

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Robert Draper

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10 Attorneys for Plaintiff,
11 RENE LOPEZ, and all other similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

RENE LOPEZ, as an “aggrieved employee” on
behalf of other similarly situated “aggrieved
employees” under the Labor Code Private
Attorney General Act of 2004,

Plaintiff(s),

vs.

BOAVIDA COMMUNITIES, LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendant(s).

Case No.: **21STCV06244**

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE
§§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



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1 Plaintiff RENE LOPEZ (hereafter “Plaintiff”), on behalf of himself, the State of
2 California, and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”), against Defendants BOAVIDA COMMUNITIES, LLC, a California limited
7 liability company; and DOES 1-50, inclusive (collectively “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him, the State of California, and other similarly situated aggrieved current and former employees
10 who worked in California as hourly, non-exempt employees, including, but not limited to, resident
11 and community managers and persons in similar positions, at any time during the period of
12 September 21, 2019 to the present, for civil penalties and other related relief. These claims are
13 based on Defendants’ (1) failure to provide all rest and meal periods; (2) failure to separately
14 compensate for rest and recovery periods and nonproductive time; (3) failure to indemnify for
15 necessary work-related expenditures; (4) failure to pay all wages earned for all hours worked at
16 the correct rates of pay; (5) failure to provide accurate and complete written wage statements; and
17 (6) failure to timely pay wages during and upon termination of employment. Accordingly,
18 Plaintiff now seeks to recover civil penalties and related relief through this representative action.

19 **II. JURISDICTION AND VENUE**

20 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
21 and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in controversy.

22 4. There is no basis for federal question subject matter jurisdiction in this case.
23 Specifically, Plaintiff asserts claims on behalf of himself, the State of California, and Aggrieved
24 Employees that solely arise under California law, rather than federal law.

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

26 6. Venue is proper in Los Angeles County pursuant to California Code of Civil
27 Procedure § 395(a) and § 395.5 in that liability arose in Los Angeles County because at least some
28 of the transactions that are the subject matter of this Complaint occurred therein and/or because
each defendant is found, maintains offices, transacts business, and/or has an agent therein.

III. THE PARTIES

7. Plaintiff, an individual and resident of California, began working for Defendants



1 as an hourly, nonexempt resident manager on or about October 19, 2019. Plaintiff continuously
2 worked for Defendants from that date until approximately September 21, 2020, when his
3 employment ended. At all relevant times, Plaintiff was an “employee” within the meaning of Title
4 8 California Code of Regulations Section 11050 and an “aggrieved employee” within the meaning
5 of Labor Code Section 2699(c).

6 8. Defendant BOAVIDA COMMUNITIES, LLC is a limited liability company
7 organized and existing under the laws of California based on Plaintiff’s information and belief.

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

14 **A. THE AGGRIEVED EMPLOYEES**

15 10. The “Aggrieved Employees” are all individuals Defendants employed in
16 California as hourly, non-exempt employees, including, but not limited to community and
17 resident managers and persons in comparable positions, at any time during the period of
18 December 11, 2019 and entry of judgment (“the PAGA Period”).

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

24 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
25 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
26 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
27 Employees in accordance with applicable California labor laws as alleged herein.

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



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employment, and/or direction and control.

IV. FACTUAL ALLEGATIONS

14. On approximately October 19, 2019, Defendants first employed Plaintiff to work as a resident manager at one of their mobile home properties located in Gardena, California. Defendants continued to employ Lopez until September 21, 2020 when his employment ended.

15. Defendants compensated Plaintiff and the Aggrieved Employees with an hourly rate of pay and issued him wages on a semi-monthly basis.

16. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime wages. At all relevant times, Plaintiff and the Aggrieved Employees often worked 7 days in a workweek, and between six (6) and 10 hours per workday. Defendants' written employment agreements with Plaintiff and the Aggrieved Employees permitted pay for only 20 hours of work per week (five (5) days in workweek, four (4) hours per workday) though Defendants knowingly required or permitted Plaintiff and the Aggrieved Employees to work in excess of this time and often in excess of eight (8) hours per day and 40 hours per week. In fact, Defendants informed the residents that they could contact Plaintiff for "Afterhours Emergencies" and included Plaintiff's personal cellphone number as the contact information. As such, Defendants were well aware of the fact that Plaintiff and the Aggrieved Employees worked more than five (5) days in a workweek and more than four (4) hours in a workday.

17. Defendants informed Plaintiff and the Aggrieved Employees, at the time of hire, that they would compensate them at an hourly rate of pay for time worked. Defendants, however, did not pay Plaintiff and the Aggrieved Employees for rest and recovery time. The written employment agreements Defendants required Plaintiff and the Aggrieved Employees to sign state,

Because Employee lives on-site. Employee knows and understands that his/her work is mostly unsupervised. Employee acknowledges that he/she is not "working" all the time Employee is on the premises and that it is difficult for Employer to determine the exact hours Employee actually works because Employee may engage in normal private pursuits such as eating, sleeping, entertaining, etc., during those periods when Employee is free of duties. Accordingly, Employee and Employer agree that twenty (20) hours per week is a reasonable estimate of the total hours Employee will work each week, taking into consideration normal work weeks, emergency situations, and unusually busy work weeks.

Thus, Defendants did not pay Plaintiff and the Aggrieved Employees for rest and recovery time



every four hours worked (or major portion thereof), nor did they provide them with rest periods as required by law.

18. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely, duty-free rest and meal periods as provided under California law. Defendants instructed Plaintiff and the Aggrieved Employees that they were not required to take meal or rest periods because they were only scheduled to work four (4) hours per day. Defendants were well aware that Plaintiff and the Aggrieved Employees often worked more than five (5) hours in a workday and intentionally failed to provide them with meal and rest periods. Additionally, Defendants required Plaintiff and the Aggrieved Employees to monitor their personal cellphones and respond to residents' inquiries at all times. Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Aggrieved Employees with rest and/or meal periods as provided by California law.

19. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including providing stamps to mail the rent checks and other paperwork to Defendants' management and use of a personal mobile telephone to communicate with management for Defendants and the residents. Defendants did not provide reimbursement for these expenses. Defendants also failed to provide Plaintiff and the Aggrieved Employees with the tools they needed to complete their tasks such as saws, hammers, drills, drill bits, and shovels. Instead, Defendants expected Plaintiff and the Aggrieved Employees to supply their own tools without reimbursement and without payment of two times minimum wage per hour to perform their job duties. Defendants also required Plaintiff and the Aggrieved Employees to use their personal vehicles to travel to Home Depot and similar stores to buy supplies or to the post office to mail rent checks or other paperwork to Defendants' management. Defendants, however, failed to reimburse them for mileage expenses.

20. At all relevant times, Defendants knowingly and intentionally failed to provide Plaintiff and the Aggrieved Employees with accurate wage statements itemizing each Aggrieved Employee's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Aggrieved Employees and the other requirements of California Labor Code Section 226.

21. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practice and policies, Plaintiff and the Aggrieved Employees were:



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- 1 A. Not provided with all off duty meal periods;
2 B. Not provided with all rest break periods as required by law;
3 C. Not paid one hour's pay for each workday in which Defendants failed to
4 provide them with one or more timely rest periods;
5 D. Not paid one hour's pay for each workday in which Defendants failed to
6 provide them with one or more timely meal periods;
7 E. Not separately compensated for rest and recovery periods and
8 nonproductive time;
9 F. Not paid all wages earned, including, but not limited to, regular and
10 overtime wages for work performed while clocked out;
11 G. Not indemnified for all necessary business expenditures incurred during
12 the discharge of their duties;
13 H. Not provided with accurate and complete wage statements; and
14 I. Not timely paid all earned and unpaid wages during their employment with
15 Defendants and at the time such employment ended.

