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

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

Plaintiff,

vs.

ALCO IRON & METAL CO., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: RG20085065

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

ENDORSED
FILED
ALAMEDA COUNTY

DEC 28 2020

CLERK OF THE SUPERIOR COURT
By TANIA PIERCE
Deputy

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

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in
13 this case on October 22, 2020, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

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

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

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

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

THE PARTIES

6. Plaintiff Evelio Hernandez is a resident of Oakland, in Alameda County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Material Separator from approximately December 2013 to May 5, 2020. Plaintiff worked for Defendants at their San Leandro, California location. During his employment, Plaintiff typically worked nine (9) hours or more per day, and six (6) days or more per week. At the time his employment ended, Plaintiff earned approximately \$17.50 per hour. His job duties included, without limitation, unloading ferrous and non-ferrous scrap metal materials dropped off by customers, inspecting and sorting such materials, and operating a forklift.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' dispute resolution policy and/or arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented new hires with an arbitration agreement ("Mediación y Arbitraje Poliza y Procedimiento," hereinafter, "Arbitration Agreement") during the onboarding process, which had to be reviewed and signed immediately. In fact, upon information and belief, the Arbitration Agreement was one of several documents presented to new employees for signature during the orientation process, including an Employee Affidavit of Medical Provider Network Notification ("Notificación Declaración Jurada de Empleados"), Authorization for Background Investigation, and Meal Period Waiver Form ("Renuncia de Comida"), among other documents. Also, employees did not have a meaningful opportunity to

1 negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants'
2 employees for them to sign on a take-it or leave-it basis at the time they were hired, along with
3 other on-boarding documents. In fact, the Arbitration Agreement specifies that the Arbitration
4 Agreement is condition of employment. Furthermore, Defendants did not set forth in the
5 agreement or otherwise provide employees with the rules which will govern the arbitration,
6 instead forcing employees to seek this information out on their own (“Una copia de las reglas
7 completes de empleo AAA de mediación se puede obtener de gerente de recursos humanos de
8 ALCO[,]” which translates to, “A copy of the full AAA employment rules for mediation can be
9 obtained from the ALCO Human Resources Manager”).

10 8. ALCO IRON & METAL CO. was and is, upon information and belief, a
11 California corporation, and at all times hereinafter mentioned, an employer whose employees
12 are engaged throughout this county and the State of California.

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

17 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
18 were the partners, agents, owners, or managers of ALCO IRON & METAL CO. at all relevant
19 times.

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

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

PAGA REPRESENTATIVE ALLEGATIONS

13. Defendants are a metal recycling company and provide wholesale distribution of scrap and waste materials, including at least one metal recycling facility in San Leandro, California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in San Leandro, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

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

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

1 16. Defendants continue to employ non-exempt or hourly paid employees in
2 California.

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

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

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

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

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

27 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest

1 periods in accordance with the Labor Code and applicable IWC Wage Order or payment of one
2 (1) additional hour of pay at their regular rates of pay when they were not authorized and
3 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
4 and other non-party Aggrieved Employees were not authorized and permitted to take compliant
5 rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved Employees
6 with payment of one (1) additional hour of pay at their regular rates of pay when they were not
7 authorized and permitted to take a compliant rest period.

8 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 receive complete and accurate wage statements in accordance with California law. In violation
11 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
12 provided complete and accurate wage statements.

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

17 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
19 timely payment of wages during their employment. In violation of the California Labor Code,
20 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
21 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
22 premium wages, within permissible time periods.

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

1 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to the
3 portion of wages previously paid and subsequently unlawfully deducted by Defendants.

4 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 payment of wages as designated by statute. In violation of the California Labor Code,
7 Defendants secretly paid Plaintiff and other non-party Aggrieved Employees lower wages that
8 required by statute while purporting to pay them proper wages.

9 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that they had a duty to cover the costs and expenses other non-party
11 Aggrieved Employees incurred obtaining mandatory examinations and/or drug tests, but
12 willfully, knowingly, and intentionally failed to do so.

13 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 receive reimbursement for all business-related expenses and costs they incurred during the
16 course and scope of their employment and that they did not receive reimbursement of applicable
17 business-related expenses and costs incurred.

18 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Defendants had a duty to provide Plaintiff and other non-party
20 Aggrieved Employees with written notice of the material terms of their employment with
21 Defendants as required by the California Wage Theft Prevention Act, but willfully, knowingly,
22 and intentionally failed to do so.

23 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that they had a duty to provide Plaintiff and other non-party Aggrieved
25 Employees with safety devices and safeguards, such as personal protective equipment, to protect
26 their life, safety, and health in the workplace, but willfully, knowingly, and intentionally failed
27 to do so.

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

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

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

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

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

22 (a) The aggrieved employee shall give written notice by online filing
23 (hereinafter "Employee's Notice") to the LWDA and by certified mail to
24 the employer of the specific provisions of the California Labor Code
25 alleged to have been violated, including the facts and theories to support
26 the alleged violations.

27 (b) An aggrieved employee's notice filed with the LWDA pursuant to
28 2699.3(a) and any employer response to that notice shall be accompanied

1 by a filing fee of seventy-five dollars (\$75).

- 2 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
3 employer and the aggrieved employee by certified mail that it does not
4 intend to investigate the alleged violation within sixty (60) calendar days
5 of the postmark date of the Employee’s Notice. Upon receipt of the
6 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
7 (65) calendar days of the postmark date of the Employee’s Notice, the
8 aggrieved employee may commence a civil action pursuant to California
9 Labor Code section 2699 to recover civil penalties in addition to any other
10 penalties to which the employee may be entitled.

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

- 14 (a) The aggrieved employee or representative shall give written notice by
15 online filing to the LWDA and by certified mail to the employer of the
16 specific provisions of the California Labor Code alleged to have been
17 violated (other than those listed in Section 2699.5), including the facts
18 and theories to support the alleged violation.
- 19 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
20 2699.3(c) and any employer response to that notice shall be accompanied
21 by a filing fee of seventy-five dollars (\$75).
- 22 (c) The employer may cure the alleged violation within thirty-three (33)
23 calendar days of the postmark date of the notice. The employer shall give
24 written notice by certified mail within that period of time to the aggrieved
25 employee or representative and the agency if the alleged violation is
26 cured, including a description of actions taken, and no civil action
27 pursuant to Section 2699 may commence. If the alleged violation is not
28 cured within the 33-day period, the employee may commence a civil

1 action pursuant to Section 2699.

