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**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 5/22/2023 2:00 PM
Reviewed By: R. Walker
Case #23CV412588
Envelope: 12035058**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JONATAN OCHOA, an individual, on behalf
of himself and others similarly situated

PLAINTIFF,

v.

MEDALLION LANDSCAPE
MANAGEMENT, LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 23CV412588

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

**[Case Assigned for all purposes to Hon.
Sunil R. Kulkarni in Dept. 1]**

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

1. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
2. Failure to Provide Employment Records Pursuant to Labor Code §§ 226 and 1198.5
3. Violation of Business & Professions Code § 17200
4. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff JONATAN OCHOA, an individual, on behalf of himself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, § 2699, *et seq.* (hereafter “PAGA”),
4 complains of Defendant MEDALLION LANDSCAPE MANAGEMENT, LLC (“Defendant”) and
5 each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382, on behalf of Plaintiff and a Proposed Class defined as:

10 All non-exempt employees who are employed or have been
11 employed by MEDALLION LANDSCAPE MANAGEMENT,
12 LLC, in the State of California who worked one or more pay periods
13 since four (4) years prior to the filing of this action to the present
14 plus any additional time during which the statutes of limitation for
the causes of action herein were tolled pursuant to Emergency Rule
9 of the California Rules of Court, the ‘Emergency Rules Related to
COVID-19’ (“Proposed Class”)

15 2. Any limitations period referenced in this complaint is extended pursuant to
16 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
17 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
18 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
19 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
20 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
21 relevant time period or statute of limitations referenced in this complaint is extended into the past
22 by the number of days in which this tolling was in effect.

23 3. For at least four (4) years prior to the filing of this action and continuing to the
24 present, Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of using
25 their personal cell phones for business related purposes. Defendant required Plaintiff and the
26 Proposed Class to use their cell phones to perform their job duties. These cellphones were not
27 provided by Defendant, and Defendant failed to reimburse Plaintiff and the Proposed Class for the
28 costs associated for using these personal cell phones.

4. Plaintiff, on behalf of himself and all Proposed Class members brings this action pursuant to Labor Code § 2802; Wage Order 5-2001; and California Code of Regulations, Title 8, Section 11050, seeking unreimbursed expenses, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

5. Plaintiff also brings a claim on behalf of himself only for a violation of Labor Code §§ 226 and 1198.5. Plaintiff requested the right to review his personnel file and his pay records by sending a letter to Defendant. Defendant refused to provide the requested documentation in violation of these statutes. Plaintiff is seeking penalties and injunctive relief.

6. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

7. For at least one (1) year prior to the date of the letter sent to the Labor Workforce and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph 1 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or formerly employed by Defendant during the liability period as defined in his PAGA notice letter (*see* Exhibit “1”), brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant’s violations of Labor Code § 2802.

II.

JURISDICTION AND VENUE

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

9. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of Santa Clara and the State of California through their acts, and by their

violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

10. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within Santa Clara County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class members within the State of California and the county of Santa Clara.

11. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

12. Plaintiff files this amended complaint adding a claim for penalties pursuant to Labor Code § 2699, *et seq.* as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C)].

III.

PARTIES

A. PLAINTIFF

13. Plaintiff JONATAN OCHOA is a resident of California.

14. Plaintiff and all Proposed Class members, were regularly required to work without being reimbursed for the use of their personal cellphones for work purposes;

15. Additionally, Plaintiff requested copies or an opportunity to copy his personnel file and his pay records. Defendant refused to comply with this request in violation of Labor Code §§ 226 and 1198.5.

16. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

17. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (*see* Labor Code §2699(c).)

///

B. DEFENDANTS

18. Defendant MEDALLION LANDSCAPE MANAGEMENT, LLC is believed to be a California corporation operating within the State of California. Defendant's corporate address is believed to be 10 San Bruno Ave, Morgan Hill, CA 95037. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

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

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

21. Furthermore, Defendants acted in all respects as the employers or joint employers of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or engaged, thereby creating a common law employment relationship, with the Proposed Class. Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

IV.

FACTUAL BACKGROUND

22. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been classified as non-exempt employees by Defendant. Defendant hires employees who work as hourly employees who are paid on an hourly basis.

23. Upon information and belief, Plaintiff and the Proposed Class are covered by California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal. Code of Regs. § 11050).

24. On a regular and consistent basis, Plaintiff and the Proposed Class have not been properly reimbursed expenses associated with the cost of using their personal cell phones necessary for the completion of their job duties. Defendant required Plaintiff and the Proposed Class members to use their own cell phones to perform and complete their job duties including to communicate with and receive instructions from Defendant's management. These cell phones were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the Proposed Class for the costs associated with using these personal cell phones.

