

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 GREGORY B. WILBUR (SBN 295945)
greg@spivaklaw.com
3 SARA BROWN (SBN 325763)
sara@spivaklaw.com
4 THE SPIVAK LAW FIRM
16530 Ventura Blvd., Suite 203
5 Encino, CA 91436
Telephone (213) 725-9094
6 Facsimile (213) 634-2485

7 Attorneys for Plaintiff,
8 DEAN CRUMPLER and all others similarly situated
(Additional attorney for Plaintiff on the following page)

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
FOR THE COUNTY OF FRESNO
11 **(UNLIMITED JURISDICTION)**

12 DEAN CRUMPLER, on behalf of himself, all
others similarly situated, and as an
13 “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
14 Private Attorneys General Act of 2004,

15 *Plaintiff,*

16 vs.

17 WESTCO EQUITIES, INC. d/b/a WESTCO
PROPERTY MANAGEMENT, a California
18 corporation; and DOES 1–50, inclusive,

19 *Defendants.*
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10/21/2021 2:27 PM
Superior Court of California
County of Fresno
By: J Nelson, Deputy

Case No.: 21CECG02993

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§510, 1182.12, 1194, 1197, and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Reimburse for Expenses (Lab. Code §§1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER L. HAINES (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP, PC
4276 Katella Ave., Suite 301
Los Alamitos, CA 90720
Telephone (562) 256-1047
Facsimile (562) 256-1006



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2 Plaintiff, DEAN CRUMPLER (hereafter “Plaintiff”), on behalf of himself and all others
3 similarly situated, complains and alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this class and representative action against Defendant WESTCO
6 EQUITIES, INC. d/b/a WESTCO PROPERTY MANAGEMENT, a California corporation; and
7 DOES 1–50, inclusive (collectively “Defendants”) for alleged violations of the California Labor
8 Code, Industrial Welfare Commission Order No. 5–2001 (hereafter “the Wage Order”), and the
9 Business and Professions Code.

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
11 him and other similarly situated current and former employees in California for unpaid wages and
12 other related relief. These claims are based on Defendants’ failures to: (1) Pay all wages earned
13 for all hours worked; (2) Provide all rest periods; (3) Provide all meal periods; (4) Failure to
14 reimburse for expenses; (5) Issue accurate and complete itemized written wage statements; (6)
15 Timely pay all wages upon termination of employment; and (7) Fairly compete. Accordingly,
16 Plaintiff now seeks to recover unpaid wages, statutory penalties, interest, and related relief
17 through this class action.

18 **JURISDICTION AND VENUE**

19 3. This court has subject matter jurisdiction because the aggregate claims of
20 Plaintiff, inclusive of all relief, place more than \$25,000 in controversy.

21 4. There is no basis for federal question subject matter jurisdiction in this case.
22 Specifically, Plaintiff asserts claims that solely arise under California law, rather than federal
23 law.

24 5. There is also no basis for federal diversity jurisdiction in this case.

25 6. Venue is proper in Fresno County pursuant to California Code of Civil Procedure

§ 395(a) and § 395.5 in that liability arose in Fresno County because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or because each defendant is found, maintains offices, transacts business, and/or has an agent therein.

PARTIES

7. Plaintiff DEAN CRUMPLER is a resident of California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11160 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

8. Defendant WESTCO EQUITIES, INC. d/b/a WESTCO PROPERTY MANAGEMENT, is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1–50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

10. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees, servants, masters, and/or employers of the remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment and with the approval and ratification of each of the other Defendants.

11. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable laws as alleged herein.



SPIVAK LAW

12. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

13. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

14. **Class Definition:** The Class is defined as follows: All individuals currently and formerly employed in California as non-exempt, hourly employees including, but not limited to maintenance workers, property managers, and persons in similar positions, individuals performing work comparable to the aforementioned, and individuals in similar positions at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

15. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

16. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

17. **Commonality and Predominance:** Common questions of law and fact exist as to

1 all Class Members and predominate over any questions which affect only individual Class
2 Members. These questions include, but are not limited to:

3 A. Whether Defendants failed to pay all wages earned to the Class Members
4 for all hours worked at the correct rates of pay

5 B. Whether Defendants failed to provide the Class Members with all meal and
6 rest periods in compliance with California law;

7 C. Whether Defendants failed to reimburse the Class Members for necessary
8 business expenses;

9 D. Whether Defendants knowingly and intentionally failed to provide the
10 Class Members with accurate and complete written wage statements;

11 E. Whether Defendants willfully failed to provide the Class Members with
12 timely final wages upon termination of employment;

13 F. Whether Defendants engaged in unfair competition within the meaning of
14 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

15 G. Whether the Class Members are entitled to restitution of money or property
16 that Defendants may have acquired from them through alleged Labor Code violations.

17 18. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
18 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
19 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
20 Code, the Wage Order, and the Business and Professions Code.

21 19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
22 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
23 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
24 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
25 Members.



1 20. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
2 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
3 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
4 Plaintiff and absent Class Members.

