

1 Robert Drexler (SBN 119119)
2 Robert.Drexler@CapstoneLawyers.com
3 Molly DeSario (SBN 230763)
4 Molly.DeSario@CapstoneLawyers.com
5 Jonathan Lee (SBN 267146)
6 Jonathan.Lee@CapstoneLawyers.com
7 Capstone Law APC
8 1875 Century Park East, Suite 1000
9 Los Angeles, California 90067
10 Telephone: (310) 556-4811
11 Facsimile: (310) 943-0396

12 Attorneys for Plaintiff Walter Cuellar

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

JUN 11 2020


LaShondra Richardson

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

12 WALTER CUELLAR, as an aggrieved
13 employee pursuant to the Private Attorneys
14 General Act ("PAGA"), on behalf of the
15 State of California and other aggrieved
16 employees,

17 Plaintiff,

18 vs.

19 MOR FURNITURE FOR LESS, INC., a
20 California corporation; and DOES 1
21 through 10, inclusive,

22 Defendants.

Case No. **CIV DS 2013280**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Walter Cuellar, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt,
8 commissions-paid employee and received at least one wage statement and against whom one
9 or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
10 provision regulating hours and days of work in the applicable Industrial Welfare Commission
11 (“IWC”) Wage Order were committed, as set forth in this complaint, at any time between one
12 year prior to the filing of the pre-filing written notice to the Labor and Workforce
13 Development Agency (“LWDA”) in this case on April 3, 2020, until judgment (“non-party
14 Aggrieved Employees”). Plaintiff’s share of civil penalties sought in this action does not
15 exceed \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons in this
3 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
4 and occurrences related to this action occurred in this county.

5 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
6 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
7 attorneys general their current or former employers for various civil penalties for violations of
8 various provisions in the California Labor Code.

9 THE PARTIES

10 6. Plaintiff Walter Cuellar is a resident of Fontana, in San Bernardino County,
11 California. Defendants employed Plaintiff as a commissions-paid, non-exempt Sales Associate
12 from approximately October 2010 to April 2019. Plaintiff worked for Defendants at their
13 retail store in Rancho Cucamonga, California. During his employment, Plaintiff typically
14 worked eight (8) to eleven (11) hours or more per day, four (4) to five (5) days per week, from
15 9:00 a.m. to 5:00 p.m. or later. At the time his employment ended, Plaintiff was compensated
16 on a commission basis, earning five (5) percent of his sales (furniture delivered) or an hourly
17 draw or “guarantee” of approximately \$15.00, whichever was greater. His job duties
18 included, without limitation, selling furniture and tracking sales and deliveries to customers.

19 7. On information and belief, Defendants required some employees, including
20 Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of
21 their hire or during their employment. On further information and belief, Defendants’ dispute
22 resolution policy and/or arbitration agreement was and is both procedurally and substantively
23 unconscionable. Specifically, Defendants presented new hires with an “Agreement to
24 Arbitrate Disputes” (“Arbitration Agreement”) during the onboarding process, which had to
25 be reviewed and signed immediately. In fact, upon information and belief, the Arbitration
26 Agreement was incorporated into Defendants Offer Letter, and was one of several documents
27 presented to new employees for signature during the orientation process. Also, employees did
28 not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement.

1 Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it
2 basis at the time they were hired, along with other on-boarding documents. Further,
3 Defendants did not set forth in the agreement or otherwise provide employees with the rules
4 which will govern the arbitration, instead forcing employees to seek this information out on
5 their own.

6 8. MOR FURNITURE FOR LESS, INC. was and is, upon information and belief,
7 a California corporation, and at all times hereinafter mentioned, an employer whose
8 employees are engaged throughout this county and the State of California.

9 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
10 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
11 amend the complaint and serve such fictitiously named Defendants once their names and
12 capacities become known.

13 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
14 were the partners, agents, owners, or managers of MOR FURNITURE FOR LESS, INC. at all
15 relevant times.

16 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
17 acts and omissions alleged herein was performed by, or is attributable to, MOR FURNITURE
18 FOR LESS, INC. and/or DOES 1 through 10 (collectively, "Defendants" or "MOR"), each
19 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
20 each of the other co-Defendants and was acting within the course and scope of such agency,
21 employment, joint venture, or concerted activity with legal authority to act on the others'
22 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
23 policy of Defendants.

24 12. At all relevant times, Defendants, and each of them, ratified each and every act
25 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
26 and abetted the acts and omissions of each and all the other Defendants in proximately causing
27 the damages herein alleged.

