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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
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Attorneys for Plaintiffs JOSE S. RIVERA and PORFIRIO N. ALVAREZ

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

JOSE S. RIVERA, an individual; and
PORFIRIO N. ALVAREZ, an individual,

Plaintiffs,

v.

MIRELES LANDSCAPING INC, a California
Corporation; JOSE ROBERTO MIRELES, an
individual; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00023588-CU-OE-CTL

FIRST AMENDED COMPLAINT FOR
DAMAGES:

1. FAILURE TO PAY WAGES
2. FAILURE TO TIMELY FURNISH
ACCURATE ITEMIZED WAGE
STATEMENTS
3. UNFAIR BUSINESS PRACTICES
4. MEAL AND REST PERIOD
VIOLATIONS
5. WAITING TIME PENALTIES
6. FAILURE TO REIMBURSE
7. PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA") PER LABOR
CODE §2699, et seq.

[IMAGED FILE]

Plaintiffs JOSE S. RIVERA and PORFIRIO N. ALVAREZ, both individuals (hereinafter “Plaintiffs”) allege as follows:

GENERAL ALLEGATIONS

The public policy of California declares:

It is the public policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions or for employers that have not secured the payment of compensation and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

(Labor Code §90.5 subd. (a).)

Despite this clear mandate, DEFENDANTS blatantly violated the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders. Defendants willfully failed to pay mandated minimum wage and overtime wage compensation and vacation and sick pay wages, failed to fully relieve their employees of their duties during their meal and rest periods, failed to reimburse their employees for all business expenses incurred, and failed to provide and maintain proper employee records to their employees.

1. This lawsuit is brought in response to the Defendants' refusal to pay Plaintiffs and the other aggrieved employees, who are current and former employees of Defendants, all wages that they earned during their employment with Defendants, among other Labor Code violations.

2. The acts complained of herein have occurred within the time period from four (4) years preceding the filing of the original Complaint herein (hereinafter, the “Relevant Time Period”).

JURISDICTION AND VENUE

3. The Superior Court of the State of California for the County of San Diego has jurisdiction over this case due to the fact that some of the alleged violations (a) of California

1 Labor Code (i.e. §§ 200 et seq.), (b) California Business and Professions Code §§ 17200 *et seq.*
2 and (c) related common law violations occurred in the County of San Diego.

3 4. Venue is proper in the Central Division of San Diego County Superior Court
4 pursuant to Code of Civil Procedure §395(a) and §395.5, because *inter alia*, (a) the Defendants'
5 and Defendant corporation's principal place of business is situated in this County, and (b)
6 complaints regarding such issues may be filed in the Central Division.
7

8 **PARTIES**

9 5. Plaintiff JOSE S. RIVERA is an individual over the age of eighteen (18) and has
10 been an employee of Defendants during the last 4 years.

11 6. Plaintiff PORFIRIO N. ALVAREZ is an individual over the age of eighteen (18)
12 and has been an employee of Defendants during the last 4 years.
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14 7. Plaintiffs are informed and believe that Defendant MIRELES LANDSCAPING
15 INC is a California Corporation, and at all times mentioned herein operated its businesses within
16 the jurisdiction of this Court.