25. As it relates to Plaintiff only, Defendant refused to comply with Plaintiff's request for copies or an opportunity to copy his personnel file and his pay records, in violation of Labor Code §§ 226 and 1198.5.

26. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

V.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a proposed class composed of and defined as follows:

All non-exempt employees who are employed or have been employed by MEDALLION LANDSCAPE MANAGEMENT, LLC, in the State of California who worked one or more pay periods since four (4) years prior to the filing of this action to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the 'Emergency Rules Related to COVID-19' ("Proposed Class")

28. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

29. This action has been brought and may properly be maintained as a class action

under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

A. NUMEROSITY

30. The potential members of the Proposed Class as defined are so numerous that joinder of all the members of the Proposed Class is impracticable. While the precise number of proposed Class Members has not been determined at this time, Plaintiff is informed and believes that Defendant currently employ, and during the relevant time periods employed over 50 members of the Proposed Class.

31. Plaintiff alleges that Defendant's employment records would provide information as to the number and location of all Proposed Class members. Joinder of all members of the Proposed Class is not practicable.

B. COMMONALITY

32. There are questions of law and fact common to the Proposed Class that predominate over any questions affecting only individual Proposed Class members. These common questions of law and fact include, without limitation:

a. Whether Defendants violated Labor Code § 2802 and/or Wage Order 5-2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the cost of personal cell phone usage;

b. Whether Defendant violated § 17200, *et seq.* of the Business & Professions Code by engaging in the acts previously alleged; and

c. Whether Plaintiff and the members of the Proposed Class are entitled to equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

d. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the acts alleged herein.

C. TYPICALITY

33. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and all members of the Proposed Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of laws, regulations that have the force and

effect of law, and statutes as alleged herein.

D. ADEQUACY OF REPRESENTATION

34. Plaintiff will fairly and adequately represent and protect the interests of the members of the proposed Class.

35. Counsel who represent Plaintiff and the Proposed Class are competent and experienced in litigating large employment class actions.

E. SUPERIORITY OF CLASS ACTION

36. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class Members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to reimburse out-of-pocket expenses.

37. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI.

FIRST CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO REIMBURSE EXPENSES PURSUANT TO

LABOR CODE § 2802

38. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

39. Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties.

40. Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of using their personal cell phones that were not provided by Defendant but were necessary for the

performance of Plaintiff and the Proposed Class’s job duties.

41. Defendant required Plaintiff and all Proposed Class members to use their own cellphones to perform and complete their job duties including using their personal cell phones to communicate with and receive instructions from Defendant’s management.

42. These cell phones were not provided by Defendant and Defendant failed to reimburse Plaintiff and the Proposed Class for the costs of regular and consistent cellular phone usage despite the fact that these expenditures were necessary for business related purposes.

43. As a result of the unlawful acts of Defendants, Plaintiff and the Proposed Class have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs.

VII.

SECOND CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF ONLY

VIOLATION OF LABOR CODE §§ 226 AND 1198.5

44. Plaintiff, on behalf of himself only, realleges and incorporates by reference all previous paragraphs.

45. On December 15, 2022, Plaintiff mailed to Defendant his first written request to his employer to copy or to receive a copy of his personnel file and payroll records. The letter cited Labor Code §§ 226 and 1198.5. Defendant signed Plaintiff’s certified mail receipt on December 19, 2022.

46. Defendant did not provide the documentation requested by Plaintiff within the statutory time frames causing Plaintiff to mail a second written request to Defendant on January 19, 2023. Plaintiff received a returned certified mail receipt signed by Defendant on January 23, 2023, indicating receipt of Plaintiff’s second written request.

47. Defendant did not provide the documentation requested by Plaintiff in his second written request.

48. Labor Code § 226(f) provides that “[a] failure by an employer to permit a current or former employee to inspect or copy records within the. . .” statutory time frame “. . . entitles the

1 current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar
2 (\$750) penalty from the employer.”

3 49. Additionally, Labor Code §226(h) permits an employee to bring an action for
4 injunctive relief to ensure compliance Labor Code § 226 and states that employee is entitled to an
5 award of costs and reasonable attorney’s fees.

6 50. Labor Code § 1198.5(a) states: “Every current and former employee, or his or her
7 representative, has the right to inspect and receive a copy of the personnel records that the
8 employer maintains relating to the employee’s performance or to any grievance concerning the
9 employee.”

