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VENTURA SUPERIOR COURT

FILED

12/11/2024

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 Executive Officer and Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

JOSEPH DOMINGUEZ, individually, and
 on behalf of other members of the general
 public similarly situated, and as an
 aggrieved employee pursuant to the Private
 Attorneys General Act ("PAGA"),

Plaintiff,

vs.

OVIS LLC, a Delaware limited liability
 company; and DOES 1 through 10,
 inclusive,

Defendants.

Case No.: 2024CUOE026684

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of Labor Code §§ 226.7, 516, and 1198 (Failure to Provide Recovery Periods);
- (6) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);

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- (9) Violation of Labor Code § 1198 and California Code of Regulations, Title 8, Section 11050 Subdivision 5(A) (Failure to Provide Reporting Time Pay);
- (10) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (11) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (13) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Joseph Dominguez, individually and on behalf of all other members of the
2 public similarly situated, and as an aggrieved employee and on behalf of all aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

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

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice.

23 3. Venue is proper in this Court because Defendants employ persons in this
24 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
25 and occurrences related to this action occurred in this county.

26 THE PARTIES

27 4. Plaintiff Joseph Dominguez is a resident of Ojai, in Ventura County, California.
28 Defendants employed Plaintiff as an hourly paid, non-exempt Housekeeping Central Services

1 Attendant and House Attendant from approximately January 2022 to October 2023. During
2 his employment, Plaintiff typically worked eight (8) hours or more per day and five (5) days
3 per week. Plaintiff's primary job duties included, without limitation, fulfilling guest requests,
4 taking out garbage, and collecting used linens into bins and preparing them for pick up.

5 5. OVIS LLC was and is, upon information and belief, a Delaware limited liability
6 company, and at all times hereinafter mentioned, an employer whose employees are engaged
7 throughout this county and the State of California.

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

12 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
13 were the partners, agents, owners, or managers of OVIS LLC at all relevant times.

14 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
15 acts and omissions alleged herein was performed by, or is attributable to, OVIS LLC and/or
16 DOES 1 through 10 (collectively, "Defendants" or "OJAI VALLEY INN"), each acting as the
17 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
18 other co-Defendants and was acting within the course and scope of such agency, employment,
19 joint venture, or concerted activity with legal authority to act on the others' behalf. The acts
20 of any and all Defendants were in accordance with, and represent, the official policy of
21 Defendants.

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

26 10. Plaintiff is informed and believes, and thereon alleges, that each of said
27 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
28 omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

11. Defendants are a premiere Southern California luxury resort featuring an on-site spa and golf course. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Chicago, Illinois, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

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

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

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

15. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

1 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
2 members were not paid for all hours worked because all hours worked were not recorded.

3 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive certain wages for
5 overtime compensation and that they were not receiving certain wages for overtime
6 compensation.

7 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive at least minimum
9 wages for compensation and that they were not receiving at least minimum wages for work
10 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
11 and class members were not paid at least minimum wages for work done off-the-clock.

12 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to meal periods in
14 accordance with the California Labor Code and applicable IWC Wage Order or payment of
15 one (1) additional hour of pay at their regular rates of pay when they were not provided with
16 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
17 were not provided with all meal periods or payment of one (1) additional hour of pay at their
18 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
19 period.

20 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to rest periods in
22 accordance with the California Labor Code and applicable IWC Wage Order or payment of
23 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
24 permitted to take a compliant rest period and that Plaintiff and class members were not
25 authorized and permitted to take compliant rest periods or provided with payment of one (1)
26 additional hour of pay at their regular rates of pay when they were not authorized and
27 permitted to take a compliant rest period.

28 21. Plaintiff is informed and believes, and thereon allege, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to recovery periods in
2 accordance with the California Labor Code and applicable General Industry Safety (“GIS”)
3 Order or payment of one (1) additional hour of pay at their regular rates of pay when they
4 were not provided a compliant recovery period and that Plaintiff and class members were not
5 provided with compliant recovery periods or payment of one (1) additional hour of pay at their
6 regular rates of pay when they were not provided a compliant recovery period.

7 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive complete and
9 accurate wage statements in accordance with California law. In violation of the California
10 Labor Code, Plaintiff and class members were not provided complete and accurate wage
11 statements.

12 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that they had a duty to maintain accurate and complete payroll records in
14 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
15 knowingly, and intentionally failed to do so.

16 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to timely payment of all
18 wages earned upon termination of employment. In violation of the California Labor Code,
19 Plaintiff and class members did not receive payment of all wages due, including, but not
20 limited to, overtime wages; minimum wages; meal, rest, and recovery period premiums;
21 and/or reporting time pay, within permissible time periods.

22 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to timely payment of wages
24 during their employment. In violation of the California Labor Code, Plaintiff and class
25 members did not receive payment of all wages, including, but not limited to, overtime wages;
26 minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay, within
27 permissible time periods.

28 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to receive all reporting time
2 pay when Plaintiff and class members were required to report to work but were put to work
3 for less than half of their usual or scheduled shift. In violation of the California Labor Code
4 and applicable IWC Wage Order, Plaintiff and class members were not paid all reporting time
5 pay.

6 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to receive full
8 reimbursement for all business-related expenses and costs they incurred during the course and
9 scope of their employment and that they did not receive full reimbursement of applicable
10 business-related expenses and costs incurred.

11 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendants knew or should have known that they had a duty to compensate
13 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
14 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
15 falsely represented to Plaintiff and class members that they were properly denied wages, all in
16 order to increase Defendants' profits.

17 **PAGA REPRESENTATIVE ALLEGATIONS**

18 29. At all times herein set forth, PAGA provides that any provision of law under
19 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
20 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for
21 violations of the California Labor Code and applicable IWC Wage Order may, as an
22 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
23 themselves and other current or former employees pursuant to procedures outlined in
24 California Labor Code section 2699.3.

25 30. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as
26 "any person who was employed by the alleged violator and personally suffered each of the
27 violations alleged."

28 31. Plaintiff and other current and former employees of Defendants are "aggrieved

employees” as defined by Labor Code section 2699(c)(1) in that they are all Defendants’ current or former employees and each of the alleged violations were committed against them.

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.
- (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation (“LWDA Notice”) within sixty (60) calendar days of the postmark date of the aggrieved employee’s notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee’s notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have

1 been violated (other than those listed in Section 2699.5), including the
2 facts and theories to support the alleged violation.

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

6 (c) The employer may cure the alleged violation within thirty-three (33)
7 calendar days of the postmark date of the notice sent by the aggrieved
8 employee or representative. The employer shall give written notice
9 within that period of time by certified mail to the aggrieved employee or
10 representative and by online filing with the LWDA if the alleged
11 violation is cured, including a description of actions taken, and no civil
12 action pursuant to Section 2699 may commence. If the alleged violation
13 is not cured within the 33-day period, the aggrieved employee may
14 commence a civil action pursuant to Section 2699.