17 8. Plaintiffs are informed and believe that Defendant JOSE ROBERTO MIRELES is
18 an individual who at all times mentioned in this Complaint herein resided within the jurisdiction
19 of this Court and who during the relevant time period has violated and/or caused to violate
20 various Labor Code sections and other provisions regulating hours and days of work established
21 by the Industrial Welfare Commission of the State of California by underpaying Plaintiffs and
22 the other aggrieved employees ("wage theft"), failing to fully relieve them of their duties during
23 their meal and rest periods, failing to reimburse business expenditures, and failing to provide and
24 maintain accurate wage statements and time records, thus rendering him individually liable.
25 Defendant JOSE ROBERTO MIRELES has owned, managed and operated and continues to
26 own, manage and operate Defendant MIRELES LANDSCAPING INC, and who at all times
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1 mentioned in this Complaint herein resided within the jurisdiction of this Court. Defendant
2 JOSE ROBERTO MIRELES was and remains a person acting on behalf of MIRELES
3 LANDSCAPING INC, on information and belief as the chief executive officer, secretary, chief
4 financial officer, and director of MIRELES LANDSCAPING INC, who violated and/or who
5 caused to violate various Labor Code sections and other provisions regulating hours and days of
6 work established by the Industrial Welfare Commission of the State of California rendering him
7 individually liable pursuant to Labor Code Sections 558, 558.1, and 2699 et. seq. In addition,
8 JOSE ROBERTO MIRELES is an officer, director, and person acting either individually or as a
9 managing agent, who paid or caused to be paid the Plaintiffs and the other aggrieved employees
10 a wage less than the minimum and overtime rate of pay under the law, failed to pay vacation pay,
11 and sick pay wages, failed to reimburse business expenses, failed to relieve them of duties during
12 their meal an rest periods, and failed to provide accurate records, or by an order of the
13 commission and is therefore subject to a civil penalty, restitution of wages payable to the
14 employee, and any applicable wages, damages and penalties imposed pursuant to Labor Sections
15 203, 558, 558.1, and 2699 et. seq.

18 9. DOES 1 to 50, inclusive are now, and/or at all times mentioned in this Complaint
19 were licensed to do business and/or actually doing business in the State of California. Plaintiffs
20 do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to
21 50, inclusive and for that reason, DOES 1 to 50 are sued under such fictitious names pursuant to
22 California Code of Civil Procedure (“CCP”) §474. Plaintiffs will amend this Complaint to allege
23 such names and capacities as soon as they are ascertained.

25 10. Plaintiffs are informed and believe and thereon allege that DOES 1 to 50,
26 inclusive, are former co-employers and/or joint employers of Plaintiffs.

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1 11. Plaintiffs are informed and believe and thereon allege that DOES 1 to 50,
2 inclusive, are successors in interest to Defendants or are otherwise obligated to pay Plaintiffs the
3 wages due and owing to them, e.g. by way of statute, common law, quantum meruit, express
4 written contract, implied in fact contract, or by way of common counts such as money had and
5 received. Plaintiffs reserve the right to augment the foregoing allegations to more clearly set
6 forth this Defendants' liability as discovery progresses and reveals the same.
7

8 12. Plaintiffs are informed and believe, and based upon such information and belief
9 allege that the Defendants, and each of them, are now and/or at all times mentioned in this
10 Complaint were in some manner legally responsible for the events, happenings and
11 circumstances alleged in this Complaint.
12

13 13. Plaintiffs are further informed and believe, and based upon such information and
14 belief allege, that at all times herein mentioned, all Defendants, and each of them, were and are
15 the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants,
16 and were, at all such times, acting within the course and scope of said employment and/or
17 agency; furthermore, that each and every Defendants herein, while acting as a high corporate
18 officer, director and/or managing agent, principal and/or employer, expressly directed, consented
19 to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as
20 herein alleged and was responsible in whole or in part for the matters referred to herein.
21

22 14. Plaintiffs are further informed and believe, and based upon such information and
23 belief allege, that at all times herein mentioned, Defendants, and each of them, proximately
24 caused Plaintiffs to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
25 damages alleged in this Complaint.
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1 15. Plaintiffs are further informed and believe, and based upon such information and
2 belief allege, that at all times herein mentioned, Defendants, and each of them were co-
3 employers and/or joint employers of Plaintiffs.

4 16. Defendants, and each of them, are now and/or at all times mentioned in this
5 Complaint were members of and/or engaged in a joint venture, partnership and common
6 enterprise, and were acting within the course and scope of, and in pursuit of said joint venture,
7 partnership and common enterprise and, as such were co-employers and/or joint employers of
8 Plaintiffs.

9 17. Defendants, and each of them, at all times mentioned in this Complaint concurred
10 with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified the
11 various acts and omissions of each and every one of the other Defendants in proximately causing
12 the complaints, injuries and/or damages alleged in this Complaint.

