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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

JEREMY TABER, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

PCL INDUSTRIAL SERVICES, INC., a
Colorado corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: BCV-20-101382

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Jeremy Taber, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on March 26, 2020, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court because Defendants have filed a statement with
3 the California Secretary of State designating a principal place of business in Bakersfield,
4 County of Kern, in accordance with California Corporations Code section 2105(a)(3). Cal.
5 Code Civ. P. § 395.5. Further, venue is proper in this Court, because Defendants employ and
6 have employed aggrieved employees in this county, and thus a substantial portion of the
7 transactions, occurrences, and/or violations related to this action occurred in this county.

8 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
9 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
10 attorneys general their current or former employers for various civil penalties for violations of
11 various provisions in the California Labor Code.

12 THE PARTIES

13 6. Plaintiff Jeremy Taber is a resident of Bakersfield, in Kern County, California.
14 Defendants employed Plaintiff as an hourly paid, non-exempt Utility Craftsman from
15 approximately August 2018 to April 2019. Plaintiff worked for Defendants out of their
16 facilities in San Ardo and Coalinga, California. During his employment, Plaintiff typically
17 worked 10 hours per day, four (4) days per week, from 6:00 p.m. to 4:30 p.m. During his
18 employment, Plaintiff earned \$17.00 per hour. Plaintiff’s job duties included, without
19 limitation, demolishing abandoned oil lines, monitoring drilling depths, and installing new
20 equipment.

21 7. On information and belief, Defendants required some employees, including
22 Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of
23 their hire or during their employment. On further information and belief, Defendants’ dispute
24 resolution policy and/or arbitration agreement was and is both procedurally and substantively
25 unconscionable. Specifically, Defendants presented new hires with an “Arbitration
26 Agreement” during the onboarding process, which had to be reviewed and signed
27 immediately. In fact, upon information and belief, the Arbitration Agreement was one of
28 several documents presented to new employees for signature during the orientation process.

1 Also, employees did not have a meaningful opportunity to negotiate the terms of the
2 Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign on
3 a take-it or leave-it basis at the time they were hired, along with other on-boarding documents.
4 Further, Defendants did not set forth in the agreement or otherwise provide employees with
5 the rules which will govern the arbitration, instead forcing employees to seek this information
6 out on their own ("The AAA's [American Arbitration Association] rules are available on its
7 website (www.adr.org). Additionally, copies are available upon request from PCL's Human
8 Resources Department.").

9 8. PCL INDUSTRIAL SERVICES, INC. was and is, upon information and belief,
10 a Colorado corporation, and at all times hereinafter mentioned, an employer whose employees
11 are engaged throughout this county and the State of California.

12 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
13 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
14 amend the complaint and serve such fictitiously named Defendants once their names and
15 capacities become known.

16 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
17 were the partners, agents, owners, or managers of PCL INDUSTRIAL SERVICES, INC. at all
18 relevant times.

19 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
20 acts and omissions alleged herein was performed by, or is attributable to, PCL INDUSTRIAL
21 SERVICES, INC. and/or DOES 1 through 10 (collectively, "Defendants" or "PCL"), each
22 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
23 each of the other co-Defendants and was acting within the course and scope of such agency,
24 employment, joint venture, or concerted activity with legal authority to act on the others'
25 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
26 policy of Defendants.

27 12. At all relevant times, Defendants, and each of them, ratified each and every act
28 or omission complained of herein. At all relevant times, Defendants, and each of them, aided

1 and abetted the acts and omissions of each and all the other Defendants in proximately causing
2 the damages herein alleged.

3 13. Plaintiff is informed and believes, and thereon alleges, that each of said
4 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
5 omissions, occurrences, and transactions alleged herein.

6 **PAGA REPRESENTATIVE ALLEGATIONS**

7 14. Defendants provide full-service heavy industrial general contractor services in
8 the United States, Canada, the Caribbean, and Australia. Upon information and belief,
9 Defendants maintain a single, centralized Human Resources (“HR”) department at their
10 corporate headquarters in Bakersfield, California, which is responsible for the recruiting and
11 hiring of new employees, and communicating and implementing Defendants’ company-wide
12 policies, including timekeeping policies and meal and rest period policies, to employees
13 throughout California.

14 15. In particular, Plaintiff and other non-party Aggrieved Employees, on
15 information and belief, received the same standardized documents and/or written policies.
16 Upon information and belief, the usage of standardized documents and/or written policies,
17 including new-hire documents, indicate that Defendants dictated policies at the corporate level
18 and implemented them company-wide, regardless of their employees’ assigned locations or
19 positions. Upon information and belief, Defendants set forth uniform policies and procedures
20 in several documents provided at an employee’s time of hire.

21 16. Upon information and belief, Defendants maintain a centralized Payroll
22 department at their corporate headquarters in Bakersfield, California, which processes payroll
23 for all non-exempt, hourly paid employees working for Defendants at their various locations
24 and jobsites in California, including Plaintiff and other non-party Aggrieved Employees.
25 Based upon information and belief, Defendants issue the same formatted wage statements to
26 all non-exempt, hourly paid employees in California, irrespective of their work locations.
27 Upon information and belief, Defendants process payroll for departing employees in the same
28 manner throughout the State of California, regardless of the manner in which each employee’s

1 employment ends.

2 17. Defendants continue to employ non-exempt or hourly paid employees in
3 California.

4 18. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
6 and advisors knowledgeable about California labor and wage law, employment and personnel
7 practices, and about the requirements of California law.

8 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
9 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
10 were not recorded.

11 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 receive certain wages for overtime compensation and that they were not receiving certain
14 wages for overtime compensation.

15 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that other non-party Aggrieved Employees were entitled to be paid at a
17 regular rate of pay, and corresponding overtime rate of pay, that included as eligible income
18 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
19 compensation.

20 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 receive at least minimum wages for compensation and that they were not receiving at least
23 minimum wages for work that was required to be done off-the-clock. In violation of the
24 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
25 least minimum wages for work done off-the-clock.

26 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that other non-party Aggrieved Employees were entitled to meal periods
28 in accordance with the Labor Code or payment of one (1) additional hour of pay at their

1 regular rates of pay when they were not provided with timely, uninterrupted, thirty (30)
2 minute meal periods and that other non-party Aggrieved Employees were not provided with
3 all meal periods or payment of one (1) additional hour of pay at their regular rates of pay
4 when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

5 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
8 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
9 and permitted to take a compliant rest period. In violation of the California Labor Code,
10 Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take
11 compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
12 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
13 they were not authorized and permitted to take a compliant rest period.

14 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 receive complete and accurate wage statements in accordance with California law. In
17 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
18 were not provided complete and accurate wage statements.

19 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that they had a duty to maintain accurate and complete payroll records in
21 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
22 and intentionally failed to do so.

23 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 timely payment of all wages earned upon termination of employment. In violation of the
26 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
27 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
28 meal and rest period premiums, and reporting time pay, within permissible time periods.

1 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 timely payment of wages during their employment. In violation of the California Labor Code,
4 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
5 including, but not limited to, overtime wages, minimum wages, meal and rest period
6 premiums, and reporting time pay, within permissible time periods.

7 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that they were prohibited from issuing instruments for the payment of
9 wages that were not payable in cash on demand, without discount and with authorization, but
10 did so, in violation of the California Labor Code.

11 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and/or other non-party Aggrieved Employees were entitled
13 to the portion of wages previously paid and subsequently unlawfully deducted by Defendants.

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and/or other non-party Aggrieved Employees were entitled
16 to payment of wages as designated by statute. In violation of the California Labor Code,
17 Defendants secretly paid Plaintiff and/or other non-party Aggrieved Employees lower wages
18 than required by statute while purporting to pay them proper wages.

19 32. Plaintiff is informed and believes, and thereon alleges, that at all time herein
20 mentioned, Defendants knew or should have known that they had a duty to cover the costs and
21 expenses other non-party Aggrieved Employees incurred obtaining mandatory examinations
22 and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

23 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 be paid reporting time pay when they reported to work for their scheduled shift but were put to
26 work for less than half of the regular schedule. In violation of the California Labor Code,
27 Defendants did not pay Plaintiff and other non-party Aggrieved Employees all reporting time
28 pay due.

1 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 receive reimbursement for all business-related expenses and costs they incurred during the
4 course and scope of their employment and that they did not receive reimbursement of
5 applicable business-related expenses and costs incurred.

6 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
8 and other non-party Aggrieved Employees with safety devices and safeguards, such as
9 personal protective equipment, to protect their life, safety, and health in the workplace, but
10 willfully, knowingly, and intentionally failed to do so.

11 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendants knew or should have known that they had a duty to compensate
13 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
14 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
15 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
16 that they were properly denied wages, all in order to increase Defendants' profits.

17 37. At all times herein set forth, PAGA provides that any provision of law under
18 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
19 assessed and collected by the LWDA for violations of the California Labor Code and
20 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
21 civil action brought on behalf of themselves and other current or former employees pursuant
22 to procedures outlined in California Labor Code section 2699.3.

23 38. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
24 person who was employed by the alleged violator and against whom one or more of the
25 alleged violations was committed."

26 39. Plaintiff and other current and former employees of Defendants are "aggrieved
27 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
28 or former employees and one or more of the alleged violations were committed against them.

1 40. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
2 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
3 following requirements have been met:

- 4 (a) The aggrieved employee shall give written notice by online filing
5 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
6 to the employer of the specific provisions of the California Labor Code
7 alleged to have been violated, including the facts and theories to support
8 the alleged violations.
- 9 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
10 2699.3(a) and any employer response to that notice shall be
11 accompanied by a filing fee of seventy-five dollars (\$75).
- 12 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
13 employer and the aggrieved employee by certified mail that it does not
14 intend to investigate the alleged violation within sixty (60) calendar
15 days of the postmark date of the Employee’s Notice. Upon receipt of
16 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
17 five (65) calendar days of the postmark date of the Employee’s Notice,
18 the aggrieved employee may commence a civil action pursuant to
19 California Labor Code section 2699 to recover civil penalties in addition
20 to any other penalties to which the employee may be entitled.

21 41. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
22 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
23 provision other than those listed in Section 2699.5 after the following requirements have been
24 met:

- 25 (a) The aggrieved employee or representative shall give written notice by
26 online filing to the LWDA and by certified mail to the employer of the
27 specific provisions of the California Labor Code alleged to have been
28 violated (other than those listed in Section 2699.5), including the facts

1 and theories to support the alleged violation.

2 (b) An aggrieved employee's notice filed with the LWDA pursuant to
3 2699.3(c) and any employer response to that notice shall be
4 accompanied by a filing fee of seventy-five dollars (\$75).

