

Robert Drexler (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
Molly DeSario (SBN 230763)
Molly.DeSario@CapstoneLawyers.com
Jonathan Lee (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiffs Jorge Aguilera Rodriguez
and Eric Hernandez

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

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

Plaintiffs,

vs.

IMPERIAL WESTERN PRODUCTS,
INC., A CALIFORNIA CORPORATION, a
California corporation; DENALI WATER
SOLUTIONS, LLC, a Delaware limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CVRI2000071

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

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

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

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

Jury Trial Demanded

1 Plaintiffs Jorge Aguilera Rodriguez and Eric Hernandez, individually and on behalf of
2 all other members of the public similarly situated and as aggrieved employees and on behalf
3 of all other aggrieved employees, allege as follows:

4 JURISDICTION AND VENUE

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

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

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

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

7 **THE PARTIES**

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

15 5. Plaintiff Eric Hernandez s a resident of Bloomington, in San Bernardino
16 County, California. Defendants employed Plaintiff Hernandez as an hourly-paid non-exempt
17 Driver and Lead Driver from approximately 2017 to December 2021. Plaintiff Hernandez
18 worked for Defendants at their location in Mira Loma, in Riverside County, California.
19 During his employment, Plaintiff Hernandez typically worked ten (10) hours or more per day
20 and five (5) days or more per week. Plaintiff Hernandez's primary job duties included,
21 without limitation, driving, loading, and unloading delivery trucks; monitoring clients' waste
22 compactors; communicating with clients, supervisors, and Defendants' dispatch; and
23 monitoring vehicle maintenance.

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

28 7. DENALI WATER SOLUTIONS, LLC, A DELAWARE LIMITED

1 LIABILITY COMPANY was and is, upon information and belief, a Delaware limited liability
2 company, and at all times hereinafter mentioned, an employer whose employees are engaged
3 throughout this county, the State of California, or the various states of the United States of
4 America.

5 8. Plaintiffs are unaware of the true names or capacities of the Defendants sued
6 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
7 amend the complaint and serve such fictitiously named Defendants once their names and
8 capacities become known.

9 9. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
10 were the partners, agents, owners, or managers of IMPERIAL WESTERN PRODUCTS, INC.,
11 A CALIFORNIA CORPORATION and/or DENALI WATER SOLUTIONS, LLC, A
12 DELAWARE LIMITED LIABILITY COMPANY at all relevant times.

13 10. Plaintiffs are informed and believe, and thereon allege, that each and all of the
14 acts and omissions alleged herein was performed by, or is attributable to, IMPERIAL
15 WESTERN PRODUCTS, INC., A CALIFORNIA CORPORATION, DENALI WATER
16 SOLUTIONS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, and/or DOES 1
17 through 10 (collectively, “Defendants” or “IMPERIAL WESTERN”), each acting as the
18 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
19 other co-Defendants and was acting within the course and scope of such agency, employment,
20 joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts
21 of any and all Defendants were in accordance with, and represent, the official policy of
22 Defendants.

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

27 12. Plaintiffs are informed and believe, and thereon allege, that each of said
28 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,

omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

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

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

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

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

17. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees

1 and advisors knowledgeable about California labor and wage law, employment and personnel
2 practices, and about the requirements of California law.

3 18. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class
4 members were not paid for all hours worked because all hours worked were not recorded.

5 19. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and class members were entitled to receive at least
7 minimum wages for compensation and that they were not receiving at least minimum wages
8 for work that was required to be done off-the-clock. In violation of the California Labor
9 Code, Plaintiffs and class members were not paid at least minimum wages for work done off-
10 the-clock.

11 20. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs and/or class members were entitled to receive certain wages
13 for overtime compensation and that they were not receiving certain wages for overtime
14 compensation.

15 21. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and class members were entitled to meal periods in
17 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
18 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
19 periods and that Plaintiffs and class members were not provided with all meal periods or
20 payment of one (1) additional hour of pay at their regular rates of pay when they did not
21 receive a timely, uninterrupted, thirty (30) minute meal period.

