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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

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

JORGE AGUILERA RODRIGUEZ,
individually, and on behalf of other
members of the general public similarly
situated,

Plaintiff,

vs.

IMPERIAL WESTERN PRODUCTS,
INC., A CALIFORNIA CORPORATION, a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: CVRI2000071

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

- (1) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (2) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (3) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (4) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (5) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (6) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (7) Violation of California Labor Code §§ 551, 552, and 558 (Failure to Provide One Day's Rest in Seven);

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- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

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

4 **JURISDICTION AND VENUE**

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

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

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

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

7 **THE PARTIES**

8 4. Plaintiff Jorge Aguilera Rodriguez is a resident of Coachella, in Riverside
9 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Laborer
10 from approximately September 2017 to April 2020. Plaintiff worked for Defendants at their
11 location in Coachella, California. During his employment, Plaintiff typically worked eight (8)
12 hours per day, and five (5) or more days per week. Plaintiff's primary job duties included,
13 without limitation, manufacturing animal feed, operating heavy machinery, and loading and
14 unloading delivery trucks with animal feed.

15 5. IMPERIAL WESTERN PRODUCTS, INC., A CALIFORNIA
16 CORPORATION was and is, upon information and belief, a California corporation, and at all
17 times hereinafter mentioned, an employer whose employees are engaged throughout this
18 county, the State of California, or the various states of the United States of America.

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

23 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
24 were the partners, agents, owners, or managers of IMPERIAL WESTERN PRODUCTS, INC.,
25 A CALIFORNIA CORPORATION at all relevant times.

26 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
27 acts and omissions alleged herein was performed by, or is attributable to, IMPERIAL
28 WESTERN PRODUCTS, INC., A CALIFORNIA CORPORATION and/or DOES 1 through

1 10 (collectively, "Defendants" or "IMPERIAL WESTERN"), each acting as the agent,
2 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
3 Defendants and was acting within the course and scope of such agency, employment, joint
4 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
5 and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

13 **GENERAL ALLEGATIONS**

14 11. Defendants are a major manufacturer and supplier of animal feed commodities,
15 biodiesel fuel, tire and pipe lubricants, and provide waste recycling services. Upon
16 information and belief, Defendants maintain a single, centralized Human Resources ("HR")
17 department at their company headquarters in Coachella, California, which is responsible for
18 the recruiting and hiring of new employees, and communicating and implementing
19 Defendants' company-wide policies, including timekeeping policies and meal and rest period
20 policies, to employees throughout California.

21 12. In particular, Plaintiff and class members, on information and belief, received
22 the same standardized documents and/or written policies. Upon information and belief, the
23 usage of standardized documents and/or written policies, including new-hire documents,
24 indicate that Defendants dictated policies at the corporate level and implemented them
25 company-wide, regardless of their employees' assigned locations or positions. Upon
26 information and belief, Defendants set forth uniform policies and procedures in several
27 documents provided at an employee's time of hire.

28 13. Upon information and belief, Defendants maintain a centralized Payroll

1 department at their company headquarters in Coachella, California, which processes payroll
2 for all non-exempt, hourly paid employees working for Defendants at their various locations
3 and jobsites in California, including Plaintiff and class members. Based upon information and
4 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
5 employees in California, irrespective of their work locations. Upon information and belief,
6 Defendants process payroll for departing employees in the same manner throughout the State
7 of California, regardless of the manner in which each employee's employment ends.

8 14. Defendants continue to employ non-exempt or hourly paid employees in
9 California.

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

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

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

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

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

1 periods and that Plaintiff and class members were not provided with all meal periods or
2 payment of one (1) additional hour of pay at their regular rates of pay when they did not
3 receive a timely, uninterrupted, thirty (30) minute meal period.

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

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

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

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

28 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to timely payment of wages
2 during their employment. In violation of the California Labor Code, Plaintiff and class
3 members did not receive payment of all wages, including, but not limited to, minimum wages
4 and/or meal and rest period premium wages, within permissible time periods.

5 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to one day's rest in seven.
7 In violation of the California Labor Code, Defendants required Plaintiff and class members to
8 work more than six consecutive days without a day of rest, where the total hours worked
9 exceeded 30 hours in any week or six hours in any one day thereof.

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

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

21 **PAGA REPRESENTATIVE ALLEGATIONS**

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

28 29. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any

1 person who was employed by the alleged violator and against whom one or more of the
2 alleged violations was committed.”

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

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

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

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

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

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

- 1 (a) The aggrieved employee or representative shall give written notice by
2 online filing with the LWDA and by certified mail to the employer of
3 the specific provisions of the California Labor Code alleged to have
4 been violated (other than those listed in Section 2699.5), including the
5 facts and theories to support the alleged violation.
- 6 (b) An aggrieved employee's notice filed with the LWDA pursuant to
7 2699.3(c) and any employer response to that notice shall be
8 accompanied by a filing fee of seventy-five dollars (\$75).
- 9 (c) The employer may cure the alleged violation within thirty-three (33)
10 calendar days of the postmark date of the notice sent by the aggrieved
11 employee or representative. The employer shall give written notice
12 within that period of time by certified mail to the aggrieved employee or
13 representative and by online filing with the LWDA if the alleged
14 violation is cured, including a description of actions taken, and no civil
15 action pursuant to Section 2699 may commence. If the alleged violation
16 is not cured within the 33-day period, the aggrieved employee may
17 commence a civil action pursuant to Section 2699.

18 33. On November 2, 2020, Plaintiff provided written notice by online filing to the
19 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
20 Code alleged to have been violated, including facts and theories to support the alleged
21 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
22 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
23 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
24 Plaintiff PAGA Case Number LWDA-CM-811352-20. A true and correct copy of Plaintiff's
25 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

1 35. Thus, Plaintiff has satisfied the administrative prerequisites under California
2 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
3 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
4 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

20 39. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
21 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
22 private attorney general, seeks assessment and collection of civil penalties for himself, all
23 other aggrieved employees, and the State of California against Defendants for violations of
24 California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516,
25 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

26 **CLASS ACTION ALLEGATIONS**

27 40. Plaintiff brings this action on his own behalf, as well as on behalf of each and
28 all other persons similarly situated, and thus seeks class certification under California Code of

1 Civil Procedure section 382.

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

4 42. Plaintiff's proposed class consists of and is defined as follows:

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

7 43. Plaintiff's proposed subclass consists of and is defined as follows:

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

11 44. Members of the Class and Subclass are referred to herein as "class members."