15 34. On August 6, 2024, Plaintiff provided written notice by online filing to the
16 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
17 Code alleged to have been violated, including facts and theories to support the alleged
18 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
19 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
20 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
21 Plaintiff PAGA Case Number LWDA-CM-1044065-24. A true and correct copy of Plaintiff's
22 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

23 35. As of the filing date of this complaint, over 65 days have passed since Plaintiff
24 sent the notice described above to the LWDA, and the LWDA has not responded that it
25 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

26 36. Thus, Plaintiff has satisfied the administrative prerequisites under California
27 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
28 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,

1 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

14 39. As set forth below, Defendants have violated numerous provisions of both the
15 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
16 Order.

17 40. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5.
18 2699(a), 2699(k), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the
19 public interest as a private attorney general, seeks assessment and collection of civil penalties
20 and injunctive relief for himself, all other aggrieved employees, and the State of California
21 against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a),
22 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

23 **CLASS ACTION ALLEGATIONS**

24 41. Plaintiff brings this action on his own behalf, as well as on behalf of each and
25 all other persons similarly situated, and thus seeks class certification under California Code of
26 Civil Procedure section 382.

27 42. All claims alleged herein arise under California law for which Plaintiff seeks
28 relief authorized by California law.

1 43. Plaintiff’s proposed class consists of and is defined as follows:

2 All persons who worked for Defendants as non-exempt, hourly
3 paid employees in California, at any time from August 2, 2023,
 until the date of trial (“Class”).

4 44. Plaintiff’s proposed subclass consists of and is defined as follows:

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

8 45. Members of the Class and Subclass are referred to herein as “class members.”

9 46. Plaintiff reserves the right to redefine the Class and Subclass and to add
10 additional subclasses as appropriate based on further investigation, discovery, and specific
11 theories of liability.

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

- 14 (a) Whether Defendants required Plaintiff and class members to work over
15 eight (8) hours per day, over twelve (12) hours per day, or over forty
16 (40) hours per week and failed to pay all legally required overtime
17 compensation to Plaintiff and class members;
18 (b) Whether Defendants failed to pay Plaintiff and class members at least
19 minimum wages for all hours worked;
20 (c) Whether Defendants failed to provide Plaintiff and class members with
21 meal periods;
22 (d) Whether Defendants failed to authorize and permit Plaintiff and class
23 members to take rest periods;
24 (e) Whether Defendants failed to provide Plaintiff and class members with
25 recovery periods;
26 (f) Whether Defendants provided Plaintiff and class members with
27 complete and accurate wage statements as required by California Labor
28 Code section 226(a);

- 1 (g) Whether Defendants maintained accurate payroll records as required by
2 California Labor Code section 1174(d);
- 3 (h) Whether Defendants failed to pay earned overtime wages; minimum
4 wages; meal, rest, and recovery period premiums; and/or reporting time
5 pay due to Plaintiff and class members upon their discharge;
- 6 (i) Whether Defendants failed to timely pay overtime wages; minimum
7 wages; meal, rest, and recovery period premiums; and/or reporting time
8 pay due to Plaintiff and class members during their employment;
- 9 (j) Whether Defendants required Plaintiff and class members to report to
10 work, but failed to provide them with work or provided them with less
11 than half their usual or scheduled day's work, without properly
12 compensating them as required by California Code of Regulations, Title
13 8, section 11050(5);
- 14 (k) Whether Defendants failed to reimburse Plaintiff and class members for
15 necessary and required business-related expenditures and/or losses
16 incurred by them in the scope of their employment;
- 17 (l) Whether Defendants engaged in unlawful and unfair business practices
18 in violation of California Business & Professions Code sections 17200,
19 *et seq.*; and
- 20 (m) The appropriate amount of damages, restitution, or monetary penalties
21 resulting from Defendants' violations of California law.

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

- 24 (a) Numerosity: The class members are so numerous that joinder of all
25 members would be unfeasible and impractical. The membership of the
26 entire class is unknown to Plaintiff at this time; however, the class is
27 estimated to be greater than one hundred (100) individuals and the
28 identity of such membership is readily ascertainable by inspection of

Defendants' employment records.

- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- (d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.
- (e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class

actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)

49. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

50. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

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

52. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

53. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

54. California Labor Code section 510 codifies the right to overtime compensation

1 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
2 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
3 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
4 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
5 in a day on the seventh (7th) day of work.

6 55. During the relevant time period, Defendants willfully failed to pay all overtime
7 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
8 class members were not paid overtime premiums for all of the hours they worked in excess of
9 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
10 hours in a week, because all hours worked were not recorded.

11 56. First, during the relevant period, Defendants had a company-wide "on-call"
12 policy, whereby they scheduled Plaintiff and class members to work "on-call," or on standby.
13 These "on-call" shifts worked to Defendants' benefit and to the detriment of Plaintiff and
14 class members. By utilizing "on-call" shifts, Defendants received the benefit of being able to
15 maximize revenue by having a standby workforce they could choose to utilize or not,
16 depending on resort's traffic and sales metrics, without incurring the cost of compensating
17 employees who show up to work and work a full or partial scheduled day's work.

18 57. When scheduled for an "on-call" or standby shift, Plaintiff and class members
19 were required to wait for the resort to call them prior to their scheduled standby shift.
20 Plaintiff and class members were engaged to wait and could not engage in personal activities
21 as they had to be ready to travel to the resort on short notice and work their standby shift.
22 When scheduled to be "on-call" for a standby shift, Plaintiff and class members were
23 controlled by Defendants because they were forced to put their lives on hold and could not use
24 that time freely for their own purposes. For example, Plaintiff refrained from making plans
25 altogether while "on-call" for a standby shift because he knew that he had to drop whatever he
26 was doing at a moment's notice if he was instructed to work his standby shift. Defendants did
27 not pay Plaintiff and class members for the time they spent waiting to hear whether they
28 needed to report for work at the resort on days they ultimately were not called in.

1 58. Second, during the relevant time period, Defendants had, and continue to have,
2 a company-wide policy and/or practice of forcing Plaintiff and class members to work off-the-
3 clock performing tasks outside of their scheduled shift times, because Defendants did not
4 provide a means to account for this time. For example, Plaintiff and class members parked in
5 the designated employee parking lot which was approximately a 15-minute walk away from
6 the timekeeping machine Plaintiff and class members used to clock in and out of their shifts.
7 As a result, after reporting to work and parking in the employee parking lot, Plaintiff spent 15
8 minutes walking to the housekeeping building in the back of the property where he was finally
9 able to clock in; similarly, Plaintiff spent 15 minutes after clocking out from his shifts walking
10 back to his vehicle before he could leave Defendants' premises. Defendants did not provide
11 any means for Plaintiff and class members to record this time spent under Defendants' control
12 thus exacerbating the amount of time Plaintiff and class members spent off-the-clock, time for
13 which they were not paid.