5 (c) The employer may cure the alleged violation within thirty-three (33)
6 calendar days of the postmark date of the notice. The employer shall
7 give written notice by certified mail within that period of time to the
8 aggrieved employee or representative and the agency if the alleged
9 violation is cured, including a description of actions taken, and no civil
10 action pursuant to Section 2699 may commence. If the alleged violation
11 is not cured within the 33-day period, the employee may commence a
12 civil action pursuant to Section 2699.

13 42. On March 26, 2020, Plaintiff provided written notice by online filing to the
14 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
15 Code alleged to have been violated, including facts and theories to support the alleged
16 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
17 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
18 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
19 Plaintiff PAGA Case Number LWDA-CM-780368-20. A true and correct copy of Plaintiff's
20 written notice to the LWDA and Defendants dated March 26, 2020, is attached hereto as
21 "Exhibit 1."

22 43. As of the filing date of this complaint, over 65 days have passed since Plaintiff
23 sent the initial LWDA Notice described above, and the LWDA has not responded that it
24 intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

25 44. Thus, Plaintiff has satisfied the administrative prerequisites under California
26 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
27 violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223,
28 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and

1 6403.

2 45. Labor Code section 558(a) provides “[a]ny employer or other person acting on
3 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
4 provision regulating hours and days of work in any order of the Industrial Welfare
5 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
6 dollars (\$50) for each underpaid employee for each pay period for which the employee was
7 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
8 underpaid employee for each pay period for which the employee was underpaid” Labor
9 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
10 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
11 as a private attorney general, seeks assessment and collection of civil penalties under Labor
12 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
13 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
14 and the applicable IWC wage order. Plaintiff, acting in the public interest as private attorney
15 general, does not seek the recovery of unpaid wages under Labor Code section 558 from
16 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
17 IWC wage order.

18 46. Defendants, at all times relevant to this complaint, were employers or persons
19 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
20 Employees’ rights by violating various sections of the California Labor Code as set forth
21 above.

22 47. As set forth below, Defendants have violated numerous provisions of both the
23 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
24 Order.

25 48. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
26 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
27 private attorney general, seeks assessment and collection of civil penalties for himself, all
28 other non-party Aggrieved Employees, and the State of California against Defendants for

violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

FIRST CAUSE OF ACTION

For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

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

50. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, 6401, and 6403.

51. Defendants’ conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay, and failure to properly calculate the overtime rates paid to other non-party Aggrieved Employees as set forth below;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the applicable IWC wage order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked as set forth below;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC wage order for Defendants’ failure to provide Plaintiff

1 and other non-party Aggrieved Employees with meal periods, as set
2 forth below;

3 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
4 IWC wage order for Defendants' failure to authorize and permit
5 Plaintiff and other non-party Aggrieved Employees to take rest periods,
6 as set forth below;

7 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
8 wage order for failure to provide accurate and complete wage statements
9 to Plaintiff and other non-party Aggrieved Employees, as set forth
10 below;

11 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
12 IWC wage order for failure to maintain payroll records as set forth
13 below;

14 (g) Violation of Labor Code section 204 for failure to pay all earned wages
15 during employment as set forth below;

16 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
17 earned wages upon termination as set forth below;

18 (i) Violation of Labor Code sections 212 and 213 for issuing instruments
19 for the payment of wages that were not payable in cash on demand,
20 without discount, and with prior authorization as set forth below;

21 (j) Violation of Labor Code sections 221 and 224 for unlawfully deducting
22 a portion of wages previously paid to Plaintiff and/or other non-party
23 Aggrieved Employees, as set forth below;

24 (k) Violation of Labor Code section 223 for secretly paying Plaintiff and/or
25 other non-party Aggrieved Employees lower wages than required by
26 statute, while purporting to pay the proper wages, as set forth below;

27 (l) Violation of Labor Code section 222.5 for failure to compensate other
28 non-party Aggrieved Employees for mandatory physical examinations

and/or drug testing as set forth below;

- (m) Violation of Labor Code section 1198 and the applicable IWC wage order for failure to pay reporting time pay when Plaintiff and other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below;
- (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below, as set forth below; and
- (o) Violation of Labor Code sections 6401 and 6403 for failure to provide safety devices and safeguards, such as personal protective equipment, to Plaintiff and other non-party Aggrieved Employees, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

52. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

53. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

54. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

55. The applicable IWC Wage Order further provides that Defendants are and were

1 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
2 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
3 An employee's regular rate of pay includes all remuneration for employment paid to, or on
4 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

5 56. California Labor Code section 510 codifies the right to overtime compensation
6 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
7 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
8 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
9 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
10 in a day on the seventh (7th) day of work.

11 57. During the relevant time period, Defendants willfully failed to pay all overtime
12 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
13 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
14 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
15 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
16 not recorded.

17 58. First, during the relevant period, Defendants had, and continue to have, a
18 company-wide policy and/or practice of failing to record hours worked by their employees.
19 Defendants have not implemented a timekeeping system at their job sites and does not provide
20 employees with any mechanism, such as a handwritten timesheet, time clock, or electronic
21 timekeeping system, to track and record their hours worked. Instead, on information and
22 belief, Defendants' policy and/or practice is to simply pay employees, including Plaintiff and
23 other non-party Aggrieved Employees, for the hours they are scheduled to work. Because
24 Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with any
25 mechanism to record their actual hours worked and failed to otherwise record their actual
26 hours worked, Plaintiff and other non-party Aggrieved Employees were not paid for all hours
27 worked.

28 59. Moreover, Defendants did not have a procedure in place to track the start and

1 stop times of meal periods or to allow employees to report a short, missed, or interrupted meal
2 period. The sign-in sheet Plaintiff and other non-party Aggrieved Employees were required to
3 sign before their shifts began was not provided to them throughout the day to record meal
4 period start and stop times. Instead, Defendants automatically recorded that employees,
5 including Plaintiff and other non-party Aggrieved Employees, took 30-minute meal periods.
6 Defendants would record that compliant meal periods were taken, even if that was not the
7 case. Because Defendants failed to implement any sort of timekeeping system for meal
8 periods and automatically recorded 30-minute meal periods were taken even when they were
9 not, Plaintiff and other non-party Aggrieved Employees were not paid for all hours worked.

10 60. Second, Defendants' sign-in protocol led to Plaintiff and other non-party
11 Aggrieved Employees performing work for which they were not paid. Specifically,
12 Defendants required Plaintiff and other non-party Aggrieved Employees to report to
13 Defendants' main yard or a satellite office before their scheduled shift for "sign-in," before
14 departing to various assigned job sites. Plaintiff and other non-party Aggrieved Employees
15 would report to Defendants' main yard or satellite office before their scheduled shift start time
16 and wait to sign in on a physical "sign-in" sheet and wait for the coordination of carpools to
17 job sites. However, Defendants did not compensate Plaintiff and other non-party Aggrieved
18 Employees for the time they spent waiting to physically sign in on the "sign-in" sheet, waiting
19 to coordinate carpools, or for the time they subsequently spent traveling to their various
20 assigned job sites.

21 61. Third, Defendants had a company-wide written policy and practice of failing to
22 compensate Plaintiff and other non-party Aggrieved Employees for travel from one job site to
23 another in the same workday, including travel back to the main yard or satellite office at the
24 end of the day. Defendants' written policy provides: ". . . [a]s a passenger [in company or
25 courtesy transportation], **time spent in transit is not considered work and therefore it is**
26 **not paid.**" (Emphasis added). As mentioned, as part of Defendants' sign-in process at the
27 beginning of each workday, Plaintiff and other non-party Aggrieved Employees were required
28 to report to the main yard or satellite office before their scheduled shifts to coordinate

1 carpools to the various job sites. From Defendants' main yard or satellite office, Plaintiff and
2 other non-party Aggrieved Employees were expected to either carpool together in employee
3 vehicles or company-issued vehicles to job sites throughout the day. Travel to an initial job
4 site typically took at least 5-10 minutes before arriving at their destination. However, on
5 information and belief, Plaintiff and other non-party Aggrieved Employees were not
6 considered to be "clocked-in" until arriving at the job site and were not paid for any time
7 spent traveling in between job sites or for their return travel to the main yard or satellite office
8 after their shift ended.

9 62. Fourth, Defendants had a company-wide policy and/or practice of discouraging
10 and impeding Plaintiff and other non-party Aggrieved Employees from recording hours
11 worked that were outside of their scheduled shifts, to limit the amount of overtime employees
12 could accrue. On information and belief, this limitation on overtime accrual was based on a
13 company-wide policy of staffing job sites or locations strictly based on the labor hours or
14 labor budget set by corporate. This policy of limiting overtime, coupled with Defendants'
15 understaffing policy and assigning strict deadlines and heavy workloads (*see infra*), led
16 Plaintiff and other non-party Aggrieved Employees to work off-the-clock before and after
17 their scheduled shift times in order to complete their assigned tasks. Moreover, as stated,
18 Defendants had a company-wide policy of failing to track clock-out times for the end of
19 scheduled shifts. As a result of this restriction on overtime accrual, Defendants also forced
20 Plaintiff and other non-party Aggrieved Employees to perform work off-the-clock outside of
21 their scheduled shifts, such as traveling to job sites, finishing their work assignments,
22 speaking with supervisors about work assignments, and responding to phone calls on their
23 personal cellular phones. Defendants failed to track this time spent working before and after
24 scheduled shifts, and Plaintiff and other non-party Aggrieved Employees received no
25 compensation for this time.

26 63. Fifth, Defendants have systematically, and on a company-wide basis,
27 understaffed their job sites, pursuant to their labor budget practices, while assigning heavy
28 workloads and/or strict deadlines, thereby failing to provide adequate meal period coverage to

1 permit employees to take compliant meal periods. Because Defendants understaffed their job
2 sites, sufficient meal period coverage was not provided. As a result, Plaintiff and other non-
3 party Aggrieved Employees were not always afforded uninterrupted 30-minute meal periods
4 during shifts when they were entitled to receive a meal period. Further, Defendants'
5 competitive bidding practices required work to be performed as quickly as possible to win
6 bids and meet profit margins, resulting in Defendants assigning heavy workloads and strict
7 deadlines for Plaintiff and other non-party Aggrieved Employees to meet.

