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**SUPERIOR COURT OF CALIFORNIA
BY AND FOR THE COUNTY OF SACRAMENTO**

IAN ALVARADO, an individual, on behalf of
himself and those similarly situated and on
behalf of the general public,

Plaintiff,

v.

LEWIS OPERATING CORP., a California
Corporation authorized to do business in the
State of California, and DOE 1-100, Inclusive.

Defendants.

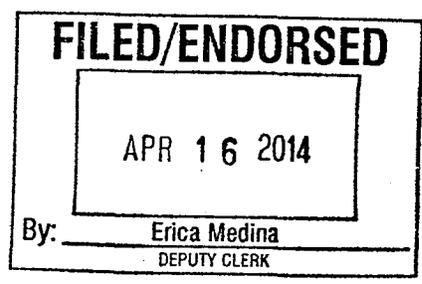
CASE NO. 34-2014-00159707

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES, RESTITUTION, AND
INJUNCTIVE RELIEF:**

- (1) **FAILURE TO PAY WAGES OWED IN VIOLATION OF CAL. LAB. CODE § 204;**
- (2) **UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. AND PROF. CODE § 17200;**
- (3) **PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT OF 2004 (LAB. CODE § 2699, et seq.)**

DEMAND FOR JURY TRIAL



VIA FAX

1 Comes now Ian Alvarado (hereinafter “ALVARADO”), on behalf of himself and all
2 persons similarly situated:

3 This class action is brought on behalf of all present and former security guards of Lewis
4 Operating Corp. (hereinafter “LOC”), in California. All allegations in this Complaint are based
5 upon information and belief except for those allegations which pertain to the PLAINTIFF named
6 herein and his counsel. Each allegation in this Complaint has evidentiary support or is likely to
7 have evidentiary support after a reasonable opportunity for further investigation and discovery.
8

9 **JURISDICTION AND VENUE**

10 1. This Court has jurisdiction over this action pursuant to Cal. Civ. Proc. Code §
11 410.10. The action is brought pursuant to Cal. Civ. Proc. Code § 382 and Bus. and Prof Code
12 §17203. PLAINTIFF brings this action on his own behalf, and on behalf of all persons within the
13 class defined.
14

15 2. Venue is proper in this Court pursuant to Cal. Civ. Proc. Code §§ 395 and 395.5
16 because PLAINTIFF is informed and believes that DEFENDANT maintains a regional
17 headquarters in this county currently and at all relevant times.
18

19 **CLASS DEFINITION**

20 3. The PLAINTIFF CLASS consists of all persons who are current or former
21 employees of DEFENDANT who worked in a building maintenance capacity while employed in
22 California by DEFENDANT and who were put on “on-call” or “standby”¹ by DEFENDANT
23 during the period commencing on the date that is within four years prior to the filing of this
24 complaint and through the present date (the “Class Period”), and who were not compensated for
25 that standby time pursuant to the applicable California Labor Code Sections. To the extent
26

27 ¹ “On-call” and “standby,” for all purposes herein, mean the same thing, and are time spent for the employer,
28 doing nothing. “[A]n employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something
to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all
employments in a stand-by capacity.” *Armour & Co. v. Wantock*, 323 U.S. 126 (1944).

1 equitable tolling operates to toll claims by the Class against DEFENDANT, the Class Period
2 should be adjusted accordingly. The Class includes all such persons whether or not they were paid
3 by commission, by salary, or by part commission and part salary.
4

5
6 **CLASS ALLEGATIONS**

7 4. PLAINTIFF Ian Alvarado, at all material times mentioned herein is:

8 (a) An individual who resides in the City Chino, California;

9 (b) Was employed as building maintenance for DEFENDANT in the City of
10 Alta Loma, California;

11 (c) Was required to be on standby for one (1) week per month, for the entire
12 week;

13 (d) While on standby, was not allowed to refuse a call and could not easily trade
14 standby responsibilities;

15 (e) While on standby, was not allowed to drink alcohol;

16 (f) While on standby, was required to have a response time of not more than
17 thirty (30) minutes;