13 18. Plaintiffs are informed and believes and thereon allege that at all times herein
14 mentioned, some of the Defendants DOES 1 through 50, Inclusive, were the *alter egos* of the
15 named Defendants. Plaintiffs are informed and believe and thereon allege that there exists such a
16 unity of interest and ownership between the named Defendants and DOES 1 through 50, that the
17 individuality and separateness of the named Defendants and DOES 1 through 50 has ceased to
18 exist. The business affairs of named Defendants and DOES 1 through 50, are, and at all times
19 relevant hereto were, so mixed and intermingled that the same cannot reasonably be segregated,
20 and the same are in inextricable confusion. Defendants, and at all times relevant hereto, used
21 each other as a mere shell and conduit for the conduct of certain of Defendants' affairs. The
22 recognition of the separate existence of Defendants would not promote justice, in that it would
23 permit Defendants to insulate themselves from liability to Plaintiffs. Accordingly, the named
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1 Defendants constitute the *alter ego* of Defendants DOES 1 through 50, and the fiction of their
2 separate existence must be disregarded.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES**

5 **(Against all Defendants)**

6
7 19. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
8 section as though fully set forth herein.

9 20. Plaintiffs were each an “employee” of Defendants (as defined by section 350 of
10 the Labor Code) but Defendants failed to pay Plaintiffs and the other aggrieved employees for all
11 hours worked. Plaintiffs were employed as landscaping laborers.

12 21. Pursuant to Labor Code section 1197, payment of less than the minimum wage
13 fixed by the commission is unlawful.

14 22. During the entire period of time that Plaintiffs and the other aggrieved employees
15 were employed by Defendants, and for the four (4) years preceding the filing of this lawsuit,
16 Defendants were required to compensate them at least at the minimum wage, but failed to carry
17 out their duties and responsibilities as an employer imposed under the laws and regulations of the
18 State of California and violated the law by failing to pay Plaintiffs and the other aggrieved
19 employees a minimum wage for all hours worked pursuant to all applicable wage orders and in
20 accordance with Labor Code sections 200, 226, 500, 510, 558.1, 1194, 1194.2, and 1197.

21 23. Defendants regularly failed to pay Plaintiffs and the other aggrieved employees
22 all of the wages that they earned. Specifically, Defendants have intentionally failed to pay
23 Plaintiffs and the other aggrieved employees for all hours worked (“wage theft”), where
24 Defendants shave time worked by Plaintiffs and the aggrieved employees and do not pay for all
25 hours worked even though they regularly work over 8 hours per day and/or 40 hours per week,
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1 causing them to not receive at least the minimum wage for all of their hours worked. For
2 instance, Plaintiffs and the other aggrieved employees regularly were required to work on
3 average at least 7.5 overtime hours per week for which they were not paid at all. Further, on
4 several occasions Plaintiffs were required to work in Calxico for at least 10 hours but were only
5 paid \$100 at the most for their shift in Calxico. This wage theft does not cover at least the
6 minimum wage and does not cover the requisite overtime wages at the overtime rate.

8 24. In violation of state law, Defendants have knowingly and willfully refused to
9 perform their obligations to compensate Plaintiffs and the other aggrieved employees for all
10 minimum wages earned and all hours worked. As a direct result, Plaintiffs and the other
11 aggrieved employees have suffered, and continue to suffer, substantial losses related to the use
12 and enjoyment of such unpaid wages, lost interest on such wages, costs and attorneys' fees in
13 seeking to compel Defendants to fully perform their obligations under state law, all to their
14 damage in amounts according to proof at the time of trial, but in amounts in excess of the
15 minimum jurisdiction requirement of this Court. Defendants committed the acts alleged herein
16 knowingly and willfully, with wrongful and deliberate intent.

18 25. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,
19 510, 558, 558.1, 1194, 1194.2, and 1197. As a proximate result of the aforementioned
20 violations, Plaintiffs and the other aggrieved employees have been damaged in an amount
21 according to proof at the time of trial, but in an amount in excess of the minimum jurisdiction
22 requirement of this Court. Therefore, pursuant to Labor Code sections 200, 203, 226, 558,
23 558.1, 1194, 1194.2, 1197, and 1197.1, Plaintiffs are therefore entitled to recover the unpaid
24 balance of wages Defendants owe Plaintiffs and the other aggrieved employees, plus interest,
25 penalties, liquidated damages, attorneys' fees, expenses, and costs of suit.
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1 26. Pursuant to Labor Code §200, “wages” includes all amounts for labor performed
2 by employees of every description, whether the amount is fixed or ascertained by the standard of
3 time, task, piece, commission basis, or other method of calculation.