2 39. On October 22, 2020, Plaintiff provided written notice by online filing to the
3 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
4 Code alleged to have been violated, including facts and theories to support the alleged
5 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
6 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
7 PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff
8 PAGA Case Number LWDA-CM-810386-20. A true and correct copy of Plaintiff's written
9 notice to the LWDA and Defendants dated October 22, 2020, is attached hereto as "Exhibit 1."

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

13 41. Thus, Plaintiff has satisfied the administrative prerequisites under California
14 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
15 violations of California Labor Code sections 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a),
16 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

17 42. Labor Code section 558(a) provides "[a]ny employer or other person acting on
18 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
19 provision regulating hours and days of work in any order of the Industrial Welfare Commission
20 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
21 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
22 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
23 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
24 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
25 criminal penalty provided by law." Plaintiff, acting in the public interest as a private attorney
26 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
27 himself, all other non-party Aggrieved Employees, and the State of California against
28 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable

1 IWC wage order. Plaintiff, acting in the public interest as a private attorney general, does not
2 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
3 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC wage order.

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

7 44. As set forth below, Defendants have violated numerous provisions of both the
8 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
9 Order.

10 45. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
11 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private
12 attorney general, seeks assessment and collection of civil penalties for himself, all other non-
13 party Aggrieved Employees, and the State of California against Defendants for violations of
14 California Labor Code sections 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a), 226.7, 510,
15 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

16 **FIRST CAUSE OF ACTION**

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

18 **(Against all Defendants)**

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

21 47. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
22 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
23 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 221, 222.5, 223,
24 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401,
25 and 6403. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to
26 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,
27 including sections 516 and 1182.12.

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1 48. Defendants' conduct, as alleged herein, violates numerous sections of the
2 California Labor Code, including, but not limited to, the following:

- 3 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
4 wage order for Defendants' failure to compensate Plaintiff and other non-
5 party Aggrieved Employees with all required overtime pay, as set forth
6 below;
- 7 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
8 applicable IWC wage order for Defendants' failure to compensate
9 Plaintiff and other non-party Aggrieved Employees with at least
10 minimum wages for all hours worked as set forth below;
- 11 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
12 applicable IWC wage order for Defendants' failure to provide Plaintiff
13 and other non-party Aggrieved Employees with meal periods, as set forth
14 below;
- 15 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
16 IWC wage order for Defendants' failure to authorize and permit Plaintiff
17 and other non-party Aggrieved Employees to take rest periods, as set forth
18 below;
- 19 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
20 wage order for failure to provide accurate and complete wage statements
21 to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- 22 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC
23 wage order for failure to maintain payroll records as set forth below;
- 24 (g) Violation of Labor Code section 204 for failure to pay all earned wages
25 during employment as set forth below;
- 26 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
27 earned wages upon termination as set forth below;
- 28 (i) Violation of Labor Code sections 221 and 224 for unlawfully deducting

a portion of wages previously paid to Plaintiff and other non-party Aggrieved Employees, as set forth below;

- (j) Violation of Labor Code section 223 for secretly paying plaintiff and other non-party Aggrieved Employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (k) Violation of Labor Code section 222.5 for failing to compensate other non-party Aggrieved Employees for mandatory physical examinations and/or drug testing, as set forth below;
- (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below;
- (m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other non-party Aggrieved Employees' employment with Defendants, as set forth below; and
- (n) Violation of Labor Code sections 6401 and 6403 for failure to provide safety devices and safeguards, such as personal protective equipment, to Plaintiff and other non-party Aggrieved Employees, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

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

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

1 worked by the person on a daily or weekly basis.

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

7 52. The applicable IWC Wage Order further provides that Defendants are and were
8 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
9 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
10 An employee's regular rate of pay includes all remuneration for employment paid to, or on
11 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

12 53. California Labor Code section 510 codifies the right to overtime compensation
13 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
14 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
15 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
16 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
17 the seventh (7th) day of work.

18 54. During the relevant time period, Defendants willfully failed to pay all overtime
19 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
20 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
21 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
22 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
23 not recorded.

24 55. First, during the relevant time period, Defendants had, and continue to have, a
25 company-wide practice and/or policy of requiring Plaintiff and other non-party Aggrieved
26 Employees to perform work-related tasks while off-the-clock, such as operating forklifts and
27 closing the gates to the yard. For example Plaintiff would spend about five (5) minutes each
28 time his supervisor asked him to move a forklift blocking the workplace yard before he had

1 clocked in for his shift and asked him to close the yard gate after he had clocked out for his
2 shift. However, Defendants failed to track this time spend working before and after scheduled
3 shifts, and Plaintiff and other non-party Aggrieved Employees received no compensation for
4 this time.

5 56. Second, Defendants had a company-wide practice and/or policy of understaffing
6 their worksites while assigning heavy workloads, which—in conjunction with Defendants
7 company-wide practice of failing to adhere to a schedule of meal periods—resulted in a failure
8 to provide Plaintiff and other non-party Aggrieved Employees with adequate meal period
9 coverage. As a result of this lack of meal period coverage, Plaintiff and other non-party
10 Aggrieved Employees were not always afforded uninterrupted 30-minute meal periods during
11 shifts when they were entitled to receive a meal period. For example, Plaintiff and other non-
12 party Aggrieved Employees would have their meal periods interrupted or cut short to assist
13 customers dropping off materials.

14 57. Furthermore, Defendants had a policy and/or practice of requiring that Plaintiff
15 and other non-party Aggrieved Employees carry a company-issued radio at all times in order to
16 respond to calls from supervisors and management, even during unpaid meal breaks.
17 Defendants' supervisors and management contacted Plaintiff and other non-party Aggrieved
18 Employees on their radios during their meal periods. Thus, Plaintiff and other non-party
19 Aggrieved Employees missed and/or had meal periods interrupted in order to complete their
20 assigned workloads. Defendants did not pay Plaintiff and other non-party Aggrieved
21 Employees for the time they continued to perform tasks during meal periods.

22 58. Defendants knew or should have known that, as a result of these company-wide
23 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
24 their assigned duties during meal periods and/or while off-the-clock, and were suffered or
25 permitted to perform work for which they were not paid.

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

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

2 60. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
3 the balance of overtime compensation as required by California law, violates the provisions of
4 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
5 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
6 2699(a), (f), and (g).

7 **FAILURE TO PAY MINIMUM WAGES**

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

9 61. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
10 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
11 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
12 Compensable work time is defined by the applicable wage order as "the time during which an
13 employee is subject to the control of an employer, and includes all the time the employee is
14 suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8,
15 § 11010(2)(G) (defining "Hours Worked").

