

Michael D. Palmer (admitted *pro hac vice*)
SANFORD HEISLER SHARP, LLP
1350 Avenue of the Americas, 31st Floor
New York, NY 10019
Telephone: (646) 402-5653
Facsimile: (646) 402-5651
mpalmer@sanfordheisler.com

Xinying Valerian (CA Bar No. 254890)
VALERIAN LAW
1604 Solano Ave., Ste. D
Albany, CA 94707
Telephone: (888) 686-1918
Facsimile: (510) 982-4513
xinying@valerian.com

Danielle Fuschetti (CA Bar # 294064)
SANFORD HEISLER SHARP, LLP
111 Sutter Street, Suite 975
San Francisco, CA 94104
Telephone: (415) 795-2020
Facsimile: (415) 795-2021
dfuschetti@sanfordheisler.com

Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED JURISDICTION**

MARTIN FLETSCHER, On Behalf of Himself
and All Others Similarly Situated,

Plaintiff,

v.

OVERLAND SOLUTIONS, INC.,

Defendant.

Case No. RG17852058

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES, PENALTIES AND
INJUNCTIVE RELIEF**

- 1. FAILURE TO PAY MINIMUM
WAGES**
- 2. FAILURE TO FURNISH ITEMIZED
WAGE STATEMENTS**
- 3. FAILURE TO REIMBURSE
BUSINESS EXPENSES**
- 4. FAILURE TO PAY EARNED WAGES
UPON SEPARATION**
- 5. UNLAWFUL AND UNFAIR BUSINESS
PRACTICES**
- 6. PRIVATE ATTORNEY GENERAL
ACT**

JURY TRIAL DEMANDED

Judge: Hon. Ioana Petrou
Dept.: 17

Plaintiff Martin Fletscher (“Plaintiff” or “Mr. Fletscher”), individually and on behalf of all others similarly situated, brings this Class Action Complaint against Defendant Overland SOLUTIONS, INC. (“OSI” or “Defendant”). Plaintiff alleges upon knowledge as to himself and his own acts, and otherwise upon information and belief, as follows:

I. INTRODUCTION

1. This action is brought by Martin Fletscher on behalf of himself and a Class of OSI insurance inspectors to obtain damages and restitution from Defendant for wage and hour violations. This action seeks to remedy OSI’s illegal practices of dodging employment laws applicable to its California workforce of insurance inspectors as independent contractors, despite exercising extensive control over the manner in which inspectors performed their work.

2. Based upon its willful misclassification of Plaintiff and other inspectors as independent contractors, OSI unlawfully avoided paying the wages required by the California Labor Code and wrongly avoided the significant expenses shouldered by inspectors conducting field inspections for OSI.

3. OSI’s practices have deprived Plaintiff and all other current and former insurance inspectors of minimum wages to which they are entitled, and committed other violations of California wage and hour law.

4. OSI has violated California law. Accordingly, Plaintiff brings this action to seek unpaid wages, liquidated damages, penalties, reasonable attorneys’ fees and costs, and all other appropriate relief to which OSI inspectors are entitled.

5. As referenced herein, the “Class” includes Plaintiff and all other persons classified by OSI as independent contractors who performed insurance inspections or surveys as part of OSI’s Survey Division in the State of California on or after the date that is four years before the filing of the Complaint in this case.¹ Class members are also referred to herein as “insurance inspectors,” “field inspectors,” and “inspectors.”

¹ OSI has used various, similar job titles and job references for Class members. OSI publicly posts job openings on its careers website for “IC-Insurance Inspector” and “Residential Insurance Inspector” and “High Value Insurance Consultant.” OSI also refers to them as field representatives, field staff, field professionals and professional surveyors. See, e.g.,

1 **II. JURISDICTION AND VENUE**

2 6. This case is properly before this Court because it involves issues of state law, and
3 Defendant does business in Alameda County.