4 27. Plaintiffs are thus entitled to their earned unpaid wages in an amount to be proven
5 at trial, plus interest, penalties, attorneys’ fees and costs.

6 28. Under California law, including but not limited to, Labor Code sections 200, 226,
7 500, 510, 558, 558.1, and 1198, Defendants were required to compensate Plaintiffs and the other
8 aggrieved employees for all overtime, which is calculated at one and one-half (1.5) times the
9 regular rate of pay for hours worked in excess of forty (40) per week or after eight (8) in one day,
10 and double time (2) times the regular rate of pay for hours worked on the seventh consecutive
11 work day, or after twelve (12) hours in any workday.

12 29. Throughout their employment with Defendants, Plaintiffs regularly worked over
13 40 hours per week and over 8 hours per day, at least five days per week. Plaintiffs and the other
14 aggrieved employees are or were non-exempt employees entitled to overtime pay under
15 California law, including but not limited to Labor Code sections 200, 226, 500, 510, 558, 558.1,
16 and 1198. Throughout Plaintiffs’ employment, Defendants regularly failed to pay Plaintiffs and
17 the other aggrieved employees at the overtime wage rate for all of their overtime hours worked.
18 Specifically, Defendants would intentionally fail to pay Plaintiffs, and other aggrieved
19 employees, at the overtime rate for any or some of their overtime hours worked, instead paying
20 them at the regular rate of pay or nothing at all for these overtime hours worked, even though
21 Plaintiffs and the other aggrieved employees regularly worked over 40 hours in a week and over
22 8 hours in a day.

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1 30. Under the applicable wage orders, statutes and regulations, Plaintiffs and the other
2 aggrieved employees are entitled to one and one-half (1.5) times and double their regular rate of
3 pay for overtime work performed during the entire course of their employment with Defendants.
4

5 31. As a direct result, Plaintiffs and the other aggrieved employees have suffered
6 substantial losses related to the use and enjoyment of such wages, lost interest on such wages,
7 and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligation
8 under state law, all to their respective damage in amounts according to proof at the time of trial,
9 but in amounts in excess of the jurisdiction of this Court. Defendants committed the acts alleged
10 herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiffs,
11 from improper motives amounting to malice, and in conscious disregard of Plaintiffs' rights.
12 Plaintiffs are thus entitled to recover nominal, actual, compensatory damages in amounts
13 according to proof at the time of trial, but in amounts in excess of the jurisdiction of this Court.
14

15 32. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,
16 510, 558, 558.1, 1194, and 1197.1. As a proximate result of the aforementioned violations,
17 Plaintiffs and the other aggrieved employees have been damaged in an amount according to
18 proof at the time of trial, but in an amount in excess of the jurisdiction of this Court. Therefore,
19 pursuant to Labor Code sections 200, 203, 226, 558, 558.1, and 1194, Plaintiffs and the other
20 aggrieved employees are entitled to recover the unpaid balance of overtime compensation
21 Defendants owe to Plaintiffs and the other aggrieved employees, plus interest, penalties,
22 attorneys' fees, expenses, and costs of suit.
23

24 33. All accrued and earned vacation pay must be paid as wages at the time of
25 termination of an employee and earned vacation may not be forfeited by an employer pursuant to
26 Labor Code Sections 201, 202, 203, 227, and 227.3, and applicable Wage Orders.
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1 34. Plaintiffs and the other aggrieved employees earned vacation pay per Defendants'
2 vacation pay policy that was not taken by the employee or paid by Defendants at the time of
3 separation. Defendants willfully failed to pay Plaintiffs and the other aggrieved employees their
4 earned vacation at the time of separation of their employment from Defendants. By Defendants'
5 failure to timely pay accrued vacation pay wages to Plaintiffs and the other aggrieved employees,
6 Defendants willfully violated the provisions of Labor Code Sections 201, 202, 203, 227, and
7 227.3, and applicable Wage Orders.