14 59. Defendants knew or should have known that, as a result of these company-wide
15 practices and/or policies, Plaintiff and class members were performing their assigned duties
16 off-the-clock before and after their shifts, and were suffered or permitted to perform work for
17 which they were not paid. Because Plaintiff and class members worked shifts of eight (8)
18 hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work
19 qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid
20 overtime wages for all of the overtime hours they actually worked.

21 60. Defendants' failure to pay Plaintiff and class members the balance of overtime
22 compensation, as required by California law, violates the provisions of California Labor Code
23 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
24 members are entitled to recover from Defendants their unpaid overtime compensation, as well
25 as interest, costs, and attorneys' fees.

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SECOND CAUSE OF ACTION
Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)

61. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

62. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050(2)(L) (defining “Hours Worked”).

63. As stated above, Defendants had a company-wide “on-call” policy, whereby they required Plaintiff and class members to wait to be called by Defendants when scheduled for “on-call” or standby shifts. However, Defendants did not pay Plaintiff and class members at least minimum wages for the time they spent waiting to see if they were needed at the resort. Further, as set forth above, Defendants maintained policies and/or practices requiring Plaintiff and class members to perform work off-the-clock outside of their scheduled shifts, including walking from and to the employee parking lot to the housekeeping building where they were able to use the timekeeping machine at the beginning and end of their shifts.

64. Defendants did not pay minimum wages for all hours worked by Plaintiff and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

65. Defendants’ failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to

1 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from
2 Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and
3 interest thereon.

4 **THIRD CAUSE OF ACTION**

5 **Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period** 6 **Violations** 7 **(Against all Defendants)**

8 66. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
9 and every allegation set forth above.

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

17 68. At all relevant times herein set forth, California Labor Code sections 226.7,
18 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
19 meal period mandated by an applicable order of the IWC.

20 69. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
21 the applicable IWC Wage Order also require employers to provide a second meal period of
22 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
23 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
24 hours worked is no more than twelve (12) hours, the second meal period may be waived by
25 mutual consent of the employer and the employee only if the first meal period was not waived.

26 70. During the relevant time period, on information and belief, Defendants had, and
27 continue to have, a company-wide policy and/or practice of staffing their resort operations
28 strictly based on the labor hours or payroll budget set by corporate. Defendants' uniform use

1 of labor budgets resulted in understaffing, such that there were too few employees on duty to
2 handle the workload and attend to guests. Because Defendants did not employ or staff a
3 sufficient number of employees to meet guest demand, there was no one available to relieve
4 employees needing meal period coverage, and Plaintiff and class members were not always
5 afforded timely, uninterrupted meal periods to which they were entitled. Moreover,
6 Defendants also had a practice of failing to adhere to a schedule for meal periods, which
7 further prevented Plaintiff and class members from taking all timely, uninterrupted meal
8 periods to which they were entitled. As a result, Plaintiff and class members had to work
9 through all or part of their meal periods, had their meal periods interrupted, and/or had to wait
10 extended periods of time before taking meal periods. For example, Plaintiff sometimes took
11 his meal periods late, after having worked in excess of five (5) hours into his shifts, due to the
12 heavy workload resulting from guest demands and lack of coverage. Plaintiff and class
13 members did not sign valid meal period waivers on days that they were entitled to meal
14 periods and were not relieved of all duties.

15 71. At all times herein mentioned, Defendants knew or should have known that, as
16 a result of these policies, Plaintiff and class members were not actually relieved of all duties to
17 take timely, uninterrupted meal periods. Defendants further knew or should have known that
18 Defendants did not pay Plaintiff and class members meal period premiums when meal periods
19 were late, interrupted, shortened, and/or missed.

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

26 73. Defendants' conduct violates the applicable IWC Wage Order, and California
27 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
28 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular

1 rate of compensation for each work day that the meal period was not provided.

2 **FOURTH CAUSE OF ACTION**

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

5 74. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

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

10 76. At all relevant times, the applicable IWC Wage Order provides that "[e]very
11 employer shall authorize and permit all employees to take rest periods, which insofar as
12 practicable shall be in the middle of each work period" and that the "rest period time shall be
13 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
14 hours or major fraction thereof" unless the total daily work time is less than three and one-half
15 (3 ½) hours.

16 77. At all relevant times, California Labor Code section 226.7 provides that no
17 employer shall require an employee to work during any rest period mandated by an applicable
18 order of the California IWC. To comply with its obligation to authorize and permit rest
19 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
20 employer must "relinquish any control over how employees spend their break time, and
21 relieve their employees of all duties—including the obligation that an employee remain on
22 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
23 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
24 Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from
25 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
26 required rest period was not authorized and permitted.

27 78. During the relevant time period, Defendants regularly failed to authorize and
28 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour

1 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
2 use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy
3 workloads resulted in a lack of rest period coverage and prevented Plaintiff and class members
4 from being relieved of all duty in order to take compliant rest periods. Defendants also failed
5 to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest
6 period coverage, further led to Plaintiff and class members not being authorized and permitted
7 to take rest periods.

8 79. Furthermore, on information and belief, Defendants maintained and
9 implemented a company-wide on-premises rest period policy, which effectively required that
10 Plaintiff and class members remain on the premises during their rest periods. Because
11 Plaintiff and class members were restricted from leaving Defendants' premises during rest
12 periods, they were denied the ability to use their rest periods freely for their own purposes,
13 such as running personal errands. Thus, Defendants effectively maintained control over
14 Plaintiff and class members during rest periods.

15 80. As a result of Defendants' practices and policies, Plaintiff and class members
16 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
17 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
18 Plaintiff had to forgo his rest periods due to the heavy workload and lack of coverage.

19 81. Defendants have also engaged in a systematic, company-wide practice and/or
20 policy of not paying rest period premiums owed when rest periods are not authorized and
21 permitted. Because of this practice and/or policy, Plaintiff and class members have not
22 received premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and
23 class members rest periods and failed to pay them rest period premiums due, in violation of
24 Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

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

permitted.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of Regulations Title 8, Section 3395—Heat Recovery Period Violations (Against all Defendants)

83. Plaintiff incorporates by reference and re-allege as if fully stated herein each and every allegation set forth above.

84. At all relevant times herein set forth, the applicable GIS Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class members' employment by Defendants.

85. At all relevant times, California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable GIS Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code Regs. tit. 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other." *Id.* "Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times." *Id.*

86. During the relevant time period, Defendants violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because Defendants failed to provide Plaintiff and class members with recovery periods. For example, Defendants did not inform Plaintiff that he was entitled to recovery periods thus Plaintiff was

1 not permitted to take them while working at the resort even though some of his work was
2 performed outside under the sun and in high temperatures.

