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County of Stanislaus
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF STANISLAUS**

11 **VIVIANA BARAJAS**, an individual, on
12 behalf of herself and all other similarly
13 aggrieved employees and the State of
14 California,

15 Plaintiff,

16 vs.

17 **KELLERMEYER BERGENSONS**
18 **SERVICES, LLC**, a Delaware Limited
19 Liability Company; and **DOES 1-50**,

20 Defendants.

Case No.: CV-21-005312

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

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24 This case has been assigned to Judge Mayne, John R
25 Dept. 21
26 Department _____, for all purposes including Trial.

27
28 **COMPLAINT**

1 Plaintiff Viviana Barajas (“Plaintiff”) on behalf of herself and all other similarly aggrieved
2 employees and the State of California, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff, as a proxy for the State of California, brings a representative law
5 enforcement action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code
6 Section 2698 et seq., to recover civil penalties against Defendant Kellermeyer Bergensons
7 Services, LLC (“KBS” or “Defendant”). On behalf of herself and other aggrieved employees,
8 Plaintiff seeks to recover civil penalties (75% payable to the Labor Workforce Development
9 Agency and 25% payable to aggrieved employees) owed by Defendant under Labor Code Section
10 2699 for violations of Labor Code sections 432.5, 226, 1198.5, 432 and subsection 7 of the
11 Industrial Wage Commission’s Wage Order 5-2001.

12 **JURISDICTION AND VENUE**

13 2. Venue is proper in the County of Stanislaus because work was performed by
14 aggrieved employees for Defendant in the County of Stanislaus and the legal obligations of
15 Defendant to Plaintiff and other aggrieved employees were breached throughout California,
16 including in Stanislaus County.

17 3. The California Superior Court has jurisdiction in this matter because Plaintiff is a
18 resident of California, Defendant is qualified to do business in California and Defendant regularly
19 conducts business in California. Further, there is no federal question at issue as the claims herein
20 are based solely on California law.

21 **THE PARTIES**

22 **A. Plaintiff**

23 4. Plaintiff is over the age of eighteen, and at times mentioned in this complaint, was
24 a resident of Stanislaus County. During the one-year period preceding the notification of her claims
25 under PAGA to Defendant and the LWDA, Plaintiff was employed by Defendant and assigned to
26 perform maintenance work at Kohl’s department stores in Patterson and Manteca, both located in
27 California.

1 5. Plaintiff seeks to represent similarly situated persons who are Aggrieved
2 Employees. Aggrieved Employees are persons who, at any time since the date one year before the
3 date of Plaintiff's letter notifying Defendant and the LWDA of the alleged violations were also
4 employed by for Defendant in California and subject to the same policies and procedures described
5 herein.

6 6. As such, Plaintiff appears in this action on behalf of herself and on behalf of all
7 others similarly situated employees of Defendant and the State of California.

8 **B. Defendants**

9 7. Defendant Kellermeyer Bergensons Services, LLC is a limited liability company
10 that does business in California, including in Stanislaus County, California. At all times relevant
11 to this action, Defendant has owned and operated a facility services business, providing contract
12 services including, but not limited to, janitorial, facilities repair and maintenance, landscape
13 management and parking lot maintenance services, to major retailers and commercial facilities
14 nationwide, including throughout California.

15 8. Plaintiff is ignorant of the true names, capacities, relationships and extent of
16 participation in the conduct herein alleged, of the Defendants sued herein as DOES, but is informed
17 and believes and thereon alleges that said Defendants are legally responsible for the wrongful
18 conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will
19 amend this complaint to allege the true names and capacities of the DOE Defendants when
20 ascertained.

21 9. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
22 all respects pertinent to this action as the agent of one or more of the other Defendants, carried out
23 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
24 Defendant are legally attributable to one or more of the other Defendants.

25 **FACTS RELEVANT TO PLAINTIFF'S CLAIMS**

26 **Facts Relevant to Violations of Labor Code § 432.5**

27 10. Labor Code section 432.5 provides: "No employer, or agent, manager,
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1 superintendent, or officer thereof, shall require any employee or applicant for employment to
2 agree, in writing, to any term or condition which is known by such employer, or agent, manager,
3 superintendent, or officer thereof to be prohibited by law.”

4 11. Unlawful Waiver of PAGA Actions: When Defendant hired Plaintiff, it required
5 Plaintiff to sign a document entitled “Employment and Arbitration Agreement” as a condition of
6 employment (the “Agreement”), attached hereto as **Exhibit 1**. Among other things, the Agreement
7 contains an arbitration agreement, including a provision that expressly prohibits representative
8 actions and further prohibits matters to proceed as a private attorney general on behalf of a class
9 of persons or the general public. On information and belief, Defendant required all other aggrieved
10 employees on whose behalf Plaintiff brings these claims to sign the Agreement as a condition of
11 their employment.

12 12. The Agreement Defendant required Plaintiff and other aggrieved employees to sign
13 as a condition of their employment contained a purported waiver of Plaintiff’s right to bring any
14 claim related to her employment on a representative basis under California’s Private Attorneys
15 General Act of 2004, Labor Code Section 2698 et seq. (“PAGA”) that is unlawful and
16 unenforceable as a matter of settled California law.

17 13. The Agreement states in relevant part (with bold added):

18 It is agreed that all claims or disputes between the parties must be brought
19 in the parties’ individual capacity, and not as a plaintiff or class member in
20 any purported class or collective action **or representative proceeding**. The
21 arbitrator may not consolidate more than one person’s claims and may not
22 otherwise preside over any form of a representative class proceeding **or**
allow a matter to proceed as a private attorney general on behalf of a
class of persons or the general public.

23 14. At the time Defendant required Plaintiff and others to sign the Agreement
24 containing the waiver of their right to a trial of PAGA claims, it was well-established that such
25 PAGA waivers are contrary to California law and unenforceable. *See Iskanian v. CLS*
26 *Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 384 (“We conclude that where, as here,
27 an employment agreement compels the waiver of representative claims under the PAGA, it is
28 contrary to public policy and unenforceable as a matter of state law.”); *Juarez v. Wash Depot*

1 *Holdings, Inc.* (2018) 24 Cal. App. 5th 1197, 1202–03 (“court properly concluded that the PAGA
2 waiver set forth in the handbook is unenforceable as against public policy”); *Lawson v. ZB, N.A.*
3 (2017) 18 Cal. App. 5th 705, 725, as modified (Dec. 21, 2017) (same).