5 21. **Superiority:** A class action is vastly superior to other available means for fair and
6 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
7 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
8 and efficiently prosecute their common claims in a single forum without the unnecessary
9 duplication of effort and expense that numerous individual actions would entail. In addition, the
10 monetary amounts due to many individual Class Members are likely to be relatively small and
11 would thus make it difficult, if not impossible, for individual Class Members to both seek and
12 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
13 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
14 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

15 **STATEMENT OF FACTS**

16 22. On approximately April 2, 2018, Plaintiff began working for Defendants as a
17 maintenance worker in Fresno. Defendants continuously employed him in that capacity from that
18 time until on or about March 21, 2021, when Plaintiff went on a leave of absence and the
19 employment relationship ended.

20 23. At all relevant times, Defendants issued wages to Plaintiff and the other Class
21 Members on a biweekly basis and paid them at an hourly rate of pay. At all relevant times,
22 Defendants classified Plaintiff and the Class Members as non-exempt employees entitled to the
23 protections of both the Labor Code and the Wage Order.

24 24. At all relevant times, Defendants failed to compensate Plaintiff and the Class
25 Members for all hours worked at the applicable minimum or regular rate of pay. Defendants



1 required Plaintiff and the Class Members to work, off-the-clock, through what should have been
2 their meal periods to respond to communications by managers and homeowners. Defendants also
3 required Plaintiff and the Class Members to work at least 30-minutes of work at the end of each
4 day and prohibited Plaintiff and the Class Members from recording that time for payroll purposes.
5 Defendants did not pay Plaintiff and the Class Members for this unrecorded time. This work
6 included time spent locking up the office. Defendants' policy also included requirements that
7 Plaintiff and the Class Members start their work one hour before their scheduled start times that
8 Defendants would begin paying Plaintiff and the Class Members from. This unpaid time was
9 spent performing such tasks as training other employees and picking up necessary supplies from
10 hardware stores. Defendants' work time policies extended each workday for Plaintiff and the
11 Class Members beyond 8 hours a day and each workweek beyond 40 hours.

12 25. Defendants failed to compensate Plaintiff and the Class Members at the correct
13 rate of pay for all hours worked over 8 in a day, over 40 in a week, and for the first 8 hours of
14 the seventh day worked in a workweek.

15 26. At all relevant times, Defendants failed to provide Plaintiff and the Class
16 Members with all timely meal periods. Defendants failed to provide timely 30-minute, off-duty
17 meal periods to Plaintiff and the Class Members by requiring them to work through their off-the
18 clock meal periods to respond to communications from managers and home owners. Defendants
19 failed to pay premium wages for days on which it failed to provide Plaintiff and the Class
20 Members with meal periods as required by law.

21 27. Moreover, Defendants failed to authorize and permit rest periods to Plaintiff and
22 the Class Members in violation of California law. Defendants required Plaintiff and the Class
23 Members to respond to communications from managers and homeowners and failed to authorize
24 and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest periods every
25 four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest



1 period protections of the Wage Order from the California Divisions of Labor Standards
2 Enforcement.

3 28. Defendants failed to pay premium wages for days on which they failed to provide
4 Plaintiff and the other Class Members with timely meal periods. Defendants also failed to pay
5 premium wages for days on which they failed to provide Plaintiff and the other Class Members
6 with timely rest periods.

7 29. At all relevant times, Defendants required Plaintiff and the Class Members to
8 incur certain business expenses in the course of performing their duties. Although Defendants
9 occasionally provided Plaintiff and the Class Members with a Home Depot credit card to
10 purchase supplies, such as brooms, mops, buckets, shovels, shop vacs, and wheelbarrows,
11 Defendants usually required Plaintiff and the Class Members to supply their own mobile phones,
12 tools, supplies, equipment and materials to perform their job duties. The list of tools that
13 Defendant required Plaintiff and the Class Members to supply themselves included, but it not
14 limited to, hammers, drill bits, screw drivers, tape measures, visors, sanding belts, belt sanders,
15 firearms, flashlights, cameras, calculators, claw hammers, levels, utility knives, cordless power
16 tools, wire strippers, pliers, wrenches, shovels, saws, thermal gun readers, heat guns, impact
17 guns, and face board nailers. Defendants failed to provide these items or even reimburse Plaintiff
18 and the Class Members for purchasing these items.

19 30. Defendants failed to maintain accurate employee records of Plaintiff and the Class
20 Members. Defendants failed to maintain accurate and complete records of Plaintiff's and the
21 Class Members' meal periods and rest periods, as well as the premium wages they earned for
22 missed meal and rest periods.

23 31. Defendants failed to issue to Plaintiff and the Class Members complete and
24 accurate wage statements that stated all hours worked at the correct rates of pay, and all wages
25 earned. Defendants knowingly and intentionally failed to state on the wage statements they issued



1 to Plaintiff and the Class Members the unpaid wages discussed above. These wage statements
2 failed to state all hours worked at the correct rates of pay, all minimum wages earned, all regular
3 wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium
4 wages earned, all rest break premium wages earned, and all unlawfully deducted wages.
5 Defendants also failed to timely pay Plaintiff and the Class Members all earned wages described
6 above at the conclusion of employment.

7 32. Defendants failed to maintain accurate employee records of Plaintiff and the Class
8 Members. Defendants failed to maintain Plaintiff's and the Class Members' records of the work
9 performed and records of their on-duty meal and rest breaks.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

12 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

13 **(By Plaintiff and the Class against Defendants)**

14 33. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

15 34. At all relevant times, Plaintiff and the other Class Members have been non-exempt
16 employees of Defendants and entitled to the benefits and protections of California Labor Code
17 §§ 510, 1182.12, 1194, 1197, and 1198 and the Wage Order.