8 64. Finally, coupled with their lack of meal period coverage, Defendants had a
9 company-wide policy and/or practice of failing to adhere to a schedule of meal periods, which
10 further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their
11 duties for compliant meal periods. For example, Plaintiff and other non-party Aggrieved
12 Employees were required to perform their duties, such as marking out the lines to drill holes
13 for the new pipelines, picking up stakes to stake down the boards, responding to emergencies
14 such as gas leaks, answering work-related questions from supervisors on-site, or responding to
15 work-related calls from Defendants' management during unpaid meal periods, or would have
16 their meal periods interrupted to complete such work-related tasks. Defendants did not record
17 or pay Plaintiff and other non-party Aggrieved Employees for the time they continued to
18 perform tasks during meal periods. Consequently, Plaintiff and other non-party Aggrieved
19 Employees performed work during meal periods for which they were not paid.

20 65. Defendants knew or should have known that, as a result of these company-wide
21 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
22 their assigned duties off-the-clock before or after their shifts and during meal periods, and
23 were suffered or permitted to perform work for which they were not paid. Defendants also
24 knew, or should have known, that they did not compensate Plaintiff and other non-party
25 Aggrieved Employees applicable overtime rates of pay for overtime hours that they worked.

26 66. Because Plaintiff and other non-party Aggrieved Employees sometimes worked
27 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-
28 the-clock work qualified for overtime premium pay. Therefore, Plaintiff and other non-party

1 Aggrieved Employees were not paid overtime wages for all of the overtime hours they
2 actually worked.

3 67. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
4 correct overtime rate for the recorded overtime hours that they generated. In addition to an
5 hourly wage, Defendants paid other non-party Aggrieved Employees shift differential pay,
6 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in
7 violation of the California Labor Code, Defendants failed to incorporate all compensation,
8 including shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of
9 remuneration, into the calculation of the regular rate of pay for purposes of calculating the
10 overtime wage rate. Therefore, during times when other non-party Aggrieved Employees
11 worked overtime and received these other forms of pay, Defendants failed to pay all overtime
12 wages by paying a lower overtime rate than required.

13 68. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
14 the balance of overtime compensation as required by California law, violates the provisions of
15 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
16 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
17 2699(a), (f), and (g).

18 **FAILURE TO PAY MINIMUM WAGES**

19 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

20 69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
21 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
22 to be paid to employees, and the payment of a wage less than the minimum so fixed is
23 unlawful. Compensable work time is defined by the applicable wage order as "the time
24 during which an employee is subject to the control of an employer, and includes all the time
25 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
26 Regs. tit. 8, § 11160(2)(J) (defining "Hours Worked").

27 70. As set forth above, during the relevant time period, Defendants had a company-
28 wide policy and/or practice of only paying Plaintiff and other non-party Aggrieved Employees

1 for their scheduled shifts, rather than their actual hours worked, because Defendants had no
2 timekeeping system in place to track hours actual hours worked. Also, as stated above,
3 Defendants maintained a policy and/or practice requiring Plaintiff and other non-party
4 Aggrieved Employees to perform work off-the-clock prior to their shifts, including waiting to
5 “sign-in” before their shift, waiting to leave the main yard or satellite office for the job site,
6 traveling to the job site and between various job sites, and, after the end of their shifts
7 traveling back to the main yard or satellite office. Also, as a result of Defendants’ policy of
8 limiting the amount of overtime employees could accrue by not recording hours worked that
9 were outside of employees’ scheduled shifts, Plaintiff and other non-party Aggrieved
10 Employees were forced to work off-the-clock before and after their scheduled shift start and
11 end times to complete their assigned job duties, including travel to and from job sites,
12 speaking with supervisors about work assignments and responding to phone calls on their
13 personal cellular phones. As also stated, due to Defendants’ policy and/or practice of
14 understaffing while assigning heavy workloads and strict deadlines, and failure to adhere to a
15 schedule of meal periods, Plaintiff and other non-party Aggrieved Employees were forced to
16 forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved
17 of all duties during meal period.

18 71. Further, Defendants maintained and implemented a company-wide policy of
19 requiring employees to travel to a medical facility on their own time and using their own
20 personal vehicles to undergo mandatory drug testing and/or physical examinations. At all
21 times, Defendants were in control of scheduling the date and time for the testing and/or
22 physical examinations, selecting the provider or facility where the testing and/or physical
23 examinations were to take place, and determining the scope of the testing and/or physical
24 examinations. Other non-party Aggrieved Employees were required to travel in their own
25 personal vehicles and spend time undergoing Defendants’ mandatory drug test and/or physical
26 examination. However, Defendants did not compensate other non-party Aggrieved
27 Employees for the time they spent traveling to and from the medical facilities and undergoing
28 the mandatory drug testing and/or physical examinations.

1 72. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
2 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
3 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
4 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
5 1194, 1197, and 1198.

6 73. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
7 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
8 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
9 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

10 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
11 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

12 74. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
13 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff and
14 non-party Aggrieved Employees' employment by Defendants.

15 75. At all relevant times herein set forth, California Labor Code section 512(a)
16 provides that an employer may not require, cause, or permit an employee to work for a period
17 of more than five (5) hours per day without providing the employee with a meal period of not
18 less than thirty (30) minutes, except that if the total work period per day of the employee is
19 not more than six (6) hours, the meal period may be waived by mutual consent of both the
20 employer and the employee. Under California law, first meal periods must start after no more
21 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
22 2012).

23 76. At all relevant times herein set forth, California Labor Code section 226.7,
24 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
25 meal period mandated by an applicable order of the IWC.

26 77. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
27 and the applicable IWC Wage Order also require employers to provide a second meal period
28 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay

1 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
2 total hours worked is no more than twelve (12) hours, the second meal period may be waived
3 by mutual consent of the employer and the employee only if the first meal period was not
4 waived.

5 78. First, Defendants did not have a procedure in place to track the start and stop
6 times of meal periods or to allow employees to report a late, short, missed, or interrupted meal
7 period. As stated, Defendants did not have a time clock or other timekeeping system at
8 various job sites or provide employees with any mechanism for recording hours worked
9 during meal periods.

10 79. Second, during the relevant period, on information and belief, Defendants had,
11 and continue to have, a company-wide policy and/or practice of strictly staffing their job sites
12 based on the labor hours allocated by the corporate office, which resulted in and continues to
13 result in chronic understaffing and a lack of adequate meal period coverage, because there
14 were too few employees on duty to handle the workload. As a result of this inadequate meal
15 period coverage, Plaintiff and other non-party Aggrieved Employees missed and/or had their
16 meal periods interrupted by work to meet the demands of their workload. For example,
17 Plaintiff's unpaid meal periods were frequently interrupted or cut short by 5-10 minutes to
18 travel and report to the next job site and discuss upcoming work assignments and due to
19 Defendants' management approaching him to discuss work-related matters.

20 80. Third, as stated, Defendants have, on a company-wide basis, systematically
21 discouraged and impeded Plaintiff and other non-party Aggrieved Employees from taking
22 meal periods by failing to adhere to a schedule of meal periods, while assigning strict
23 deadlines and heavy workloads, even though they are aware and know that employees are
24 entitled to such meal periods. As a result of this uniform failure to adhere to a schedule of
25 meal periods, Plaintiff and other non-party Aggrieved Employees have not been provided
26 timely, uninterrupted 30-minute meal periods during their shifts in which they were entitled to
27 receive a meal period. For example, Plaintiff worked through his meal periods due to strict
28 deadlines and a heavy workload resulting from Defendants' competitive bidding practices,

1 which required work to be performed as quickly as possible.

2 81. Additionally, during the relevant period, Defendants had a company-wide
3 policy and/or practice of requiring that Plaintiff and other non-party Aggrieved Employees
4 respond to calls from supervisors and management on their personal cellular phones, even
5 during unpaid meal periods, and requiring that other non-party Aggrieved Employees remain
6 on premises during unpaid meal periods. Consequently, Plaintiff and other non-party
7 Aggrieved Employees suffered missed and interrupted meal periods, work for which they
8 were not paid. Plaintiff and other non-party Aggrieved Employees were required to work
9 throughout their shifts without taking compliant meal periods to adhere to Defendants'
10 policies and expectations.

11 82. As a result of Defendants' practices and/or policies, Plaintiff and other non-
12 party Aggrieved Employees were forced to work in excess of five (5) hours before taking a
13 meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal
14 periods altogether. Defendants knew or should have known that as a result of their policies,
15 Plaintiff and other non-party Aggrieved Employees were not actually relieved of all duties to
16 take timely, uninterrupted meal periods because, to the extent meal periods were recorded
17 after the fact, Defendants falsified or adjusted employee time records to reflect compliant
18 meal periods, even if none were taken.

19 83. For example, during his employment, Plaintiff missed approximately four (4) to
20 six (6) meal periods per month. Plaintiff was also required to take his meal periods late after
21 having worked in excess of five (5) hours or more into his shift, and at times would have his
22 meal periods interrupted by his supervisors with work-related questions. As a further
23 example, Plaintiff's meal periods were also cut short when his supervisors required him to
24 report early to the next job site to discuss work assignments.

25 84. Fourth, Defendants did not provide Plaintiff and other non-party Aggrieved
26 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
27 hours in one day. During his employment, Plaintiff worked in excess of 10 hours per day, but
28 was not provided with second 30-minute meal periods. Plaintiff and other non-party

1 Aggrieved Employees did not sign valid meal period waivers on days that they were entitled
2 to meal periods and were not relieved of all duties.

3 85. Defendants knew or should have known that as a result of their company-wide
4 policies and practices, including a failure to implement any kind of employee timekeeping
5 system, understaffing, failure to adhere to a schedule for meal periods, and requirement that
6 employees respond to calls to their cellular phones at all times, that Plaintiff and other non-
7 party Aggrieved Employees were not actually relieved of all duties to take timely,
8 uninterrupted meal periods. Defendants further knew or should have known that they did not
9 pay Plaintiff and other non-party Aggrieved Employees meal period premium wages when
10 they were missed, late, short, and/or interrupted.

11 86. Defendants also have engaged in a company-wide practice and/or policy of not
12 paying meal period premiums owed when compliant meal periods are not provided. Because
13 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
14 received premium pay for missed, interrupted, or late meal periods. Alternatively, to the
15 extent that Defendants did pay meal period premium wages to other non-party Aggrieved
16 Employees, they did so at the incorrect rates. Because Defendants did not properly calculate
17 other non-party Aggrieved Employees' regular rates of pay by including all remunerations,
18 such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums
19 paid for meal period violations were also paid at an incorrect rate and resulted in an
20 underpayment of meal period premium wages.

21 87. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
22 Employees compliant meal periods and failed to pay the full meal period premiums due.
23 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
24 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
25 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
26 (g).

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28 //

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

88. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and other non-party Aggrieved Employees' employment by Defendants.

89. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

90. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

91. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

92. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide policies and/or practices, including assigning deadlines and heavy workloads due to Defendants' competitive bidding practices, prevented Plaintiff and other

1 non-party Aggrieved Employees from being relieved of all duty to take compliant rest periods.
2 For example, Plaintiff frequently missed his rest periods due to strict deadlines and a heavy
3 workload. Additionally, Defendants failed to adhere to a schedule of rest periods, which,
4 coupled with Defendants' failure to provide adequate rest period coverage, further led to
5 Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take
6 compliant rest periods. Moreover, Plaintiff and other non-party Aggrieved Employees were
7 expected to carry and respond to their personal cellular phones at all times, including during
8 rest periods.

9 93. Furthermore, Defendants maintained and implemented a company-wide
10 practice and/or policy requiring that Plaintiff and other non-party Aggrieved Employees
11 remain on the work premises during their rest periods. Because Plaintiff and other non-party
12 Aggrieved Employees were restricted from leaving the work premises during rest periods,
13 they were denied the ability to use their rest periods freely for their own purposes. Thus,
14 Defendants effectively maintained control over Plaintiff and other non-party Aggrieved
15 Employees during rest periods, and, as a result, did not relinquish control over Plaintiff and
16 other non-party Aggrieved Employees during rest periods.

17 94. Due to Defendants' practices and policies, Plaintiff and other non-party
18 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
19 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
20 entitled. For example, throughout his employment, Plaintiff missed his rest periods, due to
21 Defendants' policy of assigning heavy workloads and strict deadlines, understaffing, failure to
22 adhere to a schedule of rest periods, and requirement that he respond to his personal cellular
23 phone at all times.

24 95. Defendants also have engaged in a company-wide practice and/or policy of not
25 paying all rest period premiums owed when compliant rest periods are not authorized or
26 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
27 Employees have not received premium pay for all missed rest periods. Alternatively, to the
28 extent that Defendants did pay rest period premium wages to other non-party Aggrieved

1 Employees, they did so at the incorrect rates. Because Defendants did not properly calculate
2 other non-party Aggrieved Employees' regular rates of pay by including all forms of
3 compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or
4 other forms of remuneration, any premiums paid for rest period violations were also paid at an
5 incorrect rate and resulted in an underpayment of rest period premium wages.

6 96. Defendants' conduct violates the applicable IWC Wage Order and California
7 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
8 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
9 558 and/or 2699(a), (f), and (g).

10 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
11 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

12 97. At all relevant times herein, California Labor Code section 226(a) provides that
13 every employer shall furnish each of his or her employees an accurate and complete itemized
14 wage statement in writing, including, but not limited to, the name and address of the legal
15 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
16 applicable rates of pay.

17 98. During the relevant time period, Defendants have knowingly and intentionally
18 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
19 inaccurate wage statements. For example, Defendants issued uniform wage statements to
20 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
21 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
22 the pay period, including overtime rates of pay, and the corresponding number of hours
23 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
24 226(a)(5), and 226(a)(9).

25 99. Because Defendants did not record the time Plaintiff and other non-party
26 Aggrieved Employees spent working off-the-clock and deducted time from Plaintiff's and/or
27 other non-party Aggrieved Employees' records for meal periods that were interrupted and/or
28 missed (and therefore time for which they should have been paid), Defendants did not list the

1 correct amount of gross wages and net wages earned by Plaintiff and other non-party
2 Aggrieved Employees in compliance with sections 226(a)(1) and 226(a)(5). For the same
3 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and
4 other non-party Aggrieved Employees in violation of section 226(a)(2), and failed to list the
5 applicable hourly rates of pay in effect during the pay period and corresponding accurate
6 number of work hours worked at each hourly rate in violation of section 226(a)(9).

7 100. In addition, because Defendants did not calculate other non-party Aggrieved
8 Employees' regular rate of pay correctly for purposes of paying overtime, Defendants did not
9 list the correct amount of gross wages earned by other non-party Aggrieved Employees in
10 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct
11 amount of net wages earned by other non-party Aggrieved Employees in violation of section
12 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during
13 the pay period, namely, correct overtime rates of pay and/or correct rates of pay for premium
14 wages, in violation of section 226(a)(9).

15 101. The wage statement deficiencies also include, without limitation, failing to list
16 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
17 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
18 only the last four digits of his or her social security number or an employee identification
19 number other than a social security number; failing to list the name and address of the legal
20 entity that is the employer; failing to list the inclusive dates of the period for which aggrieved
21 employees were paid; and/or failing to state all hours worked as a result of not recording or
22 stating hours worked off-the-clock.

23 102. California Labor Code section 1198 provides that the maximum hours of work
24 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
25 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
26 employment of any employees for longer hours than those fixed by the order or under
27 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
28 Wage Order, employers are required to keep accurate time records showing when the

1 employee begins and ends each work period and meal period. During the relevant time
2 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
3 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
4 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
5 and/or policy of falsifying Plaintiff's and other non-party Aggrieved Employees' time records
6 by deducting meal periods or recording that compliant meal periods were taken, regardless of
7 if or when meal periods were actually taken, and thereby failed to keep accurate records of
8 meal period start and stop times for Plaintiff and other non-party Aggrieved Employees in
9 violation of section 1198. Furthermore, in light of Defendants' failure to provide Plaintiff and
10 other non-party Aggrieved Employees with second 30-minute meal periods to which they
11 were entitled, Defendants kept no records of meal start and end times for second meal periods.

12 103. California Labor Code section 1174(d) provides that "[e]very person employing
13 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
14 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
15 plants or establishments at which employees are employed, payroll records showing the hours
16 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
17 applicable piece rate paid to, employees employed at the respective plants or
18 establishments..." At all relevant times, and in violation of Labor Code section 1174(d),
19 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
20 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
21 as a result of failing to record the off-the-clock hours that they worked.

22 104. Because Defendants' violations of 226(a) and 1174(d) were committed against
23 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
24 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
25 1174.5, and/or 2699(a), (f), and (g).

26 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

27 **VIOLATION OF LABOR CODE SECTION 204**

28 105. At all relevant times herein set forth, California Labor Code section 204

1 requires that all wages earned by any person in any employment between the 1st and the 15th
2 days, inclusive, of any calendar month, other than those wages due upon termination of an
3 employee, are due and payable between the 16th and the 26th day of the month during which
4 the labor was performed. Labor Code section 204 further provides that all wages earned by
5 any person in any employment between the 16th and the last day, inclusive, of any calendar
6 month, other than those wages due upon termination of an employee, are due and payable
7 between the 1st and the 10th day of the following month.

8 106. At all relevant times herein, California Labor Code section 204 also requires
9 that all wages earned for labor in excess of the normal work period shall be paid no later than
10 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
11 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
12 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
13 more than seven (7) calendar days following the close of the payroll period.

14 107. During the relevant time period, Defendants willfully failed to pay Plaintiff and
15 other non-party Aggrieved Employees all wages due to them within any time period specified
16 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
17 wages, meal and rest period premium wages, and reporting time pay.

18 108. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
19 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

20 **FAILURE TO PAY WAGES UPON TERMINATION**

21 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

22 109. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
23 that if an employer discharges an employee, the wages earned and unpaid at the time of
24 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
25 her employment, his or her wages shall become due and payable not later than seventy-two
26 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
27 his or her intention to quit, in which case the employee is entitled to his or her wages at the
28 time of quitting.

110. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

111. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

UNLAWFUL DISCOUNT OF WAGES

VIOLATION OF LABOR CODE SECTIONS 212 AND 213

112. California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount, at some established place of business in the state, the name and address of which must appear on the instrument. California Labor Code section 212 further prohibits employers from issuing payment of wages due in the form of any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

113. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit.

114. Under California law, employers are permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible

1 relied heavily on:

2 . . . [T]he fact that the pay programs were optional, thereby
3 allowing an employee to either participate in the program or
4 receive his or her pay in some other way, such as direct deposit.
5 Specifically, the DLSE opined that “[t]he success of the
6 described procedure, in practice, will of course require that . . .
7 it is presented as an *alternative* method for wage payment for
8 which [the employees’] participation is optional.” The DLSE
also stated, “[i]t is significant that the program does not
mandate employee participation in the Money Network Service
and that it is designed to provide an alternative for employees
receiving their wage payment. Employees are also given the
option of having their pay direct deposited into an account of
their choosing . . .” (internal citations omitted).

9 115. In addition, California law only permits employers to utilize payroll debit card
10 programs if they provide employees with effective access to their wages without discount.
11 The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of
12 payroll debit cards where the following requirements are satisfied:

13 . . . (1) [T]he “wages [are] payable at some established place of
14 business in the state and there be at least 30 days of sufficient
15 funds for payment,”; (2) the employees are “fully informed of
16 the service and procedures and that it is represented as an
17 alternative method for wage payment for which their
participation is optional,”; (3) the employees receive “an
itemized wage statement,”; and (4) “at least one transaction per
pay period [is] without fee.”

18 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL 6202298 at 3.

19 116. Further, the DLSE notes that the Labor Code manifests:

20 . . . [A] strong public policy that prohibits an employer (or its
21 agent) from imposing conditions or obstacles which interfere
22 with or prevent an employee’s (*sic*) from promptly receiving
23 their due wages *in full*. The imposition of a fee in order to
24 readily *access* one’s earned and paid wage under a payroll card
25 program which is designed to discharge the employer’s wage
26 payment obligations could impermissibly interfere with an
employee’s receipt of page
wages by creating a financial condition which would have the
effect of reducing or discounting wages because such fee would
be charged against the same account in which wages are
deposited.” (Emphases in original)

27 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service
28 providers “effectively act as *agents* of the client employers in discharging the employer’s

wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07.2.*

117. During the relevant time period, Defendants had an agreement with a payroll service provider for the issuance of payroll cards to employees, including Plaintiff and other non-party Aggrieved Employees, to discharge their wage payment obligations to their employees. Upon information and belief, Defendants’ payroll debit card program was not voluntary or optional to other non-party Aggrieved Employees and Defendants had a practice and/or policy of automatically issuing payroll debit cards to other non-party Aggrieved Employees without giving them the option to elect their form of payment for their wages. Upon information and belief, other non-party Aggrieved Employees received their wages on a payroll debit card without a choice of an alternative method, including a written check.

118. Moreover, under Defendants’ payroll debit program, on information and belief, Defendants did not permit Plaintiff and other non-party Aggrieved Employees to withdraw their entire wages in at least one transaction without incurring a fee. For example, Plaintiff utilized ATMs to try to withdraw his wages but could not obtain the entire amount because ATMs only disburse cash in limited denominations. Additionally, Plaintiff also encountered approximately \$2.00-\$3.00 in ATM fees each time he utilized an ATM to withdraw funds from his payroll debit card, which resulted in a discount in his pay.