4 7. Venue is proper in the Superior Court of Alameda County under Code of Civil
5 Procedure § 395 because Defendant Overland Solutions, Inc. does not have a principal place of
6 business in California.

7 **III. THE PARTIES**

8 8. Plaintiff Martin Fletscher is a California resident. Mr. Fletscher worked for OSI as
9 an insurance inspector in California from 2011 until October 2017.

10 9. Defendant OSI is a Delaware corporation with its corporate headquarters in
11 Overland, Kansas.

12 **IV. FACTUAL ALLEGATIONS**

13 10. Plaintiff is informed and believes that Defendant OSI is legally responsible for all
14 of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the
15 following paragraphs as the employer of Plaintiff and Class members.

16 **a. OSI Treats Plaintiff and Class Members Like Employees But Classifies Them**
17 **as Independent Contractors**

18 11. OSI has two divisions, Audit and Survey. See
19 <http://www.overlandsolutionsinc.com/our-services/> (last visited March 3, 2017).

20 12. Class members are the field workforce in OSI's Survey Division. They are an
21 integral part of OSI's business. Insurance inspectors perform surveys and provide reports to the
22 insurance industry to assist in the underwriting of insurance policies.

23 13. OSI classifies all the inspectors in the Survey Division – the entire field workforce
24 – as independent contractors.

25
26
27 <http://www.overlandsolutionsinc.com/wp-content/uploads/2014/04/FAQsHomeowners.pdf>
28 (last visited March 3, 2017) and <http://www.overlandsolutionsinc.com/our-services/loss-control/commercial-survey/> (last visited March 3, 2017).

1 14. However, during all relevant times, Plaintiff and all other Class members have been
2 non-exempt employees of OSI who were subject to the control of the Defendant while they
3 performed their work as field inspectors.

4 15. OSI's misclassification of Plaintiff and Class members as independent contractors
5 was willful and without a good faith or well-reasoned basis.

6 16. Class members are not in an occupation, trade or business distinct from the services
7 that OSI is in the business to provide. No minimum educational requirements or professional
8 credentials or licenses are required for the job. Indeed, OSI avoids hiring licensed insurance agents
9 and realtors, and OSI states in job postings that it does not want such licensed professionals.

10 17. Before being hired by OSI, Class members are required to go through an extensive
11 hiring process that includes a rigorous background check. Once hired, OSI provides an orientation
12 program, training modules, and quizzes.

13 18. As field representatives of OSI, Class members are hired through the same or similar
14 processes as workers who are classified as employees. For example, job openings for "contractor"
15 inspectors are listed alongside openings for "employee" positions on OSI's website. OSI directly
16 recruits the inspectors rather than use staffing agencies. OSI interviews candidates, checks their
17 backgrounds, makes job offers, collects personnel files documents such as emergency contacts and
18 direct deposit information, and conducts other onboarding and orientation activities.

19 19. Just like workers classified as employees rather than contractors, inspectors have
20 the opportunity to rise up the ranks through OSI's system of promoting from within. OSI states on
21 its website: "We mentor auditors and inspectors to become supervisors, General Managers, and
22 Vice Presidents within the organization and its divisions. Many of our field professionals have been
23 promoted into management roles." ([http://www.overlandsolutionsinc.com/your-career/employee-](http://www.overlandsolutionsinc.com/your-career/employee-training/)
24 [training/](http://www.overlandsolutionsinc.com/your-career/employee-training/), last visited March 7, 2017.) For example, one of OSI's current leaders, Tom Nay, rose
25 through the ranks from Field Inspector to Regional Manager and Quality Director to his current
26 role as a Vice President within the Survey Division. ([http://www.overlandsolutionsinc.com/our-](http://www.overlandsolutionsinc.com/our-company/leadership/)
27 [company/leadership/](http://www.overlandsolutionsinc.com/our-company/leadership/), last visited March 7, 2017.)
28

1 20. The inspectors work from their homes and travel to the businesses or residences of
2 policy holders to collect information about the policy holders and their properties and businesses.