4 15. Despite knowing that the Agreement contains an unlawful and unenforceable
5 PAGA waiver, Defendant continued to require its employees to sign these arbitration agreements
6 during the one-year period preceding Plaintiff’s submission of this notice letter.

7 16. By requiring Plaintiff and other aggrieved employees to sign mandatory arbitration
8 agreements that Defendant knew contained an unlawful PAGA waiver, Defendants violated
9 Section 432.5. In doing so, Defendant deterred its employees from pursuing PAGA claims that
10 they otherwise are entitled to pursue in court.

11 **Facts Related to Violations of Labor Code §§226(b)-(c), 1198.5, and 432 and Wage**
12 **Order 5-2001 § 7.**

13 17. Time and Pay Records: Labor Code section 226 and Wage Order 5-2001 § 7 require
14 that employers keep the following information on file for each employee for a minimum of three
15 years:

- 16 • The employee’s dates of employment.
- 17 • The employee’s hourly rates and the corresponding number of hours
18 worked by the employee at each hourly rate.
- 19 • When the employee begins and ends each work period (including meal
20 periods and split shift intervals).
- 21 • Total hours worked by the employee.
- 22 • All deductions.
- 23 • Gross wages earned.
- 24 • Net wages earned.

25 18. Section (b) of Labor Code section 226 further requires employers to “afford current
26 and former employees the right to inspect or receive a copy of records pertaining to their
27 employment, upon reasonable request to the employer.” Section (c) of Labor Code § 226 provides
28 that, “an employer who receives a written or oral request to inspect or receive a copy of records
pursuant to subdivision (b) pertaining to a current or former employee shall comply with the

1 request as soon as practicable, but no later than 21 calendar days from the date of the request. A
2 violation of this subdivision is an infraction.” An employer’s failure to comply within this
3 timeframe entitles a current or former employee to recover a seven hundred fifty dollar (\$750)
4 penalty from the employer. Lab. Code § 226(f).

5 19. Personnel Records: In addition to their right to time and pay records, employees, and
6 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
7 Labor Code section 1198.5. This statute applies to both former and current employees. Section 432
8 of the Labor Code further specifies that employers must furnish copies of all employment records
9 bearing the employee’s signature.

10 20. Labor Code section 1198.5 also requires that the file be made available for inspection
11 or receipt within a “reasonable” amount of time, “but not later than 30 calendar days from the date
12 the employer receives a written request.” An employer’s failure to comply within this timeframe
13 likewise entitles a current or former employee to recover a seven hundred fifty dollar (\$750) penalty
14 from the employer. Lab. Code § 1198.5(k).

15 21. *Violations of Labor Code §§ 226, 1198.5 and Wage Order 5-2001 § 7*: On April
16 13, 2021, Plaintiff, through her counsel, mailed requests for Plaintiff’s and another aggrieved
17 employee’s employment records to Defendant’s Agent for Service of Process as listed on the
18 California’s Secretary of State website and Defendant’s Human Resources office. As discussed
19 above, Defendant had 21 days to provide Plaintiff’s pay records and 30 days to provide Plaintiff’s
20 personnel records. Defendant’s Agent for Service of Process received the letter on April 22, 2021.
21 Attached as **Exhibit A to Exhibit 2** hereto (Plaintiff’s PAGA Letter) is a true and correct copy of
22 the Notice of Service of Process attaching a copy of the April 13, 2021 letter, provided to Plaintiff’s
23 counsel by Holly Neely, Defendant’s Corporate Paralegal Manager and showing service on April
24 22, 2021. (*See* Exh. D to Exh. 2, *infra*.)

25 22. After not receiving any documents from Defendant within the time prescribed by
26 statute, Plaintiff’s counsel called Defendant’s Human Resources Manager on May 26, 2021, May
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1 27, 2021, and May 28, 2021. On all occasions, counsel was not able to speak with Defendant's
2 Human Resources Manager or leave a voice message.

3 23. On June 1, 2021, Plaintiff's counsel sent via certified mail a letter following up on
4 the request for employment records for Plaintiff's and another aggrieved employee's employment
5 records to Defendant's Agent for Service of Process as listed on the California's Secretary of State
6 website and Defendant's Human Resources office. Attached as **Exhibit B** to **Exhibit 2** hereto is a
7 true and correct copy of the June 1, 2021, letter ("The Letter"). Attached as **Exhibit C** to **Exhibit**
8 **2** hereto is a true and correct copy of the certified mail return receipt cards for Defendant and its
9 Agent for Service of Process. The Letter detailed Defendant's obligations under various Labor
10 Codes, including Labor Code sections 226, 1198.5 and 432. The Letter further stated all efforts to
11 date that Plaintiff's counsel had undertaken to request the employment records. Accordingly, the
12 mailing established June 22, 2021, as a second deadline for Defendant to comply with Labor Code
13 section 226 and July 1, 2021 to comply with Labor Code section 1198.5. The Letter also stated that
14 Plaintiff would not seek the penalties imposed by Sections 226 and 1198.5 if Defendant promptly
15 complied with the requests.

16 24. On June 14, 2021, Holly Neely, Defendant's Corporate Paralegal Manager emailed
17 Plaintiff's counsel requesting further identifying information for Plaintiff and the other aggrieved
18 employee. On June 16, 2021, Plaintiff's counsel provided the requested information. After not
19 hearing from Defendant, Plaintiff's counsel emailed Holly Neely on June 28, 2021, asking if
20 Defendant intended to respond to the employment records request. Attached as **Exhibit D** to
21 **Exhibit 2** hereto is a true and correct copy of the email chain between Plaintiff's attorney and Ms.
22 Neely dated June 14, 2021 through June 28, 2021.

23 25. On July 30, 2021, counsel for Defendant sent Plaintiff's counsel the following
24 email: "My colleagues and I represent Kellermeyer Bergensons. We are aware that you have filed
25 a PAGA notice on behalf of Ms. Barajas and have requested employee records for her as well as
26 Ms. Sanchez. Would you agree to give KBS an extension of time to August 18 to produce the
27 records?"

