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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 FEDERICO VILCHIZ VASQUEZ, JESUS
15 VILCHEZ VASQUEZ, FRANCISCO DOMINGO
16 CLAUDIO, ADA CAÑEZ, EMIGDIO MENDEZ,
and CANDELARIA HURTADO for themselves
and all others similarly situated,

17 Plaintiffs,

18 vs.

19 USM, INC. dba USM SERVICES, INC., a
20 Pennsylvania Corporation; Ross Stores, Inc.
21 dba Ross Dress for Less, a Delaware Corporation;
22 Ross Stores, Inc. dba dd's DISCOUNTS, a
23 Delaware Corporation; and DOES 1 through 20,
inclusive,

24 Defendants.

Case No.: CV-13-05449 WHA

**SECOND AMENDED COMPLAINT;
CLASS AND REPRESENTATIVE ACTION**

- 17 **(1) VIOLATION OF CAL. LAB. CODE § 2810**
- 18 **(2) UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES (BUS. & PROF. CODE §§ 17200-17208);**
- 19 **(3) PAGA CLAIM FOR CIVIL PENALTIES (LABOR CODE § 2698 et seq.); and,**
- 20 **(4) REASONABLE ATTORNEYS' FEES AND COSTS**

DEMAND FOR JURY TRIAL

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1 Plaintiffs Federico Vilchiz Vasquez (“Plaintiff F. Vilchiz”), Jesus Vilchez Vasquez (“Plaintiff
2 J. Vilchez”), Francisco Domingo Claudio (“Plaintiff Domingo”), Ada Cañez (“Plaintiff Cañez”),
3 Emigdio Mendez (“Plaintiff Mendez”), and Candelaria Hurtado (“Plaintiff Hurtado”) (collectively,
4 “Plaintiffs”), on behalf of themselves and all others similarly situated, allege as follows:

5 INTRODUCTION

6 1. Plaintiffs were employed by local subcontractors to clean Ross Dress for Less and/or
7 dd’s DISCOUNTS stores in California in connection with the performance of contracts or agreements
8 for janitorial services and labor between (a) Defendant Ross Stores, Inc. (“Ross”), which operates the
9 Ross Dress for Less and dd’s DISCOUNTS “off-price” stores, and prime contractor defendant USM,
10 Inc. dba USM Services, Inc. (“USM”); and (b) prime contractor USM and local subcontractors.

11 Plaintiffs bring this case as a class action against USM and Ross under Federal Rule of Civil Procedure
12 23 on behalf of themselves and all other janitorial workers who have cleaned a Ross Dress for Less
13 and/or dd’s DISCOUNTS store in the State of California, at any time from four years prior to the date
14 of filing of this action through the date of trial, in connection with the performance of subcontractor
15 agreements for janitorial services with USM for violations of: 1) California Labor Code § 2810; 2) the
16 California Unfair Competition Law (“UCL”), codified as California Business and Professions Code
17 § 17200-17208; and 3) the Private Attorneys General Act of 2004 (“PAGA”), codified as California
18 Labor Code § 2698 *et seq.*

19 2. Plaintiffs allege that USM and Ross have engaged in a janitorial services subcontracting
20 scheme that results in significant cost-savings to Ross and substantial profits to prime contractor USM,
21 while depriving the janitorial workers who clean Ross Dress for Less and/or dd’s DISCOUNTS stores
22 in connection with the performance of subcontractor agreements with USM of the wages to which they
23 are entitled under California law.¹

24 ¹ As the Los Angeles Times recently reported about the findings of a recent report entitled *Hollow*
25 *Victories: The Crisis in Collecting Unpaid Wages for California’s Workers*, by the National
26 Employment Law Project and the UCLA Labor Center, subcontracting schemes such as the one in
27 which USM has engaged often leave injured employees with no means to recover their unpaid wages.
28 See Marc Lifsher, *Many Low-Wage Workers Who Won Judgments Were Never Paid*, L.A. TIMES,
June 27, 2013. Many janitorial employees like Plaintiffs work for small, undercapitalized
subcontractors that do not have the funds to pay their employees the wages they are owed, even when
employees secure judgments against them. The Times reported that, “[o]ver a recent three-year

1 3. Under this scheme, Ross contracts with USM to provide janitorial services for some or
2 all of its Ross Dress for Less and dd's DISCOUNTS store locations around California. In turn, USM
3 subcontracts with janitorial subcontractors (the "Subs") that hire the workers necessary to perform the
4 janitorial services USM contracts to provide at the designated retail store locations.

5 4. On information and belief, the agreements between Ross and USM outline in detail
6 what stores are to be cleaned, what janitorial services should be performed at these stores, how often
7 these services should be completed, how many workers are required, when the workers should be
8 present at the stores, how the work will be monitored, and how much Ross will pay USM. These
9 agreements further recognize that USM will subcontract with local janitorial businesses that will
10 supply the labor.

11 5. The agreement(s) that USM and Ross sign do not include funds sufficient to allow USM
12 to comply with all applicable local, state, and federal laws or regulations governing the janitorial
13 services to be provided at Ross Dress for Less and/or dd's DISCOUNTS stores in connection with the
14 performance of those agreement(s).

15 6. Ross knows or should know that the funds provided to USM under their agreement(s)
16 are not sufficient to allow USM to comply with all applicable local, state, and federal laws or
17 regulations governing the janitorial services to be provided at Ross Dress for Less and/or dd's
18 DISCOUNTS stores in connection with the performance of those agreement(s).

19 7. The subcontractor agreements that USM signs with the Subs for the performance of
20 janitorial services at Ross Dress for Less and/or dd's DISCOUNTS stores in connection with the
21 performance of the agreements(s) it signs with Ross are form contracts drafted by USM. These

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23 period, thousands of mainly immigrant workers in California who clean buildings . . . won monetary
24 judgments against their employers but were never paid." *Id.* This inability to collect judgments for
25 unpaid wages is in part because the "companies representing three-fifths of unpaid-wage judgments
26 legally vanished." *Id.* As the article explained, the "[b]usinesses are dissolved, licenses canceled, and
27 it's very hard for workers to get their money." *Id.* Meanwhile, prime contractors like USM, who
28 knowingly underfund these janitorial subcontracts, continue to profit from the employees' labor. This
is precisely the type of scheme that Labor Code § 2810 was enacted to stop. *See* Senate Committee
Bill Analysis of SB 179 ("This measure attacks the hidden use of unfair economic leverage to
influence labor contractors to enter into contracts that are financially inadequate to permit the
contractor to comply with applicable laws. While employers usually claim they are unaware of abuses
committed by their contractors, the reality is just the opposite.").

1 contracts provide, in relevant part, that 1) USM will not pay the Subs until 30 days after it receives all
2 Work Orders signed by a retail store representative; 2) USM will not pay the Subs unless the retail
3 store is satisfied with the janitorial services rendered; 3) the Subs must maintain worker's
4 compensation, general liability, and automotive insurance; and 4) USM unilaterally reserves the right
5 to discount payments to Subs for services performed if the Subs request accelerated payment or if the
6 Subs reach a certain volume of payments from USM in a given year.

7 8. USM's subcontractor agreements with the Subs also dictate the specific requirements
8 for the janitorial services to be performed by the Subs at Ross Dress for Less and/or dd's DISCOUNTS
9 stores, including which retail stores are to be cleaned, the type work to be performed, the number of
10 hours per week that must be spent performing the janitorial services, and the amount that USM will
11 pay the Subs for completing the services detailed in the agreement. The subcontractor agreements that
12 USM and the Subs sign do not include funds sufficient to allow the Subs to cover their operating
13 budgets, which include the insurance required by the subcontractor agreements and the wages that
14 Plaintiffs and other employees of the Subs earn by performing the janitorial services detailed in the
15 subcontractor agreements.