3 21. OSI does not permit Class members to hire helpers of their choosing, and instead
4 forbids inspectors from bringing other individuals to inspections.

5 22. OSI exerts the right to control how inspectors communicate with and present
6 themselves to third parties. OSI requires Class members to call policy holders within a certain
7 number of hours after receiving an assignment, and requires Class members to log the date and
8 time of their contacts with policy holders. OSI also requires Class members to identify themselves
9 as OSI representatives when talking to policy holders, to wear an OSI name badge, and to follow
10 OSI's dress code. OSI further forbids inspectors from using their own business cards.

11 23. OSI provides scripts for inspectors to follow. For example, in one document entitled
12 "Phone contact Sample / Commercial Inspections conducted by Overland Surveys/EXL," (with
13 notation "last revised Oct 3, 2016") OSI provides sample phone scripts for Class members to use
14 when making initial contact with insureds to set up a site visit, both for a "typical phone call" and
15 for a "a phone call when extra travel is required." The scripts also contain reminders for inspectors
16 to obtain and verify certain information over the phone, to have OSI's online system open to add
17 notes to the files during the calls, and other detailed instructions about what to say on phone calls
18 with insureds. As with all of the voluminous written instructions from OSI to inspectors, the phone
19 scripts direct inspectors to contact their managers if they have any questions.

20 24. Class members perform commercial and residential surveys for OSI.

21 25. For both commercial and residential surveys, inspectors are required to perform site
22 visits – looking around the property and taking notes and photographs – pursuant to instructions
23 provided by OSI.

24 26. The procedures that must be followed in carrying out each survey assignment, and
25 the information that must be collected during the surveys, are detailed in several types of sources:
26 OSI's standard operating procedures and guidelines, OSI's insurance carrier's instructions (called
27 the "client book,"), the work orders that accompany each survey assignment, and manager
28 communications, usually over email.

1 27. Following the site visit, the inspector is required to take the information and
2 promptly put it together into a report, using OSI's centralized online systems. OSI's online
3 systems, OSITrac and Aspen among them, dictate in minute detail the manner in which the required
4 inspection information is to be submitted. This work is performed by the inspector at his/her home
5 or office.

6 28. OSITrac and Aspen are used by OSI managers as well as OSI's clients to track the
7 progress of all work online from order entry to completion.

8 29. OSI Quality Control staff review all reports submitted by inspectors.

9 30. Class members have no right to control the manner and means of performing their
10 work. OSI dictates nearly every aspect of how Class members carry out survey assignments.

11 31. Class members were under the supervision and control of OSI at all relevant times.

12 32. Class members are subjected to considerable oversight in the performance of their
13 jobs.

14 33. Class members report to and are supervised by Regional Managers, who are
15 employees of OSI. Many Regional Managers began their careers at OSI as field inspectors.

16 34. Regional Managers monitor the time that Class members take to complete tasks and
17 to submit reports, and they reprimand Class members who do not meet OSI's standards of
18 operation.

19 35. In addition, Class members' performance on every report is assessed by Quality
20 Control reviewers, who give numeric ratings of the quality of the report and provide commentary
21 or critiques. On occasion, Quality Control reviewers will require Class members to address
22 problems in the reports through the so-called "Return for Correction" process.

23 36. Class members work for OSI on an open-ended and ongoing basis. OSI has the
24 right and authority to discipline and reprimand Class members, as well as the right and authority
25 to terminate the contract of a Class member without cause.

26 37. The nature of the work performed by Class members for OSI does not require
27 specialized credentials and involves no meaningful discretion or independent judgment. Class
28

members perform classic non-exempt, production labor, and are entitled to overtime compensation under the law.

b. OSI Fails to Pay Plaintiff and Class Members for Non-Billable Time Worked for All Product Lines

38. OSI has adopted pay structures and policies that applied uniformly to all inspectors. At all relevant times, OSI adhered to the following pay policies and practices.

