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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

15 BEVERLY DURHAM, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 UNIVERSAL PROTECTION SERVICE, LP,
20 a California limited partnership; and DOES 1
21 through 10,

22 Defendants.

Case No.: 30-2021-01188789-CU-OE-CXC
Assigned for all purposes to: Judge James J. Di Cesare
C16

**COMPLAINT FOR PUBLIC
INJUNCTIVE RELIEF AND VIOLATION
OF PAGA PURSUANT TO:**

1. Cal. Bus. & Prof. Code § 17200 *et seq.* and
2. Cal. Lab. Code § 2698 *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff Beverly Durham (“Plaintiff”), on behalf of herself and all others similarly situated,
2 brings this action against Defendant Universal Protection Service, LP and DOES 1 through 10
3 (collectively, “Defendants”), upon information and belief, except to her own actions, the investigation
4 of her counsel, and the facts that are a matter of public record, as follows:

5 INTRODUCTION

6 1. This action arises from Defendants’ failure to take reasonable and necessary
7 precautions to protect their employees and the community from the harmful effects of COVID-19,
8 thereby facilitating the spread of the virus and putting their employees and the surrounding
9 community at an unnecessarily heightened risk of infection.

10 2. COVID-19 is a highly contagious respiratory disease, caused by a novel coronavirus
11 that has not previously been seen in humans. Symptoms of COVID-19 include, but are not limited to,
12 fever or chills, cough, shortness of breath, fatigue, muscle or body aches, headache, loss of taste or
13 smell, sore throat, and congestion or runny nose; more severe symptoms include trouble breathing,
14 persistent pain or pressure in the chest, confusion, inability to wake or stay awake, and even death.
15 COVID-19 can also cause severe long-term complications, including damage to the heart, lungs,
16 kidneys, and/or brain. Ctrs. for Disease Control & Prevention (“CDC”), *Symptoms of Coronavirus*
17 (Feb. 22, 2021), <https://www.cdc.gov/coronavirus/2019-nCoV/index.html>. As of the date of this
18 Complaint, there have been over 500,000 deaths in the United States from COVID-19. *See* CDC,
19 *COVID Data Tracker*, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited Mar.
20 11, 2021).

21 3. The easiest way for COVID-19 to spread is through “prolonged exposure” to an
22 infected person, especially without adequate covering of the eyes, nose, or mouth. The risk of
23 infection through spread increases dramatically when individuals are in close physical proximity,
24 particularly indoors, and for extended periods of time, and when individuals come into contact with
25 infected persons who sneeze or cough. *See* CDC, *Interim U.S. Guidance for Risk Assessment and*
26 *Work Restrictions for Healthcare Personnel with Potential Exposure to SARS-CoV-2* (Mar. 11, 2021),
27 <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html>.

28 4. Defendants, through various actions and omissions, have created an unnecessarily

1 dangerous work environment for their employees during the COVID-19 pandemic, which, in turn has
2 created dangerous conditions for their employees and the general public. These actions include, but
3 are not limited to, failing to provide their employees with adequate personal protective equipment
4 (“PPE”) including masks, gloves, and face shields, and failing to reimburse their employees for
5 expenses relating to the same.

6 5. Throughout the COVID-19 pandemic, Defendants have failed to support their
7 employees and communities by failing to implement the proper safety measures in compliance with
8 California law.

9 6. Plaintiff seeks relief on behalf of herself and all others similarly situated as a result of
10 employment policies, practices, and procedures that violate the California Business and Professions
11 Code, the California Labor Code, and the standards promulgated by the California Department of
12 Industrial Relations, the Industrial Welfare Commission, the Division of Labor Standards, and the
13 Division of Occupational Safety and Health (“Cal-OSHA”).

14 7. By this Complaint, Plaintiff seeks injunctive relief on behalf of herself and the general
15 public.

16 8. Plaintiff also has complied with the procedures for bring suit specified in the Private
17 Attorneys General Act (“PAGA”), California Labor Code section 2698 *et seq.* By letter dated January
18 21, 2021, required notice was sent to Labor and workforce Development Agency (“LWDA”), Cal-
19 OSHA, and Defendants of the specific provisions of the California Labor Code alleged to have been
20 violated, including the acts and theories to support the alleged violations.