22 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiffs and class members were entitled to rest periods in
24 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
25 additional hour of pay at their regular rates of pay when they were not authorized and
26 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiffs
27 and class members were not authorized and permitted to take compliant rest periods, nor did
28 Defendants provide Plaintiffs and class members with payment of one (1) additional hour of

1 pay at their regular rates of pay when they were not authorized and permitted to take a
2 compliant rest period.

3 23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and class members were entitled to receive complete and
5 accurate wage statements in accordance with California law. In violation of the California
6 Labor Code, Plaintiffs and class members were not provided complete and accurate wage
7 statements.

8 24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that they had a duty to maintain accurate and complete payroll records in
10 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
11 and intentionally failed to do so.

12 25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiffs and class members were entitled to timely payment of all
14 wages earned upon termination of employment. In violation of the California Labor Code,
15 Plaintiffs and class members did not receive payment of all wages due, including, but not
16 limited to, minimum wages and/or meal and rest period premium wages, within permissible
17 time periods.

18 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and class members were entitled to timely payment of
20 wages during their employment. In violation of the California Labor Code, Plaintiffs and
21 class members did not receive payment of all wages, including, but not limited to, minimum
22 wages and/or meal and rest period premium wages, within permissible time periods.

23 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and class members were entitled to one day's rest in seven.
25 In violation of the California Labor Code, Defendants required Plaintiffs and class members to
26 work more than six consecutive days without a day of rest, where the total hours worked
27 exceeded 30 hours in any week or six hours in any one day thereof.

28 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or

1 should have known that Plaintiffs and class members were entitled to receive full
2 reimbursement for all business-related expenses and costs they incurred during the course and
3 scope of their employment and that they did not receive full reimbursement of applicable
4 business-related expenses and costs incurred.

5 29. Plaintiffs are informed and believe, and thereon allege, that at all times herein
6 mentioned, Defendants knew or should have known that they had a duty to compensate
7 Plaintiffs and class members for all hours worked, and that Defendants had the financial
8 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
9 and falsely represented to Plaintiffs and class members that they were properly denied wages,
10 all in order to increase Defendants' profits.

11 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

21 32. Plaintiffs and other current and former employees of Defendants are "aggrieved
22 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
23 or former employees and one or more of the alleged violations were committed against them.

24 33. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
25 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
26 following requirements have been met:

- 27 (a) The aggrieved employee or representative shall give written notice by
28 online filing with the LWDA and by certified mail to the employer of

1 the specific provisions of the California Labor Code alleged to have
2 been violated, including the facts and theories to support the alleged
3 violation.

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

7 (c) The LWDA shall notify the employer and the aggrieved employee or
8 representative by certified mail that it does not intend to investigate the
9 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
10 the postmark date of the aggrieved employee's notice. Upon receipt of
11 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
12 (65) calendar days of the postmark date of the aggrieved employee's
13 notice, the aggrieved employee may commence a civil action pursuant
14 to California Labor Code section 2699 to recover civil penalties.

15 34. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
16 through Plaintiffs, may pursue a civil action arising under PAGA for violations of any
17 provision other than those listed in Section 2699.5 after the following requirements have been
18 met:

19 (a) The aggrieved employee or representative shall give written notice by
20 online filing with the LWDA and by certified mail to the employer of
21 the specific provisions of the California Labor Code alleged to have
22 been violated (other than those listed in Section 2699.5), including the
23 facts and theories to support the alleged violation.

24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(c) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).

27 (c) The employer may cure the alleged violation within thirty-three (33)
28 calendar days of the postmark date of the notice sent by the aggrieved

1 employee or representative. The employer shall give written notice
2 within that period of time by certified mail to the aggrieved employee or
3 representative and by online filing with the LWDA if the alleged
4 violation is cured, including a description of actions taken, and no civil
5 action pursuant to Section 2699 may commence. If the alleged violation
6 is not cured within the 33-day period, the aggrieved employee may
7 commence a civil action pursuant to Section 2699.