3 87. Defendants also engaged in a company-wide practice and/or policy of not
4 paying recovery period premiums owed when compliant recovery periods were not provided.
5 Because of this practice and/or policy, Plaintiff and class members have not received premium
6 pay for missed recovery periods.

7 88. Defendants' conduct violates the applicable GIS Order and California Labor
8 Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to
9 recover from Defendants one (1) additional hour of pay at the employee's regular rate of
10 compensation for each work day that a compliant recovery period was not provided.

11 **SIXTH CAUSE OF ACTION**

12 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**

13 **Statements and Failure to Maintain Accurate Payroll Records**

14 **(Against all Defendants)**

15 89. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

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

22 91. At all relevant times, Defendants have knowingly and intentionally provided
23 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
24 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
25 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the
26 address of the legal entity that is the employer; and all applicable hourly rates in effect during
27 the pay period, including rates of pay for overtime wages, and the corresponding number of
28 hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),

1 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

2 92. First, because Defendants did not accurately record the time Plaintiff and
3 Subclass members spent working off-the-clock, Defendants did not list the correct amount of
4 gross wages and net wages earned by Plaintiff and Subclass members in compliance with
5 sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the
6 total number of hours worked by Plaintiff and Subclass members in violation of section
7 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period
8 and corresponding accurate number of work hours worked at each hourly rate in violation of
9 section 226(a)(9).

10 93. Second, and separately from these violations, Defendants issued uniform wage
11 statements to Plaintiff and Subclass members that failed to list the address of the legal entity
12 of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to
13 provide California employees with transparency as to the true identity of their employer, to
14 allow the employee to contact their employer during employment or in the future for various
15 reasons, including filing an administrative claim, judicial claim, or other action to seek relief
16 against their employer, to obtain unemployment benefits, etc. During the relevant time period,
17 Defendants systematically, and on a company-wide basis, issued wage statements to Plaintiff
18 and Subclass members that fail to correctly list the employing entity's correct address.
19 Plaintiff's and Subclass members' wage statements incorrectly list the employer's address as
20 "905 COUNTRY CLUB ROAD, OJAI, CA 93023," but according to the California Secretary
21 of State's website, Defendant OVIS LLC's entity address should be "222 N LASALLE ST
22 STE 2000, CHICAGO, IL 60601."

23 94. The wage statement deficiencies also include, without limitation, failing to list
24 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
25 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
26 for which employees were paid; failing to list the name of the employee and only the last four
27 digits of his or her social security number or an employee identification number other than a
28 social security number; failing to list the name of the legal entity that is the employer; and/or

1 failing to state all hours worked as a result of not recording or stating hours worked off-the-
2 clock.

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

13 96. California Labor Code section 1198 provides that the maximum hours of work
14 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
15 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
16 employment of any employees for longer hours than those fixed by the order or under
17 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
18 Wage Order, employers are required to keep accurate time records showing when the
19 employee begins and ends each work period and meal period. During the relevant time
20 period, Defendants engaged in company-wide practices and/or policies of failing to record
21 actual hours worked, and thereby failed to keep accurate records of work period and meal
22 period start and end times for Plaintiff and Subclass members, in violation of section 1198.

23 97. Plaintiff and Subclass members are entitled to recover from Defendants the
24 greater of their actual damages caused by Defendants’ failure to comply with California Labor
25 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
26 employee.

27 //

28 //

SEVENTH CAUSE OF ACTION
Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon
Termination
(Against all Defendants)

98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

99. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

100. On information and belief, Defendants have a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Plaintiff provided Defendants with more than seventy-two (72) hours' notice of his intention to quit on September 25, 2023; however, Defendants did not provide Plaintiff with all of his final wages until October 6, 2023, four (4) days after his termination date. Thus, Defendants failed to pay Plaintiff his final wages within the requisite time limit in violation of California Labor Code section 202.

101. Additionally, Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

102. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within

seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

EIGHTH CAUSE OF ACTION

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

103. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

104. This cause of action is dependent upon, and wholly derivative of, the overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay that were not timely paid to Plaintiff and class members during their employment.

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

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

107. At all times relevant herein, Labor Code section 204 provides that 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. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than

1 seven (7) calendar days following the close of the payroll period.

2 108. During the relevant time period, Defendants willfully failed to pay Plaintiff and
3 class members all wages due including, but not limited to, overtime wages; minimum wages;
4 meal, rest, and recovery period premiums; and/or reporting time pay, within the time periods
5 specified by California Labor Code section 204.

6 109. Defendants' failure to timely pay Plaintiff and class members all wages due
7 violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover
8 from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

9 **NINTH CAUSE OF ACTION**

10 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section**
11 **11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay**
12 **(Against all Defendants)**

13 110. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 111. California Labor Code section 1198 dictates that no employer may employ an
16 employee under conditions of labor that are prohibited by the applicable IWC wage order.
17 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
18 fixed by the commission shall be the . . . standard conditions of labor for employees. The
19 employment of any employee . . . under conditions of labor prohibited by the order is
20 unlawful.”

21 112. The applicable IWC Wage Order, California Code of Regulations, Title 8,
22 section 11050(5)(A), provides that “[e]ach workday an employee is required to report to the
23 work site and does report, but is not put to work or is furnished less than half of his/her usual
24 or scheduled day’s work, the employer shall be pay him/her for half the usual or scheduled
25 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the
26 employee’s regular rate of pay, which shall not be less than the minimum wage.” The
27 “primary purpose of the reporting time regulation” is “to guarantee at least partial
28 compensation for employees who report to work expecting to work a specified number of

1 hours, and who are deprived of that amount because of inadequate scheduling or lack of
2 proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

3 113. During the relevant time period, Defendants violated California Labor Code
4 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
5 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
6 work for their usual or scheduled shift but were put to work for less than half of their usual or
7 scheduled day’s work.

8 114. As stated, Defendants had a company-wide “on-call” policy, whereby they
9 scheduled Plaintiff and class members to work “on-call,” or on standby. When scheduled for
10 an “on-call” or standby shift, Plaintiff and class members regularly presented themselves as
11 ready for work by waiting for the resort to call them before their scheduled standby shift and
12 would await instructions on whether to report to the resort. When this occurred, Defendants
13 did not pay Plaintiff and class members for at least half of their scheduled day’s work or the
14 minimum reporting time pay when they were subject to Defendants’ “on-call” policy and were
15 ultimately not called.

16 115. Accordingly, Plaintiff and class members were not properly compensated with
17 reporting time pay in violation of California Labor Code section 1198 and California Code of
18 Regulations, Title 8, section 11050(5)(A). Plaintiff and class members are therefore entitled
19 to recover from Defendants unpaid wages and interest.

