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1 **ACKERMANN & TILAJEF, P.C.**
2 Craig J. Ackermann, CA Bar No. 229832
3 cja@ackermanntilajef.com
4 1180 South Beverly Drive, Suite 610
5 Los Angeles, California 90035
6 Telephone: (310) 277-0614
7 Facsimile: (310) 277-0635

8 **LAW OFFICE OF TATIANA HERNANDEZ P.C.**
9 Tatiana Hernandez, CA Bar No. 255322
10 tatiana@thawpc.com
11 1180 South Beverly Drive, Suite 610
12 Los Angeles, California 90035
13 Telephone: (213) 909-4248
14 Facsimile: (310) 388-0639

15 *Attorneys for Plaintiff, the Putative Class, and the PAGA Aggrieved Employees*

16
17 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18
19 **FOR THE COUNTY OF SAN BERNARDINO**

20 **DIEGO CARDENAS QUINTERO**, individually
21 and on behalf of all others similarly situated,

22 **PLAINTIFF,**

23 **v.**

24 **MISSION LANDSCAPE COMPANIES, INC.**, a
25 California Corporation,

26 **DEFENDANT.**

27 200730-0331

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 02 2020

LaShondra Richardson

CASE NO. **CIV DS 2014754**

**CLASS ACTION AND PAGA
REPRESENTATIVE ACTION COMPLAINT
FOR DEFENDANT'S VIOLATION OF
LABOR CODE SECTIONS 226(A) AND
CALIFORNIA'S PRIVATE ATTORNEY
GENERAL ACT OF 2004, LABOR CODE
SECTIONS 2699 ET SEQ.**

1 Plaintiff DIEGO CARDENAS QUINTERO, ("Plaintiff"), on behalf of himself and all
2 other similarly situated individuals, complains and alleges as follows:

3 **OVERVIEW OF CLAIMS**

4 1. Plaintiff brings this action on behalf of himself and other similarly situated
5 employees in California, against Defendant Mission Landscape Companies, Inc. ("Defendant")
6 and Does 1 to 100 (collectively, "Defendants") for alleged violations of Section 226 of the
7 California Labor Code and California's Private Attorney General Act of 2004, Labor Code section
8 2698 et seq. ("PAGA") based on Defendants' failure to provide compliant wage statements
9 pursuant to Labor Code § 226(a). As a result of the foregoing, Defendants have violated California
10 statutory laws as described below.

11 **VENUE**

12 2. Venue is proper in this county under section 395.5 of the California Code of Civil
13 Procedure as the allegations herein took place within San Bernardino County. Further, Defendants
14 keep and maintain a place of business in Ontario, California. Venue is therefore proper in San
15 Bernardino County.

16 **JURISDICTION**

17 3. Defendant Mission Landscape Companies, Inc. is within the jurisdiction of this
18 Court. Defendant transacts its landscaping and construction business in Southern California and
19 maintains its business offices in Ontario, California in San Bernardino County. Thus, Defendant
20 has obtained the benefits of the laws of the State of California. In addition, Plaintiff asserts no
21 claims arising under federal law. Rather, Plaintiff brings causes of action based solely on, and
22 arising from, California law.

23 **THE PARTIES**

24 4. Plaintiff Diego Cardenas Quintero resides in Ontario, California in San Bernardino
25 County of California. During the Class Period (i.e., one year prior to the filing of this Complaint
26 through the present) and during the PAGA Covered Period (i.e., from March 18, 2019 to the
27 present), Defendant employed Plaintiff as an hourly, non-exempt worker for Defendants at
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1 Defendant Mission Landscape Companies, Inc.'s Ontario, California location. Specifically,
2 Plaintiff was employed by Defendant from approximately June 2018 to December 2019. During
3 the PAGA Covered Period and the Class Period, Plaintiff and the putative class members and
4 PAGA aggrieved employees were not issued compliant wage statements that included the address of
5 the legal entity that was their employer in violation of Labor Code section 226(a)(8)

6 5. Defendant Mission Landscape Companies, Inc. is a California Corporation that
7 keeps and maintains a regional headquarters in Irvine, California. However, Defendant also
8 maintains business offices throughout southern California, including in Ontario. Defendant is a
9 landscaping and construction company, providing landscape development and maintenance among
10 other services.