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

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

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

Code section 226(a);

- (f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (g) Whether Defendants failed to pay earned minimum wages and/or meal and rest period premium wages due to Plaintiff and class members upon their discharge;
- (h) Whether Defendants failed timely to pay minimum wages and/or meal and rest period premium wages due to Plaintiff and class members during their employment;
- (i) Whether Defendants failed to provide Plaintiff and class members to take one day's rest in seven;
- (j) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (k) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (l) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

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

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately

1 protect the interests of each class member with whom he has a well-
2 defined community of interest, and Plaintiff's claims (or defenses, if
3 any) are typical of all class members as demonstrated herein.

4 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
5 protect the interests of each class member with whom he has a well-
6 defined community of interest and typicality of claims, as demonstrated
7 herein. Plaintiff acknowledges that he has an obligation to make known
8 to the Court any relationship, conflicts or differences with any class
9 member. Plaintiff's attorneys, the proposed class counsel, are versed in
10 the rules governing class action discovery, certification, and settlement.
11 Plaintiff has incurred, and throughout the duration of this action, will
12 continue to incur costs and attorneys' fees that have been, are, and will
13 be necessarily expended for the prosecution of this action for the
14 substantial benefit of each class member.

15 (d) Superiority: The nature of this action makes the use of class action
16 adjudication superior to other methods. A class action will achieve
17 economies of time, effort, and expense as compared with separate
18 lawsuits, and will avoid inconsistent outcomes because the same issues
19 can be adjudicated in the same manner and at the same time for the
20 entire class.

21 (e) Public Policy Considerations: Employers in the State of California
22 violate employment and labor laws every day. Current employees are
23 often afraid to assert their rights out of fear of direct or indirect
24 retaliation. Former employees are fearful of bringing actions because
25 they believe their former employers might damage their future
26 endeavors through negative references and/or other means. Class
27 actions provide the class members who are not named in the complaint
28 with a type of anonymity that allows for the vindication of their rights

1 while simultaneously protecting their privacy.

2 **FIRST CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid**

4 **Minimum Wages**

5 **(Against all Defendants)**

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

8 49. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
9 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
10 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
11 fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as “the time
12 during which an employee is subject to the control of an employer, and includes all the time
13 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
14 Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

15 50. Defendants had, and continue to have, a company-wide policy and/or practice
16 of requiring employees to travel to a medical facility on their own time and using their own
17 personal vehicles to undergo mandatory drug testing and/or physical examinations. At all
18 times, Defendants were in control of scheduling the date and time for the testing and/or
19 physical examinations, selecting the provider or facility where the testing and/or physical
20 examinations were to take place, and determining the scope of the testing and/or physical
21 examinations. Defendants gave Plaintiff and class members strict instructions to obtain drug
22 testing and physical examinations, and Plaintiff and class members underwent the
23 examinations and testing for the sole benefit of Defendants.

24 51. For example, in order to undergo Defendants’ mandatory drug test, Plaintiff
25 followed Defendants’ instructions and traveled 16-20 miles in his personal vehicle, for
26 approximately 30-40 minutes total, to and from the medical facility authorized by Defendants,
27 an Eisenhower Occupational Health Services clinic in La Quinta, California, spent
28 approximately two (2) hours waiting at the medical facility, and spent 30 minutes undergoing

1 the 10-Panel drug screening. Additionally, Defendants required Plaintiff to undergo a
2 mandatory physical examination, which entailed Plaintiff performing a series of physical
3 fitness exercises administered by one of Defendants' human resources representatives, for
4 approximately 30 minutes. However, Defendants did not compensate Plaintiff and class
5 members for the time they spent traveling to and from the medical facilities and undergoing
6 the mandatory drug testing and physical examinations.

7 52. As a result, Defendants have failed to pay Plaintiff and class members at least
8 minimum wages for those hours worked off-the-clock in violation of California Labor Code
9 sections 1182.12, 1194, 1197, 1197, and 1198. Pursuant to California Labor Code section
10 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount
11 equal to the wages unlawfully unpaid and interest thereon.

12 **SECOND CAUSE OF ACTION**

13 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

14 **Violations**

15 **(Against all Defendants)**

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

18 54. At all relevant times herein set forth, California Labor Code section 512(a)
19 provides that an employer may not require, cause, or permit an employee to work for a period
20 of more than five (5) hours per day without providing the employee with a meal period of not
21 less than thirty (30) minutes, except that if the total work period per day of the employee is
22 not more than six (6) hours, the meal period may be waived by mutual consent of both the
23 employer and the employee. Under California law, first meal periods must start after no more
24 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
25 2012).

26 55. At all relevant times herein set forth, California Labor Code sections 226.7,
27 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
28 meal period mandated by an applicable order of the IWC.

1 56. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
2 the applicable IWC Wage Order require employers to provide a second meal period of not less
3 than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
4 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
5 hours worked is no more than twelve (12) hours, the second meal period may be waived by
6 mutual consent of the employer and the employee only if the first meal period was not waived.
7 Under California law, an employer cannot evade meal period requirements via the use of "on-
8 duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*,
9 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

10 57. During the relevant time period, Defendants had, and continue to have, a
11 company-wide policy and/or practice of understaffing their locations, while simultaneously
12 assigning heavy workloads, which prevented Plaintiff and class members from taking all
13 timely, uninterrupted meal periods to which they were entitled. Additionally, Defendants
14 failed to schedule meal periods, which resulted in Plaintiff and class members having to wait
15 extended periods of time before taking meal periods or missing their meal periods altogether.
16 For example, approximately once per month, Plaintiff was forced to work in excess of five (5)
17 hours before he was provided with a meal period. On other occasions, Plaintiff's meal periods
18 were interrupted or shortened twice per month by requests from Defendants' supervisors to
19 assist with unloading pallets or trucks that arrived during his meal periods.

20 58. To the extent Defendants required their employees to sign written "on-duty"
21 meal period agreements, such agreements were invalid under California law. Defendants'
22 "on-duty" meal period policy results from their own staffing and business decisions, not
23 because the nature of the work performed by Plaintiff and class members required a single-
24 employee staffing model. At those times, there were multiple employees employed by
25 Defendants at their locations that could have been scheduled to provide meal period coverage.
26 As Defendants' locations are located in well-populated cities and towns, Defendants'
27 locations were not located in some remote area. Further, the work of Defendants' employees
28 is not of the kind that could be said to meet the "nature of the work" exception. Plaintiff and

1 class members were responsible for operating machinery/tractors and loading/unloading
2 trucks, while performing other general laborer tasks. None of these tasks is akin to the kind
3 that the California Division of Labor Standards Enforcement ("DLSE") has found warrant an
4 "on-duty" meal period, such as transporting hazardous materials via vehicles that must be
5 monitored at all times pursuant to federal regulation. Therefore, Defendants' use of an "on-
6 duty" meal period is improper and unlawful. Because of Defendants' company-wide written
7 "on-duty" meal period policy, Plaintiff and class members did not receive all required off-duty
8 meal periods and did not receive premium pay for missed, late, or interrupted meal periods.

