

1 Mark A. Ozzello (SBN 116595)
2 Mark.Ozzello@capstonelawyers.com
3 Brandon K. Brouillette (SBN 273156)
4 Brandon.Brouillette@capstonelawyers.com
5 Brooke W. Waldrop (SBN 314486)
6 Brooke.Waldrop@capstonelawyers.com
7 Capstone Law APC
8 1875 Century Park East, Suite 1000
9 Los Angeles, California 90067
10 Telephone: (310) 556-4811
11 Facsimile: (310) 943-0396

12 Attorneys for Plaintiff Daniela Garibay

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

JUL 02 2020

BY JAM
DEBRA PEDROSA, DEPUTY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN BERNARDINO

12 DANIELA GARIBAY, individually, and on
13 behalf of other members of the general
14 public similarly situated,

15 Plaintiff,

16 vs.

17 PACIFIC STEEL GROUP, a California
18 corporation; and DOES 1 through 10,
19 inclusive,

20 Defendants.

Case No.: CIVDS2011129

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (2) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (3) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (4) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (5) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (6) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (7) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(10) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

1 Plaintiff Daniela Garibay, individually and on behalf of all other members of the
2 public similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court because Defendants employ persons in this
5 county, and employed Plaintiff this county, and thus a substantial portion of the transactions
6 and occurrences related to this action occurred in this county.

7 **THE PARTIES**

8 4. Plaintiff Daniela Garibay is a resident of Bloomington, in San Bernardino
9 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Data Entry
10 Employee from approximately April 2019 to January 2020. Plaintiff worked for Defendants
11 at their location in Bloomington, California. During her employment, Plaintiff typically
12 worked eight (8) hours or more per day, five (5) days per week. Plaintiff's primary job duties
13 included, without limitation, performing administrative computer functions, compiling data,
14 and filing information packets.

15 5. PACIFIC STEEL GROUP was and is, upon information and belief, a California
16 corporation, and at all times hereinafter mentioned, an employer whose employees are
17 engaged throughout this county, the State of California, or the various states of the United
18 States of America.

19 6. Plaintiff is unaware of the true names or capacities of the Defendants sued
20 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
21 amend the complaint and serve such fictitiously named Defendants once their names and
22 capacities become known.

23 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
24 were the partners, agents, owners, or managers of PACIFIC STEEL GROUP at all relevant
25 times.

26 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
27 acts and omissions alleged herein was performed by, or is attributable to, PACIFIC STEEL
28 GROUP and/or DOES 1 through 10 (collectively, "Defendants" or "PSG"), each acting as the

1 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
2 other co-Defendants and was acting within the course and scope of such agency, employment,
3 joint venture, or concerted activity with legal authority to act on the others' behalf. The acts
4 of any and all Defendants were in accordance with, and represent, the official policy of
5 Defendants.

6 9. At all relevant times, Defendants, and each of them, ratified each and every act
7 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
8 and abetted the acts and omissions of each and all the other Defendants in proximately causing
9 the damages herein alleged.

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

13 **GENERAL ALLEGATIONS**

14 11. Defendants provide concrete reinforcing steel bars, pre-assembled rebar cages,
15 and post-tension cables for residential, commercial, and industrial projects. Upon information
16 and belief, Defendants maintain a single, centralized Human Resources ("HR") department at
17 their company headquarters in San Diego, California, which is responsible for the recruiting
18 and hiring of new employees, and communicating and implementing Defendants' company-
19 wide policies, including timekeeping policies and meal and rest period policies, to employees
20 throughout California.

21 12. In particular, Plaintiff and class members, on information and belief, received
22 the same standardized documents and/or written policies. Upon information and belief, the
23 usage of standardized documents and/or written policies, including new-hire documents,
24 indicate that Defendants dictated policies at the corporate level and implemented them
25 company-wide, regardless of their employees' assigned locations or positions.

26 13. Upon information and belief, Defendants maintain a centralized Payroll
27 department at their company headquarters in San Diego, California, California, which
28 processes payroll for all non-exempt, hourly paid employees working for Defendants at their

1 various locations and jobsites in California, including Plaintiff and class members. Upon
2 information and belief, Defendants process payroll for departing employees in the same
3 manner throughout the State of California, regardless of the manner in which each employee's
4 employment ends.

5 14. Defendants continue to employ non-exempt or hourly paid employees in
6 California.

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

11 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
12 members were not paid for all hours worked because all hours worked were not recorded.

13 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to receive at least minimum
15 wages for compensation and that they were not receiving at least minimum wages for work
16 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
17 and class members were not paid at least minimum wages for work done off-the-clock.

18 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and/or class members were entitled to receive certain wages
20 for overtime compensation and that they were not receiving certain wages for overtime
21 compensation.

22 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to meal periods in
24 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
25 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
26 periods and that Plaintiff and class members were not provided with all meal periods or
27 payment of one (1) additional hour of pay at their regular rates of pay when they did not
28 receive a timely, uninterrupted, thirty (30) minute meal period.

1 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to rest periods in
3 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
4 additional hour of pay at their regular rates of pay when they were not authorized and
5 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
6 and class members were not authorized and permitted to take compliant rest periods, nor did
7 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
8 pay at their regular rates of pay when they were not authorized and permitted to take a
9 compliant rest period.

10 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive complete and
12 accurate wage statements in accordance with California law. In violation of the California
13 Labor Code, Plaintiff and class members were not provided complete and accurate wage
14 statements.

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

19 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to timely payment of all
21 wages earned upon termination of employment. In violation of the California Labor Code,
22 Plaintiff and class members did not receive payment of all wages due, including, but not
23 limited to, minimum wages and/or meal and rest period premiums, within permissible time
24 periods.

25 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to timely payment of wages
27 during their employment. In violation of the California Labor Code, Plaintiff and class
28 members did not receive payment of all wages, including, but not limited to, minimum wages

1 and/or meal and rest period premiums, within permissible time periods.

2 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to receive their full wages
4 due without having to execute a release of claims.

5 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
7 and expenses Plaintiff and class members incurred obtaining mandatory physical examinations
8 and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

9 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to receive full
11 reimbursement for all business-related expenses and costs they incurred during the course and
12 scope of their employment and that they did not receive full reimbursement of applicable
13 business-related expenses and costs incurred.

14 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants knew or should have known that they had a duty to compensate
16 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
17 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
18 falsely represented to Plaintiff and class members that they were properly denied wages, all in
19 order to increase Defendants' profits.

20 **PAGA REPRESENTATIVE ALLEGATIONS**

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

27 30. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
28 person who was employed by the alleged violator and against whom one or more of the

1 alleged violations was committed.”

2 31. Plaintiff and other current and former employees of Defendants are “aggrieved
3 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
4 or former employees and one or more of the alleged violations were committed against them.