16 **V. FIRST (AND ONLY) CAUSE OF ACTION**

17 **CIVIL PENALTIES**

18 **(Lab. Code §§ 2698, *et seq.*)**

19 **(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all**
20 **Defendants)**

21 22. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22 23. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
23 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

24 **A. FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

25 24. In relevant part, California Labor Code § 1198 states:

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

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



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

5 An employer shall not employ an employee for a work period of
6 more than 10 hours per day without providing the employee with
7 a second meal period of not less than 30 minutes, except that if the
8 total hours worked is no more than 12 hours, the second meal
period may be waived by mutual consent of the employer and the
employee only if the first meal period was not waived.

9 26. In relevant part, Section 12 of the Wage Order states:

10
11 **Rest Periods**

12 (A) “Every employer shall authorize and permit all employees
13 to take rest periods, which insofar as practicable shall be in the
14 middle of each work period. The authorized rest period time shall
15 be based on the total hours worked daily at the rate of ten (10)
16 minutes net rest time per four (4) hours or major fraction thereof.
17 However, a rest period need not be authorized for employees
whose total daily work time is less than three and one-half (3 1/2)
hours. Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages.”

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

21 27. In relevant part, Section 11 of the Wage Order states:

22
23 **Meal Periods**

24 (A) “No employer shall employ any person for a work period
25 of more than five (5) hours without a meal period of not less than
26 30 minutes, except that when a work period of not more than six
27 (6) hours will complete the day’s work the meal period may be
28 waived by mutual consent of the employee and the employer.
Unless the employee is relieved of all duty during a 30 minute meal
period, the meal period shall be considered an ‘on duty’ meal
period and counted as time worked. An ‘on duty’ meal period shall



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1 be permitted only when the nature of the work prevents an
2 employee from being relieved of all duty and when by written
3 agreement between the parties an on-the-job paid meal period is
4 agreed to. The written agreement shall state that the employee
5 may, in writing, revoke the agreement at any time.”

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

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

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

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

27 29. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
28 Aggrieved Employees were entitled to uninterrupted meal periods of at least thirty (30) minutes
for each day they worked five or more hours, and to a second uninterrupted 30-minute meal on
days they worked more than ten hours.

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

31. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
with all required 30-minute duty free meal periods and 10-minute rest periods in accordance with
the Wage Order. Plaintiff is informed and believes and thereon alleges that, at all relevant times



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1 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
2 which resulted in Defendants not providing the Aggrieved Employees with all off-duty meal
3 periods and rest breaks required by California law.

4 **B. FAILURE TO INDEMNIFY**

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

8 33. In relevant part Section 9 of the Wage Order states,

9 (C) When tools or equipment are required by the employer or are necessary to
10 the performance of a job, such tools and equipment shall be provided and
11 maintained by the employer, except that an employee whose wages are at least two
12 (2) times the minimum wage provided herein may be required to provide and
13 maintain hand tools and equipment customarily required by the trade.

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

16 35. On information and belief, Plaintiff alleges on behalf of himself and the Aggrieved
17 Employees that Defendants required them to incur business expenses, including, but not limited
18 to, the use of personal mobile telephones to communicate with Defendants, the use of personal
19 vehicles to buy supplies, without being reimbursed for mileage expenses, and the use of tools to
20 complete tasks as a necessary condition of employment. Defendants failed to indemnify Plaintiff
21 and the Aggrieved Employees for these expenses both during and after their employment ended.

22 **C. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

23 36. Section 2 of the Wage Order defines “hours worked” as “the time during which an
24 employee is subject to the control of an employer, and includes all the time the employee is
25 suffered or permitted to work, whether or not required to do so[.]”

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

38. Employers must compensate non-exempt employees for “off-the-clock” work
(before punching in or after punching out on a time clock) if the employers knew or should have
known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.