9 59. Additionally, Defendants did not provide Plaintiff and class members with
10 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
11 day. During his employment, Plaintiff worked shifts in excess of ten (10) hours or more hours
12 per day, but was not provided an uninterrupted second 30-minute meal period. For example,
13 Plaintiff was never given a second meal period even though he worked shifts of ten (10) hours
14 or more 1-2 times per week. Plaintiff and class members did not sign valid meal period
15 waivers on days that they were entitled to meal periods and were not relieved of all duties.

16 60. Furthermore, Defendants had a company-wide policy of requiring all newly
17 hired employees to sign blanket meal period waivers at or near their time of hire. Defendants
18 took the position that non-exempt, hourly paid employees had waived their rights to second
19 meal periods for the entirety of their employment and on that basis did not provide them with
20 all meal periods to which they were entitled. Defendants' presumption that second meal
21 periods would not be provided for shifts in excess of ten (10) hours but less than twelve (12)
22 hours due to use of blanket second meal period waivers, and imposition of the burden on
23 employees to revoke the meal period waiver in writing, discouraged and impeded Plaintiff and
24 class members from taking all second meal periods to which they were entitled.

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

1 [A]fter the meal break obligation is triggered . . . an employer is put to a
2 choice: it must (1) afford an off-duty meal period; (2) consent to a
3 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
4 obtain written agreement to an on-duty meal period if circumstances
5 permit. Failure to do one of these will render the employer liable for
6 premium pay.

7 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
8 require employees to sign meal period waivers in advance (as opposed to on a specific work
9 day) renders them invalid and unenforceable, because Defendants' obligation to provide
10 Plaintiff and class members with meal periods did not arise until Defendants had employed
11 them for a full five (5) hours.

12 62. At all times herein mentioned, Defendants knew or should have known that, as
13 a result of these policies, Plaintiff and class members were prevented from being relieved of
14 all duties and required to perform some of their assigned duties during meal periods.
15 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
16 members meal period premium wages when meal periods were late, interrupted, shortened, or
17 missed.

18 63. Furthermore, Defendants engaged in a company-wide practice and/or policy of
19 not paying all meal period premiums owed when compliant meal periods are not provided.
20 Because of this practice and/or policy, Plaintiff and class members have not received premium
21 pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide
22 Plaintiff and class members compliant meal periods in violation of California Labor Code
23 sections 226.7, 512, and 516 and failed to pay the full meal period premiums due.

24 64. Defendants' conduct violates the applicable IWC Wage Order, and California
25 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
26 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
27 rate of compensation for each work day that the meal period was not provided.

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1 **THIRD CAUSE OF ACTION**

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

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

6 66. At all relevant times herein set forth, the applicable IWC Wage Order and
7 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
8 members' employment by Defendants.

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

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

26 69. During the relevant time period, Defendants regularly failed to authorize and
27 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
28 period worked or major fraction thereof. As with meal periods, Defendants' company-wide

1 policy and/or practice of understaffing and assigning heavy workloads prevented Plaintiff and
2 class members from being relieved of all duty in order to take compliant rest periods.

3 Additionally, Defendants failed to adhere to a schedule of rest periods, which, coupled with
4 Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and class
5 members not being authorized and permitted to take compliant rest periods.

6 70. Furthermore, upon information and belief, Defendants maintained a company-
7 wide on-premises practice and/or policy requiring that Plaintiff and class members remain on
8 Defendants' premises during their rest periods. Because Plaintiff and class members were
9 restricted from leaving the premises during rest periods, they were denied the ability to use
10 their rest periods freely for their own purposes. Thus, Defendants effectively maintained
11 control over Plaintiff and class members during rest periods.

12 71. As a result of Defendants' practices and policies, Plaintiff and class members
13 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
14 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
15 Plaintiff missed rest periods at least six (6) times per week in order to complete all of the
16 work-related duties Defendants assigned to him. Additionally, Plaintiff did not receive a third
17 rest period when he worked shifts in excess of 10 hours.

18 72. Defendants have also engaged in a company-wide practice and/or policy of not
19 paying all rest period premiums owed when compliant rest periods are not authorized and
20 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
21 to pay them rest period premium wages due, in violation of Labor Code section 226.7, 516,
22 and the applicable IWC Wage Order.

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

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1 **FOURTH CAUSE OF ACTION**

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

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

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

12 76. At all relevant times, Defendants have knowingly and intentionally provided
13 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
14 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
15 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the
16 correct name of the legal entity that is the employer; and all applicable hourly rates in effect
17 during the pay period, including overtime rates of pay, and the corresponding number of hours
18 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
19 226(a)(5), 226(a)(8), and 226(a)(9).

20 77. Because Defendants did not record the time Plaintiff and Subclass members
21 spent working off-the-clock, Defendants did not list the correct amount of gross wages and net
22 wages earned by Plaintiff and Subclass members in compliance with section 226(a)(1) and
23 section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the
24 total number of hours worked by Plaintiff and Subclass members, in violation of section
25 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period
26 and the corresponding accurate number of hours worked at each hourly rate, in violation of
27 section 226(a)(9)).

28 78. Separate from these violations, Defendants issued uniform wage statements to

1 Plaintiff and Subclass members that failed to correctly list the name of the legal entity of the
2 actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide
3 California employees with transparency as to the true identity of their employer, to allow the
4 employee to contact their employer during employment in the future for various reasons,
5 including, filing an administrative claim, judicial claim, or other action to seek relief against
6 their employer, to obtain unemployment benefits, etc.

7 79. Defendants systematically, and on a company-wide basis, issued wage
8 statements to Plaintiff and Subclass members that incorrectly list the employing entity's name.
9 Plaintiff's and Subclass members' wage statements incorrectly list the employer as
10 "IMPERIAL WESTERN PRODUCTS, INC.," and according to the California Secretary of
11 State's website, there is no such entity by the name "IMPERIAL WESTERN PRODUCTS,
12 INC." Plaintiff believes that the correct employing entity that should be listed on employees'
13 wage statements is "IMPERIAL WESTERN PRODUCTS, INC., **A CALIFORNIA**
14 **CORPORATION.**"

15 80. The wage statement deficiencies also include, among other things, failing to list
16 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
17 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
18 only the last four digits of his or her social security number or an employee identification
19 number other than a social security number; failing to list the address of the legal entity that is
20 the employer; failing to list the inclusive dates of the period for which class members were
21 paid; and/or failing to state all hours worked as a result of not recording or stating the hours
22 they worked off-the-clock.