18 (g) Was not compensated for time while on standby except for time that
19 DEFENDANT considered "actual time worked."
20

21 (h) Is a member of the CLASS as defined in paragraph 3.
22

23 5. This class action meets the statutory prerequisites for the maintenance of a class
24 action as set forth in the California Code of Civil Procedure section 382, in that:

25 (a) The persons who comprise the CLASS are so numerous that the joinder of
26 all such persons is impracticable and the disposition of their claims as a class will
27 benefit the parties and the Court;

28 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues

1 that are raised in this Complaint are common to the CLASS and will apply
2 uniformly to every member of the CLASS, and as a practical matter be dispositive
3 of interests of the other members not party to the adjudication or substantially
4 impair or impede their ability to protect their interests.

5 (c) The parties opposing the CLASS have acted or refuse to act on grounds
6 generally applicable to the CLASS, thereby making appropriate final injunctive
7 relief or corresponding declaratory relief with respect to the CLASS as a whole; and

8 (d) Common questions of law and fact exist as to the members of the CLASS
9 and predominate over any question affecting only individual members, and a Class
10 Action is superior to other available methods for the fair and efficient adjudication
11 of the controversy, including consideration of:
12

13 i. The interests of the members of the CLASS in individually
14 controlling the prosecution or defense of separate actions;

15 ii. The extent and nature of any litigation concerning the controversy
16 already commenced by or against members of the CLASS;

17 iii. The desirability or undesirability of concentrating the litigation of the
18 claims in the particular forum; and

19 iv. The difficulties likely to be encountered in the management of a
20 Class Action.
21

22
23 6. This Court should permit this action to be maintained as a Class Action pursuant to
24 California Code of Civil Procedure § 382 because:

25 (a) The questions of law and fact common to the CLASS predominate over any
26 question affecting only individual members;

27 (b) A Class Action is superior to any other available method for the fair and
28 efficient adjudication of the claims of the members of the CLASS;

1 (c) The members of the CLASS are so numerous that it is impractical to bring
2 all members of the CLASS before the Court;

3 (d) PLAINTIFFS, and the other CLASS members, will not be able to obtain
4 effective and economic legal redress unless the action is maintained as a Class
5 Action;

6 (e) There is a community of interest in obtaining appropriate legal and equitable
7 relief for the common law and statutory violations and other improprieties, and in
8 obtaining adequate compensation for the damages and injuries which
9 DEFENDANT's actions have inflicted upon the CLASS;

10 (f) There is a community of interest in ensuring that the combined assets and
11 available insurance of DEFENDANT are sufficient to adequately compensate the
12 members of the CLASS for the injuries sustained;

13
14
15 7. DEFENDANT has acted or refused to act on grounds generally applicable to the
16 CLASS, thereby making final injunctive relief appropriate with respect to the CLASS as a whole.

17 **DEFENDANT**

18 8. PLAINTIFF is informed and believes thereupon alleges that at all times mentioned
19 herein that:

20 (a) Defendant LOC is a corporation licensed to do business and actually doing
21 business in the State of California. LOC is a California corporation with its principal
22 place of business located at 1156 N Mountain Avenue, Upland, California 91785.

23 (b) Defendant LOC maintains a Northern California Regional Office, which is
24 located in the County of Sacramento at 9216 Kiefer Boulevard, Sacramento,
25 California 95826.

26 (c) According to its website (www.lewisop.com), LOC is "one of the nation's
27 largest privately held real estate development companies."
28

1 (d) PLAINTIFFS are informed and believe that LOC advertises and operates
2 within the County of Sacramento.

