

COPY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 03 2020

BY 
ANAI CORTEZ-RAMIREZ, DEPUTY

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Marta Manus (SBN 260132)

manaus@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

LAW OFFICES OF SAHAG MAJARIAN II

Sahag Majarian II (SBN 146621)

sahagii@aol.com

18250 Ventura Blvd.

Tarzana, CA 91356

Tel: (818) 609-0807/Facsimile: (818) 609-0892

Attorneys for Plaintiff Alexander R. Davari, on behalf of himself
and as representative for the State of California on behalf of all other aggrieved employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ALEXANDER R. DAVARI, on behalf of
himself and as representative for the State of
California on behalf of all other aggrieved
employees,

Plaintiff,

v.

STONELEDGE FURNITURE LLC, a
Wisconsin Limited Liability Company; and
DOES 1 through 10, Inclusive,

Defendants.

CASE NO. **CIV DS 2010967**

**REPRESENTATIVE ACTION COMPLAINT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
[Labor Code §§ 2698, et seq.]**

1. Civil Penalties Pursuant to the PAGA for Failure to Pay Minimum, Regular, and Overtime Wages (Lab. Code §§ 2698, et seq.);
2. Civil Penalties Pursuant to the PAGA for Failure to Reimburse Business Expenses (Lab. Code §§ 2698, et seq.);
3. Civil Penalties Pursuant to the PAGA for Failure to Provide Accurate Wage Statements (Lab. Code §§ 2698, et seq.);
4. Civil Penalties Pursuant to the PAGA for Failure to Timely Pay Wages Due During Employment (Lab. Code §§ 2698, et seq.);
5. Civil Penalties Pursuant to the PAGA for Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 2698, et seq.);
6. Civil Penalties Pursuant to the PAGA for Failure to Maintain Accurate Records (Lab. Code §§ 2698, et seq.).

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

1 Plaintiff ALEXANDER R. DAVARI (“Plaintiff”), on behalf of himself and as representative for
2 the State of California, the California Labor and Workforce Development Agency (“LWDA”), and on
3 behalf of all other aggrieved employees, hereby alleges as follows:

4 **I.**

5 **INTRODUCTION**

6 1. Plaintiff brings this representative action pursuant to the Private Attorneys General Act of
7 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, against STONELEDGE FURNITURE LLC, a
8 Wisconsin Limited Liability Company, and DOES 1 through 10, Inclusive (collectively, “Defendants”)
9 to recover civil penalties arising out of Defendants’ labor code violations including failure to pay all
10 wages including minimum, regular, and overtime wages; failure to reimburse business expenses;
11 failure to provide accurate itemized wage statements; failure to maintain accurate records; and, failure
12 to timely pay all wages due during and upon separation of employment, including vested vacation
13 wages.

14 2. Plaintiff has given written notice of these claims and allegations to the California Labor
15 and Workforce Development Agency (“LWDA”) on March 10, 2020. A true and correct copy of
16 Plaintiff’s Notice showing compliant with Labor Code section 2699.3 is attached hereto as **Exhibit 1**.
17 As there has been no LWDA intervention within 65 days of that notice, Plaintiff asserts claims for
18 civil penalties as a representative for and on behalf of the State of California in a representative
19 capacity, as provided by the PAGA to the extent permitted by law, as an aggrieved non-exempt
20 employee. Plaintiff is an aggrieved employee and has standing to bring a representative action on
21 behalf of the State of California and the LWDA as a private attorney general.

22 3. Plaintiff asserts claims for civil penalties as a representative of the State of California, as
23 authorized by the PAGA, and to the extent permitted by law, on behalf of aggrieved employees who
24 held the positions identified herein and suffered one or more of the violations alleged. Labor Code §§
25 2698, *et seq.* and 2699.3(a)(2)(C).

26 4. Plaintiff seeks to represent all current and former non-exempt employees of Defendants
27 in California who suffered one or more of the alleged violations (“aggrieved employees”) during the
28 period one year and 65 days before May 15, 2020 until the start of trial in this matter (“PAGA

Period”).¹

II.

JURISDICTION AND VENUE

5. Venue as to each Defendant is proper in this judicial district. Code of Civil Procedure section 395. Defendants conduct business and commit Labor Code violations in San Bernardino County, and each Defendant or DOE is within California for service of process. The unlawful acts alleged have a direct effect on aggrieved employees within California and within San Bernardino County.