21 **PARTIES**

22 9. Plaintiff Beverly Durham is, and at all times relevant herein was, a resident of Los
23 Angeles, California. Plaintiff has been employed by Defendants as a non-exempt employee since
24 approximately March 2020.

25 10. Upon information and belief, Defendant Universal Protection Service, LP is, and at all
26 times relevant herein was, a California limited partnership with its principal place of business in
27 California located at 1551 North Tustin Avenue, Suite 650, Santa Ana, California 92705.

28 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and

1 omissions alleged herein was performed by, or are attributable to, Defendants and/or DOES 1 through
2 10, with each acting as the agent for the other, with legal authority to act on the other's behalf. The
3 acts of any and all Defendants were in accordance with, and represent, the official practice and policy
4 of Defendants. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
5 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
6 Complaint and serve such fictitiously named Defendants once their names and capacities become
7 known.

8 12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were
9 the partners, agents, owners, shareholders, managers, or employees of Defendant Universal Protection
10 Service, LP at all relevant times.

11 13. Plaintiff is informed and believes, and thereon alleges, that each Defendant is, in some
12 manner, intentionally or otherwise, responsible for the acts, omissions, occurrences, and transactions
13 of each and all of the other Defendants in proximately causing the damages herein alleged.

14 14. At all relevant times, Defendants, and each of them, ratified each and every act or
15 omission complained of herein. At all relevant times, Defendants, and each of them, aided and
16 abetted the acts alleged herein.

17 **JURISDICTION AND VENUE**

18 15. The Court has jurisdiction over this action pursuant to the California Constitution,
19 article VI, section 10, which grants the superior court "original jurisdiction in all other causes" except
20 those given by statute to other courts. The statutes under which this action is brought do not specify
21 any other basis for jurisdiction.

22 16. The Court has jurisdiction over the violations of the California Business and
23 Professions Code section 17200 *et seq.* ("UCL"), and the California Labor Code.

24 17. This Court has jurisdiction over Defendants because, upon information and belief,
25 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
26 intentionally avail themselves of the California market so as to render the exercise of jurisdiction over
27 them by the California courts consistent with traditional notions of fair play and substantial justice.

28 18. Venue is proper in this Court because, upon information and belief, Defendants

1 maintain offices, have agents, and/or transact business in the State of California, County of Orange.

2 **PUBLIC-INJUNCTIVE-RELIEF ALLEGATIONS**

3 19. The UCL provides for public injunctive relief. *See McGill v. City Bank, N.A.*, 2 Cal.
4 5th 945, 961 (2017) (stating that “public injunctive relief remains a remedy available to private
5 plaintiffs under the UCL” even when there is an arbitration provision and without complying with the
6 procedural requirements of a class action). Under *McGill*, any consumer who loses money or property
7 as a result of an unfair business practice may seek public injunctive relief to prohibit unlawful acts that
8 threaten future injury to the public without the need to certify a class.

9 20. As alleged in detail below, Plaintiff, who has lost money or property as a result of
10 Defendants’ unfair business practices, seeks to prohibit ongoing unlawful acts that threaten future
11 injury to the public at large.

12 21. Plaintiff reserves the right to expand, limit, modify, or amend these allegations at any
13 time based upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

14 **REGULATORY BACKGROUND**

15 22. On approximately March 4, 2020, California Governor Gavin Newsom proclaimed a
16 state of emergency as a result of the threat of COVID-19. Thereafter, on approximately March 11,
17 2020, the World Health Organization declared COVID-19 a pandemic. On approximately March 13,
18 2020, the President of the United States declared a national state of emergency in this country as a
19 result of the disease and its rapid spread. On approximately March 19, 2020, Governor Newsom
20 issued a statewide shelter-in-place order, directing all California residents to stay home unless they
21 worked for an “essential business,” such as a hospital. The executive order did not set a date for the
22 lifting of the stay-at-home requirement.

23 23. Additionally, numerous cities, counties, and municipalities throughout California have
24 issued orders related to COVID-19, including requiring facial coverings in public. Numerous cities
25 and counties throughout California continue to promulgate and update their rules and regulations
26 regarding the requirement of PPE.