18 35. Labor Code § 1197 makes it unlawful for an employer to pay an employee less
19 than the minimum wage required under the applicable Wage Order for all hours worked during a
20 payroll period.

21 36. Labor Code § 1194 invalidates any agreement between an employer and an
22 employee to work for less than the minimum wage required under the applicable Wage Order.

23 37. Section 1182.12 of the Labor Code establishes the hourly minimum wage rate for
24 non-exempt employees. This rate is as follows:



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Effective Date	Employers Who Employ 26+ Employees	Employers Who Employ 258 Employees
Jan. 1, 2017, to Dec. 31, 2017	\$10.50	\$10.00
Jan. 1, 2018, to Dec. 31, 2018	\$11.00	\$10.50
Jan. 1, 2019, to Dec. 31, 2019	\$12.00	\$11.00
Jan. 1, 2020, to Dec. 31, 2020	\$13.00	\$12.00
Jan 1, 2021, to Dec. 31, 2021	\$14.00	\$13.00

38. Defendants failed to pay Plaintiff and the Class Members at least the minimum wage because Defendant required Plaintiff and the Class Members to work off-the-clock and did not compensate them for this time.

39. Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

40. Section 2 of the Wage Order defines “hours worked” 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.”

41. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.



(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

42. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

43. Labor Code § 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

44. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

45. At all relevant times during the applicable limitations period, at Defendants' direction, Plaintiff and the Class Members have worked off-the-clock without pay. Such work included, but is not limited to, responding to communications from managers and **tenants**, training co-workers, picking up supplies and materials, and locking up Defendants' office.

46. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Class Members for all hours worked as required by



1 California law.

2 47. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
3 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
4 the full amount of wages earned during each pay period during the applicable limitations period,
5 including minimum and overtime wages.

6 48. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members,
7 seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid
8 wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject
9 to proof.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST PERIODS**

12 **(Lab. Code §§ 226.7 and 1198)**

13 **(By Plaintiff and the Class against all Defendants)**

14 49. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 50. At all relevant times during the applicable limitations period, Plaintiff and the
16 Class Members have been employees of Defendants and entitled to the benefits and protections
17 of California Labor Code §§ 226.7, 1198, and the Wage Order.

18 51. In relevant part, California Labor Code § 1198 states:

19 The maximum hours of work and the standard conditions of labor fixed by the
20 commission shall be the maximum hours of work and the standard conditions of
labor for employees. The employment of any employee for longer hours than those
fixed by the order or under conditions of labor prohibited by the order is unlawful.

21 52. In relevant part, § 12 of the Wage Order states:

22 **Rest Periods**

23 (A) "Every employer shall authorize and permit all employees to take rest
24 periods, which insofar as practicable shall be in the middle of each work period.
The authorized rest period time shall be based on the total hours worked daily at
25 the rate of ten (10) minutes net rest time per four (4) hours or major fraction
thereof. However, a rest period need not be authorized for employees whose total
daily work time is less than three and one-half (3 1/2) hours. Authorized rest period



time shall be counted as hours worked for which there shall be no deduction from wages.”

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.”

53. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.

54. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

55. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 10-minute rest periods free from any work duties in accordance with the Wage Order.

56. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take 10-minute rest breaks every four hours worked or major fraction thereof as required by the Wage Order. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class Members with timely rest periods.

57. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all off-duty rest periods required by California law.

58. As a result of Defendants’ unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional



1 wages owed for all meal periods and rest breaks not provided to them.

2 59. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
3 the Class Members are entitled to premium wages for workdays in which one or more rest breaks
4 were not provided to them.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PROVIDE MEAL PERIODS**

7 **(Lab. Code §§ 226.7, 512, and 1198)**

8 **(By Plaintiff and the Class against all Defendants)**

9 60. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

10 61. At all relevant times during the applicable limitations period, Plaintiff and the
11 Class Members have been employees of Defendants and entitled to the benefits and protections
12 of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

13 62. In relevant part, California Labor Code § 1198 states:

14 The maximum hours of work and the standard conditions of labor fixed by the
15 commission shall be the maximum hours of work and the standard conditions of
16 labor for employees. The employment of any employee for longer hours than those
17 fixed by the order or under conditions of labor prohibited by the order is unlawful.

18 63. In relevant part, California Labor Code § 512 states:

19 An employer shall not employ an employee for a work period of more than five
20 hours per day without providing the employee with a meal period of not less than
21 30 minutes, except that if the total work period per day of the employee is no more
22 than six hours, the meal period may be waived by mutual consent of both the
23 employer and employee.

24 An employer shall not employ an employee for a work period of more than 10
25 hours per day without providing the employee with a second meal period of not
less than 30 minutes, except that if the total hours worked is no more than 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.

64. In relevant part, § 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period of more than five
(5) hours without a meal period of not less than 30 minutes, except that when a
work period of not more than six (6) hours will complete the day’s work the meal
period may be waived by mutual consent of the employee and the employer.



