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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



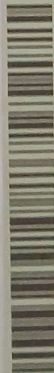
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OVIS LLC
222 N LASALLE ST STE 2000
CHICAGO, IL 60601

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