3 (e) LOC is subject to Cal. Lab. Code §§ 204, Cal. Bus. and Prof. Code § 17200
4 *et seq.* (Unfair Business Practices Act) and the applicable wage order(s) issued by
5 the Industrial Welfare Commission of the State of California because: (i) the
6 company is situated in the Upton, California; (ii) it operates in locations in and
7 throughout the County of Sacramento and the County of San Bernardino; and (iii)
8 PLAINTIFF Ian Alvarado worked for the DEFENDANT in the State of California.
9

10 **THE CONDUCT**

11 9. PLAINTIFF is informed and believes thereupon alleges that at all times mentioned
12 herein that: PLAINTIFF was employed by DEFENDANT doing building maintenance between the
13 dates of October 25, 2012 and November 3, 2013 in Alta Loma, California. PLAINTIFF was paid
14 bi-weekly at an hourly rate of \$17.00 per hour. PLAINTIFF was assigned to building maintenance
15 for three (3) buildings.
16

17 10. DEFENDANT, from time to time, would require PLAINTIFF to be on “standby,”
18 meaning that while PLAINTIFF was allowed to be at home, PLAINTIFF could be called into work
19 at any time during the standby period.
20

21 11. PLAINTIFF was on standby one (1) week every month, and therefore was on
22 standby for twelve (12) weeks a year. During the weeklong standby period, PLAINTIFF would
23 work his regular hours, but outside of those hours, PLAINTIFF could be called back to work at any
24 time, day or night. While PLAINTIFF was on standby, DEFENDANT’s policy required
25 PLAINTIFF to respond to every call, and therefore PLAINTIFF was unable to pass on or turn
26 down a call to service a building, and it was difficult for PLAINTIFF to trade standby
27 responsibilities unless planned two (2) to three (3) weeks in advance. Additionally, at all times
28 while on standby, DEFENDANT’s policy required PLAINTIFF to be within thirty (30) minutes

1 response time from all three (3) buildings assigned to him. Because PLAINTIFF lived between
2 fifteen (15) and twenty (20) minutes away from the buildings assigned to him, he could not delay
3 when called back to work. Therefore, at all times while on standby, PLAINTIFF's ability travel
4 any distance that would put him outside of that thirty (30) minute response time was restricted.

5
6 12. PLAINTIFF was required to abstain from alcohol during the standby period,
7 preventing him from engaging in certain social events.

8 13. DEFENDANT's policies caused PLAINTIFF to miss personal events such as
9 church, children's activities, dinner, movies, birthdays, etc. Therefore, DEFENDANT's
10 restrictions were substantial enough to prevent PLAINTIFF from attending to private pursuits.

11 14. DEFENDANT did not compensate PLAINTIFF for any time while on standby,
12 except for that time which DEFENDANT considered "actual time worked" or time spent by
13 PLAINTIFF responding to a call. PLAINTIFF remains uncompensated by DEFENDANT for his
14 time spent subject to the control of DEFENDANT.
15

16 **CAUSES OF ACTION**

17 **FIRST COUNT**

18 **FOR FAILURE TO PAY WAGES OWED**

19 **[Cal. Lab. Code §§ 204, 218, 218.5, and 218.6]**

20 **(By PLAINTIFF and CLASS and against Defendant LOC)**

21
22 15. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this
23 reference, as though fully set forth herein, the preceding paragraphs of this Complaint.

24 16. Cal. Lab. Code § 204 establishes the fundamental right of all employees in the State
25 of California to be paid wages in a timely fashion for their work.

26 17. Pursuant to the IWC Wage Order No. 4-2001, DEFENDANT is required to pay
27 PLAINTIFF, and the other members of the class, for all hours worked, meaning the time which an
28 employee is subject to the control of an employer, and includes all the time the employee is

1 suffered or permitted to work, whether or not required to do so.

2 18. DEFENDANT required PLAINTIFF, and the other members of the class, from time
3 to time, to be on standby. During the entire weeklong standby period, DEFENDANT's policies
4 required PLAINTIFF, and the other members of the class, to never refuse a call, to remain within
5 distance that would allow them a thirty (30) minute response time, and to abstain from alcohol.
6

7 19. In accordance with *Seymore v. Metson Marine, Inc.*, 194 Cal.App.4th 361, 373-381
8 (2011), due to DEFENDANT's policies, PLAINTIFF, and the other members of the class, were
9 required to sleep within a restricted geographical area; had excessive geographical restrictions
10 placed on their movements during the course of their entire day; had a fixed time limit for their
11 response time that was unduly restrictive; could not easily trade standby responsibilities; were
12 required to remain within those geographical restrictions for the entire week; and could not
13 reasonably engage in personal activities during standby time. PLAINTIFF, and the other members
14 of the class, could not reasonably do as they pleased, and their time was not under their own
15 control, but the control of DEFENDANT, and therefore, such standby time was hours worked.
16

17 20. Defendant knowingly and maliciously failed to pay to PLAINTIFF, and the other
18 members of the CLASS, all wages owed.

