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THE SUPERIOR COURT
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CASE NUMBER:

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17 *Attorneys for Plaintiff and all others similarly situated***18 SUPERIOR COURT OF THE STATE OF CALIFORNIA****19 FOR THE COUNTY OF ALAMEDA**20 BRIGIDO BELTRAN, an individual, on
21 behalf of the State of California, as a private
22 attorney general, and on behalf of all
23 Aggrieved Employees,

24 Plaintiff,

25 v.

26 LAZ PARKING CALIFORNIA LLC, a
27 California Limited Liability Company; and
28 DOES 1 to 50, inclusive,

29 Defendants.

30 CASE NO. _____

**31 PAGA REPRESENTATIVE ACTION
32 COMPLAINT FOR:**

- 33 1. Penalties Pursuant to PAGA (Labor Code §
-
- 2699,
- et seq.*
-)

1 Plaintiff BRIGIDO BELTRAN (“Plaintiff”) brings this action against Defendants LAZ PARKING
2 CALIFORNIA LLC, a California Limited Liability Company and DOES 1 to 50 (collectively, “LAZ” or
3 “Defendants”) as a PAGA representative action under the Labor Code Private Attorneys General Act of
4 2004, § 2699, *et seq.* (“PAGA”), and alleges as follows upon information and belief:

5
6 **I. INTRODUCTION**

7 1. This is a representative action brought pursuant to Labor Code § 2699, *et seq.*, on behalf
8 of the State of California and the groups of “Aggrieved Employees” defined as:

9 *All individuals who were employed by Defendants in California as hourly, non-exempt employees*
10 *in the position of valets or similar positions from August 24, 2019, i.e., one year prior to the*
11 *submission of Plaintiff’s LWDA letter, through the earlier of the date of settlement approval or*
12 *trial (the “PAGA Period”), who worked at least one shift in excess of three and a half hours for*
13 *Defendant LAZ during the at a parking lot or valet service location operated by Defendants as*
14 *the sole employee stationed at that location during such shift(s) (the “Aggrieved Employees”).*

15
16 **II. JURISDICTION AND VENUE**

17 2. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant
18 to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by
19 virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds
20 \$25,000, and because each cause of action asserted arises under the laws of the State of California or is
21 subject to adjudication in the courts of the State of California.

22
23 3. This Court has personal jurisdiction over Defendants because Defendants have caused
24 injuries in the county in which this Court is situated through their acts, and by their violation of the
25 California Labor Code and California state common law.

26 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil
27 Procedure § 395. Defendants operate within California and does business within the county that this Court
28 is situated. The unlawful acts alleged herein have a direct effect on Plaintiff and all employees within the
29 State of California and this County.

30
31 **III. THE PARTIES**

32 5. Plaintiff BRIGIDO BELTRAN is a resident of California who was employed by
33 Defendants during the PAGA Period. Plaintiff is an Aggrieved Employee. Plaintiff began working for

1 LAZ in 2012 in Oakland, California.

2 6. Aggrieved Employees, including Plaintiff, at all times pertinent hereto, have been
3 classified as employees by Defendants. Defendants have hired employees to work in California during the
4 Class Period.

5 7. Upon information and belief, Plaintiff and all other Aggrieved Employees are covered by
6 California Industrial Welfare Commission Occupational Wage Order No. 9-2001.

7 8. Defendant LAZ PARKING CALIFORNIA LLC is a California limited liability company
8 that has operated within the State of California at all relevant times. LAZ is primarily in the business of
9 operating parking lots and/or valet parking services at hundreds of locations throughout the State of
10 California, including airports, hotels, restaurants, hospitals and other businesses.

11 9. The true names and capacities, whether individual, corporate, associate, or otherwise, of
12 Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues
13 Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and
14 believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally
15 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to
16 amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as
17 DOES when such identities become known.

18 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in
19 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
20 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the
21 other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of
22 Plaintiff and the other Aggrieved Employees.

