK OF THE SUPERIOR COURT  
BY YASMIN SINGH, Deputy

Attorneys for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA

10

11 ROBERT SNYDER, ERNESTINA )  
12 HERNANDEZ DE SALGADO, )  
13 GUADALUPE PANIAGUA, on )  
14 behalf of themselves and others )  
15 similarly situated, )

CASE NO.: RG07351434

[Assigned for all purposes to Hon. Steven Brick,  
Dept. 17]

Plaintiffs,

SECOND AMENDED CLASS ACTION  
COMPLAINT FOR:

v.

16 KELLERMEYER BUILDING )  
17 SERVICES, LLC; and )  
18 DOES 1 to 50, Inclusive, )  
19 Defendants. )

- 1. Failure to Pay Wages and/or Overtime
- 2. Failure to Provide Meal Breaks Under Labor Code §§226.7 and 512
- 3. Failure to Provide Rest Breaks Under Labor Code §226.7
- 4. Failure to Provide Split Shift Pay
- 5. Penalties Pursuant to Labor Code §203
- 6. Penalties Pursuant to Labor Code §2810
- 7. Penalties Pursuant to Labor Code §2699
- 8. Violation of Business & Professions Code §17200

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22 Plaintiffs ROBERT SNYDER, ERNESTINA HERNANDEZ DE SALGADO, and  
23 GUADALUPE PANIAGUA on behalf of themselves and all others similarly situated, complains of  
24 defendants, and each of them, as follows:

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I

26

INTRODUCTION

27

28

1. This is a Class Action, pursuant to Code of Civil Procedure §382, on behalf of plaintiffs and all individuals who hold or held the position of janitor, who are employed by, or formerly

1 employed by KELLERMEYER BUILDING SERVICES, LLC, and any subsidiaries or affiliated  
2 companies (hereinafter referred to as "KBS" or "defendants") within the State of California.

3 2. For at least four (4) years prior to the filing of this action continuing to the present,  
4 defendants have had a consistent policy of failing to pay overtime to all hourly employees for all  
5 work over eight (8) hours per day or forty (40) hours per week.

6 3. For at least four (4) years prior to the filing of this action and continuing to the present  
7 ("rest and meal break liability period"), defendants have had a consistent policy of requiring hourly  
8 employees within the State of California, including plaintiffs, to work at least five (5) hours without  
9 an uninterrupted meal period and failing to pay such employees one (1) hour of pay at the  
10 employees' regular rate of compensation for each workday that the meal period is not provided or  
11 provided after five (5) hours, as required by California state wage and hour laws.

12 4. For at least four (4) years prior to the filing of this action and continuing to the present,  
13 defendants have had a consistent policy of failing to provide hourly employees within the State of  
14 California, including plaintiffs, rest periods of at least ten (10) minutes per four (4) hours worked  
15 or major fraction thereof and failing to pay such employees one (1) hour pay at the employees'  
16 regular rate of compensation for each workday that the rest period was not provided, as required by  
17 California state wage and hour laws.

18 5. For at least four (4) years prior to the filing of this action and continuing to the present,  
19 defendants have had a consistent policy of entering into agreements with entities knowing that such  
20 agreements do not include sufficient funds to allow defendants to comply with all California state  
21 wage and hour laws.

22 6. Plaintiffs, on behalf of themselves and all proposed class members, brings this action  
23 pursuant to Labor Code §§201, 202, 203, 218.5, 226.7, 510, 512, 1194, 1197, 1199, and 2810  
24 seeking unpaid overtime, unpaid meal and rest period compensation, injunctive and other equitable  
25 relief, and reasonable attorneys' fees and costs.

26 7. Plaintiffs, on behalf of themselves and all proposed class members, pursuant to Labor  
27 Code §2699, seek penalties for defendants' failure to provide overtime compensation and meal and  
28 rest breaks in accordance with California law, and for entering into agreements with entities knowing

1 that such agreements do not have sufficient funds to permit defendants comply with California laws  
2 and regulations.

3 8. Plaintiffs, on behalf of themselves and all proposed class members, pursuant to Business  
4 & Professions Code §§17200-17208, also seek injunctive relief, restitution, and disgorgement of all  
5 benefits defendants enjoyed from their failure to provide overtime and meal and rest period  
6 compensation.