16 9. USM knows or should know that the subcontractor agreements for janitorial services
17 that USM enters into with the Subs do not include funds sufficient to allow the Subs to comply with all
18 applicable local, state, and federal laws or regulations governing the janitorial services to be provided
19 in violation of California Labor Code § 2810.

20 10. As a result of the insufficient funds provided for in both the agreement(s) between Ross
21 and USM and the agreements between USM and the Subs, the Subs have routinely failed to pay
22 Plaintiffs and other similarly-situated janitorial employees the minimum wage, their contracted rate,
23 and/or overtime premiums. The Subs have also failed to provide Plaintiffs and other similarly-situated
24 janitorial employees with timely itemized statements accurately showing total hours worked and
25 applicable hourly rates and have failed to provide them with adequate meal and rest breaks.
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JURISDICTION AND VENUE

11. This Court has jurisdiction over Plaintiffs’ and Class Members’ claims for damages and injunctive relief under California Labor Code § 2810.

12. This Court has jurisdiction over Plaintiffs’ and Class Members’ claims for restitution of unpaid wages and other ill-gotten benefits arising from Defendants’ unlawful and/or unfair business practices, and injunctive relief under Business & Professions Code §§ 17202 and 17203.

13. This Court has jurisdiction over Plaintiffs’ and Class Members’ PAGA claims for civil penalties under California Labor Code § 2698 *et seq.*

14. The Court has jurisdiction over USM because USM transacts business within the State of California.

15. The Court has jurisdiction over Ross because Ross transacts business within the State of California.

16. Defendants removed this action to this Court on November 22, 2013, under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d), 1453.

17. Venue is proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1331 and 1441(a) to the extent this Court has jurisdiction under CAFA. Venue is also proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendants reside in this district and because a substantial part of the events giving rise to the claims occurred in this district.

18. Ross is incorporated in Delaware and is headquartered in Pleasanton, Alameda County, California.

THE PARTIES

Plaintiffs

19. Plaintiff Domingo, a native Spanish speaker, lives in Oakland, California. In or around October 2010, RC Maintenance, Inc., an Alameda County based janitorial subcontractor, hired Plaintiff Domingo to provide janitorial services to, among other stores, a Ross Dress for Less store in Alameda County, in connection with the performance of a Subcontractor Agreement with USM.

1 Mr. Domingo continued working for RC Maintenance performing janitorial services in connection
2 with the performance of a subcontractor agreement with USM through approximately October 2012.

3 20. Plaintiff F. Vilchiz, a native Spanish speaker, lives in Oakland, California. In or around
4 February 2012, New Generation Maintenance, an unregistered Alameda County based janitorial
5 subcontractor, hired Plaintiff F. Vilchiz to provide janitorial services to the Ross Dress for Less store
6 located at 4408 Las Positas Road in Livermore, California, in connection with the performance of a
7 subcontractor agreement with USM. Plaintiff F. Vilchiz worked for New Generation Maintenance
8 performing janitorial services in connection with the performance of a subcontractor agreement with
9 USM until approximately October 2012.

10 21. Plaintiff J. Vilchez, a native Spanish speaker, lives in Oakland, California. In or around
11 May 2012, New Generation Maintenance, an unregistered Alameda County based janitorial
12 subcontractor, hired Plaintiff J. Vilchez to provide janitorial services to the Ross Dress for Less store
13 located at 4408 Las Positas Road in Livermore, California, in connection with the performance of a
14 Subcontractor Agreement with USM. Plaintiff F. Vilchiz worked for New Generation Maintenance
15 performing janitorial services in connection with the performance of a subcontractor agreement with
16 USM until approximately October 2012.

17 22. Plaintiff Cañez, a native Spanish speaker, lives in San Jose, California. In or around
18 June 2009, Cleanmex, a janitorial subcontractor based in Santa Clara, hired Plaintiff Cañez to provide
19 janitorial services to the Ross Dress for Less store in Redwood City in connection with Cleanmex's
20 contract(s) with USM. Plaintiff Cañez continued working for Cleanmex performing janitorial services
21 in connection with the performance of Cleanmex's subcontractor agreement(s) with USM through
22 approximately February 2010, when Cleanmex lost its contract with USM for the Ross Dress for Less
23 store in Redwood City. In or around February 2010, USM entered into a contract with Garcia's
24 Janitorial to provide janitorial services at the Ross Dress for Less store in Redwood City, and Garcia's
25 Janitorial hired Plaintiff Cañez to provide janitorial stores to the Ross Dress for Less store in Redwood
26 City. Plaintiff Cañez continued working for Garcia's Janitorial performing janitorial services in
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1 connection with the performance of Garcia's Janitorial's subcontractor agreement(s) with USM
2 through approximately February 2011.

3 23. Plaintiff Mendez, a native Spanish speaker, lives in Compton, California. In or around
4 April 2008, Martin S. Martinez dba Janitorial Professional Services ("Janitorial Professional"), a
5 janitorial subcontractor based in Los Angeles, hired Plaintiff Mendez to provide janitorial services at
6 various Ross Dress for Less and dd's DISCOUNTS stores in the Los Angeles area in connection with
7 Janitorial Professional's contract(s) with USM. Plaintiff Mendez currently still works for Janitorial
8 Professional performing janitorial services in connection with the performance of Janitorial
9 Professional's subcontractor agreement(s) with USM.

10 24. Plaintiff Hurtado, a native Spanish speaker, lives in Compton, California. In or around
11 November 2009, Martin S. Martinez dba Janitorial Professional Services ("Janitorial Professional"), a
12 janitorial subcontractor based in Los Angeles, hired Plaintiff Hurtado to provide janitorial services at
13 various Ross Dress for Less and dd's DISCOUNTS stores in the Los Angeles area in connection with
14 Janitorial Professional's contract(s) with USM. Plaintiff Hurtado currently still works for Janitorial
15 Professional performing janitorial services in connection with the performance of Janitorial
16 Professional's subcontractor agreement(s) with USM.

17 **Defendants**

18 25. USM, which boasts estimated 2013 revenues of \$6.5 billion, is a for-profit corporation
19 with its headquarters located at 1880 Markley Street, Norristown, PA 19401.

20 26. In May 2011, USM, Inc., listing an address of 1880 Markley Street, Norristown, PA
21 19401, registered with the California Secretary of State to do business in California as USM Services,
22 Inc.

23 27. On or around June 30, 2011, Fortune 500 company EMCOR Group, Inc., a Delaware
24 corporation headquartered in Norwalk, CT, announced that it had completed its acquisition of USM
25 Services Holdings, Inc. for \$255 million in cash, representing \$225 million for the base USM business
26 plus \$30 million for the net present value of a USM tax benefit.

1 31. The Subs routinely receive insufficient funds from USM to maintain their businesses
2 and compensate their workers in compliance with the law. Accordingly, the Subs fail to pay their
3 employees the wages they have earned, violate the Labor Code and, eventually, close down shop.

4 32. To promote maximum cost-savings, Ross contracts with USM for the provision of
5 janitorial services at its Ross Dress for Less and dd's DISCOUNTS stores throughout California,
6 knowing that, due to the insufficiency of the funds provided for in the contract(s) between Ross and
7 USM, USM will in turn enter into thinly funded agreements with Subs that do not allow the Subs to
8 comply with all applicable local, state, and federal laws or regulations governing the labor or services
9 to be provided.