39. Pursuant to OSI's compensation system, inspectors are paid based on OSI's estimates about the billable time that can be billed to the clients.

40. Billable time is defined by OSI as the time spent conducting onsite inspections and writing the reports, excluding re-inspections and re-writing reports that were previously submitted but "returned for correction."

41. As a matter of policy, OSI does not compensate Plaintiff and Class members for non-billable time, *i.e.*, anything other than site visit and report writing time. As a result, OSI fails to compensate Plaintiff and Class members for various other types of work. For example:

- a. OSI does not pay for time spent by inspectors on orientation and training.
- b. OSI does not pay for the travel time between inspectors' offices (usually home offices) and inspection sites or the travel time between inspection sites.
- c. OSI does not pay for inspectors' time spent on reviewing OSI management communications and time spent communicating with OSI managers about their work.
- d. OSI does not pay for inspectors' time spent reviewing documents, such as client books and work orders, prior to a site visit.
- e. OSI does not pay for inspectors' time spent scheduling inspections, communicating by telephone with third parties, such as the insurance customers whose residences or businesses are to be inspected, in the course of completing a survey report.

1 f. OSI does not pay for inspectors' time spent reviewing OSI's feedback on the
2 reports that have been submitted and responding to Requests for Correction of
3 reports.

4 42. For residential surveys, "Value" commercial surveys, and "Core" commercial
5 surveys, Class members are paid a piece rate -- a flat rate per report which does not vary from job
6 to job.

7 43. For "Premier Fixed Price" commercial surveys, Class members are paid a piece rate
8 based on an hourly rate multiplied by the maximum billable hours for the job. For example, if the
9 hourly rate is \$30 and the maximum billable hours for a particular Premier Fixed survey is 2 hours,
10 a Class member will be paid \$60 for that job as the piece rate, regardless of whether the job took
11 more or less than that amount of time.

12 **c. OSI Fails to Pay Plaintiff and Class Members for All Billable Time Worked**
13 **for Premier Hourly Surveys**

14 44. For Premier Hourly Surveys, a type of commercial survey, OSI does not follow a
15 piece rate system. Rather, OSI pays hourly based on the hours reported by the inspector, up to the
16 maximum billable hours for the job. (As with other product lines, OSI does not pay for non-billable
17 time as a matter of policy.)

18 45. For Premier Hourly Surveys, OSI caps payment at the maximum billable hours,
19 pays less if the inspector reports less than the maximum billable hour, and discourages inspectors
20 from reporting and requesting additional time spent on billable work.

21 46. OSI's work-tracking system does not allow inspectors to report more than the
22 maximum billable hours. The maximum time is programmed into the system. An inspector who
23 requests payment for more than the maximum billable hours must separately email their Regional
24 Manager to request payment for the excess time and explain in detail the reasons for it. At no time
25 does OSI advise inspectors to accurately report their hours.

26 47. As a result, Plaintiff and Class members who performed Premier Hourly Surveys
27 do not have a reasonable method for accurately reporting their billable hours. Even if they do make
28 the request for extra hours to be paid, OSI does not always grant the request.

1 48. OSI knows or should know that actual billable time spent on site visits and report
2 writing frequently exceeds the maximum times specified for the jobs.

3 49. The time inspectors spent on site visits and report writing frequently exceeds the
4 maximum time allotted for such billable time. This is due to foreseeable circumstances, such as
5 OSI's requirement that the inspectors fulfill both client and OSI specifications for information
6 collection and documentation.

7 50. OSI touts to clients: "In addition to SOP (standard operating procedure), we will
8 collaborate with you to fine tune a custom client book to call attention to any special requests and
9 ensure all customer requirements are understood prior to any field work being completed."
10 (<http://www.overlandsolutionsinc.com/our-services/loss-control/commercial-survey/>, last visited
11 March 3, 2017.)

12 **d. OSI Requires Plaintiff and Class Members to Pay for Substantial Business**
13 **Expenses**

14 51. OSI also requires Class members, as a condition of employment and in order to
15 perform their jobs, to incur certain expenses necessary for the discharge of their duties as
16 inspectors.