6. This Court has jurisdiction over Plaintiff’s claims because Defendants regularly conduct business in California; are alleged to have violated the law in California; Plaintiff’s claims raise no federal question; and, PAGA civil penalty actions are not subject to federal jurisdiction.

7. This Court has jurisdiction over Plaintiff’s and other aggrieved employees’ claims under Labor Code sections 2698, *et seq.*

8. On information and belief, the California Superior Court has primary and original jurisdiction in this matter because there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure, Rules of Court, and Business and Professions Code.

III.

THE PARTIES

A. Plaintiff

9. Plaintiff Alexander R. Davari is over the age of eighteen (18) and was at all relevant times a California resident. From approximately November 2018 through February 14, 2020, Claimant worked as a non-exempt employee in Defendants’ Colton, California location in the County of San Bernardino.

B. Defendants

10. Plaintiff is informed, believes, and alleges STONELEDGE FURNITURE LLC is a

¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix, I, Emergency Rule No. 9.

1 Wisconsin Limited Liability Company and has conducted business, and employed Plaintiff and other
2 aggrieved employees during the PAGA Period, in the County of San Bernardino.

3 11. The true names and capacities, whether individual, corporate, associate, or otherwise, of
4 Defendants sued as DOES 1 through 10, inclusive, are unknown to Plaintiff, who sues Defendants by
5 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and
6 alleges, each DOE Defendant is legally responsible in some manner for the unlawful acts alleged.
7 Plaintiff will seek leave to amend this Complaint to reflect the true names and capacities of DOE
8 Defendants when they become known.

9 12. Plaintiff is informed and believes each Defendant acted in all respects pertinent to this
10 action as the agent of the other Defendants, carried out a joint scheme, plan or policy, and the acts of
11 each Defendant are legally attributable to the other Defendants.

12 **IV.**

13 **GENERAL ALLEGATIONS**

14 13. During the PAGA Period, Defendants conducted business in California and San
15 Bernardino County, and employed Plaintiff and other aggrieved employees in the State of California.

16 14. During the PAGA Period, Plaintiff and other aggrieved employees of Defendants worked
17 under the same policies, practices, and procedures relating to their employment.

18 15. Responsibilities for Plaintiff and other aggrieved employees include, among other things,
19 assisting customers on the sales floor and making cold calls to acquire new customers.

20 16. Plaintiff and other aggrieved employees oftentimes continue to work after clocking out
21 because they must finish assisting customers on the sales floor and must meet their sales quotas.

22 17. During the PAGA Period, Defendants had a policy and practice of failing to pay all wages
23 due, including overtime wages for all hours worked. On information and belief, Defendants failed to
24 pay all wages, including minimum, regular, and/or overtime wages for all hours worked over eight (8)
25 hours in a workday and/or forty (40) hours in a workweek. On information and belief, Plaintiff and
26 other aggrieved employees worked off-the-clock after their shift ended to continue to assist customers
27 on the sales floor. Defendants discouraged Plaintiff and other aggrieved employees from working
28 overtime yet pressured Plaintiff and other aggrieved employees to meet their sales goals. As a result,

1 Plaintiff and other aggrieved employees had to work off-the-clock to help customers and meet their
2 sales quotas. On information and belief, Defendants failed to pay any wages for all hours worked off-
3 the-clock. Additionally, Defendants had a practice of underpayment of overtime wages and failed to
4 pay wages at the accurate overtime rate of pay.

5 18. During the PAGA Period, Defendants knowingly and willfully failed to provide accurate
6 itemized wage statements to Plaintiff and other aggrieved employees, which did not include, among
7 other things, the accurate total number of hours worked and/or wages due. Additionally, Defendants
8 failed to compensate Plaintiff and other aggrieved employees for all hours worked and failed to
9 accurately reflect the correct number of hours at the accurate corresponding rate of pay and stated
10 inaccurate overtime wages. As a result, the wage statements that Defendants furnished to Plaintiff and
11 other aggrieved employees were incomplete and inaccurate and failed to comply with the requirements
12 of Labor Code section 226(a). Attached hereto as **Exhibit 2** is a copy of one of Plaintiff's wage
13 statements provided by Defendants showing the incorrect overtime rate of pay.

14 19. During the PAGA Period, Defendants had a consistent policy and practice of failing to
15 reimburse Plaintiff and other aggrieved employees for all necessarily incurred and reasonable business
16 expenses, including expenses for the use of personal cell phones for work-related duties. Defendants
17 required Plaintiff and other aggrieved employees to make between 30-40 cold calls per day using their
18 personal cell phones without reimbursing for this business expense.