1 Unless the employee is relieved of all duty during a 30-minute meal period, the
2 meal period shall be considered an 'on duty' meal period and counted as time
3 worked. An 'on duty' meal period shall be permitted only when the nature of the
4 work prevents an employee from being relieved of all duty and when by written
5 agreement between the parties an on-the-job paid meal period is agreed to. The
6 written agreement shall state that the employee may, in writing, revoke the
7 agreement at any time."

(B) If an employer fails to provide an employee a meal period in accordance
with the applicable provisions of this Order, the employer shall pay the employee
one (1) hour of pay at the employee's regular rate of compensation for each work
day that the meal period is not provided."

65. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest
period mandated pursuant to an applicable statute, or applicable regulation,
standard, or order of the Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in
accordance with a state law, including, but not limited to, an applicable statute or
applicable regulation, standard, or order of the Industrial Welfare Commission, the
Occupational Safety and Health Standards Board, or the Division of Occupational
Safety and Health, the employer shall pay the employee one additional hour of pay
at the employee's regular rate of compensation for each work day that the meal or
rest period is not provided.

66. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
to a second 30-minute meal period when they worked more than 10 hours in a workday.

67. Defendants intentionally failed to provide Plaintiff and the Class Members with
all required 30-minute duty-free meal periods and 10-minute rest periods free from any work
duties in accordance with the Wage Order.

68. At all relevant times, Defendants failed to provide Plaintiff and the Class
Members with all timely 30-minute duty-free meal periods within the first five hours of work.
Furthermore, Defendants failed to pay premium wages for days on which they failed to provide
Plaintiff and the Class Members with timely meal periods.

69. Plaintiff is informed and believes and thereon alleges that, at all relevant times
within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy



1 which resulted in Defendants not providing the Class with all off-duty meal periods required by
2 California law.

3 70. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
4 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
5 wages owed for all meal periods not provided to them.

6 71. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
7 the Class Members are entitled to premium wages for workdays in which one or more off-duty
8 meal periods were not provided to them, and for workdays in which one or more rest breaks were
9 not provided to them.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE FOR EXPENSES**

12 **(Lab. Code §§ 1198 and 2802)**

13 **(By Plaintiff and the Class against Defendants)**

14 72. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

15 73. At all relevant times, Plaintiff and the other Class Members have been non-exempt
16 employees of Defendants and entitled to the benefits and protections of California Labor Code
17 §§ 1198 and 2802 and the Wage Order.

18 74. In pertinent part, California Labor Code § 2802(a) states, "[a]n employer shall
19 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
20 consequence of the discharge of his or her duties."

21 75. California Labor Code § 1198 prohibits employers from employing their
22 employees under conditions prohibited by the Wage Order.

23 76. At all relevant times during the applicable limitations period, Defendants required
24 Plaintiff and the Class Members to supply mobile phones to perform their job duties, but
25 Defendants did not provide these items or even reimburse Plaintiff and the Class Members for



1 these items. Defendants required Plaintiff and the Class Members to use these personal mobile
2 phones to communicate with their managers and other individuals. Defendants failed to provide
3 these phones or even reimburse Plaintiff and the Class Members for phone usage. Defendants
4 also required Plaintiff and the Class Members to provide their own tools and supplies to perform
5 their job duties. Defendants did not reimburse Plaintiff and the Class Members for the tools and
6 supplies purchased on Defendants' behalf.

7 77. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
8 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
9 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
10 during the course of performing their duties.

11 78. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class
12 Members are entitled to reimbursement for all necessary expenditures and losses and interest
13 thereon, due and owing to them within four years of the date of the filing of the Complaint until
14 the entry of judgment.

15 79. Accordingly, with respect to this cause of action, on behalf of himself and the
16 Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys' fees
17 pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

20 **(Lab. Code § 226)**

21 **(By Plaintiff and the Class against all Defendants)**

22 80. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

23 81. At all relevant times during the applicable limitations period, Plaintiff and the
24 other Class Members have been employees of Defendants and entitled to the benefits and
25 protections of California Labor Code § 226.



1 82. Pursuant to California Labor Code § 226(a), Plaintiff and the other Class Members
2 were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate and
3 complete itemized statement showing:

- 4 (1) Gross wages earned,
5 (2) Total hours worked by the employee, except for any employee whose
6 compensation is solely based on a salary and who is exempt from payment of overtime under
7 subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,
8 (3) The number of piece rate units earned and any applicable piece rate if the
9 employee is paid on a piece-rate basis,
10 (4) All deductions, provided that all deductions made on written orders of the
11 employee may be aggregated and shown as one item,
12 (5) Net wages earned,
13 (6) The inclusive dates of the period for which the employee is paid,
14 (7) The name of the employee and his or her social security number, except
15 that by January 1, 2008, only the last four digits of his or her social security number or an
16 employee identification number other than a social security number may be shown on the itemized
17 statement,
18 (8) The name and address of the legal entity that is the employer, and
19 (9) All applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.

21 83. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
22 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
23 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
24 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
25 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and



1 is entitled to an award of costs and reasonable attorneys' fees.