26. Plaintiff's counsel responded: "While Ms. Barajas and Ms. Sanchez would have preferred to receive their documents sooner, we cannot prevent KBS from taking until August 18 to do so. Please note that in accepting the late produced documents, neither Ms. Barajas nor Ms. Sanchez are waiving their rights under the Labor Code or to any remedies they may be entitled to."

27. On August 18, 2021, 118 days from April 22, 2021, the date Defendant's Agent for Service of Process received Plaintiff's original letter request, more than 64 days after Plaintiff's counsel provided the additional information for Plaintiff requested by Defendant, and 49 days after the second Letter was mailed to Defendant, Defendant provided copies of Plaintiff's employment records. Defendant's untimely production of records violated Labor Code §§ 226(b),(c), 1198.5(a),(b), 432 and § 7 of Wage Order 5-2001.

28. As a result of these violations, Plaintiff seeks on behalf of herself and all others similarly aggrieved employees, all available penalties under PAGA.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER PAGA

(By Plaintiff, Aggrieved Employees and the State of California against Defendants)

29. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

30. At all times relevant to this action, Plaintiff and other Aggrieved Employees were “aggrieved employees” within the meaning of Labor Code Section 2699.

31. Defendants' conduct as described herein, arising from Defendant's requirement to sign as a condition of employment arbitration agreements that contained unlawful PAGA waivers, constitute violations of Labor Code Sections 432.5.

32. Defendants' conduct as described herein, arising from Defendant's failure to maintain required employee records and to timely respond to requests for employee records under the Labor Code, constitute violations of Labor Code §§226(b)-(c), 1198.5, and 432 and the relevant

1 sections of the applicable Wage Orders of the Industrial Welfare Commission, including
2 subsection 7 of Wage Order 5-2001.

3 33. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf
4 of herself, other current or former employees and the State of California, to bring a civil action to
5 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

6 34. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
7 Section 2699.3(c). By letter dated July 23, 2021, Plaintiff gave written notice to the Labor and
8 Workforce Development Agency (“LWDA”) via its online filing system and by certified mail to
9 Defendant Kellermeyer Bergensons Services, LLC, of the specific provisions of the Labor Code
10 alleged to have been violated, including the facts and theories to support the alleged violations. A
11 true and correct copy of the July 23, 2021, letter is attached hereto as **Exhibit 2**.

12 35. Because the PAGA Letter alleges violations of Labor Code section 432.5 listed in
13 Labor Code § 2699.5, PLAINTIFF was required to give 65 days’ notice before filing her
14 Complaint. Lab. Code § 2699.3(a)(2)(A). To date, more than 65 days after the July 23, 2021 PAGA
15 Letter was submitted, the LWDA has not responded.

16 36. Because Plaintiff alleges some violations of provisions of the Labor Code and
17 applicable Wage Order other than those listed in Labor Code Section 2699.5 or Division 5
18 (commencing with Section 6300) (i.e., Labor Code §§ 226(b)-(c), 1198.5, and 432 and Wage Order
19 5-2001 § 7), the requirements of Labor Code § 2699.3(c) apply to those other claims for PAGA
20 penalties.

21 37. Labor Code § 2699.3(c)(2)(A) provides: “The employer may cure the alleged
22 violation within 33 calendar days of the postmark date of the notice sent by the aggrieved employee
23 or representative. The employer shall give written notice within that period of time by certified
24 mail to the aggrieved employee or representative and by online filing with the agency if the alleged
25 violation is cured, including a description of actions taken, and no civil action pursuant to Section
26 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee
27 may commence a civil action pursuant to Section 2699.”

38. To date, more than 33 days after the postmark date of July 23, 2021, neither Plaintiff nor her representative has received notice from Defendant by certified mail pursuant to Labor Code section 2699.3(c)(2)(A) that Defendant has cured any alleged violations. The PAGA website for the LWDA listing Plaintiff's claim also does not reflect that Defendant has submitted a cure notice for the alleged violations of Labor Code sections 226(b)-(c), 1198.5, and 432 and Wage Order 5-2001 § 7 pursuant to Labor Code section 2699.3(c)(2)(A).

39. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff and other Aggrieved Employees are entitled to civil penalties for Defendant's violations of the Labor Code and the applicable Wage Orders of the Industrial Welfare Commission, including Wage Order 5-2001. For violations of a provision of the code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees, Plaintiff may recover the prescribed civil penalties. Lab. Code § 2699(a). For all provisions of the code except those for which a civil penalty is specifically provided, Plaintiff may recover a civil penalty for a violation of these provisions in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Lab. Code § 2699(f). Pursuant to Labor Code section 2699(i), 75% of the civil penalties recovered shall be distributed to the LWDA, and 25% shall be distributed to the aggrieved employees.

40. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with her claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself and all others similarly situated, prays for relief and judgment against Defendants as follows:

1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to aggrieved employees);
2. Costs;

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- 3. Reasonable attorney's fees; and
- 4. Such other and further relief as this Court may deem just and proper.

Dated: September 27, 2021

MOSS BOLLINGER, LLP

By: _____



Jeremy F. Bollinger
Attorney for Plaintiff VIVIANA BARAJAS

EXHIBIT 1

to

Complaint

Employment and Arbitration Agreement

WHEREAS, Kellermeyer Bergenson Services, LLC (the "Employer or the "Company") agrees to employ the Employee identified below, under the terms and conditions set forth herein, and Employee hereby agrees to accept those terms and conditions; and WHEREAS, the Employer and Employee desire to have in place a procedure requiring mandatory, binding arbitration of all disputes that may arise between them.