19 20. During the PAGA Period, Defendants had a consistent policy and practice of failing to
20 timely compensate Plaintiff and other aggrieved employees for all wages owed during and upon
21 separation of employment, in violation of California state wage and hour laws.

22 21. For purposes of this action, Plaintiff, as a representative of the State of California, will
23 seek to invoke Labor Code section 1195.5 which states: "The Division of Labor Standards
24 Enforcement shall determine, upon request, whether the wages of employees, which exceed the
25 minimum wages fixed by the commission, have been correctly computed and paid. For this purpose,
26 the division may examine the books, reports, contracts, payrolls and other documents of the employer
27 relative to the employment of employees. The division shall enforce the payment of any sums found,
28 upon examination, to be due and unpaid to the employees."

22. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

23. Labor Code section 2699(f)(2) states: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

24. Pursuant to California Labor Code section 558(a), “[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 in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Plaintiff seeks only to recover the civil penalty provided for in section 558(a) for the violations alleged herein and **does not** seek to recover underpaid wages.

25. Pursuant to California Labor Code section 558.1, Defendants are employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission, as well as California Labor Code sections 201, 202, 203, 226, 510, 512, 558, 1194, 1197.1, and 1198, and as such, are liable as an employer of Plaintiff and other aggrieved employees employed in the State of California.

CAUSES OF ACTION

27. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

28. Labor Code section 1194(a) provides: “(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

29. Labor Code section 1197 states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful.”

30. Labor Code section 510 states, in part: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

1 31. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law, any
2 provision of this code that provides for a civil penalty to be assessed and collected by the Labor and
3 Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies,
4 or employees, for a violation of this code, may, as an alternative, be recovered through a civil action
5 brought by an aggrieved employee on behalf of himself or herself and other current or former
6 employees pursuant to the procedures specified in Section 2699.3.”

7 32. “For all provisions of this code except those for which a civil penalty is specifically
8 provided, there is established a civil penalty for a violation of these provisions, as follows... (2) If, at
9 the time of the alleged violation, the person employs one or more employees, the civil penalty is one
10 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
11 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”
12 Labor Code § 2699(f)(2).

13 33. Labor Code section 2699.5 provides, in pertinent part that “provisions of subdivision (a)
14 of Section 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] ...1194,
15 1194.1” and allow for recovery of civil penalties pursuant to the PAGA.

16 34. During the PAGA Period, Defendants had a policy and practice of failing to pay all wages
17 due including overtime wages for all hours worked. On information and belief, Defendants failed to
18 pay all wages, including minimum, regular, and/or overtime wages for all hours worked over eight (8)
19 hours in a workday and/or forty (40) hours in a workweek. On information and belief, Plaintiff and
20 other aggrieved employees worked off-the-clock after their shift ended to continue to assist customers
21 on the sales floor. Defendants discouraged Plaintiff and other aggrieved employees from working
22 overtime yet pressured Plaintiff and other aggrieved employees to meet their sales goals. As a result,
23 Plaintiff and other aggrieved employees had to work off-the-clock to help customers and meet their
24 sales quotas. On information and belief, Defendants failed to pay any wages for all hours worked off-
25 the-clock. Additionally, Defendants had a practice of underpayment of overtime wages and failed to
26 pay wages at the accurate overtime rate of pay.

27 35. As a result of Defendants’ failure to pay overtime wages for hours worked in excess of
28 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first

1 eight hours worked on the seventh day of work in any one workweek, Defendants, and each of them,
2 are liable for civil penalties within the applicable limitations period of Labor Code section 2699(f)(2)
3 for violations of Labor Code sections 1194 and 1194.2 in the amount of \$100 for each aggrieved
4 employee per pay period for the initial violation and \$200 for each subsequent violation for
5 Defendants' failure to pay Plaintiff and other aggrieved employees overtime wages.

6 36. Pursuant to California Labor Code section 558(a), "[a]ny employer or other person acting
7 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
8 provision regulating hours and days of work in any order of the Industrial Welfare Commission shall
9 be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
10 underpaid employee for each pay period for which the employee was underpaid in addition to an
11 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars
12 (\$100) for each underpaid employee for each pay period for which the employee was underpaid in
13 addition to an amount sufficient to recover underpaid wages." Plaintiff seeks only to recover the civil
14 penalty provided for in section 558(a) for the violations alleged herein and **does not** seek to recover
15 any underpaid wages.

