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Employees***FILED**
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 28 2022

Priscilla Saldaña
*Priscilla Saldaña***SUPERIOR COURT OF THE STATE OF CALIFORNIA****COUNTY OF SAN BERNARDINO**ERICK FUENTES, individually, and on
behalf of all other aggrieved employees,

Plaintiff,

v.

EMPLOYER'S OUTSOURCING, INC., a
California corporation; DIRT CHEAP, INC.,
doing business as, DCG FULFILLMENT, a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NUMBER: **CIV SB 22 214 80****COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 ("PAGA")**[California Labor Code § 2698 *et seq.*]

1 This is a representative action brought by Erick Fuentes, individually and on behalf of all
2 other aggrieved employees ("Plaintiff"), relating to systemic violations of California wage and
3 hour laws by his employers Employer's Outsourcing, Inc. ("EO"), and Dirt Cheap, Inc. doing
4 business as, DCG Fulfillment, ("DCG") (collectively, "Defendants"). Plaintiff makes the
5 following allegations on information and belief, except as to allegations pertaining to Plaintiff
6 individually, which are based on his personal knowledge.

7 INTRODUCTION

8 1. EO is a private staffing company that sends employees out to work for other
9 businesses.

10 2. DCG operates two (2) or more large warehouses where a variety of products are
11 stored and shipped from small parcels to oversized pallet products.

12 3. As private, for-profit businesses, Defendants have jointly implemented common
13 policies and practices that have resulted in systemic violations of California's wage and hour laws.

14 4. Defendants have implemented unlawful written policies with respect to meal and
15 rest breaks. Defendants also require their non-exempt employees, who are informed that the needs
16 of the businesses take top priority, to work through meal and rest breaks, to take untimely meal
17 periods and to remain on call during such breaks. As a result, Plaintiff and other aggrieved
18 employees have been denied the ability to take the meal and rest breaks that they were and are
19 legally entitled to take.

20 5. Moreover, Defendants have uniformly failed to pay Plaintiff and other aggrieved
21 employees proper overtime wages due the fact that they improperly calculate the regular rate of
22 pay, and willfully turn a blind eye to off-the-clock work that Plaintiff and other non-exempt
23 employees perform as a direct consequence of Defendants' understaffing and imposition of an
24 unreasonable workload.

25 JURISDICTION AND VENUE

26 6. The Superior Court of the State of California has jurisdiction in this matter because
27 Plaintiff is a resident of the State of California, and EO is licensed to do business under the laws
28 of the State of California.

7. Venue is proper in this judicial district and the County of San Bernardino because Defendant EO maintains its office and Defendant DCG operates its warehouses, in the County of San Bernardino and Plaintiff worked for DCG in Ontario, California, a city located in the County of San Bernardino. Many other aggrieved employees also worked for Defendants in the County of San Bernardino.

8. Venue is also proper in this judicial district and the County of San Bernardino because Defendant EO assigned Plaintiff to perform services in the County of San Bernardino. Many other aggrieved employees also worked for Defendant DCG and were assigned to perform services in the County of San Bernardino. In particular, Plaintiff was assigned to a client of Defendant in the City of Ontario, California which is a city located within this judicial district.

9. Defendants employed Plaintiff and other aggrieved employees within the State of California and the unlawful acts alleged herein have a direct effect on Plaintiff and other aggrieved employees.

10. The State of California, San Bernardino County, 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, San Bernardino County Superior Court maintains the appropriate jurisdiction to hear this matter.

THE PARTIES

11. Plaintiff is a citizen of the State of California and currently resides in San Bernardino County. During the relevant time period, Plaintiff was employed by Defendants as a warehouse worker.

12. Plaintiff is informed and believes, and thereon alleges, that Defendant EO are, and at all times relevant hereto were, is a corporation organized and existing under the laws of the State of California. Defendant EO is authorized to conduct business and does conduct business in the State of California.