28 13. Plaintiff is informed and believes, and thereon alleges, that each of said

Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

PAGA REPRESENTATIVE ALLEGATIONS

14. Defendants are one of the largest furniture retailers in the United States, with approximately 50 retail stores nationwide and 15 store locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in San Diego, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

15. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire.

16. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in San Diego, California, which processes payroll for all non-exempt, commissions-paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, commissions-paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee’s employment ends.

17. Defendants continue to employ non-exempt, commissions-paid employees in California.

1 18. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
3 and advisors knowledgeable about California labor and wage law, employment and personnel
4 practices, and about the requirements of California law.

5 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
6 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
7 were not recorded.

8 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that they were obligated to separately compensate Plaintiff and other non-
10 party Aggrieved Employees for rest periods and other nonproductive time when paying them
11 on a piece-rate or commission basis at their regular rate of pay. In violation of California law,
12 Defendants failed to separately compensate Plaintiff and other non-party Aggrieved
13 Employees for rest periods and other nonproductive time.

14 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 receive at least minimum wages for compensation and that they were not receiving at least
17 minimum wages for work that was required to be done off-the-clock. In violation of the
18 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
19 least minimum wages for work done off-the-clock.

20 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that other non-party Aggrieved Employees were entitled to meal periods
22 in accordance with the Labor Code or payment of one (1) additional hour of pay at their
23 regular rates of pay when they were not provided with timely, uninterrupted, thirty (30)
24 minute meal periods and that other non-party Aggrieved Employees were not provided with
25 all meal periods or payment of one (1) additional hour of pay at their regular rates of pay
26 when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

27 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
2 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
3 and permitted to take a compliant rest period. In violation of the California Labor Code,
4 Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take
5 compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
6 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
7 they were not authorized and permitted to take a compliant rest period.

8 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 receive complete and accurate wage statements in accordance with California law. In
11 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
12 were not provided complete and accurate wage statements.

13 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that they had a duty to maintain accurate and complete payroll records in
15 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
16 and intentionally failed to do so.

17 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
19 timely payment of all wages earned upon termination of employment. In violation of the
20 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
21 payment of all wages due, including, but not limited to, minimum wages, compensation for
22 rest periods and other nonproductive time, and meal and rest period premiums, within
23 permissible time periods.

24 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 timely payment of wages during their employment. In violation of the California Labor Code,
27 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
28 including, but not limited to, minimum wages, compensation for rest periods and other

1 nonproductive time, and meal and rest period premiums, within permissible time periods.

2 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 the portion of wages previously paid and subsequently unlawfully deducted by Defendants.

5 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 payment of wages as designated by statute. In violation of the California Labor Code,
8 Defendants secretly paid Plaintiff and other non-party Aggrieved Employees lower wages
9 than required by statute while purporting to pay them proper wages.

10 30. Plaintiff is informed and believes, and thereon alleges, that at all time herein
11 mentioned, Defendants knew or should have known that they had a duty to cover the costs and
12 expenses other non-party Aggrieved Employees incurred obtaining mandatory examinations
13 and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 suitable seating and/or were entitled to sit when it did not interfere with the performance of
17 their duties and also have seats nearby to use during a lull in tasks that do require moving
18 about or standing.

19 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
21 receive reimbursement for all business-related expenses and costs they incurred during the
22 course and scope of their employment and that they did not receive reimbursement of
23 applicable business-related expenses and costs incurred.

24 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants knew or should have known that they had a duty to compensate
26 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
27 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
28 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees

1 that they were properly denied wages, all in order to increase Defendants' profits.

2 34. At all times herein set forth, PAGA provides that any provision of law under
3 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
4 assessed and collected by the LWDA for violations of the California Labor Code and
5 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
6 civil action brought on behalf of themselves and other current or former employees pursuant
7 to procedures outlined in California Labor Code section 2699.3.

8 35. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
9 person who was employed by the alleged violator and against whom one or more of the
10 alleged violations was committed."

11 36. Plaintiff and other current and former employees of Defendants are "aggrieved
12 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
13 or former employees and one or more of the alleged violations were committed against them.

14 37. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
15 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
16 following requirements have been met:

- 17 (a) The aggrieved employee shall give written notice by online filing
18 (hereinafter "Employee's Notice") to the LWDA and by certified mail
19 to the employer of the specific provisions of the California Labor Code
20 alleged to have been violated, including the facts and theories to support
21 the alleged violations.
- 22 (b) An aggrieved employee's notice filed with the LWDA pursuant to
23 2699.3(a) and any employer response to that notice shall be
24 accompanied by a filing fee of seventy-five dollars (\$75).
- 25 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
26 employer and the aggrieved employee by certified mail that it does not
27 intend to investigate the alleged violation within sixty (60) calendar
28 days of the postmark date of the Employee's Notice. Upon receipt of

1 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
2 five (65) calendar days of the postmark date of the Employee's Notice,
3 the aggrieved employee may commence a civil action pursuant to
4 California Labor Code section 2699 to recover civil penalties in addition
5 to any other penalties to which the employee may be entitled.

