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FILED/ENDORSED
APR 16 2014
By: Erica Medina
DEPUTY CLERK

VIA FAX

**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

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

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

- 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.
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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;

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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.

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

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

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

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

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

25 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
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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

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

By: _____


R. Craig Clark
James M. Treglio
Attorney for Plaintiffs