19 21. Pursuant to Cal. Lab. Code §218.6, PLAINTIFF, and the other members of the
20 CLASS, are entitled to, and do, seek recovery of pre-judgment interest on all amounts recovered
21 herein.
22

23 22. Pursuant to Cal. Lab. Code §218.5, PLAINTIFF, and the other members of the
24 CLASS, are entitled to, and do, request that the Court award reasonable attorneys' fees and costs
25 incurred by them in this action.
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1 **SECOND COUNT**

2 **FOR UNFAIR BUSINESS PRACTICES**

3 **[Cal. Bus. and Prof. Code §§ 17200 *et seq.*]**

4 **(By PLAINTIFF and the CLASS and against Defendant LOC)**

5 23. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this
6 reference, as though fully set forth herein, the proceeding paragraphs of this Complaint.
7

8 24. LOC is a “person” as that term is defined under Bus. and Prof. Code § 17201.

9 25. Cal. Bus. and Prof. Code § 17200 defines unfair competition as “any unlawful,
10 unfair, or fraudulent business act or practice.”

11 26. At all times relevant hereto, by and through the conduct described herein, LOC has
12 engaged in unfair and unlawful practices by failing to reimburse PLAINTIFF, and the other
13 members of the CLASS, for expenses incurred during the performance of their duties, pursuant to
14 the applicable Cal. Lab. Code and Industrial Welfare Commission requirements in violation of Cal.
15 Bus. and Prof. Code § 17200 *et seq.*, and has thereby deprived PLAINTIFF, and the other members
16 of the CLASS, of fundamental rights and privileges owed to them by law.
17

18 27. By and through the unfair and unlawful business practices described herein, LOC
19 has obtained valuable property, money, and services from the PLAINTIFF, and the other members
20 of the CLASS, and has deprived them of valuable rights and benefits guaranteed by law, all to their
21 detriment.
22

23 28. All the acts described herein as violations of, among other things, the Cal. Lab.
24 Code and Industrial Welfare Commission Wage Orders, are unlawful and in violation of public
25 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
26 constitute unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code § 17200
27 *et seq.*
28

29. PLAINTIFF, and the other members of the CLASS, are entitled to, and do, seek

1 such relief as may be necessary to restore to them the money and property which DEFENDANT
2 has acquired, or of which PLAINTIFF, and the other members of the CLASS, have been deprived,
3 by means of the above described unfair and unlawful business acts and practices.

4 30. PLAINTIFF, and the other members of the CLASS, are further entitled to, and do,
5 seek a declaration that the above described business practices are unfair and unlawful and that
6 injunctive relief should be issued restraining LOC from engaging in any of the above described
7 unfair and unlawful practices in the future.

8 31. PLAINTIFF, and the other members of the CLASS, have no plain, speedy, and/or
9 adequate remedy at law to redress the injuries which they have suffered as a consequence of the
10 unfair and unlawful business practices of LOC. As a result of the unfair and unlawful business
11 practices described above, PLAINTIFF, and the other members of the CLASS, have suffered and
12 will continue to suffer irreparable harm unless LOC is restrained from continuing to engage in
13 these unfair and unlawful business practices. In addition, LOC should be required to disgorge the
14 unpaid moneys to PLAINTIFF, and the other members of the CLASS.

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17 **THIRD COUNT**

18 **FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT OF 2004**

19 **[Cal. Lab. Code §§ 2699 *et seq.*]**

20 **(By PLAINTIFF and the CLASS and against Defendant LOC)**

21 32. Plaintiff, as an aggrieved employee acting on Behalf of himself and all other current
22 and former employees, realleges and incorporates by references, as though fully set forth herein,
23 the preceding paragraphs of this complaint.