2 84. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
3 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
4 injury if the employer fails to provide accurate and complete information as required by California
5 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
6 statement alone one or more of the following:

7 A. The amount of the gross wages or net wages paid to the employee during
8 the pay period or any of the other information required to be provided on the itemized wage
9 statement pursuant to California Labor Code § 226(a);

10 B. Which deductions the employer made from gross wages to determine the
11 net wages paid to the employee during the pay period;

12 C. The name and address of the employer and, if the employer is a farm labor
13 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
14 address of the legal entity that secured the services of the employer during the pay period; and

15 D. The name of the employee and only the last four digits of his or her social
16 security number or an employee identification number other than a social security number.

17 85. "Promptly and easily determine," as stated in California Labor Code §
18 226(e), means a reasonable person would be able to readily ascertain the information without
19 reference to other documents or information.

20 86. As alleged herein, Defendants failed to provide Plaintiff and the other Class
21 Members with all meal and rest periods in compliance with California law. Defendants also failed
22 to provide Plaintiff and the other Class Members with premium wages on the workdays
23 Defendants failed to provide them with one or more meal and/or rest periods in compliance with
24 California law. Defendants also failed to reimburse Plaintiff and the other Class Members for all
25 necessary business expenses that they incurred on Defendants' behalf. As a result, Defendants



1 have failed to properly itemize Plaintiff and the other Class Members' gross and net wages earned
2 and other requirements of California Labor Code § 226. As a result, Defendants have violated
3 California Labor Code § 226.

4 87. Defendants' failure to provide Plaintiff and the other Class Members with accurate
5 and complete wage statements was knowing and intentional. Defendants had the ability to provide
6 Plaintiff and the other Class Members with accurate wage statements but intentionally provided
7 wage statements that Defendants knew were not accurate.

8 88. As a result of being provided with inaccurate wage statements by Defendants,
9 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
10 wage statements were violated and they were misled about the amount of wages they had actually
11 earned and were owed. In addition, the absence of accurate information on their wage statements
12 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
13 and mathematical computations to determine the amounts of wages owed, has caused difficulty
14 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
15 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
16 and the other Class Members were not able to ascertain from the wage statements whether
17 Defendants complied with their obligations under California Labor Code § 226(a).

18 89. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members
19 are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the
20 initial pay period in which a violation of California Labor Code § 226(a) occurred and one
21 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
22 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
23 also entitled to an award of costs and reasonable attorneys' fees.

24 90. Accordingly, with respect to this cause of action, on behalf of himself and the other
25 Class, Plaintiff prays for the herein stated relief and for an award of all reasonable costs and



1 attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

2 **SIXTH CAUSE OF ACTION**

3 **WAITING TIME PENALTIES**

4 **(Lab. Code §§ 201, 202, and 203)**

5 **(By Plaintiff and the Class against all Defendants)**

6 91. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

7 92. At all relevant times during the applicable limitations period, Plaintiff and the
8 Class have been non-exempt employees of Defendants and entitled to the benefits and
9 protections of California Labor Code §§ 201–203, and the Wage Order.

10 93. Labor Code § 201 provides that all earned and unpaid wages of an employee who
11 is discharged are due and payable immediately at the time of discharge.

12 94. Labor Code § 202 provides that all earned and unpaid wages of an employee who
13 quits after providing at least 72-hours notice before quitting are due and payable at the time of
14 quitting and that all earned and unpaid wages of an employee who quits without providing at
15 least 72-hours notice before quitting are due and payable within 72 hours.

16 95. By failing to pay earned minimum and premium wages to Plaintiff and the Class,
17 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
18 § 201 or § 202.

19 96. Plaintiff is informed and believes that Defendants' failures to timely pay all final
20 wages to him and the Class Members have been willful in that Defendants have the ability to
21 pay final wages in accordance with Labor Code §§ 201, and 202 but have intentionally adopted
22 policies or practices that are incompatible with those requirements.

23 97. Labor Code § 203 provides that the wages of an employee continue on a daily
24 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
25 unpaid wages to the employee in accordance with Labor Code § 201, or § 202.



1 premium wages for workdays in which they did not provide employees with one or more meal
2 and rest periods, pay them all earned wages for all regular and overtime hours worked, and
3 reimburse Plaintiff and the Class Members for business expenses incurred on Defendants' behalf.
4 Defendants' unfair competitive advantage also includes the financial gains that resulted from
5 deducting at least 30 minutes from the work time Plaintiff and the Class Members had worked
6 per day.

7 104. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
8 other Class Members have suffered injuries in fact and lost money or property. Defendants
9 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and
10 premium wages that Plaintiff and the other Class Members incurred during the course of
11 performing their duties. Furthermore, Defendants failed to reimburse Plaintiff and the Class
12 Members for necessary business expenses.

13 105. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
14 other Class Members are entitled to restitution of all monies rightfully belonging to them that
15 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
16 and unfair business practices.

17 106. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
18 connection with their unfair competition claims pursuant to California Code of Civil Procedure
19 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

20 **EIGHTH CAUSE OF ACTION**

21 **CIVIL PENALTIES**

22 **(By Plaintiff and the Class against all Defendants)**

23 107. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

24 108. The "Aggrieved Employees" are all members of the Class defined above who
25 Defendants employed during the period beginning January 16, 2020 and ending on the date
that final judgment is entered in this action.