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

1 employee begins and ends each work period and meal period. During the relevant time
2 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
3 and meal period start and stop times for Plaintiff and Subclass members, in violation of
4 section 1198. Furthermore, in light of Defendants' failure to provide Plaintiff and Subclass
5 members with second 30-minute meal periods to which they were entitled, Defendants kept no
6 records of meal start and end times for second meal periods.

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

17 83. Plaintiff and Subclass members are entitled to recover from Defendants the
18 greater of their actual damages caused by Defendants' failure to comply with California Labor
19 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
20 employee.

21 **FIFTH CAUSE OF ACTION**

22 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 23 **Termination** 24 **(Against all Defendants)**

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

27 85. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
28 that if an employer discharges an employee, the wages earned and unpaid at the time of

1 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
2 her employment, his or her wages shall become due and payable not later than seventy-two
3 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
4 his or her intention to quit, in which case the employee is entitled to his or her wages at the
5 time of quitting.

6 86. On information and belief, Defendants have a company-wide practice or policy
7 of paying departing employees their final wages on the next regular pay cycle, instead of
8 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
9 Plaintiff was terminated on April 14, 2020, but did not receive his final wages from
10 Defendants until April 19, 2020. Thus, Defendants failed to pay Plaintiff his final wages
11 immediately, in violation of Labor Code section 201.

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

16 88. Defendants' failure to pay Plaintiff and class members who are no longer
17 employed by Defendants their wages earned and unpaid at the time of discharge, or within
18 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
19 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
20 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
21 thirty (30) day maximum pursuant to California Labor Code section 203.

22 **SIXTH CAUSE OF ACTION**

23 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
24 **Employment**
25 **(Against all Defendants)**

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

28 90. This cause of action is dependent upon, and wholly derivative of, the minimum

1 wages and/or meal and rest period premium wages that were not timely paid to Plaintiff and
2 those class members.

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

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

13 93. At all times relevant herein, Labor Code section 204 provides that all wages
14 earned for labor in excess of the normal work period shall be paid no later than the payday for
15 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
16 204 provides that the requirements of this section are deemed satisfied by the payment of
17 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
18 seven (7) calendar days following the close of the payroll period.

19 94. During the relevant time period, Defendants willfully failed to pay Plaintiff and
20 class members all wages due including, but not limited to, minimum wages and/or meal and
21 rest period premium wages, within the time periods specified by California Labor Code
22 section 204.

23 95. Defendants' failure to pay Plaintiff and class members all wages due violates
24 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
25 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

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1 **SEVENTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 551, 552, and 558—Failure to Provide One Day’s**
3 **Rest in Seven**

4 **(Against all Defendants)**

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

7 97. At all relevant times herein, California Labor Code section 551 provides that
8 every person employed in any occupation of labor is entitled to one day’s rest in seven.
9 Additionally, California Labor Code section 552 prohibits employers from requiring
10 employees to work more than six consecutive days without a day of rest.

11 98. Further, at all times relevant herein set forth, California Labor Code section 556
12 exempts an employer from the day-of-rest requirement when the total hours worked by an
13 employee do not exceed 30 hours in any week or six hours in any one day thereof.

14 99. Labor Code section 558(a) provides “[a]ny employer or other person acting on
15 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
16 provision regulating hours and days of work in any order of the Industrial Welfare
17 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
18 dollars (\$50) for each underpaid employee for each pay period for which the employee was
19 underpaid in addition to an amount sufficient to recover underpaid wages. . . . (2) For each
20 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
21 period for which the employee was underpaid . . . in addition to an amount sufficient to
22 recover underpaid wages.” Labor Code section 558(c) provides “[t]he civil penalties provided
23 for in this section are in addition to any other civil or criminal penalty provided by law.”

24 100. During the relevant period, Defendants required Plaintiff and class members to
25 work eight (8) or more hours per day and seven (7) consecutive days in a workweek. For
26 example, Plaintiff was required to work approximately twenty-one (21) consecutive days in
27 October 2017. Because Plaintiff and class members worked over thirty (30) hours per week
28 and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest

1 requirement. To the extent that Plaintiff and class members signed purported waivers of their
2 right to a day's rest in seven, such waivers are invalid.

3 101. Thus, during the relevant time period, and in violation of Labor Code sections
4 551 and 552, Defendants willfully caused Plaintiff and class members to work more than six
5 days in seven. Plaintiff and class members are therefore entitled to recover civil penalties
6 pursuant to Labor Code section 558.

7 **EIGHTH CAUSE OF ACTION**

8 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 9 **(Against all Defendants)**

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

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

23 104. First, Defendants required Plaintiff and class members to wear uniform long-
24 sleeved shirts bearing the company logo on a daily basis, but failed to provide Plaintiff and
25 class members with uniform cleaning services or reimburse them for cleaning expenses
26 incurred. For example, due to the nature of his work, Plaintiff's uniform shirts would become
27 stained with toxic chemicals such that he was unable to mix these clothes in with his other
28 laundry. As a result, he had to wash his uniform items separately from any other items, thus

1 incurring additional utility and laundry expenses.

2 105. Second, Defendants, on a company-wide basis, required that Plaintiff and class
3 members use their own personal cellular phones and/or cellular data to carry out their job
4 duties, but failed to reimburse them for the costs of their work-related cellular phone
5 expenses. For example, Plaintiff and class members were required to use their personal
6 cellular phones to complete their work-related tasks, such as discussing work-related matters
7 with supervisors. Although Defendants required Plaintiff and class members to utilize their
8 personal cellular phones to carry out their work-related responsibilities, Defendants failed to
9 fully reimburse them for this cost.

10 106. Third, Defendants had a company-wide policy of requiring Plaintiff and class
11 members to travel in their own personal vehicles to obtain mandatory drug testing and/or
12 physical examinations, but did not reimburse them for their travel expenses, including
13 mileage. Defendants maintained and implemented a company-wide policy of requiring
14 employees to travel to a medical facility on their own time and using their own personal
15 vehicles to undergo mandatory drug testing and/or physical examinations. At all times,
16 Defendants were in control of scheduling the date and time for the testing and/or physical
17 examinations, selecting the provider or facility where the testing and/or physical examinations
18 were to take place, and determining the scope of the testing and/or physical examinations.
19 Defendants gave Plaintiff and class members strict instructions to obtain drug testing and
20 physical examinations, and Plaintiff and class members underwent the testing and physical
21 examinations for the sole benefit of Defendants.

22 107. As described above, Plaintiff followed Defendants' instructions, traveled
23 approximately 16-20 miles in his personal vehicle to and from Eisenhower Occupational
24 Health Center in La Quinta, California, and underwent Defendants' drug testing, but was not
25 reimbursed for his mileage to and from the medical facility. Although Defendants required
26 Plaintiff and class members to undergo drug testing and/or physical examinations, Defendants
27 failed to reimburse them for their travel expenses.