24 33. The California Labor Code Private Attorney General Act of 2004 (“PAGA”) states
25 at Cal. Lab. Code § 2699(a) that where a provision of the Labor Code allows a civil penalty to be
26 assessed and collected by the Labor and Workforce Development Agency (“LWDA”), the same
27 penalty may be recovered through a civil action brought by an aggrieved employee on behalf of
28

1 himself or herself and other current or former employees pursuant to the procedures specified in
2 Cal. Lab. Code § 2699.3.

3 34. Plaintiff is an aggrieved employee with respect to the employer Lewis Operating
4 Corp., within the meaning of Cal. Lab. Code § 2699(c).

5 35. Plaintiff has complied with the procedures specified in Cal. Lab. Code § 2699.3. A
6 letter was sent to the LWDA by certified mail on March 11, 2014, giving notice of this PAGA
7 Claims, and a copy was simultaneously sent by certified mail to Lewis Operating Corp. through its
8 agent for service of process.

9 36. On March 26, 2014, the LWDA responded to Plaintiff's letter, informing Plaintiff
10 that the LWDA does not intend to investigate the alleged violations. Therefore, under Cal. Lab.
11 Code § 2699.3, Plaintiff has the right to pursue his claims under PAGA on behalf of himself and all
12 others similarly situated.

13 37. On behalf of himself and other current or former employees of Lewis Operating
14 Corp. against whom one or more of the alleged violations was committed, Plaintiff seeks to recover
15 statutory penalties as provided by Cal. Lab. Code §§ 2699(a), 2699(f), 210, 226.3, and 558, such
16 that 75 percent of the recovered penalties shall be distributed to the LWDA and 25 percent shall be
17 distributed to the aggrieved employees, as set forth in Cal. Lab. Code § 2699(i).

18 38. Pursuant to Cal. Lab. Code § 2699(g)(1), Plaintiff requests that the Court award him
19 his reasonable attorney's fees and costs incurred in this action.

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23 **PRAYER**

24 39. WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANTS as
25 follows:

26 **AS TO THE FIRST CLAIM**

27 **(Violation of Cal. Lab. Code § 204)**

28 1. For compensatory damages, including lost wages, commissions, bonuses, and other

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- losses, according to proof;
- 2. For general damages, according to proof;
- 3. For an award of interest, including prejudgment interest at the legal rate;
- 4. For statutory damages, including reasonable attorneys’ fees and cost of suit.

AS TO THE SECOND CLAIM

(Violation Of Cal. Bus. & Prof. Code § 17200, et seq.)

- 1. For restitution and disgorgement;
- 2. For injunctive relief ordering the continuing unfair business acts and practices to cease, or as the Court otherwise deems just and proper;

AS TO THE THIRD CLAIM

(Violation Of Cal. Lab. Code § 2699, et seq.)

- 1. For all penalties as provided by Cal. Lab. Code §§ 2699(a) and 2699(f), 210, 226.3 and 558;
- 2. For reasonable attorney’s fees and costs as provided by Cal. Lab. Code § 2699(g)(1);

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ON ALL CAUSES OF ACTION

1. An Order certifying the CLASS, approving PLAINTIFF as the Representative of the CLASS, and permitting this case to proceed as a class action; and,
2. For such other and further relief as the Court deems just and proper.

Dated: April 15, 2014

CLARK & TREGLIO

SIGNATURE REDACTED

By:

~~R. Craig Clark~~
James M. Treglio
Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

PLAINTIFF demands jury trial on issues triable to a jury.

Dated: April 15, 2014

CLARK & TREGLIO

SIGNATURE REDACTED

By:

~~R. Craig Clark~~
James M. Treglio
Attorney for Plaintiffs

AMERICAN ARBITRATION ASSOCIATION
EMPLOYMENT TRIBUNAL

In the Matter of Arbitration)
 between)
IAN ALVARADO) OPINION AND
 and) PARTIAL FINAL AWARD
LEWIS OPERATING CORPORATION) Hearing: 3/28/17
AAA Case #02-15-0006-1044)

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the personnel manual or employment agreement entered into by the above-named parties and dated October 10, 2013, and having been duly sworn and having duly heard the proofs and allegations of the parties, AWARD as follows:

A hearing was held on March 28, 2017 in Los Angeles, CA. Dawn Berry, Esq. represented the Claimant. Arthur Silbergeld, Esq. and Rowena Santos, Esq. represented Respondent. At the conclusion of the hearing both parties elected to submit final arguments in writing. The matter was considered fully submitted upon my receipt of the post-hearing briefs. The parties consented to an extension of the date due for this Award.

