THE WHEELER LAW FIRM, APC
Scott Ernest Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

Attorneys for Plaintiff and the other Aggrieved Employees

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHRISTINE RODRIGUEZ, as an Aggrieved Employee, and on behalf of all other Aggrieved Employees under the Labor Code Private Attorneys General Act of 2004 ("PAGA"),

Plaintiff,

v.

FAIRWAY STAFFING SERVICES, a California corporation; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: CIVSB2512009

COMPLAINT FOR VIOLATION OF THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")

[California Labor Code § 2698 *et seq.*]

Plaintiff Christine Rodriguez ("Plaintiff"), as an Aggrieved Employee, brings this representative action under the Private Attorneys General Act of 2004 ("PAGA"), to collect civil penalties under PAGA for the State of California only, for all other aggrieved employees against Defendant, Fairway Staffing Services (hereinafter referred to as "Fairway Staffing" or "Defendant") relating to systemic violations of California wage and hour laws.

Plaintiff makes the following allegations on information and belief, which are based on his personal knowledge, as follows:

JURISDICTION AND VENUE

1. This is a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against Defendant and any of its respective subsidiaries or affiliated companies within the State of California, and DOES 1 through 10, as further defined below, as a proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of all other current and former non-exempt employees of Defendant working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 1198.5, 2802, 6401.7, 6401.9, 6428, 6429, 6721, California Code of Regulations, Title 8, Sections 3395 and 3396, IWC Wage Order Nos. 4-2001, 5-2001, 7-2001 and 9-2001, Sections 3, 4, 7, 11-12, 18, and all other applicable IWC Wage Orders, on behalf the State of California, only, within the Civil Penalty Period (collectively, "Aggrieved Employees").

2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code of Civil Procedure Section 410.10.

3. Venue is proper in San Bernardino County, California pursuant to Code of Civil Procedure Sections 392, et seq. because, among other things, the County of San Bernardino is where the causes of action complained of herein arose; the county in which the employment relationship began; the county in which performance of the employment contract, or part of it, between Plaintiff and Defendant was due to be performed; and the county in which the employment contract, or part of it, between Plaintiff and Defendant was actually performed. Moreover, the unlawful acts alleged

herein have a direct effect on Plaintiff, as an Aggrieved Employees and Aggrieved Employees in the County of San Bernardino, and because Defendant employs numerous Aggrieved Employees in the County of San Bernardino and throughout the State of California.

4. Plaintiff is an "Aggrieved Employee" under PAGA, since Plaintiff was employed by Defendant during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term "civil penalty" is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA") in addition to reasonable attorneys' fees and costs, for the State of California only, during the Civil Penalty Period. Plaintiff does not seek to assert her own claim for civil penalties under PAGA as part of this Action.

5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. Based upon the foregoing, class certification requirements do not apply to PAGA actions.

6. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"), Defendant violated, *inter alia*, Labor Code sections 201, 202, 203, 210, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 1199, 2699, 2802, 6401.7, 6401.9, 6428, 6429, 6721, California Code of Regulations, Title 8, Sections 3395 and 3396, IWC Wage Order Nos. 4-2001, 5-2001, 7-2001 and 9-2001, Sections 3, 4, 7, 11-12, 18, and all other applicable IWC Wage Orders, and all other applicable IWC Wage Orders.

7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees on behalf of all other aggrieved current and former employees within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3 without asserting a claim to bring Plaintiff's own claim for civil penalties under PAGA. (*See, e.g.*, *Balderas v. Fresh Start Harvesting, Inc*. (2024) 101 Cal.App.5th 533, and *Rodriguez v. Packers*

Sanitation Services LTD., LLC (2025) 2025 Cal. App. LEXIS 103). Specifically, Plaintiff does not seek to recover Plaintiff's individual 35% share of civil penalties for the particular Labor Code violations Plaintiff experienced as an Aggrieved Employee. Rather, this is a purely representative PAGA action wherein Plaintiff seeks to recover 35% of civil penalties for the Labor Code violations experienced by third-party aggrieved employees (Aggrieved Employees) and the State of California's 65% of the civil penalties for the Labor Code violations Plaintiff and the other Aggrieved Employees experienced. Plaintiff does not seek individual penalties as a result of this action.