6 38. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
7 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
8 provision other than those listed in Section 2699.5 after the following requirements have been
9 met:

- 10 (a) The aggrieved employee or representative shall give written notice by
11 online filing to the LWDA and by certified mail to the employer of the
12 specific provisions of the California Labor Code alleged to have been
13 violated (other than those listed in Section 2699.5), including the facts
14 and theories to support the alleged violation.
- 15 (b) An aggrieved employee's notice filed with the LWDA pursuant to
16 2699.3(c) and any employer response to that notice shall be
17 accompanied by a filing fee of seventy-five dollars (\$75).
- 18 (c) The employer may cure the alleged violation within thirty-three (33)
19 calendar days of the postmark date of the notice. The employer shall
20 give written notice by certified mail within that period of time to the
21 aggrieved employee or representative and the agency if the alleged
22 violation is cured, including a description of actions taken, and no civil
23 action pursuant to Section 2699 may commence. If the alleged violation
24 is not cured within the 33-day period, the employee may commence a
25 civil action pursuant to Section 2699.

26 39. On April 3, 2020, Plaintiff provided written notice by online filing to the
27 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
28 Code alleged to have been violated, including facts and theories to support the alleged

1 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
2 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
3 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
4 Plaintiff PAGA Case Number LWDA-CM-781615-20. A true and correct copy of Plaintiff's
5 written notice to the LWDA and Defendants dated April 3, 2020, is attached hereto as
6 "Exhibit 1."

7 40. As of the filing date of this complaint, over 65 days have passed since Plaintiff
8 sent the initial LWDA Notice described above, and the LWDA has not responded that it
9 intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

10 41. Thus, Plaintiff has satisfied the administrative prerequisites under California
11 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
12 violations of California Labor Code sections 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a),
13 226.7, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

14 42. Labor Code section 558(a) provides "[a]ny employer or other person acting on
15 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
16 provision regulating hours and days of work in any order of the Industrial Welfare
17 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
18 dollars (\$50) for each underpaid employee for each pay period for which the employee was
19 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
20 underpaid employee for each pay period for which the employee was underpaid" Labor
21 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
22 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
23 as a private attorney general, seeks assessment and collection of civil penalties under Labor
24 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
25 California against Defendants for violations of Labor Code sections 512(a), 516, 1198, and the
26 applicable IWC wage order. Plaintiff, acting in the public interest as private attorney general,
27 does not seek the recovery of unpaid wages under Labor Code section 558 from Defendants
28 for violations of Labor Code sections 512(a), 516, 1198, and the applicable IWC wage order.

43. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth above.

44. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

45. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a), 226.7, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

46. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

47. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a), 226.7, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 226.2, 516, and 1182.12.

48. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of Labor Code section 226.2 for Defendant's failure to

1 separately compensate Plaintiff and other non-party Aggrieved
2 Employees for rest periods at correct rates of pay and other
3 nonproductive time when paying them on a piece-rate or commission
4 basis, as alleged herein;

5 (d) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
6 applicable IWC wage order for Defendants' failure to compensate
7 Plaintiff and other non-party Aggrieved Employees with at least
8 minimum wages for all hours worked as set forth below;

9 (e) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
10 applicable IWC wage order for Defendants' failure to provide Plaintiff
11 and other non-party Aggrieved Employees with meal periods, as set
12 forth below;

13 (f) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
14 IWC wage order for Defendants' failure to authorize and permit
15 Plaintiff and other non-party Aggrieved Employees to take rest periods,
16 as set forth below;

17 (g) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
18 wage order for failure to provide accurate and complete wage statements
19 to Plaintiff and other non-party Aggrieved Employees, as set forth
20 below;

21 (h) Violation of Labor Code sections 1174(d), 1198, and the applicable
22 IWC wage order for failure to maintain payroll records as set forth
23 below;

24 (i) Violation of Labor Code section 204 for failure to pay all earned wages
25 during employment as set forth below;

26 (j) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
27 earned wages upon termination as set forth below;

28 (k) Violation of Labor Code sections 221 and 224 for unlawfully deducting

a portion of wages previously paid to Plaintiff and other non-party Aggrieved Employees, as set forth below;

- (l) Violation of Labor Code section 223 for secretly paying Plaintiff and other non-party Aggrieved Employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (m) Violation of Labor Code section 222.5 for failure to compensate other non-party Aggrieved Employees for mandatory physical examinations and/or drug testing as set forth below;
- (n) Violation of Labor Code section 1198 for failing to provide suitable seating to Plaintiff and other non-party Aggrieved Employees, as set forth below; and
- (o) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below, as set forth below.