9 35. An employer must pay its employees sick leave pursuant to Labor Code Section
10 246, et seq. Defendants failed to pay for sick pay leave in violation of Labor Code Section 246,
11 et seq. Therefore, Plaintiffs are entitled to unpaid sick pay leave in an amount to be proven at
12 trial, plus interest, penalties, attorneys' fees and costs.

13
14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO TIMELY FURNISH**

16 **ACCURATE ITEMIZED WAGE STATEMENTS**

17 **(Pursuant to Labor Code §226(a) and (e))**

18 **(Against all Defendants)**

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20 36. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
21 section as though fully set forth herein.

22 37. Plaintiffs are informed and believe and thereon allege that Defendants, in
23 violation of Labor Code §226(a), engaged in a practice of regularly failing to furnish him with
24 accurate, itemized statements in writing showing (1) all gross wages earned, (2) all deductions,
25 (3) net wages earned, (4) accurate rate of pay, and (5) all hours worked during each respective
26 pay period that Plaintiffs have worked for Defendants, as well as all other information required
27 by section 226 of the Labor Code. Specifically, Defendants failed to provide wage statements to
28

1 Plaintiffs and the other aggrieved employees showing the above required information,
2 particularly because Defendants regularly failed to pay all earned wages and record all worked
3 hours by Plaintiffs and the other aggrieved employees.

4 38. Plaintiffs seek damages pursuant to Labor Code §226(e) for each violation by
5 Defendants of Labor Code §§ 226, 226.3, and pursuant to § 558.1, plus attorneys' fees and costs.
6 In addition, Plaintiffs seek preliminary and permanent injunctive relief pursuant to Labor Code
7 §226(h).
8

9 **THIRD CAUSE OF ACTION**

10 **UNFAIR BUSINESS PRACTICES**

11 **(BUSINESS & PROFESSIONS CODE §17200, et seq.)**

12 **(Against all Defendants)**

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14 39. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
15 section as though fully set forth herein.

16 40. Defendants have engaged in unfair business practices in California by utilizing
17 and engaging in an unlawful pattern and practice of failing to properly pay employee
18 compensation as described throughout this Complaint, specifically, by requiring the Plaintiffs
19 and the other aggrieved employees to perform the work without proper payment of overtime,
20 regular, minimum, and vacation and sick pay earned, without meal and rest periods, illegal
21 deductions, and failed to pay and report proper taxes to the US and California governments.
22 Defendants' use of such practices constitutes a statutorily illegal, and thus, unfair business
23 practice and provides an unfair advantage over Defendants' competitors.
24

25 41. Plaintiffs seek full restitution by Defendants as necessary and according to proof,
26 to restore any and all monies withheld, acquired and/or converted by the Defendants by means of
27 the unfair business practices complained of herein.
28

42. Plaintiffs seek the appointment of a receiver, as necessary, to oversee said restitution, including all wages earned and unpaid, including interest thereon.

43. The acts complained of herein, occurred, at least in part, within the last 4 years preceding this Complaint for Damages.

44. Further, if Defendants are not enjoined from the unlawful conduct described above, Defendants will continue unabated in its unlawful conduct, which will continue to result in irreparable injury to members of the general public, including, but not limited to Plaintiffs and the other aggrieved employees, who are current and former employees of the Defendants, and for which there is no adequate remedy at law. Thus, Plaintiffs request that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

FOURTH CAUSE OF ACTION

MEAL AND REST PERIOD VIOLATIONS

LABOR CODE §§ 226.7 and 512

(Against all Defendants)

45. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this section as though fully set forth herein.