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

8 (a) The aggrieved employee or representative shall give written notice by
9 online filing with the LWDA and by certified mail to the employer of
10 the specific provisions of the California Labor Code alleged to have
11 been violated, including the facts and theories to support the alleged
12 violation.

13 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
14 2699.3(a) and any employer response to that notice shall be
15 accompanied by a filing fee of seventy-five dollars (\$75).

16 (c) The LWDA shall notify the employer and the aggrieved employee or
17 representative by certified mail that it does not intend to investigate the
18 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
19 the postmark date of the aggrieved employee’s notice. Upon receipt of
20 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
21 (65) calendar days of the postmark date of the aggrieved employee’s
22 notice, the aggrieved employee may commence a civil action pursuant
23 to California Labor Code section 2699 to recover civil penalties.

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

28 (a) The aggrieved employee or representative shall give written notice by

1 online filing with the LWDA and by certified mail to the employer of
2 the specific provisions of the California Labor Code alleged to have
3 been violated (other than those listed in Section 2699.5), including the
4 facts and theories to support the alleged violation.

5 (b) An aggrieved employee's notice filed with the LWDA pursuant to
6 2699.3(c) and any employer response to that notice shall be
7 accompanied by a filing fee of seventy-five dollars (\$75).

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

17 34. On April 13, 2020, Plaintiff provided written notice by online filing to the
18 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
19 Code alleged to have been violated, including facts and theories to support the alleged
20 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
21 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
22 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
23 Plaintiff PAGA Case Number LWDA-CM-782839-20. A true and correct copy of Plaintiff's
24 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

25 35. As of the filing date of this complaint, over 65 days have passed since Plaintiff
26 sent the notice described above to the LWDA, and the LWDA has not responded that it
27 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

28 36. Thus, Plaintiff has satisfied the administrative prerequisites under California

1 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
2 violations of California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7,
3 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

4 37. Labor Code section 558(a) provides “[a]ny employer or other person acting on
5 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
6 provision regulating hours and days of work in any order of the Industrial Welfare
7 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
8 dollars (\$50) for each underpaid employee for each pay period for which the employee was
9 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
10 underpaid employee for each pay period for which the employee was underpaid” Labor
11 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
12 to any other civil or criminal penalty provided by law.”

13 38. Defendants, at all times relevant to this complaint, were employers or persons
14 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
15 rights by violating various sections of the California Labor Code as set forth above.

16 39. As set forth below, Defendants have violated numerous provisions of both the
17 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
18 Order.

19 40. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
20 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
21 private attorney general, seeks assessment and collection of civil penalties for herself, all other
22 aggrieved employees, and the State of California against Defendants for violations of
23 California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 510, 512(a),
24 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

25 **CLASS ACTION ALLEGATIONS**

26 41. Plaintiff brings this action on her own behalf, as well as on behalf of each and
27 all other persons similarly situated, and thus seeks class certification under California Code of
28 Civil Procedure section 382.

1 42. All claims alleged herein arise under California law for which Plaintiff seeks
2 relief authorized by California law.

3 43. Plaintiff's proposed class consists of and is defined as follows:

4 All persons who worked for Defendants as non-exempt, hourly
5 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

6 44. Plaintiff's proposed subclass consists of and is defined as follows:

7 All persons who worked for Defendants as non-exempt, hourly
8 paid employees in California and who received at least one wage
statement within one (1) year prior to the filing of the initial
9 complaint until the date of trial ("Subclass").

10 45. Members of the Class and Subclass are referred to herein as "class members."

11 46. Plaintiff reserves the right to redefine the Class and Subclass and to add
12 additional subclasses as appropriate based on further investigation, discovery, and specific
13 theories of liability.

14 47. There are common questions of law and fact as to class members that
15 predominate over questions affecting only individual members, including, but not limited to:

- 16 (a) Whether Defendants failed to pay Plaintiff and class members at least
17 minimum wages for all hours worked;
- 18 (b) Whether Defendants required Plaintiff and/or class members to work
19 over eight (8) hours per day, over twelve (12) hours per day, or over
20 forty (40) hours per week, and failed to pay all legally required overtime
21 compensation to Plaintiff and/or class members;
- 22 (c) Whether Defendants failed to provide Plaintiff and class members with
23 meal periods;
- 24 (d) Whether Defendants failed to authorize and permit Plaintiff and class
25 members to take rest periods;
- 26 (e) Whether Defendants provided Plaintiff and class members with
27 complete and accurate wage statements as required by California Labor
28 Code section 226(a);

- 1 (f) Whether Defendants maintained accurate payroll records as required by
2 California Labor Code section 1174(d);
- 3 (g) Whether Defendants failed to pay earned minimum wages and meal and
4 rest period premiums due to Plaintiff and class members upon their
5 discharge;
- 6 (h) Whether Defendants failed timely to pay minimum wages and meal and
7 rest period premiums to Plaintiff and class members during their
8 employment;
- 9 (i) Whether Defendants unlawfully required Plaintiff and class members to
10 execute releases of claims as a condition to receiving their earned
11 wages;
- 12 (j) Whether Defendants failed to pay Plaintiff and class members for the
13 costs of mandatory physical examinations and/or drug testing;
- 14 (k) Whether Defendants failed to reimburse Plaintiff and class members for
15 necessary and required business-related expenditures and/or losses
16 incurred by them in the scope of their employment;
- 17 (l) Whether Defendants engaged in unlawful and unfair business practices
18 in violation of California Business & Professions Code sections 17200,
19 *et seq.*; and
- 20 (m) The appropriate amount of damages, restitution, or monetary penalties
21 resulting from Defendants' violations of California law.

22 48. There is a well-defined community of interest in the litigation and the class
23 members are readily ascertainable:

- 24 (a) Numerosity: The class members are so numerous that joinder of all
25 members would be unfeasible and impractical. The membership of the
26 entire class is unknown to Plaintiff at this time; however, the class is
27 estimated to be greater than one hundred (100) individuals and the
28 identity of such membership is readily ascertainable by inspection of

Defendants' employment records.

- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- (d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.
- (e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class

actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages (Against all Defendants)

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

50. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 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, § 11010(2)(G) (defining “Hours Worked”).

51. At all relevant times, Defendants maintained and implemented a company-wide policy of requiring all 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 time period 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, Defendants gave Plaintiff strict instructions to obtain drug testing, and Plaintiff underwent the testing for the sole benefit of Defendants. Plaintiff followed Defendants’ instructions and spent one and one half (1½) hours total traveling to and from the medical facility designated by Defendants, another one (1) hour waiting at the medical facility, and 30 minutes undergoing the requisite testing. However, Defendants did not compensate Plaintiff and class members for the time they spent traveling to and from the

1 medical facilities and undergoing the mandatory drug testing and/or physical examinations.