10 51. Labor Code § 1198.5(k) provides that if an employer fails to permit an inspection
11 or fails to permit an employee to copy personnel records within the times specified, the current or
12 former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

13 52. Additionally, Labor Code § 1198.5(l) permits an employee to bring an action for
14 injunctive relief to obtain compliance with this section, and may recover costs and reasonable
15 attorney’s fees in such an action.

16 53. As such, Defendant has violated Labor Code §§ 226 and 1198.5 and Plaintiff is
17 entitled Plaintiff is entitled to production of the documents requested, penalties, and attorney’s fees
18 and costs.

19 **VIII.**

20 **THIRD CAUSE OF ACTION**

21 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

22 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

23 54. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
24 by reference all previous paragraphs.

25 55. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
26 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
27 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
28 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general

1 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
2 interest within the meaning of Code of Civil Procedure § 1021.5.

3 56. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
4 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
5 appropriate equitable relief.

6 57. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
7 practices.

8 58. California’s wage and hour laws express fundamental public policies. Providing
9 employees with proper wages and compensation are fundamental public policies of this State and
10 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
11 vigorously minimum labor standards, to ensure that employees are not required or permitted to
12 work under substandard and unlawful conditions, and to protect law-abiding employers and their
13 employees from competitors who lower their costs by failing to comply with minimum labor
14 standards.

15 59. Defendant has violated statutes and public policies as alleged herein. Through the
16 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
17 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
18 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
19 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
20 guaranteed to all employees under law.

21 60. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
22 violation of § 17200, *et seq.* of the Business & Professions Code.

23 61. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
24 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
25 § 17200, *et seq.* of the Business & Professions Code.

26 62. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
27 others similarly situated have been damaged in a sum as may be proven.

28 63. Unless restrained, Defendant will continue to engage in the unlawful conduct as

1 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
2 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
3 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
4 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
5 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
6 proposed Class the money Defendant has unlawfully failed to pay.

7 **IX.**

8 **FOURTH CAUSE OF ACTION**

9 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

10 64. Plaintiff, on behalf of himself and all aggrieved employees, realleges and
11 incorporates by reference all previous paragraphs.

12 65. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
13 seeks penalties under Labor Code § 2699, *et seq.* use of Defendant's violation of Labor Code §
14 2802; Wage Order 5-2001; and California Code of Regulations, Title 8, Section 11050, which call
15 for civil penalties.

16 66. For each such penalty, Plaintiff and the aggrieved employees are entitled to
17 penalties in an amount to be shown at trial, subject to the following formula:

18 a. \$100 for the initial violation per employee per pay period.

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

20 67. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
21 twenty-five percent (25%) to the affected employees.

22 68. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
23 LWDA¹ and mailed a letter by certified mail to Defendant's entity address, which is 10 San Bruno
24 Avenue, Morgan Hill, CA 95037, as proscribed by the Code on March 17, 2023, describing
25 Defendant's conduct in violation of Labor Code § 2802 (*see* Exhibit "1.") Plaintiff received a
26 signed green return receipt from Defendant, indicating that it received Plaintiff's notice letter. (*see*

27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

Exhibit “2.”) Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit “3”).

69. As no letter evidencing the LWDA’s intention to investigate was received by Plaintiff’s Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of Plaintiff’s and each Proposed Class Members’ unreimbursed out of pocket expenses as a requirement of employment;

2. On behalf of himself only, Plaintiff requests penalties pursuant to Labor Code §§ 226(f) and 1198.5(k) and injunctive relief pursuant to Labor Code §§ 226(h) and 1198.5(k) for violation of Labor Code §§ 226 and 1198.5;

3. An award of prejudgment and post judgment interest;

4. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with reimbursed out of pocket expenses pursuant to Labor Code § 2802, and IWC 5-2001;

5. For restitution for unfair competition pursuant to Business & Professions Code § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

6. For penalties and other relief pursuant to Labor Code §2699, *et seq.* for Plaintiff and all other Aggrieved Employees for Defendant’s violation of Labor Code § 2802; Wage Order 5-2001; and California Code of Regulations, Title 8, Section 11050;

7. An award providing for payment of costs of suit;

8. An award of attorneys’ fees; and

9. Such other and further relief as this Court may deem proper and just.

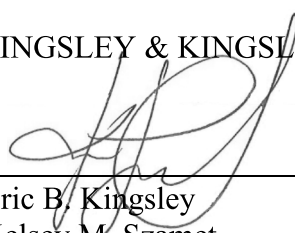
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

DATED: May 22, 2023

KINGSLEY & KINGSLEY, APC

By: 