27 24. The CDC advises that restricting human-to-human contact via physical distancing, to
28 the extent possible, is the only way to limit COVID-19 infections among workers in healthcare and

1 prevent the spread of disease. Preventative measures such as the use of PPE, frequent handwashing,
2 and sanitization of commonly touched physical objects are also recommended. See CDC, *Interim*
3 *Infection Prevention and Control Recommendations for Healthcare Personnel During the*
4 *Coronavirus Disease 2019 (COVID-19) Pandemic* (Feb. 23, 2021),
5 <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>.

6 25. The CDC has recognized the heightened risks facing healthcare personnel (“HCP”),¹
7 and has released safety guidance for employers operating healthcare facilities to prevent the
8 transmission of COVID-19, including “Interim U.S. Guidance for Risk Assessment and Work
9 Restrictions for Healthcare Personnel with Potential Exposure to SARS-CoV-2.” See CDC, *Interim*
10 *U.S. Guidance for Risk Assessment and Work Restrictions for Healthcare Personnel with Potential*
11 *Exposure to SARS-CoV-2* (Mar. 11, 2021), [https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-](https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assessment-hcp.html)
12 [risk-assessment-hcp.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assessment-hcp.html). This is in addition to general guidance that the CDC has issued for all
13 businesses open during the pandemic. See CDC, *Guidance for Businesses and Employers Responding*
14 *to Coronavirus Disease 2019 (COVID-19)* (Mar. 8, 2021), [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html)
15 [ncov/community/guidance-business-response.html](https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html).

16 26. According to these guidelines, because HCP regularly come into “extensive and close
17 contact with vulnerable individuals . . . , a conservative approach to HCP monitoring and applying
18 work restrictions is recommended to prevent transmission from potentially contagious HCP to
19 patients, other HCP, and visitors.” CDC, *Interim U.S. Guidance for Risk Assessment and Work*
20 *Restrictions for Healthcare Personnel with Potential Exposure to SARS-CoV-2* (Mar. 11, 2021),

21 ¹ The CDC defines “HCP” as “all paid and unpaid persons serving in healthcare settings who have
22 the potential for direct or indirect exposure to patients or infectious materials, including body
23 substances (e.g., blood, tissue, and specific body fluids); contaminated medical supplies, devices, and
24 equipment; contaminated environmental surfaces; or contaminated air.” CDC, *Interim U.S. Guidance*
25 *for Risk Assessment and Work Restrictions for Healthcare Personnel with Potential Exposure to*
26 *SARS-CoV-2* (Mar. 11, 2021), [https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-](https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assessment-hcp.html)
27 [assessment-hcp.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assessment-hcp.html). HCP include, but are not limited to, “emergency medical service personnel,
28 nurses, nursing assistants, physicians, technicians, therapists, phlebotomists, pharmacists, students and
trainees, contractual staff not employed by the healthcare facility, and persons not directly involved in
patient care, but who could be exposed to infectious agents that can be transmitted in the healthcare
setting (e.g., clerical, dietary, environmental services, laundry, security, engineering and facilities
management, administrative, billing, and volunteer personnel).”

1 <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html>.

2 27. The CDC provides guidance for the health and safety of HCP in healthcare facilities.
3 This guidance includes the following instructions for hospital employees and employers: wear a
4 facemask at all times while in the healthcare facility, including in breakrooms or other spaces;
5 universal use of PPE; create a process to respond to COVID-19 exposures among HCP and others;
6 and create a plan for how exposures in a healthcare facility will be investigated and managed, and how
7 contact tracing will be performed. *See CDC, Interim Infection Prevention and Control*
8 *Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19)*
9 *Pandemic* (Feb. 23, 2021), [https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-](https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html)
10 [recommendations.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html).

11 28. Cal-OSHA has also outlined basic steps that every employer can take to reduce the risk
12 of worker exposure to COVID-19 in their workplace. Such steps include developing an infectious-
13 disease preparedness and response plan; developing policies and procedures for prompt identification
14 and isolation of sick people, if appropriate; and developing, implementing, and communicating about
15 workplace flexibilities and protections. *See Cal-Osha, Guidance on Preparing Workplaces for*
16 *COVID-19*, <https://www.osha.gov/Publications/OSHA3990.pdf>.