39. In relevant part, California Labor Code § 510 states,



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

40. Section 3 of the applicable Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

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

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

41. California Labor Code § 510(a) and the Wage Order require employers to compensate employees at one and one-half times their regular rates of pay for:



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- 1 a) All hours worked in excess of eight hours in one workday;
2 b) All hours worked in excess of forty hours in one workweek; and,
3 c) The first eight hours worked on a seventh consecutive workday during a
4 workweek.

5 42. Labor Code § 1194 invalidates any agreement between an employer and an
6 employee to work for less than the minimum or overtime wage required under the applicable
7 Wage Order.

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

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

13 45. Labor Code § 226.2 states,

- 14 a) For employees compensated on a piece-rate basis during a pay period, the
15 following shall apply for that pay period:

- 16 1) Employees shall be compensated for rest and recovery periods and other
17 nonproductive time separate from any piece-rate compensation.

18 ...

- 19 (3) (A) Employees shall be compensated for rest and recovery periods at a
20 regular hourly rate that is no less than the higher of:

- 21 (i) An average hourly rate determined by dividing the total compensation
22 for the workweek, exclusive of compensation for rest and recovery
23 periods and any premium compensation for overtime, by the total
24 hours worked during the workweek, exclusive of rest and recovery
25 periods.

- 26 (ii) The applicable minimum wage.

27 46. At all relevant times during the applicable limitations period, Defendants failed to
28 compensate Plaintiff and the Aggrieved Employees for all hours worked, including but not limited
to overtime wages for all overtime hours they worked at the correct rates of pay, including
overtime wages for the hours worked on the seventh consecutive day. At the time of hire,



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Defendants informed Plaintiff and the Aggrieved Employees that they would compensate them at an hourly rate of pay for time worked. Defendants, however, failed to separately compensate Plaintiff and the Aggrieved Employees for rest and recovery periods and nonproductive time as required by Lab. Code § 226.2. As such, Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay.

47. Plaintiff is informed and believes that, at all relevant times, Defendants have applied centrally devised policies and practices to his and the Aggrieved Employees with respect to working conditions and compensation arrangements.

48. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants' failure to compensate the Aggrieved Employees for all hours worked, including but not limited to, regular and overtime hours at the correct rates of pay.

D. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

49. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved Employees were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect during the pay period; and d) the corresponding number of hours worked at each hourly rate by the employee.

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

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

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

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



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1 D. The name of the employee and only the last four digits of his or his social
2 security number or an employee identification number other than a social security number; and

3 E. The number of piece-rate units earned and the piece rate.

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

7 52. As alleged herein, Defendants failed to provide Plaintiff and the Aggrieved
8 Employees all wages owed, including, but not limited to, all regular and overtime wages owed at
9 the correct rates for work performed off-the-clock. As a result, Defendants have failed to properly
10 and accurately itemize each employee's gross wages earned, net wages earned, the total hour
11 worked, the corresponding number of hours worked by employees, and other requirements of
12 California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

13 53. Labor code § 226.2 states,

14 For employees compensated on a piece-rate basis during a pay period, the
15 following shall apply for that period:

16 The itemized statement required by subdivision (a) of Section 226 shall, in
17 addition to the other items specified in that subdivision, separately state the
18 following, to which the provisions of Section 226 shall also be applicable:

19 The total hours of compensable rest and recovery periods, the rate
20 of compensation, and the gross wages paid for those periods during the pay
21 period.

22 Except for employers paying compensation for other
23 nonproductive time in accordance with paragraph (7), the total hours of other
24 nonproductive time, as determined under paragraph (5), the rate of
25 compensation, and the gross wages paid for that time during the pay period.

26 54. Defendants failed to issue Plaintiff and the Aggrieved Employees itemized wage
27 statements that state the hours and rates of compensation for rest and recovery periods.

28 55. Defendants' failure to provide Plaintiff and the Aggrieved Employees with
accurate wage statements was knowing and intentional. Defendants had the ability to provide
Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided



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1 wage statements that Defendants knew were not accurate.