16 37. Defendants' conduct also violates Wage Order 15-2001 by failing to pay minimum and
17 overtime wages to employees.

18 38. Plaintiff, as a representative of the general public, will and does seek to recover any and
19 all penalties under Labor Code section 2699(f)(2) for each and every violation of Labor Code shown
20 to exist or to have occurred, in an amount according to proof, as to those penalties that are otherwise
21 only available in public agency enforcement actions. Funds will be distributed in accordance with the
22 PAGA, with 75% of the civil penalties recovered being reimbursed to the LWDA on behalf of the
23 State of California. The exact amount of the applicable penalty is all in an amount to be shown according
24 to proof at trial.

25 **SECOND CAUSE OF ACTION**
26 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO REIMBURSE**
27 **BUSINESS EXPENSES**
28 **[Labor Code §§ 2698, *et seq.*]**

39. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

40. California Labor Code section 2802 provides: "An employer shall indemnify his or her

1 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
2 the discharge of his or her duties, obedience to the directions of the employer...[].”

3 41. For purposes of this section, the term “necessary expenditures or losses” shall include all
4 reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the
5 rights granted by this section.

6 42. California Labor Code section 2804 mandates “[a]ny contract or agreement, express or
7 implied, made by any employee to waive the benefits of this article or any part thereof is null and void,
8 and this article shall not deprive any employee or his personal representative of any right or remedy
9 to which he is entitled to under the laws of this State.”

10 43. Labor Code section 2699(f)(2) states: “For all provisions of this code except those for
11 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
12 provisions, as follows... (2) If, at the time of the alleged violation, the person employs one or more
13 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
14 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
15 for each subsequent violation.”

16 44. Aggrieved employees are entitled to pursue civil penalties under the PAGA for violations
17 of Labor Code section 2802. Labor Code § 2699.5.

18 45. Because there is no established civil penalty for violations of Section 2802, Labor Code
19 section 2699(f)(2) provides the appropriate civil penalty, as Defendants employed more than one
20 person during the statutory period, and still employ more than one person.

21 46. Defendants violated the above statutes throughout the applicable statutory period by
22 failing to fully reimburse Plaintiff and other aggrieved employees for necessary expenditures incurred
23 in direct consequence of discharging their duties, including failing to reimburse for all expenses
24 incurred by Plaintiff and aggrieved employees for the use of personal cell phones for business-related
25 purposes. Defendants required Plaintiff and other aggrieved employees to make between 30-40 cold
26 calls per day using their personal cell phones without reimbursing for this business expense.

27 47. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section
28 2699(f)(2) penalties for each Labor Code section 2802 violation, according to proof, as to those

1 penalties otherwise only available in public agency enforcement actions. Funds recovered will be
2 distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on
3 behalf of the State of California. The exact amount of the applicable penalty is all in an amount to be
4 shown according to proof at trial.

5 **THIRD CAUSE OF ACTION**
6 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PROVIDE**
7 **ACCURATE ITEMIZED WAGE STATEMENTS**
8 **[Labor Code §§ 2698, *et seq.*]**

9 48. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

10 49. Labor Code section 226(a) provides: “Every employer shall, semimonthly or at the time
11 of each payment of wages, furnish each of his or her employees... an accurate itemized statement in
12 writing showing (1) gross wages earned, (2) total hours worked by the employee, (5) net wages
13 earned... ...and (9) all applicable hourly rates in effect during the pay period and the corresponding
14 number of hours worked at each hourly rate by the employee...”

15 50. During the PAGA Period, Defendants knowingly and willfully failed to provide accurate
16 itemized wage statements to Plaintiff and other aggrieved employees, which did not include, among
17 other things, the total number of hours worked and/or wages due. Additionally, Defendants failed to
18 compensate Plaintiff and other aggrieved employees for all hours worked and failed to accurately
19 reflect the correct number of hours at the accurate corresponding rate of pay and stated inaccurate
20 overtime wages. As a result, the wage statements that Defendants furnished to Plaintiff and other
21 aggrieved employees were incomplete and inaccurate and fail to comply with the requirements of
22 Labor Code section 226(a).

23 51. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to
24 enforce California’s labor laws, and the penalty provisions identified in Labor Code section 226.3.
25 Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise
26 capable of being collected by the Division of Labor Standards Enforcement (“DLSE”). Labor Code
27 section 2699.5 provides that Section 2699.3(a) applies to an alleged violation of Labor Code section
28 226.