17 52. OSI requires Class members to have a reliable working vehicle to drive to inspection
18 sites, a cell phone, a Windows-based PC, an image/document scanner, a digital camera, high speed
19 internet, and a measuring wheel.

20 53. OSI requires Class members to pay for their own mileage. As the inspection job is
21 a field job, vehicle-related expenses are significant.

22 54. Plaintiff has incurred substantial business expenses to comply with OSI's
23 requirements, as have all Class members, and continues to incur ongoing expenses for the upkeep
24 and maintenance of his car and other equipment.

25 55. OSI does not pay for such business expenses. OSI does not have a policy of
26 reimbursing Class members for such expenses as a matter of course. It only allows Class members
27 to request additional payment under extenuating circumstances.

1 **e. Additional Payments Beyond OSI's Established Pay Rates Are the Exception**
2 **to the Rule**

3 56. While inspectors may request additional payments, e.g. to defray mileage expenses
4 for unusually distant jobs, such requests are frowned upon.

5 57. Class members who habitually request additional payment from OSI are penalized
6 by having less work assigned to them. Plaintiff has requested additional payments from OSI in an
7 attempt to get more work time compensated and as a result OSI has assigned less work to him.

8 58. If an additional payment is made, it is separately itemized in OSI's payment records.

9 59. Upon information and belief, even when additional payments are made, Defendant
10 does not compensate Class members for all hours worked and all expenses incurred. Despite
11 receiving some additional payments, Plaintiff has never been paid for all his hours worked and
12 expenses incurred.

13 **V. CLASS ACTION ALLEGATIONS**

14 60. Plaintiff seeks to represent a Class defined as:

15 All individuals classified by OSI as independent contractors who performed
16 insurance inspections or surveys as part of OSI's Survey Division in the
17 State of California on or after the date that is four years before the filing of
the original complaint in this case.

18 61. Plaintiff is a member of the Class.

19 62. Plaintiff is informed and believes and thereupon alleges that more than two-thirds
20 of the members of the proposed Class are citizens of California.

21 63. In violation of California wage and hour laws, Defendant's wrongful acts against
22 Plaintiff and the Class include:

- 23 a. failure to pay wages for all hours worked;
24 b. failure to pay all minimum wages due;
25 c. failure to furnish employees with itemized wage statements and failure to
26 maintain accurate work time and payroll records;
27 d. failure to reimburse employees for business expenses; and
28 e. failure to pay all owed wages upon separation from employment.

1 64. Upon information and belief, the above violations are the result of centralized
2 policies and practices created by Defendant.

3 65. This action may be properly maintained as a class action pursuant to Code of Civil
4 Procedure § 382 because there is a well-defined community of interest in the litigation and the
5 proposed Class is easily ascertainable.

6 a. **Numerosity:** The Class members are so numerous that joinder of all
7 members is impracticable. Based on information and belief, the Class exceeds 40 individuals. The
8 Class members are ascertainable through OSI's centralized and electronically maintained records.

9 b. **Commonality:** Common questions of law and fact predominate over any
10 questions affecting only individual Class members. These common questions include, but are not
11 limited to: (i) What are and were the policies, practices, programs, procedures, protocols and plans
12 of Defendant regarding the compensation of Class members; (ii) whether Defendant's uniform
13 right of control requires that Class members be considered OSI's employees under California law;
14 (iii) whether Defendant's compensation policies paid Class members for all hours worked; (iv)
15 whether Defendant had policies and practices forbidding or discouraging the reporting of all hours
16 worked; (v) whether Defendant violated the Labor Code and applicable Wage Orders by failing to
17 pay minimum wages; (vi) whether Defendant violated Labor Code § 1174 by failing to keep
18 accurate records of Class members' daily and weekly work time; (vii) whether Defendant's failure
19 to provide accurate, itemized wage statements violated Labor Code § 226; (viii) whether Defendant
20 required Class members to pay for specific business expenses without reimbursement; (ix) whether
21 Defendant's failure to provide formerly employed Class members with all wages due upon
22 separation violated Labor Code §§ 201, 202 and 203; (x) whether Defendant knowingly and
23 willfully violated wage and hour laws; and (xi) whether Defendant violated Business and
24 Professions Code § 17200 by virtue of its violations of the Labor Code.