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

17 36. On May 27, 2022, Plaintiff Hernandez provided written notice by online filing
18 to the LWDA and by Certified Mail to Defendants of the specific provisions of the California
19 Labor Code alleged to have been violated, including facts and theories to support the alleged
20 violations, in accordance with California Labor Code section 2699.3. Plaintiff Hernandez's
21 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
22 The LWDA PAGA Administrator confirmed receipt of Plaintiff Hernandez's written notice
23 and assigned Plaintiff Hernandez PAGA Case Number LWDA-CM-886160-22. A true and
24 correct copy of Plaintiff Hernandez's written notice to the LWDA and Defendants is attached
25 hereto as "Exhibit 2."

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

1 38. Thus, Plaintiffs have satisfied the administrative prerequisites under California
2 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
3 violations of California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7,
4 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

20 42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
21 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as a
22 private attorney general, seeks assessment and collection of civil penalties for himself, all
23 other aggrieved employees, and the State of California against Defendants for violations of
24 California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 510, 512(a),
25 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

26 **CLASS ACTION ALLEGATIONS**

27 43. Plaintiffs bring this action on their own behalf, as well as on behalf of each and
28 all other persons similarly situated, and thus seek class certification under California Code of

Civil Procedure section 382.

44. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

45. Plaintiffs' proposed class consists of and is defined as follows:

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

46. Plaintiffs' proposed subclass consists of and is defined as follows:

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

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

48. Plaintiffs reserve the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

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

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

Code section 226(a);

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

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

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

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

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

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

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

1 while simultaneously protecting their privacy.

2 **FIRST CAUSE OF ACTION**

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

6 51. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
7 and every allegation set forth above.

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

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

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

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

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

12 **SECOND CAUSE OF ACTION**

13 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period** 14 **Violations** 15 **(Against all Defendants)**

16 56. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
17 and every allegation set forth above.

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

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

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

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

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

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

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

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

28 64. In addition, an employer’s obligation to provide a meal period is only

1 “triggered” when the employer “employs an employee for a work period of more than five
2 hours per day.” *Brinker*, 53 Cal. 4th at 1039 (“If an employer engages, suffers, or permits
3 anyone to work for a full five hours, its meal break obligation is triggered.”).

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

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

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

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

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

1 **THIRD CAUSE OF ACTION**

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

4 68. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
5 and every allegation set forth above.

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

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

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

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

1 wide policy and/or practice of understaffing and assigning heavy workloads prevented
2 Plaintiffs and class members from being relieved of all duty in order to take compliant rest
3 periods. Additionally, Defendants failed to adhere to a schedule of rest periods, which,
4 coupled with Defendants' failure to provide adequate rest period coverage, further led to
5 Plaintiffs and class members not being authorized and permitted to take compliant rest
6 periods.

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

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

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

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

1 **FOURTH CAUSE OF ACTION**

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

5 77. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
6 and every allegation set forth above.

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

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

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

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

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

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

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

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

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

25 87. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
26 and every allegation set forth above.

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

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

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

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

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

23 **SIXTH CAUSE OF ACTION**

24 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 25 **Employment** 26 **(Against all Defendants)**

27 92. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
28 and every allegation set forth above.

1 93. This cause of action is dependent upon, and wholly derivative of, the minimum
2 wages and/or meal and rest period premium wages that were not timely paid to Plaintiffs and
3 those class members.

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

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

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

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

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

27 //

28 //

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

SEVENTH CAUSE OF ACTION
Violation of California Labor Code §§ 551, 552, and 558—Failure to Provide One Day’s
Rest in Seven
(Against all Defendants)

99. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

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

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

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

103. During the relevant period, Defendants required Plaintiffs and class members to work eight (8) or more hours per day and seven (7) consecutive days in a workweek. For example, Plaintiff Rodriguez was required to work approximately twenty-one (21) consecutive days in October 2017. Because Plaintiff Rodriguez and class members worked over thirty (30) hours per week and over six (6) hours per day in a workweek, they were not

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

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

8 **EIGHTH CAUSE OF ACTION**

9 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 10 **(Against all Defendants)**

11 105. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
12 and every allegation set forth above.