11 FACTUAL ALLEGATIONS

12 6. Defendants operate and, at all times during the Class Period and PAGA Covered
13 Period, have done and does business in California by providing construction and landscaping
14 services in the State of California to its contracted clients. Defendants, in the course of operating
15 their business in California during the class period and PAGA Covered Period, employed Plaintiff,
16 the putative class members, and the PAGA aggrieved employees, as defined below.

17 7. Plaintiff, the putative class members and the aggrieved employees are, and at all
18 times relevant to this lawsuit, have been non-exempt employees within the meaning of California
19 Labor Code § 500, *et seq.*, and the rules and regulations of the California IWC Wage Orders.

20 8. Since at least March 18, 2019, Plaintiff, the PAGA aggrieved employees and the
21 putative class members have been receiving non-compliant wage statements, in violation of
22 California Labor Code § 226(a)(8). Specifically, Plaintiff, the PAGA aggrieved employees and the
23 putative class members have received wage statements during the relevant time period that did not
24 contain their employer's address, as required by section 226(a) subsection (8).

25 9. As a result of Defendants' violation of Plaintiff and the putative class members'
26 rights under section 226(a) California Labor Code, Plaintiff and the putative class members were
27 unable to promptly and easily determine from the wage statements alone the information required
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1 by Labor Code § 226(a) subsection (8).

2 10. California Labor Code section 226(e) states:

3 (1) An employee suffering injury as a result of a knowing and intentional failure by
4 an employer to comply with subdivision (a) is entitled to recover the greater of all
5 actual damages or fifty dollars (\$50) for the initial pay period in which a violation
6 occurs and one hundred dollars (\$100) per employee for each violation in a
subsequent pay period, not to exceed an aggregate penalty of four thousand dollars
(\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

7 11. California Labor code section 226.3 states:

8 12. Any employer who violates subdivision (a) of Section 226 shall be subject to a civil
9 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
10 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
11 citation, for which the employer fails to provide the employee a wage deduction statement or fails
12 to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in
13 this section are in addition to any other penalty provided by law.

14 13. As explained in detail above, Defendant failed to provide Plaintiff and the other
15 Aggrieved Employees with complete itemized wage statements. Accordingly, Plaintiff and the
16 other Aggrieved Employees may also recover Labor Code § 226.3 penalties for Defendant's
17 violations of Labor Code § 226(a). See *Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015)
18 2015 WL 1137151, at *7 ["the weight of authority counsels that violations of Section 226.3 may
19 be the basis of a PAGA claim."]; *Pedroza v. PetSmart, Inc.*, 2012 WL 9506073, at *6 (C.D. Cal.
20 June 14, 2012) ("Lab.Code § 226.3 merely provides that failure to perform actions mandated by §
21 226(a) may trigger civil penalties.")

22 14. In violation of California law, Defendants knowingly and intentionally issued
23 Plaintiff and the putative class members inaccurate wage statements in violation of California
24 Labor Code § 226(a), triggering statutory penalties under section 226(e) and civil penalties under
25 226.3. Defendants' act in doing so was willful, intentional, deliberate and with an improper
26 motive amounting to malice and in conscious disregard of the rights of Plaintiff and the putative
27 class members, thereby entitling Plaintiff and the aggrieved employees to recover nominal, actual,
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1 compensatory, and all damages so allowable under California law, in amount according to proof at
2 trial.