7 **II**

8 **PARTIES**

9 **A. Plaintiffs**

10 9. Venue as to each defendant is proper in this judicial district pursuant to Code of Civil  
11 Procedure §395. Defendants operate within Northern California. The unlawful acts alleged herein  
12 have a direct effect on plaintiffs and those similarly situated within the State of California.

13 10. Plaintiff ROBERT SNYDER is a resident of Butte County, California.

14 11. Plaintiff ERNESTINA HERNANDEZ DE SALGADO is a resident of San Diego County,  
15 California.

16 12. Plaintiff GUADALUPE PANIAGUA is a resident of Los Angeles County, California.

17 13. Plaintiffs were regularly required to:

18 (1) Work over eight (8) hours per day or forty (40) per week without being provided  
19 premium overtime pay rates;

20 (2) Work in excess of five (5) hours per day without being provided a meal period and  
21 not being compensated one (1) hour of pay at the regular rate of compensation for each workday that  
22 a meal period was not provided or provided after five (5) hours, all in violation of California labor  
23 laws, regulations, and Industrial Welfare Commission Wage Orders.

24 (3) Work without being provided a minimum ten (10) minute rest period for every four  
25 (4) hours or major fraction thereof worked and not being compensated one (1) hour of pay at the  
26 regular rate of compensation for each workday that a rest period was not provided.

27 (4) Work more than one shift per day that were separated by a non-working, non-paid  
28 period of time that was not a meal break or rest break.



1 (8) hours per day and/or forty (40) hours per week without being compensated at premium overtime  
2 rates. In addition, these employees have not been provided meal periods for work days in excess of  
3 five (5) hours, rest periods for work periods of four (4) hours or major fractions thereof, and were  
4 not compensated one hours wages in lieu thereof.

5 20. Plaintiffs and the proposed class routinely worked more than one shift per day which  
6 were separated by a non-working, non-paid period of time that was not a rest break or an meal break,  
7 and they were not paid an additional hour's pay at minimum wage. Furthermore, the combination  
8 of the two shifts caused plaintiffs and the proposed class to routinely work more than eight hours  
9 in a day.

10 21. Plaintiffs and the proposed class are, and at all times pertinent hereto, have been non-  
11 exempt employees within the meaning of the California Labor Code and the implementing rules and  
12 regulations of the IWC California Wage Orders.

13 22. During the rest and meal period liability period, plaintiffs and the members of the  
14 proposed class were regularly required to work in excess of three and one-half (3 1/2) hours without  
15 being provided a rest period and were regularly required to work in excess of five (5) hours per day  
16 without being provided a meal period.

17 23. Defendants did not fully compensate the proposed class for defendants' failure to provide  
18 rest periods and meal periods during the rest and meal period liability period.

19 24. Defendants' requirement that plaintiffs and the proposed class work through rest and meal  
20 periods without paying legal compensation or failure to provide rest or meal periods during the  
21 liability periods was willful and deliberate.

22 25. Defendants willfully failed to pay overtime wages, and further failed to pay one hours  
23 wages in lieu of rest and meal periods, when each employee quit or was discharged.

24 26. By failing to pay overtime wages and one hours wages in lieu of rest and meal periods,  
25 defendants, and those entities who contract for defendants' services, have failed to provide sufficient  
26 funds for defendants to comply with all applicable state laws and regulations governing the labor and  
27 services provided in violation of Labor Code §2810.

28 27. Defendants have failed to comply with Industrial Welfare Commission ("IWC") Wage

1 Order 5-2001(7) by failing to maintain time records showing when the employee begins and ends  
2 each work period, rest and meal periods, and total daily hours worked by itemizing in wage  
3 statements all deductions from payment of wages and accurately reporting total hours worked by  
4 plaintiffs and the members of the proposed class.

5 28. Plaintiffs and the proposed class are covered by California Industrial Welfare  
6 Commission Occupational Wage Order No. 5-2001.