17 29. The Cal-OSHA Manual instructs employers to “[p]rotect workers in close contact with
18 (i.e., within 6 feet of) a sick person or who have prolonged/repeated contact with such persons by
19 using additional engineering and administrative controls, safe work practices, and PPE.” *Id.*

20 30. The Cal-OSHA Manual further elaborates on safe work practices with the following
21 example: “[p]roviding resources and a work environment that promotes personal hygiene. For
22 example, provide tissues, no-touch trash cans, hand soap, alcohol-based hand rubs containing at least
23 60 percent alcohol, disinfectants, and disposable towels for workers to clean their work surfaces.” *Id.*

24 31. The Cal-OSHA Manual makes clear that “PPE may also be needed to prevent certain
25 exposures.” *Id.* Examples of PPE include gloves, goggles, face shields, face masks, and respiratory
26 protection. *Id.* All types of PPE must be selected based upon the hazard to the worker; properly fitted
27 and periodically fitted, as applicable; consistently and properly worn when required; regularly
28 inspected, maintained, and replaced as necessary; and properly removed, cleaned, and stored or

1 disposed of, as applicable, to avoid contamination of self, others, or the environment. *Id.*

2 32. Furthermore, according to the California Labor Code, “[e]very employer **shall** furnish
3 and use safety devices and safeguards, and **shall** adopt and use practices, means, methods, operations,
4 and processes which are reasonably adequate to render such employment and place of employment
5 safe and healthful.” Cal. Lab. Code § 6401 (emphasis supplied). *See also id.* §§ 6402 (“No employer
6 **shall** require, or permit any employee to go or be in[,] any place of employment which is not safe and
7 healthful.”) (emphasis supplied), 6403 (“No employer **shall** fail or neglect to do any of the following:
8 (a) To provide and use safety devices and safeguards reasonably adequate to render the employment
9 and place of employment safe. (b) To adopt and use methods and processes reasonably adequate to
10 render the employment and place of employment safe. (c) To do every other thing reasonably
11 necessary to protect the life, safety, and health of employees.”) (emphasis supplied). A “safety
12 device,” in turn, is defined as having “a broad interpretation so as to include any practicable method of
13 mitigating or preventing a specific danger.” *Id.* § 6306(b). Furthermore, and specifically as to
14 COVID-19, the California Code of Regulations provides that “[e]mployers **shall** evaluate the need for
15 personal protective equipment to prevent exposure to COVID-19 hazards, such as gloves, goggles,
16 and face shields, and **provide** such personal protective equipment as needed.” 8 Cal. Code Regs.
17 § 3205(c)(8)(E) (emphasis supplied). Similarly, the Code of Regulations states that “[e]mployers
18 **shall provide** face coverings and ensure that they are worn by employees over the nose and mouth
19 when indoors, when outdoors and less than six feet away from another person, and where required by
20 orders from the [California Department of Public Health] or local health department.” *Id.*
21 § 3205(c)(7) (emphasis supplied).

22 33. In addition, the California Civil Code defines “nuisance” as “[a]nything which is
23 injurious to health, . . . or is indecent or offensive to the senses, . . . so as to interfere with the
24 comfortable enjoyment of life or property.” Cal. Civ. Code § 3479. The Civil Code also defines
25 “public nuisance” as any nuisance that “affects at the same time an entire community or
26 neighborhood, or any considerable number of persons, although the extent of the annoyance or
27 damage inflicted upon individuals may be unequal.” *Id.* § 3480. The failure to comply with state,
28 municipal, or county ordinances, and/or with minimum basic health and safety standards in the

1 workplace, including the CDC and Cal-OSHA guidelines and other minimum public-health standards
2 necessary to stop the spread of COVID-19, is causing, or is reasonably certain to cause, community
3 spread of the disease. This community spread is not, and will not be, limited to Defendants'
4 employees, but extends to their families and others in the community. This community spread of
5 COVID-19 will result in disease and possibly death. It will also stress healthcare resources and cause
6 financial harm.

7 34. Defendants' conduct as discussed more fully herein violates the above rules,
8 regulations, and statutes designed to protect the public health.