2 56. As a result of being provided with inaccurate wage statements by Defendants,
3 Plaintiff and the Aggrieved Employees have suffered an injury. Their legal rights to receive
4 accurate wage statements were violated and they were misled about the amount of wages they
5 had actually earned and were owed. In addition, the absence of accurate information on their wage
6 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
7 discovery and mathematical computations to determine the amounts of wages owed, has caused
8 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
9 submission of inaccurate information about wages to state and federal government agencies.
10 Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the wage
11 statements whether Defendants complied with their obligations under California Labor Code §
12 226(a) and 226.2.

13 **E. UNTIMELY WAGES DURING EMPLOYMENT**

14 57. Labor Code § 204 states

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

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

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

(c) However, when employees are covered by a collective bargaining



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1 agreement that provides different pay arrangements, those
2 arrangements shall apply to the covered employees.

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

7 58. Defendants paid wages to employees on regular intervals. Defendants, however,
8 failed to pay Plaintiff on such intervals for all wages earned and all hours worked including, but
9 not limited to, all premium wages for all rest breaks and/or off-duty meal periods that were not
10 provided, and all regular and overtime wages for work performed off-the-clock. On information
11 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
12 intervals for all wages earned and all hours worked.

13 **F. UNTIMELY FINAL WAGES**

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

16 60. Labor Code § 202 provides that all earned and unpaid wages of an employee who
17 quits after providing at least 72-hours notice before quitting are due and payable at the time of
18 quitting and that all earned and unpaid wages of an employee who quits without providing at least
19 72-hours notice before quitting are due and payable within 72 hours.

20 61. By failing to pay Plaintiff and the Aggrieved Employees 1) all earned regular and
21 overtime wages at the correct rates and 2) premium wages for all late or missed rest breaks and/or
22 meal periods, Defendants failed to timely pay them all earned and unpaid wages in violation of
23 Labor Code § 201 or § 202.

24 62. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
25 and the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at
26 all relevant times, Defendants have deliberately maintained policies and practices that violate the
27 requirements of the Labor Code and the Wage Order even though, at all relevant times, they have
28 had the ability to comply with those legal requirements.

G. CIVIL PENALTIES SOUGHT

63. Labor Code § 204 states

- (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
or 204.2, earned by any person in any employment are due and payable twice
during each calendar month, on days designated in advance by the employer as the



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regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

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

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

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

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

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

65. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

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

67. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars



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1 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
2 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
3 (penalty amounts established by California Labor Code § 210).

4 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
5 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
6 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

7 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
8 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
9 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
10 each pay period for which the employee was underpaid (penalty amounts established by
11 California Labor Code § 558).

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

17 E. For violations of California Labor Code §§ 201, 202, 203, 226.2, 226.7,
18 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period
19 for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
20 period for each subsequent violation (penalty amounts established by California Labor Code §
21 2699(f)(2)).

22 **H. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

23 68. Plaintiff has complied with the procedures for bringing suit specified in California
24 Labor Code § 2699.3. By letter dated December 11, 2020, Plaintiff gave written notice by certified
25 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
26 provisions of the California Labor Code alleged to have been violated, including the facts and
27 theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA
28 dated December 11, 2020 is attached hereto as Exhibit A. The LWDA has not responded to
Plaintiff’s letter.

69. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in



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connection with their claims for civil penalties.

VI. PRAYER FOR RELIEF

70. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys' fees; and
- D. Such other relief as the Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 16, 2021

By: /s/ David Spivak

DAVID SPIVAK

CAROLINE TAHMASSIAN

Attorneys for Plaintiff, RENE LOPEZ, the
State of California, and the Aggrieved
Employees



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 11, 2020

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

RE: *Rene Lopez/BoaVida*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Rene Lopez (hereafter “Lopez”) provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to resident or community managers and persons in similar positions (hereafter referred to as “Aggrieved Employees”), by BoaVida Communities LLC (referred to as “BoaVida”), for violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

At all relevant times, BoaVida has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Lopez and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order” or “Wage Order 5”), paragraph 2.F, and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

On or about October 19, 2019, BoaVida first employed Lopez to work in California as a resident manager at one of its mobile home properties located in Gardena, California. BoaVida continued to employ Lopez until September 21, 2020 when his employment ended.