NOW, THEREFORE, for and in consideration of Employer's employment or continued employment of Employee, as the case may be, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby agree to the following terms and conditions of employment beginning on the date first hired by the Employer:

1. Employment Start Date (new employees only): **08/22/2018**
2. Compensation. During the period of time Employee performs his/her current job, employer shall compensate Employee at the rate of no less than: **\$13.50 per hour**.
3. Termination at Will. The employment may be terminated at any time with or without cause either by Employer or Employee.
4. Arbitration of Disputes Required.
 - a. Employer and Employee agree that all disputes or claims that arise out of or relate to the employment (from the date first hired by the Employer), or the existence, scope or validity of this agreement, including those dealing with wages, meal and rest breaks, sexual harassment, discrimination and retaliation (except claims that are excluded from arbitration as a matter of law)) shall be resolved exclusively through final and binding arbitration before a neutral arbitrator. All arbitrations shall be conducted in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association effective November 1, 2000. These rules can be found here.
 - b. Employer and employee agree that the arbitration and this Agreement shall be controlled by the Federal Arbitration Act (9 U.S.C. Sections 1-14) and they acknowledge that the Company's business and nature of the employee's employment affect Interstate commerce.
 - c. The Company encourages all Employees to become familiar with their rights under state and federal wage and hour laws, equal employment opportunity laws, and all other laws. Among other locations, information regarding an Employee's rights under applicable wage and hour laws can be found at the U.S. Department of Labor's website (and similar state governmental websites), and information regarding an Employee's rights under equal employment opportunity laws can be found at the U.S. Equal Employment Opportunity Commission's website (and similar state governmental websites). The Company encourages all Employees to report any violations of applicable law to the Human Resources Department and to assert claims under this Agreement for any alleged violations of any state or federal law.
 - d. If the Employer and Employee are unable to agree upon a neutral arbitrator, the Employer will obtain a list of arbitrators from a state or federal arbitration service. Employee (first) and then the Employer will alternately strike names from the list until only one name remains; the remaining person shall be the arbitrator. The arbitrator shall be bound by the qualifications and disclosure provisions and the procedures set forth in the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association effective November 1, 2009 and shall order such discovery as is appropriate for the claim and necessary to the adjudication thereof. The parties shall have the right to be represented by counsel and they shall have the right to pursue dispositive motions (for example, a motion to dismiss or motion for summary judgment based on the Federal Rules of Civil Procedure).
 - e. Arbitration proceedings shall be held in the city or town where Employee's employment services were performed, at the Employer's headquarters, or any other location mutually agreed upon. Each party shall be responsible for its share of the arbitration fees and for its own attorney's fees incurred in connection with the arbitration. In states which require the Employer to pay all arbitration fees, Employer will pay all fees required by law. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other party shall be entitled to recover its costs, including reasonable attorney's fees, incurred in having to compel arbitration or defend or enforce the award.
 - f. It is agreed that all claims or disputes between the parties must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class or collective action or representative proceeding. The Arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative class proceeding or allow a matter to proceed as a private attorney general on behalf of a class of persons or the general public. Employee understands that there might be ongoing litigation in various States and by signing this agreement Employee may waive his/her right to participate in those actions. The Arbitrator shall be required to follow applicable law and to render a written opinion. The arbitrator shall be permitted to award only those remedies in law or equity that are requested by the parties, appropriate for the claims and supported by credible, relevant evidence and shall not have the right to award speculative damages. The Arbitrator shall not have the right to award punitive damages to either party, unless required by law, and he/she shall not have the power to amend this Agreement. The provisions of this agreement to arbitrate shall survive the termination of this agreement and Employee's employment and shall remain in full force and effect thereafter.
 - g. The Employer and Employee agree that this arbitration shall be the exclusive means of resolving any dispute

arising out of the employment and that no other action will be brought by the Employee in any court or other forum. ONLY THE ARBITRATOR, NOT A JUDGE OR JURY, WILL DECIDE THE DISPUTE. The Arbitrator's decision shall be final and legally binding and judgment may be entered thereon in any court having jurisdiction, pursuant to the Federal Arbitration Act (9 U.S.C. Sections 1-14).

- h. If Employee decides to dispute Employee's termination, or to assert an employment-related claim, Employee agrees to deliver a written request for arbitration to Employer within one (1) year of the date of Employee's termination, or within one (1) year of the incident at issue, and to respond within fourteen (14) calendar days to each communication regarding the selection of an arbitrator, the scheduling of a hearing and other matters related to arbitration proceedings. If Employer does not receive a written request for arbitration from Employee within one (1) year from the date of Employee's termination, or within one (1) year of the incident at issue, or if employee does not respond to any communication from Employer about the arbitration proceedings within fourteen (14) calendar days, Employee agrees that he/she will have waived any right to raise any claims arising out of the termination of Employee's employment, or arising from the incident at issue, in arbitration or in any court or other forum. The limitations set forth in this paragraph shall not be subject to tolling, equitable or otherwise.
- i. No Employee shall be subject to retaliation if he or she exercises his or her right to assert claims under this Agreement and any retaliatory act or omission is directly contrary to Company policy. If any Employee believes that he or she has been retaliated against by anyone at the Company, the Employee should immediately report this to the Human Resources Department.
- j. It is further agreed and understood that any agreement contrary to or modifying this Agreement must be entered into, in writing, signed by the Employee and the Chief Executive Officer or President of the Company. This is the entire agreement between the Company and the Employee regarding dispute resolution, the length of Employee's employment, and the reasons for termination of employment, and this Agreement supersedes any and all prior agreements regarding these issues.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH AFFECTS YOUR LEGAL RIGHTS AND MAY BE ENFORCED BY THE PARTIES

Employer Signature



Employer

Kellermeyer Bergensons Services LLC.

Date

08/22/2018

Employee Signature

viviana
Barajas

Print Name

Viviana Barajas

Last Four Digits of SSN

XXX-XX-████

Date

08/22/2018

EXHIBIT 2

to

Complaint



Moss Bollinger
LLP

JEREMY F. BOLLINGER
310.982.2984/fax: 310.861.0389
jeremy@mossbollinger.com

July 23, 2021

VIA PAGA ONLINE FILING

Secretary Julie Su
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Kellermeyer Bergensons Services, LLC
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice pursuant to Labor Code Section 2699.3(a)(1)
to Labor Code Private Attorney General Act (“PAGA”)

Employer: Kellermeyer Bergensons Services, LLC

Employee: Viviana Barajas, on behalf of herself and on behalf of all current and former
employees of Kellermeyer Bergensons Services, LLC

Dear Secretary Su:

Pursuant to the Private Attorney General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”), representative employee, Viviana Barajas (“Ms. Barajas” or “Plaintiff”), on behalf of herself and all other similarly situated California employees, gives notice that her former employer, Kellermeyer Bergensons Services, LLC (collectively, “KBS” or “Defendant”) violated the California Labor Code throughout her employment and within the one year prior to the mailing of this letter as follows.