10 33. Plaintiff Domingo, who worked for Alameda County based Sub RC Maintenance,
11 Inc. ("RC Maintenance") beginning in or around late 2009, providing janitorial services to various
12 Oakland retail stores including a Ross Dress for Less store in Alameda County, received no premium
13 wages for his overtime hours and regularly could not cash his paycheck because of insufficient funds.
14 When RC Maintenance informed Plaintiff Domingo in or around early January 2012 that it lacked the
15 money to pay him for work he had performed since mid-November 2011, Plaintiff Domingo resigned.
16 Soon thereafter, two years after registering with the California Secretary of State, RC Maintenance
17 went out of business. RC Maintenance's owner, Carlos Rivera, reported that his company went out of
18 business, in large part, because of the insufficient funds provided by the Subcontractor Agreements
19 between USM and RC Maintenance.³

20 34. In the wake of RC Maintenance, New Generation Maintenance ("New Generation")
21 began operating in Oakland, and USM engaged the business, despite its never registering with the
22 County or the State.⁴ New Generation hired Plaintiff F. Vilchiz to clean a Ross Dress for Less store in
23 Livermore, California, in connection with the performance of its Subcontractor Agreement with USM.
24 Plaintiff F. Vilchiz began working for New Generation in or around February 2012. He received no
25

26 ³ RC Maintenance filed with the Secretary of State on January 27, 2009 as Entity No. C3179591,
27 registering an Entity Address of 3235 MacArthur Blvd., Oakland, CA 94602. RC Maintenance is now
28 on suspended status with the California Secretary of State.

⁴ New Generation's address was 1248 35th Avenue, Oakland, CA 94601.

1 compensation for his first month of work, after which New Generation began providing him with a
2 lump sum cash or check payment after each month of work.

3 35. In or around May 2012, New Generation hired Plaintiff J. Vilchez to work at the same
4 Livermore Ross Dress for Less store. Plaintiff J. Vilchez also received no wages for his first month of
5 work but continued to work for New Generation and received lump sum cash or check payments after
6 completing subsequent months of work.

7 36. In or around early October 2012, New Generation informed Plaintiffs F. Vilchiz and J.
8 Vilchez that it lacked the funds to pay them for their previous month's work, so the men resigned. On
9 information and belief, New Generation has since ceased operations.

10 37. Bearing in mind the requirements and payments outlined in its agreement(s) with Ross,
11 USM dictated the terms of its Subcontractor Agreements with both RC Maintenance and New
12 Generation—including the janitorial services to be performed at each store location, the hours of labor
13 required to complete the contracted-for services, and the amount that the Sub would be paid for these
14 services.

15 38. However, as Ross knew or should have known would be the result of its insufficiently
16 funded agreement(s) with USM, the amount that USM agreed to pay the Subs was insufficient to
17 comply with all applicable laws and the costs required to complete the janitorial services that the
18 Subcontractor Agreements required the Subs to perform.

19 39. In addition, USM reduced its promised payments to the Subs even after the work had
20 been performed.

21 40. Since at least 2008, Ross and USM have conspired to systematically engage local
22 janitorial subcontractors to clean Ross Dress or Less and/or dd's DISCOUNTS stores throughout
23 California, while imposing upon these Subs contractual arrangements that they know or should know
24 do "not include funds sufficient to allow the [Subs] to comply with all applicable local, state, and
25 federal laws or regulations governing the labor or services to be provided," in violation of Labor Code
26 § 2810.

1 **Ross and USM Establish Services**

2 41. On information and belief, the agreement(s) between USM and Ross outline in detail
3 what Ross Dress for Less and/or dd's DISCOUNTS stores are to be cleaned, what janitorial services
4 should be performed at these stores, how often these services should be completed, how many workers
5 are required, when the workers should be present at the stores, how the work will be monitored, and
6 how much Ross will pay USM. These agreements further recognize that USM will not hire the
7 workers directly but will instead subcontract with local businesses that will supply the labor.

8 42. The janitorial services for which Ross contracts with USM generally fall into two
9 categories: (1) daily or regular basic cleaning and (2) periodic floor scrubbing, recoating, and buffing,
10 an overnight process that the janitors call "floor stripping." Often, the janitors complete the basic
11 cleaning service under the supervision of a store manager during the 2-3 hours either before a store
12 opens or after it closes. In addition, each store receives a floor buffing, scrubbing and recoating
13 service about once a month. The workers who complete this floor polishing are often locked into a
14 store overnight without supervision.

15 43. To ensure that the Subs provide the correct services, USM and Ross memorialize the
16 requirements for each service in various documents that USM provides to the Subs, including manuals,
17 instruction sheets, and PowerPoint presentations.⁵

18 44. As these documents reflect, since at least 2008, the basic cleaning Ross and USM have
19 required the Subs to provide on a daily or regular basis has been standardized and specific: sweeping
20 and mopping of tiled areas; cleaning of mirrors and front door glass; vacuuming of mats and carpets;
21 cleaning of all counters; emptying of all wastebaskets; cleaning and sanitizing of all fixtures; refilling
22 of dispensers and cleaning of sinks, stalls, and toilets in the bathroom; cleaning of all mirrors; dusting
23 of all partitions; washing of windows; wiping down of fittings rooms; and dusting signs, art and vents.

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26 ⁵ For instance, USM Senior Director Jimmy Henley and Ross Contract Services Manager Ryan
27 Benguerel produced and dispensed a PowerPoint presentation on or around October 28, 2008, that
28 outlined the janitorial services that should be completed every day in/on the sales floor, the customer
service area, the restrooms, the fitting rooms, the outside of the building, the lounge, the offices, and
the miscellaneous area of each Ross store.

1 45. Likewise, USM and Ross have developed standard practices for how and when the floor
2 buffing, scrubbing, and recoating should occur and what rules the workers must follow when in the
3 stores overnight, including such details as the type of finish the workers should use and the number of
4 coats that should be applied, and a clear mandate that workers “must not exit the Store for any reason
5 (except an emergency) during the night,” and if a worker tries to leave before a Ross employee arrived
6 in the morning, then “a silent alarm will sound and police will be called.”⁶

7 **Subcontractor Agreement**

8 46. When engaging the Subs that that will provide the agreed-upon services to meet Ross’s
9 janitorial needs, USM requires the Subs to sign a standard Subcontractor Agreement, a form contract
10 drafted by USM, which has remained the same in all parts material to Labor Code § 2810 since at least
11 2008.

12 47. Attached as Exhibit A is the Subcontractor Agreement, executed on July 17, 2008,
13 between USM and Sub Cleanmex, which contracted with USM to provide janitorial services to over 10
14 Ross Dress for Less and dd’s DISCOUNTS stores throughout the Bay Area.

15 48. Attached as Exhibit B is the Subcontractor Agreement, executed on April 30, 2009,
16 between USM and RC Maintenance, the now-dissolved Sub that hired Plaintiff Domingo.

17 49. Attached as Exhibit C are the “materials related to your service as a USM, Inc (“USM”)
18 contractor,” including a blank Subcontractor Agreement, which USM has been providing to the Subs it
19 engages since at least 2012.

20 50. In all three agreements, the contracting parties are listed as USM, Inc., with an address
21 of 1880 Markley Street, Norristown, Pennsylvania, 19401, and the Sub.

22 51. On information and belief, these three contracts, which are identical in all parts material
23 to Labor Code § 2810, reflect the Subcontractor Agreements between USM and all the Subs it has
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27 ⁶ The forms developed by USM and Ross included the “Overnight Service Vendor Responsibilities
28 Checklist,” a “Scrub-and-Recoat” explanation sheet, a “Wet Work Scope of Work” instruction sheet, a
“Wet Work: Overnight Spot Strip Vendor Responsibilities Checklist,” a “Wet Work: Scrub and Recoat
Vendor Responsibilities Checklist.”