23 **IV. FACTUAL BACKGROUND**

24 11. Plaintiff and the other Aggrieved Employees were and are employed by Defendants to
25 work at their many parking lot and valet locations, performing tasks such as monitoring parking lots and
26 parking and retrieving vehicles for customers.

27 12. Aggrieved Employees are or were all hourly, non-exempt employees working for and paid
28 by Defendants.

29 ///

1 **A. Defendants Denied Aggrieved Employees Compliant Rest and Meal Periods**

2 13. Labor Code § 512 and IWC Wage Order No. 9 § 11 both require California employers to
3 authorize, permit, and provide employees with thirty (30) minute uninterrupted and duty-free meal periods
4 on or before the 5th hour of work, and a second such meal period before the 10th hour of work. IWC Wage
5 Order 9-2001 § 11 prohibits an employer from “employ[ing] any person for a work period of more than
6 five (5) hours without a meal period of not less than 30 minutes.”
7

8 14. IWC Wage Order 9-2001 § 12 requires California employers to authorize, permit, and
9 provide all employees to take ten (10) minute duty free rest periods for every major fraction of four hours
10 worked.

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

15 16. During the PAGA Period, Defendants denied Aggrieved Employees the opportunity to take
16 uninterrupted, duty-free rest periods and meal periods as required by California law.

17 17. Specifically, Defendants regularly assigned Aggrieved Employees to work shifts alone at
18 their work posts without any other coworkers. During such solo shifts, nobody has been present to relieve
19 Aggrieved Employees of their duties for such breaks or to cover their work duties so that they may take a
20 rest or meal break.
21

22 18. Even during the limited occasions when Defendants would send a second employee to
23 work sites, Aggrieved employees were regularly prohibited by Defendants to leave the work area and/or
24 were required and instructed to attend to customers needing assistance with parking or retrieving vehicles
25 during their meal and rest period time, resulting in non-compliant and/or interrupted rest and meal periods.
26 As a result, Aggrieved Employees were prevented from taking compliant, uninterrupted, duty-free rest
27 breaks and/or meal periods of sufficient duration. *See Augustus v. ABM Security Services, Inc.* (2016) 2
28 Cal. 5th 257, 269 (concluding that “during rest periods employers must relieve employees of all duties
29 and relinquish control over how employees spend their time.”). In *Augustus*, the court expressly rejected
30 the employer’s assertion that it could provide an on-duty rest period to employees who worked as security
31 guards and further explained “that employers [must] relinquish any control over how employees spend
32 their break time, and relieve their employees of all duties.” *Id.* at 273.
33

1 19. In addition, Defendants further violated Labor Code §§ 226.7, 1198 and Section 12 of IWC
2 Wage Order No. 9-2001 on each occasion that an Aggrieved employee’s meal or rest period was subject
3 to actual or even potential interruption by customers needing assistance with parking or retrieving vehicles
4 or other work duties, during all shifts over 3.5 hours.

5 20. The *Brinker* Court explained in the context of rest breaks that employer liability attaches
6 from adopting an unlawful policy:
7

8 An employer is required to authorize and permit the amount of rest break time called for
9 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
10 policy authorizing and permitting only one rest break for employees working a seven-hour
11 shift when two are required—it has violated the wage order and is liable.

12 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033.

13 21. Since Defendants failed to offer Aggrieved Employees the opportunity to receive
14 compliant, off-duty, ten-minute rest periods, “the court may not conclude employees voluntarily chose to
15 skip . . . breaks.” *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015) (“[i]f an
16 employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees
17 voluntarily chose to skip those breaks.”); accord *Brinker, supra*, 53 Cal. 4th at 1033 (“No issue of waiver
18 ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an
19 employee has no opportunity to decline to take it.”). Further, even an employer who maintains an
20 otherwise compliant rest period policy, “reminded their employees of their availability—and the
21 importance—of taking breaks on a daily basis, and even went so far as to conduct regular audits to ensure
22 that employees were being offered rest breaks” will still be liable for rest period violations if the employees
23 were provided non-compliant rest periods. *Amaro v. Gerawan Farming, Inc.*, 2016 U.S. Dist. LEXIS
24 66842 * (E.D. Cal. May 19, 2016) *aff’d* *Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS 112540, 2016 WL
25 4440966, at *11 (E.D. Cal. Aug. 22, 2016); *rev. denied* by 9th Cir. Case No. 0:16-23f-80120 (9th Cir.
26 Nov. 16, 2016).