9 **FACTUAL BACKGROUND RELATING TO PLAINTIFF AND TO DEFENDANTS'**

10 **OTHER CALIFORNIA EMPLOYEES**

11 35. Since the onset of the pandemic, Defendants have fallen far short of the CDC and Cal-
12 OSHA recommendations and the requirements of California law.

13 36. Defendants, among other things, provide security-personnel services to commercial
14 clients, including numerous hospitals and commercial facilities throughout California. In this
15 connection, Defendants employ a number of non-exempt individuals to work as security guards at
16 various locations throughout California.

17 37. Plaintiff has worked for Defendants since approximately March 2020 as a non-exempt
18 security guard at Los Angeles Community Hospital at Bellflower ("LACHB").

19 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants have not
20 provided COVID-19-related safety devices to their security guards at LACHB, and that they continue
21 to fail to provide any COVID-19-related safety devices to their security guards at LACHB. Plaintiff is
22 further informed and believes, and based thereon alleges, that this is Defendants' standard practice and
23 policy throughout California and has been implemented out of neglect, callous disregard for human
24 safety, and/or to reduce Defendants' expenses.

25 39. From about the inception of Plaintiff's employment through about the end of 2020, the
26 LACHB (*not* Defendant) provided Defendants' employees working at LACHB with one paper mask
27 per day and made available a limited supply of small bottles of alcohol. This has been woefully
28 inadequate to protect against COVID-19 transmission.

40. In approximately the end of December 2020 or the beginning of January 2021, LACHB (***not*** Defendant) began to provide N95 masks and face shields only to security guards working on the second floor of the facility. However, security guards who work on the first floor of the facility were only provided with a single paper mask per day. This has also been woefully inadequate to protect against COVID-19 transmission.

41. Plaintiff works on the first floor of LACHB and has personally come in close proximity to COVID-19-positive patients who pass by the first-floor security desk as part of admittance.

42. As a result of Defendants' failure to provide COVID-19-related safety devices, Plaintiff has been forced to pay hundreds of dollars out-of-pocket for PPE to be used for her personal safety at work for which she has not been reimbursed.

43. Plaintiff is informed and believes, and based thereon alleges, that Defendants' other employees throughout California have similarly been forced to pay out-of-pocket for PPE to be used for personal safety at work for which they have not been reimbursed.

FIRST CAUSE OF ACTION

Unfair Business Practices

(Cal. Bus. & Prof. Code § 17200 *et seq.*)

47. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

48. California Business and Professions Code sections 17200 *et seq.* The UCL prohibits “any unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200. Defendants have committed acts of unfair competition proscribed by the UCL as alleged herein.

49. Defendants are “persons” as defined by the UCL.

50. A violation of the UCL may be predicated on the violation of any state or federal law. In the instant case, Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in California in violation of the UCL by failing to comply with state, municipal, and county ordinances, failing to provide a safe workplace, failing to implement an effective illness-prevention plan, failing to provide necessary protective equipment, and failing to reimburse their employees for purchases of necessary protective equipment, as described more fully above.

51. Defendants' aforementioned acts and omissions constitute business practices in that Defendants have engaged in them repeatedly over a significant period of time and in a systematic manner, to the detriment of Plaintiff, other employees, and the community as a whole, and to Defendants' economic benefit.

52. Defendants' aforementioned acts and omissions have caused economic injury to Plaintiff and other employees, including, but not limited to, medical expenses and the cost of healthcare supplies and PPE.

53. Defendants' actions also constitute "unfair" business practices because they have exposed employees, as well as those employees' family members and other members of the community, to an increased risk of COVID-19 infection that could have been avoided through reasonably safe practices. Accordingly, any purported justification for Defendants' conduct is outweighed by the gravity of the harm to Plaintiff, Defendants' employees, and the general public.

54. As a result of Defendants' unfair and unlawful business practices, Defendants have gained an unfair competitive advantage that they would not have if they had adequately protected the health and safety of their employees and the public, and have reaped, and continue to reap, unfair and illegal profits at the expense of Plaintiff, their other employees, and members of the public.

