STANSBURY BROWN
LAW PC

December 12, 2025

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Angel Acevedo v. Western Pump, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Angel Acevedo in claims arising from his employment with Western Pump, Inc. and DOES 1 through 100 (collectively "WPI"). Mr. Acevedo is an "aggrieved employee" as defined by Labor Code Section 2698 *et seq*., due to WPI's numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated.

WPI is in the business of service contracting for fueling and transportation infrastructure facilities. WPI is a fully integrated gas station construction, service, maintenance, compliance, and equipment distribution company. Mr. Acevedo commenced employment with WPI as a non-exempt employee from approximately December 2024 until approximately October 2025 in the position of service technician. Mr. Acevedo had no set schedule. Rather, he would generally work Monday through Friday between 9.5-11 hours per day, depending on work demands. However, as discussed below, Mr. Acevedo worked considerably more hours than he was credited for on his wage statements. Mr. Acevedo was paid at a rate of approximately $42.50 per hour at the time of his separation with WPI.

For purposes of this letter, the "aggrieved employees" whom Mr. Acevedo seeks to represent are the other non-exempt employees of WPI in California at any time during the one year preceding the date of this letter through the present.

During Mr. Acevedo's employment with WPI, Mr. Acevedo and other aggrieved employees were not paid for all hours worked due to WPI's failures to properly account for all hours that Mr. Acevedo and other aggrieved employees actually worked. Specifically, Mr. Acevedo and other aggrieved employees were required to be "on-call" on a rotating shift during WPI's closed office hours. For example, Mr. Acevedo would be on call for a single day a week from 4 pm to 8 am. The day on call rotates over a period of 6 weeks, advancing by one day each week, with the on-call Friday shift covering the whole weekend from 4 pm Friday until 8 am Monday. However, instead of properly compensating Mr.

Acevedo and other aggrieved employees for these on-call hours worked, WPI would simply elect to pay them for the hours in which they were actually called in to perform work, which was vastly under representative of the number of hours that they were necessarily performing work on call. California courts considering whether on-call time constitutes hours worked primarily focus on the extent of the employer's control. Indeed, "[t]he level of the employer's control over its employees ... is determinative" in resolving the issue." (*Morillion, v. Royal Packing Co.*, (2000) 22 Cal.4th 575, 587 ("When an employer directs, commands or restrains an employee from leaving the work place ... and thus prevents the employee from using the time effectively for his or her own purposes, that employee remains subject to the employer's control. According to [the legal definition of hours worked], that employee must be paid.") *Id.* at p. 583. Courts have identified various factors bearing on an employer's control during on-call time: 1) whether there was an on-premises living requirement; 2) whether there were excessive geographical restrictions on employee's movements; 3) whether the frequency of calls was unduly restrictive; 4) whether a fixed time limit for response was unduly restrictive; 5) whether the on-call employee could easily trade on-call responsibilities; 6) whether use of a pager could ease restrictions; and 7) whether the employee had actually engaged in personal activities during call-in time. *See, e.g., Owens v. Local No. 169* (9th Cir.1992) 971 F.2d 347, 351; *Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508 ("*Gomez*")*; Mendiola v. CPS Sec. Sols., Inc.,* (2015) 60 Cal. 4th 833, 840–42 ("*Mendiola*"). Courts have also taken into account whether the "[o]n-call waiting time ... is spent primarily for the benefit of the employer and its business." *Gomez,* at p. 523; *Madera Police Officers Assn. v. Cty of Madera,* (1984) 36 Cal.App.3d 403,406. Here, Mr. Acevedo and other aggrieved employees were expected to respond to any work orders that came in during their on-call shifts immediately. They could not engage in personal activities and remained geographically restricted to their company vehicles (which were not permitted to be used for personal reasons). Employees were expected to complete any work order received while on call within short time frames following dispatch or else face reprimand. Mr. Acevedo and other aggrieved employees would be forced to sit at home attentive to WPI's needs without any opportunity to attend to their personal lives while on-call. Being on call was a chore that the technicians detested and due to the nature of the rotation employees were rarely, if ever, able to trade on-call responsibilities. It is abundantly clear that the primary beneficiary of these on-call policies/practices were WPI, and not its employees who were wholly unpaid for any time spent on-call waiting for a job to come in. As a result of WPI's policies/practices regarding this on-call work, WPI failed to pay all requisite minimum, overtime, and/or double time wages owed to Mr. Acevedo and other aggrieved employees.