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

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

1 with his other laundry. As a result, he had to wash his uniform items separately from any
2 other items, thus incurring additional utility and laundry expenses.

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

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

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

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

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

113. Plaintiffs and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

NINTH CAUSE OF ACTION

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

(Against all Defendants)

114. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

115. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

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

(a) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,

1 and the applicable IWC wage order for Defendants' failure to
2 compensate Plaintiffs and other aggrieved employees with at least
3 minimum wages for all hours worked, as alleged herein;

- 4 (b) Violation of Labor Code sections 510, 1198, and the applicable IWC
5 wage order for Defendants' failure to compensate other aggrieved
6 employees with all required overtime pay, as set forth below;
- 7 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
8 applicable IWC wage order for Defendants' failure to provide Plaintiffs
9 and other aggrieved employees with meal periods, as alleged herein;
- 10 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
11 IWC wage order for Defendants' failure to authorize and permit
12 Plaintiffs and other aggrieved employees to take rest periods, as alleged
13 herein;
- 14 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
15 wage order for failure to provide accurate and complete wage statements
16 to Plaintiffs and other aggrieved employees, as alleged herein;
- 17 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
18 IWC wage order for failure to maintain payroll records as alleged
19 herein;
- 20 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
21 earned wages upon termination, as alleged herein;
- 22 (h) Violation of Labor Code section 204 for failure to pay all earned wages
23 during employment, as alleged herein;
- 24 (i) Violation of Labor Code section 206.4 for unlawfully requiring
25 employees to execute releases of a claim or right "on account of wages
26 due, or to become due, or made as an advance on wages to be earned,
27 unless payment of those wages has been made" as alleged herein;
- 28 (j) Violation of Labor Code section 222.5 for failure to compensate other

1 aggrieved employees for mandatory physical examinations and/or drug
2 testing, as set forth below;

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

5 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
6 and other aggrieved employees for all business expenses necessarily
7 incurred, as alleged herein.

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

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

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

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

26 121. California Labor Code section 510 codifies the right to overtime compensation
27 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
28 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the

seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

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

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

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

125. At all relevant times herein, California Labor Code section 206.5 prohibits employers from requiring employees to executed releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made."

126. During the relevant time period, on information and belief, Defendants required Plaintiff Hernandez and other aggrieved employees to release their claims for meal and rest

1 period violations, as well as their claims for uncompensated hours worked, as a condition to
2 receiving their paychecks. For example, prior to receiving their paychecks, Defendants
3 required Plaintiff Hernandez and other aggrieved employees to sign verifications stating they
4 had been provided all meal and rest periods and that they had not been paid for all hours
5 worked. Defendants compelled Plaintiff Hernandez and other aggrieved employees to sign
6 these false verifications when they, in fact, were not provided all meal and rest periods and/or
7 had not been able to accurately record all of the hours they had worked.

8 127. Defendants' policy and practice of requiring Plaintiff Hernandez and other
9 aggrieved employees to release their claims for unpaid wages as a condition to receiving their
10 paychecks is in violation of California Labor Code section 206.5. Plaintiff Hernandez and
11 other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest
12 thereon, pursuant to Labor Code sections 2699(a), (f)- (g).

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

16 129. During the relevant time period, Defendants implemented, on a company-wide
17 basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory
18 physical examination and/or drug test, but required them to do so at their own expense. As
19 stated, Defendants had a company-wide policy requiring that all employees, including other
20 aggrieved employees, travel to a specified medical facility using their own personal vehicles
21 to undergo physical examinations and/or drug testing. At all times, Defendants were in
22 control of scheduling the date and time for the examination and/or testing, selecting the
23 provider/facility where the examination and/or testing was to take place, and determining the
24 scope of the examination and/or testing. Other aggrieved employees were also instructed by
25 Defendants to undergo a physical examination, which entailed performing a series of physical
26 fitness exercises administered by a designated human resource representative, for
27 approximately 30 minutes.