119. California courts recognize a policy favoring the full and prompt payment of wages to employees. Defendants’ payroll card program is inconsistent with this policy and for the reasons alleged herein violates California Labor Code sections 212 and 213. Plaintiff and/or other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

COLLECTING OR RECEIVING WAGES ALREADY PAID

VIOLATION OF LABOR CODE SECTION 221 AND 224

120. At all times relevant herein, California Labor Code section 221 provides that it

1 shall be unlawful for any employer to collect or receive from an employee any part of wages
2 theretofore paid by said employer to said employee. California Labor Code section 224 also
3 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
4 deduction is expressly authorized in writing by the employee."

5 121. During the relevant time period, Defendants unlawfully deducted a portion of
6 wages previously paid to Plaintiff and/or other non-party Aggrieved Employees in violations
7 of California Labor Code section 221. Defendants systematically, and on a company-wide
8 basis, provided Plaintiff and/or other non-party Aggrieved Employees with payroll debit cards
9 as payment of their wages and/or final wages. Under Defendants' payroll debit card program,
10 Plaintiff and other non-party Aggrieved Employees were assessed various fees in connection
11 with their use of the payroll debit cards. Plaintiff and other non-party Aggrieved Employees
12 were required to pay per-transaction fees, ATM fees, in-person teller fees, and/or other fees to
13 obtain and/or spend their earned and due wages. The fees charged to Plaintiff and/or other
14 non-party Aggrieved Employees resulted in a discount of their wages.

15 122. Defendants' payroll debit card program, which resulted in a discount of wages
16 to employees, is tantamount to taking deductions from Plaintiff's and/or other non-party
17 Aggrieved Employees' paychecks without their written authorization and therefore constitutes
18 an unlawful deduction of wages, in violation of Labor Code sections 221 and 224.

19 123. Defendants' conduct as alleged herein violates California Labor Code sections
20 221 and 224. Plaintiff and/or other non-party Aggrieved Employees are therefore entitled to
21 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

22 **SECRET PAYMENT OF A LOWER WAGE**

23 **VIOLATION OF LABOR CODE SECTION 223**

24 124. At all times, California Labor Code section 223 makes it unlawful for an
25 employer to secretly pay wages lower than required by statute while purporting to pay legal
26 wages.

1 125. During the relevant time period, Defendants willfully and systematically issued
2 payroll debit cards to Plaintiff and/or other non-party Aggrieved Employees. The payroll
3 debit cards discounted the wages of Plaintiff and/or other non-party Aggrieved Employees by
4 charging various fees in connection with the use of the payroll debit cards. Defendants'
5 payroll debit card program resulted in the payment of less than statutorily required wages to
6 Plaintiff and/or other non-party Aggrieved Employees. In doing so, Defendants acted with the
7 intent to deprive Plaintiff and/or other non-party Aggrieved Employees of statutory wages,
8 including, but not limited to, overtime wages and minimum wages, to which they were
9 entitled to under California law. Thus, Defendants paid Plaintiff and/or other non-party
10 Aggrieved Employees lower wages than those they were entitled to while purporting that
11 Plaintiff and/or other non-party Aggrieved Employees were properly paid.

12 126. Defendants' failure to pay Plaintiff and/or other non-party Aggrieved
13 Employees the correct designated wage, while purporting to pay legal wages, is a violation of
14 California Labor Code section 223. Plaintiff and/or other non-party Aggrieved Employees are
15 therefore entitled to recover civil penalties pursuant to sections 225.5 and/or 2699(a), (f), and
16 (g).

17 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION**
18 **VIOLATION OF LABOR CODE SECTION 222.5**

19 127. At all relevant times herein, California Labor Code section 222.5 requires
20 employers to pay for the costs an employee incurs for obtaining any required medical or
21 physical examination.

22 128. During the relevant time period, Defendants implemented, on a company-wide
23 basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo
24 mandatory drug tests and/or physical examinations, but required them to do so at their own
25 expense. As stated, Defendants had a company-wide policy requiring that other non-party
26 Aggrieved Employees travel to specified medical facilities on their own time and use their
27 own means of transportation to undergo drug testing and/or physical examinations. At all
28 times, Defendants were in control of scheduling the date and time for the drug testing and/or

1 physical examinations, selecting the provider/facility where the drug testing and/or physical
2 examinations were to take place, and determining the scope of the drug test and/or physical
3 examinations.

4 129. Other non-party Aggrieved Employees were required to travel in their own
5 personal vehicles and spend time undergoing Defendants' mandatory drug test and/or physical
6 examination. However, Defendants did not compensate other non-party Aggrieved
7 Employees for the time they spent traveling to and from their drug tests and/or physical
8 examinations, or for the time they spent undergoing the testing and/or examinations, or
9 reimburse them for the travel expenses they incurred getting to and from the medical facilities.
10 Defendants' policy and/or practice of not paying for all costs other non-party Aggrieved
11 Employees incurred obtaining mandatory drug tests and/or physical examinations tests is in
12 violation of California Labor Code section 222.5.

13 130. Other non-party Aggrieved Employees are therefore entitled to recover civil
14 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

15 **FAILURE TO PAY REPORTING TIME PAY**

16 **VIOLATION OF LABOR CODE SECTION 1198**

17 131. California Labor Code section 1198 makes it illegal to employ an employee
18 under conditions of labor that are prohibited by the applicable wage order. California Labor
19 Code section 1198 requires that "... the standard conditions of labor fixed by the commission
20 shall be the ... standard conditions of labor for employees. The employment of any employee
21 ... under conditions of labor prohibited by the order is unlawful."

22 132. California Code of Regulations, Title 8, section 11160(5)(A) provides that
23 "[e]ach workday an employee is required to report for work and does report, but is not put to
24 work or is furnished less than half said employee's usual or scheduled day's work, the
25 employee shall be paid for half the usual or scheduled day's work, but in no event for less
26 than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which
27 shall not be less than the minimum wage." The "primary purpose of the reporting time
28 regulation" is "to guarantee at least partial compensation for employees who report to work

1 expecting to work a specified number of hours, and who are deprived of that amount because
2 of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch*
3 *Cellular*, 209 Cal. App. 4th 556 (2012)

4 133. Upon information and belief, during the relevant time period, Defendants
5 violated California Labor Code section 1198 and California Code of Regulations, Title 8,
6 section 11160(5), because Defendants failed to pay Plaintiff and other non-party Aggrieved
7 Employees reporting time pay when they reported to work for their scheduled shift but were
8 put to work for less than half of the regularly scheduled day’s work.

9 134. Defendants had a company-wide practice of sending Plaintiff and other non-
10 party Aggrieved Employees home early from their shifts, including before they had worked at
11 least half of their regular shift, but would not pay Plaintiff and other non-party Aggrieved
12 Employees for half of their scheduled shift. For example, Plaintiff would report to work, but
13 was at times sent home immediately or before he worked at least half of his scheduled shift if
14 Defendants determined construction work could not proceed due to inclement weather.
15 Although Plaintiff and other non-party Aggrieved Employees would report to work based on
16 the schedule that Defendants provided to them, Defendants would send them home before
17 they had worked at least half of their scheduled shifts without giving them reporting time pay.
18 Accordingly, Plaintiff and other non-party Aggrieved Employees were not properly
19 compensated with reporting time pay in violation of California Labor Code section 1198.

20 135. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
21 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

22 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

23 **VIOLATION OF LABOR CODE SECTION 2802**

24 136. At all times herein set forth, California Labor Code section 2802 provides that
25 an employer must reimburse employees for all necessary expenditures and losses incurred by
26 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
27 to prevent employers from passing off their cost of doing business and operating expenses on
28 to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144

(2014). The applicable wage order, IWC Wage Order 16-2001, provides that: “[w]hen the employer requires the use of tools or equipment or they are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft.”

137. First, during the relevant time period, Defendants had a company-wide policy of requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal vehicles for work purposes, but failed to reimburse them for the costs of travel, including mileage. For example, Plaintiff was required to drive his personal vehicle to various job sites, but was not reimbursed for all travel expenses or mileage and was not reimbursed at all when sent home early due to inclement weather. Defendants also had a company-wide policy of requiring other non-party Aggrieved Employees to travel in their own personal vehicles to medical facilities to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. Defendants maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, Defendants were in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. Defendants gave other non-party Aggrieved Employees strict instructions to obtain drug testing and physical examinations, and other non-party Aggrieved Employees underwent the testing and examination for the sole benefit of Defendants. Thus, although Defendants required Plaintiff and/or other non-party Aggrieved Employees to use their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, Defendants failed to reimburse them for all of their travel expenses.

138. Second, Defendants, on a company-wide basis, required that Plaintiff and other non-party Aggrieved Employees utilize their own personal cellular phones and/or cellular phone data to carry out their job duties, but failed to reimburse them for the costs of their

1 cellular phone and/or data plans. For example, Plaintiff was required to use his personal
2 cellular phone to carry out his work, such as answering calls and text messages from
3 Defendants' management regarding work-related activities, such as ordering supplies for
4 various jobs and completing paperwork. Although Defendants required Plaintiff and other
5 non-party Aggrieved Employees to regularly utilize their personal cellular phones to carry out
6 work-related responsibilities, Defendants failed to reimburse them for this cost.

7 139. Third, as alleged herein, Defendants had a company-wide policy and/or practice
8 of requiring Plaintiff and other non-party Aggrieved Employees to provide certain equipment
9 for use at their assigned job sites, such as tape measures, but denied Plaintiff's and other non-
10 party Aggrieved Employees' requests for reimbursement of these business expenses.

11 140. Fourth, during the relevant time period, Defendants, on a company-wide basis,
12 mandated that Plaintiff and other non-party Aggrieved Employees purchase steel-toed boots
13 and flame-resistant or fire-retardant clothing, including shirts and pants, which they were
14 required to wear while at work. Plaintiff and other non-party Aggrieved Employees purchased
15 steel-toed boots and flame-resistant or fire-retardant clothing to wear at their assigned work
16 sites, but were not reimbursed for all of these costs.

17 141. Defendants could have provided Plaintiff and other non-party Aggrieved
18 Employees with the actual tools for use on the job, including company phones, company
19 vehicles, tape measures, steel-toed boots, and flame-resistant/fire retardant clothing.
20 Alternatively, Defendants could have reimbursed employees for these expenses. Instead,
21 Defendants passed these operating costs off onto Plaintiff and other non-party Aggrieved
22 Employees. Thus, Defendants had, and continue to have, a company-wide policy and/or
23 practice of not reimbursing employees for expenses necessarily incurred. At all relevant
24 times, Plaintiff did not earn at least two (2) times the minimum wage.