8. The State of California, County of San Bernardino, has jurisdiction in this matter because the individual claims are under the seventy-five thousand dollar ($75,000.00) individual jurisdictional threshold and the five million dollar ($5,000,000.00) aggregate jurisdictional threshold for federal court diversity jurisdiction. Further, there is no federal question at issue as the issues herein are based solely on the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure and Rules of Court. Thus, the State of California of Superior Court, County of San Bernardino maintains the appropriate jurisdiction to hear this matter.

THE PARTIES

9. During the statute of limitations period, Plaintiff was employed by Defendant as an Account Manager, managing and overseeing Defendant's staffing accounts, recruiting applicants, onboarding potential temporary employees, and ongoing client relations. Plaintiff was employed at Defendant's office located at 601 South Milliken Avenue, Suite L, Ontario, California. Plaintiff was employed during the period of time from November 24, 2022 through November 14, 2024.

10. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times relevant hereto was, a corporation organized and existing under the laws of the State of Tennessee and license to do business in the State of California. Defendant is a staffing company that provides labor to its clients for temporary and long-term assignments.

11. The true names and capacities of DOES 1 through 50, inclusive, are unknown to Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner

highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and capacities of such DOE defendants when ascertained.

12. 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 other aggrieved employees.

13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy. Managing agent, and/or principal of the co-Defendants, and in performing the acts mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges that the acts of each Defendant are legally attributable to the other Defendants.

14. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendant sued herein was, at all relevant times, the employer, owner, shareholder, principal, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent and knowledge, approval and/or ratification of the other Defendants. The above co-Defendant, managing agents, and supervisors, aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts described herein.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

15. On February 18, 2025, Plaintiff gave written notice by certified mail pursuant to California Labor Code § 2699.3, to the California Labor and Workforce Development Agency ("LWDA") and Defendant, of the specific provisions of the California Labor Code and IWC Wage

Order alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff has not received any response from the LWDA. As Plaintiff has waited more than sixty-five (65) days from the February 18, 2025 postmark date of her written notice before filing this action, Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative action under the California Private Attorneys General Act of 2004 ("PAGA").

16. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this action on behalf of the State of California, and all other aggrieved employees (e.g., current and former non-exempt employees of Defendant and performed work for Defendant in the State of California at any time within the period beginning one (1) year prior to the February 18, 2025 notice Plaintiff provided to the LWDA and Defendant, and ending at the time this action proceeds to final judgment ("statute of limitations period")).

FACTUAL ALLEGATIONS

Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7, 512, 558; § 11 of the Applicable IWC Wage Order]

17. During the statute of limitations period, as part of Defendant's illegal policies and practices to minimize labor costs and maximize corporate profits, Defendants have required, permitted or otherwise suffered Aggrieved Employees to perform work during their meal periods, to completely skip their meal periods, to take late and short meal periods, and Defendants have otherwise failed to provide the required meal periods to Aggrieved Employees as required under California Labor Code §§ 226.7, 512, 558 and § 11 of the applicable IWC Order.

18. Defendant has implemented several practices that have caused Aggrieved Employees to systematically miss and otherwise take non-compliant meal periods. Defendant systematically understaffs customer assignments such that its hourly, non-exempt employees are given so much work to complete that they regularly miss or take non-compliant meal periods. As a direct consequence of this understaffing at Defendant's offices and where its onboarded temporary employees are assigned, Aggrieved Employees have so much work to complete within their

scheduled shifts that they are forced to skip their meal periods altogether, to take them after working longer than five (5) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period.

19. There are also frequently occasions when Aggrieved Employees need to perform other duties immediately before the time during which they are legally entitled to take a meal period. Pursuant to Defendant's policies, Aggrieved Employees cannot simply drop their job duties to take a their meal periods. Consequently, Aggrieved Employees regularly miss meal periods, take late meal periods, return early from meal periods, and even clock out for meal periods but continue working.

20. Defendant has also violated California Labor Code §§ 226.7, § 11 of the applicable IWC Wage Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to compensate Aggrieved Employees who were not authorized and permitted to take a complete, timely, uninterrupted meal period, one additional hour of compensation at the proper regular rate of pay for each workday that such a meal period was not authorized or permitted.

Failure to Provide Required Rest Breaks

[Cal. Lab. Code §§ 226.7, 512; § 12 of the Applicable IWC Wage Order]

21. During the statute of limitations period, as part of Defendant's illegal policies and practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize and permit Aggrieved Employees to take rest breaks as required under California Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Order.

22. The same common policies and practices that deprive Aggrieved Employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to take their first and second and third rest breaks. As alleged herein, Defendant understaffs its workforce which creates so much work for Aggrieved Employees that they are frequently unable to take rest breaks.