28 130. However, Defendants did not compensate other aggrieved employees for the

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

8 **TENTH CAUSE OF ACTION**

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

10 **Unlawful Business Practices**

11 **(Against all Defendants)**

12 131. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
13 and every allegation set forth above.

14 132. Defendants are "persons" as defined by California Business & Professions
15 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
16 and/or associations.

17 133. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
18 unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have
19 suffered injury in fact and has lost money as a result of Defendants' unlawful business
20 practices. Plaintiffs seek to enforce important rights affecting the public interest within the
21 meaning of Code of Civil Procedure section 1021.5.

22 134. Defendants' activities, as alleged herein, are violations of California law, and
23 constitute unlawful business acts and practices in violation of California Business &
24 Professions Code sections 17200, *et seq.*

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

28 (a) Failing to pay at least minimum wage to Plaintiffs and class members in

- violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- (b) Failing to provide uninterrupted meal periods to Plaintiffs and class members in violation of California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Order, as alleged herein;
- (c) Failing to authorize and permit Plaintiffs and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- (d) Failing to provide Plaintiffs and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), 1198, and the applicable IWC Order, as alleged herein;
- (e) Failing timely to pay all earned wages to Plaintiffs and class members in violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;
- (f) Failing to pay Plaintiffs and class members the costs of mandatory physical examinations and/or drug testing in violation of California Labor Code section 222.5, as set forth below;
- (g) Failing to authorize and permit Plaintiffs and class members to take one day's rest in seven in violation of California Labor Code sections 551 and 552, and the applicable IWC Order as alleged herein; and
- (h) Failing to reimburse Plaintiffs and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein.

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

137. At all times relevant herein, Defendants implemented, on a company-wide

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

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

20 139. However, Defendants did not compensate Plaintiffs and class members for the
21 time they spent traveling to and from their drug tests and/or physical examinations, or for the
22 time they spent undergoing the testing and/or examinations, or reimburse them for the travel
23 expenses they incurred getting to and from the medical facilities. Defendants' policy and/or
24 not paying for all costs Plaintiffs and class members incurred obtaining mandatory physical
25 examinations and/or drug testing is in violation of California Labor Code section 222.5.

26 140. As a result of the violations of California law herein described, Defendants
27 unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members
28 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged

1 herein.

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

8 **ELEVENTH CAUSE OF ACTION**

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

10 **Unfair Business Practices**

11 **(Against all Defendants)**

12 142. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
13 and every allegation set forth above.

14 143. Defendants are “persons” as defined by California Business & Professions
15 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
16 and/or associations.

17 144. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
18 and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered
19 injury in fact and has lost money as a result of Defendants' unfair business practices.
20 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of
21 Code of Civil Procedure section 1021.5.

22 145. Defendants' activities, namely Defendants' company-wide practice and/or
23 policy of not paying Plaintiffs and class members all meal and rest period premium wages due
24 to them under Labor Code section 226.7, deprived Plaintiffs and class members of the
25 compensation guarantee and enhanced enforcement implemented by section 226.7. The
26 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
27 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
28 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were

1 guaranteed to Plaintiffs and class members as part of their employment with Defendants, and
2 thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
3 unfair business practice in violation of California Business & Professions Code sections
4 17200, *et seq.* (Id.)

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

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

16 **REQUEST FOR JURY TRIAL**

17 Plaintiffs request a trial by jury.

18 **PRAYER FOR RELIEF**

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

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

24 **Class Certification**

- 25 2. That this case be certified as a class action;
- 26 3. That Plaintiffs be appointed as the representatives of the Class and Subclass;
- 27 4. That counsel for Plaintiffs be appointed as class counsel.