7 IV

8 **CLASS ACTION ALLEGATIONS**

9 29. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a  
10 Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiffs seek to represent a class  
11 composed of and defined as follows:

12 All persons who are employed or have been employed by defendants in the  
13 State of California and from at least four (4) years prior to the filing of this  
action who:

- 14 a) worked one or more work periods in excess of 5 hours per day;  
15 b) worked two work periods in a day separated by more than one  
hour and one minute between the two periods;  
16 c) worked one or more shifts greater than three and a half hours.

17 30. Plaintiffs reserve the right under Rule 3.765(b) of the California Rules of Court to amend  
18 or modify the class description with greater specificity, by further division into subclasses, or by  
19 limitation to particular issues.

20 31. This action has been brought and may properly be maintained as a class action under the  
21 provisions of §382 of the Code of Civil Procedure because there is a well-defined community of  
22 interest in the litigation and the proposed class is easily ascertainable.

23 **A. Numerosity**

24 32. The potential members of the proposed class as defined are so numerous that joinder of  
25 all the members of the proposed class is impracticable. While the precise number of proposed class  
26 members has not been determined at this time, plaintiffs are informed and believes that defendants  
27 currently employ, and during the relevant time periods employed, over 100 janitors.

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1           33. Accounting for employee turnover during the relevant periods necessarily increases this  
2 number substantially. Plaintiffs allege defendants' employment records would provide information  
3 as to the number and location of all proposed class members. Joinder of all members of the  
4 proposed class is not practicable.

5           **B. Commonality**

6           34. There are questions of law and fact common to the proposed class that predominate over  
7 any questions affecting only individual class members. These common questions of law and fact  
8 include, without limitation:

9                   (1) Whether defendants failed to pay overtime compensation as required by the Labor  
10 Code §510, IWC Wage Orders 5-2001, or other applicable Wage Orders;

11                   (2) Whether defendants violated Labor Code §§226.7 and 512, IWC Wage Order 5-  
12 2001 or other applicable IWC Wage Orders by failing to provide meal periods on days they worked  
13 in excess of five (5) hours and failing to compensate said employees one (1) hours wages in lieu of  
14 meal periods;

15                   (3) Whether defendants violated Labor Code §§226.7, IWC Wage Order 5-2001, or  
16 other applicable IWC Wage Orders by failing to provide daily rest periods for every three and one half (3 1/2)  
17 hours or major fraction thereof worked and failing to compensate said employees one (1) hours  
18 wages in lieu of rest periods;

19                   (4) Whether defendants, and those entities who contract for defendants' services,  
20 violated §2810 of the Labor Code by failing to provide sufficient funds for defendants to pay  
21 overtime wages and meal and rest period compensation;

22                   (5) Whether defendants violated §§201-203 of the Labor Code by failing to pay  
23 compensation due and owing at the time that any proposed class member's employment with  
24 defendants terminated;

25                   (6) Whether defendants violated §2699 et. seq. of the Labor Code by engaging in the  
26 acts previously alleged;

27                   (7) Whether defendants violated §17200 et. seq. of the Business & Professions Code  
28 by engaging in the acts previously alleged; and

1 (8) Whether plaintiffs and the members of the proposed class are entitled to equitable  
2 relief pursuant to Business & Professions Code §17200, et. seq.

3 **C. Typicality**

4 35. The claims of the named plaintiffs are typical of the claims of the proposed class.  
5 Plaintiffs and all members of the proposed class sustained injuries and damages arising out of and  
6 caused by defendants' common course of conduct in violation of laws, regulations that have the force  
7 and effect of law, and statutes as alleged herein.

8 **D. Adequacy of Representation**

9 36. Plaintiffs will fairly and adequately represent and protect the interests of the members of  
10 the proposed class. Counsel who represents plaintiffs is competent and experienced in litigating  
11 large employment class actions.

12 **E. Superiority of Class Action**

13 37. A class action is superior to other available means for the fair and efficient adjudication  
14 of this controversy. Individual joinder of all proposed class members is not practicable, and  
15 questions of law and fact common to the proposed class predominate over any questions affecting  
16 only individual members of the proposed class. Each member of the proposed class has been  
17 damaged and is entitled to recovery by reason of defendants' illegal policy and/or practice of failing  
18 to compensate class members at the legal overtime rates and denying class members meal periods  
19 and rest periods without legal compensation.