Furthermore, Mr. Acevedo and other aggrieved employees routinely worked overtime but did not receive overtime compensation equal to one and one-half times their regular rate of pay for all overtime hours worked. WPI paid Mr. Acevedo and other aggrieved employees at different rates of pay that are not excludable from the regular rate of pay. Mr. Acevedo received his standard hourly rate of $42.50, but received a higher rate of pay for public works projects ("Prevailing Wages") of $46.69. Despite WPI's payment of different rates to Mr. Acevedo and other aggrieved employees, WPI failed to properly calculate the regular rate of pay, thereby causing Mr. Acevedo and other aggrieved employees to be underpaid all required overtime wages. This practice was pervasive throughout Mr. Acevedo's employment as he was routinely compensated at multiple and different rates of pay. However, all forms of pay were not factored in by WPI when calculating Mr. Acevedo's regular rate of pay during those pay periods when he received different rates of pay. Further on information and belief, WPI failed to properly blend all hourly rates in a given pay period to determine the proper regular rate of pay for calculating overtime. This practice resulted in a systemic underpayment of overtime wages.

Mr. Acevedo and other aggrieved employees were required to work seven days a week in order to meet intense deadlines, in direct violation of Labor Code § 551 and 552.

In addition, Mr. Acevedo and other aggrieved employees were not provided all legally compliant meal periods due to WPI's meal period policies and practices which fail to provide a timely 30-minute duty-free first meal period (i.e. a first meal period commencing before the end of the fifth hour of work). Specifically, Mr. Acevedo estimates that he did not receive a compliant first meal period, whether it be shortened, missed, or interrupted, on at least 85% of the shifts that he worked due to intense deadlines. Mr. Acevedo's shortened, late, and on-duty meal periods were a direct result of WPI's policy/practice. Mr. Acevedo was explicitly instructed by WPI's supervisors to write on his timecards that he took a timely meal period even if he did not exercise one. WPI also failed to provide timely, legally compliant second meal periods when Mr. Acevedo and other aggrieved employees worked shifts in excess of 10.0 hours. In addition, on those occasions when Mr. Acevedo and the other aggrieved employees were not provided with all legally compliant meal periods to which they were entitled, WPI failed to compensate them with the required meal period premiums, as mandated by Labor Code § 226.7.

WPI also failed to authorize and permit Mr. Acevedo and other aggrieved employees to take all statutorily mandated rest periods. Mr. Acevedo and the other employees would be made to work through the entirety of their shifts and forced to forego rest periods in order to meet the strict deadlines imposed on them by WPI. Due to the overwhelming workload and the company culture, Mr. Acevedo and the other aggrieved employees were generally not permitted to exercise any compliant duty-free rest periods. Further, upon information and belief during at least a portion of the relevant time period, WPI maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not authorized or permitted to Mr. Acevedo and the other aggrieved employees.

WPI also maintained inaccurate payroll records and issued inaccurate and deficient wage statements, in part due to WPI's failure to pay all minimum and overtime wages, and meal and rest period premium wages. As a result, WPI also failed to pay all wages owed to Mr. Acevedo and the other aggrieved employees upon their separation of employment from WPI, in part due to WPI's failure to pay all minimum and overtime wages, and meal and rest period premium wages.

WPI failed to meet its obligations to provide paid sick leave to Mr. Acevedo and other aggrieved employees under Labor Code § 245.5(b) which requires that employers authorize and permit its employees who worked 30 or more days within a year to accrue paid sick leave, and to allow them to exercise paid sick leave on or after their 90th day of employment. Despite meeting all of the statutory requirements for being able to accrue and utilize paid sick leave, Mr. Acevedo and other aggrieved employees were not provided paid sick leave on those occasions where they needed to take a "sick day" in violation of Labor Code § 245.5(b).

Furthermore, WPI violated Labor Code § 204 by failing to pay Mr. Acevedo and other aggrieved employees all wages earned at least twice during each calendar month.

Finally, WPI failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Acevedo and other aggrieved employees written notices, in the language normally used to communicate employment related information to the employees, containing information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the employer; v) the address of the legal entity that is the employer; vi) the telephone number of the employer; vii) identifying information for the employer's workers' compensation insurance carrier; and viii) information informing the employee of their right to accrue and use paid sick leave.