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

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

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

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

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

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

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

As to the Second Cause of Action

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

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

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

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

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

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

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

As to the Third Cause of Action

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

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

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

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

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

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

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

As to the Fourth Cause of Action

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

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

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

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

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

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

appropriate.

As to the Fifth Cause of Action

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

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

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

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

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

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

As to the Sixth Cause of Action

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

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

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

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

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

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

As to the Seventh Cause of Action

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

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

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

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

As to the Eighth Cause of Action

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

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

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

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

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

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

As to the Ninth Cause of Action

53. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees:

1 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all
2 hours worked); 510 and 1198 (by failing to pay all overtime compensation); 226.7, 512, 516,
3 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
4 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
5 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
6 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
7 employment); 206.5 (by unlawfully requiring employees to execute releases of claims on
8 account of wages due); 222.5 (by failing to pay the costs of mandatory drug testing and/or
9 physical examinations); 551 and 552 (by failing to provide one day's rest in seven); and 2802
10 (by failing to reimburse business expenses);

11 54. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
12 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
13 sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d),
14 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

15 55. For attorneys' fees and costs pursuant to California Labor Code section
16 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
17 Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 510, 512(a), 516, 551,
18 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

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

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

23 58. That the Court declare, adjudge and decree that Defendants' conduct of failing
24 to provide Plaintiffs and class members all minimum wages due to them, failing to provide
25 Plaintiffs and class members all meal periods, failing to authorize and permit Plaintiffs and
26 class members to take all rest periods, failing to provide Plaintiffs and class members accurate
27 and complete wage statements, failing to maintain accurate payroll records for Plaintiffs and
28 class members, failing timely to pay Plaintiffs and class members all earned wages during

1 employment, failing to reimburse Plaintiffs and class members for the costs of mandatory
2 drug testing and/or physical examinations, failing to provide Plaintiffs and class members
3 with one day's rest in seven, and failing to reimburse Plaintiffs and class members for
4 business-related expenses, constitutes an unlawful business practice in violation of California
5 Business and Professions Code sections 17200, *et seq.*;

6 59. For restitution of unpaid wages to Plaintiffs and all class members and
7 prejudgment interest from the day such amounts were due and payable;

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

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

14 62. For such other and further relief as the Court may deem equitable and
15 appropriate.

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

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

21 64. For restitution of the statutory benefits under section 226.7 unfairly withheld
22 from Plaintiffs and class members and prejudgment interest from the day such amounts were
23 due and payable;

24 65. For the appointment of a receiver to receive, manage and distribute any and all
25 funds disgorged from Defendants and determined to have been wrongfully acquired by
26 Defendants as a result of violations of California Business & Professions Code sections 17200
27 *et seq.*;

28 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to

1 California Code of Civil Procedure section 1021.5;

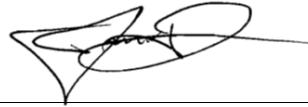
2 67. For pre-judgment and post-judgment interest as provided by law; and

3 68. For such other and further relief as the Court may deem equitable and
4 appropriate.

5
6 Dated: September 15, 2022

Respectfully submitted,

7 Capstone Law APC

8 

9 By: _____

10 Robert Drexler

Molly DeSario

11 Jonathan Lee

12 Attorneys for Plaintiffs Jorge Aguilera Rodriguez
13 and Eric Hernandez
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **September 15, 2022**, I served the document described as: **SECOND AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Lisa Hird Chung
Kim L. Carter
Carl J. Lehman
Schor Vogelzang & Chung LLP
2170 Fourth Avenue San Diego, CA 92101
Lisa@svclegal.com
Kim@svclegal.com
Carl@svclegal.com

Attorneys for Defendants
IMPERIAL WESTERN PRODUCTS, INC.

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **September 15, 2022**, at Los Angeles, California.

Sophia Flores

Type/Print Name



Signature