46. Under California Labor Code sections 226.7, 512 and California Wage Orders, Off Duty Meal Periods of 30 minutes are required for all non-exempt employees who work at least 5 hours in a shift, except that when a work period of not more than 6 hours will complete the day's work then the meal period may be waived by mutual consent of the employer and employee. Time records of meal periods must be kept except that meal periods during which operations cease need not be recorded. Employers must provide non-exempt employees 2 Off Duty Rest Periods of 10 minutes each in a normal 8 hour shift. Rest Periods need not be

1 recorded. The Meal Periods are unpaid unless the employee is not fully relieved of all duties.
2 Rest Periods must be paid. An employer who fails to provide off duty meal and rest periods
3 (breaks) must pay the employee an additional 1 hour regular pay for each category of break not
4 provided in a work day.
5

6 47. At all times mentioned herein, Defendants violated Labor Code sections 226.7
7 and 512 by refusing to allow Plaintiffs and the other aggrieved employees to be fully relieved of
8 their duties during their meal and rest periods.
9

10 48. Accordingly, Plaintiffs and the other aggrieved employees seek damages available
11 pursuant to the Labor Code, including but not limited to Labor Code sections 226.7, 512, 558,
12 and 558.1.
13

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES UPON SEPARATION OF EMPLOYMENT**

16 **WAITING TIME PENALTIES PURSUANT TO LABOR CODE §203**

17 **(Against all Defendants)**

18 49. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
19 section as though fully set forth herein.
20

21 50. Defendants failed to pay Plaintiffs and the other aggrieved employees all earned
22 wages upon the separation of their employment with Defendants in violation of Labor Code
23 sections 201 and 202, including but not limited to, overtime, minimum, and regular wages, and
24 meal and rest period premium wages, vacation and sick pay, and despite their several demands to
25 be paid.
26

27 51. Defendants' failure to pay Plaintiffs and the other aggrieved employees all wages
28 due was willful and done with malice. Plaintiffs and the other aggrieved employees are therefore

1 entitled to penalties pursuant to Labor Code section 203, 558, 558.1, plus attorneys' fees and
2 costs.

3
4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE**

6 **(Against All Defendants)**

7 52. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
8 section as though fully set forth herein.

9
10 53. Pursuant to Labor Code §2802(a), an employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct
12 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
13 the employer.

14 54. Defendants required Plaintiffs and the other aggrieved employees to incur
15 expenditures for the benefit of the Defendants including but not limited to use of their personal
16 vehicle, cellular phone and service, and to purchase uniforms, tools and equipment in the
17 discharge of their daily duties. Defendants, however, failed to reimburse Plaintiffs and the other
18 aggrieved employees for such expenditures.

19
20 55. Therefore, pursuant to Labor Code §2802(c) Plaintiffs are entitled to recover
21 reimbursement for all necessary expenditures for use of personal vehicle, cellular phone and
22 service, and for uniforms, tools and equipment purchases and other business expenditures
23 incurred in discharge of their daily duties for Defendants, plus interest, penalties, attorneys' fees,
24 expenses, and costs of suit.

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1 **SEVENTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”)**

3 **PER LABOR CODE §2699, et seq.**

4 **(Against All Defendants)**

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6 56. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
7 section as though fully set forth herein.

8
9 57. On or about May 10, 2021, pursuant Labor Code sections 2699(a) and 2699.3,
10 Plaintiffs, through their counsel, provided notice in writing by online submission to the
11 California Labor Workforce Development Agency (“LWDA”) and via certified US Mail to
12 Defendants and each of them, that Plaintiffs intended to assert a PAGA claim pursuant to section
13 2699(a) on their own behalf, and in a representative capacity on behalf of other aggrieved
14 employees of Defendants, for Defendants’ violations of specified provisions of the California
15 Labor Code. See Exhibit 1 attached to this First Amended Complaint. The LWDA did not
16 respond within 65 days.

17
18 58. As a result, Plaintiffs have perfected their right to sue Defendants in a civil action,
19 and to collect statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1) on behalf of
20 all aggrieved employees (PAGA Employees).

21
22 59. As a result of the acts alleged above, Plaintiffs bring this action on their own
23 behalf, and in a representative capacity on behalf of other current or former aggrieved employees
24 (PAGA Employees), for penalties pursuant to California Labor Code section 2699 for
25 Defendants’ violations of the enumerated Labor Code sections, including, but not limited to
26 sections 200, 201, 202, 203, 210, 216, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227,
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1 227.3, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1, 1198, 1198.5, 1199,
2 and 2802.