1 109. Labor Code § 204 states

2 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
3 or 204.2, earned by any person in any employment are due and payable twice
4 during each calendar month, on days designated in advance by the employer as the
5 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
6 calendar month shall be paid for between the 16th and the 26th day of the month
7 during which the labor was performed, and labor performed between the 16th and
8 the last day, inclusive, of any calendar month, shall be paid for between the 1st
9 and 10th day of the following month. ...

10 (b) (1) Notwithstanding any other provision of this section, all wages
11 earned for labor in excess of the normal work period shall be paid no later than the
12 payday for the next regular payroll period.

13 (2) An employer is in compliance with the requirements of subdivision (a) of
14 Section 226 relating to total hours worked by the employee, if hours worked in
15 excess of the normal work period during the current pay period are itemized as
16 corrections on the paystub for the next regular pay period. Any corrections set out
17 in a subsequently issued paystub shall state the inclusive dates of the pay period
18 for which the employer is correcting its initial report of hours worked.

19 (c) However, when employees are covered by a collective bargaining
20 agreement that provides different pay arrangements, those arrangements shall
21 apply to the covered employees.

22 (d) The requirements of this section shall be deemed satisfied by the payment
23 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
24 more than seven calendar days following the close of the payroll period.

25 110. Defendants paid wages to employees on regular intervals. Defendants, however,
26 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
27 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
28 intervals for all wages earned and all hours worked.

29 111. During the applicable time period, Defendants violated California Labor Code §§
30 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

31 112. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
32 behalf of themselves and other current or former employees, to bring a civil action to recover civil
33 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

34 113. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
35 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code



1 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable
2 limitations period in the following amounts:

3 A. For violations of California Labor Code § 204, one hundred dollars
4 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
5 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
(penalty amounts established by California Labor Code § 210).

6 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
7 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
8 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
California Labor Code § 226.3).

9 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
10 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
11 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
established by California Labor Code § 558).

12 D. For violations of California Labor Code § 1197, one hundred dollars
13 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
14 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
15 (regardless of whether the initial violations were intentionally committed) (penalty amounts
established by California Labor Code § 1197.1).

16 E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
17 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
18 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
19 period for each subsequent violation (penalty amounts established by California Labor Code §
2699(f)(2)).

20 114. Plaintiff has complied with the procedures for bringing suit specified in California
21 Labor Code § 2699.3. By letter dated August 17, 2021, Plaintiff filed written notice online with
22 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
23 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
24 violated, including the facts and theories to support the alleged violations. A true and correct copy
25 of the notice to the LWDA dated August 17, 2021, is attached as Exhibit A. Plaintiff accompanied
his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in



1 response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the
2 LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate
3 these allegations.

4 115. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
5 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
6 connection with their claims for civil penalties.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
9 relief and judgment against Defendants as follows:

- 10 A. An order that the action be certified as a class action;
- 11 B. An order that Plaintiff be appointed class representative;
- 12 C. An order that counsel for Plaintiff be appointed class counsel;
- 13 D. Unpaid Wages;
- 14 E. Actual Damages;
- 15 F. Statutory Damages;
- 16 G. Civil Penalties;
- 17 H. Restitution;
- 18 I. Declaratory and injunctive relief;
- 19 J. Equitable relief;
- 20 K. Pre-judgment interest;
- 21 L. Statutory penalties;
- 22 M. Costs of suit;
- 23 N. Interest;
- 24 O. Reasonable attorneys' fees; and
- 25 P. Such other relief as the Court deems just and proper.



SPIVAK LAW

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: October 21, 2021

By 

DAVID SPIVAK,
GREGORY B. WILBUR,
SARA BROWN,
Attorneys for Plaintiff,
DEAN CRUMPLER, and all others similarly
situated



SPIVAK LAW

EXHIBIT A

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 16, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Dean Crumpler / Westco Equities

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Dean Crumpler (hereafter “Crumpler” or “Complainant”) provides notice that Westco Equities, Inc. dba Westco Property Management, a California corporation, and related entities (collectively “the Westco Equities Employers” or “the Employers”) violated his rights and those of all other individuals the Westco Equities Employers have employed or otherwise contracted with in California as maintenance workers, property managers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 1174, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802. On behalf of himself and all other Aggrieved Employees, Crumpler hereby provides this notice to the Labor & Workforce Development Agency and the Westco Equities Employers and their agents and representatives.

At all relevant times, the Westco Equities Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Crumpler and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No.

5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately April 12, 2018, the Westco Equities Employers began to employ Crumpler in Fresno in the position of maintenance worker. The Westco Equities Employers continuously employed him in that capacity until on or about March 21, 2021 when he began a leave of absence. On or about March 21, 2021, the employment relationship ended.

At all relevant times, the Westco Equities Employers issued wages to Crumpler and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Westco Equities Employers classified Crumpler and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Westco Equities Employers failed to compensate Crumpler and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to work through their off-the-clock meal periods to respond to communications by managers and homeowners. Moreover, the Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to perform at least 30 minutes of work each day that the Westco Equities Employers prohibited them from recording for purposes of payroll. This included requirements that Crumpler and the Aggrieved Employees start their work one hour before the start time that the Westco Equities Employers would begin to pay them from. The unpaid time was spent performing such tasks as training other employees and picking up supplies at hardware stores necessary to complete work orders. The Westco Equities Employers also required Crumpler and all of the other Aggrieved Employees to perform work at the end of their workdays that the Westco Equities Employers would not pay them for. This work included time spent locking up the office. These unpaid work periods extended each workday of Crumpler and the

Aggrieved Employees beyond eight hours and each workweek beyond 40 hours. Furthermore, the Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to provide their own tools to perform the job duties the Westco Equities Employers expected them to perform, but did not reimburse them for such tools nor provide them. In spite of this, the Westco Equities Employers failed to pay Crumpler and all of the other Aggrieved Employees at least twice minimum wage as required by the Wage Order.