Eric B. Kingsley

Kelsey M. Szamet

Attorneys for Plaintiff and the Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

March 17, 2023

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

Medallion Landscape Management, LLC
10 San Bruno Avenue
Morgan Hill, CA 95037
Via Certified Mailing # 7022 3330 0002 1335 5980

Re: Jonatan Ochoa v. Medallion Landscape Management, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Jonatan Ochoa (“Plaintiff”) and a proposed group of current and former employees working for Medallion Landscape Management, LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by Medallion Landscape Management, LLC, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 16 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

March 17, 2023

Page 2 of 2

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

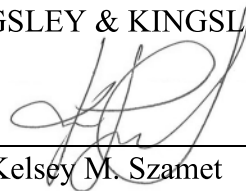
Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. Specifically, Plaintiff and the aggrieved employees used their personal cell phones to communicate with and receive instructions from Defendant's management. These cell phones were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones.

Plaintiff also brings a claim on behalf of himself only for a violation of Labor Code §§ 226 and 1198.5. Plaintiff requested the right to review his personnel file and his pay records by sending a letter to Defendant. Defendant refused to provide the requested documentation in violation of these statutes. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§ 226 and 1198.5.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code § 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/km

Cc: 1. Abramson Labor Group, 3580 Wilshire Blvd Ste 1260, Los Angeles, CA90010-2513

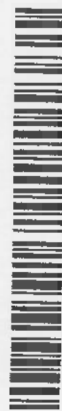
EXHIBIT "2"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Medallion Landscape Management, LLC
10 San Bruno Avenue
Morgan Hill, CA 95037



9590 9402 7019 1225 1743 66

2. Article Number (Transfer from service label)

7022 3330 0002 1335 5980

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Adult Signature
☐ Certified Mail®
☐ Collect on Delivery
☐ Insured Mail (over \$500)☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

3/20/23

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

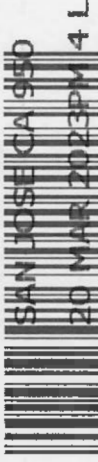
3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

USPS TRACKING#



9590 9402 7019 1225 1743 66

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

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
MEDALLION LANDSCAPE MANAGEMENT, LLC

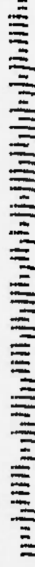


EXHIBIT "3"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

kimberly@kingsleykingsley

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California ▼

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Jonatan Ochoa

Plaintiff/Aggrieved Employee Occupation *

non-exempt employee

Add Additional Plaintiffs

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

Medallion Landscape Management, LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

10 San Bruno Avenue

Employer City *

Morgan Hill

Employer State *

California ▼

Employer Zip/Postal Code *

95037

Employer Industry *

Agriculture ▼

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☐ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☐ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☐ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Child Labor – Specify Ages**Provide Details of Other Violation *****Other(Maybe Multiple)**

- ☐ Other Violation

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information**Billing First Name ***

Eric

Billing Last Name *

Kingsley

Billing Email *

kimberly@kingsleykingsley

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

[REDACTED] ▼

Credit Card Number *

[REDACTED]

CVV Number *

[REDACTED]

Credit Card Expiration Month *

[REDACTED]

mm

Credit Card Expiration Year *

[REDACTED]

yyyy

Notice and Other Attachments**PAGA Claim Notice (must be a .pdf) *****Choose File** LWDA Letter ...ement, LLC.pdf**Other Attachment – (if any) (must be a .pdf)****Choose File** No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ **I understand that, if I file, I must comply with the redaction rules consistent with this notice.**

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Friday, March 17, 2023 10:06 AM
To: Kimberly Madrid
Subject: Thank you for submission of your PAGA Case.

External Email!

3/17/2023

LWDA Case No. LWDA-CM-942612-23

Law Firm : Kingsley & Kingsley, APC

Plaintiff Name : Jonatan Ochoa

Employer: Medallion Landscape Management, LLC Filing Fee : \$75.00 IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7Ckimberly%40kingsleykingsley.com%7C5aa7640cb435467c5e2208db2709d339%7C121a7875db eb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638146695384689378%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMD AiLCJQJjoiV2luMzliLCJBTiI6Ikh1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=gcPckziU75l%2F84ryrqz1KkU0jqY9s AT2uTc%2FaMxVelw%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Friday, March 17, 2023 10:06 AM
To: Kimberly Madrid
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-942612-23

Order Number: ORD-000213890

Total:\$75.00

Card Type: 

Date: 3/17/2023

Billing Information

Name: Eric Kingsley

Email: kimberly@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436