1 engaged since 2008 for the provision of janitorial services at Ross Dress for Less and dd's
2 DISCOUNTS stores throughout California.

3 52. In these Agreements, USM requires its Subs to assume all costs associated with
4 overhead, equipment and other materials, mandating:

5 [Y]ou are required to furnish at your own expense all supervision, labor,
6 equipment, materials, and supplies to provide the Services. You agree to
7 use materials, products, and equipment approved by our customer(s) for
8 the Services, and you agree to keep such equipment in satisfactory
9 condition and in safe-working order.

10 (Exhibit A at 1; Exhibit B at 1; Exhibit C at 3.)

11 53. USM also instructs the Subs to obtain and pay for Workers' Compensation and liability
12 insurance:

13 Prior to the commencement of the Services, you shall obtain and
14 maintain or cause to be obtained and maintained the following insurance,
15 in amounts not less than those specified below: (1) Workers'
16 Compensation . . . (2) Employer's Liability insurance in an amount not
17 less than \$100,000 each accident, \$100,000 each disease, \$200,000 in the
18 aggregate for each statute in which your employees engage in Services
19 under this Agreement. (3) Comprehensive General Liability (CGL) on
20 ISO Form CG 00 01 12 04 with limits of liability of not less than: (i)
21 Each Occurrence: \$1,000,000 (ii) Each offense \$1,000,000 (iii) General
22 aggregate \$2,000,000 (iv) Product-Completed Operates Aggregate
23 \$3,000,000 (v) Fire Damages (any one person) \$50,000 (vi) Medical
24 Expense (any one person) \$5,000 (4) Comprehensive Automobile
25 Liability . . .

26 (Exhibit A at 2-3; Exhibit B at 2-3; Exhibit C at 4-5.)

27 54. In the Subcontractor Agreement, USM establishes that (1) it will supply the Subs with
28 future "schedules" that will specify the stores to be cleaned, the services to be provided, the hours of
labor required, and the commission to be paid; and (2) after completing the required services each day,
the workers must have their store supervisors sign off on their "work orders," daily, weekly or monthly
catalogues of the janitor's performance that the Subs must submit to USM once completed in order to
be paid. Specifically, the Agreements provide:

We will set forth the specifications and pricing on one or more schedules
to this Agreement, which you must sign and return prior to commencing
any Services. Additionally . . . we will provide you with a work order
that must be signed by our customer following completion of Service (a
"Work Order"). You must perform all the Services per the specifications

1 and to our customer's satisfaction. You will perform the Services on the
2 days and during the hours specified by our customer(s). . . . You will
3 comply with all procedures specified by us and our customers in
4 performing the Services.

(Exhibit A at 1; Exhibit B at 1; Exhibit C at 3.)

5 55. USM provides the Subs will get paid only after receiving completed Worker Orders:

6 On the last day of each month, you must submit all Work Order(s)
7 signed by our customer's authorized representatives during the month,
8 together with an invoice reconciling that month's activity for each
9 customer. . . . Your timely submission of an invoice is a condition
10 precedent to our obligation to pay you. Subject to the terms of this
11 Section , we shall send your payment 30 days after the date that we
12 receive and process your invoice. . . .

13 56. At the same time, USM reserves the right to pay less than the amount promised in the
14 Schedules if the Sub does not satisfy several obligations:

15 We will make payment to you as long as (i) we have received you
16 invoice within 120 days from the last day of the month that you provided
17 the Services; (ii) we have received all properly executed Work Orders
18 and other schedules; (iii) we have received your insurance certifications
19 evidencing the requisite coverage; and (iv) our customer is satisfied. . . .

(Exhibit A at 1; Exhibit B at 1; Exhibit C at 3.)

20 57. USM further asserts that it does not have to pay for work that a retail store does not
21 deem satisfactory in any way and for any reason:

22 You will immediately correct, without additional charge[,] any Service
23 that does not meet the specifications, and we may deduct up to the full
24 amount due to you for any Service that you do not correct. You further
25 will replace any crew or individual employee upon the request of our
26 customer and that you will do so within 24 hours of receiving notice
27 from us of the customer's request.

(Exhibit A at 1; Exhibit B at 1; Exhibit C at 3.)

28 58. USM establishes that it will discount the payment further if a Sub requests timely
reimbursement or provides consistent services:

At your request we may, but are not obligated to pay you all or a portion
of the amount invoiced prior to the expiration of the Payment Period
("Rapid Payment"). In consideration of the Rapid Payment, we may
discount the amount advanced to you by up to 5%. . . . If your business
with us grows to the level that we have paid you at least \$10,000 in any
twelve month period, then we may automatically discount payments to
you by 4% of the total amount of your invoice.

1 (Exhibit A at 1; Exhibit B at 1; Exhibit C at 3.)

2 59. Finally, USM absolves itself of any obligation to pay the Sub if USM does not get paid
3 by the Retailer:

4 We are not obligated to pay you until we receive payment from our
5 customer for the Services that you provide.

6 (Exhibit A at 1; Exhibit B at 1; Exhibit C at 3.)

7 **Schedules**

8 60. On information and belief, the Schedules that USM provided to Sub Cleanmex, which
9 were signed in or around October 2008 regarding the provision of janitorial services for approximately
10 3 dd's DISCOUNTS and 8 Ross Dress for Less stores in Alameda and surrounding counties, are
11 illustrative of the Schedules USM imposes on its Subs.

12 61. Attached as Exhibit D, these Schedules mandate that Cleanmex assign two people to
13 each store for (1) three hours of routine cleaning seven days a week and (2) approximately 12.5 hours
14 of overnight floor buffing once a month. Thus, in total, USM required approximately 205 hours of
15 labor per store per month. Per the schedules, USM would pay Cleanmex \$1,200 per month per store.

16 62. Compensation of \$1,200 per month for both workers, who have labored a total of 205
17 hours in the month, breaks down to \$5.85 per hour – significantly less than the \$8.00 minimum wage
18 that has been in effect in California since January 1, 2008.

19 63. Nonetheless, under the Subcontracting Agreement, Cleanmex had to extend these
20 insufficient funds to cover not just employee wages but also insurance, equipment and supplies,
21 payroll, overhead and other costs.

22 64. Thus, even without considering the discounted amounts that USM ultimately paid for
23 the services performed under the Subcontractor Agreement, USM and Ross imposed a funding
24 arrangement on Cleanmex that was insufficient “to allow the [Sub] to comply with all applicable local,
25 state, and federal laws or regulations governing the labor or services to be provided,” in violation of
26 Labor Code § 2810.

27 65. On information and belief, the Schedules that USM provides the Subs that it engages to
28 clean Ross Dress for Less and dd's DISCOUNTS stores throughout California are regularly

1 insufficient to cover (a) regular and overtime wages workers earn performing the janitorial services
2 that the Schedules require; (b) worker's compensation and other employee benefits; (c) the costs of
3 purchasing and maintaining cleaning supplies and equipment; (d) multiple insurance policy premiums;
4 (e) business supplies; (f) wages and benefits for business office employees; (g) costs associated with
5 maintaining the records and providing the wage statements required by the California Labor Code;
6 (h) overhead costs; (i) taxes; and (g) other standard expenses incurred by small janitorial businesses, in
7 violation Labor Code § 2810.

8 **Provision of Services, Work Orders, and Discounted Payment**

9 66. While at the stores they are assigned to clean, janitorial workers are regularly required
10 to identify themselves as USM vendors. For example, Plaintiff Domingo was instructed to wear a
11 badge captioned with a logo that identified him as affiliated with "USM An EMCOR Company."