3 15. Plaintiff and the aggrieved employees do not need to establish intent or injury to
4 prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant &*
5 *Assocs., LLC* (2017) 15 Cal. Cal. App. 4th 773, 788 (“hold[ing] a plaintiff seeking civil penalties
6 under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and
7 ‘knowing and intentional’ requirements of section 226(e)(1).”); *Willner v. Manpower Inc.*, 35 F.
8 Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff]
9 needs to establish is a violation of section 226(a), which she has done, as discussed above.”);
10 *McKenzie v. Fed. Exp. Corp.*, 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the
11 purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and
12 need not establish a Section 226(e) injury.”).

13 CLASS ACTION ALLEGATIONS

14 16. **Proposed Class:** Plaintiff bring the claims alleged herein as a class action pursuant
15 to California Rule of Civil Procedure section 382 on behalf of a “Class” consisting of the
16 following similarly situated individuals:

17 *All individuals who were employed by Mission Landscape, Inc. in California as*
18 *hourly, non-exempt employees, and who received at least one wage statement*
19 *from Defendant Mission Landscape, Inc., at any time from one year prior to the*
filing of this Complaint through the present (the “Class Period”).

20 17. Plaintiff reserves the right to amend or modify the class description with greater
21 specificity or further division into subclasses or limitation to particular issues.

22 18. This action has been brought and may be maintained as a class action pursuant to
23 California Code of Civil Procedure section 382 because there is a well-defined community of
24 interest among numerous persons who comprise a readily ascertainable class.

25 a. **Numerosity and Ascertainability:** The potential number of putative class
26 members as defined above is so numerous that joinder of all members would be unfeasible
27 and impractical. The disposition of their claims through this class action will benefit both
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1 the parties and this Court. The number of putative class members estimated to be greater
2 than 100 individuals, the identify of and membership in the putative class can readily be
3 ascertained from employment records maintained by Defendant.

4 **b. Superiority:** The nature of this action and the nature of laws available to Plaintiff
5 make use of the class action format particularly efficient and appropriate under the
6 circumstances presented in this lawsuit. By establishing a technique whereby the claims of
7 many individuals' claims can be resolved at the same time, the class both eliminates the
8 possibility of repetitious litigation and provides small-value claimants with a method of
9 obtaining redress for claims which would otherwise be too small to warrant individual
10 litigation. Class action treatment will allow a large number of similarly situated persons to
11 prosecute their common claims in a single forum, simultaneously, efficiently, and without
12 the unnecessary duplication of effort and expense that numerous individual actions would
13 require. The actual monetary recovery due to most of the individual putative class
14 members is likely to be small, and the burden and expense of individual litigation would
15 make it prohibitive for individual putative class members to seek relief. A class action will
16 serve an important public interest by permitting such individuals to effectively pursue
17 recovery of the sums owed to them. Further, class litigation prevents the potential for
18 inconsistent or contradictory judgments if individual putative class members were to
19 litigate separately. Finally, class litigation will preserve valuable judicial resources by
20 having all issues decided by one court in once venue.

21 **c. Well-Defined Community of Interest:** Plaintiff and the putative class meet the
22 established standard for class certification since the class is well defined and otherwise
23 meets the standards for class certification (*See e.g., Lockheed Martin Corp. v. Superior*
24 *Court*, 29 Cal.4th 1096 (2003)), as follows:

25 **d. Typicality:** the claims of Plaintiff are typical of the putative class because all
26 members of the putative class sustained substantially identical injuries and damages arising
27 out Defendants' policies, practices, and common course of conduct in violation of
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1 California's law and the injuries and damages of all putative class members were caused by
2 Defendants' wrongful conduct in violation of California law. Specifically, all putative
3 class members received deficient wage statements. There are no facts known to Plaintiff
4 that would subject him to defenses unique from those of the applicable to the putative class

5 e. **Adequacy:** Plaintiff is an adequate representative of the putative class he seeks to
6 represent. He has agreed to fairly protect the interests of the putative class. He is aware of
7 the duties required of her in acting as the class representative. He has no interests
8 antagonistic to the putative class. Finally, he has agreed to vigorously pursue this suit
9 through her attorneys who are competent, skilled and experienced in class action litigation
10 in state and federal courts in both California and in the United States more broadly.