28 108. Defendants could have provided Plaintiff and class members with the actual

1 tools for use on the job, such as access to laundering services or company vehicles. Or,
2 Defendants could have fully reimbursed employees for their uniform expenses, cellular phone
3 expenses, travel expenses, and mileage. Instead, Defendants passed these operating costs off
4 onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2)
5 times the minimum wage.

6 109. Defendants' company-wide policy and/or practice of passing on their operating
7 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
8 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
9 business-related expenses and costs.

10 110. Plaintiff and class members are entitled to recover from Defendants their
11 business-related expenses incurred during the course and scope of their employment, plus
12 interest.

13 **NINTH CAUSE OF ACTION**

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

15 **(Against all Defendants)**

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

18 112. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
19 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
20 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
21 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor
22 Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
23 penalties for violations of those Labor Code sections not found in section 2699.5, including
24 sections 516 and 1182.12.

25 113. Defendants' conduct, as alleged herein, violates numerous sections of the
26 California Labor Code, including, but not limited to, the following:

- 27 (a) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
28 and the applicable IWC wage order for Defendants' failure to

1 compensate Plaintiff and other aggrieved employees with at least
2 minimum wages for all hours worked, as alleged herein;

3 (b) Violation of Labor Code sections 510, 1198, and the applicable IWC
4 wage order for Defendants' failure to compensate other aggrieved
5 employees with all required overtime pay, as set forth below;

6 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
7 applicable IWC wage order for Defendants' failure to provide Plaintiff
8 and other aggrieved employees with meal periods, as alleged herein;

9 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
10 IWC wage order for Defendants' failure to authorize and permit
11 Plaintiff and other aggrieved employees to take rest periods, as alleged
12 herein;

13 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
14 wage order for failure to provide accurate and complete wage statements
15 to Plaintiff and other aggrieved employees, as alleged herein;

16 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
17 IWC wage order for failure to maintain payroll records as alleged
18 herein;

19 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
20 earned wages upon termination, as alleged herein;

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

23 (i) Violation of Labor Code section 222.5 for failure to compensate other
24 aggrieved employees for mandatory physical examinations and/or drug
25 testing, as set forth below;

26 (j) Violation of Labor Code sections 551 and 552 for failure to provide one
27 day's rest in seven to other aggrieved employees, as alleged herein; and

28 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff

1 and other aggrieved employees for all business expenses necessarily
2 incurred, as alleged herein.

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

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

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

16 117. The applicable IWC Wage Order further provides that Defendants are and were
17 required to pay other aggrieved employees working more than twelve (12) hours in a day,
18 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
19 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
20 employee, including nondiscretionary bonuses and incentive pay.

21 118. California Labor Code section 510 codifies the right to overtime compensation
22 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
23 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
24 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
25 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
26 in a day on the seventh (7th) day of work.

27 119. As stated, Defendants’ company-wide policies and/or practices of understaffing
28 their locations while assigning heavy workloads, lack of adequate meal period coverage, and

1 failure to schedule meal periods, prevented other aggrieved employees from taking all timely,
2 uninterrupted meal periods to which they were entitled. As a result, other aggrieved
3 employees missed or had meal periods interrupted in order to complete their assigned
4 workloads. Defendants did not pay other aggrieved employees for the time they continued to
5 perform tasks during meal periods.

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

11 121. Because other aggrieved employees regularly worked shifts of eight (8) hours a
12 day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for
13 overtime premium pay. Therefore, other aggrieved employees were not paid overtime wages
14 for all of the overtime hours they actually worked. Defendants' failure to pay other aggrieved
15 employees the balance of overtime compensation, as required by California law, violates the
16 provisions of California Labor Code sections 510 and 1198. Other aggrieved employees are
17 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

1 scope of the examination and/or testing. Other aggrieved employees were also instructed by
2 Defendants to undergo a physical examination, which entailed performing a series of physical
3 fitness exercises administered by a designated human resource representative, for
4 approximately 30 minutes.

5 124. However, Defendants did not compensate other aggrieved employees for the
6 time they spent traveling to and from their drug tests and/or physical examinations, or for the
7 time they spent undergoing the testing and/or examinations, or reimburse them for the travel
8 expenses they incurred getting to and from the medical facilities. Defendants' policy and/or
9 practice of not paying for all costs other aggrieved employees incurred obtaining mandatory
10 physical examinations and/or drug testing violates California Labor Code section 222.5.
11 Other aggrieved employees are entitled to recover civil penalties pursuant to Labor Code
12 sections 2699(a), (f), and (g).

13 **TENTH CAUSE OF ACTION**

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

15 **Unlawful Business Practices**

16 **(Against all Defendants)**

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

19 126. Defendants are "persons" as defined by California Business & Professions
20 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
21 and/or associations.

22 127. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
23 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
24 suffered injury in fact and has lost money as a result of Defendants' unlawful business
25 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
26 meaning of Code of Civil Procedure section 1021.5.

27 128. Defendants' activities, as alleged herein, are violations of California law, and
28 constitute unlawful business acts and practices in violation of California Business &

1 Professions Code sections 17200, *et seq.*

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

- 5 (a) Failing to pay at least minimum wage to Plaintiff and class members in
6 violation of California Labor Code sections 1182.12, 1194, 1197,
7 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 8 (b) Failing to provide uninterrupted meal periods to Plaintiff and class
9 members in violation of California Labor Code sections 226.7, 512(a),
10 516, 1198, and the applicable IWC Order, as alleged herein;
- 11 (c) Failing to authorize and permit Plaintiff and class members to take
12 uninterrupted rest periods in violation of California Labor Code sections
13 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 14 (d) Failing to provide Plaintiff and class members with accurate wage
15 statements and failing to maintain accurate payroll records in violation
16 of California Labor Code sections 226(a), 1174(d), 1198, and the
17 applicable IWC Order, as alleged herein;
- 18 (e) Failing timely to pay all earned wages to Plaintiff and class members in
19 violation of California Labor Code section 204 and the applicable IWC
20 Order, as alleged herein;
- 21 (f) Failing to pay Plaintiff and class members the costs of mandatory
22 physical examinations and/or drug testing in violation of California
23 Labor Code section 222.5, as set forth below;
- 24 (g) Failing to authorize and permit Plaintiff and class members to take one
25 day's rest in seven in violation of California Labor Code sections 551
26 and 552, and the applicable IWC Order as alleged herein; and
- 27 (h) Failing to reimburse Plaintiff and class members for all business
28 expenses necessarily incurred in violation of California Labor Code

1 sections 2802, as alleged herein.