The Westco Equities Employers failed to compensate Crumpler and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to work through their off-the-clock meal periods to respond to communications by managers and homeowners. Moreover, the Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to perform at least 30 minutes of work each day that the Westco Equities Employers prohibited them from recording for purposes of payroll. The unpaid work periods described above extended each workday of Crumpler and the Aggrieved Employees beyond eight hours and each workweek beyond 40 hours, though the Westco Equities Employers did not pay Crumpler and all of the other Aggrieved Employees overtime premium rates for work performed in excess of eight hours in a day and 40 hours in a week.

At all relevant times, the Westco Equities Employers failed to provide Crumpler and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to work through their off-the-clock meal periods to respond to communications by managers and homeowners but did not pay them for such periods. The Westco Equities Employers also failed to pay premium wages for days on which it failed to provide Crumpler and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Westco Equities Employers failed to authorize and permit Crumpler and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The

Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to work through their rest periods to respond to communications by managers and homeowners. The Westco Equities Employers also failed to pay premium wages for days on which it failed to authorize and permit Crumpler and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Westco Equities Employers supplied Crumpler and the Aggrieved Employees with a Home Depot credit card to at times purchase brooms, mops, buckets, shovels, shop vacs, and wheelbarrows, but required Crumpler and all of the other Aggrieved Employees to supply mobile phones, tools, equipment, supplies, and materials to perform their job duties. The tools the Westco Equities Employers required Crumpler and all of the Aggrieved Employees to provide themselves included hammers, drill bits, screwdrivers, tape measures, visors, sanding belts, belt sander firearms, flashlights, cameras, calculators, claw hammers, levels, utility knives, cordless power tools sets, wire stripper pliers, pliers, wrenches, shovels, saws, thermal gun readers, heat guns, impact guns, and face board nailers. The Westco Equities Employers did not provide these items and did not reimburse Crumpler and the other Aggrieved Employees for these items. The Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to provide their own tools to perform the job duties the Westco Equities Employers expected them to perform, but did not reimburse them for such tools nor provide them. When Crumpler used the Home Depot credit cards to purchase tools to perform his job duties, his manager who decided whether or not to approve purchases criticized him for spending too much on tools. Additionally, the Westco Equities Employers required Crumpler to share the tools they provided to him with others which also slowed down the progress of his work.

At all relevant times, the Westco Equities Employers failed to issue to Crumpler and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Westco Equities Employers knowingly and intentionally failed to state on the wage statements they issued to Crumpler and all of the other

Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and all unlawfully deducted wages.

The Westco Equities Employers also failed to timely pay Crumpler and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Westco Equities Employers failed to maintain accurate employee records of Crumpler and all of the other Aggrieved Employees. The Westco Equities Employers failed to maintain the records of the work performed and the meal and rest breaks taken on-duty by Crumpler and all of the other Aggrieved Employees.

For the reasons stated herein, Crumpler alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Westco Equities Employers failed to pay Crumpler and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Westco Equities Employers failed to provide Crumpler and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Westco Equities Employers failed to authorize and permit Crumpler and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Westco Equities Employers failed to compensate Crumpler and all of the other Aggrieved Employees at one hour's pay for

each day in which the Westco Equities Employers failed to provide them with one or more meal periods as required by law;

- (e) The Westco Equities Employers failed to compensate Crumpler and all of the other Aggrieved Employees at one hour's pay for each day in which the Westco Equities Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Westco Equities Employers failed to indemnify Crumpler and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Westco Equities Employers unlawfully deducted wages belonging to Crumpler and all of the other Aggrieved Employees;
- (h) The Westco Equities Employers knowingly and intentionally failed to provide Crumpler and all of the other Aggrieved Employees with accurate wage statements;
- (i) The Westco Equities Employers willfully failed to timely pay Crumpler and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Westco Equities Employers and when their employment ended; and
- (j) The Westco Equities Employers failed to maintain accurate employment records pertaining to Crumpler and all of the other Aggrieved Employees.

Accordingly, Crumpler now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Westco Equities Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and

- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Westco Equities Employers, Crumpler, and all of the Aggrieved Employees were covered by the Wage Order because the Westco Equities Employers operated, and Crumpler, and all of the Aggrieved Employees, worked for one or more apartments houses, homeowners associations, and residential properties. Accordingly, Crumpler and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and

- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to work through their off-the-clock meal periods to respond to communications by managers and homeowners. Moreover, the Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to perform at least 30 minutes of work each day that the Westco Equities Employers prohibited them from recording for purposes of payroll. This included requirements that Crumpler and the Aggrieved Employees start their work one hour before the start time that the Westco Equities Employers would begin to pay them for. The unpaid time was spent performing such tasks as training other employees and picking up supplies at hardware stores necessary to complete work orders. The Westco Equities Employers also required Crumpler and all of the other Aggrieved Employees to perform work at the end of their workdays that the Westco Equities Employers would not pay them for. This work included time spent locking up the office. These unpaid work periods extended each workday of Crumpler and the Aggrieved Employees beyond eight hours and each workweek beyond 40 hours. Furthermore, the Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to provide their own tools to perform the job duties the Westco Equities Employers expected them to perform, but did not reimburse them for such tools nor

provide them. In spite of this, the Westco Equities Employers failed to pay Crumpler and all of the other Aggrieved Employees at least twice minimum wage as required by the Wage Order.