16 62. As set forth above, Plaintiff and other non-party Aggrieved Employees were
17 required to perform work off-the-clock by handling duties assigned by Defendants'
18 management before and after their scheduled shifts, time for which they were not paid. As also
19 stated above, due to Defendants' policy and/or practice of understaffing while assigning heavy
20 workloads, combined with their requirement that employees carry their radios at all times,
21 Plaintiff and other non-party Aggrieved Employees were forced to forego meal periods, have
22 their meal periods interrupted, and/or were otherwise not relieved of all duties during meal
23 periods.

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

1 testing and/or physical examinations were to take place, and determining the scope of the testing
2 and/or physical examinations. On information and belief, Defendants gave other non-party
3 Aggrieved Employees strict instructions to obtain drug testing and/or physical examinations,
4 and other non-party Aggrieved Employees underwent the testing and/or examinations for the
5 sole benefit of Defendants. Other non-party Aggrieved Employees were required to travel in
6 their personal vehicles or obtain alternate transportation and spend time undergoing the requisite
7 testing and/or examinations. However, Defendants did not compensate other non-party
8 Aggrieved Employees for the time they spent traveling to and from the medical facilities and
9 for the time they spent undergoing the mandatory drug testing and/or physical examinations.

10 64. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
11 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
12 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
13 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
14 1197, and 1198.

15 65. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
16 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
17 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
18 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

19 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

20 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

24 67. At all relevant times herein set forth, California Labor Code section 512(a)
25 provides that an employer may not require, cause, or permit an employee to work for a period
26 of more than five (5) hours per day without providing the employee with a meal period of not
27 less than thirty (30) minutes, except that if the total work period per day of the employee is not
28 more than six (6) hours, the meal period may be waived by mutual consent of both the employer

1 and the employee. Under California law, first meal periods must start after no more than five
2 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

3 68. At all relevant times herein set forth, California Labor Code section 226.7,
4 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
5 meal period mandated by an applicable order of the IWC.

6 69. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
7 and the applicable IWC Wage Order also require employers to provide a second meal period of
8 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
9 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
10 hours worked is no more than twelve (12) hours, the second meal period may be waived by
11 mutual consent of the employer and the employee only if the first meal period was not waived.

12 70. As stated, Defendants had, and continue to have, a company-wide policy and/or
13 practice of understaffing while simultaneously assigning heavy workloads, which resulted in a
14 lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees
15 from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, as
16 stated, Defendants' requirement that employees carry radios at all times prevented Plaintiff and
17 other non-party Aggrieved Employees from taking compliant meal periods. As result, Plaintiff
18 and other non-party Aggrieved Employees had to work through part or all of their meal periods,
19 have their meal periods interrupted, and/or wait extended periods of time before taking meal
20 periods. For example, during his employment, Plaintiff would have his meal periods interrupted
21 by his supervisors via radio approximately four (4) times per week to discuss work-related
22 matters, and his meal periods were cut short by 20 minutes at least once per week to assist with
23 customers during busy periods. Plaintiff also received late meal periods approximately twice
24 per week due to the heavy workload and lack of meal period coverage.

25 71. In addition, during the relevant time period, Defendants did not provide Plaintiff
26 and other non-party Aggrieved Employees with second 30-minute meal periods on days that
27 they worked in excess of ten (10) hours in one day. During his employment, Plaintiff worked
28 shifts in excess of ten (10) hours or more per day, but was rarely provided a second 30-minute

1 meal period during these shifts. Plaintiff and other non-party Aggrieved Employees did not
2 sign valid meal period waivers on days that they were entitled to meal periods and were not
3 relieved of all duties.

4 72. Moreover, Defendants had a company-wide policy of requiring all newly hired
5 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
6 the position that non-exempt, hourly paid employees had waived their rights to second meal
7 periods for the entirety of their employment and, on that basis, did not provide them with all
8 meal periods to which they were entitled. Defendants' presumption that second meal periods
9 would not be provided for shifts in excess of ten (10) hours but less than twelve (12) hours due
10 to blanket meal period waivers, and imposition of the burden on employees to revoke the meal
11 period waiver in writing, discouraged and prevented Plaintiff and other non-party Aggrieved
12 Employees from taking all second meal periods to which they were entitled.

13 73. In addition, an employer's obligation to provide a meal period is only "triggered"
14 when the employer "employs an employee for a work period of more than five hours per day."
15 *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a
16 full five hours, its meal break obligation is triggered.").

17 [A]fter the meal break obligation is triggered . . . an employer is put to a
18 choice: it must (1) afford an off-duty meal period; (2) consent to a
19 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
20 obtain written agreement to an on-duty meal period if circumstances
21 permit. Failure to do one of these will render the employer liable for
22 premium pay. *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5,
23 subd. 11(A), (B)).

24 74. That Defendant requires aggrieved employees to sign meal period waivers
25 simultaneously at or near their time of hire (as opposed to on a specific work day) renders them
26 invalid and unenforceable, because Defendants' obligation to provide Plaintiff and other non-
27 party Aggrieved Employees with meal periods did not arise until it had employed them for a
28 full five (5) hours.

75. Defendants knew or should have known that as a result of their policies, Plaintiff
and other non-party Aggrieved Employees were not actually relieved of all duties to take timely,
uninterrupted meal periods. Defendants further knew or should have known that they did not

1 pay Plaintiff and other non-party Aggrieved Employees meal period premium wages when meal
2 periods were missed, late, short, and/or interrupted.

3 76. Furthermore, Defendants engaged in a company-wide practice and/or policy of
4 not paying all meal period premiums owed when compliant meal periods are not provided.
5 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have
6 not received premium pay for missed, interrupted, or late meal periods.

7 77. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
8 Employees compliant meal periods and failed to pay the full meal period premiums due.
9 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
10 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
11 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
12 (g).

13 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

14 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

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

18 79. At all relevant times, the applicable IWC Wage Order provides that "[e]very
19 employer shall authorize and permit all employees to take rest periods, which insofar as
20 practicable shall be in the middle of each work period" and that the "rest period time shall be
21 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
22 hours or major fraction thereof" unless the total daily work time is less than three and one-half
23 (3½) hours.

24 80. At all relevant times, California Labor Code section 226.7 provides that no
25 employer shall require an employee to work during any rest period mandated by an applicable
26 order of the California IWC. To comply with its obligation to authorize and permit rest periods
27 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
28 must "relinquish any control over how employees spend their break time, and relieve their

employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

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

82. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ policies and/or practice of understaffing and assigning heavy workloads and requirement that employees carry radios at all times, prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty in order to take compliant rest periods. Defendants also failed to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take rest periods. Defendants also had a policy or practice of failing authorize and permit Plaintiff and other non-party Aggrieved Employees to take third rest periods when they worked in excess of 10 hours in one day.