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

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

14 132. During the relevant time period, Plaintiff was instructed by Defendants to travel
15 to an Eisenhower Occupational Health Services clinic in La Quinta, California, and obtain a
16 drug test. Plaintiff followed Defendants' instructions, traveled to the facility Defendants
17 selected, and underwent the testing. Plaintiff was required to travel approximately 16-20
18 miles roundtrip (for approximately 30-40 minutes total) to and from a medical facility selected
19 by Defendants using his own vehicle, spent two (2) hours waiting at the medical facility, and
20 spent 30 minutes undergoing the requisite testing. Plaintiff was also instructed by Defendants
21 to undergo a physical examination, which entailed Plaintiff performing a series of physical
22 fitness exercises administered by a designated human resource representative, for
23 approximately 30 minutes.

24 133. However, Defendants did not compensate Plaintiff and class members for the
25 time they spent traveling to and from their drug tests and/or physical examinations, or for the
26 time they spent undergoing the testing and/or examinations, or reimburse them for the travel
27 expenses they incurred getting to and from the medical facilities. Defendants' policy and/or
28 not paying for all costs Plaintiff and class members incurred obtaining mandatory physical

1 examinations and/or drug testing is in violation of California Labor Code section 222.5.

2 134. As a result of the violations of California law herein described, Defendants
3 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
4 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
5 herein.

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

12 **ELEVENTH CAUSE OF ACTION**

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

14 **Unfair Business Practices**

15 **(Against all Defendants)**

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

18 137. Defendants are "persons" as defined by California Business & Professions
19 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
20 and/or associations.

21 138. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
22 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
23 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
24 seeks to enforce important rights affecting the public interest within the meaning of Code of
25 Civil Procedure section 1021.5.

26 139. Defendants' activities, namely Defendants' company-wide practice and/or
27 policy of not paying Plaintiff and class members all meal and rest period premium wages due
28 to them under Labor Code section 226.7, deprived Plaintiff and class members of the

1 compensation guarantee and enhanced enforcement implemented by section 226.7. The
2 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
3 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
4 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
5 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
6 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
7 unfair business practice in violation of California Business & Professions Code sections
8 17200, *et seq.* (Id.)

9 140. A violation of California Business & Professions Code sections 17200, *et seq.*
10 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
11 and practices have violated the spirit of California’s meal and rest period laws and constitute
12 acts against the public policy behind these laws.

13 141. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
14 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
15 benefits implemented by section 226.7 withheld and retained by Defendants during a period
16 that commences four years prior to the filing of this complaint; a permanent injunction
17 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
18 Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil
19 Procedure section 1021.5 and other applicable laws; and an award of costs.

20 **REQUEST FOR JURY TRIAL**

21 Plaintiff requests a trial by jury.

22 **PRAYER FOR RELIEF**

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

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

28 //

1 **Class Certification**

2 2. That this case be certified as a class action;

3 3. That Plaintiff be appointed as the representative of the Class and Subclass;

4 4. That counsel for Plaintiff be appointed as class counsel.

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

6 5. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
8 minimum wages to Plaintiff and class members;

9 6. For general unpaid wages and such general and special damages as may be
10 appropriate;

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

13 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
14 California Labor Code section 1194(a);

15 9. For liquidated damages pursuant to California Labor Code section 1194.2; and

16 10. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Second Cause of Action**

19 11. That the Court declare, adjudge, and decree that Defendants violated California
20 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
21 willfully failing to provide all meal periods to Plaintiff and class members;

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

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

27 14. For premiums pursuant to California Labor Code section 226.7(c);

28 15. For pre-judgment interest on any unpaid meal period premiums from the date

1 such amounts were due, or as otherwise provided by law;

2 16. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 17. For such other and further relief as the Court may deem equitable and
5 appropriate.

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

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

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

13 20. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 21. For premiums pursuant to California Labor Code section 226.7(c);

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

18 23. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 24. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Fourth Cause of Action**

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

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

1 section 210;

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

4 41. For attorneys' fees pursuant to California Code of Civil Procedure section
5 1021.5, or as otherwise provided by law; and

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

8 **As to the Seventh Cause of Action**

9 43. That the Court declare, adjudge and decree that Defendants violated California
10 Labor Code sections 551 and 552 by failing to provide one day's rest in seven, and that
11 Defendants committed said violations of the Labor Code against Plaintiff and class members;

12 44. For civil penalties for conduct occurring any time between one year prior to the
13 filing of this complaint and judgment, pursuant to California Labor Code section 558;

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

15 46. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Eighth Cause of Action**

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

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

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

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

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

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

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

4 53. That the Court declare, adjudge and decree that Defendants violated the
5 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
6 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all
7 hours worked); 510 and 1198 (by failing to pay all overtime compensation); 226.7, 512, 516,
8 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
9 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
10 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
11 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
12 employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical
13 examinations); 551 and 552 (by failing to provide one day's rest in seven); and 2802 (by
14 failing to reimburse business expenses);

15 54. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
16 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
17 sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d),
18 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

19 55. For attorneys' fees and costs pursuant to California Labor Code section
20 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
21 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552,
22 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

24 57. For such other and further relief as the Court may deem equitable and
25 appropriate.

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

27 58. That the Court declare, adjudge and decree that Defendants' conduct of failing
28 to provide Plaintiff and class members all minimum wages due to them, failing to provide

1 Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class
2 members to take all rest periods, failing to provide Plaintiff and class members accurate and
3 complete wage statements, failing to maintain accurate payroll records for Plaintiff and class
4 members, failing timely to pay Plaintiff and class members all earned wages during
5 employment, failing to reimburse Plaintiff and class members for the costs of mandatory drug
6 testing and/or physical examinations, failing to provide Plaintiff and class members with one
7 day's rest in seven, and failing to reimburse Plaintiff and class members for business-related
8 expenses, constitutes an unlawful business practice in violation of California Business and
9 Professions Code sections 17200, *et seq.*;

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

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

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

18 62. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **As to the Eleventh Cause of Action**

21 63. That the Court declare, adjudge and decree that Defendants' conduct of denying
22 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
23 an unfair business practice in violation of California Business and Professions Code sections
24 17200, *et seq.*;

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

28 65. For the appointment of a receiver to receive, manage and distribute any and all

1 funds disgorged from Defendants and determined to have been wrongfully acquired by
2 Defendants as a result of violations of California Business & Professions Code sections 17200
3 *et seq.*;

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

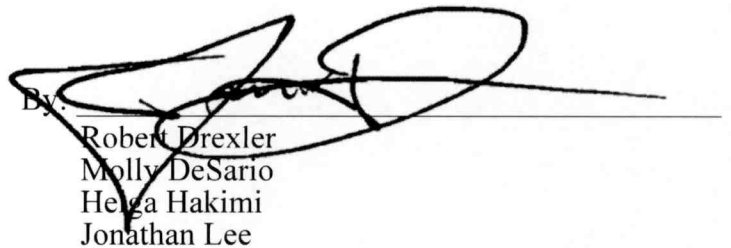
6 67. For pre-judgment and post-judgment interest as provided by law; and

7 68. For such other and further relief as the Court may deem equitable and
8 appropriate.