55. Defendants' acts of unfair competition as set forth above present a continuing threat and will persist and continue unless and until this Court issues appropriate injunctive relief. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*, section 1021.5 of the California Code of Civil Procedure.

SECOND CAUSE OF ACTION

Violation of PAGA

(Cal. Lab. Code § 2698 *et seq.*)

56. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

57. Again, Defendants have violated sections 6401, 6402, and 6403 of the California Labor Code, as well as section 3205 of the California Code of Regulations. Plaintiff is entitled to collect

///

1 civil penalties for these violations.² Specially, PAGA—section 2698 *et seq.* of the California Labor
2 Code—provides:

3 (a) Notwithstanding any other provision of law, any provision
4 of this [C]ode that provides for a civil penalty to be assessed and
5 collected by the Labor and Workforce Development Agency or any
6 of its departments, divisions, commissions, boards, agencies, or
7 employees, for a violation of this [C]ode, may, as an alternative, be
8 recovered through a civil action brought by an aggrieved employee
9 on behalf of himself or herself and other current or former employees
10 pursuant to the procedures specified in [s]ection 2699.3.

11

12 (f) For all provisions of this [C]ode except those for which a
13 civil penalty is specifically provided, there is established a civil
14 penalty for a violation of these provisions, as follows: (2) If, at
15 the time of the alleged violation, the person employs one or more
16 employees, the civil penalty is one hundred dollars (\$100) for each
17 aggrieved employee per pay period for the initial violation and two
18 hundred dollars (\$200) for each aggrieved employee per pay period
19 for each subsequent violation. . . .

20 *Id.* § 2699.

21 58. As alleged below, Plaintiff has complied with the procedures specified by section
22 2699.3 of the California Labor Code to collect civil penalties. Section 2699.3 provides:

23 (b) A civil action by an aggrieved employee pursuant to
24 subdivision (a) or (f) of [s]ection 2699 alleging a violation of any
25 provision of Division 5 (commencing with [s]ection 6300) other than
26 those listed in [s]ection 2699.5 shall commence only after the
27 following requirements have been met:

28 (1) The aggrieved employee or representative shall give notice
by online filing with the Division of Occupational Safety and Health
and by certified mail to the employer, with a copy to the Labor and
Workforce Development Agency, of the specific provisions of
Division 5 (commencing with [s]ection 6300) alleged to have been

² Defendants also have violated section 2802 of the California Labor Code, which section requires employers to reimburse employees for “all necessary expenditures or losses incurred by . . . employee[s] in direct consequence of the discharge of [their] duties.” Cal. Lab. Code § 2802(a). Plaintiff has initiated the process under PAGA for seeking civil penalties associated with this wage-and-hour violation, and will amend this Complaint in due course to seek those penalties once the necessary time limits have elapsed. As presently alleged, Plaintiff’s PAGA cause of action is therefore limited to Defendants’ violations of California’s workplace-safety statutes and regulations.

1 violated, including the facts and theories to support the alleged
2 violation.

3 (2)(A) The division shall inspect or investigate the alleged
4 violation pursuant to the procedures specified in Division 5
(commencing with [s]ection 6300).

5

6 (B) If the division fails to inspect or investigate the alleged
7 violation as provided by [s]ection 6309, the provisions of subdivision
(c) shall apply to the determination of the alleged violation.

8 *Id.* § 2699.3. As set forth in section 6309, Cal-OSHA has a maximum of fourteen calendar days after
9 receipt of a complaint to investigate, *see id.* § 6309(a), and an additional fourteen days thereafter to
10 notify the complainant of any action in connection with that investigation, *see id.* § 6309(b).

11 59. The California Labor Code provisions that Plaintiff alleges Defendants have violated
12 are not listed in section 2699.5 of PAGA, which triggers the procedure set forth in subsection (b) of
13 section 2699.3. As to that procedure, on approximately January 21, 2021, Plaintiff provided written
14 notice by online filing with Cal-OSHA and the Labor and Workforce Development Agency
15 (“LWDA”), and by certified mail to Defendants, of the specific violations of the California Labor
16 Code detailed above. A copy of the written notice is attached hereto as **Exhibit 1**. Accordingly,
17 under section 6309 of the California Labor Code, Cal-OSHA had until approximately February 4,
18 2021, to investigate Plaintiff’s notice, and until approximately February 18, 2021, to notify Plaintiff as
19 to what actions, if any, were undertaken in connection with that investigation. As of the signing of
20 this Complaint, Plaintiff has not received any notice from Cal-OSHA that Cal-OSHA has undertaken
21 any investigation of Plaintiff’s notice (or any action whatsoever). According to PAGA, then, this
22 means that “the provisions of subdivision (c) [of section 2699.3] shall apply.” *Id.* § 2699.3(b)(2)(B).