83. Furthermore, on information and belief, during the relevant time period, Defendants maintained a company-wide on-premises rest period policy, which mandated that Plaintiff and other non-party Aggrieved Employees remain on Defendants’ premises during their rest periods. Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, Defendants effectively maintained control over Plaintiff and other non-party Aggrieved Employees during rest periods.

84. As a result of Defendants’ practices and policies, Plaintiff and other non-party Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest

1 periods to which they were entitled. For example, throughout his employment, Plaintiff's rest
2 periods were interrupted by supervisors and management requiring him to respond to questions
3 regarding work-related tasks. Moreover, he often missed his second rest periods and did not
4 receive a third rest period when working in excess of 10 hours in a day.

5 85. Defendants also have engaged in a company-wide practice and/or policy of not
6 paying all rest period premiums owed when compliant rest periods are not authorized and
7 permitted.

8 86. Defendants' conduct violates the applicable IWC Wage Order and California
9 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
10 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
11 2699(a), (f), and (g).

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

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

19 88. During the relevant time period, Defendants have knowingly and intentionally
20 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
21 inaccurate wage statements. For example, Defendants issued uniform wage statements to
22 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
23 earned; total hours worked; net wages earned; the address of the legal entity that is the employer;
24 and all applicable hourly rates in effect during the pay period, including overtime rates of pay,
25 and the corresponding number of hours worked at each hourly rate. Specifically, Defendants
26 violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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1 89. Because Defendants did not record the time Plaintiff and other non-party
2 Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount
3 of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in
4 compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason,
5 Defendants failed to accurately list the total number of hours worked by Plaintiff and other non-
6 party Aggrieved Employees, in violation of section 226(a)(2), and failed to list the applicable
7 hourly rates of pay in effect during the pay period and the corresponding accurate number of
8 hours worked at each hourly rate, in violation of section 226(a)(9).

9 90. Moreover, and separate from these violations, Defendants issued uniform wage
10 statements to Plaintiff and other non-party Aggrieved Employees that failed to correctly list the
11 address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of
12 section 226(a)(8) is to provide California employees with transparency as to the true identity of
13 their employer, to allow the employee to contact their employer during employment in the future
14 for various reasons, including filing an administrative claim, judicial claim, or other action to
15 seek relief against their employer, to obtain unemployment benefits, etc. Plaintiff's and other
16 non-party Aggrieved Employees' wage statements failed to list Defendants' address at all.

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

25 92. California Labor Code section 1174(d) provides that “[e]very person employing
26 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
27 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
28 plants or establishments at which employees are employed, payroll records showing the hours

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
2 applicable piece rate paid to, employees employed at the respective plants or establishments...”
3 Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records
4 for Plaintiff and other non-party Aggrieved Employees showing the daily hours they worked
5 and the wages paid thereto as a result of failing to record the off-the-clock hours that they
6 worked.

7 93. 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 set
9 forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment
10 of any employees for longer hours than those fixed by the order or under conditions of labor
11 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
12 are required to keep accurate time records showing when the employee begins and ends each
13 work period and meal period. During the relevant time period, Defendants failed, on a
14 company-wide basis, to keep accurate records of work period and meal period start and end
15 times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198.
16 Furthermore, in light of Defendants’ failure to provide Plaintiff and other non-party Aggrieved
17 Employees with second 30-minute meal periods to which they were entitled, Defendants kept
18 no records of meal start and end times for second meal periods.

19 94. Because Defendants’ violations of 226(a), 1174(d), and 1198 were committed
20 against Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party
21 Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code sections
22 226.3, 1174.5, and/or 2699(a), (f), and (g).

23 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

24 **VIOLATION OF LABOR CODE SECTION 204**

25 95. At all relevant times herein set forth, California Labor Code section 204 requires
26 that all wages earned by any person in any employment between the 1st and the 15th days,
27 inclusive, of any calendar month, other than those wages due upon termination of an employee,
28 are due and payable between the 16th and the 26th day of the month during which the labor was

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

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

11 97. During the relevant time period, Defendants willfully failed to pay Plaintiff and
12 other non-party Aggrieved Employees all wages due to them within any time period specified
13 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
14 wages, and/or meal and rest period premium wages.

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

17 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

26 100. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
27 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
28 above, including but not limited to, overtime wages, minimum wages, and/or meal and rest

1 period premium wages, either at the time of discharge, or within seventy-two (72) hours of their
2 leaving Defendants' employ.

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

9 **COLLECTING OR RECEIVING WAGES ALREADY PAID**

10 **VIOLATION OF LABOR CODE SECTION 221 AND 224**

11 102. At all times relevant herein, California Labor Code section 221 provides that it
12 shall be unlawful for any employer to collect or receive from an employee any part of wages
13 theretofore paid by said employer to said employee. California Labor Code section 224 also
14 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
15 deduction is expressly authorized in writing by the employee."

16 103. During the relevant time period, Defendants unlawfully deducted a portion of
17 wages previously paid to Plaintiff and other non-party Aggrieved Employees in violation of
18 California Labor Code section 221. Defendants systematically, and on a company-wide basis,
19 required employees to pay for uniform laundering by a provider procured by the company.
20 Plaintiff and other non-party Aggrieved Employees were required to pay \$7.00 weekly charge,
21 even if they did not wish to use the service due to concerns with quality.

22 104. Accordingly, during the relevant time period, Defendants unlawfully deducted a
23 portion of wages previously paid to Plaintiff and other non-party Aggrieved Employees in
24 violation of California Labor Code section 221. Defendants periodically, and on a company-
25 wide basis, deducted wages from Plaintiff's and other non-party Aggrieved Employees'
26 paychecks for uniform laundering. Plaintiff and other non-party Aggrieved Employees had
27 deductions on their paychecks by Defendants, denoted on their wage statements as "UNIFORM,"
28 for these uniform items, which amounted to a deduction in wages. Such deductions were not

1 always expressly authorized in writing by Plaintiff and other non-party Aggrieved Employees.
2 These deductions were not expressly authorized in writing by other non-party Aggrieved
3 Employees. Thus, Defendants' policy of deducting these payments from Plaintiff and other
4 non-party Aggrieved Employees' wages constitutes an unlawful deduction of wages in violation
5 of California Labor Code sections 221 and 224.