20 TENTH CAUSE OF ACTION

21 Violation of California Labor Code § 2802—Unpaid Business-Related Expenses 22 (Against all Defendants)

23 116. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 117. At all times herein set forth, California Labor Code section 2802 provides that
26 an employer must reimburse employees for all necessary expenditures and losses incurred by
27 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
28 to prevent employers from passing off their cost of doing business and operating expenses on

1 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
2 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen
3 tools or equipment are required by the employer or are necessary to the performance of a job,
4 such tools and equipment shall be provided and maintained by the employer, except that an
5 employee whose wages are at least two (2) times the minimum wage provided herein may
6 provide and maintain hand tools and equipment customarily required by the trade or craft."

7 118. During the relevant time period, Defendants, on a company-wide basis,
8 required Plaintiff and class members to use their personal mobile devices, including, but not
9 limited to, cellular phones, and/or mobile data to carry out their job duties but failed to
10 reimburse them for the costs of their work-related mobile device and/or mobile data expenses.
11 For example, Plaintiff was required to use his personal cellular phone and mobile data to
12 communicate with Defendants' management about work-related matters and to take
13 photographs of completed work projects and send them to Defendants' management as proof.
14 Although Defendants required Plaintiff and class members to use their personal mobile
15 devices and mobile data to carry out their work-related duties, Defendants failed to reimburse
16 them for their costs incurred.

17 119. Defendants could have provided Plaintiff and class members with the actual
18 tools for use on the job, such as company mobile devices. Or, Defendants could have
19 reimbursed employees for their mobile device usage. Instead, Defendants passed these
20 operating costs off onto Plaintiff and class members. At all relevant times, Plaintiff did not
21 earn at least two (2) times the minimum wage.

22 120. Defendants' company-wide policy and/or practice of not reimbursing
23 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
24 and class members violates California Labor Code section 2802. Defendants have
25 intentionally and willfully failed to reimburse Plaintiff and class members for necessary
26 business-related expenses and costs.

27 121. Plaintiff and class members are entitled to recover from Defendants their
28 business-related expenses incurred during the course and scope of their employment, plus

1 interest.

2 **ELEVENTH CAUSE OF ACTION**

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

4 **(Against all Defendants)**

5 122. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 123. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
8 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
9 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and
10 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to
11 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,
12 including sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, 1197.1, and 2802.

13 124. Defendants’ conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

- 15 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
16 Wage Order for Defendants’ failure to compensate Plaintiff and other
17 aggrieved employees with all required overtime pay, as alleged herein;
- 18 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
19 1198, and the applicable IWC Wage Order for Defendants’ failure to
20 compensate Plaintiff and other aggrieved employees with at least
21 minimum wages for all hours worked, as alleged herein;
- 22 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
23 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
24 and other aggrieved employees with meal periods, as alleged herein;
- 25 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
26 applicable IWC Wage Order for Defendants’ failure to authorize and
27 permit Plaintiff and other aggrieved employees to take rest periods, as
28 alleged herein;

- 1 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
2 applicable GIS Order for Defendants' failure to provide heat recovery
3 periods to Plaintiff and other aggrieved employees, as alleged herein;
4 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
5 IWC Wage Order for failure to provide accurate and complete wage
6 statements to Plaintiff and other aggrieved employees, as alleged herein;
7 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
8 IWC Wage Order for failure to maintain payroll records, as alleged
9 herein;
10 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
11 earned wages upon termination, as alleged herein;
12 (i) Violation of Labor Code section 204 for failure to pay all earned wages
13 during employment, as alleged herein; and
14 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
15 and other aggrieved employees for all business expenses necessarily
16 incurred, as alleged herein.

17 125. Plaintiff and other aggrieved employees are therefore entitled to recover civil
18 penalties pursuant to Labor Code sections 2699(a), (f), and (k).

19 **TWELFTH CAUSE OF ACTION**

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

21 **Unlawful Business Practices**

22 **(Against all Defendants)**

23 126. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 127. Defendants are “persons” as defined by California Business & Professions
26 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
27 and/or associations.

28 128. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,

1 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
2 suffered injury in fact and has lost money as a result of Defendants' unlawful business
3 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
4 meaning of Code of Civil Procedure section 1021.5.

5 129. Defendants' activities, as alleged herein, are violations of California law, and
6 constitute unlawful business acts and practices in violation of California Business &
7 Professions Code sections 17200, *et seq.*

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

- 11 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
12 class members, to work overtime without paying them proper
13 compensation in violation of California Labor Code sections 510 and
14 1198, and the applicable IWC Wage Order, as alleged herein;
- 15 (b) Failing to pay at least minimum wage to Plaintiff and class members in
16 violation of California Labor Code sections 1182.12, 1194, 1197,
17 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
18 herein;
- 19 (c) Failing to provide all meal periods to Plaintiff and class members in
20 violation of California Labor Code sections 226.7, 512(a), 516, and
21 1198, and the applicable IWC Wage Order, as alleged herein;
- 22 (d) Failing to authorize and permit Plaintiff and class members to take all
23 rest periods in violation of California Labor Code sections 226.7, 516,
24 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 25 (e) Failing to provide all recovery periods to Plaintiff and class members in
26 violation of California Labor Code sections 226.7, 516, and 1198, and
27 the applicable GIS Order, as alleged herein;
- 28 (f) Failing to provide Plaintiff and class members with accurate wage

1 statements and failing to maintain accurate payroll records in violation
2 of California Labor Code sections 226(a), 1174(d), and 1198, and the
3 applicable IWC Wage Order, as alleged herein;

4 (g) Failing to timely pay all earned wages to Plaintiff and class members in
5 violation of California Labor Code section 204, as alleged herein;

6 (h) Failing to pay reporting time pay in violation of California Labor Code
7 section 1198 and the applicable IWC Wage Order, as alleged herein;
8 and

9 (i) Failing to reimburse Plaintiff and class members for all business
10 expenses necessarily incurred in violation of California Labor Code
11 section 2802, as alleged herein.

12 131. As a result of the violations of California law herein described, Defendants
13 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
14 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
15 herein.

16 132. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
17 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
18 Defendants during a period that commences four years prior to the filing of the initial
19 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
20 Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of
21 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

22 **THIRTEENTH CAUSE OF ACTION**

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

24 **Unfair Business Practices**

25 **(Against all Defendants)**

26 133. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 134. Defendants are "persons" as defined by California Business & Professions

Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

135. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

136. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premiums due to them under California Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

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

138. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of the initial complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil

1 Procedure section 1021.5 and other applicable laws; and an award of costs.

2 **REQUEST FOR JURY TRIAL**

3 Plaintiff requests a trial by jury.

4 **PRAYER FOR RELIEF**

5 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
6 against Defendants, jointly and severally, as follows:

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

10 **Class Certification**

- 11 2. That this case be certified as a class action;
12 3. That Plaintiff be appointed as the representative of the Class and Subclass;
13 4. That counsel for Plaintiff be appointed as class counsel.