1 13. Plaintiff is informed and believes, and thereon alleges, that Defendant DCG is, and
2 at all times relevant hereto was, a corporation organized and existing under the laws of the State
3 of Kansas and license to do business in the State of California.

4 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
5 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
6 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
7 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
8 employer and/or joint employer of Plaintiff and the other aggrieved employees.

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

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

24 **NOTICE PURSUANT TO LABOR CODE §2810.3(d)**

25 17. On July 15, 2022, Plaintiff provided Defendants with notice pursuant to Labor Code
26 §2810.3 with regard to potential joint liability based upon violations of the Labor Code as provided
27 herein. Defendant EO, for all purposes of this action, is a the “labor contractor” pursuant to Labor
28 Code §2810.3 and Defendant DCG is the “client employer” and shall share any and all civil

1 liability for all of the aggrieved employees supplied by Defendant EO for any and all penalties
2 imposed as a result of this action.

3 18. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
4 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff
5 is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
6 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other
7 aggrieved employees' injuries and damages, as alleged herein, were proximately caused by the
8 conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint
9 to allege the true names and capacities of such DOE defendants when ascertained.

10 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

11 19. On July 15, 2022, Plaintiff gave written notice by certified mail pursuant to
12 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
13 ("LWDA") and Defendants, of the specific provisions of the California Labor Code and IWC
14 Wage Order alleged to have been violated, including the facts and theories to support the alleged
15 violations. Plaintiff has not received any response from the LWDA. As Plaintiff has waited more
16 than sixty-five (65) days from July 15, 2022 postmark date of his written notice before filing this
17 action, Plaintiff has complied with all of the requirements set forth in California Labor Code §
18 2699.3 to commence a representative action under the California Private Attorneys General Act of
19 2004 ("PAGA").

20 20. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
21 action on behalf of the State of California, and all other aggrieved employees (e.g., current and
22 former non-exempt employees of Defendants and performed work for Defendants in the State of
23 California at any time within the period beginning one (1) year prior and sixty-five (65) days prior
24 to the July 15, 2022 notice Plaintiff provided to the LWDA and Defendants, and ending at the time
25 this action proceeds to final judgment ("statute of limitations period")).

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1 **FACTUAL ALLEGATIONS**

2 **Failure to Provide Required Meal Periods**

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

4 21. During the statute of limitations period, as part of Defendants' illegal policies and
5 practices to minimize labor costs and maximize corporate profits, Defendants have required,
6 permitted or otherwise suffered Plaintiff and aggrieved employees to perform work during their
7 meal periods, to completely skip their meal periods, to take late and short meal periods, and
8 Defendants have otherwise failed to provide the required meal periods to Plaintiff and aggrieved
9 employees as required under California Labor Code §§ 226.7, 512, 558 and § 11 of the applicable
10 IWC Order.

11 22. Defendants have implemented several practices that have caused Plaintiff and
12 aggrieved employees to systematically miss and otherwise take non-compliant meal periods.
13 Defendants systematically understaff their job sites such that non-exempt employees are given so
14 much work to complete that they regularly miss or otherwise take non-compliant meal periods. As
15 a direct consequence of this understaffing, Plaintiff and aggrieved employees have so much work
16 to complete within their scheduled shifts that they are forced to skip their meal periods altogether,
17 to take them after working longer than five (5) hours, to perform work during their meal periods,
18 or return to work after taking less than a thirty (30) minute meal period.

19 23. There are also frequently occasions when Plaintiff and aggrieved employees need
20 to perform other duties immediately before the time during which they are legally entitled to take
21 a meal period. Pursuant to Defendants' policies, Plaintiff and aggrieved employees cannot simply
22 drop their urgent job duties to take a meal period. Consequently, Plaintiff and aggrieved
23 employees regularly miss meal periods, take late meal periods, return early from meal periods, and
24 even clock out for meal periods but continue working.

25 24. Plaintiff and aggrieved employees need to first secure permission before taking a
26 meal period. Plaintiff and aggrieved employees often cannot simply stop working and take their
27 meal period, and their inability to secure coverage regularly causes them to regularly miss and
28 otherwise take non-compliant meal periods.