6 105. Defendants' conduct as alleged herein violates California Labor Code sections
7 221 and 224. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
8 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

9 **SECRET PAYMENT OF A LOWER WAGE**

10 **VIOLATION OF LABOR CODE SECTION 223**

11 106. At all times, California Labor Code section 223 makes it unlawful for an
12 employer to secretly pay wages lower than required by statute while purporting to pay legal
13 wages.

14 107. During the relevant time period, as stated, Defendants implemented a policy of
15 deducting \$7.00 uniform laundering fees (*see supra*) from employees' wages, which, on
16 information and belief, resulted in the payment of less than statutorily required wages to
17 Plaintiff and other non-party Aggrieved Employees. In doing so, Defendants acted with the
18 intent to deprive Plaintiff and other non-party Aggrieved Employees of statutory wages,
19 including, but not limited to, overtime wages and minimum wages, to which they were entitled
20 to under California law. Thus, Defendants paid Plaintiff and other non-party Aggrieved
21 Employees lower wages than those they were entitled to while purporting that other non-party
22 Aggrieved Employees were properly paid.

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

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1 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION**

2 **VIOLATION OF LABOR CODE SECTION 222.5**

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

6 110. During the relevant time period, Defendants implemented, on a company-wide
7 basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo
8 mandatory drug tests and/or physical examinations, but required them to do so at their own
9 expense. As stated, upon information and belief, Defendants had a company-wide policy
10 requiring that other non-party Aggrieved Employees travel to a specified medical facility on
11 their own time and use their own means of transportation to undergo drug testing and/or physical
12 examinations. At all times, Defendants were in control of scheduling the date and time for the
13 drug testing and/or physical examinations, selecting the provider/facility where the drug testing
14 and/or physical examinations were to take place, and determining the scope of the drug test
15 and/or physical examinations.

16 111. However, Defendants did not compensate other non-party Aggrieved Employees
17 for the time they spent traveling to and from their drug tests and/or physical examinations, or
18 for the time they spent undergoing the testing and/or examinations, or reimburse them for the
19 travel expenses they incurred getting to and from the medical facilities. Defendants' policy
20 and/or practice of not paying for all costs other non-party Aggrieved Employees incurred
21 obtaining mandatory drug tests and/or physical examinations is in violation of California Labor
22 Code section 222.5.

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

25 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

26 **VIOLATION OF LABOR CODE SECTION 2802**

27 113. At all times herein set forth, California Labor Code section 2802 provides that
28 an employer must reimburse employees for all necessary expenditures and losses incurred by

1 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
2 to prevent employers from passing off their cost of doing business and operating expenses on
3 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
4 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: “[w]hen the
5 employer requires the use of tools or equipment or they are necessary to the performance of a
6 job, such tools and equipment shall be provided and maintained by the employer, except that an
7 employee whose wages are at least two (2) times the minimum wage may provide and maintain
8 hand tools and equipment customarily required by the particular trade or craft.”

9 114. First, Defendants required Plaintiff and other non-party Aggrieved Employees to
10 wear uniform shirts bearing the company logo on a daily basis, but failed to provide Plaintiff
11 and other non-party Aggrieved Employees with uniform cleaning services or reimburse them
12 for cleaning expenses incurred. For example, due to the nature of his work, Plaintiff’s uniforms
13 would become dirty with grime such that he was unable to mix these clothes in with his other
14 laundry. As a result, he had to wash his uniform items separately from any other items, thus
15 incurring additional laundry expenses. Moreover, as stated, Defendants automatically deducted
16 \$7.00 per pay period from wages earned by Plaintiff and other non-party Aggrieved Employees
17 for a uniform cleaning and maintenance service, regardless of whether or not the employees
18 utilized the service.

19 115. Second, as stated, Defendants had a company-wide policy of requiring other non-
20 party Aggrieved Employees to travel in their own personal vehicles to medical facilities to
21 undergo mandatory drug testing and/or physical examinations, but did not reimburse them for
22 their travel expenses. At all times, Defendants were control of scheduling the date and time for
23 the testing and/or physical examinations, selecting the provider or facility where the testing
24 and/or physical examinations were to take place, and determining the scope of the testing and/or
25 physical examinations. Defendants gave other non-party Aggrieved Employees strict
26 instructions to obtain drug testing and/or physical examinations, and other non-party Aggrieved
27 Employees underwent the examinations and/or testing for the sole benefit of Defendants.
28 Although Defendants required other non-party Aggrieved Employees to use their own vehicles

1 or obtain alternate transportation to undergo physical examinations and/or drug testing,
2 Defendants never reimbursed them for their travel expenses.

3 116. Third, on a company-wide basis, Defendants mandated that Plaintiff and other
4 non-party Aggrieved Employees purchase special safety shoes, such as steel-toed boots, which
5 they were required to wear while at work. Plaintiff and other non-party Aggrieved Employees
6 purchased steel-toed boots to wear inside Defendants' facilities, but were not reimbursed for
7 these costs.

8 117. Defendants could have provided Plaintiff and other non-party Aggrieved
9 Employees with the actual tools for use on the job, such as company vehicles and steel-toed
10 boots, or, Defendants could have reimbursed them for the costs of laundering services, travel
11 expenses, mileage, and steel-toed boots. Instead, Defendants passed these operating costs off
12 onto Plaintiff and other non-party Aggrieved Employees. At all relevant times, Plaintiff and
13 other non-party Aggrieved Employees did not earn at least two (2) times the minimum wage.

14 118. Defendants' company-wide policy and/or practice of passing on their operating
15 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
16 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and other
17 non-party Aggrieved Employees for necessary business-related expenses and costs. Plaintiff
18 and other non-party Aggrieved Employees are therefore entitled to recover civil penalties
19 pursuant to Labor Code sections 2699(a), (f), and (g).

20 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
21 **EMPLOYMENT - VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

22 119. California's Wage Theft Prevention Act was enacted to ensure that employers
23 provide employees with basic information material to their employment relationship at the time
24 of hiring, and to ensure that employees are given written and timely notice of any changes to
25 basic information material to their employment. Codified at California Labor Code section
26 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must
27 provide written notice to employees containing basic and material payroll information,
28 including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour,

1 shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the
2 regular payday designated by the employer, and any allowances claims as part of the minimum
3 wage, including meal or lodging allowances.

4 120. During the relevant time period, Defendants failed to provide Plaintiff and other
5 non-party Aggrieved Employees with written notice that lists all the requisite information set
6 forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide
7 Plaintiff and other non-party Aggrieved Employees with the hourly rate(s) of pay and overtime
8 rate(s) of pay, in violation of section 2810.5(a)(1)(A).