**FAILURE TO COMPENSATE FOR
REST PERIODS & OTHER NONPRODUCTIVE TIME
VIOLATION OF LABOR CODE SECTION 226.2**

49. At all relevant times herein, California Labor Code section 226.2 requires employers that utilize a piece-rate compensation plan to separately compensate employees for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates. Labor Code section 226.2 further requires that employers provide employees compensated on a piece-rate basis with itemized statements stating the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and the total hours of other nonproductive time, as specified, the rate of compensation, and the gross wages paid for that time during the pay period.

50. Under California law, employers who pay employees on a commission basis must separately compensate them for rest and recovery periods and other nonproductive time

1 at or above specified minimum hourly rates. *Vaquero v. Stoneledge Furniture, LLC*, 9
2 Cal.App.5th 98, 108 (2017).

3 51. During the relevant time period, Defendants adopted a company-wide
4 compensation plan whereby it has paid Plaintiff and other non-party Aggrieved Employees on
5 a commission basis for the sales and delivery of furniture. *See infra*. On information and
6 belief, Defendants did not record their actual hours worked and/or did not pay them for all
7 hours that they worked. Thus, Defendants failed to separately compensate Plaintiff and other
8 non-party Aggrieved Employees for all nonproductive time, including, but not limited to, such
9 non-selling activities as handling returns for repeat customers and providing post-sales
10 customer service. In addition, Defendants had, and continue to have, a company-wide policy
11 of failing to separately pay Plaintiff and other non-party Aggrieved Employees for rest periods
12 as required by law. During the relevant time period, Defendants have never separately paid
13 Plaintiff and other non-party Aggrieved Employees paid on a commissions-only basis for rest
14 periods.

15 52. On information and belief, Defendants also failed to provide Plaintiff and other
16 non-party Aggrieved Employees with itemized statements listing the total hours of all
17 nonproductive time and total hours of compensable rest periods, and other required details
18 regarding payment for nonproductive time and rest periods. Defendants further did not
19 provide Plaintiff and other non-party Aggrieved Employees with itemized statements showing
20 the rates at which they were paid for compensable nonproductive time and rest periods.

21 53. Defendants' failure to separately compensate Plaintiff and other non-party
22 Aggrieved Employees for rest periods and other nonproductive time at or above specified
23 minimum hourly rates, as well as Defendants' failure to provide Plaintiff and other non-party
24 Aggrieved Employees with the requisite itemized statements, violates Labor Code section
25 226.2. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
26 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

27 //

28 //

1 **FAILURE TO PAY MINIMUM WAGES**

2 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

3 54. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
4 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
5 to be paid to employees, and the payment of a wage less than the minimum so fixed is
6 unlawful. Compensable work time is defined by the applicable wage order as “the time
7 during which an employee is subject to the control of an employer, and includes all the time
8 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
9 Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

10 55. As set forth above, during the relevant time period, Defendants implemented a
11 company-wide compensation plan for commissioned employees that systematically failed to
12 compensate Plaintiff and other non-party Aggrieved Employees for all hours worked. As
13 previously stated, Defendants did not record Plaintiff’s and other non-party Aggrieved
14 Employees’ actual hours worked and/or did not pay them for all hours that they worked.
15 Specifically, Defendants required Plaintiff and other non-party Aggrieved Employees paid on
16 a commission basis to perform other non-commission producing activities without
17 compensation. Defendants had a company-wide policy of pressuring Plaintiff and other non-
18 party Aggrieved Employees to maintain a monthly sales quota based on the amount of
19 furniture delivered (“minimum delivered business”), upon threat of termination. Toward the
20 end of his employment, Plaintiff was required to deliver \$57,500 worth of furniture per each
21 28-day period, but furniture was not delivered in a predictable manner, as many items he sold
22 could be out of stock for long periods of time. This resulted in Plaintiff and other non-party
23 Aggrieved Employees having to remain available for customers’ and supervisors’ requests at
24 all times in order to meet this quota, by keeping current and potential customers satisfied at all
25 times while selling as much inventory as possible. This practice and/or policy of requiring
26 employees to meet monthly sales quotas resulted in Plaintiff and other non-party Aggrieved
27 Employees performing work-related tasks while off-the-clock. For example, every few
28 months, Plaintiff would be required to write up sales for repeat customers after he had clocked

1 out for the day. Thus, Defendants failed to record the time spent by Plaintiff and other non-
2 party Aggrieved Employees on nonproductive tasks, such as processing returns for repeat
3 customers and providing post-sales customer service, and, as a result, failed to pay them for
4 all hours worked when they received commissions in lieu of the hourly draw. Defendants also
5 failed to separately pay Plaintiff and other non-party Aggrieved Employees for rest periods.