1 25. Despite the foregoing, Defendants have implemented a policy and practice of
2 actively discouraging the issuance of meal period premium payments, and in the process,
3 Defendants have also violated California Labor Code §§ 226.7, § 11 of the applicable IWC Wage
4 Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by
5 failing to compensate Plaintiff and aggrieved employees who were not authorized and permitted
6 to take a complete, timely, uninterrupted meal period, one additional hour of compensation at the
7 proper regular rate of pay for each workday that such a meal period was not authorized or
8 permitted. Defendants also implemented an unlawful meal period policy by compensating
9 Plaintiff and aggrieved employees for interrupted meal periods only for their actual work time, as
10 opposed to paying them legally required premiums.

11 26. Defendants also violated California Labor Code § 226.7, § 11 of the applicable
12 IWC Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*,
13 by failing to pay Plaintiff and other aggrieved employees who were not provided with a meal
14 period, in accordance with the applicable wage order, one additional hour of compensation at the
15 proper regular rate of pay, including but not limited to, shift differentials, nondiscretionary
16 bonuses, etc., for each workday that a rest break was not provided.

17 **Failure to Provide Required Rest Breaks**

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

19 27. During the statute of limitations period, as part of Defendants' illegal policies and
20 practices to minimize labor costs and maximize corporate profits, Defendants have failed to
21 authorize and permit Plaintiff and other aggrieved employees to take rest breaks as required under
22 California Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Order.

23 28. The same common policies and practices that deprive Plaintiff and other aggrieved
24 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability
25 to take their first and second and third rest breaks. As alleged herein, Defendants understaff their
26 facilities, which creates so much work for Plaintiff and other aggrieved employees that they are
27 frequently unable to take rest breaks. Moreover, Plaintiff and other aggrieved employees need to
28 secure permission before taking a rest break, which is often denied by supervisors.

29. Further, as alleged herein, Defendants require Plaintiff and aggrieved employees to remain “on call” at all times, in effect causing Plaintiff and aggrieved employees to regularly have their rest breaks interrupted to complete their assigned work tasks.

30. Defendants also do not provide adequate training regarding their legal obligations with respect to the provision of rest breaks, do not implement a schedule regarding rest breaks for non-exempt employees, DCG does not post the required wage and hour posters, including but not limited to, the appropriate IWC Wage Order poster, at the workplace, nor did EO or DCG provide adequate training regarding the legal obligations to provide rest breaks to Plaintiff and aggrieved employees, and neither EO or DCG implemented an adequate schedule regarding rest breaks for non-exempt employees. In short, Defendants essentially have a non-existent rest break policy, as there is no guidance or specification as to when Plaintiff and other aggrieved employees are authorized and permitted to take rest breaks during their shifts. This common policy (or lack thereof) has caused widespread missed rest breaks and systematic violations of California Labor Code §§ 226.7 and 512, and IWC Order No. 9-2001, § 12.

31. Defendants 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 Plaintiff and other 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, including but not limited to, shift differentials, nondiscretionary bonuses, etc., for each workday that a rest break was not provided.

Failure to Pay Overtime Wages

[Cal. Lab. Code §§ 510, 1194, 1198; § 3 of the Applicable IWC Wage Order]

32. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order, Defendants are 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

1 seventh consecutive day of work in any workweek.

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

11 34. In a short-sighted attempt to maximize profits, Defendants have understaffed their
12 facilities. Not only has this practice resulted in widespread missed meal and rest breaks, but it has
13 also caused Plaintiff and other aggrieved employees to perform work while off-the-clock.
14 Defendants have actual or constructive knowledge of this off-the-clock work and subtly condone
15 it. Plaintiff and other aggrieved employees routinely arrive to work early to check so that they are
16 prepared and ready to begin performing their duties promptly at the start of their shifts, as they
17 must be pursuant to Defendants' requirements. Defendants know that Plaintiff and other aggrieved
18 employees perform this work off-the-clock.