2 52. Defendants' failure to pay Plaintiff and class members minimum wages violates
3 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
4 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
5 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

6 **SECOND CAUSE OF ACTION**

7 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period** 8 **Violations** 9 **(Against all Defendants)**

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

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

20 55. At all relevant times herein set forth, California Labor Code sections 226.7,
21 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
22 meal period mandated by an applicable order of the IWC.

23 56. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
24 the applicable IWC Wage Order also require employers to provide a second meal period of
25 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
26 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
27 hours worked is no more than twelve (12) hours, the second meal period may be waived by
28 mutual consent of the employer and the employee only if the first meal period was not waived.

1 57. During the relevant time period, Defendants had, and continue to have, a
2 company-wide policy and/or practice of understaffing their locations and assigning
3 demanding workloads and stringent deadlines, which prevented Plaintiff and class members
4 from taking all timely, uninterrupted meal periods to which they were entitled. In addition,
5 Defendants did not schedule meal periods, which further caused Plaintiff and class members
6 to not be relieved of their duties for compliant meal periods. As a result, Plaintiff and class
7 members were forced to work in excess of five (5) hours before taking a meal period, had
8 their meal periods interrupted, and/or had to forgo their meal periods altogether in order to
9 complete their assigned workloads. For example, at least once per month, Plaintiff was forced
10 to work more than five (5) hours before taking a meal period, compiling and filing data
11 packets in order to meet the stringent deadlines she was given. For the same reasons, other
12 class members worked through their meal periods or had their meal periods interrupted in
13 order to complete their assigned workloads. Plaintiff and class members did not sign valid
14 meal period waivers on days that they were entitled to meal periods and were not relieved of
15 all duties.

16 58. At all times herein mentioned, Defendants knew or should have known that, as
17 a result of these policies, Plaintiff and class members were prevented from being relieved of
18 all duties to take timely, uninterrupted meal periods. Defendants further knew or should have
19 known that Defendants did not pay Plaintiff and class members meal period premium wages
20 when meal periods were late, interrupted, shortened, or missed.

21 59. Moreover, Defendants engaged in a company-wide practice and/or policy of
22 not paying all meal period premiums owed when compliant meal periods are not provided.
23 Because of Defendants' practices and/or policies, Plaintiff and class members have not
24 received premium pay for all missed, late, and interrupted meal periods. As a result,
25 Defendants failed to provide Plaintiff and class members compliant meal periods in violation
26 of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period
27 premiums due.

28 60. Defendants' conduct violates the applicable IWC Wage Order, and California

1 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
2 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
3 rate of compensation for each work day that the meal period was not provided.

4 **THIRD CAUSE OF ACTION**

5 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 6 **(Against all Defendants)**

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

9 62. At all relevant times herein set forth, the applicable IWC Wage Order and
10 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
11 members' employment by Defendants.

12 63. At all relevant times, the applicable IWC Wage Order provides that "[e]very
13 employer shall authorize and permit all employees to take rest periods, which insofar as
14 practicable shall be in the middle of each work period" and that the "rest period time shall be
15 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
16 hours or major fraction thereof" unless the total daily work time is less than three and one-half
17 (3½) hours.

18 64. At all relevant times, California Labor Code section 226.7 provides that no
19 employer shall require an employee to work during any rest period mandated by an applicable
20 order of the California IWC. To comply with its obligation to authorize and permit rest
21 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
22 employer must "relinquish any control over how employees spend their break time, and
23 relieve their employees of all duties — including the obligation that an employee remain on
24 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
25 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
26 California Labor Code section 226.7(b), Plaintiff and class members are entitled to recover
27 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
28 that a required rest period was not authorized and permitted.

1 65. During the relevant time period, Defendants regularly failed to authorize and
2 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
3 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
4 practices, including understaffing while assigning heavy workloads and stringent deadlines,
5 prevented Plaintiff and class members from being relieved of all duty to take compliant rest
6 periods. Defendants also failed to schedule rest periods, which, coupled with Defendants'
7 failure to provide adequate rest period coverage, further led to Plaintiff and class members not
8 being authorized and permitted to take rest periods.

9 66. Furthermore, upon information and belief, during the relevant time period,
10 Defendants maintained and implemented a company-wide on-premises rest period policy,
11 which mandated that Plaintiff and class members remain on Defendants' premises during their
12 rest periods. Upon information and belief, Defendants' company-wide on-premises rest
13 period policy prevented Plaintiff and class members from being relieved of all duties for rest
14 periods and caused them to perform work during rest periods.

15 67. As a result of Defendants' practices and policies, Plaintiff and class members
16 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
17 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
18 throughout her employment, Defendants' management explicitly prohibited Plaintiff and class
19 members from taking rest periods.

20 68. Defendants have also engaged in a systematic, company-wide practice and/or
21 policy of not paying rest period premiums owed when rest periods are not authorized and
22 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
23 to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the
24 applicable IWC Wage Order.

25 69. Defendants' conduct violates the applicable IWC Wage Order and California
26 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
27 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
28 compensation for each work day that a compliant rest period was not authorized and

permitted.

FOURTH CAUSE OF ACTION

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

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

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

72. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and Subclass members 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 and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

73. Because Defendants did not record the time Plaintiff and Subclass members spent working off the clock, Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and Subclass members in compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and corresponding accurate number of work hours worked at each hourly rate in violation of section 226(a)(9).

74. 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

1 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
2 only the last four digits of his or her social security number or an employee identification
3 number other than a social security number; failing to list the name and address of the legal
4 entity that is the employer; failing to list the inclusive dates of the period for which class
5 members were paid; and/or failing to state all hours worked as a result of not recording or
6 stating hours worked off-the-clock.

7 75. California Labor Code section 1198 provides that the maximum hours of work
8 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
9 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
10 employment of any employees for longer hours than those fixed by the order or under
11 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
12 Wage Order, employers are required to keep accurate time records showing when the
13 employee begins and ends each work period and meal period. During the relevant time
14 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
15 and meal period start and stop times for Plaintiff and Subclass members, in violation of
16 section 1198.

17 76. California Labor Code section 1174(d) provides that “[e]very person employing
18 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
19 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
20 plants or establishments at which employees are employed, payroll records showing the hours
21 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
22 applicable piece rate paid to, employees employed at the respective plants or establishments . .
23 . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants
24 willfully failed to maintain accurate payroll records for Plaintiff and Subclass members
25 showing the daily hours they worked and the wages paid thereto as a result of failing to record
26 the off-the-clock hours that they worked.

27 77. Plaintiff and Subclass members are entitled to recover from Defendants the
28 greater of their actual damages caused by Defendants’ failure to comply with California Labor

Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

FIFTH CAUSE OF CACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

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

79. This cause of action is dependent upon, and wholly derivative of, the minimum wages and meal and rest period premium wages, that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

80. At all times relevant herein set forth, Labor Code sections 201 and 202 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.