12 67. Using various different supervision mechanisms, USM and Ross monitor the workers to
13 ensure that they satisfactorily provide all required services.

14 68. First, they require that the workers document their arrival and departure through a
15 phone message service. For instance, New Generation instructed Plaintiff F. Vilchiz and Plaintiff J.
16 Vilchez to call a specific number using the Ross Dress for Less store's phone upon arriving at work
17 and leave a message with their name, hour of arrival, and city and name of the store. Likewise, New
18 Generation told them to call the same number upon departing the store and leave a message with their
19 name, hour of departure, name and city of store, and information about any problems with the
20 equipment. On information and belief, USM mandated that New Generation provide these instructions
21 to its janitorial workers.

22 69. Second, as forecasted in the Subcontractor Agreements, USM and Ross design "Work
23 Orders," which articulate the specific tasks that must be completed and how often they must be done.
24 USM and Ross provide these Work Orders to the Subs, who then distribute them to the workers.
25 Illustrative of the Work Orders that USM and Ross required the Subs to provide the workers are the
26 "Daily Janitorial Service Sign-Off Sheets" and "Periodic Janitorial Service Sign-Off Sheets" that New
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1 Generation distributed to Plaintiffs F. Vilchiz and J. Vilchez for their work at the Livermore Ross Store
2 in September 2012, attached as Exhibit E.

3 70. Third, USM and Ross require that Ross Dress for Less and dd's DISCOUNTS store
4 managers sign off on the Work Orders each day, memorializing what services were performed, when
5 the workers arrived and departed, and whether there were problems.

6 71. Fourth, as USM warns in its Subcontractor Agreements, it refuses to provide payment
7 for completed services until receiving "properly executed Work Orders."

8 72. On information and belief, through the creation and review of these Work Orders and
9 other information it obtained from Ross and the Subs, USM knew or should have known that the scope
10 of services required regularly could not be completed within the timeframes outlined in the Schedules,
11 forcing the janitors to work even more hours than provided for in the Schedules.

12 73. On information and belief, through the creation and review of these Work Orders and
13 its daily supervision of the workers, Ross knew or should have known how many hours of labors and
14 what equipment were necessary to enable fulfillment of the services its requested.

15 74. In addition, Carlos Rivera, the owner of RC Maintenance, has reported that USM
16 regularly invoked the discount provisions of the Subcontractor Agreement and paid significantly less
17 than the amount promised under the Schedules he signed with USM. On information and belief, USM
18 often invoked its discount provisions with all of the Subs it engaged to provide janitorial services to
19 Ross Dress for Less and dd's DISCOUNTS stores throughout California.

20 75. On information and belief, USM regularly paid the Subs that it contracted with to
21 provide janitorial services at Ross and or dd's DISCOUNTS stores in California less than the amounts
22 outlined in the Schedules.

23 **Plaintiff Domingo**

24 76. In or around October 2010, RC Maintenance hired Plaintiff Domingo to provide
25 janitorial services to several retail stores throughout Alameda County and Marin County in connection
26 with the performance of a Subcontractor Agreement with USM.

1 77. Through approximately January 2012, Plaintiff Domingo cleaned a variety of stores, but
2 he dedicated most of his time to Ross Dress for Less and PETCO stores.

3 78. While his schedule varied, he regularly provided basic cleaning services for his
4 assigned Ross Dress for Less store(s) approximately three hours per day, several days per weeks, either
5 before or after the stores opened. In addition, approximately two times per month, he did overnight
6 floor buffering at his assigned Ross Dress for Less store(s) for approximately ten hours per night.

7 79. RC Maintenance instructed him to wear a name badge with the “USM an EMCOR
8 Company” logo. On information and belief, USM either provided this badge or instructed RC
9 Maintenance to design it.

10 80. RC Maintenance contracted with Plaintiff Domingo to pay him \$8 per hour on a
11 bimonthly basis. When he was paid, Plaintiff Domingo received a payroll check from RC
12 Maintenance for a half-month of work. These checks were often received weeks after the work was
13 completed and they often reflected fewer hours that Plaintiff Domingo had worked.

14 81. Plaintiff Domingo was regularly deprived of minimum, overtime, and regular wages.

15 82. Approximately five times before December 2011, RC Maintenance gave Plaintiff
16 Domingo a payroll check that Plaintiff Domingo could not cash because there were insufficient funds
17 in RC Maintenance’s bank account. These checks include one dated November 30, 2011, in the
18 amount of \$494.59 for Plaintiff Domingo’s work the first half of November and one dated November
19 4, 2011, in the amount of \$572 for Plaintiff Domingo’s work during the second half of September.

20 83. Plaintiff Domingo never received any cash or check for the work he performed from
21 mid-November 2011 through his last day of work in early January 2012.

22 84. When Plaintiff Domingo asked why he had not received the wages he had earned, RC
23 Maintenance’s owner Carlos Rivera explained that USM had not provided him with enough money to
24 run his business and pay his workers.

25 85. Mr. Rivera reports that, around November 2011, USM informed Mr. Rivera that the
26 company would not pay any money it owed RC Maintenance for services rendered until RC
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1 Maintenance resolved a separate wage claim that a previous RC Maintenance employee had filed with
2 the California Labor Commissioner against RC Maintenance, USM, and Michaels Stores.

3 86. Plaintiff Domingo resigned on or around January 7, 2012. In or around June 2012,
4 Plaintiff Domingo sent a demand letter to RC Maintenance requesting his unpaid wages and other
5 damages and penalties to which he was entitled under the California Labor Code.

6 87. However, by that time, RC Maintenance had gone out of business. According to
7 Mr. Rivera, USM destroyed his business by underpaying him for the services he had provided.

8 **Plaintiffs F. Vilchiz and J. Vilchez**

9 88. On or around February 25, 2012, New Generation, an unregistered Alameda County
10 based janitorial Sub, hired Plaintiff F. Vilchiz to clean Ross Dress for Less store #264, located at 4408
11 Las Positas Road in Livermore, California. New Generation agreed to pay Plaintiff F. Vilchiz a
12 monthly lump sum of \$625 for 2-3 hours of janitorial work in the morning before the Livermore Ross
13 Dress for Less store opened, seven days a week.

14 89. New Generation instructed Plaintiff F. Vilchiz that, each day, he must call and leave a
15 message at a specified phone number upon arriving at and leaving from work and must get the Ross
16 Dress for Less store manager to sign his "Daily Janitorial Service Sign-Off Sheet."

17 90. Plaintiff F. Vilchiz worked for a month and, at its end, received no compensation. His
18 New Generation manager told him that the company needed to keep his first month's wages as a
19 "deposit." Plaintiff F. Vilchiz never received this money.

20 91. Despite his initial month of unpaid work, Plaintiff F. Vilchiz continued working for
21 New Generation. For the rest of the year, he received \$625 in cash or by check at the end of each
22 month.

23 92. On or around May 30, 2012, New Generation hired Plaintiff J. Vilchez. Again, New
24 Generation agreed to pay \$625 per month for 2-3 hours of work per day, seven days per week.

25 93. Like Plaintiff F. Vilchiz, Plaintiff J. Vilchez received no compensation for his first
26 month of work, which New Generation kept as a "deposit." For the rest of the year, he too received
27 \$625 in cash or by check at each month's end.

1 94. The checks that Plaintiffs F. Vilchiz and J. Vilchez received from New Generation did
2 not reflect the hours they had worked.

3 95. As instructed, each day, Plaintiffs F. Vilchiz and J. Vilchez had a Ross Dress for Less
4 store Manager or Assistant Store Manager initial their Daily Janitorial Service Sign-Off Sheet, which
5 provided a place for the manager to indicate whether two men were present and whether they had
6 completed all required tasks on/in the sales floor, the customer service area, the restrooms, the fitting
7 rooms, the exterior of the store, the lounge, the offices, the door glass, and the mirrors.