11 f. **Predominant Common Questions of Law and/or Fact Include:**

- 12 i. Whether Defendants provide deficient wage statements to Plaintiff and the
13 putative class in violation of Labor Code §§ 226(a)(8);
14 ii. Whether Defendants are liable for the labor law violations alleged in this
15 Complaint under Labor Code section 226(e); and
16 iii. Whether Plaintiff and the putative class are entitled to attorney fees;

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PROVIDE COMPLIANT WAGE STATEMENTS**

19 **[Cal. Labor Code §§ 226(a)(8) and 226(e)]**

20 **On Behalf of Plaintiff and the Putative Class Members Against Defendant**

21 19. Plaintiff and the putative class re-allege and incorporate the foregoing paragraphs as
22 though full set forth herein.

23 20. At all relevant times, Plaintiff and the putative class were non-exempt employees
24 covered by California Labor Code §§ 226.

25 21. California Labor Code § 226(a) states:

26 An employer, semimonthly or at the time of each payment of wages, shall furnish to his or
27 her employee, either as a detachable part of the check, draft, or voucher paying the
28 employee's wages, or separately if wages are paid by personal check or cash, an accurate
itemized statement in writing showing (1) gross wages earned, (2) total hours worked by

1 the employee, except as provided in subdivision (j), (3) the number of piece-rate units
2 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
3 deductions, provided that all deductions made on written orders of the employee may be
4 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
5 period for which the employee is paid, (7) the name of the employee and only the last four
6 digits of his or her social security number or an employee identification number other than
7 a social security number, (8) the name and address of the legal entity that is the employer
8 and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section
1682, the name and address of the legal entity that secured the services of the employer,
and (9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee and, beginning July 1, 2013,
if the employer is a temporary services employer as defined in Section 201.3, the rate of
pay and the total hours worked for each temporary services assignment.

9 22. Based on the above allegations incorporated by reference, Defendants have violated
10 Labor Code § 226(a)(8) by failing to provide compliant itemized wage statements to Plaintiff and
11 the putative class members that included their employing entity's legal address. *See Cicairos v.*
12 *Summit Logistics, Inc.* (2005) 133 Cal. App. 4th 949, 961 (employers that do not list the defendant
13 employer's name and address...are not adequate itemized wage statements.”).

14 23. Labor Code § 226(e) states:

15 An employee suffering injury as a result of a knowing and intentional failure by an
16 employer to comply with subdivision (a) is entitled to recover the greater of all
17 actual damages or fifty dollars (\$50) for the initial pay period in which a violation
18 occurs and one hundred dollars (\$100) per employee for each violation in a
subsequent pay period, not to exceed an aggregate penalty of four thousand dollars
(\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

19 24. Here, Defendant knowingly and intentionally failed to include required information
20 on Plaintiff's and the putative class members' wage statements as required by Labor Code § 226(a)
21 subsection (8).

22 25. Defendants' failure to provide accurate itemized wage statements resulted in
23 Plaintiff and putative class members suffering legal injury damages insofar as he and they were not
24 able to discern the address of the legal entity that employed them from the wages statements alone
25 and they were, therefore incomplete and confusing and deficient. *See Elliot v. Spherion Pac. Work*
26 *LLC*, 572 F. Supp. 2d 1169, 1181 (C.D. Cal. 2008) (noting that there was no injury where
27 plaintiff did not even allege confusion). *Perez v. Safety-Kleen Systems, Inc.*, 2007 U.S. Dist.
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1 LEXIS 48308, 2007 WL 1848037 (N.D. Cal. June 27, 2007); *Cicairos v. Summit Logistics, Inc.*,
2 133 Cal.App.4th 949, 35 Cal. Rptr. 3d 243 (Cal. Ct. App. 2005); *Wang v. Chinese Daily News,*
3 *Inc.*, 435 F.Supp.2d 1042 (C.D. Cal. 2006).