At all relevant times, BoaVida compensated Lopez and the other Aggrieved Employees with an hourly rate of pay and issued him wages on a semi-monthly basis.

BoaVida failed to compensate Lopez and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime wages. At all relevant times, Lopez and the other Aggrieved Employees often worked seven (7) days in a workweek, and between six (6) and 10 hours per workday. BoaVida's written employment agreements with Lopez and Aggrieved Employees permitted pay for only 20 hours of work per week (5 days in workweek, four(4) hours per workday) though BoaVida knowingly required or permitted Lopez and the Aggrieved Employees to work in excess of this time and often in excess of eight hours per day and 40 hours per week. In fact, BoaVida informed the residents that they could contact Lopez for "Afterhours Emergencies" and include his personal cellphone number as the contact information. As such, BoaVida was well aware of the fact that Lopez and the Aggrieved Employees worked more than five (5) days in a workweek and more than four (4) hours in a workday.

Further, at the time of hire, BoaVida informed Lopez and the Aggrieved Employees that it would compensate them at an hourly rate of pay for time worked. BoaVida, however, did not pay Lopez or the other Aggrieved Employees for rest and recovery time. The written employment agreements BoaVida required Lopez and the Aggrieved Employees to sign state,

Because Employee lives on-site. Employee knows and understands that his/her work is mostly unsupervised. Employee acknowledges that he/she is not "working" all the time Employee is on the premises and that it is difficult for Employer to determine the exact hours Employee actually works because Employee may engage in normal private pursuits such as

eating, sleeping, entertaining, etc., during those periods when Employee is free of duties. Accordingly, Employee and Employer agree that twenty (20) hours per week is a reasonable estimate of the total hours Employee will work each week, taking into consideration normal work weeks, emergency situations, and unusually busy work weeks.

Thus, BoaVida did not pay Lopez and the Aggrieved Employees for rest and recovery time every four hours worked (or major portion thereof), nor did it provide them with rest periods.

At all relevant times, BoaVida failed to provide Lopez and the Aggrieved Employees with all timely, duty-free rest and meal periods as provided under California law. BoaVida instructed Lopez and the Aggrieved Employees that they were not required to take meal or rest periods because they were only scheduled to work four (4) hours per day. BoaVida was well aware that Lopez and the other Aggrieved Employees often worked more than five (5) hours in a workday and intentionally failed to provide them with meal and rest periods. Additionally, BoaVida required Lopez and the other Aggrieved Employees to monitor their personal cellphones and respond to residents' inquiries at all times. BoaVida failed to pay premium wages for days on which it failed to provide Lopez and the Aggrieved Employees with rest and/or meal periods as provided by California Law.

BoaVida also required Lopez and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including providing stamps to mail the rent checks and other paperwork to BoaVida management and use of a personal mobile telephone to communicate with management for BoaVida and the residents. BoaVida did not provide reimbursement for these expenses. BoaVida also failed to provide Lopez and the Aggrieved Employees with the tools they needed to complete their tasks such as saws, hammers, drills, drill bits, and shovels. Instead, BoaVida expected Lopez and the Aggrieved Employees to supply their own tools without reimbursement and without payment of two times minimum wage to perform their job duties. BoaVida also required Lopez and the Aggrieved Employees to use their personal vehicles to travel to Home Depot and similar stores to buy supplies or to the post office to

mail rent checks or other paperwork to BoaVida management. BoaVida, however, failed to reimburse them for mileage expenses.

At all relevant times, BoaVida knowingly and intentionally failed to provide Lopez and the Aggrieved Employees with accurate wage statements itemizing each Aggrieved Employee's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code Section 226.