6 56. Second, Defendants, on a company-wide basis, had a practice of failing to
7 schedule meal periods, which further caused Plaintiff and/or other non-party Aggrieved
8 Employees to not be relieved of their duties for compliant meal periods. As a result of these
9 policies and/or practices, Plaintiff and other non-party Aggrieved Employees were required to
10 work during and/or to return early from meal periods, in order to complete their assigned
11 tasks, such as closing a deal with a customer. Moreover, on information and belief, because
12 Defendants frowned upon employees accruing meal period penalties, when Plaintiff and other
13 non-party Aggrieved Employees failed to clock themselves out at their designated meal period
14 start times, they were subject to Defendants altering their time records and deducting time for
15 meal periods that were not taken. Alternatively, Defendants' management falsified employee
16 time records by clocking out Plaintiff and other non-party Aggrieved Employees at designated
17 start and end times to reflect compliant meal periods, regardless of whether they had received
18 a compliant meal period or not, in order to strictly limit meal penalties that Defendants would
19 otherwise owe. Consequently, Plaintiff and other non-party Aggrieved Employees performed
20 work during meal periods for which they were not paid.

21 57. Third, during the relevant time period, Defendants also maintained and
22 implemented a company-wide policy of requiring all employees to travel to a medical facility
23 on their own time and use their own personal vehicles to undergo mandatory drug tests and/or
24 physical examinations. At all times, upon information and belief, Defendants were in control
25 of scheduling the date and time for the testing and/or physical examination, selecting the
26 provider/facility where the testing and/or physical examination was to take place, and
27 determining the scope of the testing and/or physical examination. However, Defendants did
28 not compensate other non-party Aggrieved Employees for the time they spent traveling to and

1 from the medical facilities and undergoing the mandatory drug testing and/or physical
2 examinations.

3 58. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
4 and other non-party Aggrieved Employees in violation of California Labor Code sections
5 1182.12, 1194, 1197, and 1198.

6 59. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
7 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
8 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
9 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

10 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
11 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

12 60. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
13 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff and
14 non-party Aggrieved Employees' employment by Defendants.

15 61. At all relevant times herein set forth, California Labor Code section 512(a)
16 provides that an employer may not require, cause, or permit an employee to work for a period
17 of more than five (5) hours per day without providing the employee with a meal period of not
18 less than thirty (30) minutes, except that if the total work period per day of the employee is
19 not more than six (6) hours, the meal period may be waived by mutual consent of both the
20 employer and the employee. Under California law, first meal periods must start after no more
21 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
22 2012).

23 62. At all relevant times herein set forth, California Labor Code section 226.7,
24 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
25 meal period mandated by an applicable order of the IWC.

26 63. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
27 and the applicable IWC Wage Order also require employers to provide a second meal period
28 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay

1 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
2 total hours worked is no more than twelve (12) hours, the second meal period may be waived
3 by mutual consent of the employer and the employee only if the first meal period was not
4 waived.

5 64. As set forth above, during the relevant time period, Defendants had, and
6 continue to have, company-wide policies and/or practices of pressuring employees to meet a
7 monthly sales quota, upon threat of termination, which impeded Plaintiff and other non-party
8 Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were
9 entitled. Additionally, Defendants, on a company-wide basis, had a practice of failing to
10 schedule meal periods, which further caused Plaintiff and other non-party Aggrieved
11 Employees to not be relieved of their duties for compliant meal periods.

12 65. As a result, Plaintiff and other non-party Aggrieved Employees were forced to
13 forego meal periods and/or have their meal periods interrupted by work or delayed by work,
14 and were not relieved of all duties for unpaid meal periods, in order to attend their assigned
15 tasks, such as closing a deal with a customer. Plaintiff and other non-party Aggrieved
16 Employees had to remain available to respond to requests from current or potential customers
17 or to assist managers with sales, including during their meal periods. For example, two or
18 three times a month, Plaintiff would work over five (5) hours straight before Defendants
19 permitted him to take his meal period. As a further example, twice a month, Plaintiff would
20 clock out for his meal period, but would be required to return to work in order to respond to
21 requests from his manager to attend to customers. Additionally, as stated, because Defendants
22 frowned upon employees accruing meal period penalties, upon information and belief,
23 Defendants' management would adjust employee time records to reflect compliant meal
24 periods, regardless of whether they had received a compliant meal period, in order to strictly
25 limit meal penalties that would need to be paid by Defendants.

