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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CESAR VELEZ CERNA, Plaintiff, vs. SDH SERVICES WEST LLC; and DOES 1 to 25, inclusive, Defendants.	CASE NO.: 24STCV00321 **COMPLAINT FOR DAMAGES FOR:** **1) PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**

COMES NOW Plaintiff, CESAR VELEZ CERNA (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants SDH SERVICES WEST LLC; and DOES 1 to 25, inclusive (hereinafter collectively "SDH" or "Defendant(s)") do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein exceed $25,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant SDH SERVICES WEST LLC is a Delaware Limited Liability Company, doing business in the County of Los Angeles, State of California, and which employed Plaintiff. SDH SERVICES WEST LLC is hereinafter referred to as "SDH" or "Defendant(s)".

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of

that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

GENERAL ALLEGATIONS

6. Plaintiff started working for SDH on or around January 7, 2022 as a floor tech. During his employment tenure, Plaintiff was classified as an hourly, non-exempt employee. Plaintiff latest rate of pay was $22.90 per hour. Plaintiff is still employed by SDH.

7. SDH has committed the below labor code violations against Plaintiff and other hourly, non-exempt employees. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves and others. The statute also states that an "aggrieved employee" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas' motion.

8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and

other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is our position that Plaintiff can equivocally bring the following labor code violations on behalf of all other hourly, non-exempt employees, irrespective of job titles or job duties.

9. SDH did not provide Plaintiff and other aggrieved employees with compensation for all hours worked and did not pay Plaintiff and others the minimum wages to which they were entitled for work performed "off the clock" pursuant to California Labor Code sections 1194, 1197 and 1197.1. Plaintiff and others also worked "off the clock" due to their meal breaks being interrupted with work obligations and work duties. Additionally, Plaintiff and others also worked "off the clock" and were not paid for all hours worked because SDH had a company policy wherein they would disproportionately round down the number of hours worked by Plaintiff and other aggrieved employees, resulting in "time shaving" and further resulting in aggrieved employees not being paid for all hours worked. In addition, Plaintiff and others were not compensated for the time it takes to clock in and clock out of the workplace despite being under the control of the employer.

10. Due to the above "off the clock" violations and due to rounding/ "time shaving", SDH also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, SDH did not compensate its hourly, non-exempt employees with the correct amount of overtime. Furthermore, SDH failed to include bonuses/incentive payments in calculating Plaintiff's and other employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into Plaintiff's and others' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

11. SDH violated Labor Code §§ 512 and 226.7 as well as the applicable Industrial Welfare

Commission (IWC) Wage Order (no. 4 or 5) because it failed to provide Plaintiff and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal periods. SDH did not completely relieve Plaintiff of all duties during said meal periods. SDH did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory meal periods was not provided. There were many, many occasions wherein Plaintiff and others would not be able to receive their meal periods before the 5th hour worked due to work obligations. Plaintiff would specifically be asked to perform work-related duties as a floor tech, which would prevent him from taking a timely meal period. Late meal breaks were consistent and pervasive and across the board for all hourly, non-exempt employees. Moreover, and as mentioned above, it was routine for Plaintiff's and others' meal periods to be interrupted due to work obligations. Moreover, since it took Plaintiff and others quite a while to clock out for lunch and then quite a while to clock back in for lunch, Plaintiff's and others' meal periods were not actually the required 30 minutes in length. Furthermore, SDH failed to include bonuses/incentive payments in calculating Plaintiff's and other employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into Plaintiff's and others' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

12. If SDH had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift. If SDH had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods or stay on the premises during meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does not and did not prevent him from taking a meal period. SDH could have easily hired more staff, which would have allowed Plaintiff to take a timely, uninterrupted break and be relieved of all work duties. If SDH argues that Plaintiff and others were actually paid for their meal breaks, the latter would not mean there was no violation since Plaintiff and others were essentially denied any meal breaks for them to rest and get something to eat. The solution for SDH is not to keep their employees from taking meal periods, but to hire additional staff and "breakers" to make sure that their employees receive statutory breaks. To the extent

that SDH argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at SDH was not conducive to receiving consistent, timely, uninterrupted statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments.

13. SDH violated Labor Code § 226.7 as well as the applicable IWC Wage Order (no. 4 or 5) because it failed to provide Plaintiff and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. SDH did not completely relieve Plaintiff of all duty during said rest periods. SDH did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not company policy and not part of the company culture for employees such as Plaintiff and others to take consistent, TIMELY rest breaks, especially two daily rest breaks of at least 10 minutes each wherein Plaintiff and others were fully relieved of their work duties. As such, the culture at SDH did not lend itself to the employees receiving consistent statutory breaks wherein they were relieved of all work duties. It was the normal practice and custom of SDH not to authorize, permit, and enforce full, timely, and complete statutory rest periods. As such, the environment and culture at SDH was not conducive to receiving statutory rest breaks under California law.

14. Furthermore, during the relevant time period, and due to the aforementioned violations, SDH failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to

them within any time period specified by California Labor Code section 204. SDH was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, premium pay for missed meal and rest breaks, all deductions, net wages earned, the correct name and address of the employer, employee identifying information, the correct start and end of the pay periods, and reimbursement for business expenses, among others. As such, SDH did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

15. SDH violated Labor Code § 203 because it willfully failed to pay Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. After aggrieved employees stopped working at SDH and after their employment with SDH ended, SDH failed and refused to pay all wages earned and due immediately upon separation. These earned but unpaid wages include the unpaid minimum wages/compensation for all hours worked, overtime, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

16. It is Plaintiff's contention that the rounding/time shaving, and statutory meal and rest period violations would trigger penalties under Labor Code sections 203, 204, and 226 per <u>Naranjo v. Spectrum Security Services Inc.</u> (2022) 13 Cal. 5th 93.

17. During the relevant time period, SDH also failed to keep accurate and complete payroll records showing the correct wages paid to Plaintiff and other aggrieved employees, pursuant to California Labor Code sections 1174(d).

18. Alternatively, during the relevant time period, Plaintiff and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by SDH. These costs include, but are not limited to, use of their personal cell phones for work purposes. Plaintiff and others were also not reimbursed for their uniforms. Moreover, Accordingly, SDH was in violation of California Labor Code sections 2800 and 2802.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802)

(Plaintiff against All Named Defendants and all DOE defendants)

19. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

20. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated October 31, 2023, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

21. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

22. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

23. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

24. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of other current and former employees, including all

current and former hourly, non-exempt employees who worked for SDH in the state of California as referenced above during the applicable PAGA Period.

25. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations of numerous provisions of the California Labor Code as alleged in this Complaint.

26. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

27. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants for violating the Labor Code.

28. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not seeking individual penalties/victim specific relief or underpaid wages for himself or other employees under this specific PAGA cause of action. Plaintiff has separate causes of action in this Complaint for individual wages but is not seeking wages through the PAGA action.

29. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 4/5) violated based on the facts alleged in this Complaint.

30. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

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PRAYER FOR RELIEF

1. For the imposition of civil penalties;
2. For maximum civil penalties available under Labor Code Section 2699 against Defendants in a manner and amount authorized by that statute, as described more particularly in the Complaint and representative PAGA claims;
3. For all costs and disbursements incurred in this suit;
4. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and
5. For such other and further relief as this Court may deem proper.

DATED: January 3, 2024

MESSRELIAN LAW INC.

By______________________________

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Attorneys for Plaintiff Cesar Velez Cerna