THE PARTIES

Defendant owns and operates a facility services business, providing contract services, including, but not limited to, janitorial, facilities repair and maintenance, landscape management and parking lot maintenance services, to major retailers and commercial facilities nationwide, including throughout California. Defendant employed Plaintiff as a non-exempt janitorial employee assigned to various department stores in California from sometime in 2017 until January 2021, including in San Joaquin and Stanislaus Counties. As part of the onboarding process, Plaintiff and other aggrieved employees are required to sign an acknowledgment of the Employee Handbook and Arbitration Agreement.

THE CLAIMS

Violation of Labor Code § 432.5

Unlawful Waiver of PAGA Actions

Labor Code section 432.5 provides: “No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

On information and belief, when Defendant hired Plaintiff, it required Plaintiff to sign a document entitled “Employment and Arbitration Agreement” as a condition of employment (the “Agreement”). Among other things, the Agreement contains an arbitration agreement, including a provision that expressly prohibits representative actions and further prohibits matters to proceed as a private attorney general on behalf of a class of persons or the general public. On information and belief, Defendant required all other aggrieved employees on whose behalf Plaintiff brings these claims to sign the Agreement as a condition of their employment.

The Agreement Defendant required Plaintiff and other aggrieved employees to sign as a condition of their employment a purported waiver of Plaintiff’s right to bring any claim related to her employment on a representative basis under California’s Private Attorneys General Act of 2004, Labor Code Section 2698 et seq. (“PAGA”) that is unenforceable as a matter of settled California law.

The Agreement states in relevant part (with bold added):

It is agreed that all claims or disputes between the parties must be brought in the parties’ individual capacity, and not as a plaintiff or class member in any purported class or collective action **or representative proceeding**. The arbitrator may not

consolidate more than one person's claims and may not otherwise preside over any form of a representative class proceeding **or allow a matter to proceed as a private attorney general on behalf of a class of persons or the general public.**

At the time Defendant required Plaintiff and others to sign the Agreement containing the waiver of their right to a trial of PAGA claims, it was well-established that such PAGA waivers are contrary to California law and unenforceable. *See Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 384 (“We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”); *Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal. App. 5th 1197, 1202–03 (“court properly concluded that the PAGA waiver set forth in the handbook is unenforceable as against public policy”); *Lawson v. ZB, N.A.* (2017) 18 Cal. App. 5th 705, 725, as modified (Dec. 21, 2017) (same).

Despite knowing that the Agreement contains an unlawful and unenforceable PAGA waiver, Defendant continued to require its employees to sign these arbitration agreements during the one-year period preceding Plaintiff's submission of this notice letter

By requiring Plaintiff and other aggrieved employees to sign mandatory arbitration agreements that Defendant knew contained an unlawful PAGA waiver, Defendants violated section 432.5. In doing so, Defendant deterred its employees from pursuing PAGA claims that they otherwise are entitled to pursue in court.

Under California Labor Code § 2699(f)(2), civil penalties of one hundred dollars (\$100) per pay period for the first violation (i.e., pay period in which the unlawful provision was in effect) and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation are owed per Plaintiff and each aggrieved employee of Defendant in California who was required to sign a mandatory arbitration agreement containing the same illegal term in violation of California Labor Code § 432.5—that is, the term requiring the employee to waive his or her right to bring a representative action under PAGA—for as long as the Agreement was in effect.

Unlawful Prohibition of Discussing and Disclosing Wages

When Defendant hired Plaintiff, it required Plaintiff to sign an acknowledgement of the Employee Handbook in which she agreed to follow all policies in the Handbook as a condition of employment. Acknowledgment of the Employee Handbook was part of the onboarding process. The Employee Handbook, among other things, contains a confidentiality provision entitled, “Non-Disclosure of Information”. On information and belief, Defendant required all other aggrieved employees on whose behalf Plaintiff brings these claims to sign the acknowledgment of the Employee Handbook, including the unlawful confidentiality provision, as a condition of their employment.

The Employee Handbook, including the embedded confidentiality provision, Defendant required Plaintiff to acknowledge in writing as a condition of her employment contains a provision entitled, “Non-Disclosure of Information” that prohibits employees from discussing or disclosing confidential information, including, “employee pay rates” and “payroll and time records” in violation of Labor Code section 232 (see discussion below in next section).

The Non-Disclosure of Information section states, in relevant part (with bold added):

There is a lot of information at work that can be considered confidential. Protecting confidential business information and trade secrets is vital to the interests and success of KBS.

Depending on your position and the work you do, confidential information may include things like:

- ***Payroll and time records***
- ***Employee pay rates***
- *Phone lists of employees*
- *Site worker shift schedules*
- *Conversations between people associated with the company*

Employees who improperly use or disclose trade secrets or confidential business information will be subject to disciplinary action, including termination of employment and legal action, even if they do not actually benefit from the disclosed information.

You may only use confidential information to perform your job. We follow the “need to know” principle. ***Never share confidential information with others unless they have a need to know the information in order to do their job and they are a part of KBS. Sharing confidential information is against our policies and may also violate the law.***

Despite knowing that the Employee Handbook contains an unlawful confidentiality provision, Defendant continued to require its employees to sign acknowledgments regarding the Employee Handbook during the one-year period preceding Plaintiff’s submission of this notice letter.

By requiring Plaintiff and other aggrieved employees to sign mandatory acknowledgements of the Employee Handbook that Defendant knew contained an unlawful confidentiality provision, Defendants violated section 432.5. In doing so, Defendant deterred its employees from discussing and disclosing their wages.

Under California Labor Code § 2699(f)(2), civil penalties of one hundred dollars (\$100) per pay period for the first violation (i.e., pay period in which the unlawful provision was in effect) and

two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation are owed per Plaintiff and each aggrieved employee of Defendant in California who was required to sign an acknowledgment of the Employee Handbook containing the same illegal term in violation of California Labor Code § 432.5—that is, the term prohibiting the employee from discussing his or her wages—for as long as that provision was in effect.