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

82. Defendants' failure to pay Plaintiff and class members 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 class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

1 **SIXTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**

3 **Employment**

4 **(Against all Defendants)**

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

7 84. This cause of action is dependent upon, and wholly derivative of, the minimum
8 wages and meal and rest period premium wages, that were not timely paid to Plaintiff and
9 those class members by Defendants during their employment.

10 85. At all times relevant herein set forth, Labor Code section 204 provides that all
11 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
12 days, inclusive, of any calendar month, other than those wages due upon termination of an
13 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
14 the month during which the labor was performed.

15 86. At all times relevant herein, Labor Code section 204 provides that all wages
16 earned by any person in any employment between the sixteenth (16th) and the last day,
17 inclusive, of any calendar month, other than those wages due upon termination of an
18 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
19 month.

20 87. At all times relevant herein, Labor Code section 204 provides that all wages
21 earned for labor in excess of the normal work period shall be paid no later than the payday for
22 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
23 204 provides that the requirements of this section are deemed satisfied by the payment of
24 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
25 seven (7) calendar days following the close of the payroll period.

26 88. During the relevant time period, Defendants willfully failed to pay Plaintiff and
27 and/or class members all wages due including, but not limited to, minimum wages and meal
28 and rest period premium wages, within the time periods specified by California Labor Code

1 section 204.

2 89. Defendants' failure to pay Plaintiff and class members all wages due violates
3 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
4 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

5 **SEVENTH CAUSE OF ACTION**

6 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

7 **(Against all Defendants)**

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

10 91. At all times herein set forth, California Labor Code section 2802 provides that
11 an employer must reimburse employees for all necessary expenditures and losses incurred by
12 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
13 to prevent employers from passing off their cost of doing business and operating expenses on
14 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
15 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: "[w]hen tools or
16 equipment are required by the employer or are necessary to the performance of a job, such
17 tools and equipment shall be provided and maintained by the employer, except that an
18 employee whose wages are at least two (2) times the minimum wage provided herein may be
19 required to provide and maintain hand tools and equipment customarily required by the trade
20 or craft."

21 92. During the relevant time period, Defendants had a company-wide policy of
22 requiring Plaintiff and class members to travel in their own personal vehicles to other jobsite
23 locations and/or medical facilities to undergo mandatory drug testing and/or physical
24 examinations, but did not reimburse them for their travel expenses, including mileage.

25 93. Defendants maintained and implemented a company-wide policy of requiring
26 all employees to travel to a medical facility on their own time and using their own personal
27 vehicles to undergo mandatory drug testing and/or physical examinations. At all times,
28 Defendants were in control of scheduling the time period for the testing and/or physical

1 examinations, selecting the provider or facility where the testing and/or physical examinations
2 were to take place, and determining the scope of the testing and/or physical examinations.
3 Defendants gave Plaintiff strict instructions to obtain drug testing, and Plaintiff underwent the
4 testing for the sole benefit of Defendants. For example, Plaintiff drove 50 miles roundtrip,
5 spending one and one half (1½) hours total traveling to and from the medical facility
6 designated by Defendants, to obtain a mandatory drug test per Defendants' instructions, but
7 was not reimbursed for her mileage to and from the medical facility. Although Defendants
8 required Plaintiff and class members to undergo drug testing and/or physical examinations,
9 Defendants never reimbursed them for their travel expenses.

10 94. Defendants could have provided Plaintiff and class members with the actual
11 tools for use on the job, such as company vehicles or company-paid transportation to be used
12 for fulfilling work-related tasks, or Defendants could have reimbursed employees for the costs
13 of their mileage and/or travel expenses. Instead, Defendants passed these operating costs off
14 onto Plaintiff and class members.

15 95. Defendants' company-wide policy and/or practice of passing on their operating
16 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
17 have intentionally and willfully failed to reimburse Plaintiff and other class members for
18 necessary business-related expenses and costs.

19 96. Plaintiff and class members are entitled to recover from Defendants their
20 business-related expenses incurred during the course and scope of their employment, plus
21 interest.

22 **EIGHTH CAUSE OF ACTION**

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

24 **(Against all Defendants)**

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

27 98. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
28 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code

1 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 206.5,
2 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor
3 Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
4 penalties for violations of those Labor Code sections not found in section 2699.5, including
5 sections 516 and 1182.12.

6 99. Defendants' conduct, as alleged herein, violates numerous sections of the
7 California Labor Code, including, but not limited to, the following:

- 8 (a) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
9 and the applicable IWC wage order for Defendants' failure to
10 compensate Plaintiff and other aggrieved employees with at least
11 minimum wages for all hours worked, as alleged herein;
- 12 (b) Violation of Labor Code sections 510, 1198, and the applicable IWC
13 wage order for Defendants' failure to compensate other aggrieved
14 employees with all required overtime pay, as set forth below;
- 15 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
16 applicable IWC wage order for Defendants' failure to provide Plaintiff
17 and other aggrieved employees with meal periods, as alleged herein;
- 18 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
19 IWC wage order for Defendants' failure to authorize and permit
20 Plaintiff and other aggrieved employees to take rest periods, as alleged
21 herein;
- 22 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
23 wage order for failure to provide accurate and complete wage statements
24 to Plaintiff and other aggrieved employees, as alleged herein;
- 25 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
26 IWC wage order for failure to maintain payroll records as alleged
27 herein;
- 28 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all

1 earned wages upon termination, as alleged herein;

2 (h) Violation of Labor Code section 204 for failure to pay all earned wages
3 during employment, as alleged herein;

4 (i) Violation of Labor Code section 206.5 for requiring Plaintiff and other
5 aggrieved employees to execute a release of claims as a condition to
6 receiving wages due to them, as set forth below;

7 (j) Violation of Labor Code section 222.5 for failure to compensate
8 Plaintiff and other aggrieved employees for mandatory physical
9 examinations and/or drug testing as set forth below; and

10 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
11 and other aggrieved employees for all business expenses necessarily
12 incurred, as alleged herein.

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

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

22 102. Specifically, the applicable IWC Wage Order provides that Defendants are and
23 were required to pay other aggrieved employees working more than eight (8) hours in a day or
24 more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours
25 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

26 103. The applicable IWC Wage Order further provides that Defendants are and were
27 required to pay other aggrieved employees working more than twelve (12) hours in a day,
28 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s

1 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
2 employee, including nondiscretionary bonuses and incentive pay.

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

9 105. As described above, during the relevant period, Defendants had, and continue
10 to have, a company-wide policy and/or practice of understaffing their locations, assigning
11 employees a heavy workload and stringent deadlines, while failing to schedule meal periods,
12 which had the combined effect of preventing other aggrieved employees from taking all
13 timely, uninterrupted meal periods to which they were entitled. As a result, other aggrieved
14 employees were forced to work through their meal periods or had their meal periods
15 interrupted in order to handle the workload. Defendants did not pay other aggrieved
16 employees for the time they continued to perform tasks during meal periods.