During the course of the hearing both parties were

afforded a full and complete opportunity to present evidence, to cross-examine witnesses and to develop argument. All witnesses were duly sworn. A transcript of the proceeding was prepared.

ISSUES

The Issues presented for decision are as follows;

1. Did the Respondent, Lewis Operating Corp. (Lewis), owe wages to Claimant, Ian Alvarado (Alvarado), for the on-call time he spent while employed by Respondent?

2. If so, what is the appropriate remedy?

I note for the record that the PAGA claim is not before me.

STATEMENT OF RELEVANT FACTS

The facts in this matter are not in dispute. Alvarado worked as a Maintenance Mechanic for Lewis for just over a year. He was regularly assigned to an apartment complex about 20 minutes travel time from his home. Every fourth week he was given a cellphone and assigned to be on-call nights and weekends. He was expected to immediately respond to all calls on the company cellphone and to show up at any of four Lewis

apartment complexes within 25-30 minutes. He was prohibited from being under the influence of drugs or alcohol during his on-call time. He was not required to appear in uniform.

Alvarado knew of the on-call policy when he was hired and he anticipated being able to earn substantial overtime. In fact, however, most calls he received were resolved on the phone and he only made five in-person responses for fairly brief periods during his eleven weeks on-call. He was paid for the in-person responses, but, according to him, he was not paid for the time he spent responding to tenant needs only by telephone.

Alvarado testified that he believed that due to his on-call status he could not go to the market, attend church, join friends' parties or BBQs, work with his horses, or take gigs as a player with mariachi bands. He acknowledged that he was free to engage in normal pursuits at his home, spend time at the park and socialize with neighbors. He was permitted to, and on occasion did, trade on-call time with other maintenance mechanics who covered the other three weeks without needing approval from Lewis.

DISCUSSION

The parties agree that parameters for this decision are laid out in the DLSE Manual that is consistent with case law. The two overall criteria are whether Alvarado was in the control of Lewis during the on-call week and the degree to which his time was restricted by Lewis' requirements.

Although Lewis raises in passing whether or not it was in control of Alvarado, this really cannot be doubted in the facts here. The real dispute is the degree of restrictions he faced. None of the factors generally considered are determinative standing alone. In *Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508 the court laid out the most common elements of potential restriction:

"(1) whether there was an on-premises living requirement; (2) whether there were excessive geographical restrictions on employee's movements; (3) whether the frequency of calls was unduly restrictive; (4) whether a fixed time limit for response was unduly restrictive; (5) whether the on-call employee could easily trade on-call responsibilities; (6) whether use of a pager could ease restrictions; and (7) whether the employee had actually engaged in personal activities during call-in time."

The requirements of Lewis' on-call policy of immediate response and arrival within 25-30 minutes effectively imposed a

geographical limit. Alvarado was further restricted by the alcohol and drug policy. On the other hand, he was not required to be on-site, he did have a cellphone to allow him to move around, he was able to trade shifts without Respondent's approval and the frequency of calls was extremely low.

Many of the restrictions Alvarado placed on himself were not reasonable in the circumstance. The cellphone could be placed on vibrate so it did not disturb others on the rare occasions he received a call. Although he could not drink, he was free to go to parties and BBQs within the geographical restriction. He could and did engage in many normal activities at and near his home.

Although it is a somewhat close question, the very low frequency of calls and the ability to freely trade are the finally deciding factors as, in combination, they allowed Alvarado to engage in much of his normal activity. A review of the cited cases makes clear that the applicable standard is that a limited amount of restriction of usual or desired personal activity is insufficient to require payment for time simply on-call.

