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Attorneys for Plaintiff Gregory Olivas, on behalf of himself and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

GREGORY OLIVAS, on behalf of himself
and all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

FAIRMONT HOSPITALITY, INC., a
California corporation, d/b/a HOLIDAY INN
EXPRESS, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: **CIV SB 22 25 073**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 510, 512, 1194,
AND 2802 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 226.3 AND 558**

\$435⁰⁰
2023-128448

1 Plaintiff GREGORY OLIVAS (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, codified as Labor Code §§
3 2698 *et seq.*, complains of FAIRMONT HOSPITALITY, INC., a California corporation, d/b/a
4 HOLIDAY INN EXPRESS, and/or any subsidiaries or affiliated companies (hereinafter referred to
5 as “Defendants”), as follows:

6 **I.**

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
9 Plaintiff and other non-exempt California employees who currently work or formerly worked for
10 Defendants (“Aggrieved Employees”).

11 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
12 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
13 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
14 consistent policies of:

15 a. Failing to pay Plaintiff and Aggrieved Employees all minimum and overtime
16 wages due during the course of employment, in violation of Labor Code §§ 510, 558, and 1194.
17 Defendants rounded down the hours reflected on Plaintiff’s and other Aggrieved Employees’ time
18 records to pay fewer hours than were actually worked. On a weekly basis, this rounding deprived
19 Plaintiff and other Aggrieved Employees of significant hours worked. These failures to pay all
20 minimum and overtime wages due constitute violations of Labor Code §§ 510, 558, and 1194;

21 b. Failing to pay all minimum and overtime wages earned during the course of
22 employment to him and other Aggrieved Employees, in violation of Labor Code §§ 510, 558, 1194,
23 and 1194.2. Plaintiff and other Aggrieved Employees routinely and frequently worked off-the-clock,
24 without compensation: they were not paid for time spent (1) to complete a daily COVID screening,
25 (2) to wait in line for the time clock to become available to clock in for work, (3) answering work-
26 related calls and text messages outside of their scheduled shifts, (4) to watch training videos, and (5)
27 on other post-shift activities, such as helping other Aggrieved Employees with their work tasks or
28 performing maintenance work. This violates Labor Code §§ 510, 558, and 1194;

1 c. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who
2 were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001.
3 Plaintiff and other Aggrieved Employees were routinely unable to take a 10-minute rest period for
4 every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
5 hour's pay for each missed rest period. Plaintiff was simply denied and not authorized to take his
6 legally entitled rest periods and was never paid premium wages for missed rest periods. Furthermore,
7 when employees were able to take a rest period, they were required to carry, be alert to, and use a
8 two-way radio, resulting in on-duty rest periods that were typically interrupted. Plaintiff and
9 Aggrieved Employees were also impermissibly required to remain on the company premises, under
10 Defendants' control, during their rest periods. This violates Labor Code § 226.7 and IWC Wage Order
11 No. 5-2001;

12 d. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who
13 were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage
14 Order 5-2001. Plaintiff and other Aggrieved Employees were routinely denied, and not authorized to
15 take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours,
16 or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten
17 hours, but were not paid premium wages of one hour's pay for each missed first or second meal
18 period. When meal periods were provided, Plaintiff and Aggrieved Employees were required to carry,
19 be alert to, and use a two-way radio, resulting in an on-duty meal period and additional unpaid wages
20 for time worked during their off-the-clock meal period. Further, when meal periods were provided,
21 they were typically late, short, or interrupted. This violates Labor Code §§ 226.7, 510, 512, 558, and
22 1194 and IWC Wage Order 5-2001;

23 e. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary
24 business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor
25 Code § 2802, including, but not limited to, the use of their personal cell phones and personal vehicles.
26 Labor Code § 2802 requires that an employer must indemnify its employees for all necessary
27 expenditures or losses incurred by the employee in direct consequence of the discharge of their duties,
28 and Defendants' failure to do so has violated this section;

1 f. Failing to provide Plaintiff and other Aggrieved Employees with wage
2 statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a).
3 Plaintiff and other Aggrieved Employees were not paid all wages due, as stated above. As such, the
4 wage statements provided by Defendants failed to accurately state all gross wages earned, in violation
5 of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2)
6 and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable
7 hourly rates in effect during the pay period and the corresponding number of hours worked at each
8 hourly rate, in violation of Labor Code §§ 226(a)(9) and 226.3; and

9 g. Failing to timely pay Plaintiff and other Aggrieved Employees all wages due
10 at the separation of their employment based on the time frames required by Labor Code §§ 201 and
11 202. As stated above, Plaintiff and Aggrieved Employees were not paid all wages due during the
12 course of their employment and, as a result of this failure, they were not timely paid all wages due at
13 the separation of their employment. Furthermore, when Plaintiff resigned his employment, he was not
14 issued all of his final wages within 72 hours of his resignation—instead, his final check was short by
15 a substantial sum. Plaintiff alleges that Defendants maintain a policy of untimely paying final wages
16 to its former employees. This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and
17 certain Aggrieved Employees no longer employed by Defendants.

18 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
19 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

20 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
21 The Labor Code violations alleged against Defendants herein arose throughout California, including
22 in San Bernardino County.

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1 **II.**

2 **PARTIES**

3 **A. Plaintiff**

4 5. Plaintiff GREGORY OLIVAS was employed by Defendants as a non-exempt
5 employee from approximately October 2021 through April 2022 in San Bernardino County,
6 California.

7 **B. Defendant**

8 6. Defendant FAIRMONT HOSPITALITY, INC. is a California corporation doing
9 business as HOLIDAY INN EXPRESS, which employed Plaintiff and Aggrieved Employees
10 throughout the state of California, including in San Bernardino County.

11 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
12 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
13 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
14 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
15 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
16 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
17 designated hereinafter as DOES when such identities become known.

18 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
19 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
20 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
21 attributable to the other Defendants.

22 9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
23 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
24 provisions of the California Labor Code as alleged herein.

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III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1194, AND 2802 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, 1194, and 2802; and

b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On August 29, 2022, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of August 29, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

IV.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: November 3, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: Daniel F. Gaines
DANIEL F. GAINES
EVAN S. GAINES
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