9
10 Dated: January 7, 2021

Respectfully submitted,

Capstone Law APC

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13 
14 By: Robert Drexler
15 Molly DeSario
16 Helga Hakimi
17 Jonathan Lee

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19 Attorneys for Plaintiff Jorge Aguilera Rodriguez
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Exhibit 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

November 2, 2020

VIA ONLINE SUBMISSION

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

Subject: *Jorge Aguilera Rodriguez v. Imperial Western Products, Inc., a California Corporation*

Dear PAGA Administrator:

This office represents Jorge Aguilera Rodriguez in connection with his claims under the California Labor Code. Mr. Rodriguez was an employee of IMPERIAL WESTERN PRODUCTS, INC., A CALIFORNIA CORPORATION ("IWP").

The employer may be contacted directly at the address below:

IMPERIAL WESTERN PRODUCTS, INC.,
A CALIFORNIA CORPORATION
86600 AVENUE 54
COACHELLA CA 92236

Mr. Rodriguez 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. Rodriguez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by IWP 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.

IWP employed Mr. Rodriguez as an hourly paid, non-exempt employee from approximately September 2017 to April 2020. Mr. Rodriguez worked for IWP as a Laborer at its location in Coachella, California. During his employment, Mr. Rodriguez typically worked eight (8) hours or more per day and five (5) days or more per week. At the time Mr. Rodriguez's employment ended, he earned approximately \$16.00 per hour. His job duties included, without limitation, manufacturing animal feed, operating heavy machinery, and loading and unloading delivery trucks with animal feed.

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

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

IMPERIAL WESTERN PRODUCTS, INC., A CALIFORNIA CORPORATION is a California corporation. IWP is a major manufacturer and supplier of animal feed commodities, biodiesel fuel, tire products, and pipe lubricants, and provides waste recycling services. Upon information and belief, IWP maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Coachella, California, for all non-exempt, hourly paid employees working for IWP in California, including Mr. Rodriguez and other aggrieved employees. At all relevant times, IWP issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Rodriguez and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code sections 226.7, 512(a), 516, 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 break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee’s regular rate, except that if the total hours worked is no more than

¹ These facts, theories, and claims are based on Mr. Rodriguez’s experience and counsel’s review of those records currently available relating to Mr. Rodriguez’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. Rodriguez 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.

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.

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

During the relevant time period, IWP had, and continues to have, a company-wide policy and/or practice of understaffing its locations, while simultaneously assigning heavy workloads, which prevented Mr. Rodriguez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, IWP failed to schedule meal periods, which resulted in Mr. Rodriguez and other aggrieved employees having to wait extended periods of time before taking meal periods or missing their meal periods altogether. For example, approximately once per month Mr. Rodriguez was forced to work in excess of five (5) hours before he was provided with a meal period. On other occasions, Mr. Rodriguez's meal periods were interrupted or shortened twice per month by requests from IWP's supervisors to assist with unloading pallets or trucks that arrived during his meal periods.

To the extent IWP required its employees to sign written "on-duty" meal period agreements, such agreements were invalid under California law. IWP's "on-duty" meal period policy results from its own staffing and business decisions, not because the nature of the work performed by Mr. Rodriguez and other aggrieved employees required a single-employee staffing model. At those times, there were multiple employees employed by IWP at its locations that could have been scheduled to provide meal period coverage. As IWP's locations are located in well-populated cities and towns, IWP's locations were not located in some remote area. Further, the work of IWP's employees is not of the kind that could be said to meet the "nature of the work" exception. Mr. Rodriguez and other aggrieved employees were responsible for operating machinery/tractors and loading/unloading trucks, while performing other general laborer tasks. None of these tasks is akin to the kind that the California Division of Labor Standards Enforcement ("DLSE") has found warrant an "on-duty" meal period, such as transporting hazardous materials via vehicles that must be monitored at all times pursuant to federal regulation. Therefore, IWP's use of an "on-duty" meal period is improper and unlawful. Because of IWP's company-wide written "on-duty" meal period policy, Mr. Rodriguez and other aggrieved employees did not receive all required off-duty meal periods and did not receive premium pay for missed, late, or interrupted meal periods.

Additionally, IWP did not provide Mr. Rodriguez 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. Rodriguez worked shifts in excess of ten (10) hours or more hours per day but was not provided an uninterrupted second 30-minute meal period. For example, Mr. Rodriguez was never given a second meal period even though he worked shifts of ten (10) hours or more 1-2 times per week. Mr. Rodriguez 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.

Furthermore, IWP had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. IWP 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. IWP'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 use of blanket second meal period waivers, and imposition of the

burden on employees to revoke the meal period waiver in writing, discouraged and impeded Mr. Rodriguez 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 IWP requires employees to sign meal period waivers in advance (as opposed to on a specific work day) renders them invalid and unenforceable, because IWP's obligation to provide Mr. Rodriguez and other aggrieved employees with meal periods did not arise until IWP had employed them for a full five (5) hours.

At all times herein mentioned, IWP knew or should have known that, as a result of these policies, Mr. Rodriguez and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. IWP further knew or should have known that IWP did not pay Mr. Rodriguez and other aggrieved employees meal period premium wages when meal periods were late, interrupted, shortened, or missed.

Furthermore, IWP engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Rodriguez and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that IWP did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. In addition to an hourly wage, IWP paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, because IWP did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, IWP failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Rodriguez 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, IWP regularly failed to authorize and permit Mr. Rodriguez 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, IWP’s company-wide policy and/or practice of understaffing and assigning heavy workloads prevented Mr. Rodriguez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, IWP failed to adhere to a schedule of rest periods, which, coupled with IWP’s failure to provide adequate rest period coverage, further led to Mr. Rodriguez and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, upon information and belief, IWP maintained a company-wide on-premises practice and/or policy requiring that Mr. Rodriguez and other aggrieved employees remain on IWP’s premises during their rest periods. Because Mr. Rodriguez 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, IWP effectively maintained control over Mr. Rodriguez and other aggrieved employees during rest periods.

As a result of IWP’s practices and policies, Mr. Rodriguez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Rodriguez missed rest periods at least six (6) times per week in order to complete all of the work-related duties IWP assigned to him. Additionally, Mr. Rodriguez did not receive a third rest period when he worked shifts in excess of 10 hours.