25 142. Defendants' company-wide policy and/or practice of passing on their operating
26 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
27 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and
28 other non-party Aggrieved Employees for necessary business-related expenses and costs.

1 143. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
2 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

3 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

4 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

5 144. At all times herein set forth, California Labor Code section 6401 provides that
6 employers must furnish and use safety devices and safeguards, and adopt and use practices,
7 means, methods, operations, and processes which are reasonably adequate to render the
8 employment and place of employment safe and healthy. California Labor Code Section 6401
9 further provides that an employer must to everything reasonably necessary to protect the life,
10 safety and health of its employees. California Labor Code section 6403(a) requires that
11 employers provide and use safety devices and safeguards reasonably adequate to render the
12 employment and place of employment safe.

13 145. Defendants, on a company-wide basis, failed to provide Plaintiff and other non-
14 party Aggrieved Employees with personal protective equipment, such as steel-toed boots and
15 flame-resistant or fire-retardant clothing, to keep them safe in the workplace, including
16 refrigeration areas. Despite the fact that Defendants required employees to wear certain
17 personal protective equipment, including steel-toed boots and flame-resistant or fire-retardant
18 clothing, Defendants failed to provide such reasonably necessary equipment to Plaintiff and
19 other non-party Aggrieved Employees to keep them safe.

20 146. Defendants' failure to provide Plaintiff and other non-party Aggrieved
21 Employees with safety devices and safeguards for the workplace violates Labor Code sections
22 6401 and 6403. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
23 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

24 **REQUEST FOR JURY TRIAL**

25 Plaintiff requests a trial by jury.

26 **PRAYER FOR RELIEF**

27 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
28 judgment against Defendants, jointly and severally, as follows:

1 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
2 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

3 **As to the First Cause of Action**

4 2. That the Court declare, adjudge and decree that Defendants violated the
5 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
6 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
7 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516,
8 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
9 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
10 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
11 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
12 employment); 212 and 213 (by failing to make earned wages accessible without discount);
13 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying
14 wages lower than required by statute); 222.5 (by failing to pay for costs of mandatory physical
15 examinations and/or drug testing); 1198 (by failing to provide reporting time pay); 2802 (by
16 failing to reimburse business expenses); and 6401 and 6403 (by failing to provide safety
17 devices and safeguards).

18 3. For civil penalties, pursuant to California Labor Code sections 210, 225.5,
19 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
20 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d),
21 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403;

22 4. For attorneys' fees and costs pursuant to California Labor Code section
23 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
24 Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510,
25 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403;

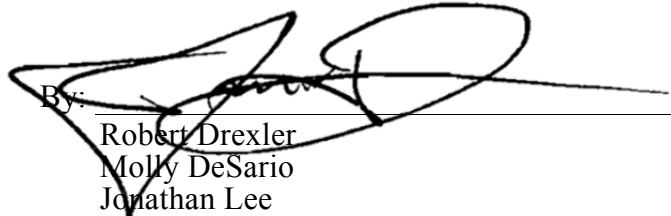
26 5. For pre-judgment and post-judgment interest as provided by law; and
27
28

1 6. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 Dated: June 17, 2020

Respectfully submitted,

Capstone Law APC

5
6  By: _____
7 Robert Drexler
8 Molly DeSario
9 Jonathan Lee

Attorneys for Plaintiff Jeremy Taber

Exhibit 1



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310.556.4811 Main | 310.943.0396 Fax

MICHELLE KENNEDY
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March 26, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Jeremy Taber v. PCL Industrial Services, Inc., et al.*

Dear PAGA Administrator:

This office represents Jeremy Taber in connection with his claims under the California Labor Code. Mr. Taber was an employee of PCL INDUSTRIAL SERVICES, INC.; PCL CONSTRUCTION, INC.; PCL CONSTRUCTION RESOURCES (U.S.A.), INC.; and/or PCL CONSTRUCTION SERVICES, INC. For the purpose of this letter, Mr. Taber collectively refers to these entities as "PCL."

The employers may be contacted directly at the addresses below:

PCL INDUSTRIAL SERVICES, INC.
1500 S UNION AVE
BAKERSFIELD CALIFORNIA 93307

PCL CONSTRUCTION, INC.
1711 W GREENTREE DR #201
TEMPE AZ 85284

PCL CONSTRUCTION RESOURCES
(U.S.A.), INC.
2000 S COLORADO BLVD STE 2-500
DENVER CO 80222

PCL CONSTRUCTION SERVICES, INC.
500 N BRAND BLVD STE 1500
GLENDALE CA 91203

PCL CONSTRUCTION SERVICES, INC.
2000 S COLORADO BLVD STE 2-500
DENVER CO 80222

Mr. Taber intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Taber seeks relief on behalf of himself, the State of California, and other persons who are or were employed by PCL in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

PCL employed Mr. Taber as a non-exempt, hourly paid Utility Craftsman from approximately August 2018 to April 2019. Mr. Taber worked for PCL out of its facilities in San Ardo and Coalinga, California. During his employment, Mr. Taber typically worked 10 hours or more per day, four (4) days per week, from 6:00 a.m. to 4:30 p.m. Mr. Taber's primary job duties included, without limitation, demolishing abandoned oil lines, monitoring drilling depths, and installing new equipment.

PCL has committed one or more of the following Labor Code violations against Mr. Taber, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

PCL's Company-Wide and Uniform Payroll and HR Practices

PCL INDUSTRIAL SERVICES, INC.; PCL CONSTRUCTION, INC.; PCL CONSTRUCTION RESOURCES (U.S.A.), INC.; and PCL CONSTRUCTION SERVICES, INC. are Colorado corporations, and provide full-service heavy industrial general contractor services in the United States, Canada, the Caribbean, and Australia. Upon information and belief, PCL maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Bakersfield, California, for all non-exempt, hourly paid employees working for PCL in California, including Mr. Taber and other aggrieved employees. At all relevant times, PCL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Taber and other aggrieved employees, regardless of their location or position.

Upon information and belief, PCL maintains a centralized Payroll department at its corporate headquarters in Bakersfield, California, which processes payroll for all non-exempt, hourly paid employees working for PCL in California, including Mr. Taber and other aggrieved employees. Further, PCL issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Taber and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, PCL utilized the same methods and formulas when calculating wages due to Mr. Taber and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of

¹ These facts, theories, and claims are based on Mr. Taber's experience and counsel's review of those records currently available relating to Mr. Taber's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Taber reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

PCL willfully failed to pay all overtime wages owed to Mr. Taber and other aggrieved employees. During the relevant time period, Mr. Taber and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, PCL had, and continues to have, a company-wide policy and/or practice of failing to record hours worked by its employees. PCL has not implemented a timekeeping system at its job sites and does not provide employees with any mechanism, such as a handwritten timesheet, time clock, or electronic timekeeping system, to track and record their hours worked. Instead, on information and belief, PCL's policy and/or practice is to simply pay employees, including Mr. Taber and other aggrieved employees, for the hours they are scheduled to work. For instance, PCL would only require Mr. Taber and other aggrieved employees to sign in at the start of their scheduled shift, when they arrived at the main yard or a satellite office for a particular job, prior to heading out to a client project/job site. Because PCL failed to provide Mr. Taber and other aggrieved employees with any mechanism to record their actual hours worked, Mr. Taber and other aggrieved employees were not paid for all hours worked before or after their scheduled shifts. For example, in order for Mr. Taber and other aggrieved employees to carpool to a job site (and subsequent job sites throughout the day) in a company vehicle, PCL required them to report to work prior to when their scheduled shift started. Mr. Taber and other aggrieved employees would report to work at the main yard 5-90 minutes prior to the start of their scheduled shift. However, Mr. Taber and other aggrieved employees were not paid for the time they spent waiting to sign in.

In addition, PCL did not have a procedure in place to track the start and stop times of meal periods or to allow employees to report a late, short, missed, or interrupted meal period. The sign-in sheet presented to Mr. Taber and other aggrieved employees at the start of their shift was not provided to them throughout the day to accurately record meal periods. To the extent that meal periods were later recorded by PCL, PCL falsified employee time records to reflect that compliant meal periods were taken, even if that was not the case. Thus, there was no time clock in place to capture actual hours worked, including hours worked before or after scheduled shifts or during meal periods.

Second, due to PCL's policies and/or procedures for traveling to job sites, Mr. Taber and other aggrieved employees were forced to work off-the-clock, as time spent prior to arriving to a job site was not tracked for all employees. PCL's written policy states: "... As a passenger [in company or courtesy transportation], **time spent in transit is not considered work and therefore it is not paid.**" (emphasis added). As stated, pursuant to PCL's company-wide policy, Mr. Taber and other aggrieved employees were required to report to PCL's main yard or satellite office at least 5 minutes (and sometimes up to 90 minutes) prior to a scheduled departure time, then would drive or would be driven as a group to the job site in a company vehicle, often traveling for at least 5-10 minutes before arriving at their destination. However, on information and belief, Mr. Taber and other aggrieved employees were not considered to be "clocked-in" until arriving at the job site.

Third, as stated above, PCL had a policy and/or practice of discouraging and impeding Mr. Taber and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this

limitation on overtime accrual was based on a company-wide policy of staffing job sites or locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with PCL's understaffing policy and assigning strict deadlines and heavy workloads (*see infra*), led Mr. Taber and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. Moreover, as stated, PCL had a company-wide policy of failing to track clock-out times for the end of scheduled shifts. As a result of this restriction on overtime accrual, PCL also forced Mr. Taber and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, such as traveling to job sites, finishing their work assignments, speaking with supervisors about work assignments, and responding to phone calls on their personal cellular phones. PCL failed to track this time spent working before and after scheduled shifts, and Mr. Taber and other aggrieved employees received no compensation for this time.