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

15 5. That the Court declare, adjudge, and decree that Defendants violated California
16 Labor Code sections 510 and 1198 and the applicable IWC Wage Order by willfully failing to
17 pay all overtime wages due to Plaintiff and class members;

18 6. For general unpaid wages at overtime wage rates and such general and special
19 damages as may be appropriate;

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

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

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

26 **As to the Second Cause of Action**

27 10. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage

Order by willfully failing to pay minimum wages to Plaintiff and class members;

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

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

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

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

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

As to the Third Cause of Action

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

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

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

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

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

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

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully
2 failing to authorize and permit Plaintiff and class members to take all rest periods;

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

6 25. For all actual, consequential, and incidental losses and damages, according to
7 proof;

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

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

11 28. For attorneys' fees pursuant to California Code of Civil Procedure section
12 1021.5, or as otherwise provided by law; and

13 29. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Fifth Cause of Action**

16 30. That the Court declare, adjudge and decree that Defendants violated California
17 Labor Code sections 226.7, 516, and 1198 and the applicable GIS Order by willfully failing to
18 provide all recovery periods to Plaintiff and class members;

19 31. That the Court make an award to the Plaintiff and class members of one (1) hour
20 of pay at each employee's regular rate of pay for each workday that a recovery period was not
21 provided;

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

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

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

27 35. For attorneys' fees pursuant to California Code of Civil Procedure section
28 1021.5, or as otherwise provided by law; and

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

3 **As to the Sixth Cause of Action**

4 37. That the Court declare, adjudge and decree that Defendants violated the
5 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
6 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
7 itemized wage statements thereto;

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

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

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

12 41. For attorneys' fees and costs pursuant to California Labor Code section
13 226(e)(1); and

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

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

17 43. That the Court declare, adjudge and decree that Defendants violated California
18 Labor Code sections 201 and 202 by willfully failing to pay overtime wages; minimum wages;
19 meal, rest, and recovery period premiums; and/or reporting time pay owed at the time of
20 termination of the employment of Plaintiff and other terminated class members;

21 44. For all actual, consequential and incidental losses and damages, according to
22 proof;

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

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

27 47. For attorneys' fees pursuant to California Code of Civil Procedure section
28 1021.5, or as otherwise provided by law; and

1 48. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Eighth Cause of Action**

4 49. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
6 overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting
7 time pay during their employment;

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

10 51. For statutory penalties according to proof pursuant to California Labor Code
11 section 210;

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

14 53. For attorneys' fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

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

18 **As to the Ninth Cause of Action**

19 55. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5)(A) by
21 failing to provide Plaintiff and class members with reporting time pay;

22 56. For all actual, consequential and incidental losses and damages, according to
23 proof;

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

26 58. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 //

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

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

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

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

9 62. For all actual, consequential, and incidental losses and damages, according to
10 proof;

11 63. For attorneys' fees and costs pursuant to California Labor Code section
12 2802(c), or as otherwise provided by law; and

13 64. For such other and further relief as the Court may deem equitable and
14 appropriate.

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

16 65. That the Court declare, adjudge and decree that Defendants violated the
17 following California Labor Code provisions as to Plaintiff and other aggrieved employees:
18 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
19 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
20 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
21 permit all rest periods); 226.7, 516, and 1198 (by failing to provide recovery periods); 226(a),
22 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate
23 payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination);
24 204 (by failing to timely pay all earned wages during employment); and 2802 (by failing to
25 reimburse business expenses);

26 66. For civil penalties pursuant to the California Labor Code, including sections
27 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code
28 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,

1 1198, and 2802;

2 67. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
3 2699(k) to bring Defendants into compliance with the requirements of California Labor Code
4 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
5 1198, and 2802;

6 68. For attorneys' fees and costs pursuant to California Labor Code section
7 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California
8 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
9 1197, 1197.1, 1198, and 2802;

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

11 70. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Twelfth Cause of Action**

14 71. That the Court declare, adjudge and decree that Defendants' conduct of failing
15 to provide Plaintiff and class members all overtime wages due to them, failing to provide
16 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
17 class members all meal periods, failing to authorize and permit Plaintiff and class members to
18 take all rest periods, failing to provide all heat recovery periods, failing to provide Plaintiff
19 and class members accurate and complete wage statements, failing to maintain accurate
20 payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class
21 members all earned wages during employment, failing to pay Plaintiff and class members
22 reporting time pay, and failing to reimburse Plaintiff and class members for business-related
23 expenses constitutes an unlawful business practice in violation of California Business and
24 Professions Code sections 17200, *et seq.*;

25 72. For restitution of unpaid wages to Plaintiff and all class members and
26 prejudgment interest from the day such amounts were due and payable;

27 73. For the appointment of a receiver to receive, manage and distribute any and all
28 funds disgorged from Defendants and determined to have been wrongfully acquired by

Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

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

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

As to the Thirteenth Cause of Action

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

77. For restitution of the statutory benefits under California Labor Code section 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the day such amounts were due and payable;

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

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

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

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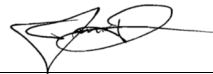
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1 81. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: December 11, 2024

Respectfully submitted,

5
6 Capstone Law APC

7 By: 

8 Robert Drexler

Jonathan Lee

9 Robert Myong

10 Attorneys for Plaintiff Joseph

11 Dominguez

EXHIBIT “1”



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Los Angeles, California 90067
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August 6, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Joseph Dominguez v. OVIS LLC*

Dear PAGA Administrator:

This office represents Joseph Dominguez in connection with his claims under the California Labor Code. Mr. Dominguez was an employee of OVIS LLC ("OVIS").

The employer may be contacted directly at the address below:

OVIS LLC
222 N LASALLE ST STE 2000
CHICAGO, IL 60601

Mr. Dominguez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Dominguez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by OVIS as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

OVIS employed Mr. Dominguez as an hourly paid, non-exempt employee from approximately January 2022 to October 2023. Mr. Dominguez worked for OVIS as a Housekeeping Central Services Attendant and House Attendant at its resort location in Ojai, California. Mr. Dominguez typically worked eight (8) or more hours per day and five (5) days per week. Mr. Dominguez was compensated approximately \$20.80 per hour. His job duties included, without limitation, fulfilling guest requests, taking out garbage, and collecting used linens into bins and preparing them for pick up.

OVIS committed each of the following Labor Code violations against Mr. Dominguez, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

OVIS’s Company-Wide and Uniform Payroll and HR Practices

OVIS LLC is a Delaware limited liability company and is a premiere Southern California luxury resort featuring an on-site spa and golf course. Upon information and belief, OVIS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Chicago, Illinois, for all non-exempt, hourly paid employees working for OVIS in California, including Mr. Dominguez and other aggrieved employees. At all relevant times, OVIS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Dominguez and other aggrieved employees, regardless of their location or position.