23. Defendant also violated California Labor Code § 226.7, § 12 of the applicable IWC Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to pay Aggrieved Employees who were not provided with a rest break, in accordance with the applicable wage order, one additional hour of compensation at the proper regular rate of pay for each

workday that a rest break was not provided.

Failure to Provide Required Recovery Periods

[Cal. Lab. Code §§ 226.7; California Code of Regulations, Title 8, Section 3395]

24. Defendant failed to provide recovery periods to Plaintiff and the aggrieved employees assigned to work at their temporary work assignments as required under California Labor Code § 226.7 and California Code of Regulations, Title 8, Section 3395. Defendant are required to provide recovery or "cooldown" periods to non-exempt employees in order to prevent heat illness. Defendant in fact discouraged recovery periods and pressured aggrieved employees to utilize meal and rest period time as recovery periods and use of bathroom facility time. Further, Defendant is required to pay one (1) additional hour of compensation at the non-exempt employee's regular rate of pay for each workday in which the recovery period is not provided.

25. To the extent that Defendant provided for cooling down periods or for any reason related to wellbeing, health and safety, or heat illness prevention, aggrieved employees were discouraged from taking recovery periods. Defendant intentionally and knowingly failed to disclose to Plaintiff and aggrieved employees of their right to recovery periods.

26. Furthermore, facilities where Plaintiff and the other aggrieved employees worked are routinely subject to extreme heat/humidity and cold thereby increasing the need for recovery periods. As an example, the temperature at Employers' facilities during the summertime routinely exceeds 86 degrees, and below 32 degrees Fahrenheit. The humidity also reaches unsafe levels especially on days when the temperature exceeds 90 degrees for employees who are exposed. Defendant failed to take appropriate and necessary action to provide heat relief or cooling down areas and/or recovery periods.

27. Moreover, Defendant has taken no remedial measures to abide by California's heat-illness and prevention measures including failing to provide recovery periods, to the extent Defendant took any action, the steps taken by Defendant were superficial and inadequate. Plaintiff and the other aggrieved employees worked in excessive heat and cold and were not provided with all of their recovery periods. Despite these work conditions, Defendant failed to implement any policy or practice of providing proper recovery periods to their non-exempt employees. Defendant similarly failed to

make any efforts to comply with heat illness prevention regulations by providing for recovery periods or by supplying sufficient amounts of drinking water. There have been many days when Employers did not provide aggrieved employees with any water, and aggrieved employees had no knowledge they were entitled to take recovery periods and thus they never took them.

28. Defendant violated California Labor Code § 226.7 and California Code of Regulations, Title 8, Section 3395 by failing to pay aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a recovery period was not provided.

Failure to Pay Overtime Wages

[California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order]

29. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order, Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

30. During the statute of limitations period, Defendant failed to compensate Plaintiff and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other methods: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering Plaintiff and other aggrieved employees to work off-the-clock, and to work through meal and rest breaks, but not compensating them for this time, illegal rounding, improperly calculating the regular rate of pay based on bonuses, commissions, and other remuneration, and other methods to be discovered.

31. Defendant has knowingly and willfully refused to perform its obligations to compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in violation of California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

Failure to Pay Minimum and Straight Time Wages

[Cal. Lab. Code §§ 1194, 1197; § 4 of the IWC Wage Orders]

32. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

33. During the statute of limitations period, the hourly rates for Plaintiff and other aggrieved employees were precisely at California minimum wage. Based on this common practice, Defendant failed to pay Plaintiff and other aggrieved employees minimum wages for all hours worked by requiring, permitting or suffering Plaintiff and other Aggrieved Employees to work off the clock, such as requiring them to work through meal and rest breaks but not compensating them for this time, and failing to include this time in all hours worked, and other methods to be discovered.

34. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order. As a proximate result of the aforementioned violations, Aggrieved Employees and the State of California have been damaged and are entitled to penalties in an amount according to proof at trial.

Failure to Pay All Wages Due to Discharged and Quitting Employees

[California Labor Code §§ 201, 202 and 203]

35. Pursuant to California Labor Code §§ 201, 202 and 203, Defendant is required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

36. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

37. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who

quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

38. During the statute of limitations period, Defendant has willfully failed to pay accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance with California Labor Code §§ 201 and 202. On information and belief, Defendant does not have a sufficient policy to provide Plaintiff and other aggrieved employees with their final paychecks within the timeframes required under California law. Defendant also willfully failed and continues to fail to pay accrued wages and other compensation to other Aggrieved Employees similarly situated as Plaintiff in accordance with California Labor Code §§ 201, 202 and 203.