17 106. Defendants knew or should have known that, as a result of these company-wide
18 practices and/or policies, other aggrieved employees were performing their assigned duties
19 off-the-clock, and were suffered or permitted to perform work for which they were not paid.
20 Defendants also knew, or should have known, that they did not compensate other aggrieved
21 employees applicable overtime rates of pay for overtime hours that they worked.

22 107. Because other aggrieved employees regularly worked shifts of eight (8) hours a
23 day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for
24 overtime premium pay. Therefore, other aggrieved employees were not paid overtime wages
25 for all of the overtime hours they actually worked. Defendants' failure to pay other aggrieved
26 employees the balance of overtime compensation, as required by California law, violates the
27 provisions of California Labor Code sections 510 and 1198. Other aggrieved employees are
28 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

1 108. California Labor Code section 206.5 prohibits employers from requiring
2 employees to execute releases of a claim or right “on account of wages due, or to become due,
3 or made as an advance on wages to be earned, unless payment of those wages has been made. A
4 release required or executed in violation of the provisions of this section shall be null and void
5 as between the employer and the employee.”

6 109. During the relevant time period, Defendants required Plaintiff and other
7 aggrieved employees to release their claims for meal and/or rest period violations, as well as
8 their claims for uncompensated hours worked, as a condition of receiving their paychecks.
9 For example, Defendants’ policies state: “At the end of each week-ending[sic] you will be
10 asked to certify the hours and meal period taken and recorded on the timesheet are true and
11 accurate and that ALL rest periods have been made available to you.” At the end of each pay
12 period, Defendants required Plaintiff and other aggrieved employees to sign off in their
13 timesheets that:

14 I certify this is a true and correct report of all hours worked
15 (including any overtime/double-time) and in/out times. I further
16 certify that this time card includes all hours worked inside and
17 outside the office. By signing below, I represent the meal period
18 times I have reported are true/accurate and that I did not
 involuntarily experience a late, short, missed, or interrupted meal
 period that was not reported. I further represent that I was
 authorized, permitted, and strongly encouraged to take my rest
 periods.

19 110. Defendants compelled Plaintiff and other aggrieved employees to sign these
20 false verifications when they, in fact, were not provided all meal and/or rest periods and/or
21 were unaware if they would be compensated for all hours worked during the pay period.
22 Defendants’ policy and practice of requiring Plaintiff and other aggrieved employees to
23 release their claims for meal and/or rest period violations, as well as their claims for
24 uncompensated hours worked, as a condition to receiving their wages is in violation of
25 California Labor Code section 206.5. Plaintiff and other aggrieved employees are therefore
26 entitled to civil penalties pursuant to Labor Code sections 2699(a), (f)-(g).

27 111. At all relevant times herein, California Labor Code section 222.5 requires
28 employers to pay for the costs an employee incurs for obtaining any medical or physical

1 examination taken.

2 112. At all times relevant herein, Defendants implemented, on a company-wide
3 basis, an employer-imposed requirement that Plaintiff and other aggrieved employees undergo
4 a mandatory drug test and/or physical examination, but required them to do so at their own
5 expense. As stated, Defendants had a company-wide policy requiring that all employees,
6 including Plaintiff and other aggrieved employees, travel to a specified medical facility on
7 their own time and using their own personal vehicles to undergo drug testing and/or physical
8 examinations. At all times, Defendants were in control of scheduling the time period for the
9 testing and/or physical examinations, selecting the provider/facility where the testing and/or
10 physical examinations were to take place, and determining the scope of the testing and/or
11 physical examinations.

12 113. For example, Plaintiff was instructed by Defendants to travel to a medical
13 facility and obtain a drug test. As described above, Plaintiff followed Defendants'
14 instructions, traveled to the medical facility Defendants selected, and underwent the testing.
15 Plaintiff was required to drive approximately 50 miles roundtrip to and from the medical
16 facility selected by Defendants using her own vehicle, traveling for approximately one and
17 one half (1½) hours total, and spent one (1) hour waiting at the medical facility and another 30
18 minutes undergoing the requisite testing.

19 114. However, Defendants did not compensate Plaintiff and other aggrieved
20 employees for the time they spent traveling to and from their drug tests and/or physical
21 examinations, or for the time they spent undergoing the testing and/or examinations, or
22 reimburse them for the travel expenses they incurred getting to and from the medical facilities.
23 Defendants' policy and/or practice of not paying for all costs Plaintiff and other aggrieved
24 employees incurred obtaining mandatory drug tests and/or physical examinations violates
25 California Labor Code section 222.5. Plaintiff and other aggrieved employees are therefore
26 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f)-(g).

27 //

28 //

1 **NINTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

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

7 116. Defendants are “persons” as defined by California Business & Professions
8 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 117. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
12 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
13 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 118. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code sections 17200, *et seq.*

18 119. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Failing to pay at least minimum wage to Plaintiff and class members in
22 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
23 and 1198 and the applicable IWC Order, as alleged herein;
- 24 (b) Failing to provide uninterrupted meal periods to Plaintiff and class
25 members in violation of California Labor Code sections 226.7, 512(a),
26 516, 1198, and the applicable IWC Order, as alleged herein;
- 27 (c) Failing to authorize and permit Plaintiff and class members to take
28 uninterrupted rest periods in violation of California Labor Code sections

226.7, 516, 1198, and the applicable IWC Order, as alleged herein;

(d) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), 1198, and the applicable IWC Order, as alleged herein;

(e) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;

(f) Requiring Plaintiff and class members to execute releases of claims as a condition to receiving their earned wages, in violation of California Labor Code section 206.5, as set forth below;

(g) Failing to pay Plaintiff and class members the costs of mandatory physical examinations and/or drug testing in violation of California Labor Code section 222.5, as set forth below; and

(h) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein.

120. At all relevant times herein set forth, California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right “on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee.”

121. During the relevant time period, Defendants required Plaintiff and class members to release their claims for meal and/or rest period violations, as well as their claims for uncompensated hours worked, as a condition of receiving their paychecks. For example, Defendants’ policies state: “At the end of each week-ending[sic] you will be asked to certify the hours and meal period taken and recorded on the timesheet are true and accurate and that ALL rest periods have been made available to you.” At the end of each pay period,

1 Defendants required Plaintiff and class members to sign off in their timesheets that:

2 I certify this is a true and correct report of all hours worked
3 (including any overtime/double-time) and in/out times. I further
4 certify that this time card includes all hours worked inside and
5 outside the office. By signing below, I represent the meal period
6 times I have reported are true/accurate and that I did not
involuntarily experience a late, short, missed, or interrupted meal
period that was not reported. I further represent that I was
authorized, permitted, and strongly encouraged to take my rest
periods.