25 c. **Typicality:** Plaintiff has suffered the same violations and similar injuries
26 as other Class members arising out of and caused by Defendant's common course of conduct in
27 violation of law as alleged herein;
28

d. **Adequacy of representation:** Plaintiff is a member of the Class and will fairly and adequately represent and protect the interests of all Class members. Plaintiff is represented by counsel who are competent and experienced in litigating wage and hour and other employment class actions.

e. **Superiority of a class action:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries, and damages suffered by each of the individual Class members are relatively small, the expenses and burden of individual litigation would make it extremely difficult, if not impossible, for the individual Class members to redress the wrongs done to them. Additionally, important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources. Treating the claims as a class action will result in a significant saving of these costs. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the Class, establishing incompatible standards of conduct for Defendant and resulting in the impairment of Class members' rights and the disposition of their interests through actions to which they were not parties. The issues in this class action can be decided by means of common, class-wide proof. In addition, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

FIRST CAUSE OF ACTION
FAILURE TO PAY CALIFORNIA MINIMUM WAGES
 California Labor Code §§ 226.2 and 1194 et seq.
 (On Behalf of Plaintiff and the Class Against Defendant)

66. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

67. Defendant has operated under and continue to operate under a common policy of failing and refusing to pay Class members for all work time.

1 68. Defendant is an employer of Plaintiff and the other Class members within the
2 meaning of the California Labor Code, IWC Wage Order 4-2001, and common law.

3 69. Defendant failed to pay minimum wages for non-billable work time for all product
4 lines. Defendant also failed to pay minimum wages for billable work time for Premier Hourly
5 surveys beyond the maximum allotted time.

6 70. As a result, Plaintiff and the other Class members regularly were not compensated
7 for all hours worked. The time that should have been compensated, but was not, includes both
8 productive work time as well as rest and recovery time in between productive work tasks.

9 71. California law does not allow an employer to avoid paying its employees for all
10 hours worked by averaging total compensation over total hours worked in a given pay period. *See,*
11 *e.g., Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36, 40-41 (2013); *Armenta v.*
12 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005). Averaging piece-rate wages over total hours
13 worked results in underpayment of employee wages required “by contract” under Labor Code
14 section 223, as well as improper collection of wages paid to an employee under Labor Code section
15 221.

16 72. California Labor Code section 226.2, effective January 1, 2016, provides that
17 employees shall be compensated for rest and recovery periods and other nonproductive time
18 separate from any piece-rate compensation. Section 226.2 further requires that employees must be
19 compensated for these time periods at a rate no less than the highest of the federal, state, or local
20 minimum wage that is applicable to the employment.

21 73. Pursuant to Labor Code § 1194, “... any employee receiving less than the legal
22 minimum wage ... applicable to the employee is entitled to recover in a civil action the unpaid
23 balance of the full amount of this minimum wage ... including interest thereon, reasonable
24 attorneys’ fees, and costs of suit.” Because Plaintiff and the Class suffered damage as a direct
25 result of Defendant’s unlawful compensation policy, Plaintiff and the Class are entitled to recovery
26 of the full amount of the difference between what they were paid and what they were required to
27 be paid, including interest thereon, reasonable attorneys’ fees, and costs of suit.