26 66. Furthermore, Defendants did not schedule second meal periods and had no
27 policy for permitting Plaintiff and other non-party Aggrieved Employees with second 30-
28 minute meal periods on days that they worked in excess of ten (10) hours in one day. As a

1 result, Plaintiff and other non-party Aggrieved Employees worked shifts in excess of ten (10)
2 hours without receiving an uninterrupted second 30-minute meal period. Plaintiff and other
3 non-party Aggrieved Employees did not sign valid meal period waivers on days that they were
4 entitled to meal periods and were not relieved of all duties.

5 67. Defendants knew or should have known that as a result of their company-wide
6 policies and practices, that Plaintiff and other non-party Aggrieved Employees were not
7 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
8 knew or should have known that they did not pay Plaintiff and other non-party Aggrieved
9 Employees meal period premium wages when they were missed, late, short, and/or
10 interrupted.

11 68. Defendants also have engaged in a company-wide practice and/or policy of not
12 paying meal period premiums owed when compliant meal periods are not provided. Because
13 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
14 received premium pay for missed, interrupted, or late meal periods. Alternatively, to the
15 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
16 additional hour of premium pay for missed meal periods, Defendants did not pay Plaintiff and
17 other non-party Aggrieved Employees at the correct rate of pay for premium wages because
18 Defendants systematically failed to include all forms of compensation, such as commissions,
19 nondiscretionary bonuses, incentive pay, and/or other forms of remuneration, in the regular
20 rate of pay. As a result, to the extent Defendants paid Plaintiff and other non-party Aggrieved
21 Employees premium pay for missed meal periods, it did so at a lower rate than required by
22 law.

23 69. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
24 Employees compliant meal periods and failed to pay the full meal period premiums due.
25 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
26 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
27 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
28 (g).

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

70. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and other non-party Aggrieved Employees' employment by Defendants.

71. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3½) hours.

72. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

73. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

74. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide practices, including assigning sales quotas, prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty in order to take

1 compliant rest periods. Defendants also failed to schedule rest periods, which further led to
2 Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take
3 rest periods.

4 75. Furthermore, Defendants maintained and implemented a company-wide on-
5 premises rest period policy, which mandated that Plaintiff and other non-party Aggrieved
6 Employees remain on Defendants' premises during their rest periods. Upon information and
7 belief, Defendants' company-wide on-premises rest period policy prevented Plaintiff and
8 other non-party Aggrieved Employees from being relieved of all duties for rest periods and
9 caused them to perform work during rest periods.

10 76. As a result of Defendants' practices and policies, Plaintiff and other non-party
11 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
12 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
13 entitled. For example, during his employment, Plaintiff missed his rest periods, due to
14 Defendants' sales quotas, heavy workload, and failure to schedule rest periods.

15 77. Defendants also have engaged in a company-wide practice and/or policy of not
16 paying all rest period premiums owed when compliant rest periods are not authorized or
17 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
18 Employees have not received premium pay for all missed rest periods. Alternatively, to the
19 extent that Defendants did pay rest period premium wages to Plaintiff and other non-party
20 Aggrieved Employees, it did so at the incorrect rates. Because Defendants did not properly
21 calculate Plaintiff's and other non-party Aggrieved Employees' regular rates of pay by
22 including all forms of remuneration, such as commissions, incentive pay, and/or
23 nondiscretionary bonuses, any premiums paid for rest period violations were also paid at an
24 incorrect rate and resulted in an underpayment of rest period premium wages.

25 78. Defendants' conduct violates the applicable IWC Wage Order and California
26 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
27 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
28 558 and/or 2699(a), (f), and (g).

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS
VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

79. At all relevant times herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

80. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

81. Because Defendants did not record the time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock, deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), and failed to provide itemized statements listing the total hours of all nonproductive time and other required details regarding payment for nonproductive time, Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved Employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and corresponding accurate number of work hours worked at each hourly rate in violation of section 226(a)(9).

82. The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on

1 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
2 only the last four digits of his or her social security number or an employee identification
3 number other than a social security number; failing to list the name and address of the legal
4 entity that is the employer; failing to list the inclusive dates of the period for which aggrieved
5 employees were paid; and/or failing to state all hours worked as a result of not recording or
6 stating hours worked off-the-clock.