19 35. Plaintiff and other aggrieved employees must get to work by no later than the start
20 of their shifts – and usually earlier. Thus, they are not afforded the benefit of clocking in for work
21 a few minutes late. Likewise, Plaintiff and other aggrieved employees are in a rush to complete
22 their mandatory job duties, so they are rarely afforded the benefit of clocking out early at the end
23 of their shifts. This results in the widespread underpayment of time worked.

24 36. Defendants have knowingly and willfully refused to perform their obligations to
25 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
26 violation of California Labor Code §§ 510, 1194 and 1198 and § 3 of the applicable IWC Order.

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1 quit, in which case the employee is entitled to his or her wages at the time of quitting.

2 42. California Labor Code § 203 provides that if an employer willfully fails to pay, in
3 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
4 quits, the employer is liable for waiting time penalties in the form of continued compensation to
5 the employee at the same rate for up to 30 workdays.

6 43. During the statute of limitations period, Defendants have willfully failed to pay
7 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance
8 with California Labor Code §§ 201 and 202. Defendants do not have a sufficient policy to provide
9 Plaintiff and other aggrieved employees with their final paychecks within the timeframes required
10 under California law. In addition, because Defendants have failed and continue to fail to properly
11 compensate Plaintiff and other aggrieved employees for all hours worked when due, overtime
12 wages, and compensation for non-compliant meal and rest breaks, Defendants have also willfully
13 failed and continue to fail to pay accrued wages and other compensation to Plaintiff and other
14 aggrieved employees in accordance with California Labor Code §§ 201 and 202.

15 **Failure to Timely Pay Wages During Employment**

16 **[Cal. Lab. Code § 204]**

17 44. Pursuant to California Labor Code § 204, for all labor performed between the 1st
18 and 15th days of any calendar month, Defendants are required to pay its nonexempt employees
19 between the 16th and 26th day of the month during which the labor was performed. California
20 Labor Code § 204 also provides that for all labor performed between the 16th and 26th days of
21 any calendar month, Defendants are required to pay its non-exempt employees between the 1st
22 and 10th day of the following calendar month. In addition, California Labor Code § 204 provides
23 that all wages earned for labor in excess of the normal work period shall be paid no later than the
24 payday of the next regular payroll period.

25 45. During the statute of limitations period, Defendants has knowingly and willfully
26 failed to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by
27 the next regular payroll period as required by California Labor Code § 204, including but not
28 limited to, compensation for missed meal and rest breaks, proper overtime wages due to an

1 unlawful calculation of the regular rate of pay, and for work performed off-the-clock.

2 **Failure to Furnish Accurate Itemized Wage Statements**

3 **[Cal. Lab. Code § 226(a); § 7 of the Applicable IWC Wage Order]**

4 46. During the statute of limitations period, Defendants have routinely failed to provide
5 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
6 Defendants' pay stubs violate Labor Code § 226 on their face by, failing to list the applicable rates
7 of pay for regular and overtime hours worked by Plaintiff and aggrieved employees. Further,
8 Defendants were and are not providing Plaintiff and other aggrieved employees with proper meal
9 periods and rest breaks but intentionally fails to include in their wage statements one (1) additional
10 hour of compensation at their regular rates of pay for each non-compliant meal period or rest break
11 which include but not limited to, shift differentials, nondiscretionary bonuses, etc., and failure to
12 have the full and complete legal address for the legal entity that is the employer of Plaintiff and
13 the other aggrieved employees. Finally, Defendants' wage statements also fail to provide the
14 amount of supplemental COVID-19 paid sick leave taken and available, all in violation of Labor
15 Code §§226 and 248.1 and 248.6.