52. Labor Code section 226.3 provides for civil penalties for violations of Section 226. The
civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

53. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section 2699(f)(2) penalties for each Labor Code section 226 violation, according to proof, as to those penalties otherwise only available in public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California. The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

FOURTH CAUSE OF ACTION
PAGA CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO TIMELY PAY
WAGES DUE DURING EMPLOYMENT
[Labor Code §§ 2698, *et seq.*]

54. Plaintiff incorporates all preceding paragraphs of this Complaint.

55. Labor Code section 204(a) requires employers to pay wages earned by employees within strict time requirements. Defendants had a policy, practice, and procedure of willfully failing to pay the earned wages of Defendants' employees twice during each calendar month, on days designated in advance by the employer as the regular paydays.

56. Defendants failed to pay Plaintiff and other aggrieved employees all minimum, regular, and overtime wages during their employment, as required by Labor Code sections 204.

57. Labor Code sections 2698, *et seq.* impose upon Defendants, and each of them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation of Labor Code sections 204 and 1198.

58. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code for which there is no corresponding civil penalty, including Labor Code section 203. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee. Labor Code § 2699(f)(2).

59. Plaintiff, as a representative of the general public, seeks to recover all penalties under Labor Code section 2699(f)(2) for each and every violation of Labor Code section 204(a), in an amount according to proof, as to those penalties that are otherwise only available in public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California. The exact amount of the

1 applicable penalty is all in an amount to be shown according to proof at trial.

2 **FIFTH CAUSE OF ACTION**
3 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO TIMELY PAY**
4 **WAGES DUE UPON SEPARATION**
5 **[Labor Code §§ 2698, *et seq.*]**

6 60. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

7 61. Labor Code sections 201-203 require employers to pay wages earned by employees
8 within strict time requirements. Defendants had a policy, practice, and procedure of willfully failing
9 to pay the earned wages of Defendants' former employees. If an employer willfully fails to timely and
10 fully pay all final wages the employer must, as a penalty, continue to pay an employee's wages for 30
11 days, or until the back wages are paid in full.

12 62. Defendants failed to pay Plaintiff and other aggrieved employees who ended their
13 employment with the Defendant all wages, including minimum, overtime, as required by Labor Code
14 sections 201-203.

15 63. Labor Code section 256 states: "The Labor Commissioner shall impose a civil penalty in
16 an amount not exceeding 30 day's pay as waiting time under the terms of Section 203."

17 64. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor
18 Code for which there is no corresponding civil penalty, including Labor Code section 203. The civil
19 penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid
20 employee. Labor Code § 2699(f)(2).

21 65. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section
22 2699(f)(2) penalties for each Labor Code section 201-203 violation, according to proof, as to those
23 penalties otherwise only available in public agency enforcement actions. Funds recovered will be
24 distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on
25 behalf of the State of California. The exact amount of the applicable penalty is all in an amount to be
26 shown according to proof at trial.

27 **SIXTH CAUSE OF ACTION**
28 **PAGA CIVIL PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
[Labor Code §§ 2698, *et seq.*]

66. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

67. Labor Code section 1174(d) states: "Every person employing labor in this state shall:

1 Keep, at a central location in the state or at the plants or establishments at which employees are
2 employed, payroll records showing the hours worked daily by and the wages paid to employees
3 employed at the respective plants or establishments. These records shall be kept in accordance with
4 rules established for this purpose by the commission, but, in any case shall be kept on file for not less
5 than three years.”

6 68. Labor Code section 1174.5 states: “Any person employing labor who willfully fails to
7 maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject
8 to a civil penalty of five hundred dollars.”

9 69. IWC Wage Order 15-2001, section 7 obligates an employer to keep accurate information
10 of wages earned and paid including applicable overtime, rest period and gratuity wages. IWC Wage
11 Order 15-2001, section 7(A)(3) states in pertinent part: “Every employer shall keep accurate
12 information with respect to each employee including the following: ... (3) Time records showing when
13 the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours
14 worked shall also be recorded.”

15 70. During all or a substantial portion of the PAGA Period, Defendants failed to maintain
16 accurate records showing the accurate number of hours works.

17 71. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and
18 other aggrieved employees, for civil penalties as required by Labor Code section 1174(d) or, in the
19 alternative, section 2699(f)(2).

20 72. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an
21 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

22 73. Plaintiff, as a representative of the general public, will and does seek to recover any and
23 all civil penalties for each and every violation, in an amount according to proof, as to those penalties
24 that are otherwise only available in public agency enforcement actions. Civil penalties recovered will
25 be distributed in accordance with the PAGA, with 75% of civil penalties recovered provided to the
26 LWDA on behalf of the State of California. The exact amount of the applicable penalty is all in an
27 amount to be shown according to proof at trial.

28 ///

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

A. That this action be maintained as a Representative Action under the PAGA, and Plaintiff and his counsel be provided with all enforcement capability as if the action were brought by the California Division of Labor Standards Enforcement;

B. For recovery of all civil penalties permitted by Labor Code section 2699 for unpaid minimum, regular, and overtime wages pursuant to Labor Code section 1194, according to proof;

C. For recovery of all civil penalties permitted by Labor Code section 2699 for unreimbursed business expenses pursuant to Labor Code section 2802, according to proof;

D. For recovery of civil penalties permitted by Labor Code section 2699 for inaccurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according to proof;

E. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) for failing to timely pay all wage due pursuant to Labor Code section 204(a).

F. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for failing to timely pay all final wages due pursuant to Labor Code sections 201-202;

G. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for failing to pay statutory waiting time penalties due pursuant to Labor Code section 203;

H. For Pre-Judgment and Post-Judgment interest;

I. For the Plaintiff to be recognized by the Court as serving as a Representative of the LWDA, that he has suffered sufficient harm to be deemed and “aggrieved employees” and to proceed in this PAGA Action, and to be awarded some form of enhanced compensation for bringing this action should he prevail and provide benefit to the State of California or other “aggrieved employees,” subject to the Court’s discretion;

J. Attorneys’ fees and costs of suit, including expert fees and fees pursuant to California Labor Code sections 226, 1194, 2699.3, and all other applicable state laws including Code of Civil Procedure section 1021.5; and,

///

///

1 K. Such other relief as this Court deems necessary, just, equitable, and proper.

2 COHELAN KHOURY & SINGER
3 LAW OFFICES OF SAHAG MAJARIAN II
4

5 Dated: June 3, 2020

6 By:  _____

Michael Singer, Esq.

Marta Manus, Esq.

7 Attorneys for Plaintiff Alexander R. Davari, on behalf of himself
8 and as representative for the State of California on behalf of all
9 other aggrieved employees
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC •

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

www.ckslaw.com

JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

March 10, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency ("LWDA")

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Stoneledge Furniture, LLC
One Ashley Way
Arcadia, WI 54612

Stoneledge Furniture, LLC
c/o CSC-Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Alexander R. Davari on behalf of himself and all other non-exempt employees of Stoneledge Furniture, LLC in the State of California, as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator and Stoneledge Furniture, LLC:

This letter shall serve as Alexander R. Davari (hereafter "Claimant")'s Notice pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698, *et seq.* regarding his claims against Stoneledge Furniture, LLC (referred to herein as "the Employer"). Claimant submits this notice on behalf of himself and all current and former non-exempt employees employed by the Employer in California during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

If the LWDA does not intend to investigate the alleged violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of himself and all other aggrieved employees of the Employer, seeking civil penalties on behalf of himself and all other aggrieved non-exempt employees in the State of California. A copy of this notice is being sent to the Employer by certified mail at the addresses above.

Claimant and other non-exempt employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL STATEMENT

Claimant worked for the Employer as a non-exempt employee in the position of Sales Representative/Associate from approximately November 2018 through February 14, 2020 at Employer's Colton, California location. At all relevant times at least one year prior to the date of

this Notice, the Employer subjected Claimant and non-exempt employees to policies and practices which caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties individually and on behalf of other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239. Claimant's claims are set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order(s) on behalf of himself and all other non-exempt employees employed by the Employer in California.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code section 1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)((2), provides that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employer violated Labor Code sections 218, 510, 1194, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked. The Employer failed to properly calculate the accurate wages owed including regular and overtime wages due Claimant and other aggrieved employees. For example, Claimant’s regular rate of pay was \$13.00 per hour and the Employer paid Claimant at the overtime rate of \$18.28 as opposed to the correct rate of \$19.50 for overtime hours. Furthermore, the wages paid were frequently miscalculated resulting in the underpayment of all wages due and owed. Additionally, the Employer failed to incorporate commission wages into the calculation of the regular rate of pay for purposes of calculating the accurate overtime rate of pay resulting in an underpayment of wages.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the “Meal Period” and “Rest Period” Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

The “Rest Period” Section of applicable IWC Wage Order states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period 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.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

The Employer failed to provide Claimant and other aggrieved employees with legally compliant meal and rest periods on eligible workdays. The Employer regularly failed to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than 10 hours, as required under California law. Furthermore, the meal periods provided to Claimant and other aggrieved employees were often short insofar as they were not at least 30 minutes in length, as required under California law. On information and belief, Claimant and other aggrieved employees did not waive their right to receive meal periods, including second meal periods and third rest periods on eligible shifts. During Claimant’s employment, the Employer failed to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. The Employer’s employment practices incentivized employees to forego taking meal and rest breaks because employees such as Claimant were pressured to meet their sales quotas and thus had to spend as much time as possible on the sales floor. If Claimant and other aggrieved employees failed to meet their sales quotas, the Employer would discipline them including and up to termination. Therefore, Claimant and other aggrieved employees were pressured by the demands of the job to forego taking meal and rest breaks. Furthermore, the Employer failed to pay one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
(Labor Code §§ 2802 and 2804, and the “Tools and Equipment” section of the applicable IWC Wage Order)

Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(c) states that “[f]or purposes of [2802], the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to attorney’s fees incurred by the employee enforcing the rights granted by [2802].”

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “When 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.”

Labor Code section 2802 prohibits employers, such as the Employer, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employer failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties. Claimant and other non-exempt employees’ job duties included making sales calls to potential customers of the Employer, which they had to do using their personal cell phones. The Employer failed to reimburse Claimant and other aggrieved employees for the costs incurred by employees in direct consequence of the discharge of his or her duties.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

UNLAWFUL DEDUCTION OF WAGES
(Labor Code §§ 221, 223, 224, and 225.5)

California Labor Code section 221 states that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

California Labor Code section 223 states that “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

California Labor Code section 224 states: “The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee’s wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.”

California Labor Code section 225.5 provides:

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

- (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As set forth in detail above, the Employer violated Labor Code sections 221 and 223, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it deducted wages due and earned by Claimant and other aggrieved employees, which also resulted in the failure to pay all minimum, regular, and overtime wages for all hours worked. Additionally, the Employer unlawfully deducted wages for health insurance that Claimant never enrolled in without reimbursement of these wages.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor

Code and applicable IWC Wage Orders.

FAILURE TO PAY ALL VACATION WAGES
(Labor Code §§ 218.5, 218.6, 227.3, and 2698, *et seq.*)

California Labor Code section 227.3 states, in pertinent part: “Whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

The Employer failed to comply with Labor Code section 227.3 by failing to pay all vacation wages due and earned to Claimant and all other aggrieved employees.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE PAID SICK LEAVE
(Labor Code §§ 246, 248.5)

Labor Code section 246 grants the right to employees to paid sick days. Specifically, Cal. Labor Code section 246(b) states that:

(1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.

(2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee’s normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.

(3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.

Labor Code section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee's wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

The Employer failed to comply with Labor Code sections 246 and 248.5 by failing to provide all paid sick leave due and earned and failing to set forth in a written notice the accurate amount of paid sick leave Claimant and other aggrieved employees accrued.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, 1198, 2699, and the "Records" Section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code section 226(e)(2)(A) states: "An employee is deemed to suffer injury for purposes of this subdivision if the Employer fails to provide a wage statement."

Labor Code section 226.3 imposes an additional civil penalty on the Employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of 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 exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney's fees.

Due to the Employer's failure to pay all wages due at all times during Claimant's employment, including minimum, regular, or overtime wages, the Employer violated Labor Code section 226 by failing to provide accurate itemized wage statements to Claimant and other aggrieved employees. The wage statements issued by the Employer fail to inform of the accurate number of hours worked and accurate total wages due and earned. The wage statements issued

by the Employer do not accurately reflect the correct number of hours at the accurate corresponding rate of pay. Specifically, the regular rate of pay is listed as \$13.00/hour and the overtime rate of pay is listed as \$18.31 when it should be \$19.50/hour. Furthermore, the commission wages are not included in the regular rate of pay for purposes of calculating the accurate overtime rate of pay.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code § 1174 and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 1174(d) states: “Every person employing labor in this state shall: Keep, 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 employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.”

Labor Code section 1174.5 states: “Any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a civil penalty of five hundred dollars.”

IWC Wage Order 4-2001, section 7 obligates an employer to keep accurate information by underpaying minimum wages, regular wages, and overtime, and not recording accurate meal periods. IWC Wage Order 4-2001, section 7(A)(3) states in pertinent part: “Every employer shall keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

The Employer failed to maintain accurate records showing the accurate number of hours worked and accurate wages owed. Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: “If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.”

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

As detailed above, the Employer failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal period premiums, and regular, minimum, and overtime wages within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. As a result, the Employer violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

**CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS**
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes

to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employer underpaid Claimant and other aggrieved employees by failing to provide them with compliant meal periods or compensation in lieu thereof and failed to pay overtime wages as required by Labor Code sections 226.7, 510, and 512 and sections 3 and 11 of the applicable IWC Wage Order. As a result, the Employer is liable for *civil penalties* under Labor Code section 558.

Accordingly, Claimant will pursue civil penalty or other lawful remedies for himself and other current and former non-exempt employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA action.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employer violated this requirement by its failure to accurately record employee hours worked and/or paid including wages owed for off-the-clock time and meal and rest period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employer failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid.

California LWDA
Stoneledge Furniture, LLC
Re: Alexander R. Davari
March 10, 2020
Page | 12

Claimant will pursue all remedies on behalf of himself and other current and former employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employer is liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of the Employer's unlawful actions.

CONCLUSION

The Employer violated Labor Code sections as set forth herein. Claimant will pursue all remedies on behalf of himself and other aggrieved employees, including recovery of attorney's fees, costs, and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint. Should you have any questions, please feel free to contact me at your convenience.

Sincerely,
COHELAN KHOURY & SINGER

A handwritten signature in blue ink, appearing to read 'Marta Manus', with a stylized flourish at the end.

Marta Manus, Esq.

cc:
Via Email only
Sahag Majarian, Esq.
Law Offices of Sahag Majarian II
18250 Ventura Blvd.
Tarzana, CA 91356
sahagii@aol.com

EXHIBIT 2

Stoneledge Furniture, LLC
One Ashley Way
Arcadia, WI 54612

Advice No 346993
Date 2/14/2020



PAY
ONLY

REDACTED

AMOUNT

--

TO THE ALEXANDER R. DAVARI
ORDER OF [REDACTED]

NON-NEGOTIABLE

NON-NEGOTIABLE NON-NEGOTIABLE NON-NEGOTIABLE NON-NEGOTIABLE

Stoneledge Furniture, LLC
One Ashley Way
Arcadia, WI 54612

ATTENDANCE LINE
(909)572-2340

ALEXANDER R. DAVARI
[REDACTED]

Emp No	609916	Advice No	346993
Location	CLHS11	Advice Date	2/14/2020
Finan Dept	L7507	Period Start	2/2/2020
Work Center	HOMST	Period End	2/8/2020
Group	11026	Paygroup	SLFCA
Nature	5022	Job	SALESHR
Base Rate	13.00		
Shift Rate	0.00		

vsn 20150624

COMPANY MESSAGE

See page 2 of paystub for itemization of hours worked and corresponding rate of pay. 90 days employment required to use sick pay

EARNINGS							DEDUCTIONS			TAXES		
Pay Type	Per Start	Per End	Hours	Rate of Pay	Current	YTD	Deduction	Current	YTD	Tax Code	Current	YTD
HOLIDAY						172.24	Cell Phone Stip		-10.00	Employee Medicare	19.31	81.43
MEAL WAIVER						28.61	Child Support	30.92	216.44	Social Security Empl	82.56	348.17
OVERTIME			0.07	18.31	1.21	11.90	Dental Plan2	3.44	20.64	CA Disability Employ	13.32	56.16
REGULAR			36.92	13.00	480.01	2,996.53	Medical Plan 4	17.59	105.54			
SALES INCENTIVE					738.13	1,828.18	Service Fee	1.00	7.00			
SPIFFS					133.33	704.36						

PAID TIME OFF

Plan	Balance
CA Sick Pay	24.0000
Personal Time	24.0000
Vacation	80.0000

NET PAY DISTRIBUTION

XXXXXXXXXX703 C 1,184.54

	TOTAL HOURS	GROSS	TAXES	DEDS	NET PAY
CURRENT	36.92	1,352.68	115.19	52.95	1,184.54
YTD		5,741.82	485.76	339.62	4,916.44
Total Net Pay					1,184.54