Violations of Labor Code § 232

Labor Code section 232 prohibits employers from preventing an employee “from disclosing the amount of his or her wages” (Lab. Code § 232(a)) and from “[r]equire an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages (Lab. Code § 232(b)).

As discussed above, Defendant required Plaintiff and other aggrieved employees to sign as a condition of employment an acknowledgement of the Employee Handbook containing an illegal provision entitled “Non-Disclosure of Information”. This provision provides that “employee pay rates” and “payroll and time records” may be confidential information and further instructs employees to “Never share confidential information with others unless they have a need to know the information in order to do their job and they are a part of KBS. Sharing confidential information is against our policies and may also violate the law.” Moreover, Plaintiff and other aggrieved employees are still subjected to this policy after their employment at KBS has ended. “Even after you leave employment, you still have a responsibility to maintain confidentiality about any information that you received while you worked here.”

The Non-Disclosure of Information provision’s prohibition against disclosing one’s “compensation” violates Labor Code section 232. As a result, Defendant is liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation (i.e., pay period in which the unlawful provision was in effect) and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Violations of Labor Code §§226(b)-(c), 1198.5, and 432 and Wage Order 5-2001 § 7

Time and Pay Records

Labor Code § 226 and Wage Order 5-2001 § 7 require that employers keep the following information on file for each employee for a minimum of three years:

- The employee’s dates of employment.
- The employee’s hourly rates and the corresponding number of hours worked by the employee at each hourly rate.
- When the employee begins and ends each work period (including meal periods and split shift intervals).
- Total hours worked by the employee.

- All deductions.
- Gross wages earned.
- Net wages earned.

Section (b) of Labor Code § 226 further requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Section (c) of Labor Code § 226 provides that, “an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty dollar (\$750) penalty from the employer. Lab. Code § 226(f)

As a result, Defendant is also liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation (i.e., pay period in which the unlawful provision was in effect) and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code § 1198.5. This statute applies to both former and current employees. Section 432 of the Labor Code further specifies that employers must furnish copies of all employment records bearing the employee’s signature.

Labor Code § 1198.5 also requires that the file be made available for inspection or receipt within a “reasonable” amount of time, “but not later than 30 calendar days from the date the employer receives a written request.” An employer’s failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty dollar (\$750) penalty from the employer. Lab. Code § 1198.5(k).

As a result, Defendant is also liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation (i.e., pay period in which the unlawful provision was in effect) and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation

Facts Relevant to the Above Labor Code Violations

On April 13, 2021, Plaintiff, through her counsel, mailed requests for Plaintiff’s and another aggrieved employee’s employment records to Defendant’s Agent for Service of Process as listed on the California’s Secretary of State website and Defendant’s Human Resources office. As discussed above, Defendant had 21 days to provide Plaintiff’s pay records and 30 days to provide Plaintiff’s personnel records. Defendant’s Agent for Service of Process received the letter on April 22, 2021. Attached hereto as **Exhibit A** is a true and correct copy of the Notice of Service of Process attaching a copy of the April 13, 2021 letter, provided to Plaintiff’s counsel by Holly Neely, Defendant’s Corporate Paralegal Manager. (See Exh. D, *infra*.)

After not receiving any documents from Defendant within the time prescribed by statute, Plaintiff's counsel called Defendant's Human Resources Manager on May 26, 2021, May 27, 2021, and May 28, 2021. On all occasions, counsel was not able to speak with Defendant's Human Resources Manager or leave a voice message.

On June 1, 2021, Plaintiff's counsel sent via certified mail a letter following up on the request for employment records for Plaintiff's and another aggrieved employee's employment records to Defendant's Agent for Service of Process as listed on the California's Secretary of State website and Defendant's Human Resources office. Attached hereto as **Exhibit B** is a true and correct copy of the June 1, 2021, letter ("The Letter"). Attached hereto as **Exhibit C** to is a true and correct copy of the certified mail return receipt cards for Defendant and its Agent for Service of Process. The Letter detailed Defendant's obligations under various Labor Codes, including Labor Code §§ 226, 1198.5 and 432. The Letter further stated all efforts to date that Plaintiff's counsel had undertaken to request the employment records. Accordingly, the mailing established June 22, 2021, as a second deadline for Defendant to comply with Labor Code § 226 and July 1, 2021 to comply with Labor Code § 1198.5. The Letter also stated that Plaintiff would not seek the penalties imposed by Sections 226 and 1198.5 if Defendant promptly complied with the requests.

On June 14, 2021, Holly Neely, Defendant's Corporate Paralegal Manager emailed Plaintiff's counsel requesting further identifying information for Plaintiff and another aggrieved employee. On June 16, 2021, Plaintiff's counsel provided the requested information. After not hearing from Defendant, Plaintiff's counsel emailed Holly Neely on June 28, 2021, asking if Defendant intended to respond to the employment records request. Attached hereto as **Exhibit D** is a true and correct copy of the email chain between Plaintiff's attorney and Ms. Neely dated June 14, 2021 through June 28, 2021.

To date, more than 90 days from the date Defendant's Agent for Service of Process received Plaintiff's original letter request, more than 51 days after the second Letter was mailed to Defendant and more than 35 days after Plaintiff's counsel provided the identifying information for Plaintiff requested by Defendant, Defendant still has not responded with regard to Plaintiff or the other aggrieved employee. As such, Defendant has violated Labor Code §§ 226(b),(c), 1198.5(a),(b), 432 and § 7 of Wage Order 5-2001.

CIVIL PENALTIES

As a result of the foregoing, Defendant is liable for civil penalties as provided for by California law. Consequently, Plaintiff and all other aggrieved employees of Defendant are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

CONCLUSION

Defendant violated and, on information and belief, continues to violate the Labor Code sections identified above. Plaintiff requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, Plaintiff requests that the agency inform her if it does not intend to investigate these violations so that she may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984, Ext. 6.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Bollinger', with a long horizontal flourish extending to the right.