As described above, WPI committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 16 ("Wage Order 16"):

<u>Minimum Wage Violations</u>

WPI was required to pay Mr. Acevedo and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 551, 552, 82.12, 1194; 1194.2, 1197; and Wage Order 16 § 4. As alleged above, WPI maintained and maintains timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Acevedo and other aggrieved employee whether by rounding, time-shaving, or otherwise. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Acevedo and other aggrieved employees of all required minimum wages. Mr. Acevedo and other aggrieved employees were required to work seven days a week in order to meet intense deadlines, in direct violation of Labor Code § 551 and 552.

<u>Overtime Wage Violations</u>

WPI was required to pay Mr. Acevedo and other aggrieved employees overtime wages for all overtime hours worked. *See* Labor Code §§ 1194(a) and 1198; Wage Order 16, § 3. Wage Order 16, § 3 requires an employer to pay overtime wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order. At all times relevant herein, WPI caused Mr. Acevedo and other aggrieved employees to work overtime hours but did not compensate Mr. Acevedo and other aggrieved employees at one and one-half times their regular rate of pay for such hours. Mr. Acevedo and other aggrieved employees were required to work seven days a week in order to meet intense deadlines, in direct violation of Labor Code § 551 and 552.

<u>Meal Period Violations</u>

As alleged above, WPI failed to provide Mr. Acevedo and other aggrieved employees with all required and compliant meal periods due to WPI's meal period policies/practices that often fail to provide 30 minute off-duty first meal periods before the end of the fifth hour of work. WPI also failed to provide timely, legally compliant second meal periods when Mr. Acevedo and other aggrieved employees worked shifts in excess of 10.0 hours. *See* Labor Code §§ 226.7 and 512; Wage Order 16, § 11. As a result, Mr. Acevedo and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with … [an] order of the Industrial Welfare Commission … the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

<u>Rest Period Violations</u>

As alleged above, WPI also failed to authorize and permit Mr. Acevedo and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 16, § 12. As a result, Mr. Acevedo and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required paid rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

<u>Wage Statement Violations</u>

WPI was required to furnish Mr. Acevedo and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 16, § 7. As a result of WPI's failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, WPI maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Acevedo and other aggrieved employees in violation of Labor Code § 226.

<u>Waiting Time Penalties</u>

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. WPI failed to timely pay Mr. Acevedo and other aggrieved employees all of their final wages at the time of separation, which included all overtime and minimum wages, and all meal and rest period premium wages at the time of aggrieved employees' separation of employment. Pursuant to Labor Code § 203, WPI's failure to pay all final wages due to Mr. Acevedo and other aggrieved employees was willful and, consequently, entitles Mr. Acevedo and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day WPI failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Acevedo will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr.

Acevedo's own investigation, and on information and belief, WPI committed and continue to commit the following Labor Code violations:

a. WPI violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Acevedo and other aggrieved employees the statutory minimum wage for all hours worked;

b. WPI violated Labor Code §§ 204, 510, 551-552, 558, 1194, and 1198 by failing to pay Mr. Acevedo and other aggrieved employees all overtime/doubletime compensation earned;

c. WPI violated Labor Code §§ 226.7, 512, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Acevedo and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

d. WPI violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Acevedo and other aggrieved employees from taking all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Acevedo and other aggrieved employees at their respective regular rates of compensation;

e. WPI violated Labor Code § 226 by failing to furnish Mr. Acevedo and other aggrieved employees with accurate and compliant itemized wage statements;

f. WPI violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Acevedo and other aggrieved employees;

g. WPI violated Labor Code § 204 by failing to pay Mr. Acevedo and other aggrieved employees all wages earned at least twice during each calendar month; and

h. WPI violated Labor Code § 245.5 by failing to permit and authorize Mr. Acevedo and other aggrieved employees to exercise the use of their accrued paid sick leave days; and

i. WPI violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Acevedo and other aggrieved employees;

j. WPI violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Acevedo and other aggrieved employees; and

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and WPI if the LWDA intends to investigate the alleged violations of the Labor Code stated herein. Please contact me should you require additional information.

Sincerely,
STANSBURY BROWN LAW, PC

Ethan C. Surls

cc: Western Pump, Inc. (via USPS certified mail)