74. In addition, pursuant to Labor Code §1194.2(a), Plaintiff and the Class are entitled to “recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

SECOND CAUSE OF ACTION
FAILURE TO FURNISH ITEMIZED WAGE STATEMENTS
California Labor Code § 226
(On Behalf of Plaintiff and the Class Against Defendant)

75. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

76. As a result of OSI's classification of Class members as independent contractors, Defendant failed to furnish itemized wage statements to Plaintiff and the other Class members containing gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, 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, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

77. Plaintiff and Class members have been injured by Defendant's failure to provide wage statements with information about their work hours, wage rates, piece-rates and piece rate units.

78. As a result, Defendant is liable to Plaintiff and each of the Class Members for the amounts provided by California Labor Code § 226(e): the greater of actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000), and an award of costs and reasonable attorneys' fees.

THIRD CAUSE OF ACTION
FAILURE TO INDEMNIFY OR REIMBURSE BUSINESS EXPENSES
California Labor Code § 2802 *et seq.*
(On Behalf of Plaintiff and the Class Against Defendant)

79. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

80. As a result of OSI's policy of classifying Class members as independent contractors and its policy of requiring Class members to supply their own vehicle and specified equipment, Defendant failed to indemnify or reimburse Plaintiff and Class members, its employees, for all necessary expenditures they incurred while discharging their work duties and complying with the direction of their employer.

81. As a result, Plaintiff and Class members have been deprived of compensation for work-related expenses arising from and in direct consequence of the discharge of their work duties. Plaintiff and Class members are entitled to recover such amounts, plus interest thereon, attorneys' fees and costs pursuant to Labor Code § 2802.

FOURTH CAUSE OF ACTION
FAILURE TO PAY EARNED WAGES UPON SEPARATION
(California Labor Code §§ 201, 202, 203; Brought by Plaintiff on
Behalf of Himself and the Class Against Defendant)

82. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

83. In or about October 2017, Plaintiff terminated his relationship with OSI and submitted his final inspection report to Defendant.

84. California Labor Code §§ 201 and 202 require Defendant to pay all compensation due and owing to Plaintiff and Class members immediately upon discharge or within seventy-two hours of resignation. Defendant has operated under and continues to operate under a common policy and plan of willfully failing and refusing to pay unpaid wages owed to Plaintiff and the other Class members upon separation from employment, as required by Sections 201 and 202.

85. As a result of Defendant's willful failure to pay Plaintiff and other Class members owed wages upon separation from employment, Defendant is liable for statutory waiting time penalties pursuant to California Labor Code § 203.

FIFTH CAUSE OF ACTION
UNLAWFUL AND UNFAIR BUSINESS PRACTICES
California Business and Professions Code §§ 17200 *et seq.*
(On Behalf of Plaintiff and the Class Against Defendant)

86. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 87. Each Defendant is a “person” as defined under California Business & Professions
2 Code § 17021.

3 88. Defendant’s willful failure to pay for all hours worked, failure to pay minimum
4 wages due, failure to pay all wages, failure to furnish itemized wage statements, failure to
5 reimburse business expenses, failure to maintain accurate time and payroll records, and failure to
6 timely pay all owed wages upon separation constitute unlawful activity prohibited by California
7 Business and Professions Code § 17200.

8 89. Any business act or practice that violates the Labor Code through failure to pay
9 wages is, by definition, an unfair business practice under Bus. & Prof. Code § 17200.

10 90. As a result of its unlawful and unfair acts, Defendant has reaped and continues to
11 reap unfair benefits and illegal profits at the expense of Plaintiff and the other Class Members.

12 91. Defendant should be made to disgorge these ill-gotten gains and restore to Plaintiff
13 and the other Class Members the wrongfully withheld wages to which they are entitled, interest on
14 these wages, and all other injunctive and preventive relief authorized by Business and Professions
15 Code §§ 17202 and 17203.

16 92. This action is designed to ensure the enforcement of an important right affecting the
17 public interest and a large number of low-wage workers. The necessity and financial burden of
18 private enforcement is great, and the risks to the named plaintiff for stepping forward are also
19 significant. Therefore, Plaintiff and the Class would be entitled to attorneys’ fees should they
20 prevail, and such fees should not in the interest of justice be paid out of the recovery.