Upon information and belief, OVIS maintains a centralized Payroll department at its corporate headquarters in Chicago, Illinois, which processes payroll for all non-exempt, hourly paid employees working for OVIS in California, including Mr. Dominguez and other aggrieved employees. Further, OVIS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Dominguez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, OVIS utilized the same methods and formulas when calculating wages due to Mr. Dominguez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

OVIS willfully failed to pay all overtime wages owed to Mr. Dominguez and other aggrieved employees. During the relevant time period, Mr. Dominguez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Mr. Dominguez’s experience and counsel’s review of those records currently available relating to Mr. Dominguez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Dominguez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, OVIS had a company-wide “on-call” policy, whereby it scheduled Mr. Dominguez and other aggrieved employees to work “on-call,” or on standby. These “on-call” shifts worked to OVIS’s benefit and to the detriment of Mr. Dominguez and other aggrieved employees. By utilizing “on-call” shifts, OVIS received the benefit of being able to maximize revenue by having a standby workforce they could choose to utilize or not, depending on resort’s traffic and sales metrics, without incurring the cost of compensating employees who show up to work and work a full or partial scheduled day’s work.

When scheduled for an “on-call” or standby shift, Mr. Dominguez and other aggrieved employees were required to wait for the resort to call them prior to their scheduled standby shift. Mr. Dominguez and other aggrieved employees were engaged to wait and could not engage in personal activities as they had to be ready to travel to the resort on short notice and work their standby shift. When scheduled to be “on-call” for a standby shift, Mr. Dominguez and other aggrieved employees were controlled by OVIS because they were forced to put their lives on hold and could not use that time freely for their own purposes. For example, Mr. Dominguez refrained from making plans altogether while “on-call” for a standby shift because he knew that he had to drop whatever he was doing at a moment’s notice if he was instructed to work his standby shift. OVIS did not pay Mr. Dominguez and other aggrieved employees for the time they spent waiting to hear whether they needed to report for work at the resort on days they ultimately were not called in.

Second, during the relevant time period, OVIS had, and continues to have, a company-wide policy and/or practice of forcing Mr. Dominguez and other aggrieved employees to work off-the-clock performing tasks outside of their scheduled shift times, because OVIS did not provide a means to account for this time. For example, Mr. Dominguez and other aggrieved employees parked in the designated employee parking lot which was approximately a 15-minute walk away from the timekeeping machine Mr. Dominguez and other aggrieved employees used to clock in and out of their shifts. As a result, after reporting to work and parking in the employee parking lot, Mr. Dominguez spent 15 minutes walking to the housekeeping building in the back of the property where he was finally able to clock in; similarly, Mr. Dominguez spent 15 minutes after clocking out from his shifts walking back to his vehicle before he could leave OVIS’s premises. OVIS did not provide any means for Mr. Dominguez and other aggrieved employees to record this time spent under OVIS’s control thus exacerbating the amount of time Mr. Dominguez and other aggrieved employees spent off-the-clock, time for which they were not paid.

Third, during the relevant time period, upon information and belief, OVIS has systematically, and on a company-wide basis, understaffed its locations and failed to provide adequate meal period coverage to permit employees to take compliant meal periods. Because there was no one available to relieve Mr. Dominguez and/or other aggrieved employees needing meal period coverage, OVIS required Mr. Dominguez and/or other aggrieved employees to remain available to attend to guests, including during unpaid meal periods. Moreover, OVIS also had a practice of failing to adhere to a schedule for meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Dominguez and/or other aggrieved employees to not be relieved of their duties for compliant meal periods.

OVIS knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Dominguez and other aggrieved employees were performing their assigned duties off-the-clock

before and after their shifts and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Dominguez and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Dominguez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Further, OVIS did not pay Mr. Dominguez and/or other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, OVIS paid Mr. Dominguez and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, OVIS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when Mr. Dominguez and/or other aggrieved employees worked overtime and received these other forms of pay, OVIS failed to pay all overtime wages by paying a lower overtime rate than required.

OVIS's failure to pay Mr. Dominguez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Dominguez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11050(2)(L) (defining "Hours Worked").

As stated above, OVIS had a company-wide "on-call" policy, whereby it required Mr. Dominguez and other aggrieved employees to wait to be called by OVIS when scheduled for "on-call" or standby shifts. However, OVIS did not pay Mr. Dominguez and other aggrieved employees at least minimum wages for the time they spent waiting to see if they were needed at the resort. Further, as set forth above, OVIS maintained policies and/or practices requiring Mr. Dominguez and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, including walking from and to the employee parking lot to the housekeeping building where they were able to use the timekeeping machine at the beginning and end of their shifts.

Moreover, as set forth above, due to OVIS's policies and/or practices of understaffing its locations, assigning heavy workloads, and failing to adhere to a schedule for meal periods, Mr. Dominguez and/or other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Thus, OVIS did not pay at least minimum wages for all hours worked by Mr. Dominguez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime

premium payment, OVIS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, OVIS regularly failed to pay at least minimum wages to Mr. Dominguez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Mr. Dominguez and other aggrieved employees are entitled to recover civil penalties, attorneys fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee’s regular rate, except that if the total hours worked is no more than twelve (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.

During the relevant time period, on information and belief, OVIS had, and continues to have, a company-wide policy and/or practice of staffing its resort operations strictly based on the labor hours or payroll budget set by corporate. OVIS’s uniform use of labor budgets resulted in understaffing, such that there were too few employees on duty to handle the workload and attend to guests. Because OVIS did not employ or staff a sufficient number of employees to meet guest demand, there was no one available to relieve employees needing meal period coverage, and Mr. Dominguez and other aggrieved employees were not always afforded timely, uninterrupted meal periods to which they were entitled. Moreover, OVIS also had a practice of failing to adhere to a schedule for meal periods, which further prevented Mr. Dominguez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Dominguez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Dominguez sometimes took his meal periods late, after having worked in excess of five (5) hours into his shifts, due to the heavy workload resulting from guest demands and lack of coverage.

Moreover, OVIS did not provide Mr. Dominguez and/or other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Dominguez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, OVIS knew or should have known that, as a result of these policies, Mr. Dominguez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. OVIS further knew or should have known that OVIS did not pay Mr. Dominguez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

Furthermore, OVIS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Dominguez and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that OVIS did pay Mr. Dominguez and/or other aggrieved employees premium pay for missed, late, and interrupted meal periods, OVIS did not pay Mr. Dominguez and/or other aggrieved employees at the correct rate of pay for premiums because OVIS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, OVIS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Dominguez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, OVIS regularly failed to authorize and permit Mr. Dominguez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, OVIS's company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads resulted in a lack of rest period coverage and prevented Mr. Dominguez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. OVIS also failed to schedule rest periods, which, coupled with OVIS's failure to provide adequate rest period coverage, further led to Mr. Dominguez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, OVIS maintained and implemented a company-wide on-premises rest period policy, which effectively required that Mr. Dominguez and other aggrieved employees remain on the premises during their rest periods. Because Mr. Dominguez and other aggrieved employees were restricted from leaving OVIS's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, OVIS effectively maintained control over Mr. Dominguez and other aggrieved employees during rest periods.