23 60. Subdivision (c) of section 2699.3 provides:

24 A civil action by an aggrieved employee . . . shall commence
25 only after the following requirements have been met:

26 (1)(A) The aggrieved employee or representative shall give
27 written notice by online filing the Labor and Workforce Development
28 Agency and by certified mail to the employer of the specific
provisions of this code alleged to have been violated, including the
facts and theories to support the alleged violation. (B) A notice filed

1 with the Labor and Workforce Development Agency pursuant to
2 subparagraph (A) and any employer response to that notice shall be
accompanied by a filing fee of seventy-five dollars (\$75). . . .

3 (2)(A) The employer may cure the alleged violation within 33
4 calendar days of the postmark date of the notice sent by the aggrieved
5 employee or representative. The employer shall give written notice
6 within that period of time by certified mail to the aggrieved employee
7 or representative and by online filing with the [A]gency if the alleged
violation is cured, including a description of actions taken, and no
8 civil action pursuant to [s]ection 2699 may commence. If the alleged
violation is not cured within the 33-day period, the employee may
commence a civil action pursuant to [s]ection 2699.

9 *Id.* § 2699(c). Again, on approximately January 21, 2021, Plaintiff provided written notice by online
10 filing with Cal-OSHA and the LWDA, and by certified mail to Defendants, of the specific violations
11 of the California Labor Code detailed above. That notice was accompanied by the required \$75 filing
12 fee. As of the signing of this Complaint, Plaintiff has not received any notice from Defendants about
13 any putative cure of any such violation. Since more than thirty-three calendar days have passed since
14 Plaintiff provided notice to the LWDA and Defendants, he “may commence a civil action pursuant to
15 [s]ection 2699” to collect civil penalties under PAGA for those violations. *Id.* § 2699.3(a)(2)(A).

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of aggrieved employees and general public, prays for relief
18 as follows to the extent permitted by law:

- 19 a. For injunctive relief pursuant to California Business and Professions Code section
20 17200, *et seq.*;
- 21 b. For reasonable attorneys’ fees and costs of suit incurred herein pursuant to California
22 Code of Civil Procedure section 1021.5, and/or any other applicable provisions
23 providing for attorneys’ fees and costs;
- 24 c. Awarding civil penalties, attorneys’ fees, and costs as provided by PAGA; and
25 d. For such other and further relief that this Court may deem just and proper.

26 /////

1 Dated: March 12, 2021

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17 *Counsel for Plaintiff*

18 *////*

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1 ***DEMAND FOR JURY TRIAL***

2 Plaintiff requests a trial by jury as to all causes of action.

3
4 Dated: March 12, 2021

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EXHIBIT 1



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January 21, 2021

California Labor and Workforce Development
Agency

Via Online Filing

Division of Occupational Safety and Health

Via Online Filing

Universal Protection Service, LP
c/o CT Corporation System, Registered Agent for
Service of Process
818 West Seventh Street, Suite 930
Los Angeles, California 90017

Via Certified Mail

***Re: Beverly Durham v. Universal Protection Service, LP
California Labor Code Private Attorneys General Act***

To the California Labor and Workforce Development Agency, to the Division of Occupational Safety and Health, and to Universal Protection Service, LP:

This office represents Beverly Durham, a current employee of Universal Protection Service, LP (“Universal”). Ms. Durham contends that Universal has violated provisions of the California Labor Code, and she seeks to prosecute a civil action under the Labor Code Private Attorneys General Act (“PAGA”), Labor Code section 2698 *et seq.*, to collect civil penalties based on these violations. The purpose of this letter is to comply with PAGA’s procedural requirements for bringing such an action.