9 121. Defendants' failure to provide Plaintiff and other non-party Aggrieved
10 Employees with written notice of basic information regarding their employment with
11 Defendants are in violation of Labor Code section 2810.5. Plaintiff and other non-party
12 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
13 sections 2699(a), (f), and (g).

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

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

16 122. At all times herein set forth, California Labor Code section 6401 provides that
17 employers must furnish and use safety devices and safeguards, and adopt and use practices,
18 means, methods, operations, and processes which are reasonably adequate to render the
19 employment and place of employment safe and healthy. California Labor Code Section 6401
20 further provides that an employer must to everything reasonably necessary to protect the life,
21 safety and health of its employees. California Labor Code section 6403(a) requires that
22 employers provide and use safety devices and safeguards reasonably adequate to render the
23 employment and place of employment safe.

24 123. Defendants, on a company-wide basis, failed to provide Plaintiff and other non-
25 party Aggrieved Employees with safety devices and safeguards, including personal protective
26 equipment such as steel-toed boots, to keep them safe in the workplace. Despite the fact that
27 Defendants required employees to wear certain personal protective equipment, including steel-
28 toed boots, Defendants failed to provide such reasonably necessary equipment to Plaintiff and

1 other non-party Aggrieved Employees to keep them safe.

2 124. Defendants' failure to provide Plaintiff and other non-party Aggrieved
3 Employees with safety devices and safeguards for the workplace violates Labor Code sections
4 6401 and 6403. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
5 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

6 **REQUEST FOR JURY TRIAL**

7 Plaintiff requests a trial by jury.

8 **PRAYER FOR RELIEF**

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

11 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
12 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

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

14 2. That the Court declare, adjudge and decree that Defendants violated the
15 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
16 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
17 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
18 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
19 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
20 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
21 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
22 employment); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly
23 paying wages lower than required by statute); 222.5 (by failing to pay the costs of mandatory
24 drug testing and/or physical examinations); 2802 (by failing to reimburse business expenses);
25 2810.5 (by failing to provide written notice of information material to employment); and 6401
26 and 6403 (by failing to provide safety devices and safeguards).

27 3. For civil penalties, pursuant to California Labor Code sections 210, 225.5, 226.3,
28 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201,

202, 203, 204, 221, 224, 223, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 221, 224, 223, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403;

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

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

Dated: December 28, 2020

Respectfully submitted,

Capstone Law APC

By: 

Bevin Allen Pike
Orlando Villalba
Daniel Jonathan
Trisha K. Monesi

Attorneys for Plaintiff Evelio Hernandez

EXHIBIT “1”



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MICHELLE KENNEDY
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October 22, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Evelio Hernandez v. Alco Iron & Metal Co.*

Dear PAGA Administrator:

This office represents Evelio Hernandez in connection with his claims under the California Labor Code. Mr. Hernandez was an employee of ALCO IRON & METAL CO ("ALCO").

The employer may be contacted directly at the address below:

ALCO IRON & METAL CO.
2140 DAVIS STREET
SAN LEANDRO, CA 94577

Mr. Hernandez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Hernandez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by ALCO as a non-exempt, hourly paid employee in California 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.

ALCO employed Mr. Hernandez as an hourly paid, non-exempt employee from approximately December 2013 to May 5, 2020. Mr. Hernandez worked for ALCO as a Material Separator at its location in San Leandro, California. During his employment, Mr. Hernandez typically worked nine (9) hours or more per day, and six (6) days or more per week. At the time Mr. Hernandez's employment with ALCO ended, he earned approximately \$17.50 per hour. His job duties included, without limitation, unloading materials dropped off by customers, inspecting and sorting such materials, and operating a forklift.

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

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

ALCO IRON & METAL CO. is a California corporation. ALCO is a metal recycling company, and also provides wholesale distribution of scrap and waste materials. Upon information and belief, ALCO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Leandro, California, for all non-exempt, hourly paid employees working for ALCO in California, including Mr. Hernandez and other aggrieved employees. At all relevant times, ALCO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Hernandez and other aggrieved employees, regardless of their location or position.

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

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

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

ALCO willfully failed to pay all overtime wages owed to Mr. Hernandez and other aggrieved employees. During the relevant time period, Mr. Hernandez 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

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

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, ALCO had a company-wide practice and/or policy of requiring Mr. Hernandez and other aggrieved employees to perform work-related tasks while off-the-clock, such as operating forklifts and closing the gates to the yard. For example, Mr. Hernandez would spend about five (5) minutes each time his supervisor asked him to move a forklift blocking the workplace yard before he had clocked in for his shift and asked him to close the yard gate after he had clocked out for his shift. However, ALCO failed to track this time spent working before and after scheduled shifts, and Mr. Hernandez and other aggrieved employees received no compensation for this time.

Second, during the relevant period, ALCO had, and continues to have, a company-wide policy and/or practice of understaffing its worksites while assigning heavy workloads, which—in conjunction with ALCO's company-wide practice of failing to adhere to a schedule of meal periods—resulted in a failure to provide Mr. Hernandez and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Mr. Hernandez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Hernandez and other aggrieved employees would have their meal periods interrupted or cut short to assist customers dropping off materials. Furthermore, ALCO had a policy and/or practice of requiring that Mr. Hernandez and other aggrieved employees carry a company-issued radio at all times in order to respond to calls from supervisors and management, even during unpaid meal periods. ALCO's supervisors and management contacted Mr. Hernandez and other aggrieved employees on their radios during their meal periods. Thus, Mr. Hernandez and other aggrieved employees missed or had meal periods interrupted in order to complete their assigned workloads. ALCO did not pay Mr. Hernandez and other aggrieved employees for the time they continued to perform tasks during meal periods.

ALCO knew or should have known that as a result of these company-wide practices and/or policies, Mr. Hernandez and/or other aggrieved employees were performing their assigned duties off-the-clock and/or were working during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Hernandez and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Hernandez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, ALCO did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, ALCO paid other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ALCO failed to incorporate all compensation, including shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, ALCO failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 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, Mr. Hernandez and other aggrieved employees were required to perform work off-the-clock by handling duties assigned by ALCO’s management before and after their scheduled shifts, time for which they were not paid. As also stated above, due to ALCO’s policy and/or practice of understaffing while assigning heavy workloads, combined with its requirement that employees carry their radios at all times, Mr. Hernandez and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Furthermore, on information and belief, ALCO maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, ALCO 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. On information and belief, ALCO gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of ALCO. Other aggrieved employees were required to travel in their personal vehicles or obtain alternate transportation and spend time undergoing the requisite testing and/or examinations. However, ALCO did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the mandatory drug testing and/or physical examinations.