7 83. California Labor Code section 1198 provides that the maximum hours of work
8 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
9 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
10 employment of any employees for longer hours than those fixed by the order or under
11 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
12 Wage Order, employers are required to keep accurate time records showing when the
13 employee begins and ends each work period and meal period. During the relevant time
14 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
15 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
16 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
17 and/or policy of falsifying Plaintiff’s and other non-party Aggrieved Employees’ time records
18 by deducting meal periods or recording that compliant meal periods were taken, regardless of
19 if or when meal periods were actually taken, and thereby failed to keep accurate records of
20 meal period start and stop times for Plaintiff and other non-party Aggrieved Employees in
21 violation of section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff and
22 other non-party Aggrieved Employees with second 30-minute meal periods to which they
23 were entitled, Defendants kept no records of meal start and end times for second meal periods.

24 84. California Labor Code section 1174(d) provides that “[e]very person employing
25 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
26 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
27 plants or establishments at which employees are employed, payroll records showing the hours
28 worked daily by and the wages paid to, and the number of piece-rate units earned by and any

1 applicable piece rate paid to, employees employed at the respective plants or
2 establishments...” At all relevant times, and in violation of Labor Code section 1174(d),
3 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
4 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
5 as a result of failing to record the off-the-clock hours that they worked.

6 85. Because Defendants’ violations of 226(a) and 1174(d) were committed against
7 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
8 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
9 1174.5, and/or 2699(a), (f), and (g).

10 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

11 **VIOLATION OF LABOR CODE SECTION 204**

12 86. At all relevant times herein set forth, California Labor Code section 204
13 requires that all wages earned by any person in any employment between the 1st and the 15th
14 days, inclusive, of any calendar month, other than those wages due upon termination of an
15 employee, are due and payable between the 16th and the 26th day of the month during which
16 the labor was performed. Labor Code section 204 further provides that all wages earned by
17 any person in any employment between the 16th and the last day, inclusive, of any calendar
18 month, other than those wages due upon termination of an employee, are due and payable
19 between the 1st and the 10th day of the following month.

20 87. At all relevant times herein, California Labor Code section 204 also requires
21 that all wages earned for labor in excess of the normal work period shall be paid no later than
22 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
23 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
24 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
25 more than seven (7) calendar days following the close of the payroll period.

26 88. During the relevant time period, Defendants willfully failed to pay Plaintiff and
27 other non-party Aggrieved Employees all wages due to them within any time period specified
28 by California Labor Code section 204 including, but not limited to, minimum wages,

1 compensation for rest periods and other nonproductive time, and meal and rest period
2 premium wages.

3 89. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
4 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

5 **FAILURE TO PAY WAGES UPON TERMINATION**

6 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

7 90. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
8 that if an employer discharges an employee, the wages earned and unpaid at the time of
9 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
10 her employment, his or her wages shall become due and payable not later than seventy-two
11 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
12 his or her intention to quit, in which case the employee is entitled to his or her wages at the
13 time of quitting.

14 91. On information and belief, Defendants had a company-wide practice or policy
15 of paying departing employees their final wages on the next regular pay cycle, instead of
16 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
17 Plaintiff was terminated on or about April 5, 2019. However, Defendants did not provide him
18 with his final paycheck until approximately one week later, on April 11, 2019. Thus,
19 Defendants failed to pay Plaintiff his final wages immediately, in violation of Labor Code
20 section 201.

21 92. Additionally, Defendants willfully failed to pay Plaintiff and other non-party
22 Aggrieved Employees who are no longer employed by Defendants the earned and unpaid
23 wages set forth above, including but not limited to, minimum wages, compensation for rest
24 periods and other nonproductive time, and meal and rest period premium wages, either at the
25 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

26 93. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
27 who are no longer employed by Defendants their wages earned and unpaid at the time of
28 discharge, or within seventy-two (72) hours of their leaving Defendant's employ, violates

1 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
2 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
3 2699(a), (f), and (g).

4 **COLLECTING OR RECEIVING WAGES ALREADY PAID**
5 **VIOLATION OF LABOR CODE SECTION 221 AND 224**

6 94. At all times relevant herein, California Labor Code section 221 provides that it
7 shall be unlawful for any employer to collect or receive from an employee any part of wages
8 theretofore paid by said employer to said employee. California Labor Code section 224 also
9 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
10 deduction is expressly authorized in writing by the employee."

11 95. During the relevant time period, Defendants systematically, and on a company-
12 wide basis, maintained a compensation plan that improperly deducted wages from Plaintiff's
13 and other non-party Aggrieved Employees' wages. Defendants had a company-wide policy of
14 allowing customers to cancel orders and/or return merchandise after several months, and
15 would deduct commissions or incentives earned from employees' wages after the merchandise
16 was originally sold by the employee. These deductions were not expressly authorized in
17 writing by Plaintiff and other non-party Aggrieved Employees. Thus, Defendants' policy of
18 deducting commission chargebacks or incentive payments from Plaintiff's and other non-party
19 Aggrieved Employees' wages constitutes an unlawful deduction of wages in violation of
20 California Labor Code sections 221 and 224.