8 96. In addition, both men had a Ross Dress For Less store manager initial their monthly
9 “Periodic Janitorial Service Sign-Off Sheet” whenever they had completed one of their required
10 additional tasks.

11 97. At the end of each month, Plaintiffs F. Vilchiz and J. Vilchez provided their completed
12 Daily Janitorial Service Sign-Off Sheets and Periodic Janitorial Service Sign-Off Sheets to New
13 Generation. On information and belief, as required by their Subcontractor Agreement, New
14 Generation regularly submitted copies of these signed “Work Orders” to USM.

15 98. After Plaintiffs F. Vilchiz and J. Vilchez completed their work in September 2012, New
16 Generation informed them that the company did not have the money to pay for their previous month’s
17 work. The men resigned in or around early October.

18 99. On information and belief, soon thereafter, New Generation went out of business.

19 **Ada Cañez**

20 100. In or around June 2009, Juan Aguilar (“Mr. Aguilar”) hired Plaintiff Cañez to perform
21 janitorial work in connection with USM’s contract(s) with sub Cleanmex. Plaintiff Cañez worked for
22 Cleanmex until approximately February 2010.

23 101. Throughout her employment with Cleanmex, Plaintiff Cañez cleaned the Ross Dress for
24 Less store in Redwood City, CA. She provided daily janitorial services at the store seven days a week,
25 generally arriving at approximately 6:45 am and leaving around 9:30 am. Periodically, a Ross Dress
26 for Less store manager required her to stay longer to re-do work that the manager did not think was
27 completed satisfactorily.

1 102. Cleanmex paid Plaintiff Cañez \$450 per month in cash. Routinely, Cleanmex paid
2 Plaintiff Cañez weeks after her wages were due. Mr. Aguilar reported that he did not receive sufficient
3 funds from USM to pay Plaintiff Cañez and his other employees and cover all of the other expenses
4 Cleanmex incurred in connection with its contract(s) with USM.

5 103. Regularly working at least 83 hours per month, her monthly compensation provided
6 Plaintiff Cañez less than minimum wage for each hour worked.

7 104. In or around February 2010, Cleanmex lost its contract with USM for the Redwood City
8 Ross Dress for Less store, and USM engaged sub Garcia's Janitorial to provide daily janitorial services
9 at the store.

10 105. Upon contracting with USM, Gabino Garcia ("Mr. Garcia") hired Plaintiff Cañez to
11 work for Garcia's Janitorial. Plaintiff Cañez worked for Garcia's Janitorial until approximately
12 February 2011.

13 106. Throughout her employment with Garcia's Janitorial, Plaintiff Cañez's schedule
14 remained essentially the same as it had been when she was working for Cleanmex: she cleaned the
15 Ross Dress for Less store in Redwood City, California seven days a week, generally arriving at
16 approximately 6:45 am and leaving around 9:30 am, though staying later as required by store
17 managers.

18 107. Occasionally, Garcia's Janitorial assigned Plaintiff Cañez to do janitorial work at other
19 Ross Dress for Less stores. For instance, sometimes Plaintiff Cañez filled in for another worker at the
20 Ross Dress for Less store in Mountain View.

21 108. Garcia's Janitorial agreed to pay Plaintiff Cañez \$450 per month, which Garcia's
22 Janitorial provided in cash. Again, this monthly pay provided Plaintiff Cañez significantly less than
23 minimum wage for each hour she worked.

24 109. Until approximately September 2010, Garcia's Janitorial paid Plaintiff Cañez \$450 in
25 cash each month. Then, Garcia's Janitorial began to fall behind on its monthly payments and
26 eventually stopped paying Plaintiff Cañez at all.

1 110. Garcia's Janitorial paid Plaintiff Cañez only about half of her compensation for
2 December 2010 and nothing for her work in January or February 2011.

3 111. Sometime in or around February 2011, Garcia's Janitorial terminated Plaintiff Cañez's
4 employment, informing her that Garcia's Janitorial no longer had a contract to clean Ross stores.

5 112. Soon after her termination, Mr. Garcia changed his contact information, and Plaintiff
6 Cañez has been unable to recoup her unpaid wages.

7 **Emilio Mendez & Candelaria Hurtado**

8 113. In or around July 2008, Martin S. Martinez dba Janitorial Professional Services
9 ("Janitorial Professional") hired Plaintiff Mendez to provide janitorial services at Ross Dress for Less
10 and dd's DISCOUNTS stores in connection with Janitorial Professional's contract(s) with USM. In or
11 around November 2009, Janitorial Professional hired Plaintiff Hurtado to provide janitorial services at
12 Ross Dress for Less and dd's DISCOUNTS stores in connection with Janitorial Professional's
13 contract(s) with USM.

14 114. Plaintiff Mendez and Plaintiff Hurtado are still currently employed by Janitorial
15 Professional, performing janitorial services at Ross Dress for Less and dd's DISCOUNTS stores in
16 connection with Janitorial Professional's contract(s) with USM.

17 115. Throughout their employment with Janitorial Professional, Plaintiff Mendez and
18 Plaintiff Hurtado have provided overnight floor wetwork and daily scope janitorial services at Ross
19 Dress for Less and dd's DISCOUNTS stores throughout the Los Angeles area.

20 116. Janitorial Professional pays both Plaintiff Mendez and Plaintiff Hurtado each a flat rate
21 once a month. Their monthly pay has fluctuated throughout their employment depending on their
22 assignments. Routinely, the pay that Plaintiff Mendez and Plaintiff Hurtado receive fails to
23 compensate them for all minimum and overtime wages they have earned.

24 117. The monthly checks that Plaintiff Mendez and Plaintiff Hurtado receive do not include
25 itemized wage statements or any indication of the number of hours they worked. On several occasions,
26 Plaintiff Mendez and Plaintiff Hurtado have not received their monthly checks until a month or two
27 after they earned their wages.

1 118. In addition, several of the checks that Plaintiff Mendez and Plaintiff Hurtado have
2 received from Janitorial Professional have bounced, and Janitorial Professional has not reimbursed
3 Plaintiff Mendez and Plaintiff Hurtado for the associated costs they have incurred.

4 119. When Plaintiff Mendez and Plaintiff Hurtado have worked shifts in length that entitle
5 them to meal or rest breaks, they have been prevented from taking breaks. For instance, when
6 performing overnight wet work, they have been locked into the stores overnight, unable to leave the
7 premises.

8 120. On information and belief, Janitorial Professional has not maintained workers'
9 compensation insurance throughout Plaintiff Mendez's and Plaintiff Hurtado's employment. As a
10 result, when Plaintiff Hurtado was injured at work, she could not obtain the compensation to which she
11 was entitled.

12 **CLASS ACTION ALLEGATIONS**

13 121. This action is maintainable as a class action pursuant to Federal Rule of Civil Procedure
14 23(a), (b)(2), (b)(3) and/or (c)(4) as to claims under Labor Code § 2810 and the UCL (Cal. Bus. &
15 Prof. Code §§ 17200-17208) that Ross knows or should know that the agreement(s) into which it
16 enters with USM for the provision of janitorial services at Ross Dress for Less and dd's DISCOUNTS
17 stores throughout California provide insufficient funds to enable USM to comply with all applicable
18 local, state, and federal law and regulations governing the janitorial services to be provided. In turn,
19 USM knows or should know that the subcontractor agreements into which it enters with the Subs for
20 the provision of janitorial services at Ross Dress for Less and dd's DISCOUNTS stores throughout
21 California provide insufficient funds to enable the Subs to comply with all applicable local, state, and
22 federal law and regulations governing the janitorial services to be provided.