Failure to Furnish Accurate Itemized Wage Statements

[Cal. Lab. Code §§ 226(a), and § 7 of the Applicable IWC Wage Order]

39. During the statute of limitations period, Defendant routinely have failed to provide Aggrieved Employees with timely and accurate itemized wage statements. Defendant's pay stubs violate Labor Code § 226 on their face by, among other things, failing to set forth the amount of all regular and overtime hours worked. Derivatively, Defendant was and is not providing Plaintiff and other Aggrieved Employees with proper meal periods, recovery periods and rest breaks but intentionally fails to include in their wage statements one (1) additional hour of compensation at their regular rates of pay for each non-compliant meal period or rest break, and other California Labor Code violations yet to be discovered. Moreover, Defendants knowingly and willfully failed to issue wage statements which provide the name and address of the employee of Plaintiff and the other Aggrieved Employees.

40. In order to conceal its wage theft, Defendant knowingly, intentionally and willfully failed to provide Aggrieved Employees with timely and accurate itemized wage statements in accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

41. Plaintiff and the other Aggrieved Employees suffered injury as a result of Defendant's failure to provide timely and accurate itemized wage statements prevented them from discovering the scope and extent of Defendant's violations of California wage and hour laws, prevented them from

being able to determine the gross wages earned, the total hours worked, all deductions made, the net wages earned, all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, the accurate rate of pay, and other violations yet to be discovered.

Failure to Maintain Required Records

[Cal. Lab. Code §§ 226(a), 1174(d); § 7 of the Applicable IWC Wage Order]

42. During the statute of limitations period, as part of Defendant's illegal payroll policies and practices to deprive Aggrieved Employees of all wages earned and due, Defendant knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal and recovery periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

43. Defendant has knowledge that it was not providing Plaintiff and the other Aggrieved Employees with proper meal, recovery and rest periods, but knowingly failed to include in the wage statements one (1) extra hour of compensation for each missed meal, recovery and rest period. Defendant also illegally and inaccurately recorded the time in which Aggrieved Employees worked. Defendant has also failed to maintain accurate, itemized wage statements, and other violations of the California Labor Code which have not been discovered.

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

[Cal. Lab. Code §§2800 and 2802]

44. California Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer.

45. During the Statute of Limitations period, and in violation of Labor Code § 2802, Defendant knowingly and intentionally failed to indemnify Aggrieved Employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties, including but not limited to, reimbursements for cellular telephone usage, maintenance of uniforms and tools, and

other expenses not reimbursed.

Failure to Implement a Workplace Violence Prevention Policy

[California Labor Code §§6401.7 and 6401.9]

46. California Labor Code §§6401.7 and 6401.9 required Defendant to develop and implement a workplace violence prevention plan in accordance with newly codified Labor Code section 6401.9, which sets out the requirements for the plan. Starting July 1, 2024, Defendant was required to establish, implement, and maintain a Workplace Violence Prevention Plan that includes: 1) implementation of a Workplace Violence Prevention Plan; 2) maintaining a violence incidence log; 3) training program to discuss and prevent workplace violence; and 4) maintain records relating to workplace violence which includes, records of workplace violence hazard identifications, evaluations, and correction must be created and maintained for a minimum of five years; training records must be created and maintained;. incident logs; and records of workplace violence incident investigations under must be maintained.

47. Defendant willfully failed to implement a Workplace Violence Prevention Policy starting on or about July 1, 2024. Plaintiff and the other Aggrieved Employees are entitled to recover penalties up to $25,000 for serious violations, and up to $158,727 for "willful" violations. See, Labor Code §§6401.7, 6401.9, 6428, and 6429.

Failure to Implement Indoor and Outdoor Heat & Temperature Illness Prevention Laws

[California Code of Regulations, Title 8, section 3395 Heat Illness Prevention, Labor Code §§ 6308, 6317 and any other statutes]

48. Defendant was required to and willfully failed to maintain adequate temperatures which created excessive heat or humidity exposing Plaintiff and the other Aggrieved Employees to temperature related hazards. Defendant failed to maintain a comfortable working environment by willfully and knowingly not maintaining adequate temperatures in the workplace.