Universal, among other things, provides security-personnel services to commercial clients. Ms. Durham is currently employed by Universal. Since approximately March 2020, she has worked for Universal as a security guard at Los Angeles Community Hospital at Bellflower (“LACHB”). On information and belief, Ms. Durham alleges that Universal provides security services—including the provision of security-guard personnel—to numerous other hospitals and commercial facilities throughout California. Also on information and belief, Ms. Durham alleges that, since the onset of the COVID-19 pandemic, Universal has not provided COVID-19-related safety devices such as personal protective equipment to its security-guard personnel in California, including, but not limited to, those individuals who work at hospitals.

According to the California Labor Code, “[e]very employer ***shall*** furnish and use safety devices and safeguards, and ***shall*** adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful.” Cal. Lab. Code § 6401 (emphasis supplied). *See also id.* §§ 6402 (“No employer ***shall*** require, or permit any employee to go or be in[,] any place of employment which is not safe and healthful.”) (emphasis supplied), 6403 (“No employer ***shall*** fail or neglect to do any of the following: (a) To provide and use safety devices and safeguards reasonably adequate



to render the employment and place of employment safe. (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe. (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.”) (emphasis supplied). A “safety device,” in turn, is defined as having “a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger.” *Id.* § 6306(b). Furthermore, and specifically as to COVID-19, the California Code of Regulations provides that “[e]mployers **shall** evaluate the need for personal protective equipment to prevent exposure to COVID-19 hazards, such as gloves, goggles, and face shields, and **provide** such personal protective equipment as needed.” 8 Cal. Code Regs. § 3205(c)(8)(E) (emphasis supplied). Similarly, the Code of Regulations states that “[e]mployers **shall provide** face coverings and ensure that they are worn by employees over the nose and mouth when indoors, when outdoors and less than six feet away from another person, and where required by orders from the [California Department of Public Health] or local health department.” *Id.* § 3205(c)(7) (emphasis supplied).

Since the onset of the pandemic, Universal has not provided safety devices to Ms. Durham or other security-guard personnel. Generally speaking, from approximately March through approximately December 2020, LACHB—and **not** Universal—provided only one paper mask to each security guard per day. Universal, on the other hand, provided **nothing**. In addition, LACHB—again, **not** Universal—made available a limited supply of small bottles of alcohol. During this period, neither LACHB nor, more importantly, Universal provided gloves, face shields, or hand sanitizer to Universal security guards. On information and belief, Ms. Durham alleges that this was the same practice followed by Universal at its other client worksites. As a result of these deficiencies, Ms. Durham paid out of her pocket for her own COVID-19-related safety devices; on information and belief, so did other Universal security guards.

In approximately either the end of December 2020 or the beginning of January 2021, LACHB started to provide N95 masks (instead of paper masks) and face shields to security guards—but **only** those guards working on the second floor of the facility, where patients resided. As before, guards who worked on the first floor of LACHB were provided a single paper mask and no face shield. Ms. Dunham works on the first floor and has personally come in close proximity to COVID-19-positive patients who pass by the first-floor security desk as part of admittance. Also as before, Universal continues to fail to provide COVID-19-related safety devices to security guards assigned to LACHB. On information and belief, Ms. Durham alleges that this was the same practice followed by Universal at its other client worksites.

Ms. Durham contends that the foregoing facts constitute violations of sections 6401, 6402, and 6403 of the Labor Code, as well as section 3205 of the Code of Regulations. In addition, based on the foregoing, Universal has violated section 2802 of the Labor Code, which requires employers to reimburse employees for “all necessary expenditures or losses incurred by . . . employee[s] in direct consequence of the discharge of [their] duties.” Cal. Lab. Code § 2802(a).

* * * * *



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Based on the foregoing, Ms. Durham wishes to bring an action under PAGA on behalf of herself and the State of California, as well as on behalf of all other similarly aggrieved employees, for the above-described violations. Concurrently with the online filing of this letter, Ms. Durham will remit the \$75.00 filing fee to the LWDA. Please direct all future notices under PAGA to my office. Thank you.

Sincerely,

/s/ David Zelenski

ZELENSKI LAW
Abigail A. Zelenski
David Zelenski