23 122. Plaintiffs are representative of other janitorial workers who cleaned Ross Dress for Less
24 and/or dd's DISCOUNTS stores in connection with the performance of subcontractor agreements with
25 USM and are acting on behalf of their interests. The similarly situated employees are readily
26 identifiable and locatable through USM's, Ross's, and the Subs' records. The Class that Plaintiffs seek
27 to represent is defined as follows:

1 All persons who were employed by a Sub to clean a Ross Dress for Less
2 and/or dd's DISCOUNTS store in California in connection with the
3 performance of a subcontractor agreement with USM at any time from
4 four years prior to the date of filing of this action through the date of
5 trial.

6 During the Class Period, Class Members worked for Subs as janitorial workers cleaning Ross Dress for
7 Less and/or dd's DISCOUNTS stores in connection with the performance of (a) agreement(s) between
8 Ross and USM, which Ross knew or should have known did not provide sufficient funds to enable
9 USM to comply with all applicable local, state, and federal law and regulations governing the janitorial
10 services to be provided; and (b) subcontractor agreements between USM and Subs that USM knew or
11 should have known did not provide sufficient funds to enable the Subs to comply to comply with all
12 applicable local, state, and federal law and regulations governing the janitorial services to be provided.

13 123. While cleaning Ross Dress for Less and/or dd's DISCOUNTS stores in connection with
14 the performance of subcontractor agreements with USM, Plaintiffs and Class Members were not paid
15 for all of the hours they worked at the minimum wage, as required by I.W.C. Wage Order No. 5 § 4,
16 and Labor Code §§ 219, 221, 222, 223, 224, 1182.12, 1194, 1197, 1197.1, *et seq.* and/or in violation of
17 the UCL (Cal. Bus. & Prof. Code §§ 17200-17208); were encouraged, suffered, permitted, and/or
18 required to work in excess of forty (40) hours per week and/or eight (8) hours per day and/or on a
19 seventh consecutive day without being paid proper overtime compensation, as required by Wage Order
20 No. 5 § 3 and California Labor Code §§ 510, 1194, and/or in violation of the UCL (Cal. Bus. & Prof.
21 Code §§ 17200-17208); were not paid their agreed-upon hourly wage for each hour worked, as
22 required by Labor Code §§ 221-23 and their contracts with the Subs, and/or in violation of the UCL
23 (Cal. Bus. & Prof. Code §§ 17200-17208); were not provided meal periods of at least one half hour
24 after every five hours worked in a day in violation of California Labor Code §§ 226.7, 512, and Wage
25 Order 5 § 11, and/or in violation of the UCL (Cal. Bus. & Prof. Code §§ 17200-17208); were not
26 timely paid their total accrued compensation at time of termination of employment, in violation of
27 California Labor Code §§ 201-203, and/or in violation of the UCL (Cal. Bus. & Prof. Code §§ 17200-
28 17208); and were denied an itemized statement of total hours worked with each payment of wages, as

1 required by California Labor Code § 226, and/or in violation of the UCL (Cal. Bus. & Prof. Code
2 §§ 17200-17208). Plaintiffs are members of the class they seek to represent.

3 **Numerosity of Class**

4 124. The potential members of the class as defined are so numerous that joinder of all Class
5 Members is impracticable. Although the precise number of such employees is unknown, Plaintiffs
6 believe that there are at least 40 class members. The exact number is easily ascertained from USM's,
7 Ross's, and the Subs' records, which are presently within the control of USM, Ross, and the Subs.

8 **Existence and Predominance of Common Questions of Fact and Law**

9 125. There are questions of law and fact common to the class that predominate over any
10 questions affecting only individual members of the class, including without limitation, whether, as
11 alleged herein, (a) Ross has entered into a contract or agreement for the provision of labor or services
12 at a Ross Dress for Less and/or dd's DISCOUNTS store in California with a janitorial contractor,
13 where Ross knew or should have known that the contract or agreement did not include funds sufficient
14 to allow the contractor to comply with all applicable local, state, and federal law and regulations
15 governing the janitorial services to be provided and (b) USM has entered into a contract or agreement
16 for the provision of labor or services at a Ross Dress for Less and/or dd's DISCOUNTS store in
17 California with a janitorial contractor, where USM knew or should have known that the contract or
18 agreement did not include funds sufficient to allow the contractor to comply with all applicable local,
19 state, and federal law and regulations governing the janitorial services to be provided.

20 **Typicality**

21 126. The claims of the Plaintiffs are typical of the claims of the class they seek to represent.
22 Plaintiffs and Class Members have worked for Subs cleaning Ross Dress for Less and/or dd's
23 DISCOUNTS stores in connection with the performance of (a) agreement(s) between Ross and USM,
24 which Ross knew or should have known did not provide sufficient funds to enable USM to comply
25 with all applicable local, state, and federal law and regulations governing the janitorial services to be
26 provided; and (b) subcontractor agreements between Subs and USM that USM and/or Ross knew or
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1 should have known did not provide sufficient funds to allow the Subs to comply with all applicable
2 local, state, and federal law and regulations governing the janitorial services to be provided.

3 127. Plaintiffs and Class Members have the same rights under the California Labor Code to
4 be paid for all hours worked and to receive breaks and wage statements that comply with the law.
5 Plaintiffs and all Class Members were subjected to the same violations of their rights under California
6 law by USM and Ross and have suffered damages, including unpaid wages, resulting from USM's and
7 Ross's wrongful conduct. In addition, Plaintiffs and the Class Members are entitled to injunctive and
8 equitable relief, as permitted by law, because USM's and Ross's violations of state statutes have
9 harmed the Class Members and constitute an unfair business practice, especially when compared to
10 those competitors who comply with the law by providing sufficient funds when subcontracting for
11 janitorial services to allow the subcontractor to comply with all applicable local, state, and federal laws
12 or regulations governing the labor or services to be provided.

13 **Adequacy of Representation**

14 128. Class Representatives Plaintiffs Domingo, J. Vilchez, F. Vilchiz, Cañez, Mendez, and
15 Hurtado will fairly and adequately represent and protect the interests of the Class Members. Plaintiffs'
16 interests are not in conflict with those of the Class Members. Plaintiffs' counsel are competent and
17 experienced in litigating large employment class actions and other complex litigation matters.

18 **Superiority of Class Action**

19 129. A class action is superior to other available means for the fair and efficient adjudication
20 of this controversy. Each Class Member has been damaged and is entitled to recovery because
21 (a) Ross knows or should know that it has entered into agreements for labor or services at Ross Dress
22 for Less and/or dd's DISCOUNTS stores with prime janitorial contractor USM that do not provide
23 sufficient funds to allow USM to comply with all applicable local, state, and federal law and
24 regulations governing the janitorial services to be provided; and (b) USM and/or Ross know or should
25 know that USM has entered into agreements for labor or services at Ross Dress for Less and/or dd's
26 DISCOUNTS stores with Subs that do not provide sufficient funds to allow the Subs to comply with
27 all applicable local, state, and federal law and regulations governing the janitorial services to be
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1 provided. The damages suffered by individual Class Members are small compared to the expense and
2 burden of individual prosecution of this litigation. Individual plaintiffs may lack the financial
3 resources to vigorously prosecute a lawsuit against USM and Ross to recover damages stemming from
4 USM's and Ross's unlawful subcontracting practices. In addition, class litigation is superior because it
5 will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about
6 the legality of Ross's and USM's janitorial contracting practices.