49. On June 20, 2024, the Occupational Safety and Health Standards Board approved California Code of Regulations, Title 8, section 3396, "Heat Illness Prevention in Indoor Places of Employment". This standard applies to most workplaces where the indoor temperature reaches 82°F. It

established required safety measures for indoor workplaces to prevent worker exposure to risk of heat illness. This standard went into effect on July 23, 2024. Defendant willfully failed to comply with the mandates of the new OSHA regulations and California law.

50. The applicable provisions of the IWC Wage Orders required temperature to be maintained by Defendant at comfortable levels. Defendant has always had an affirmative duty to prevent and reduce excessive heat or humidity created by thew work environment, location, department or any other area of work that creates excessive hear and where employees are exposed to heat illness thereby requiring safety measures including, but not limited, to recovery periods. Defendant, however, has no written policy regarding preventative measures as required by California law or as required by Labor Code § 226.7 and the recently enacted OSHA standards requiring employer to take affirmative measures to prevent heat illness for indoor employees pursuant to California Code of Regulations, Title 8, section 3395 Heat Illness Prevention, Labor Code §§ 6308, 6317 and any other statutes conferring enforcement powers upon the Division.

51. Pursuant to California Labor Code §6721, Defendant was mandated to implement an indoor heat prevention standards as set forth in the recently amended Sections 3395 and 3396 of Title 8 of the California Code of Regulations, otherwise known as the Maria Isabel Vasquez Jimenez heat illness standard. Defendant failed to implement Indoor Heath Prevention policies applicable to Plaintiff and the other Aggrieved Employees when working as assigned by Defendant at its customer locations throughout the State of California.

52. Section 3396 required Defendant to establish, implement, and maintain an effective Heat Illness Prevention Plan for indoor places of employment. The plan must be in writing and include procedures for water provision, access to cool-down areas, temperature measurement, emergency response, and acclimatization. Defendant failed to establish, implement and maintain an effective Heat Illness Prevention Plan for both indoor and outdoor places of employment for Plaintiff and the other Aggrieved Employees.

53. Defendant's failure to comply with California Labor Code §6721 and the recently amended Section 3395 of Title 8 of the California Code of Regulations will result in the imposition of

substantial civil penalties. In particular, California Labor Code §6428 provides that any employer which violates any occupational safety or health standard shall be assessed a civil penalty of up to $25,000 for each serious violation. Employer who operate without an injury prevention program can be assessed heightened penalties of up to $124,709. See, California Labor Code §6429. Thus, the maximum amount of penalties should be imposed against Defendant based upon the failure to implement a heat prevention program.

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code § 2698 *et seq*.]

(On Behalf of Plaintiff and the Aggrieved Employees Against Defendant)

54. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 53 above.

55. Plaintiff is an "Aggrieved Employees" and has standing within the meaning of California Labor Code § 2699(c), and proper representative to bring a civil action on behalf of herself and other current and former non-exempt employees of Defendant pursuant to the procedures specified in Labor Code § 2699.3, because Plaintiff was employed by Defendant and one or more of the alleged California Labor Code violations was committed against Plaintiff during the statute of limitations period.

56. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties from Defendant in a representative action on behalf of all Aggrieved Employees, aside from Plaintiff pursuant to *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal. App. 5th 533 and *Rodriguez v. Packers Sanitation Services LTD., LLC* (2025) 2025 Cal. App. LEXIS 103), for the violations set forth above, including but not limited to, violations of California Labor Code §§201-203, 226(a), 226.7, 246, 510, 512, 558, 1174, 1194, 1197, 1198, and 2802.

57. Pursuant to California Labor Code § 2699(a), Plaintiff seek to recover civil penalties for all Aggrieved Employees, aside from Plaintiff, for Defendant's violations of California Labor Code provisions for which a civil penalty is specifically provided as alleged herein.

58. California Labor Code § 2699(f) provides that for all California Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: 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, and as otherwise provided by PAGA.

59. All civil penalties sought and recovered under this action will be allocated as follows: sixty-five (65) percent to the State of California and thirty-five (35) percent to Plaintiff and aggrieved employees.

60. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all other Aggrieved Employees, prays for relief against Defendant, as follows:

1. For civil penalties according to proof;

2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and

3. For such further relief that the Court may deem just and proper.

Dated: April 28, 2025

THE WHEELER LAW FIRM, APC



By: _____
SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

Attorney for Plaintiff and the other Aggrieved Employees