As a result of OVIS's practices and policies, Mr. Dominguez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Dominguez had to forgo his rest periods entirely due to the heavy workload and lack of coverage.

OVIS has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Dominguez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that OVIS did pay Mr. Dominguez and/or other aggrieved employees one (1) additional hour of premium pay for missed rest periods, OVIS did not pay Mr. Dominguez and/or other aggrieved employees at the correct rate of pay for premiums because OVIS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, OVIS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Dominguez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of Regulations Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide recovery periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest or recovery period is not provided. California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code Regs. tit. 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other." *Id.* "Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times." *Id.*

During the relevant time period, OVIS violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because OVIS failed to provide Mr. Dominguez and

other aggrieved employees with recovery periods. For example, OVIS did not inform Mr. Dominguez that he was entitled to recovery periods thus Mr. Dominguez was not permitted to take them while working at the resort even though some of his work was performed outside under the sun and in high temperatures.

OVIS also has engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. Because of this practice and/or policy, Mr. Dominguez and other aggrieved employees have not received premium pay for all missed recovery periods. Alternatively, to the extent that OVIS did pay Mr. Dominguez and/or other aggrieved employees for missed recovery periods, OVIS did not pay Mr. Dominguez and/or other aggrieved employees at the correct rate of pay, because OVIS systematically failed to include all compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, OVIS failed to authorize and permit all recovery periods in violation of California Labor Code sections 226.7, 516, and 1198, and California Code of Regulations, Title 8, section 3395. Mr. Dominguez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. OVIS has not provided Mr. Dominguez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, OVIS has knowingly and intentionally provided Mr. Dominguez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, OVIS issued uniform wage statements to Mr. Dominguez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal, rest, and recovery period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, OVIS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because OVIS did not accurately record the time Mr. Dominguez and other aggrieved employees spent working off-the-clock, OVIS did not list the correct amount of gross wages and net wages earned by Mr. Dominguez and other aggrieved employees in compliance with sections 226(a)(1) and 226(a)(5). For the same reason, OVIS failed to accurately list the total number of hours worked by Mr. Dominguez and other aggrieved employees in violation of section 226(a)(2),

and failed to list the applicable hourly rates of pay in effect during the pay period and corresponding accurate number of work hours worked at each hourly rate in violation of section 226(a)(9).

Second, because OVIS did not calculate Mr. Dominguez's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal, rest, and recovery period premiums, OVIS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, OVIS failed to list the correct amount of net wages in violation of section 226(a)(5). OVIS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal, rest, and recovery period premiums, in violation of section 226(a)(9).

Third, and separately from these violations, OVIS issued uniform wage statements to Mr. Dominguez and other aggrieved employees that failed to list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, OVIS systematically, and on a company-wide basis, issued wage statements to Mr. Dominguez and other aggrieved employees that fail to correctly list the employing entity's correct address. Mr. Dominguez's and other aggrieved employees' wage statements incorrectly list the employer's address as "905 COUNTRY CLUB ROAD, OJAI, CA 93023," but according to the California Secretary of State's website, Defendant OVIS LLC's entity address should be "222 N LASALLE ST STE 2000, CHICAGO, IL 60601." *See example paystub below.*



The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." At all relevant times, and in violation of Labor Code section 1174(d), OVIS willfully failed to maintain accurate payroll records for Mr.

Dominguez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, OVIS engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Dominguez and other aggrieved employees, in violation of section 1198. Furthermore, in light of OVIS’s failure to provide Mr. Dominguez and/or other aggrieved employees with second 30-minute meal periods to which they were entitled, OVIS kept no records of meal start and end times for second meal periods.

Because OVIS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Dominguez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Dominguez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Dominguez and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that 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. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, OVIS willfully failed to pay Mr. Dominguez and other aggrieved employees all wages due including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay, within the time periods specified by California Labor Code section 204.

Mr. Dominguez and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

On information and belief, OVIS has a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Dominguez provided OVIS with more than seventy-two (72) hours' notice of his intention to quit on September 25, 2023; however, OVIS did not provide Mr. Dominguez with all of his final wages until October 6, 2023, four (4) days after his termination date. Thus, OVIS failed to pay Mr. Dominguez his final wages within the requisite time limit in violation of California Labor Code section 202.

Additionally, OVIS willfully failed to pay Mr. Dominguez and other aggrieved employees who are no longer employed by OVIS the earned and unpaid wages set forth above, including but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving OVIS's employ.

Mr. Dominguez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, OVIS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because OVIS failed to pay Mr. Dominguez and

other aggrieved employees reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of their usual or scheduled day's work.

As stated, OVIS had a company-wide "on-call" policy, whereby it scheduled Mr. Dominguez and other aggrieved employees to work "on-call," or on standby. When scheduled for an "on-call" or standby shift, Mr. Dominguez and other aggrieved employees regularly presented themselves as ready for work by waiting for the resort to call them before their scheduled standby shift and would await instructions on whether to report to the resort. When this occurred, OVIS did not pay Mr. Dominguez and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay when they were subject to OVIS's "on-call" policy and were ultimately not called.

Also, OVIS had a company-wide practice and/or policy of sending Mr. Dominguez and/or other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Dominguez and/or other aggrieved employees for half of their scheduled shift. Although Mr. Dominguez and/or other aggrieved employees reported to work based on the schedule that was provided to them, OVIS would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, OVIS did not pay Mr. Dominguez and/or other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay.

Mr. Dominguez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, OVIS, on a company-wide basis, required Mr. Dominguez and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Dominguez was required to use his personal cellular phone and mobile data to communicate with OVIS's management about work-related matters and to take photographs of completed work projects and send them to OVIS's management as proof. Although OVIS required Mr. Dominguez and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, OVIS failed to reimburse them for their costs incurred.

OVIS could have provided Mr. Dominguez and other aggrieved employees with the actual tools for use on the job, such as company mobile devices. Or, OVIS could have reimbursed employees for

their mobile device usage. At all relevant times, Mr. Dominguez did not earn at least two (2) times the minimum wage.

Thus, OVIS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Dominguez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." OVIS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Dominguez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Dominguez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Dominguez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against OVIS for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Dominguez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Ninel Kocharyan

Copy: OVIS LLC (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



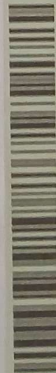
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OVIS LLC
222 N LASALLE ST STE 2000
CHICAGO, IL 60601

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☒ Addressee

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PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

PROOF OF SERVICE

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

On **December 11, 2024** I served the document described as **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **December 11, 2024**, at Los Angeles, California.

Sophia Flores

Type/Print Name



Signature