4 26. Labor Code § 226.3 states:

5 Any employer who violates subdivision (a) of Section 226 shall be subject to a civil
6 penalty in the amount of two hundred fifty dollars (\$250) per employee per
7 violation in an initial citation and one thousand dollars (\$1,000) per employee for
8 each violation in a subsequent citation, for which the employer fails to provide the
9 employee a wage deduction statement or fails to keep the records required in
10 subdivision (a) of Section 226. The civil penalties provided for in this section are in
11 addition to any other penalty provided by law.

12 27. In violation of California law, Defendants knowingly and intentionally issued
13 Plaintiff and the putative class inaccurate wage statements in violation of California Labor Code §
14 226(a), triggering penalties under both sections 226(e) and 226.3. Defendants' act in so doing was
15 willful, intentional, deliberate and with an improper motive amounting to malice and in conscious
16 disregard for the rights of Plaintiff and the putative class, thereby entitling Plaintiff and the
17 putative class to recover nominal, actual, compensatory, and all damages so allowable under
18 California law, in amounts according to proof at time of trial.

19 28. As a direct and proximate result of the aforementioned violations, Plaintiff and the
20 putative class have been damaged by Defendants in an amount according to proof at time of trial
21 and seek the amount of the penalties specified in Section 226(e) for Plaintiff and each member of
22 the putative Class, as well as an award of attorney fees and costs set forth below.

23 **SECOND CAUSE OF ACTION**

24 **CLAIM FOR CIVIL PENALTIES UNDER CALIFORNIA'S LABOR CODE PRIVATE** 25 **ATTORNEY GENERAL ACT**

26 **[Cal. Labor Code §§ 2698-2699.5; 226(A), AND 226.3]**

27 **On Behalf of the LWDA and the Aggrieved Employees Against Defendant**

28 29. Plaintiff, on behalf of himself and all Aggrieved employees, re-alleges and
incorporates by reference each and every allegation set forth in the preceding paragraphs.

30. Plaintiff is an aggrieved employee as defined in California Labor Code section

1 2699(c) because at all relevant times during his employ with Defendants, he was denied compliant
2 wage statements that included Defendant's legal address. Plaintiff seeks to represent the LWDA
3 and the other current and former aggrieved employees, defined as

4 *"All individuals who were employed by Mission Landscape, Inc. in California as*
5 *hourly, non-exempt employees, and who received at least one wage statement*
6 *from Defendant Mission Landscape, Inc., at any time from March 18, 2019 to the*
present (the "PAGA Covered Period").

7 31. Plaintiff has fully and completely exhausted and/or will have fully and completed
8 and exhausted his administrative remedies under PAGA in order to proceed with the PAGA claim.
9 On March 18, 2020, Plaintiff filed his PAGA Notice online with the Labor Workforce
10 Development Agency ("LWDA") and sent a letter by certified mail to Defendant Mission
11 Landscaping setting forth the facts and theories of the violations alleged against Defendants, as
12 prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00
13 filing fee with the LWDA by regular mail. Pursuant to Labor Code § 2699.3(a)(2)(A), Plaintiff
14 will have satisfied his administrative pre-requisites after sixty-five (65) calendar days of the
15 postmark date of the PAGA notice have elapsed. Defendant took no steps to cure its violation of
16 Labor Code section 226(a)(8).

17 32. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §
18 2699, *et. seq.*, because of Defendant's violations of Labor Code § 226(a)(8).

19 33. Plaintiff seeks to recover the PAGA civil penalties through a representative action
20 as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46
21 Cal.4th 969 (class certification procedures do not apply to of PAGA claims) .