Fourth, as stated, PCL has systematically, and on a company-wide basis, understaffed its job sites, pursuant to its labor budget practices, while assigning heavy workloads and/or strict deadlines, thereby failing to provide adequate meal period coverage to permit employees to take compliant meal periods. Because PCL understaffs its job sites, there is no one available to relieve employees needing meal period coverage, and Mr. Taber and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Further, PCL's competitive bidding practices required work to be performed as quickly as possible to win bids and meet profit margins, resulting in PCL assigning heavy workloads and strict deadlines for Mr. Taber and other aggrieved employees to meet. Additionally, PCL, on a company-wide basis, had a practice of failing to adhere to a schedule of meal periods, which further caused Mr. Taber and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Taber and other aggrieved employees were required to perform their duties, such as marking out the lines to drill holes for the new pipelines, picking up stakes to stake down the boards, responding to emergencies such as gas leaks, answering work-related questions from supervisors on-site, or responding to work-related calls from PCL's management during unpaid meal periods, or would have their meal periods interrupted to complete such work-related tasks. PCL did not record or pay Mr. Taber and other aggrieved employees for the time they continued to perform tasks during meal periods. Consequently, Mr. Taber and other aggrieved employees performed work during meal periods for which they were not paid.

PCL knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Taber and other aggrieved employees were performing work off-the-clock before or after their shifts and during their meal periods, and were suffered or permitted to perform work for which they were not paid. PCL also knew, or should have known, that it did not compensate Mr. Taber and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Taber and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Taber and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. PCL's failure to pay Mr. Taber and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, PCL did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, PCL paid other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of

remuneration. However, in violation of the California Labor Code, PCL failed to incorporate all compensation, including shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, PCL failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Taber and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 16 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11160(2)(J) (defining "Hours Worked").

As set forth above, during the relevant time period, PCL had a company-wide policy and/or practice of only paying Mr. Taber and other aggrieved employees for their scheduled shifts, rather than their actual hours worked, because PCL had no timekeeping system in place to track hours worked outside scheduled shifts or during meal periods. Also, as stated above, PCL maintained a written policy requiring Mr. Taber and other aggrieved employees to perform work off-the-clock prior to clocking in at the start of their shifts, including waiting to leave the main yard or satellite office for the job site, traveling to the job site, and, after clocking out at the end of their shifts, traveling back to the main yard. As a result of PCL's policy of limiting the amount of overtime employees could accrue by not recording hours worked that were outside of employees' scheduled shifts, Mr. Taber and other aggrieved employees were forced to work off-the-clock before and after their scheduled shift start and end times to complete their assigned job duties, including speaking with supervisors about work assignments and responding to phone calls on their personal cellular phones. As also stated, due to PCL's policy and/or practice of understaffing while assigning heavy workloads and strict deadlines, and failure to adhere to a schedule of meal periods, Mr. Taber and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Moreover, PCL maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, PCL was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, PCL gave Mr. Taber strict instructions to obtain drug testing and a physical examination, and Mr. Taber underwent the examination and testing for the sole benefit of PCL. Mr. Taber followed PCL's instructions and traveled approximately 60 miles to and from the medical facility authorized by PCL, and spent several hours waiting at the medical clinic and undergoing the requisite treatment and/or testing. However, PCL did not compensate Mr. Taber and other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, PCL did not pay minimum wages for all hours worked by Mr. Taber and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PCL did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, PCL regularly failed to pay at least minimum wages to Mr. Taber and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Taber and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated above, PCL did not have a procedure in place to track the start and stop times of meal periods or to allow employees to report a late, short, missed, or interrupted meal period. There was no time clock in place to capture hours worked during non-compliant meal periods.

Second, during the relevant period, on information and belief, PCL had, and continues to have, a company-wide policy and/or practice of strictly staffing its job sites based on the labor hours allocated by the corporate office, which has resulted in and continues to result in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. As a result of this inadequate meal period coverage, Mr. Taber and other aggrieved employees missed and/or had their meal periods interrupted by work to meet the demands of their workload. For example, Mr. Taber's unpaid meal periods were frequently interrupted or cut short by 5-10 minutes to travel and report to the next job site and discuss upcoming work assignments and due to PCL's management approaching him to discuss work-related matters.

Third, as stated, PCL has, on a company-wide basis, systematically discouraged and impeded Mr. Taber and other aggrieved employees from taking meal periods by failing to adhere to a schedule of meal periods, while assigning strict deadlines and heavy workloads, even though they are aware and know that employees are entitled to such meal periods. As a result of this uniform failure to adhere

to a schedule of meal periods, Mr. Taber and other aggrieved employees have not been provided timely, uninterrupted 30-minute meal periods during their shifts in which they were entitled to receive a meal period. For example, Mr. Taber worked through his meal periods due to strict deadlines and a heavy workload resulting from PCL's competitive bidding practices, which required work to be performed as quickly as possible. Additionally, as stated above, during the relevant period, PCL had a company-wide policy and/or practice of requiring that Mr. Taber and other aggrieved employees respond to calls from supervisors and management on their personal cellular phones, even during unpaid meal periods. Consequently, Mr. Taber and other aggrieved employees suffered missed and interrupted meal periods, work for which they were not paid. Mr. Taber and other aggrieved employees were required to work throughout their shifts without taking compliant meal periods to adhere to PCL's policies and expectations.

As a result of PCL's practices and/or policies, Mr. Taber and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. PCL knew or should have known that as a result of its policies, Mr. Taber and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods because, to the extent meal periods were recorded after the fact, PCL falsified or adjusted employee time records to reflect compliant meal periods, even if none were taken. For example, during his employment, Mr. Taber missed approximately four (4) to six (6) meal periods per month, and would start his meal periods late or would have his meal periods interrupted by his supervisors with work-related questions. As a further example, Mr. Taber's meal periods were also cut short when his supervisors required him to report early to the next job site to discuss work assignments.

Fourth, PCL did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Taber and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

PCL also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Taber and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that PCL did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because PCL did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, PCL failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Mr. Taber and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, PCL regularly failed to authorize and permit Mr. Taber and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, PCL’s company-wide policies and/or practices, including assigning deadlines and heavy workloads due to PCL’s competitive bidding practices, prevented Mr. Taber and other aggrieved employees from being relieved of all duty to take compliant rest periods. For example, Mr. Taber frequently missed his rest periods due to strict deadlines and a heavy workload. Additionally, PCL failed to adhere to a schedule of rest periods, which, coupled with PCL’s failure to provide adequate rest period coverage, further led to Mr. Taber and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, Mr. Taber and other aggrieved employees were expected to carry and respond to their personal cellular phones at all times, including during rest periods.

Furthermore, PCL maintained and implemented a company-wide practice and/or policy requiring that Mr. Taber and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Taber and other aggrieved employees were restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, PCL effectively maintained control over Mr. Taber and other aggrieved employees during rest periods, and, as a result of this rest period policy, PCL did not relinquish control over Mr. Taber and other aggrieved employees during rest periods.

As a result of PCL’s practices and policies, Mr. Taber and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Taber missed his rest periods, due to PCL’s policy of assigning heavy workloads and strict deadlines, failure to adhere to a schedule of rest periods, and requirement that he respond to his personal cellular phone at all times.

PCL also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Taber and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that PCL did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because PCL did not properly calculate

other aggrieved employees' regular rates of pay by including all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, PCL failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Taber and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. PCL has not provided Mr. Taber and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, PCL has knowingly and intentionally provided Mr. Taber and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PCL issued uniform wage statements to Mr. Taber and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, PCL violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because PCL deducted time from Mr. Taber's and other aggrieved employees' records for meal periods that were interrupted or missed (and therefore time for which they should have been paid) and did not record the time spent Mr. Taber and other aggrieved employees spent working off-the-clock, PCL did not list the correct amount of gross wages and net wages earned by Mr. Taber and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, PCL failed to accurately list the total number of the hours worked by Mr. Taber and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Further, because PCL did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, PCL did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). PCL also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), PCL willfully failed to maintain accurate payroll records for Mr. Taber and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, PCL failed to keep accurate records of meal start and end times for Mr. Taber and other aggrieved employees in violation of section 1198. As stated, PCL engaged in a company-wide practice and/or policy of falsifying Mr. Taber’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Taber and other aggrieved employees. Furthermore, in light of PCL’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, PCL kept no records of meal start and end times for second meal periods.

Because PCL failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Taber and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Taber and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Taber and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, PCL failed to pay Mr. Taber and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Taber and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

PCL willfully failed to pay Mr. Taber and other aggrieved employees who are no longer employed by PCL all their earned wages, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving PCL's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Taber and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only

under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing” (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

. . . [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment

obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07.2.*

During the relevant time period, PCL had an agreement with a payroll service provider for the issuance of payroll cards to employees, including Mr. Taber and other aggrieved employees, to discharge its wage payment obligations to its employees. PCL’s payroll debit card program was not voluntary or optional to employees. PCL had a practice and/or policy of automatically issuing payroll debit cards to employees without giving them the option to elect their form of payment for their wages. For example, other aggrieved employees received their wages on a payroll debit card without a choice of an alternative method, including a written check. Instead, PCL automatically enrolled other aggrieved employees in its payroll debit card payment for the purpose of issuing their wages to them.

Moreover, under PCL’s payroll debit program, on information and belief, PCL did not permit Mr. Taber and other aggrieved employees to withdraw their entire wages in at least one transaction without incurring a fee. For example, Mr. Taber utilized ATMs to try to withdraw his wages but could not obtain the entire amount because ATMs only disburse cash in limited denominations. Additionally, Mr. Taber also encountered approximately \$2.00-\$3.00 in ATM fees each time he utilized an ATM to withdraw funds from his payroll debit card, which resulted in a discount in his pay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. PCL’s payroll card program is inconsistent with this policy. Because PCL’s company-wide payroll debit card program is involuntary and denies aggrieved employees of easy access to the entirety of their wages, the program violates California Labor Code sections 212 and 213. Mr. Taber and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee’s wages if “a deduction is expressly authorized in writing by the employee.” During the relevant time period, PCL unlawfully deducted a portion of wages previously paid to Mr. Taber and other aggrieved employees in violation of California Labor Code section 221.

PCL systematically, and on a company-wide basis, provided Mr. Taber and other aggrieved employees with payroll debit cards as payment of their wages. Under PCL’s payroll debit card program, Mr. Taber and other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. Mr. Taber and other aggrieved employees were required to pay per-transaction fees, ATM fees, in-person teller fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to Mr. Taber and other aggrieved employees resulted in a discount of their wages.

PCL’s payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from Mr. Taber’s and other aggrieved employees’ paychecks without their

written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Taber and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, PCL willfully and systematically issued payroll debit cards to Mr. Taber and other aggrieved employees. The payroll debit cards discounted the wages of Mr. Taber and other aggrieved employees by charging various fees in connection with the use of the payroll debit cards. PCL's payroll debit card program resulted in the payment of less than statutorily-required wages to Mr. Taber and other aggrieved employees. In doing so, PCL acted with the intent to deprive Mr. Taber and other aggrieved employees of statutory wages, including, but not limited to, overtime wages and minimum wages to which they were entitled to under California law. Thus, PCL paid Mr. Taber and other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Taber and other aggrieved employees were properly paid.