27 22. Labor Code § 226.7 and IWC Wage Order 9-2001 further obligates employers to provide
28 an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation”
29 for each workday that a compliant meal or rest period is not provided.
30

31 23. Defendants failed to compensate Aggrieved Employees with one (1) hour of premium pay
32 at their regular rate of compensation when they were not provided with a compliant meal or rest period in
33

1 accordance with Labor Code § 226.7(b).

2 **B. Defendants Failed to Provide Aggrieved Employees with Suitable Seating**

3 IWC Wage Order No. 9 § 14 requires employers to provide suitable seating to employees as
4 follows:

5 (A) All working employees shall be provided with suitable seats when the nature of the
6 work reasonably permits the use of seats.

7 (B) When employees are not engaged in the active duties of their employment and the
8 nature of the work requires standing, an adequate number of suitable seats shall be
9 placed in reasonable proximity to the work area and employees shall be permitted to
10 use such seats when it does not interfere with the performance of their duties.

11 24. In addition, Labor Code § 1198 bars employers for imposing conditions of labor prohibited
12 by the Wage Orders. California courts have held that this Labor Code provision, in conjunction with the
13 Wage Orders, permits plaintiffs to bring claims and recover penalties under PAGA for violation of the
14 suitable seating requirement. See, e.g., *Home Depot USA v. Superior Court* (2010), 191 Cal. App. 4th 210;
15 *Bright v. 99 Cent Only Stores* (2010), 189 Cal. App. 4th 1472.

17 25. The nature of the work performed by Aggrieved Employees has and does reasonably permit
18 seats, particularly when Aggrieved Employees were waiting in their parking areas to assist customers at
19 various locations.

21 **C. Defendants Have Violated Labor Code §§ 204 and 210**

22 26. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
23 employment are due and payable twice during each calendar month, on days designated in advance by the
24 employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed
25 satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not
26 more than seven calendar days following the close of the payroll period.”

28 27. Due to Defendants’ failure to, *inter alia*, pay Aggrieved Employees premium pay for
29 missed, interrupted, or otherwise non-compliant meal and rest periods, and its failure to compensate
30 Plaintiff and Aggrieved Employees for worked time resulting from interrupted or on-duty meal breaks,
31 Defendants have failed and continue to fail to timely pay Plaintiff and Aggrieved Employees within seven
32 (7) days of the close of the payroll period in accordance with Labor Code § 204 on a regular and consistent
33 basis during the PAGA Period. See *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016

1 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums
2 can support claims under Labor Code §§ 203 and 204).

3 28. Labor Code § 210 provides that “in addition to, and entirely independent and apart from,
4 any other penalty provided in this article, every person who fails to pay the wages of each employee as
5 provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one
6 hundred dollars (\$100) for each failure to pay each employee; (2) for each subsequent violation, or any
7 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus
8 25% of the amount unlawfully withheld.”
9

10 29. As a result of the deliberately illegal and invalid denial of rest and meal breaks, as well as
11 premium pay for such violations, and the unpaid working time as described above, Plaintiff and Aggrieved
12 Employees are entitled to recover penalties under Labor Code § 210.
13

14 **D. Defendants Have Failed to Furnish Accurate Wage Statements to Aggrieved Employees**

15 30. Defendants have further failed to provide Aggrieved Employees with accurate itemized
16 wage statements as required by Labor Code § 226(a).

17 31. Labor Code § 226(a) obligates employers, semi-monthly or at the time of each payment,
18 to furnish an itemized wage statement in writing showing: (1) gross wages earned; (2) total hours worked
19 by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee
20 is paid on a piece rate; (4) all deductions, provided that all deductions made on written orders of the
21 employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the
22 period for which the employee is paid; (7) the name of the employee and only the last four digits of his or
23 her social security number or an employee identification number other than a social security number; (8)
24 the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect
25 during the pay period and the corresponding number of hours worked at each hourly rate by the employee.
26

27 32. As a result of Defendants’ foregoing labor violations, Defendants failed to state the correct
28 amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the
29 applicable and/or correct hourly rates in effect during the pay period and the corresponding number of
30 hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2) and (5).
31

32 33. Furthermore, the wage statements issued by Defendants were confusing as to the identity
33 and address of the employer(s). For example, some of the wage statements identified the employer(s) as

1 “LAZ PARKING” (without any corporate designation) and “SUNSET PARKING, LLC” while others
2 identified the employer as “LAZ PARKING CALIFORNIA LLC.”

3 34. Furthermore, LAZ’s principal place of business identified on the Statement of Information
4 on file with the California Secretary of State is “15 Lewis ST., Hartford, CT.” However, the wage
5 statements that Defendants provided to Aggrieved Employees during the PAGA Period incorrectly
6 identify LAZ’s address as “One Financial Plaza 14th floor Hartford CT.” At other times, other addresses
7 were listed on the wage statements.
8

9 35. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section
10 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
11 violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a
12 subsequent citation, for which the employer fails to provide the employee a wage deduction statement or
13 fails to keep the records in subdivision (a) of Section 226.”
14

15 36. Accordingly, Plaintiff may also recover Labor Code § 226.3 penalties for Defendants’
16 violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.*, No. 1:13-CV-2059 AWI-BAM, 2015
17 WL 1137151, at *7 (E.D. Cal. Mar. 12, 2015) (“the weight of authority counsels that violations of Section
18 226.3 may be the basis of a PAGA claim.”); *Pedroza v. PetSmart, Inc.*, No. ED CV 11- 298 GHK DTB,
19 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“[Lab. Code] § 226.3 merely provides that failure to
20 perform actions mandated by § 226(a) may trigger civil penalties.”)
21

22 **FIRST CAUSE OF ACTION**
23 **PENALTIES PURSUANT TO PAGA**
24 **[Cal. Labor Code § 2699 *Et Seq.* based on violation of Section 226(a)]**
25 **PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**

26 37. Plaintiff realleges and incorporates by reference all previous paragraphs.

27 38. Based on the above allegations incorporated by reference, Defendants have systematically
28 violated, without limitation, Labor Code §§ 204, 226(a), 226(a)(8), 226.3, 226.7, 210, 512, 1198, as well
29 as the applicable IWC Wage Orders, including IWC Wage Order No. 9-2001.

30 39. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other
31 Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the
32 following formula:
33

1 (1) \$100 for the initial violation per employee per pay period; and

2 (2) \$200 for each subsequent violation per employee per pay period.

3 40. These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
4 Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. These penalties
5 may be stacked separately for each of Defendants' violations of the California Labor Code. *See e.g.*
6 *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist. LEXIS 86975, at *59,
7 fn. 77 (C.D. Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties,
8 that "PAGA penalties can be 'stacked,' *i.e.*, multiple PAGA penalties can be assessed for the same pay
9 period for different Labor Code violations."); *See Lopez v. Friant & Assocs., LLC*, No. A148849, 2017
10 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) ("hold[ing] a plaintiff seeking civil penalties under
11 PAGA for a violation of Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and
12 intentional' requirements of section 226(e)(1) and acknowledging that a Plaintiff could recover separately
13 under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *accord Schiller v. David's Bridal, Inc.*,
14 No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v.*
15 *F & B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3
16 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS
17 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