20 38. Class action treatment will allow those similarly situated persons to litigate their claims  
21 in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs  
22 are unaware of any difficulties that are likely to be encountered in the management of this action that  
23 would preclude its maintenance as a class action.

24 V

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO PAY WAGES AND/OR OVERTIME**

27 39. Plaintiffs incorporate paragraphs 1 through 38 as though fully set forth herein.

28 40. Plaintiffs and others were forced to work on a regular and consistent basis, more than

1 eight (8) hours a day and/or forty (40) hours per week. Plaintiffs were not compensated for said  
2 work at premium rates. Defendants had a consistent policy of paying plaintiffs and members of the  
3 class regardless of the amount of hours worked.

4 41. By their policy of requiring plaintiffs to work in excess of eight (8) hours in a workday  
5 and/or forty (40) hours in a workweek without compensating plaintiffs at the rate of time and one-  
6 half (1 1/2), defendants wilfully violated the provisions of Labor Code §510 and §1194.

7 42. As a result of the unlawful acts of defendants, plaintiffs and the proposed class have been  
8 deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery  
9 of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor  
10 Code §§510 and 1194.

11 VI

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL BREAKS**

14 **PURSUANT TO LABOR CODE §512**

15 43. Plaintiffs incorporate paragraphs 1 through 42 as though fully set forth herein.

16 44. Labor Code §512 requires an employer to pay an additional hour of compensation for  
17 each meal period the employer fails to provide. Employees are entitled to a meal period of a least  
18 thirty (30) minutes per five (5) hour work period. Plaintiffs and the class consistently worked over  
19 five (5) hour shifts. Pursuant to the Code, plaintiffs and the class are entitled to a meal period of not  
20 less than thirty (30) minutes prior to exceeding five (5) hours of employment.

21 45. Defendants failed to provide plaintiffs and others with timely meal breaks of not less than  
22 thirty (30) minutes as required by the Labor Code during the relevant class period.

23 46. Pursuant to Labor Code §226.7, plaintiffs and the proposed class are entitled to damages  
24 in an amount equal to one (1) hour of wages per missed meal break, as well as attorneys' fees and  
25 costs under Labor Code §218.5, in a sum to be proven at trial.

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1 VII

2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REST BREAKS**

4 **PURSUANT TO LABOR CODE §226.7**

5 47. Plaintiffs incorporate paragraphs 1 through 45 as though fully set forth herein.

6 48. Labor Code §226.7 requires an employer to pay an additional hour of compensation for  
7 each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest  
8 break for every four (4) hours worked. Plaintiffs and the proposed class consistently worked over  
9 four (4) hours per shift with no rest breaks.

10 49. Defendants failed to provide plaintiffs and others with rest breaks of not less than ten (10)  
11 minutes as required by the Labor Code during the relevant class period.

12 50. Pursuant to Labor Code §226.7, plaintiffs and the proposed class are entitled to damages  
13 in an amount equal to one (1) hour of wages per missed rest break, as well as attorneys' fees and  
14 costs under Labor Code §218.5, in a sum to be proven at trial.

15 VIII

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE SPLIT SHIFT PAY**

18 **PURSUANT TO IWC WAGE ORDER 5-2001(4)(c)**

19 51. Plaintiffs incorporate paragraphs 1 through 49 as though fully set forth herein.

20 52. Plaintiffs and the class are entitled to split shift pay when they were scheduled for a work  
21 shift interrupted by non-paid non-working periods established by defendants, other than bona fide  
22 rest or meal periods.

23 53. Plaintiffs and the class are entitled to one hour's pay at the minimum wage in addition  
24 to the wages paid for that workday. See Industrial Welfare Commission Wage Order 5-2001(4)(c).

25 54. As a result of the unlawful acts of defendants, plaintiffs and the class have been deprived  
26 of split shift pay in amounts to be determined at trial.

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1 IX

2 **FIFTH CAUSE OF ACTION**

3 **WAITING TIME PENALTIES UNDER LABOR CODE §203**

4 55. Plaintiffs incorporate paragraphs 1 through 54 as though fully set forth herein.

5 56. Numerous members of the proposed class are no longer employed by defendants. They  
6 were either fired or quit defendants' employ.