Claimant alleges and Respondent does not dispute that he was paid for time reporting while on-call but was not paid for time spent on the telephone with either the service or with

tenants. Those minutes, however brief¹, were work time for the Respondent for which Alvarado should have been compensated.

PARTIAL FINAL AWARD

Having carefully considered the evidence presented and the arguments made, it is the Award of the Arbitrator that:

1. Lewis did not owe Alvarado wages for time he was purely on-call.
2. Lewis did owe Alvarado wages for the time he spent on the telephone on behalf of Lewis.
3. I remand to the parties calculation of the wages and statutory penalties due and to attempt to determine the attorney's fees due. I retain jurisdiction over these issues.
4. If the parties are unable to resolve these issues within forty-five (45) days of the date of this Award, either party may request I exercise retained jurisdiction by giving notice to the AAA and opposing counsel (email is fine).

This Partial Final Award will remain in full force and effect until such time as a final Award is rendered.

¹ The telephone calls ranged from 1-9 minutes.

SIGNATURE REDACTED

Date: June 5, 2017

Sara Adler, Esq.

AMERICAN ARBITRATION ASSOCIATION
EMPLOYMENT TRIBUNAL

In the Matter of Arbitration)
between)
IAN ALVARADO) OPINION & FINAL AWARD
and)
LEWIS OPERATING CORPORATION)
AAA Case #02-15-0006-1044)

This Final Award incorporates the Partial Final Award dated June 5, 2017 as though fully set forth herein. In the June, 2017 Award I remanded to the parties the Issue of the remedy. The parties subsequently but unsuccessfully sought to agree on the details of the remedy. They have filed briefs on the outstanding disputes which are resolved below.

As a preliminary matter I note that Respondent seeks to have me revise the Partial Final Award. I decline to do so both because I find that the reconsideration requested is without merit and I no longer have jurisdiction over those matters as it was a Partial Final Award and not a Tentative or an Interim Award.

As to the remedy issues I find that Claimant's requested amounts are

excessive. Claimant seeks compensation for some minutes that have already been paid for and I will award compensation only for the unpaid time plus interest.

Respondent argues that there are only statutory penalties due for an “initial” violation of the Labor Code. The Respondent’s argument is unpersuasive. There is no relevant cited California authority. California is a state in which employers are deemed to be on notice that work time is compensable. Had I found that the on-call time was fully compensable, there would be a reasonable argument that all the uncompensated time was an “initial violation” because, arguably, the employer was not on notice that this on-call time was so restrictive as to be considered work time. However, the time ordered to be compensated was actual work time known to the Respondent.

None of the cited cases offered by Respondent to support applying a *de minimus* rule goes to the situation here, where an employee is obligated to perform work during his off-hours. This is quite different than an employee who has to spend an extra couple of minutes at the start or end of paid time – even assuming that the *de minimus* rule is good law in California.

Claimant seeks costs for several impermissible categories and there are some cost items which are simply a mystery to me (such as “Knox” and “invoice”) and for those I will not award reimbursement.

The request for attorney’s fees is difficult to evaluate for several reasons. First,

there are no supporting affidavits as to the billing rates. Second is the bifurcated nature of the claims between the parties with only some being sent to this arbitration and the PAGA claim remaining in court. Third is the limited nature of Claimant's success. Therefore, I have relied on my experience to estimate and award what amount constitutes reasonable attorney's fees.

FINAL AWARD

Having carefully considered the evidence presented and the arguments made, it is the Final Award of the Arbitrator that:

1. Respondent is ordered to pay Claimant \$1,564.23.
2. Respondent is ordered to costs of \$1,907.10.
3. Respondent is ordered to pay attorney's fees of \$25,000.
4. Respondent is ordered to make all payments ordered within thirty (30) days of the date of this Award.
5. The administrative fees of the American Arbitration Association totaling \$2,290.00 and the compensation of the Arbitrator totaling \$6,500.00 shall be borne by Respondent. Therefore, Respondent shall reimburse Claimant the sum of \$200.00, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Claimant.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

SIGNATURE REDACTED

Date: September 18, 2017

Sara Adler, Esq.