18 41. In addition, to the extent permitted by law, Plaintiff seeks PAGA penalties for Defendants'
19 violations of Labor Code § 226(a). *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *Bell*
20 *v. Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS
21 204493, at *5 [finding after Friant that "[t]o the extent the Court's Order [granting summary judgment to
22 Home Depot] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs'
23 derivative claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read to grant
24 summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section 226(a)."]]. For
25 violations of Labor Code § 226(a), Plaintiff seeks the default penalty provided by Labor Code § 226.3.
26 Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be
27 subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in
28 an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
29 citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep
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1 the required in subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent permitted
2 by law Plaintiff and the Aggrieved Employees are entitled to recover penalties per Labor Code § 226.3
3 and PAGA for each of Defendants’ numerous violations of Labor Code § 226(a).

4 42. Pursuant to Labor Code § 2699.3 (a), on **August 24, 2020**, Plaintiff gave written notice by
5 certified mail to Defendant, and via e- filing to the LWDA of their claims for violations alleged herein
6 and the theories supporting them. The LWDA has not responded to Plaintiff’s PAGA letter within 65
7 days. All required fees have also been paid to the LWDA. Accordingly, Plaintiff has fulfilled all
8 administrative prerequisites to the filing and pursuit of their PAGA claims on himself and all other current
9 and former Aggrieved Employees of Defendants.

10 97. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, *et*
11 *seq.* because of Defendants’ above-described violations.

12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiff, on behalf of himself, the State of California, and all other Aggrieved
14 Employees, prays for judgment against Defendants as follows:

15 1. For penalties and other relief allowable by statute, including under Labor Code § 2699, *et*
16 *seq.* for Plaintiff and all Aggrieved Employees due to their violations, *inter alia*, Labor Code §§ 204,
17 226(a), 226(a)(8), 226.3, 226.7, 210, 512, 1198, as well as the applicable IWC Wage Orders, including,
18 among other things:

19 a. Civil penalties in the amount of \$100 for each initial violation and \$200 for each
20 subsequent violation as specified in section 2699(f)(2) of the California Labor Code for
21 Plaintiff and all Aggrieved Employees for each and every pay period during relevant time
22 period based on Defendants’ violation of Labor Code section 226(a);

23 b. Civil penalties pursuant to Labor Code § 210 “in addition to, and entirely
24 independent and apart from, any other penalty provided in this article” as follows: (1) For any
25 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) for each
26 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
27 each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

28 c. Civil penalties pursuant to Labor Code § 226.3, for the initial violation that is
29 committed, in the amount of two hundred fifty dollars (\$250) for the initial each inaccurate
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1 wage statement provided to Plaintiff and the Aggrieved Employees and for each subsequent
2 violation, one thousand dollars (\$1,000) for each underpaid employee for each pay period for
3 which the employee is provided an incomplete or inaccurate wage statement, for Plaintiff and
4 all Aggrieved Employees for each and every pay period during that occurred during the
5 relevant time period;

6 d. Any and all other civil penalties provided by statute for Defendants' above-
7 described violations.
8

9 2. An award of reasonable attorney's fees against Defendants as specified in Labor Code §
10 2699(g)(1) and Labor Code section 226(e)(1), for all the work performed by the undersigned counsel in
11 connection with the PAGA and class wage statement claims;

12 3. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with
13 Plaintiff's and the Aggrieved Employees' claims against Defendants as provided for in Labor Code §
14 2699(g)(1) and for costs incurred in litigating the class claims under Labor Code section 226(e)(1);
15

16 4. Such other and further relief as this Court may deem proper and just.
17

18 Respectfully submitted,

19 ACKERMANN & TILAJEF, P.C.
20 LAW OFFICE OF TATIANA HERNANDEZ, P.C.

21 Dated: January 25, 2021

22 By:



23 Sam Vahedi, Esq.

24 Craig J. Ackermann, Esq.

25 Tatiana Hernandez, Esq.

26 *Attorneys for Plaintiff and the Aggrieved Employees*
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