16 47. In order to conceal their wage theft, Defendants knowingly and intentionally failed
17 to provide Plaintiff and other aggrieved employees with timely and accurate itemized wage
18 statements in accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

19 48. Plaintiff and other aggrieved employees suffered injury as a result of Defendants'
20 failure to provide timely and accurate itemized wage statements because it listed the incorrect
21 employers, and prevented them from discovering the scope and extent of Defendants' violations
22 of California wage and hour laws, prevented them from being able to determine the gross wages
23 earned, the total hours worked, all deductions made, the net wages earned, all applicable hourly
24 rates in effect during each pay period and the corresponding number of hours worked at each
25 hourly rate, or even the name and address of the legal entity that employed them at all times alleged
26 herein.

1 **Failure to Maintain Required Records**

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

3 49. During the statute of limitations period, as part of Defendants' illegal payroll
4 policies and practices to deprive Plaintiff and other aggrieved employees of all wages earned and
5 due, Defendants knowingly and intentionally failed to maintain records as required under
6 California Labor Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but
7 not limited to the following records: total daily hours worked by each employee; applicable rates
8 of pay; all deductions; meal periods; time records showing when each employee begins and ends
9 each work period; and accurate itemized statements. Defendants had knowledge that it was not
10 providing its non-exempt employees with proper meal and rest periods, but knowingly failed to
11 include in the wage statements one (1) extra hour of compensation for each missed meal and rest
12 period. Defendants also illegally and inaccurately recorded the time in which Plaintiff and other
13 aggrieved employees worked. Defendants have also failed to maintain accurate, itemized wage
14 statements, as alleged above. Finally, Defendants failed to provide supplemental COVID-19 paid
15 sick leave to aggrieved employees and failed to maintain records relating to the amount of
16 supplemental COVID-19 sick leave hours available and the number of hours taken.

17 **Failure to Pay COVID-19 Supplemental Sick Leave**

18 **[Cal. Lab. Code §§ 248.1, 248.2 and 248.6]**

19 50. During the Statute of Limitations Period, Plaintiff is informed and believes from
20 January 1, 2021 through the present, Defendants employed 26 or more aggrieved employees.

21 51. Defendants failed to provide 80 hours of COVID-19 Supplemental Paid Sick leave
22 and compensate Aggrieved Employees at their regular rate of pay for supplemental sick leave, i.e.,
23 their highest regular rate of pay, taking into consideration non-discretionary bonuses, etc., in
24 violation of California Labor Code § 248.1(b)(3)(A) and §248.6. Defendants also failed to provide
25 COVID-19 Supplemental Sick Leave to Aggrieved Employees in addition to regular sick leave, in
26 violation of California Labor Code § 248.1(b)(2)(D). Defendants also failed to accurately reflect
27 any offset and/or the current amount of COVID-19 Supplemental Sick Leave available to
28 aggrieved employees on their wage statements, in violation of California Labor Code §§

1 248.1(b)(2)(D), 248.2, 248.6 and for the reasons provided herein.

2 **Failure to Provide Suitable Seating**

3 **[IWC Wage Order No. 9-2001, Section 14]**

4 52. IWC Wage Order No. 9-2001, § 14 provides:

5 “(A) All working employees shall be provided with suitable seats when the
6 nature of the work reasonably permits the use of seats.

7 (B) When employees are not engaged in the active duties of their employment
8 and the nature of the work requires standing, an adequate number of suitable seats
9 shall be placed in reasonable proximity to the work area and employees shall be
permitted to use such seats when it does not interfere with the performance of their
duties.”

10 53. Defendants have failed to provide suitable seating by not providing any seats or
11 stools for Plaintiff and other aggrieved employees within close proximity of their work areas.
12 The nature of the work reasonably permits the use of seats by Plaintiff and the other aggrieved
13 employees. To the extent that the use of seats could interfere with their work duties, at all times
14 herein it is and has been reasonable for Defendants to place seats in reasonable proximity to the
15 work areas to be used by Plaintiff and other aggrieved employees when doing so would not
16 interfere with their job duties.