Jeremy F. Bollinger
MOSS BOLLINGER LLP

Encls.

EXHIBIT A

to

**Notice to Kellermeyer Bergensons Services,
LLC pursuant to Labor Code Section
2699.3(a)(1)**



Notice of Service of Process

RXT / ALL
Transmittal Number: 23109549
Date Processed: 04/26/2021

Primary Contact: Judy Sobota
Kellermeyer Bergensons Services
1575 Henthorne Dr
Maumee, OH 43537-1372

Entity: Kellermeyer Bergensons Services, LLC
Entity ID Number 3820664

Entity Served: Kellermeyer Bergensons Services, LLC

Title of Action: In Re: Viviana Barajas

Document(s) Type: OTHER: Request for Employment Info

Nature of Action: Information/Appearance Request

Jurisdiction Served: California

Date Served on CSC: 04/22/2021

Answer or Appearance Due: Other/NA

Originally Served On: CSC

How Served: Regular Mail

Sender Information: Anthony Flores
310-982-2984

Notes: The document matches the original document as received.

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com



Moss Bollinger
LLP

Anthony Flores
310.982.2984/fax: 818.963.5954
anthony@mossbollinger.com

April 13, 2021

Via US Mail

Corporation Service Company – Lawyers-Incorporating Service
Agent for Service of Process
Kellermeyer Bergensons Services, LLC
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
(original)

Via US Mail

Human Resource Manager
Kellermeyer Bergensons Services, LLC
3605 Ocean Ranch Blvd, Suite 200
Oceanside, CA 92056
(copy)

Re: Viviana Barajas

Dear Human Resources Manager, and Kellermeyer Bergensons Services, LLC.,

Please be advised that I have been authorized by your former employee, Viviana Barajas to seek her employment records from Kellermeyer Bergensons Services, LLC ("KBS").

Pursuant to California Labor Code Sections 226(b)(c), 432 and 1198.5, please provide my office copies of all of Miss Barajas' payroll records, her time records (including time cards), her complete personnel records, and any other documents Miss Barajas signed relating to her employment by KBS in California. The California Labor Code has strict time limits within which to comply with this request. See Lab. Code §§ 226(c).

You can email me the documents at anthony@mossbollinger.com. Or you can mail the documents to our law office's address: Moss Bollinger LLP, 15300 Ventura Blvd., Ste. 207, Sherman Oaks, CA 91403.

Enclosed, please find a copy of an Authorization to Release Information executed by Miss Barajas. Please advise if any costs for reproduction are requested. This matter deserves your immediate attention.

Sincerely,

Anthony Flores
MOSS BOLLINGER, LLP
Encl. (signed Authorization to Release Information)



Moss Bollinger
LLP

Kiara Bramasco
Tel: 310.982.2984 Fax: 818.963.5954
kiara@mossbollinger.com

AUTORIZACIÓN PARA DIVULGAR INFORMACIÓN

Con esta autorización usted le entregara a Dennis F. Moss, Ari E. Moss, Jeremy F. Bollinger, y Kiara Bramasco de las oficinas legales de Moss Bollinger LLP, 15300 Ventura Blvd., Ste. 207, Sherman Oaks, CA 91403, o su representante debidamente autorizado, o al portador, información, registros generales, los archivos personales, registros de empleo, registros de perforación de tiempo, registros de pagos de sueldo, reportes, documentos, fotografías, facturación, o para realizar o recibir una copia del mismo a mi empleador Kellermeyer Bergensons Services, LLC.

Una fotocopia firmada de esta autorización se considerará tan efectiva como el original.

Fecha: 4/12/2021

DocuSigned by:
Viviana Barajas
Viviana Barajas

AUTHORIZATION TO RELEASE INFORMATION

This will authorize you to release to Dennis F. Moss, Ari E. Moss, Jeremy F. Bollinger, and Kiara Bramasco of the law offices of Moss Bollinger LLP, 15300 Ventura Blvd., Ste. 207, Sherman Oaks, CA 91403, or their duly authorized representative, or bearer, information, general records, personnel files, employment records, time punch records, payroll records, reports, documents, photographs, billings, or to make or receive a copy thereof to my employment by Kellermeyer Bergensons Services, LLC.

A photocopy of this signed authorization shall be deemed as effective as the original.

Date: _____

Viviana Barajas

Moss Bollinger, LLP
15300 Ventura Boulevard
Suite 207
Sherman Oaks CA 91403

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Corporation Service Company CSC
Agent for Service of Process
Home Depot U.S.A., Inc.
2710 Gateway Oaks Drive, Suite 150N
Sacramento CA 95833-3502

EXHIBIT B

to

**Notice to Kellermeyer Bergensons Services,
LLC pursuant to Labor Code Section
2699.3(a)(1)**



Moss Bollinger
LLP

Anthony Flores

310.982.2984/fax: 818.963.5954

anthony@mossbollinger.com

June 1, 2021

Via Certified Mail

Corporation Service Company – Lawyers Incorporating Service
Agent for Service of Process
Kellermeyer Bergensons Services, LLC
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
(original)

Via Certified Mail

Maria Jackson
Kellermeyer Bergensons Services, LLC
3605 Ocean Ranch Blvd, Suite 200
Oceanside, CA 92056
(copy)

***Re: Blanca Sanchez & Viviana Barajas
Request for Personnel Documents***

Dear Ms. Jackson

On April 13, 2021, we mailed the enclosed requests for Blanca Sanchez's and Viviana Barajas' employment records to Kellermeyer Bergensons Services, Inc. ("KBS"). After not receiving any documents from KBS, my office called you to follow up on the request. I called the phone number listed on Ms. Sanchez's paystub and was able to obtain the phone number to the HR Department. I then called you on May 26, 2021, May 27, 2021, and on May 28, 2021. On all occasions I was not able to speak with you or leave a message as the voicemail was not accepting messages.

As the Human Resources Manager, I'm sure you know that the California Labor Code provides deadlines for employers to respond to requests for personnel and pay records, and the imposition of penalties for an employer's failure to comply with these Labor Code provisions. Labor Code § 226(c) requires an employer to comply with the request for an employee's pay records "no later than **21 calendar days** from the date of the request." As set forth in Labor Code § 226(f), failure by an employer to comply with the request pursuant to subdivision (c) "entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty dollar (\$750) penalty from the employer."