7 57. Defendants' failure to pay wages as alleged above was willful in that defendants and each  
8 of them knew wages to be due but failed to pay them, thus entitling plaintiffs and the proposed class  
9 to penalties under Labor Code §203, which provides that an employee's wages shall continue as a  
10 penalty until paid for a period of up to thirty (30) days from the time they were due.

11 58. Defendants have failed to pay plaintiffs and others a sum certain at the time of  
12 termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums  
13 for thirty (30) days thereafter. Pursuant to the provisions of Labor Code §203, plaintiffs and the  
14 proposed class are entitled to penalties in the amount of plaintiffs' and others' daily wage multiplied  
15 by thirty (30) days.

16 X

17 **SIXTH CAUSE OF ACTION**

18 **PENALTIES UNDER LABOR CODE §2810**

19 59. Plaintiffs incorporate paragraphs 1 through 58 as though fully set forth herein.

20 60. As a result of the acts alleged above, plaintiffs and the proposed class seek penalties  
21 under Labor Code §2810 because of defendants' violation of Labor Code §§201, 202, 203, 218.5,  
22 226.7, 510, 512, 1194, 1197, and 1199 which call for civil penalties.

23 61. For each such violation, plaintiffs and the proposed class are entitled to penalties in the  
24 amount to be shown at the time of trial subject to the following formula:

- 25 a. For \$250 for the initial violation per employee per pay period.
- 26 b. For \$1,000 for each subsequent violation per employee per pay period.

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XII

**EIGHTH CAUSE OF ACTION**  
**UNFAIR COMPETITION PURSUANT TO**  
**BUSINESS & PROFESSIONS CODE §17200**

69. Plaintiffs incorporate paragraphs 1 through 68 as though fully set forth herein.

70. This is a Representative Private Attorney General Action and Class Action for Unfair Business Practices. Plaintiffs on their own behalf and on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant to Business & Professions Code §17200, et. seq. The conduct of all defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to plaintiffs, the general public, and the proposed class. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure §1021.5.

71. Plaintiffs are "person(s)" within the meaning of Business & Professions Code §17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

72. Business & Profession Code §17200, et. seq. prohibits unlawful and unfair business practices.

73. Wage and hour laws express fundamental public policies. Providing employees with meal and rest breaks and paying overtime are fundamental public policies of this State and of the United States. Labor Code §90.5(a) articulates the public policies of this State to vigorously enforce minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and their employees from competitors who lower their costs by failing to comply with minimum labor standards.

74. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Profession Code §17200, et. seq., depriving plaintiffs, and all persons similarly situated, and all interested persons of rights, benefits, and privileges guarantees to

1 all employees under law.

2 75. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in violation  
3 of §17200 et. seq. of the Business & Professions Code.

4 76. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise of  
5 reasonable care should have known that the conduct was unlawful. As such, it is a violation of  
6 §17200 et. seq. of the Business & Professions Code.

7 77. As a proximate result of the above mentioned acts of defendants, plaintiffs and others  
8 similarly situated have been damaged in a sum as may be proven.

9 78. Unless restrained by this Court, defendants will continue to engage in the unlawful  
10 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make  
11 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent  
12 the use or employment by defendants, or their agents or employees, of any unlawful or deceptive  
13 practice prohibited by the Business & Professions Code, and/or, including but not limited to,  
14 disgorgement of profits which may be necessary to restore plaintiffs and the proposed class members  
15 to the money defendants have unlawfully failed to pay.

16  
17 **RELIEF REQUESTED**

18 **WHEREFORE**, plaintiffs pray for the following relief:

19 1. For compensatory damages in the amount of unpaid wages and overtime not paid to  
20 plaintiffs and each other member of the Class from at least four (4) years prior to the filing of this  
21 action to the present as may be proven;

22 2. For compensatory damages in the amount of plaintiffs' and each class member's hourly  
23 wage for each meal period missed or taken late from at least four (4) years prior to the filing of this  
24 action to the present as may be proven;

25 3. For compensatory damages in the amount of plaintiffs' and each class member's hourly  
26 wage for each shift where rest periods were missed from at least four (4) years prior to the filing of  
27 this action to the present as may be proven;

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