17 **Failure to Indemnify Employees for Necessary Expenditures**

18 **[Cal. Lab. Code § 2802]**

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

22 55. During the Penalty Period, and in violation of Labor Code § 2802, Defendants
23 failed to indemnify Plaintiff and other aggrieved employees for all business expenses and/or
24 losses incurred in direct consequence of the discharge of their duties, including but not limited
25 to, expenses for their uniforms and uniform maintenance. Plaintiff and other aggrieved
26 employees were required to use their personal cellular phones for work related purposes. In
27 addition, Defendants required Plaintiff and other aggrieved employees to purchase safety
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1 equipment and personal protective equipment at their own expense during the COVID-19
2 pandemic and failed to properly indemnify Plaintiff and the other aggrieved employees for these
3 expenses.

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

6 **[Cal. Lab. Code § 2698 *et seq.*]**

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

8 56. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 55 above.

10 57. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code
11 § 2699(c), and a proper representative to bring a civil action on behalf of himself and other
12 aggrieved employees pursuant to the procedures specified in California Labor Code § 2699.3,
13 because Plaintiff was employed by Defendants and one or more of the alleged California Labor
14 Code violations was committed against Plaintiff during the statute of limitations period.

15 58. A plaintiff has standing to represent all aggrieved employees for all of his asserted
16 violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA,*
17 *Inc.* (2018) 23 Cal.App.5th 745, 757 (“For PAGA standing a plaintiff need only have been
18 employed by the violator and affected by ‘one or more’ of the alleged violations. (Sec. 2699, subds.
19 (a), (c)).

20 59. Plaintiff seeks to recover civil penalties through a representative action permitted
21 by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969.
22 Thus, class certification is not required.

23 60. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
24 penalties from Defendant in a representative action for the violations set forth above, including but
25 not limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512,
26 1174, 1194, 2802 and for the violations of the applicable IWC Wage Order alleged above.

27 61. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil
28 penalties against Defendant for violations of California Labor Code provisions for which a civil

1 penalty is specifically provided, including but not limited to, the following:

- 2 a. Pursuant to California Labor Code § 226.3, for violations of California
3 Labor Code § 226(a), Defendant is subject to a civil penalty in the amount
4 of two hundred and fifty dollars (\$250) per aggrieved employee for the
5 initial pay period where a violation occurs and one thousand dollars
6 (\$1,000) per aggrieved employee for violations in subsequent pay periods.
- 7 b. Pursuant to California Labor Code § 1174.5, for violations of California
8 Labor Code § 1174(d), Defendant is subject to a civil penalty of five
9 hundred dollars (\$500).

10 62. California Labor Code § 2699(f) provides that for all California Labor Code
11 violations for which a civil penalty is not specifically provided, the following civil penalties are
12 established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
13 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
14 subsequent violation.

15 63. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f)
16 for Defendant's violations of California Labor Code provisions for which a civil penalty is not
17 specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 226.7,
18 1197, 1024.5, and for the violations of the applicable IWC Wage Order alleged above.

19 64. All civil penalties sought and recovered under this action will be allocated as
20 follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to
21 Plaintiff and aggrieved employees.

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

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees,
26 prays for relief against Defendant, as follows:

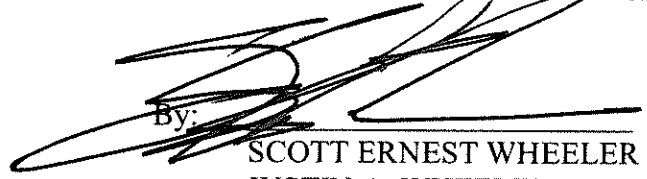
- 27 1. For civil penalties according to proof;
- 28 2. For reasonable attorneys' fees and costs pursuant to California Labor Code §

1 2699(g), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions
2 providing for attorneys' fees and costs; and

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

4 DATED: September 28, 2022

LAW OFFICE OF SCOTT E. WHEELER

5
6 By: 
7 SCOTT ERNEST WHEELER

JUSTIN A. WHEELER

8 *Attorney for Plaintiff and the other*
9 *Aggrieved Employees*