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

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

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

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the

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

As stated, ALCO had, and continues to have, a company-wide policy and/or practice of understaffing while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Mr. Hernandez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, as stated above, ALCO's requirement that employees carry radios at all times prevented Mr. Hernandez and other aggrieved employees from taking compliant meal periods. As a result, Mr. Hernandez and/or other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. For example, during his employment, Mr. Hernandez would have his meal periods interrupted by his supervisors via radio approximately four (4) times per week to discuss work-related matters and his meal periods were cut short by 20 minutes at least once per week to assist with customers during busy periods. Mr. Hernandez also received late meal periods approximately twice per week due to the heavy workload and lack of meal period coverage.

In addition, ALCO did not provide Mr. Hernandez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Hernandez worked shifts in excess of ten (10) or more hours per day, but was rarely provided a second 30-minute meal period. Mr. Hernandez 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.

Moreover, ALCO implemented a company-wide policy of requiring all newly-hired employees, including Mr. Hernandez and other aggrieved employees, to sign blanket meal period waivers at or near their time of hire. ALCO took the position that non-exempt, hourly paid employees had waived their rights to second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. ALCO's presumption that second meal periods would not be provided for shifts in excess of ten (10) hours but less than twelve (12) hours due to blanket second meal period waivers, and imposition of the burden on employees to revoke the meal period waiver in writing, discouraged and prevented Mr. Hernandez and other aggrieved employees from taking all second meal periods to which they were entitled.

In addition, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay. *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)).

That ALCO require employees to sign meal period waivers in advance (as opposed to on a specific work day) renders them invalid and unenforceable, because ALCO's obligation to provide Mr. Hernandez and other aggrieved employees with meal periods did not arise until ALCO had employed them for a full five (5) hours.

As a result of ALCO's practices and/or policies, Mr. Hernandez and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted or cut short, and/or had to forgo their meal periods altogether. ALCO knew or should have known that as a result of its policies, Mr. Hernandez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. ALCO further knew or should have known that it did not pay Mr. Hernandez and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, ALCO engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Mr. Hernandez and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that ALCO did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, ALCO did not pay other aggrieved employees at the correct rate of pay for premium wages because ALCO systematically failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, ALCO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Hernandez and other aggrieved employees are 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 sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide 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. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

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

During the relevant time period, ALCO regularly failed to authorize and permit Mr. Hernandez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, ALCO’s policies and/or practice of understaffing and assigning heavy workloads and requirement that employees carry radios at all times, prevented Mr. Hernandez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. ALCO also failed to schedule rest periods, which, coupled with ALCO’s failure to provide adequate rest period coverage, further led to Mr. Hernandez and other aggrieved employees not being authorized and permitted to take rest periods. ALCO also had a policy or practice of failing authorize and permit Mr. Hernandez and other aggrieved employees to take third rest periods when they worked in excess of 10 hours in one day.

Furthermore, on information and belief, during the relevant time period, ALCO maintained a company-wide on-premises rest period policy, which mandated that Mr. Hernandez and other aggrieved employees remain on ALCO’s premises during their rest periods. Because Mr. Hernandez and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, ALCO effectively maintained control over Mr. Hernandez and other aggrieved employees during rest periods.

As a result, Mr. Hernandez and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, throughout his employment, Mr. Hernandez’s rest periods were interrupted by supervisors and management requiring him to respond to questions regarding work-related tasks. Moreover, he often missed his second rest periods and did not receive third rest periods when he worked in excess of 10 hours in a day.

ALCO 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. Alternatively, to the extent that ALCO did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, ALCO did not pay other aggrieved employees at the correct rate of pay for premium wages because ALCO failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. ALCO has not provided Mr. Hernandez 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, ALCO has knowingly and intentionally provided Mr. Hernandez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ALCO issued uniform wage statements to Mr. Hernandez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct address of the legal entity that is the employer; 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, ALCO violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because ALCO did not record the time Mr. Hernandez and other aggrieved employees spent working off the clock, ALCO did not list the correct amount of gross wages and net wages earned by Mr. Hernandez and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, ALCO failed to accurately list the total number of the hours worked by Mr. Hernandez 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 ALCO did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, ALCO 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). ALCO 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).

Third, and separate from these violations, ALCO issued uniform wage statements to Mr. Hernandez and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, ALCO systematically, and on a company-wide basis, issued wage statements to Mr. Hernandez and other aggrieved employees that failed to list ALCO's address. *See wage statement excerpt below.*

Alco Iron & Metal Co

EMPLOYEE ID	EMPLOYEE NAME	DATE	VACATION	SICK	PTO	START PERIOD	END PERIOD
	Evelio Broks	1/10/2020		8.00	122.47	1/1/2020	1/7/2020
EARNINGS		TAXES		DEDUCTIONS		BENEFITS	

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 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. . . .” At all relevant times, and in violation of Labor Code section 1174(d), ALCO willfully failed to maintain accurate payroll records for Mr. Hernandez 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 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. During the relevant time period, ALCO failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Hernandez and other aggrieved employees, in violation of section 1198. Furthermore, in light of ALCO’s failure to provide Mr. Hernandez and other aggrieved employees with timely, compliant second 30-minute meal periods to which they were entitled, ALCO kept no records of meal start and end times for second meal periods.

Mr. Hernandez 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, ALCO failed to pay Mr. Hernandez 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.

Mr. Hernandez 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.

ALCO willfully failed to pay Mr. Hernandez and other aggrieved employees who are no longer employed by ALCO 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 ALCO's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Hernandez 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 §§ 221 and 224 – Unlawful Deductions

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

ALCO systematically, and on a company-wide basis, required employees to pay for uniform laundering by a provider procured by the company. Mr. Hernandez and/or other aggrieved employees were required to pay a \$7.00 weekly charge, even if they did not wish to use the service due to concerns with quality.

Accordingly, during the relevant time period, ALCO unlawfully deducted a portion of wages previously paid to Mr. Hernandez and/or other aggrieved employees in violation of California Labor Code section 221. ALCO periodically, and on a company-wide basis, deducted wages from Mr. Hernandez's and/or other aggrieved employees' paychecks for uniform laundering. Mr. Hernandez and/or other aggrieved employees had deductions on their paychecks by ALCO, denoted on their

wage statements as “UNIFORM,” for these uniform items, which amounted to a deduction in their wages. Such deductions were not always expressly authorized in writing by Mr. Hernandez and/or other aggrieved employees.