IWP also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Rodriguez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that IWP did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, IWP did not pay other aggrieved employees at the correct rate of pay for premium wages because IWP failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, IWP failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Rodriguez 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 §§ 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.

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

As stated, IWP's company-wide policies and/or practices of understaffing its locations while assigning heavy workloads, lack of adequate meal period coverage, and failure to schedule meal periods, prevented other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, other aggrieved employees missed or had meal periods interrupted in order to complete their assigned workloads. IWP did not pay other aggrieved employees for the time they continued to perform tasks during meal periods.

Furthermore, IWP did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. IWP failed to incorporate all compensation, including 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, IWP failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

IWP had, and continues to have, a company-wide policy and/or practice 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, IWP 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. IWP gave other aggrieved employees strict instructions to obtain drug testing and physical examinations, and other aggrieved employees underwent the examinations and testing for the sole benefit of IWP. Other aggrieved employees were required to travel in their own personal vehicles and spend time undergoing IWP's mandatory drug tests and/or physical examinations. Additionally, IWP required other aggrieved employees to undergo a mandatory physical examination, which entailed performing a series of physical fitness exercises administered by one of IWP's human resources representatives for approximately 30 minutes. However, IWP did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and physical examinations.

In addition, as stated, due to IWP's company-wide policies and/or practices of understaffing, assigning heavy workloads, resultant lack of adequate meal period coverage, and failure to schedule meal periods, other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work.

Thus, IWP 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, IWP 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, IWP regularly failed to pay at least minimum wages to Mr. Rodriguez and Mr. Rodriguez 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.

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

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

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

First, because IWP did not record the time Mr. Rodriguez and other aggrieved employees spent working off the clock, IWP did not list the correct amount of gross wages and net wages earned by Mr. Rodriguez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, IWP failed to accurately list the total number of hours worked by Mr. Rodriguez 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 IWP did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, IWP did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, IWP also failed to list the correct amount of net wages in violation of section 226(a)(5). IWP 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 meal and rest premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, IWP issued uniform wage statements to Mr. Rodriguez and other aggrieved employees that failed to correctly list the correct name 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. For example, Mr. Rodriguez's and other aggrieved employees' wage statements incorrectly list the employer as "IMPERIAL WESTERN PRODUCTS, INC.," and according to the California Secretary of State's website, there is no such entity by the name "IMPERIAL WESTERN PRODUCTS, INC." Mr. Rodriguez believes that the correct employing entity that should be listed on employees' wage statements is "IMPERIAL WESTERN PRODUCTS, INC., A CALIFORNIA CORPORATION." *See excerpt from paystub below.*

Imperial Western Products, Inc 86600 Ave 54, Coachella, CA 92236

The wage statement deficiencies also include, among other things, 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 address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as

required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), IWP willfully failed to maintain accurate payroll records for Mr. Rodriguez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

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

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

Mr. Rodriguez 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, IWP failed to pay Mr. Rodriguez 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. Rodriguez 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.

On information and belief, IWP has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Rodriguez was terminated on April 14, 2020, but did not receive his final wages from IWP until April 19, 2020. Thus, IWP failed to pay Mr. Rodriguez his final wages immediately, in violation of Labor Code section 201.

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

Mr. Rodriguez 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 § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

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

At all times relevant herein, IWP 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, IWP had a company-wide policy requiring that all employees, including other aggrieved employees, travel to a specified medical facility using their own personal vehicles to undergo physical examinations and/or drug testing. At all times, IWP 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 also instructed by IWP to undergo a physical examination, which entailed performing a series of physical fitness exercises administered by a designated human resource representative for approximately 30 minutes.

However, IWP 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. IWP'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 §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant time period, on information and belief, IWP scheduled other aggrieved employees to work eight (8) or more hours per day and more than seven (7) consecutive days in a workweek. Because other aggrieved employees worked over thirty (30) hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, IWP caused other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Other aggrieved employees are therefore 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 § 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, IWC Wage Order 5-2001, 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, IWP required Mr. Rodriguez and other aggrieved employees to wear uniform long-sleeved shirts bearing the company logo on a daily basis, but failed to provide Mr. Rodriguez 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. Rodriguez's uniform shirts would become stained with toxic chemicals 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.

Second, IWP, on a company-wide basis, required that Mr. Rodriguez and/or other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Mr. Rodriguez and/or other aggrieved employees were required to use their personal

cellular phones to complete their work-related tasks, such as discussing work-related matters with supervisors. Although IWP required Mr. Rodriguez and/or other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, IWP failed to fully reimburse them for this cost.

Third, IWP 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. IWP 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, IWP 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. IWP 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 IWP. Although IWP required other aggrieved employees to undergo drug testing and/or physical examinations, IWP failed to reimburse them for their travel expenses.

IWP could have provided Mr. Rodriguez and other aggrieved employees with the actual tools for use on the job, such as access to laundering services or company vehicles. Or, IWP could have fully reimbursed employees for their uniform expenses, cellular phone expenses, travel expenses, and mileage. Instead, IWP passed these operating costs off onto Mr. Rodriguez and other aggrieved employees. At all relevant times, Mr. Rodriguez did not earn at least two (2) times the minimum wage.

Thus, IWP 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. Rodriguez and other aggrieved employees are entitled to recover civil 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." IWP, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Rodriguez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Rodriguez 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. Rodriguez, 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 IWP

for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Rodriguez 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:

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

Best Regards,



Anthony Castillo

Copy: IMPERIAL WESTERN PRODUCTS, INC., A CALIFORNIA CORPORATION (via U.S. Certified Mail)

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X *Adrian Salazar*

☒ Agent

☐ Addressee

B. Received by (Printed Name)

Adrian Salazar

C. Date of Delivery

11/5/12

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

☐ Yes

☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Registered Mail

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation

☐ Signature Confirmation Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☒ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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



eSubmit – Document Submission Portal

Delivery Confirmation

Submission ID		Date Received		
10556259		1/7/2021 3:41:47 PM		
First Name	Middle Name	Last Name		
Sandy		Acevedo		
Street Address		City	State	Zip
1875 Century Park E, STE 1000		Los Angeles	CA	90027
Phone Number	Fax Number	Company / Agency		
(310) 556-4811		Capstone Law apc		
Email Address				
sandy.acevedo@capstonelawyers.com				
New Case	Case Number	Case Type	Court Location	
No	CVRI2000071	Civil	Riverside	
Fee Waiver or Other Exemption				
None				
Filing as an Attorney	Bar Number	Attorney for		
No				
Documents				
1 FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ				
Notes / Special Instructions				
IMPORTANT: This document serves as a confirmation of delivery only and the submitted documents have not yet been processed and/or filed by the Superior Court of California, County of Riverside.				