3
4 60. Pursuant to California Labor Code section 2699, Plaintiffs and PAGA Employees
5 are entitled to be awarded twenty-five (25%) percent of all penalties due under California law, in
6 addition to interest, attorney's fees and costs.

7
8 61. The Court should award seventy-five (75%) percent of all penalties due under
9 California law to the State of California.

10 62. Plaintiffs and PAGA Employees therefore seek to recover from Defendants, and
11 each of them, allowable damages, penalties, interest, costs, and attorneys' fees, in an amount
12 according to proof at trial, in accordance with Labor Code sections 2699, *et seq.*

13
14 63. Labor Code Section 558 states that "[a]ny employer or *other person* acting on
15 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
16 provision regulating hours and days of work in any order of the Industrial Welfare Commission
17 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
18 each underpaid employee for each pay period for which the employee was underpaid in addition
19 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
20 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
21 was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages
22 recovered pursuant to this section shall be paid to the affected employee. The Section goes on to
23 state that "[t]he civil penalties provided for in this section are in addition to any other civil or
24 criminal penalty provided by law."

25
26 64. Labor Code Section 558.1(a) provides in pertinent part: "Any employer or other
27 person acting on behalf of an employer, who violates, or causes to be violated, any provision
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1 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
2 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
3 2802, may be held liable as the employer for such violation.”

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5 65. Defendants violated/violate, or caused/causes to be violated, multiple sections of
6 the Labor Code as well as provisions regulating hours and days of work in any order of the
7 Industrial Welfare Commission including those requiring payment of minimum and regular
8 wages and payment of overtime wages, meal and rest periods, records, and reimbursement of
9 business expenses, as set forth in detail throughout this First Amended Complaint.

10
11 66. Accordingly, Plaintiffs are also entitled to recovery of wages, premium wages,
12 damages, and penalties pursuant to Labor Code Sections 558 and 558.1.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, jointly and severally, as
15 follows:

- 16
17 1. For compensatory damages pursuant to Labor Code §§ 200, 201, 202, 203, 218, 221, 222,
18 223, 224, 225.5, 226, 226.3, 226.7, 227, 227.3, 246, 350-356, 500, 510, 512, 558, 558.1, 1174,
19 1174.5, 1194, 1194.2, 1194.3, 1197.1, 1198, 1198.5, 2802, et seq., and other statutes and laws;
20 2. For pre-judgment interest pursuant to Labor Code §§218.6, et seq. and Civil Code §§
21 3287(b) and 3289 and other statutes and laws;
22 3. For penalties pursuant to Labor Code §§ 203, 225.5, 226, 226.3, 226.7, 350-356, 512,
23 558, 558.1, 1174.5, 1194.2, 1197.1, 1198.5, 2802, 2699, set seq., and other statutes and laws;
24 4. For injunctive relief pursuant to Labor Code §226(h);
25 5. For an award of reasonable attorneys’ fees and costs;
26 6. For restitution of all monies due to Plaintiffs and disgorged profits from the unlawful
27 business practices of Defendants;
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- 1 7. For all remedies available pursuant to Business and Professions Code section 17200 et
2 seq.;
- 3 8. For all other appropriate injunctive, declaratory and equitable relief;
- 4 9. For interest to the extent permitted by law; and
- 5 10. For such other and further relief as the Court may deem proper.
- 6

7 Dated: July 15, 2021

8 
Rodolfo Ruiz-Velasco, Esq.
Attorneys for Plaintiffs,
JOSE S. RIVERA, and
PORFIRIO N. ALVAREZ

EXHIBIT 1

RUIZ-VELASCO LAW FIRM

May 10, 2021

Via Electronic Submission

California Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

By Certified Mail:

Mr. Jose Roberto Mireles
Mireles Landscaping Inc
3386 Wittman Way
San Ysidro, CA 92173

Via Email (steve@elialaw.com, garrett@elialaw.com)

Steven A. Elia
Garrett F. Groom
Elia Law Firm APC
2221 Camino Del Rio South, Suite 207
San Diego, CA 92108
Counsel for Defendants

Re: **Rivera, et al. v. Mireles Landscaping Inc, et al.**
Notice of PAGA Action

To Whom It May Concern:

We represent Jose S. Rivera and Porfirio Alvarez individually and on behalf of all other aggrieved employees (collectively “Plaintiffs”), who are either former or current employees of Mireles Landscaping Inc and its owner, officer and director, Jose Roberto Mireles (collectively, “Defendants”). Pursuant to Labor Code Section 2699.3, this letter constitutes written notice of Defendants’ Labor Code violations and of our clients’ intent to recover statutory penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). A copy of this letter is also being sent to Defendants via certified mail, and their counsel via email.