For the reasons stated herein, Lopez alleges the following violations of the California Labor Code and the Wage Order 5 on behalf of himself and the Aggrieved Employees:

- a) BoaVida failed to provide Lopez and the Aggrieved Employees with all rest breaks and meal periods;
- b) BoaVida failed to pay Lopez and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more rest breaks;
- c) BoaVida failed to pay Lopez and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) BoaVida failed to pay Lopez and the Aggrieved Employees for all hours worked at the correct rates of pay;
- e) BoaVida failed to indemnify Lopez and the Aggrieved Employees for all business expenses;
- f) BoaVida failed to provide Lopez and the Aggrieved Employees with accurate wage statements;

- g) BoaVida failed to timely pay Lopez and the Aggrieved Employees all earned and unpaid wages during their employment with BoaVida; and
- h) BoaVida failed to timely pay Lopez and the Aggrieved Employees all earned and unpaid wages at the termination of their employment with BoaVida.

Accordingly, Lopez now seeks civil penalties on behalf of himself and the Aggrieved Employees based on BoaVida's alleged violations of the California Labor Code and Wage Order 5.

Wage Order 5

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." § 1. The term "Public Housekeeping Industry" means "any industry, business, or establishment which provides meals, housing, or maintenance services" and includes, but is not limited to, the following occupations:

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

- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

§ 2(P) (emphasis added). At all relevant times during the applicable limitations period, BoaVida employed Lopez and the other Aggrieved Employees as resident managers for its properties and mobile homes. Accordingly, Lopez and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

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

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal

period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of Wage Order 5 states:

Meal Periods:

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

In relevant part, Section 12 of Wage Order 5 states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time

shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

California Labor Code § 226.7 states in relevant part:

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

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

BoaVida intentionally and improperly failed to provide all timely and duty-free rest breaks and/or meal periods to Lopez and other Aggrieved Employees as

required by law. In failing to do so, BoaVida violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Lopez seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay (penalties set by Labor Code §558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

**Failure To Pay All Wages Earned For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 226.2, 510, 1194, 1197, and 1198)

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

Section 4 of Wage Order states,

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2 of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

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

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

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

(A) Daily Overtime - General Provisions

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

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

In relevant part, California Labor Code § 510 states,

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

Labor Code § 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

At all relevant times during the applicable limitations period, BoaVida failed to compensate Lopez and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay, including overtime wages for the hours worked on the seventh consuetude day.

Accordingly, Lopez seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of Labor Code §510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code §558);
2. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699, subdivision (f)(2));
3. \$100 for each underpaid employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by Labor Code § 1197.1);
4. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)); and
5. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

As discussed above, BoaVida required Lopez and the other Aggrieved Employees to incur certain business expenses. BoaVida failed to indemnify

Lopez and the other Aggrieved Employees for such expenses both during and after their employment ended.

Accordingly, Lopez seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

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

At all relevant times during the applicable limitations period, BoaVida violated California Labor Code § 226 in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226.

Labor Code § 226.2 states,

For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

Lab.Code § 226.2(a)(2).

BoaVida failed to issue Lopez and the Aggrieved Employees itemized wage statements that state the hours and rates of compensation for rest and recovery periods.

Accordingly, Lopez seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

1. \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each aggrieved

employee for each subsequent violation (penalties set by California Labor Code § 226.3); and

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failures to Timely Pay Wages
(Lab. Code § 204)

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

Because of BoaVida’s failure to pay Lopez and the Aggrieved Employees wages for off-the-clock work, including, but not limited to, off-the-clock meal periods and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, BoaVida failed to timely pay all wages due during employment. Accordingly, Lopez seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code § 210).

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages

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

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

By willfully failing to pay wages to Lopez and other Aggrieved Employees as set forth above, at the time of termination of employment, BoaVida is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and other Aggrieved Employees, Lopez seeks civil penalties from BoaVida as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

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

Conclusion

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

Sincerely,



David Spivak, Esq.
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cc: Rene Lopez

BoaVida Communities LLC
c/o Dan Trescott
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