The Westco Equities Employers failed to compensate Crumpler and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. As stated above, the Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to work through their off-the-clock meal periods to respond to communications by managers and homeowners. Moreover, the Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to perform at least 30 minutes of work each day that the Westco Equities Employers prohibited them from recording for purposes of payroll. The unpaid work periods described above extended each workday of Crumpler and the Aggrieved Employees beyond eight hours and each workweek beyond 40 hours, though the Westco Equities Employers did not pay Crumpler and all of the other Aggrieved Employees overtime premium rates for work performed in excess of eight hours in a day and 40 hours in a week.

At all relevant times during the applicable limitations period, the Westco Equities Employers failed to compensate Crumpler and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Crumpler now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each

subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with

a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an

applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Westco Equities Employers failed to provide Crumpler and all of the other Aggrieved Employees with all timely meal periods. The Westco Equities Employers denied Crumpler and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to work through their off-the-clock meal periods to respond to communications by managers, homeowners, and others but did not pay them for such periods. Furthermore, the Westco Equities Employers failed to pay premium wages for days on which they failed to provide Crumpler and all of the other Aggrieved Employees with timely meal periods. Accordingly, Crumpler now seeks civil penalties for these Labor Code violations that the Westco Equities Employers have committed against and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));

2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Westco Equities Employers failed to authorize and permit Crumpler and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Westco Equities Employers did not seek an exemption from the rest period protections of the

Wage Order from the California Division of Labor Standards Enforcement. The Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to work through their rest periods to respond to communications by managers, homeowners, and others. Moreover, the Westco Equities Employers failed to pay Crumpler and all of the other Aggrieved Employees premium wages on workdays the Westco Equities Employers failed to provide Crumpler and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Crumpler now seeks civil penalties for these Labor Code violations that the Westco Equities Employers have committed against and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When 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.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Westco Equities Employers supplied Crumpler and the Aggrieved Employees with a Home Depot credit card to at times purchase brooms, mops, buckets, shovels, shop vacs, and wheelbarrows, but required Crumpler and all of the other Aggrieved Employees to supply mobile phones, tools, equipment, supplies, and materials to perform their job duties. The tools the Westco Equities Employers required Crumpler and all of the Aggrieved Employees to provide themselves included hammers, drill bits, screwdrivers, tape measures, visors, sanding belts, belt sander firearms, flashlights, cameras, calculators, claw hammers, levels, utility knives, cordless power tools sets, wire stripper pliers, pliers, wrenches, shovels, saws, thermal gun readers, heat guns, impact guns, and face board nailers. The Westco Equities Employers did not provide these items and did not reimburse Crumpler and the other Aggrieved Employees for these items. The Westco Equities Employers required Crumpler and all of the other Aggrieved Employees to provide their own tools to perform the job duties the Westco Equities Employers expected them to perform, but did not reimburse them for such tools nor provide them. When Crumpler used the Home Depot credit cards to purchase tools to perform his job duties, his manager who decided whether or not to approve purchases criticized him for spending too much on tools. Additionally, the Westco Equities Employers required Crumpler to share the tools they provided to him with

others which also slowed down the progress of his work. Accordingly, Crumpler seeks civil penalties for these Labor Code violations that the Westco Equities Employers have committed against and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;

5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Westco Equities Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Westco Equities Employers failed to state in the wage statements they issued to Crumpler and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Westco Equities Employers knowingly and intentionally failed to state on the wage statements they issued to Crumpler and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and all unlawfully deducted wages.

Accordingly, Crumpler seeks civil penalties for the Labor Code violations that the Westco Equities Employers have committed against and all of the other

Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Westco Equities Employers failed to compensate Crumpler and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and deducted wages, at the intervals stated above. As a result, the Westco Equities Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Crumpler now seeks civil penalties for the Labor Code violations that the Westco Equities Employers have committed against and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment

(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Westco Equities Employers failed to pay Crumpler and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Crumpler, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and deducted wages. By failing to pay Crumpler and all of the other Aggrieved Employees as set forth above at the end of employment, the Westco Equities Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Crumpler seeks civil penalties from the Westco Equities Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which

subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an

employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.

- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Westco Equities Employers failed to compensate Crumpler and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and all unlawfully deducted wages. As a result, the Westco Equities Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Crumpler and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Crumpler seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Dean Crumpler will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Dean Crumpler
Walter L. Haines, Esq.
United Employees Law Group

Westco Equities dba Westco Property Management
c/o Gary Bethel, Esq.
Ivy Fitzgerald, Esq.
Littler Mendelson, PC
5200 North Palm Avenue
Suite 302
Fresno, CA 93704-2225
GBethel@littler.com
IFitzgerald@littler.com