ALCO’s policy of deducting the costs of the uniform laundering program from Mr. Hernandez’s and/or other aggrieved employees’ paychecks without their written authorization constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Hernandez and/or other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

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

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

During the relevant time period, as stated above, ALCO implemented a policy of deducting \$7.00 uniform laundering fees (*see supra*) from employees’ wages, which, on information and belief, resulted in the payment of less than statutorily required wages to Mr. Hernandez and/or other aggrieved employees. In doing so, ALCO acted with the intent to deprive Mr. Hernandez and/or other aggrieved employees of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law. Thus, ALCO paid Mr. Hernandez and/or other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Hernandez and/or other aggrieved employees were properly paid.

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

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

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

During the relevant time period, ALCO implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory physical examination and/or drug test, but required them to do so at their own expense. As stated, upon information and belief, ALCO had a company-wide policy requiring that all employees travel to a specified medical facility using their own personal vehicles to undergo physical examinations and/or drug testing. At all times, ALCO was in control of scheduling the date and time for the examination and/or testing, selecting the provider/facility where the examination and/or testing was to take place, and determining the scope of the examination and/or testing.

Other aggrieved employees were required to travel in their own personal vehicles to designated medical facilities and spend time undergoing ALCO’s mandatory drug test and/or physical examination. However, ALCO did not compensate 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. ALCO’s policy and/or not paying for all costs other

aggrieved employees incurred obtaining mandatory physical examinations and/or drug testing is in violation of California Labor Code section 222.5.

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, ALCO required Mr. Hernandez and other aggrieved employees to wear uniform shirts bearing the company logo on a daily basis, but failed to provide Mr. Hernandez and other aggrieved employees with uniform cleaning services or reimburse them for cleaning expenses incurred. For example, due to the nature of his work, Mr. Hernandez's uniform shirts would become dirty with grime such that he was unable to mix these clothes in with his other laundry. As a result, he had to wash his uniform items separately from any other items, thus incurring additional utility and laundry expenses. Moreover, ALCO automatically deducted \$7.00 per pay period from wages earned by Mr. Hernandez and other aggrieved employees for a uniform cleaning and maintenance service, regardless of whether or not the employees utilized the service.

Second, as stated, ALCO had a company-wide policy of requiring other aggrieved employees to travel in their own personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, ALCO was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. ALCO gave other aggrieved employees strict instructions to obtain drug testing and physical examinations, and other aggrieved employees underwent the testing and physical examinations for the sole benefit of ALCO. Although ALCO required other aggrieved employees to undergo drug testing, ALCO never reimbursed them for all of their travel expenses.

Third, on a company-wide basis, ALCO mandated that Mr. Hernandez and other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while at work. Mr. Hernandez and/or other aggrieved employees purchased steel-toed boots to wear inside ALCO's facilities, but were not reimbursed for these costs.

ALCO could have provided Mr. Hernandez and other aggrieved employees with the actual tools for use on the job, such as company vehicles and steel-toed boots, or ALCO could have fully reimbursed employees for the costs of laundering services, travel expenses, mileage, and steel-toed boots. Instead, ALCO passed these operating costs off onto Mr. Hernandez and other aggrieved employees.

At all relevant times, Mr. Hernandez and other aggrieved employees did not earn at least two (2) times the minimum wage.

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

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

ALCO failed to provide Mr. Hernandez and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C) on a company-wide basis. Specifically, ALCO failed to provide Mr. Hernandez and other aggrieved employees with the hourly rate(s) of pay and overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). ALCO's failure to provide Mr. Hernandez and other aggrieved employees with written notice of basic information regarding their employment with ALCO is in violation of Labor Code section 2810.5.

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

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

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

ALCO, on a company-wide basis, failed to provide Mr. Hernandez and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that ALCO required employees to wear certain personal protective equipment,

including steel-toed boots, ALCO failed to provide such reasonably necessary equipment to other aggrieved employees to keep them safe.

ALCO's failure to provide Mr. Hernandez and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Hernandez and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Mr. Hernandez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Hernandez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against ALCO for violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 222.5, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

Pre-Litigation Demand

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

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

1. ALCO shall pay Mr. Hernandez and all other aggrieved employees employed by ALCO at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. ALCO 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. ALCO shall conduct a survey or interview all current and former aggrieved employees in California who worked for ALCO 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 uniform maintenance and laundering costs, mandatory medical examinations, boot expenses, travel, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. ALCO 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. ALCO 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. ALCO shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for ALCO's benefit, including, but not limited to, uniform maintenance and laundering costs, mandatory medical examinations, boot expenses, and travel expenses, as required by Labor Code sections 222.5 and 2802.
6. ALCO shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. ALCO shall provide Mr. Hernandez and all aggrieved employees employed by ALCO 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. ALCO shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful practice of deducting wages for uniform laundering fees, including unlawful deductions (Labor Code sections 221 and 224) and secret payment of lower wages (Labor Code section 223).
9. ALCO shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
10. ALCO shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
11. ALCO shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
12. ALCO shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*,

including, but not limited to, penalties under Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 1-2001, section 20.

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

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

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

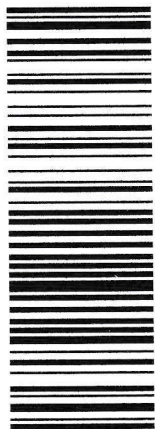
Best Regards,

A handwritten signature in black ink, appearing to read 'Michelle Kennedy', with a stylized flourish at the end.

Michelle Kennedy

Copy: ALCO IRON & METAL CO. (via U.S. Certified Mail)

CERTIFIED MAIL®



7020 0090 0001 3768 0768

tone
LAW APC
ury Park East, Ste 1000
ss, CA 90067

ALCO IRON & METAL CO.
2140 DAVIS STREET
SAN LEANDRO, CA 94577



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9590 9402 5816 0034 8470 04

2. Article Number (Transfer from service label)

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

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A. Signature

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- ☐ Agent
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B. Received by (Printed Name)

C. Date of Delivery

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

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Total Postage and Fees

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Hernandez v. Alco
Iron & Metal Co.

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1. Article Addressed to:

ALCO IRON & METAL CO.
2140 DAVIS STREET
SAN LEANDRO, CA 94577



9590 9402 5816 0034 8470 04

2. Article Number (Transfer from service label)

7020 0090 0001 3768 0768

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]* C19

☒ Agent

☐ Addressee

B. Received by (Printed Name)

R. RODRIGUEZ

C. Date of Delivery

10/26/20

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

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