7 Defendants compelled Plaintiff and class members to sign these false verifications when they,
8 in fact, were not provided all meal and/or rest periods and/or were unaware if they would be
9 compensated for all hours worked during the pay period. Defendants' policy and practice of
10 requiring Plaintiff and class members to release their claims for meal and/or rest period
11 violations, as well as their claims for uncompensated hours worked, as a condition to
12 receiving their wages is in violation of California Labor Code section 206.5.

13 122. At all relevant times herein, California Labor Code section 222.5 requires
14 employers to pay for the costs an employee incurs for obtaining any medical or physical
15 examination taken.

16 123. At all times relevant herein, Defendants implemented, on a company-wide
17 basis, an employer-imposed requirement that Plaintiff and class members undergo a
18 mandatory drug test and/or physical examination, but required them to do so at their own
19 expense. As stated, Defendants had a company-wide policy requiring that all employees,
20 including Plaintiff and class members, travel to a specified medical facility on their own time
21 and using their own personal vehicles to undergo drug testing and/or physical examinations.
22 At all times, Defendants were in control of scheduling the time period for the testing and/or
23 physical examinations, selecting the provider/facility where the testing and/or physical
24 examinations were to take place, and determining the scope of the testing and/or physical
25 examinations.

26 124. For example, Plaintiff was instructed by Defendants to travel to a medical
27 facility and obtain a drug test. Plaintiff followed Defendants' instructions, traveled to the
28 medical facility Defendants selected, and underwent the testing. Plaintiff was required to

1 drive approximately 50 miles roundtrip to and from the medical facility selected by
2 Defendants using her own vehicle, traveling for approximately one and one half (1½) hours
3 total, and spent one (1) hour waiting at the medical facility and another 30 minutes undergoing
4 the requisite testing.

5 125. However, Defendants did not compensate Plaintiff and class members for the
6 time they spent traveling to and from the medical facilities, for the time they spent undergoing
7 the drug testing and/or physical examinations, or reimburse them for the travel expenses they
8 incurred getting to and from the medical facilities. Defendants' policy and/or not paying for
9 all costs Plaintiff and class members incurred obtaining mandatory drug tests and/or physical
10 examinations is in violation of California Labor Code section 222.5.

11 126. As a result of the violations of California law herein described, Defendants
12 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
13 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
14 herein.

15 127. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
16 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
17 Defendants during a period that commences four years prior to the filing of this complaint; a
18 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
19 class members; and an award of attorneys' fees pursuant to California Code of Civil
20 Procedure section 1021.5 and other applicable laws; and an award of costs.

21 **TENTH CAUSE OF ACTION**

22 **Violation of California Business & Professions Code §§ 17200, et seq. –**

23 **Unfair Business Practices**

24 **(Against all Defendants)**

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

27 129. Defendants are "persons" as defined by California Business & Professions
28 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,

1 and/or associations.

2 130. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
3 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
4 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
5 seeks to enforce important rights affecting the public interest within the meaning of Code of
6 Civil Procedure section 1021.5.

7 131. Defendants' activities, namely Defendants' company-wide practice and/or
8 policy of not paying Plaintiff and class members all meal and rest period premium wages due
9 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
10 compensation guarantee and enhanced enforcement implemented by section 226.7. The
11 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to
12 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
13 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
14 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
15 thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
16 unfair business practice in violation of California Business & Professions Code sections
17 17200, *et seq.* (Id.)

18 132. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on any unfair business practice. In the instant case, Defendants' policies
20 and practices have violated the spirit of California's meal and rest period laws and constitute
21 acts against the public policy behind these laws.

22 133. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
23 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
24 benefits implemented by section 226.7 withheld and retained by Defendants during a period
25 that commences four years prior to the filing of this complaint; a permanent injunction
26 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
27 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
28 Procedure section 1021.5 and other applicable laws; and an award of costs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

Class Certification

- 2. That this case be certified as a class action;
- 3. That Plaintiff be appointed as the representative of the Class;
- 4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

- 5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay minimum wages to Plaintiff and class members;
- 6. For general unpaid wages and such general and special damages as may be appropriate;
- 7. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;
- 8. For reasonable attorneys’ fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);
- 9. For liquidated damages pursuant to California Labor Code section 1194.2; and
- 10. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

11. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by

1 willfully failing to provide all meal periods to Plaintiff and class members;

2 12. That the Court make an award to the Plaintiff and class members of one (1)
3 hour of pay at each employee's regular rate of pay for each workday that a meal period was
4 not provided;

5 13. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 14. For premiums pursuant to California Labor Code section 226.7(b);

8 15. For pre-judgment interest on any unpaid meal period premiums from the date
9 such amounts were due, or as otherwise provided by law;

10 16. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 17. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Third Cause of Action**

15 18. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully
17 failing to authorize and permit Plaintiff and class members to take all rest periods;

18 19. That the Court make an award to the Plaintiff and class members of one (1) hour
19 of pay at each employee's regular rate of pay for each workday that a rest period was not
20 authorized and permitted;

21 20. For all actual, consequential, and incidental losses and damages, according to
22 proof;

23 21. For premiums pursuant to California Labor Code section 226.7(b);

24 22. For pre-judgment interest on any unpaid rest period premiums from the date
25 such amounts were due, or as otherwise provided by law;

26 23. For attorneys' fees pursuant to California Code of Civil Procedure section
27 1021.5, or as otherwise provided by law; and

28 24. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Fourth Cause of Action

25. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

26. For all actual, consequential, and incidental losses and damages, according to proof;

27. For injunctive relief pursuant to California Labor Code section 226(h);

28. For statutory penalties pursuant to California Labor Code section 226(e);

29. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

30. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

31. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay minimum wages and/or meal and rest period premiums owed at the time of termination of the employment of Plaintiff and other terminated class members;

32. For all actual, consequential and incidental losses and damages, according to proof;

33. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

34. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

35. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

36. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Sixth Cause of Action

37. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members minimum wages and/or meal and rest period premiums during their employment;

38. For all actual, consequential and incidental losses and damages, according to proof;

39. For statutory penalties according to proof pursuant to California Labor Code section 210;

40. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

41. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

42. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

43. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

44. For unpaid business-related expenses and such general and special damages as may be appropriate;

45. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

46. For all actual, consequential, and incidental losses and damages, according to proof;

47. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

48. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Eighth Cause of Action

49. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 510 and 1198 (by failing to pay all overtime compensation); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 206.5 (by requiring employees to execute a release of claims for wages due); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical examinations); and 2802 (by failing to reimburse business expenses);

50. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

51. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

52. For pre-judgment and post-judgment interest as provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class

1 members to take all rest periods, failing to provide Plaintiff and class members accurate and
2 complete wage statements, failing to maintain accurate payroll records for Plaintiff and class
3 members, failing timely to pay Plaintiff and class members all earned wages during
4 employment, requiring employees to release claims as a condition to receive paychecks,
5 failing to reimburse Plaintiff and class members for the costs of physical examinations and/or
6 drug testing, and failing to reimburse Plaintiff and class members for business-related
7 expenses, constitutes an unlawful business practice in violation of California Business and
8 Professions Code sections 17200, *et seq.*;

9 55. For restitution of unpaid wages to Plaintiff and all class members and
10 prejudgment interest from the day such amounts were due and payable;

11 56. For the appointment of a receiver to receive, manage and distribute any and all
12 funds disgorged from Defendants and determined to have been wrongfully acquired by
13 Defendants as a result of violations of California Business & Professions Code sections 17200
14 *et seq.*;

15 57. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
16 California Code of Civil Procedure section 1021.5; and

17 58. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Tenth Cause of Action**

20 59. That the Court declare, adjudge and decree that Defendants' conduct of denying
21 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
22 an unfair business practice in violation of California Business and Professions Code sections
23 17200, *et seq.*;

24 60. For restitution of the statutory benefits under section 226.7 unfairly withheld
25 from Plaintiff and class members and prejudgment interest from the day such amounts were
26 due and payable;

27 61. For the appointment of a receiver to receive, manage and distribute any and all
28 funds disgorged from Defendants and determined to have been wrongfully acquired by

1 Defendants as a result of violations of California Business & Professions Code sections 17200
2 *et seq.*;

3 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
4 California Code of Civil Procedure section 1021.5;

5 63. For pre-judgment and post-judgment interest as provided by law; and

6 64. For such other and further relief as the Court may deem equitable and
7 appropriate.

8
9 Dated: July 1, 2020

Respectfully submitted,

10 Capstone Law APC

11
12 By: 

13 Mark A. Ozzello
14 Brandon K. Brouillette
15 Brooke W. Waldrop

16 Attorneys for Plaintiff Daniela Garibay
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

April 13, 2020

VIA ONLINE SUBMISSION

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

Subject: *Daniela Garibay v. Pacific Steel Group*

Dear PAGA Administrator:

This office represents Daniela Garibay in connection with her claims under the California Labor Code. Ms. Garibay was an employee of PACIFIC STEEL GROUP (“PSG”).

The employer may be contacted directly at the address below:

PACIFIC STEEL GROUP
4805 MURPHY CANYON ROAD
SAN DIEGO, CA 92123

Ms. Garibay 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”). Ms. Garibay seeks relief on behalf of herself, the State of California, and other persons who are or were employed by PSG 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.

PSG employed Ms. Garibay as a non-exempt, hourly paid employee from approximately February 2016 to May 2019. Ms. Garibay worked for PSG as a Data Entry Employee at its location in Bloomington, California. During her employment, Ms. Garibay typically worked eight (8) hours per day and five (5) days per week. Ms. Garibay’s primary job duties included performing administrative computer functions, compiling data, and filing information packets.

PSG has committed one or more of the following Labor Code violations against Ms. Garibay, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

PSG’s Company-Wide and Uniform Payroll and HR Practices

PACIFIC STEEL GROUP is a California corporation that provides concrete reinforcing steel bars, pre-assembled rebar cages, and post-tension cables for residential, commercial, and industrial projects. Upon information and belief, PSG maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Diego, California, for all non-exempt, hourly paid employees working for PSG in California, including Ms. Garibay and other aggrieved employees. At all relevant times, PSG issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Garibay and other aggrieved employees, regardless of their location or position.

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

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 break 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

¹ These facts, theories, and claims are based on Ms. Garibay’s experience and counsel’s review of those records currently available relating to Ms. Garibay’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, Ms. Garibay reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

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.

During the relevant time period, PSG had, and continues to have, a company-wide policy and/or practice of understaffing its locations and assigning demanding workloads and stringent deadlines, which prevented Ms. Garibay and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In addition, PSG did not schedule meal periods, which further caused Ms. Garibay and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Ms. Garibay and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether in order to complete their assigned workloads. For example, at least once per month, Ms. Garibay was forced to work more than five (5) hours before taking a meal period, compiling and filing data packets in order to meet the stringent deadlines she was given. For the same reasons, other aggrieved employees worked through their meal periods or had their meal periods interrupted in order to complete their assigned workloads.

Moreover, PSG 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. Ms. Garibay 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.

At all times herein mentioned, PSG knew or should have known that, as a result of these policies, Ms. Garibay and other aggrieved employees were prevented from being relieved of all duties to take timely, uninterrupted meal periods. PSG further knew or should have known that it did not pay Ms. Garibay and other aggrieved employees meal period premium wages when meal periods were late, interrupted, shortened, or missed.

PSG 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, Ms. Garibay and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that PSG did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. In addition to an hourly wage, PSG paid other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, because PSG did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as commissions, 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, PSG failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Ms. Garibay 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).

As with meal periods, PSG’s company-wide practices, including understaffing while assigning heavy workloads and stringent deadlines, prevented Ms. Garibay and other aggrieved employees from being relieved of all duty to take compliant rest periods. PSG also failed to schedule rest periods, which, coupled with PSG’s failure to provide adequate rest period coverage, further led to Ms. Garibay and other aggrieved employees not being authorized and permitted to take rest periods.

Additionally, upon information and belief, during the relevant time period, PSG maintained implemented a company-wide on-premises rest period policy, which mandated that Ms. Garibay and other aggrieved employees remain on PSG’s premises during their rest periods. Upon information and belief, PSG’s company-wide on-premises rest period policy prevented Ms. Garibay and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result of PSG’s practices and policies, Ms. Garibay 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 her employment, PSG’s management explicitly prohibited Mr. Garibay and other aggrieved employees from taking rest periods.

PSG 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, Ms. Garibay and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that PSG did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because PSG did not properly calculate other aggrieved employees’ regular rates of pay by including all forms of compensation, such as 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, PSG failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Garibay 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 §§ 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 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.

PSG willfully failed to pay all overtime wages owed to Ms. Garibay and other aggrieved employees. During the relevant time period, Ms. Garibay 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.

As described above, during the relevant period, PSG had, and continues to have, a company-wide policy and/or practice of understaffing its locations, assigning employees a heavy workload and stringent deadlines, while failing to schedule meal periods, which had the combined effect of preventing other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, other aggrieved employees were forced to work through their meal periods or had their meal periods interrupted in order to handle the workload. PSG did not pay other aggrieved employees for the time they continued to perform tasks during meal periods.

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

Because 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, other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. PSG’s failure to pay 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, PSG did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. PSG failed to incorporate all remunerations, including incentive pay, and/or nondiscretionary bonuses, 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, PSG failed to pay all overtime wages by paying a lower overtime rate than required.