7
8 **FIRST CAUSE OF ACTION**
Labor Code § 2810

9 130. Plaintiffs re-allege and incorporate all paragraphs above as though fully set forth herein.

10 131. Ross entered into contract(s) or agreement(s) for labor or services with prime contractor
11 USM for the provision of janitorial services at Ross Dress for Less and dd's DISCOUNTS stores
12 throughout California through USM's network of Subs. Ross knew or should have known that the
13 contract(s) or agreement (s) did not include sufficient funds to allow USM to comply with all
14 applicable local, state, and federal laws or regulations governing the labor or services to be provided.

15 132. On information and belief, the agreement(s) between Ross and USM do not satisfy all
16 the requirements of Labor Code § 2810(d).

17 133. In connection with the performance of its contract(s) and agreement(s) with Ross, USM
18 contracted with the Subs to perform janitorial services at Ross Dress for Less and/or dd's
19 DISCOUNTS stores throughout California. On information and belief, USM entered into these
20 subcontractor agreements knowing that they did not include sufficient funds to allow the Subs to
21 comply with all applicable local, state, and federal laws or regulations governing the janitorial services
22 provided. In the alternative, USM should have known when it entered into these subcontractor
23 agreements that the subcontractor agreements did not include sufficient funds to allow the Subs to
24 comply with all applicable local, state, and federal laws or regulations governing the janitorial services
25 provided.

26 134. The subcontractor agreements between USM and the Subs do not satisfy all the
27 requirements of Labor Code § 2810(d).

1 135. On information and belief, given the compensation that Ross was providing to USM,
2 Ross knew or should have known that, in order to fulfill its obligations under its contract(s) with Ross,
3 USM entered into agreements with Subs that did not include sufficient funds to allow the Subs to
4 comply with all applicable laws and regulations governing the janitorial services provided.

5 136. Plaintiffs and the Class Members have been injured as a result of violations of the wage
6 and hour laws and regulations, as set forth herein, in connection with the performance of the services
7 provided for by the insufficiently funded subcontractor agreements between USM and the Subs and
8 between USM and Ross.

9 137. Plaintiffs and the Class Members are aggrieved employees as defined in Labor Code
10 § 2810(g) and seek to recover their actual damages or statutory penalties, whichever is greater, and
11 injunctive relief, as alleged herein, as well as costs and reasonable attorney's fees from USM and Ross.

12 **SECOND CAUSE OF ACTION**
13 **Business and Professions Code § 17200, et seq.**

14 138. Plaintiffs re-allege and incorporate all paragraphs above as though fully set forth herein.

15 139. Based upon information and belief, Ross has engaged in unlawful, unfair and/or
16 fraudulent business acts and practices by entering into contracts or agreements with prime janitorial
17 contractor USM for services or labor to be performed at Ross Dress for Less and/or dd's DISCOUNTS
18 stores where Ross knew or should have known that the agreements did not include funds sufficient for
19 USM to comply with all applicable laws and regulations governing the janitorial services to be
20 provided, in violation of Labor Code § 2810.

21 140. Based upon information and belief, USM has engaged in unlawful, unfair and/or
22 fraudulent business acts and practices by entering into contracts or agreements with Subs for services
23 or labor to be performed at Ross Dress for Less and/or dd's DISCOUNTS stores where USM knew or
24 should have known that the agreements did not include funds sufficient for the Subs to comply with all
25 applicable laws and regulations governing the janitorial services to be provided, in violation of Labor
26 Code § 2810.

1 141. Ross's and USM's unlawful, unfair, and/or fraudulent business acts have caused harm
2 to Plaintiffs and are continuing.

3 142. Plaintiffs are informed and believe that USM and Ross engaged in the same or similar
4 unlawful, unfair, and/or fraudulent business acts against the Class Members described herein and that
5 Ross's and USM's conduct caused harm to the Class Members.

6 143. Consequently, USM and Ross are liable to compensate Plaintiffs and the Class
7 Members in restitution and should be enjoined from further violations of Labor Code § 2810.

8 **THIRD CAUSE OF ACTION**
9 **Violation of the Private Attorneys General Act ("PAGA")**
10 **[Cal. Labor Code § 2698 *et seq.*]**

11 144. Plaintiffs re-allege and incorporate all paragraphs above as though fully set forth herein.

12 145. Plaintiffs F. Vilchiz and J. Vilchez ("PAGA Plaintiffs") seek to recover the PAGA civil
13 penalties through a representative action as permitted by PAGA and the California Supreme Court in
14 *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims is
15 not required, but Plaintiffs may choose to seek certification of the PAGA claims.

16 146. Labor Code § 2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
17 pay period, per aggrieved employee for the initial violation of Labor Code § 2810 and two hundred
18 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

19 147. PAGA Plaintiffs have fully complied with the procedural requirements specified in
20 California Labor Code § 2699.3 as to each of the alleged violations. On September 4, 2013, PAGA
21 Plaintiffs sent via certified mail notice pursuant to Labor Code § 2699.3 to the California Labor &
22 Workforce Development Agency ("LWDA") of Plaintiffs' claims based on the alleged Labor Code
23 violations, including the facts and theories supporting these claims, as set forth in the letter attached as
24 Exhibit F. The LWDA has provided no notice to Plaintiffs within 33 calendar days of the postmark
25 date of that notice regarding its intention to investigate or not investigate Plaintiffs' claims.
26 Accordingly, Plaintiffs may commence this action pursuant to Labor Code section 2699.

27 148. Enforcement of statutory provisions to protect workers and to ensure proper and prompt
28 payment of wages is a fundamental public interest. PAGA Plaintiffs' successful enforcement of

1 important rights affecting the public interest will confer a significant benefit upon the general public.
2 PAGA Plaintiffs are incurring a financial burden in pursuing this action, and it would be against the
3 interests of justice to require the payment of attorneys' fees and costs from any recovery obtained,
4 pursuant to, *inter alia*, California Labor Code § 2699.

5 149. As a result of the violations alleged, PAGA Plaintiffs, as aggrieved employees on behalf
6 of themselves and other aggrieved employees, seek all civil penalties available pursuant to California
7 Labor Code § 2699, including all civil penalties, attorneys' fees, expenses, and costs of suit.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs seeks the following relief:

10 1. Certification of Plaintiffs' claims as a class action, pursuant to Federal Rule of Civil
11 Procedure 23, on behalf of the proposed class;

12 2. Class notice to all janitorial employees who cleaned Ross and/or dd's DISCOUNTS
13 stores in California in connection with the performance of a subcontractor agreement with USM from
14 four years prior to the filing of this Complaint through the trial of this action pursuant to the statute of
15 limitations on the UCL claims, California Business & Professions Code § 17208;

16 3. A declaratory judgment that USM has violated Labor Code § 2810 as to Plaintiffs and
17 the Class Members;

18 4. Monetary damages, including all unpaid wages and interest thereon;

19 5. Restitution for unpaid wages;

20 6. Injunctive relief pursuant to Business and Professions Code, sections 17202 and 17203
21 and Labor Code § 2810;

22 7. An award to Class Representative Plaintiffs and the Class Members of reasonable
23 attorneys' fees and costs, pursuant to California Civil Procedure Code § 1021.5, California Labor Code
24 § 2810, and/or other applicable law; and,

25 8. An award of such other and further relief as this Court may deem appropriate.

26 **DEMAND FOR JURY TRIAL**

27 Plaintiffs hereby demand trial by jury to the extent authorized by law.

1 Dated: April 16, 2014

Respectfully submitted,

2 GOLDSTEIN, BORGAN, DARDARIAN & HO

3 /S/ Laura L. Ho

4 Laura L. Ho

5 Attorneys for Plaintiffs

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