21 **SIXTH CAUSE OF ACTION**
22 **CALIFORNIA PRIVATE ATTORNEY GENERAL ACT VIOLATIONS**
 California Labor Code §§ 2698 *et seq.*
23 **(On Behalf of Plaintiff and Aggrieved Employees Against Defendant)**

24 93. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 94. The aforementioned wrongful acts and omissions of Defendant are violations of
26 California’s Labor Code and the IWC Wage Order as set forth herein. They include violations of
27 Labor Code Sections 204, 223, 226(a), 226.2, 226.8, 1174, 1197, and 2802:
28

- a. Labor Code 204: Defendant fails to make at least semi-monthly payments of earned wages to insurance inspectors.
- b. Labor Code 226(a): Defendant fails to provide itemized wage statements to insurance inspectors.
- c. Labor Code 226.8: Defendant willfully misclassifies insurance inspectors as independent contractors.
- d. Labor Code 223: Defendant secretly pays a lower wage than the wage required by statute or contract, while purporting to pay the required wage. It does not pay all hours at the statutory minimum wage or the agreed upon hourly rate.
- e. Labor Code 1174: Defendant fails to maintain accurate records of insurance inspectors' daily hours worked, the start and end of each work period, meal periods, wages, and applicable rates of pay.
- f. Labor Code 226.2 and 1197: Defendant fails to pay applicable minimum wages to insurance inspectors.
- g. Labor Code 2802: Defendant fails to indemnify insurance inspectors for all necessary expenditures or losses incurred by the inspectors in direct consequence of the discharge of their duties.

95. The policies, acts, and practices described in this Complaint and the ensuing Labor Code violations are ongoing and continuing.

96. Plaintiff, as an aggrieved employee, seeks recovery of civil penalties as prescribed by PAGA on behalf of himself and other current and former similarly aggrieved employees of Defendant against whom one or more of the violations of the Labor Code was committed.

97. Plaintiff has exhausted administrative remedies. In accordance with Labor Code Section 2699.3, Plaintiff gave written notice by certified mail to the California Labor and Workforce Development Agency and Defendant OSI of the Labor Code violations alleged herein on March 8, 2017. Plaintiff did not receive written notification from the LWDA of the State's intention to investigate the allegations set forth in Plaintiff's March 8, 2017 certified mail notice. Plaintiff did not receive written notice of cure by Overland.

98. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses to prosecute the Labor Code violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, request the following relief against Defendant:

A. Certify this action as a Class Action on behalf of the Class and designate Plaintiff as Class representative pursuant to Code of Civil Procedure 382;

B. Designate Plaintiff as representative of the Class;

C. Award damages to Plaintiff and the Class, including unpaid wages and statutory damages, in an amount to be determined at trial;

D. Order Defendant to pay restitution to Plaintiff and the Class;

E. Order equitable accounting to identify, locate, and restore to Plaintiff and the other Class members their wages due;

F. Enjoin Defendant from engaging in the practices challenged herein, to cease and desist from unlawful activities, and to remedy all violations of the California Labor Code in its practices and procedures in the future;

G. Award penalties available under applicable laws, including waiting time penalties;

H. Award punitive damages in amount sufficient to punish Defendant and deter future retaliation and discrimination of the same kind;

I. Award costs and expenses, including reasonable attorneys' fees, costs, and expert fees, pursuant to Labor Code §§ 226, 1194, 2699 and Code of Civil Procedure § 1021.5, and all other applicable statutes;

J. Award pre-judgment and post-judgment interest, as provided by law; and

K. Order such other and further legal and equitable relief as this Court deems necessary, just, and proper.

JURY DEMAND

Plaintiff requests a jury on all causes of action triable by jury.

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Dated: August 15, 2018

Respectfully submitted,

SANFORD HEISLER SHARP, LLP

By:



Michael D. Palmer

Danielle Fuschetti

Attorneys for Plaintiff and the Class