Mr. Taber and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, PCL implemented, on a company-wide basis, an employer-imposed requirement that Mr. Taber and other aggrieved employees undergo mandatory drug tests and/or physical examinations, upon hiring and periodically thereafter, but required them to do so at their own expense. As stated, PCL had a company-wide policy requiring that Mr. Taber and other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, PCL was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider/facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug test and/or physical examinations.

For example, Mr. Taber was instructed by PCL to travel to the Industrial Medical Group (IMG) facility located in Bakersfield, California, and obtain a physical examination. Mr. Taber followed PCL's instructions, traveled approximately 4.6 miles from PCL's main office to the IMG facility, and underwent the required physical examination. Mr. Taber spent approximately 20 minutes traveling to the medical facility and spent another 4 hours waiting for and undergoing the required examination. From the IMG facility, Mr. Taber then drove approximately one (1) mile to Bakersfield Drug Testing, and spent another 90 minutes waiting for and undergoing the required test at this facility. From the Bakersfield Drug Testing facility, Mr. Taber spent approximately 20 minutes traveling four (4) miles back to PCL's main office to deliver the test results.

However, PCL did not compensate Mr. Taber and other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. PCL's policy and/or practice of not paying for all costs Mr. Taber and other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Mr. Taber and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11160 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11160(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

PCL violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11160(5), because PCL failed to pay Mr. Taber and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule. PCL had a company-wide practice of sending Mr. Taber and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Taber and other aggrieved employees for half of their scheduled shift, due to PCL's labor budget. For example, Mr. Taber would report to work, but would be sent home early by PCL's management after they determined the work could not proceed due to inclement weather. Although Mr. Taber and other aggrieved employees would report to work based on the schedule that PCL provided to them, PCL would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Taber and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Taber and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, PCL had a company-wide policy of requiring Mr. Taber and other aggrieved employees to utilize their own personal vehicles for work purposes, but failed to reimburse them for the costs of travel, including mileage. For example, Mr. Taber was required to drive his personal vehicle to work sites, but was not reimbursed for travel expenses or mileage from using his personal vehicle on days where he was sent home immediately due to inclement weather. PCL also had a company-wide policy of requiring Mr. Taber and other aggrieved employees to travel in their own personal vehicles to medical facilities to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. For example, Mr. Taber drove approximately 60 miles roundtrip in his own personal vehicle to undergo PCL's mandatory drug test and/or physical examination, but was not reimbursed for his mileage to and from the medical facility. Although PCL required Mr. Taber and other aggrieved employees to use their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, PCL never reimbursed them for all their travel expenses.

Second, during the relevant time period, PCL, on a company-wide basis, required that Mr. Taber and other aggrieved employees utilize their own personal cellular phones and/or cellular phone data to carry out their job duties, but failed to reimburse them for the costs of their cellular phone and/or data plans. For example, Mr. Taber was required to use his personal cellular phone to carry out his work, such as answering calls and text messages from management. Although PCL required Mr. Taber and other aggrieved employees to regularly utilize their personal cellular phones to carry out work-related responsibilities, PCL failed to reimburse them for this cost.

Third, during the relevant time period, PCL, on a company-wide basis, required that Mr. Taber and other aggrieved employees perform tasks requiring the use of tools and equipment such as tape measures, but failed to provide such equipment and denied Mr. Taber's and other aggrieved employees' requests to reimburse the costs for such equipment.

Fourth, PCL, on a company-wide basis, mandated that Mr. Taber and other aggrieved employees purchase special safety shoes such as steel-toed boots and flame-resistant or fire-retardant clothing, such as shirts and pants, which they were required to wear while at work. Mr. Taber and other aggrieved employees purchased steel-toed boots and flame-resistant or fire-retardant clothing to wear at work sites designated by PCL, but were not reimbursed for all of these costs.

PCL could have provided Mr. Taber and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, tape measures, steel-toed boots, and flame-resistant/fire retardant clothing to be used for fulfilling work-related tasks. Or, PCL could have reimbursed employees for the costs of their cellular phone expenses, travel, mileage, tape measures,

boots, and flame-resistant/fire retardant clothing. Instead, PCL passed these operating costs off onto Mr. Taber and other aggrieved employees. At all relevant times, Mr. Taber did not earn at least two (2) times the minimum wage.

Thus, PCL had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Taber and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Personal Protective Equipment

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

PCL, on a company-wide basis, failed to provide Mr. Taber and other aggrieved employees with personal protective equipment, such as steel-toed boots and flame-resistant or fire-retardant clothing, to keep them safe in the workplace. Despite the fact that PCL required employees to wear certain personal protective equipment, including steel-toed boots and flame-resistant or fire-retardant clothing, PCL failed to provide such reasonably necessary equipment to Mr. Taber and other aggrieved employees to keep them safe.

PCL's failure to provide Mr. Taber and other aggrieved employees with basic personal protective equipment for the workplace violates Labor Code sections 6401 and 6403. Mr. Taber and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." PCL, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Taber's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Taber seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Taber, acting

in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against PCL for violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Taber seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Taber's reasonable attempt to settle his dispute with PCL prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform PCL of Mr. Taber's aforementioned grievances and the proposed remedies as detailed below, while affording PCL a reasonable opportunity to satisfy Mr. Taber's demands.

Demand is hereby made that PCL shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. PCL shall pay Mr. Taber and all other aggrieved employees employed by PCL at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. PCL shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. PCL shall conduct a survey or interview all current and former aggrieved employees in California who worked for PCL in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mandatory medical examinations, travel, cellular phone, and tool and uniform expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. PCL shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. PCL also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. PCL shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for PCL's benefit, including, but not limited to, costs of mandatory medical examinations, travel, cellular phone, and tool and uniform expenses, as required by Labor Code sections 222.5 and 2802.
6. PCL shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful use of payroll debit cards, including unlawful direct deposit and

discount of wages (Labor Code sections 212 and 213), unlawful deductions (Labor Code sections 221 and 224), and secret payment of lower wages (Labor Code section 223).

7. PCL shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. PCL shall provide Mr. Taber and all aggrieved employees employed by PCL at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. PCL shall provide all aggrieved employees with basic personal protective equipment for the workplace, as required by Labor Code sections 6401 and 6403.
10. PCL shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
11. PCL shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, 1199, and 2699, and Wage Order No. 16-2001, section 18.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Michelle Kennedy
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8146

Best Regards,



Michelle Kennedy

Copy: PCL INDUSTRIAL SERVICES, INC. (via U.S. Certified Mail); PCL CONSTRUCTION, INC. (via U.S. Certified Mail); PCL CONSTRUCTION RESOURCES (U.S.A.), INC. (via U.S. Certified Mail); PCL CONSTRUCTION SERVICES, INC. (via U.S. Certified Mail)

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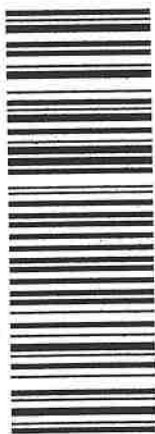
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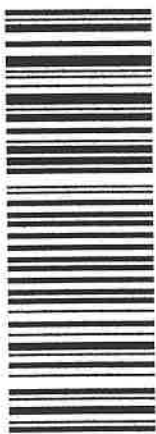
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- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

PCL CONSTRUCTION SERVICES, INC.

500 N BRAND BLVD STE 1500

GLENDALE CA 91203

PS Form 3800, April 2015 PSN 7530-02-000-0047

See Reverse for Instructions

Postmark
Here

Taber v. PCL
Construction Services
Inc.

UNITED STATES POSTAGE
PITNEY BOWES
\$007.93
02 1P
0000666553 MAR 17 2020
MAILED FROM ZIP CODE 90067



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

**PCL CONSTRUCTION SERVICES, INC.
2000 S COLORADO BLVD STE 2-500
DENVER CO 80222**



9590 9402 4882 9032 7436 42

2. Article Number (Transfer from service label)

7019 0700 0001 7653 1490

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

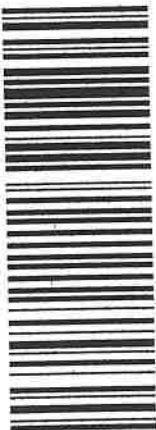
3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

CERTIFIED MAIL®



7019 0700 0001 7653 1490

PCL CONSTRUCTION SERVICES, INC.
2000 S COLORADO BLVD STE 2-500
DENVER CO 80222

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only**

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee
\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$ 2.80

☐ Return Receipt (electronic) \$ _____

☐ Certified Mail Restricted Delivery \$ _____

☐ Adult Signature Required \$ _____

☐ Adult Signature Restricted Delivery \$ _____

Postage
\$ 1.63

Total Postage and Fees
\$ 7.93

Postmark
Here

Taber V. PCL
Construction Service
Inc.

Sent To PCL CONSTRUCTION SERVICES, INC.
Street and Apt. No., or PO Box No. 2000 S COLORADO BLVD STE 2-500
City, State, ZIP+4® DENVER CO 80222

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

7019 0700 0001 7653 1490

one
AW APC
Park East, Ste 1000
CA 90067

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

PCL CONSTRUCTION SERVICES, INC.
500 N BRAND BLVD STE 1500
GLENDALE CA 91203



9590 9402 4882 9032 7436 59

2. Article Number (Transfer from service label)

7019 0700 0001 7653 1483

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X C-19-NT307

☐ Agent
☐ Addressee

B. Received by (Printed Name)

te

C. Date of Delivery

3-27-20

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

3. Service Type

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

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

PCL CONSTRUCTION, INC.
1711 W GREENTREE DR #201
TEMPE AZ 85284



9590 9402 4882 9032 7436 73

2. Article Number (Transfer from service label)

7019 0700 0001 7653 1469

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Adamp

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Mable 33 C-9

C. Date of Delivery

4/9

D. Is delivery address different from item 1? If YES, enter delivery address below:

☒ Yes
☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Registered Mail
Registered Mail Restricted Delivery
(over \$500)

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

PCL INDUSTRIAL SERVICES, INC.
1500 S UNION AVE
BAKERSFIELD, CALIFORNIA 93307



9590 9402 4882 9032 7436 80

2. Article Number (Transfer from service label)

7019 0700 0001 7653 1452

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

☐ Agent

☒ Addressee

B. Received by (Printed Name)

Mike Vandorn

C. Date of Delivery

3/30/20

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☒ No

3. Service Type

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

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt