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

JUN - 1 2020

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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

ANGEL CARACOZA, JR., on behalf of
himself and as representative for the State of
California on behalf of all other aggrieved
employees,

Plaintiff,

v.

ASHLEY FURNITURE INDUSTRIES, INC., a
Wisconsin Corporation d/b/a THE ASHLEY
COMPANIES; and DOES 1 through 10,
Inclusive,

Defendants.

CASE NO. **CIV DS 2012912**
**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 Provide Accurate Itemized Wage Statements (Lab. Code §§ 2698, et seq.);
2. Civil Penalties Pursuant to the PAGA for Failure to Pay Overtime Wages (Lab. Code §§ 2698, et seq.);
3. Civil Penalties Pursuant to the PAGA for Failure to Provide Meal Periods (Lab. Code §§ 2698, et seq.); and
4. Civil Penalties Pursuant to the PAGA for Failure to Authorize or Permit Rest Periods (Lab. Code §§ 2698, et seq.)

1 Plaintiff ANGEL CARACOZA, JR. ("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 ASHLEY FURNITURE INDUSTRIES,
8 INC., a Wisconsin Corporation doing business as THE ASHLEY COMPANIES; and DOES 1 through
9 10, Inclusive (collectively, "Defendants") to recover civil penalties pursuant to the PAGA arising out
10 of Defendants' labor code violations including failure to: provide accurate itemized wage statements;
11 pay all overtime wages due; provide compliant meal periods of at least thirty (30) consecutive minutes
12 including a second meal period on shifts more than ten (10) hours in length; and authorize and permit
13 compliant paid rest periods, including third rest periods on shifts more than ten (10) hours in length.

14 2. Plaintiff has given written notice of these claims and allegations to the California Labor
15 and Workforce Development Agency ("LWDA") on March 3, 2020, in his initial notice, and on March
16 13, 2020, in his amended notice. True and correct copies of Plaintiff's notices, in compliance with
17 Labor Code section 2699.3, are attached hereto as **Exhibit 1**. As there has been no LWDA intervention
18 within 65 days of these notices, Plaintiff asserts claims for civil penalties as a representative for, and
19 on behalf of, the State of California in a representative capacity, as provided by the PAGA to the extent
20 permitted by law, as an aggrieved non-exempt employee. Plaintiff is an aggrieved employee and has
21 standing to bring a representative action on behalf of the State of California and the LWDA as a private
22 attorney general.

23 3. Plaintiff asserts claims for civil penalties as a representative of the State of California, as
24 authorized by the PAGA, and to the extent permitted by law, on behalf of aggrieved employees who
25 held the positions identified herein and suffered one or more of the violations alleged. Labor Code §§
26 2698, *et seq.*, 2699.3(a)(2)(C).

27 4. Plaintiff seeks to represent all current and former non-exempt employees in Defendants'
28 Receiving Department in California who suffered one or more of the alleged violations ("aggrieved

employees”) during the period of one year and 65 days before this Complaint is filed until the start of trial in this matter (“PAGA Period”).

II.

JURISDICTION AND VENUE

5. Venue as to each Defendant is proper in this judicial district pursuant to 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; the issues herein are based solely on California statutes and law, including the California Labor Code, the applicable Industrial Welfare Commission Order, the Code of Civil Procedure, and the Rules of Court; 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.*

III.

THE PARTIES

A. Plaintiff

8. Plaintiff Angel Caracoza, Jr. is over the age of eighteen (18) and was at all relevant times a California resident. From approximately August 13, 2018 through June 21, 2019, Claimant, classified as a non-exempt employee, worked in the Receiving Department in Defendants’ store in the city of Redlands, California, within the County of San Bernardino, California.

B. Defendants

9. Plaintiff is informed, believes, and alleges ASHLEY FURNITURE INDUSTRIES, INC. is a Wisconsin Corporation and has conducted business, and employed Plaintiff and other aggrieved employees during the PAGA Period, in the County of San Bernardino.

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

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

IV.

GENERAL ALLEGATIONS

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

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

14. Responsibilities of Plaintiff and other aggrieved employees included, among other things, receiving, inspecting, and recording shipments received; unloading packages from incoming trucks; and updating records.

15. During the PAGA Period, Defendants knowingly and willfully failed to provide accurate itemized wage statements to Plaintiff and other aggrieved employees. Wage statements Defendants provided did not include all applicable hourly rates of pay in effect during the pay period and the corresponding number of hours worked at each hourly rate. Additionally, on information and belief, Defendants failed to pay all overtime wages due and owed for all hours worked in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek. Furthermore, because Defendants failed to compensate Plaintiff and other aggrieved employees properly for all hours worked and for all non-compliant meal and rest periods, the itemized wage statements provided by Defendants to Plaintiff and other aggrieved employees were inaccurate. As a result, the wage statements that Defendants furnished to Plaintiff and other aggrieved employees were incomplete and inaccurate and failed to

1 comply with the requirements of Labor Code section 226(a).

2 16. During the PAGA Period, on information and belief, Plaintiff and other aggrieved
3 employees were not compensated for all overtime hours worked. Plaintiff and other aggrieved
4 employees should have been paid one- and one-half times their regular rate of pay for all overtime
5 worked.

6 17. During the PAGA Period, Plaintiff and other aggrieved employees were not provided all
7 duty-free and uninterrupted 30-minute second meal periods for shifts of ten hours or more, pursuant
8 to Labor Code section 512, and section 11 of IWC Wage Order 7-2001, and all other applicable Wage
9 Orders, nor paid compensation in lieu thereof in the amount of one hour of pay at the employee's
10 regular rate of pay.

11 18. During the PAGA Period, Plaintiff and other aggrieved employees regularly worked
12 shifts of more than 10 hours per day and were not provided with a third duty-free rest period of 10
13 minutes for each shift of more than 10 hours pursuant to Labor Code section 226.7, and section 12 of
14 IWC Wage Order 7-2001, and all other applicable Wage Orders, nor paid compensation in lieu thereof
15 in the amount of one hour of pay at the employee's regular rate of pay.

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

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

21. 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.”

22. 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.

23. Pursuant to California Labor Code section 558.1, Defendants are employers of Plaintiff, and/or persons 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 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.

24. Plaintiff, as a representative of the general public and State of California, seeks to recover all civil penalties under the PAGA, Labor Code sections 2699 and 2699(f)(2), for violations of sections 226, 226.7, 226.3, 510, 512, 1194, 1194.2, 1197, and 1198 shown to have occurred, in an amount according to proof, as to those penalties that are otherwise only available in public agency enforcement actions. The funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered distributed to the LWDA on behalf of the State of California and 25% distributed to the

aggrieved employees, subject to Court approval.

V.

CAUSES OF ACTION

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

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

26. Labor Code section 226(a) provides, in pertinent part: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees...an accurate itemized statement in writing showing (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...”

27. Due to Defendants’ failure to pay for all overtime hours worked and all meal and rest periods premiums as required by the Labor Code, and due to Defendants improperly recording the applicable hourly rates of pay in effect during the pay period and the corresponding number of hours worked at each hourly rate, the wages and hours worked listed on each wage statement provided to Plaintiff and other aggrieved employees were misstated and violated Section 226(a)(9).

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

29. 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.

30. 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

1 behalf of the State of California.

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

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

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

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

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

23 35. Labor Code section 2699.5 provides, in pertinent part that “provisions of subdivision (a)
24 of Section 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] ...1194,
25 1194.1” and allow for recovery of civil penalties pursuant to the PAGA.

26 36. During all or a substantial part of the PAGA Period, Defendants failed to pay overtime
27 wages for all hours worked in excess of 8 hours per day and/or 40 hours per week and for all hours
28 subject to Defendants’ control. On information and belief, Plaintiff and other aggrieved employees

1 regularly worked hours in excess of eight (8) hours per workday and/or forty (40) hours per workweek
2 and were not compensated for all overtime hours worked.

3 37. As a result of Defendants' failure to pay overtime wages for hours worked in excess of
4 eight hours in one workday and any work in excess of 40 hours in any one workweek, Defendants,
5 and each of them, are liable for civil penalties within the applicable limitations period of Labor Code
6 section 2699(f)(2) for violations of Labor Code sections 1194 and 1194.2 in the amount of \$100 for
7 each aggrieved employee per pay period for the initial violation and \$200 for each subsequent
8 violation.

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

19 39. Defendants' conduct also violates Section 3 of IWC Wage Order 7-2001 by failing to
20 pay all overtime wages to employees.

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

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THIRD CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PROVIDE MEAL PERIODS
[Labor Code §§ 2698, *et seq.*]

41. Plaintiff hereby incorporates all preceding paragraphs of this complaint.

42. 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”

43. Labor Code section 226.7(b) provides, in pertinent part: “An employer shall not require an employee to work during a meal...period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

44. Labor Code section 226.7(c) provides, in pertinent part: “If an employer fails to provide an employee a meal...period in accordance with a state law...the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal...period is not provided.”

45. During the PAGA Period, Plaintiff and other aggrieved employees were not provided with all legally compliant, off-duty second meal periods on eligible shifts of ten (10) hours or more.

46. By failing to provide a second off-duty and uninterrupted meal period of at least thirty (30) minutes for shifts of ten (10) hours or more and failing to pay employees one hour of pay at their regular rate of pay for each eligible workday a second meal period was not provided, Defendants willfully violated Labor Code sections 226.7 and 558(a)(3), and Section 11 of IWC Wage Order 7-2001.

47. 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 226.7. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee.

48. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section

2699(f)(2) penalties for each Labor Code section 226.7 or 512(a) violation, according to proof, as to those penalties otherwise only available in public agency enforcement actions. Funds will be distributed in accordance with the PAGA, with 75% of the civil penalties recovered being reimbursed 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
CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PROVIDE REST PERIODS
[Labor Code §§ 2698, *et seq.*]

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

50. The “Rest Period” Section of the 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 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” 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 for each workday that the rest period is not provided.

51. Labor Code section 226.7(c) states, in pertinent part: “If an employer fails to provide an employee a...rest...period in accordance with...an applicable...order of the Industrial Welfare Commission...the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the...rest...period is not provided.”

52. During the PAGA Period, Plaintiff and other aggrieved employees were not provided with legally compliant, duty-free third rest periods on eligible shifts of ten (10) hours or more.

53. By failing to provide a third duty-free rest period of at least ten (10) minutes for shifts of ten (10) hours or more and failing to pay employees one hour of pay at their regular rate of pay for each eligible workday a third rest period was not provided, Defendants willfully violated Labor Code sections 226.7 and 558(a)(3), and Section 12 of IWC Wage Order 7-2001.

54. 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 226.7. The civil

1 penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid
2 employee. Labor Code § 2699(f)(2).

3 55. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section
4 2699(f)(2) penalties for each Labor Code section 226.7 violation, according to proof, as to those
5 penalties otherwise only available in public agency enforcement actions. Funds will be distributed in
6 accordance with the PAGA, with 75% of the civil penalties recovered being reimbursed to the LWDA
7 on behalf of the State of California. The exact amount of the applicable penalty is all in an amount to be
8 shown according to proof at trial.

9 **PRAYER FOR RELIEF**

10 Plaintiff prays for judgment as follows:

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

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

16 C. For recovery of civil penalties permitted by Labor Code section 2699, for failure to
17 provide meal periods pursuant to Labor Code section 226.7, according to proof;

18 D. For recovery of civil penalties permitted by Labor Code section 2699 for failure to
19 provide rest periods pursuant to Labor Code section 226.7, according to proof;

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

22 F. For Pre-Judgment and Post-Judgment interest;

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

27 H. Attorneys’ fees and costs of suit, including expert fees and fees pursuant to California
28 Labor Code sections 226, 1194, 2699.3, and all other applicable state laws including Code of Civil

1 Procedure section 1021.5; and,

2 I. Such other relief as this Court deems necessary, just, equitable, and proper.

3 COHELAN KHOURY & SINGER
4 UNITED EMPLOYEES LAW GROUP, PC

5
6 Dated: June 5, 2020

By:  _____

7 Michael Singer, Esq.

8 Marta Manus, Esq.

9 Attorneys for Plaintiff Angel Caracoza, Jr., on behalf of
10 himself and as representative for the State of California
11 on behalf of all other aggrieved employees
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EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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J. JASON HILL†
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KRISTINA DE LA ROSA

(† Also admitted in Illinois)

March 13, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Ashley Furniture Industries, Inc.
One Ashley Way
Arcadia, WI 54612

Ashley Furniture Industries, Inc.
c/o CSC-Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: *Amended Notice pursuant to California Labor Code sections 2698, et seq., the Private Attorneys General Act ("PAGA"), sent by Angel Caracoza, Jr. on behalf of himself and all other aggrieved employees of The Ashley Companies in the State of California*

Dear PAGA Administrator and The Ashley Companies and/or Ashley Furniture Industries, Inc.:

This letter shall serve as Angel Caracoza, Jr.'s (hereafter "Claimant") *Amended Notice* pursuant to the California Private Attorneys General Act ("PAGA"), California Labor Code sections 2698, *et seq.*, and supplements the previous Notice with additional facts and theories supporting allegations of the Labor Code violations committed by The Ashley Companies and/or Ashley Furniture Industries, Inc. (collectively, "Employer"). Claimant incorporates all other facts and theories alleged in the Notice submitted on March 3, 2020 (LWDA Case No. LWDA-CM-776120-20), a true and correct copy of which is attached as Exhibit A, as though set forth fully herein.

FACTUAL STATEMENT

Claimant was employed by the Employer as a non-exempt employee in the receiving department from approximately August 2018 through September 2019. For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order on behalf of himself and all other non-exempt employees of the Employer. Claimant alleges the Employer failed to provide Claimant and other non-exempt employees with all overtime wages for time worked in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek, failed to provide legally compliant meal periods or compensation in lieu thereof, and failed to provide legally compliant rest periods or compensation in lieu thereof, in addition to the claims and allegations set forth in the March 3, 2020 Notice.

Accordingly, Claimant now seeks civil penalties on behalf of himself and other aggrieved employees employed as a non-exempt employee based on the Employer's alleged violations of the California Labor Code and applicable IWC Wage Order. Claimant's claims are set forth in further detail below, as well as the March 3, 2020 Notice.

FAILURE TO PAY OVERTIME WAGES

(Labor Code §§ 226.2, 510, 1194, 1194.5, and 1198, and the "Hours and Days of Work" Section of the Applicable IWC 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 states: "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."

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

Despite the fact that Claimant and other aggrieved employees regularly worked overtime hours, they were not paid accurate overtime premium 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

California LWDA

The Ashley Companies and/or Ashley Furniture Industries, Inc.

Re: Angel Caracoza, Jr.

March 13, 2020

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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.

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.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. Claimant 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 for damages.

Sincerely,
COHELAN KHOURY & SINGER


Maria Manus, Esq.

cc:

Via Email only

Walter L. Haines, Esq.

UNITED EMPLOYEES LAW GROUP, P.C.

5500 Bolsa Avenue, Suite 201

Huntington Beach, CA 92649

walter@whaines.com

EXHIBIT A

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)

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

(† Also admitted in Illinois)

March 3, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Ashley Furniture Industries, Inc.
One Ashley Way
Arcadia, WI 54612

Ashley Furniture Industries, Inc.
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 Angel Caracoza, Jr. on behalf of himself and all other aggrieved employees of The Ashley Companies in the State of California

Dear PAGA Administrator and The Ashley Companies and/or Ashley Furniture Industries, Inc.:

This letter shall serve as Angel Caracoza, Jr.'s (hereafter "Claimant") *Notice* pursuant to the California Private Attorneys General Act ("PAGA"), California Labor Code sections 2698, *et seq.*, regarding his wage and hour claims against his employer The Ashley Companies and/or Ashley Furniture Industries, Inc. (collectively, "Employer"). Claimant submits this notice on behalf himself individually, and all current and former non-exempt employees ("aggrieved" employees) employed by the Employer in the State of California during the one-year and 65-day period preceding the filing of this written notice.

This letter serves as Claimant's written notice pursuant to Labor Code section 2699.3(a)(A)(1) providing the Labor and Workforce Development Agency (hereafter "LWDA") the opportunity to investigate the alleged claims contained herein. 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 non-exempt employees of the Employer, seeking civil penalties pursuant to the PAGA. 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 employment policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and applicable IWC Wage Order and resulted in the violations set forth below.

FACTUAL STATEMENT

Claimant was employed by the Employer as a non-exempt employee in the receiving department from approximately August 2018 through September 2019. For reasons set forth

California LWDA

The Ashley Companies and/or Ashley Furniture Industries, Inc.

Re: Angel Caracoza, Jr.

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herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order on behalf of himself and all other non-exempt employees of the Employer. Claimant alleges the Employer failed to provide Claimant and other non-exempt employees with accurate itemized wage statements showing the accurate applicable rates of pay for all hours worked.

Accordingly, Claimant now seeks civil penalties on behalf of himself and other aggrieved employees employed as a non-exempt employee based on the Employer's alleged violations of the California Labor Code and applicable IWC Wage Order. Claimant's claims are set forth in further detail below.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

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

Labor Code section 226(a) states in pertinent part: "An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the 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.

Claimant alleges that the Employer failed to provide Claimant and other non-exempt employees with accurate itemized wage statement complying with the requirements of the Labor Code section 226(a) and applicable IWC Wage Order. Claimant did not receive wage statements which included the correct number applicable rates paid for all hours worked. The wage

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Re: Angel Caracoza, Jr.

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statements issued to Claimant and other non-exempt employees list the incorrect overtime rate of pay. Specifically, the wage statements provided to Claimant list the overtime rate of pay as half of the amount of Claimant's regular rate of pay. Attached hereto as **Exhibit 1** is an exemplar of a wage statement issued by the Employer to Claimant. On information and belief, the Employer failed to issue accurate itemized wage statements to all other non-exempt employees employed by the Employer in California.

Accordingly, Claimant will pursue all remedies, including recovery of wages, interest, attorneys' fees and costs, penalties and those provided by the PAGA, to the extent allowed by law, on behalf of himself and other aggrieved employees.

**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."

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 list the correct rate of pay. 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.

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

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 §§ 226(e) and 2699(g)(1))

Labor Code sections 226(e) and 2699(g)(1) give employees the right to recover in a civil action, 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 assessed. Accordingly, the Employer is liable for these items.

Labor Code section 226(e)(1) provides "[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

Labor Code section 2699(g)(1) provides "[e]xcept as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part"

Claimant has already incurred costs and attorney's fees and will continue to incur costs as a result of the Employer's unlawful actions.

CONCLUSION

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

California LWDA

The Ashley Companies and/or Ashley Furniture Industries, Inc.

Re: Angel Caracoza, Jr.

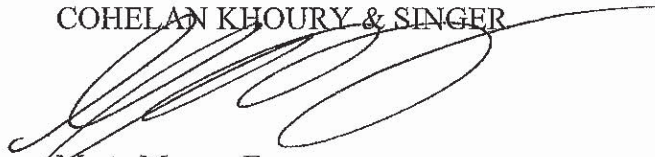
March 3, 2020

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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.

Sincerely,

COHELAN KHOURY & SINGER

A handwritten signature in black ink, appearing to read 'Marta Manus', written over the printed name.

Marta Manus, Esq.

cc:

Via Email only

Walter L. Haines, Esq.

UNITED EMPLOYEES LAW GROUP, P.C.

5500 Bolsa Avenue, Suite 201

Huntington Beach, CA 92649

walter@whaines.com

EXHIBIT 1

2000 11 15 14:00