Defendants employed Plaintiffs as landscapers. Plaintiffs are regularly required to work over 8 hours per day and/or over 40 hours in a week, without receiving at least their minimum wage compensation for all hours worked, and without receiving overtime pay for overtime hours worked (“wage theft”). For instance, Plaintiffs Rivera and Alvarez and the other aggrieved employees regularly were required to work on average at least

7.5 overtime hours per week for which they were not paid at all. Further, on several occasions Plaintiffs were required to work in Calexico for at least 10 hours but were only paid \$100 for their shift in Calexico. In addition, Defendants do not pay their employees for their vacation pay and sick pay. This wage theft does not cover at least the minimum wage and does not cover the requisite overtime wages at the overtime rate.

As a result, Defendants failed to provide Plaintiffs with paycheck statements with accurate hours worked, rate of pay, and all wages earned. Defendants also failed to keep accurate time records of Plaintiffs, in violation of Section 7 of the Wage Orders, where Plaintiffs Rivera and Alvarez and the other aggrieved employees do not record their time worked.

Plaintiffs were not paid all of their wages owed at the time of their termination of work in violation of LC Sections 203 and 204.

In addition, Defendants failed to fully relieve Plaintiffs from their meal and rest periods and to pay them any premiums for their on-duty meal and rest periods. Specifically, Plaintiffs are not allowed by Defendants to be fully relieved of their duties during their meal and rest periods, and even if they were allowed, they are not able to because they would not complete their required tasks in time.

Defendants require Plaintiffs to incur expenditures by using their cellular phone service and personal vehicles and being required to purchase uniforms to perform their duties, however, Defendants fail to reimburse Plaintiffs for these business expenditures in violation of LC Section 2802.

The payment of a less wage than the California minimum wage and minimum wage violations, including failure to pay split shift premiums, are unlawful pursuant to Labor Code Sections 1197, 1197.1, 1194, 558, 558.1. Overtime compensation is statutorily required by California Labor Code Sections 510, 558, 558.1, 1194, 1198. Meal and rest periods are required pursuant to Labor Code Sections 226.7, 512, 558, 558.1. Sick pay wages are required pursuant to Labor Code Section 246, et seq. Failure to reimburse for expenses incurred in the course of one's employment is a violation of Labor Code Section 2802, et seq. Accurate wage statements must be timely given to employees pursuant to Labor Code Sections 226, 226.3. Failure to maintain proper time records is a violation of Wage Order Section 7. Retaliation and threats for requesting his or her rights pursuant to the Labor Code is a violation of Labor Code Sections 98.6, 1102.5, 1019. Failure to pay accrued vacation is in violation of LC 227 and 227.3. Illegal deductions are in violation of LC Sections 220, 221, 222, 223, 224, et seq. Defendants' employment practices implicate violations of numerous other Labor Code sections,

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Re: Rivera, et al. v. Mireles Landscaping Inc, et al.
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including but not limited to the following: Labor Code §§ 98.6, 201, 202, 203, 204, 225.5, 226.7, 227, 227.3, 510, 512, 558, 558.1, 1102.5, 1194, 1194.2, 1197.1, 2810, 2810.3, et seq., and 2698, et seq.

Accordingly, Plaintiffs respectfully request that the Labor & Workforce Development Agency (“LWDA”) initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiffs will pursue these claims for statutory penalties on behalf of themselves and all other current and former aggrieved employees.

If you have any questions or concerns regarding the above, do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Rodolfo Ruiz-Velasco', with a stylized, flowing script.

Rodolfo Ruiz-Velasco, Esq.