22 34. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
23 all other Aggrieved employees are entitled to penalties in an amount to be shown at the time of
24 trial subject to the following formula:

25 \$100 for the initial violation per employee per pay period; and

26 \$200 for each subsequent violation per employee per pay period.

27 35. As noted, under California Labor Code § 2699(f)(2) Defendant is subject to a civil
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1 penalty of \$100 per pay period penalty for each employee for each initial violation of the
2 aforementioned labor code violations, and \$200 for each subsequent pay period where the
3 violation occurred. Pursuant to *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209
4 (2008), “[u]ntil the employer has been notified that it is violating a Labor Code provision
5 (whether or not the Commissioner or court chooses to impose penalties), the employer cannot be
6 presumed to be aware that its continuing underpayment of employees is a “violation” subject to
7 penalties. However, after the employer has learned its conduct violates the Labor Code, the
8 employer is on notice that any future violations will be punished just the same as violations that
9 are willful or intentional - *i.e.*, they will be punished at twice the rate of penalties that could have
10 been imposed or that were imposed for the initial violation.” *Id.*

11 36. An employer is deemed to have notice of the illegality of its conduct triggering
12 the heightened penalties under *Amaral* once it received either a lawsuit or written notice from the
13 Plaintiff of the alleged violation. *See In re Taco Bell Wage & Hour Actions* 2016 U.S. Dist.
14 LEXIS 48557, No. 1:07-cv-01314-SAB at *24-25 (E.D. Cal. Apr. 8, 2016) (holding that the
15 subsequent penalties under PAGA applied for each pay period following the filing of the lawsuit
16 because “[a]fter being served with this lawsuit, Defendants would have been on notice that their
17 autopay policy of only paying one half hour of compensation for each missed or short lunch
18 period would be a violation of California law... As of this date, Defendants would be on notice
19 of the violation and further violations should be subject to subsequent violation penalties.”).

20 37. Accordingly, Plaintiff seeks PAGA penalties of \$100 per aggrieved employee per
21 pay period during the PAGA Covered Period up until March 18, 2020, and \$200 per aggrieved
22 employee per pay period for each pay period after March 18, 2020 until the violation described
23 herein is remedied.

24 38. Pursuant to Labor Code section 2699(i), these penalties shall be allocated seventy-
25 five percent (75%) to California’s Labor and Workforce Development Agency (LWDA) and
26 twenty-five percent (25%) to the aggrieved employees.

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1 **PRAYER FOR RELIEF**

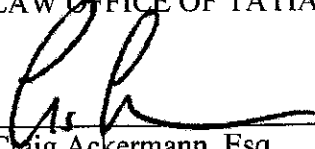
2 **WHEREFORE**, Plaintiff prays for relief as follows:

- 3 A. For an Order certifying this case as a class action and certifying the putative
4 class, as defined above;
- 5 B. For statutory and civil penalties to the Class and the PAGA aggrieved employees
6 pursuant to California Labor Code sections 226(a) and 226(e) and 2699 et seq., relied
7 upon in this Complaint;
- 8 C. For an award to Plaintiff of costs of the suit under Labor Code sections 226(h) and
9 2699;
- 10 D. For an award to Plaintiff of attorney fees pursuant to Labor Code sections 226(h) and
11 2699;
- 12 E. For an order appointing Plaintiff as the class representative and Plaintiff's counsel as
13 class counsel for all classes and subclasses included in this Complaint; and
- 14 F. For such other and further relief as this Court deems just and proper.

15
16 Dated: June 30, 2020

Respectfully submitted,

17 ACKERMANN & TILAJEF, P.C.
18 LAW OFFICE OF TATIANA HERNANDEZ P.C.

19 
20 _____
21 Craig Ackermann, Esq.
22 Tatiana Hernandez, Esq.
23 *Attorneys for Plaintiff, the Putative Class, and the*
24 *PAGA Aggrieved Employees*