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. 1 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, § 11010(2)(G) (defining “Hours Worked”).

As set forth above, due to PSG’s uniform practice of understaffing, assigning heavy workloads and stringent deadlines, and failing to schedule meal periods, other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and were otherwise not relieved of all duties during meal periods.

Further, PSG maintained and implemented a company-wide policy of requiring all 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. However, PSG did not compensate Ms. Garibay and other aggrieved employees for the time they spent traveling to and from the medical facilities or for the time they spent undergoing testing and/or physical examinations. At all times, PSG was in control of scheduling the time period 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, PSG gave Ms. Garibay strict instructions to obtain drug testing, and Ms. Garibay underwent the testing for the sole benefit of PSG. Ms. Garibay followed PSG’s instructions and spent one and one half (1½) hours total traveling to and from the medical facility designated by PSG, another one (1) hour waiting at the medical facility, and 30 minutes undergoing the requisite testing. However, PSG did not compensate Ms. Garibay 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, PSG did not pay minimum wages for all hours worked by Ms. Garibay and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PSG 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, PSG regularly failed to pay at least minimum wages to Ms. Garibay 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.

Ms. Garibay 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(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. PSG has not provided Ms. Garibay 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, PSG has knowingly and intentionally provided Ms. Garibay and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PSG issued uniform wage statements to Ms. Garibay 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, PSG violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because PSG did not record the time Ms. Garibay and other aggrieved employees spent working off-the-clock, PSG did not list the correct amount of gross wages and net wages earned by Ms. Garibay and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, PSG failed to accurately list the total number of the hours worked by Ms. Garibay 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).

Second, because PSG did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, PSG 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). PSG 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 "[keep, 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), PSG willfully failed to maintain accurate payroll records for Ms. Garibay 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, PSG failed, on a company-wide basis, to record actual hours worked, and thereby failed to keep records of work period and meal period start and stop times for Ms. Garibay and other aggrieved employees in violation of section 1198. Furthermore, in light of PSG’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, PSG kept no records of meal start and end times for second meal periods.

Because PSG failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Garibay 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, Ms. Garibay 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.

Ms. Garibay 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, PSG failed to pay Ms. Garibay and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Garibay 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.

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

Ms. Garibay 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 § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

During the relevant time period, PSG required Ms. Garibay and other aggrieved employees to release their claims for meal and/or rest period violations, as well as their claims for uncompensated hours worked, as a condition of receiving their paychecks. For example, PSG's policies state: "At the end of each week-ending[sic] you will be asked to certify the hours and meal period taken and recorded on the timesheet are true and accurate and that ALL rest periods have been made available to you." At the end of each pay period, PSG required Ms. Garibay and other aggrieved employees to sign off in their timesheets that:

I certify this is a true and correct report of all hours worked (including any overtime/double-time) and in/out times. I further certify that this time card includes all hours worked inside and outside the office. By signing below, I represent the meal period times I have reported are true/accurate and that I did not involuntarily experience a late, short, missed, or interrupted meal period that was not reported. I further represent that I was authorized, permitted, and strongly encouraged to take my rest periods.

PSG compelled Ms. Garibay and other aggrieved employees to sign these false verifications when they, in fact, were not provided all meal and/or rest periods and/or were unaware if they would be compensated for all hours worked during the pay period. PSG's policy and practice of requiring Ms. Garibay and other aggrieved employees to release their claims for meal and/or rest period violations,

as well as their claims for uncompensated hours worked, as a condition to receiving their wages is in violation of California Labor Code section 206.5.

Ms. Garibay and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 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.

At all times relevant herein, PSG implemented, on a company-wide basis, an employer-imposed requirement that Ms. Garibay and other aggrieved employees undergo a mandatory drug test and/or physical examination, but required them to do so at their own expense. As stated, PSG had a company-wide policy requiring that all employees, including Ms. Garibay and other aggrieved employees, travel to a specified medical facility on their own time and using their own personal vehicles to undergo drug testing and/or physical examinations. At all times, PSG was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider/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, Ms. Garibay was instructed by PSG to travel to a medical facility and obtain a drug test. Ms. Garibay followed PSG's instructions, traveled to the medical facility PSG selected, and underwent the testing. Ms. Garibay was required to travel to and from the medical facility selected by PSG using her own vehicle. Ms. Garibay followed PSG's instructions and spent one and one half (1½) hours total traveling to and from the medical facility designated by PSG, another one (1) hour waiting at the medical facility, and 30 minutes undergoing the requisite testing.

However, PSG did not compensate Ms. Garibay 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. PSG's policy and/or practice of not paying for all costs Ms. Garibay and other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Ms. Garibay 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, as stated, PSG had a company-wide policy of requiring Ms. Garibay and other aggrieved employees to travel in their own personal vehicles to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. For example, Ms. Garibay drove 50 miles roundtrip to obtain a mandatory drug test per PSG’s instructions, but was not reimbursed for her mileage to and from the medical facility.

Second, upon information and belief, PSG, on a company-wide basis, required other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, PSG required other aggrieved employees to travel to different jobsite locations. Although PSG required that other aggrieved employees use their own vehicles as part of their job duties, PSG never reimbursed them for all of their travel expenses.

PSG could have provided Ms. Garibay and other aggrieved employees with the actual tools for use on the job, such as company vehicles, or reimbursed employees for their mileage and travel expenses, but instead, PSG passed these operating costs off onto Ms. Garibay and other aggrieved employees.

Thus, PSG 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. Ms. Garibay 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).

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.” PSG, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Garibay’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Garibay seeks the remedies set forth in Labor Code section 558 for herself, 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, Ms. Garibay, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against PSG for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Garibay 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 Ms. Garibay's reasonable attempt to settle her dispute with PSG prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform PSG of Ms. Garibay's aforementioned grievances and the proposed remedies as detailed below, while affording PSG a reasonable opportunity to satisfy Ms. Garibay's demands.

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

1. PSG shall pay Ms. Garibay and all other aggrieved employees employed by PSG at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. PSG 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, and provided lawful meal and rest periods.
3. PSG shall conduct a survey or interview all current and former aggrieved employees in California who worked for PSG 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 travel expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. PSG 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. PSG 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. PSG shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for PSG's benefit, including, but not limited to, costs of travel expenses, as required by Labor Code sections 2802.
6. PSG shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. PSG shall provide Ms. Garibay and all aggrieved employees employed by PSG 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).
8. PSG shall cease the practice of requiring aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks (Labor Code section 206.5).

9. PSG 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, 226.3, 256, 558, 1174.5, 1197.1, 1199, and 2699, and Wage Order No. 1-2001, section 20.

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

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink that reads "Anthony Castillo". The signature is stylized with a large, flowing "A" and "C".

Anthony Castillo

Copy: PACIFIC STEEL GROUP (via U.S. Certified Mail)