Likewise, Labor Code § 1198.5 requires an employer to make the contents of an employee's personnel records available within **30 calendar days** of receipt of a request under section 1198.5. Labor Code § 1198.5(k) imposes a \$750 penalty on an employer for failure to comply with the timing requirements under this section.

June 1, 2021

Page 2 of 2

By sending Ms. Sanchez's and Ms. Barajas' Request for Personnel Documents to KBS' Entity Address and Agent for Service of Process as listed on the Secretary of State's website, our office fulfilled its duty to notify KBS of Ms. Sanchez's and Ms. Barajas' request.

Blanca Sanchez and Viviana Barajas, through my office, made requests under Sections 226 and 1198.5, as well as 432. It has been **55 calendar days** since we mailed the request for both Ms. Sanchez's and Ms. Barajas' records on April 13, 2021. If KBS provides copies of the requested documents by June 21, 2021, Ms. Sanchez and Ms. Barajas will not seek the penalties owed to each under Sections 226(f) and 1198.5(k).

For your convenience, you can email me the documents at anthony@mossbollinger.com. Or you can mail the documents to my law office at Moss Bollinger LLP, 15300 Ventura Blvd., Suite 207, Sherman Oaks, CA 91403.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony Flores', is positioned above the typed name.

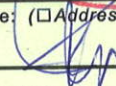
Anthony Flores
MOSS BOLLINGER, LLP

Encl.

EXHIBIT C

to

**Notice to Kellermeyer Bergensons Services,
LLC pursuant to Labor Code Section
2699.3(a)(1)**

	Restricted Delivery? (Extra Fee) ☐ Yes	Service Type CERTIFIED
	Article Number 9414 7116 9900 0239 5837 20	
 9414 7116 9900 0239 5837 20		
COMPLETE THIS SECTION ON DELIVERY		
A. Signature: (☐ Addressee or ☐ Agent) X 	B. Received By: (Please Print Clearly)	C. Date of Delivery
D. Addressee's Address (If Different From Address Used by Sender) Secondary Address / Suite / Apt. / Floor (Please Print Clearly) Delivery Address State ZIP + 4 Code		Article Addressed To: Corporation Service Company Agent for Service of Process Kellermeyer Bergensons Services, LLC 2710 Gateway Oaks Drive, Suite 150N Sacramento CA 95833-3502

Restricted Delivery? ☐ Yes (Extra Fee) ☐ Yes		Service Type CERTIFIED
Article Number 9414 7116 9900 0239 5050 67		


9414 7116 9900 0239 5050 67

COMPLETE THIS SECTION ON DELIVERY		
A. Signature: (☐ Addressee or ☐ Agent) X	B. Received By: (Please Print Clearly)	C. Date of Delivery

D. Addressee's Address (If Different From Address Used by Sender) Secondary Address / Suite / Apt. / Floor (Please Print Clearly) Delivery Address City State ZIP + 4 Code	Article Addressed To: Maria Jackson Kellermeyer Bergensons Services, LL 3605 Ocean Ranch Blvd, Suite 200 Oceanside CA 92056-2696
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PS FORM 3811, 2/04 /USA CMF-076 03/18

UNITED STATES POSTAL SERVICE
SAN DIEGO CA 920
10 JUN 2021 PM 1 L

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

RETURN TO:

Mess Bollinger, LLP
15300 Ventura Blvd Suite 207
Sherman Oaks CA 91403-5824

EXHIBIT D

to

**Notice to Kellermeyer Bergensons Services,
LLC pursuant to Labor Code Section
2699.3(a)(1)**



Anthony Flores <anthony@mossbollinger.com>

Viviana Barajas

3 messages

Holly Neely <HNeely@kbs-services.com>

Mon, Jun 14, 2021 at 11:11 AM

To: "anthony@mossbollinger.com" <anthony@mossbollinger.com>

Cc: Maria Jackson <MJackson@kbs-services.com>

Good Afternoon Mr. Flores. I am in receipt of the attached records request, concerning your client, referenced above, however I need identifying information to locate your client in our system. Please forward Ms. Barajas' date of birth, home address and the last four digits of her social security number so that I can process your request. Thank you and have a nice day.

Holly L. Neely

Corporate Paralegal Manager, Legal Department

hneely@kbs-services.com**Corporate Headquarters**[1575 Henthorne Drive](#)[Maumee, OH 43537](#)**P** 419.867.4319**F** 419.867.4295www.kbs-services.com[LinkedIn](#) | [Facebook](#) | [Twitter](#)**Essential Facility Services to**
Stay Ahead of the Curve™

This message may be confidential and attorney-client privileged. If received in error, please do not read. Instead, reply to me that you have received it in error and delete the message. Thank you.

 **4.26.21 Barajas, Viviana (CA).pdf**
204K

Anthony Flores <anthony@mossbollinger.com>
To: Holly Neely <HNeely@kbs-services.com>
Cc: Maria Jackson <MJackson@kbs-services.com>

Wed, Jun 16, 2021 at 12:10 PM

Hello Holly,

Here is the information you requested:

DOB - [REDACTED]

Last 4 of SSN - [REDACTED]

Address - [REDACTED]

Let me know if you need anything else.

Best,

Anthony Flores

Moss Bollinger, LLP

15300 Ventura Blvd., Suite 207

Sherman Oaks, California 91403

Tel. (310) 982-2984, Ext. 8

Fax (818) 963-5954

Email: anthony@mossbollinger.com

<http://mossbollinger.com>

Anthony Flores <anthony@mossbollinger.com>
To: Holly Neely <HNeely@kbs-services.com>
Cc: Maria Jackson <MJackson@kbs-services.com>

Mon, Jun 28, 2021 at 3:40 PM

Holly,

I am following up on the records request for Blanca Sanchez and Viviana Barajas. I provided the information you requested on June 16, 2020. I have not received any responsive documents via email nor has anything arrived at the office via mail. Please let me know if you plan on producing the requested documents for both Blanca Sanchez and Viviana Barajas. The deadline to provide the documents was on June 21, 2020.

Thanks,