21 96. Defendants' conduct as alleged herein violates California Labor Code sections
22 221 and 224. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
23 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

24 **SECRET PAYMENT OF A LOWER WAGE**
25 **VIOLATION OF LABOR CODE SECTION 223**

26 97. At all times, California Labor Code section 223 makes it unlawful for an
27 employer to secretly pay wages lower than required by statute while purporting to pay legal
28 wages.

1 98. During the relevant time period, as stated, Defendants implemented a policy of
2 failing to pay for rest periods and other nonproductive time and deducting commission
3 chargebacks or incentive payments from employees' wages, which, on information and belief,
4 resulted in the payment of less than statutorily required wages to Plaintiff and other non-party
5 Aggrieved Employees. In doing so, Defendants acted with the intent to deprive Plaintiff and
6 other non-party Aggrieved Employees of statutory wages, including, but not limited to,
7 minimum wages and compensation for rest periods and other nonproductive time, to which
8 they were entitled to under California law. Thus, Defendants paid Plaintiff and other non-
9 party Aggrieved Employees lower wages than those they were entitled to while purporting
10 that Plaintiff and other non-party Aggrieved Employees were properly paid.

11 99. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
12 the correct designated wage, while purporting to pay legal wages, is a violation of California
13 Labor Code section 223. Plaintiff and/or other non-party Aggrieved Employees are therefore
14 entitled to recover civil penalties pursuant to sections 225.5 and/or 2699(a), (f), and (g).

15 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION**
16 **VIOLATION OF LABOR CODE SECTION 222.5**

17 100. At all relevant times herein, California Labor Code section 222.5 requires
18 employers to pay for the costs an employee incurs for obtaining any required medical or
19 physical examination.

20 101. During the relevant time period, Defendants implemented, on a company-wide
21 basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo
22 mandatory drug tests and/or physical examinations, but required them to do so at their own
23 expense. As stated, Defendants had a company-wide policy requiring that other non-party
24 Aggrieved Employees travel to a specified medical facility on their own time and use their
25 own means of transportation to undergo drug testing and/or physical examinations. At all
26 times, Defendants were in control of scheduling the date and time for the drug testing and/or
27 physical examinations, selecting the provider/facility where the drug testing and/or physical
28 examinations were to take place, and determining the scope of the drug test and/or physical

1 examinations.

2 102. However, Defendants did not compensate other non-party Aggrieved
3 Employees for the time they spent traveling to and from their drug tests and/or physical
4 examinations, or for the time they spent undergoing the testing and/or examinations, or
5 reimburse them for the travel expenses they incurred getting to and from the medical facilities.
6 Defendants' policy and/or practice of not paying for all costs other non-party Aggrieved
7 Employees incurred obtaining mandatory drug tests and/or physical examinations tests is in
8 violation of California Labor Code section 222.5.

9 103. Other non-party Aggrieved Employees are therefore entitled to recover civil
10 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

11 **FAILURE TO PROVIDE SUITABLE SEATING**
12 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
13 **REGULATIONS, TITLE 8, SECTION 11070(14)(B)**

14 104. At all relevant times herein, California Labor Code section 1198 makes it
15 illegal to employ an employee under conditions of labor that are prohibited by the applicable
16 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
17 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
18 The employment of any employee . . . under conditions of labor prohibited by the order is
19 unlawful.”

20 105. California Code of Regulations, Title 8, section 11070(14)(B) provides that
21 “[w]hen employees are not engaged in the active duties of their employment and the nature of
22 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
23 proximity to the work area and employees shall be permitted to use such seats when it does
24 not interfere with the performance of their duties.”

25 106. During the relevant time period, Defendants violated California Labor Code
26 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
27 Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even during lulls
28 in their work duties, nor were they provided with suitable seats in reasonable proximity to

1 their work areas.

2 107. Defendants did not provide Plaintiff and other non-party Aggrieved Employees
3 with seats or stools in reasonable proximity to their work areas to allow them to use seats
4 when it would not interfere with the performance of their duties for times when they were not
5 engaged in active duties that require standing. In other words, to the extent Plaintiff and other
6 non-party Aggrieved Employees engaged in duties in which the nature of the work required
7 standing, Defendants denied them the use of seats nearby when they were not engaged in
8 those duties. Even though the layout of Defendants' workplaces could accommodate seats or
9 stools with reasonable or no modification to these work areas, Defendants have, on a
10 company-wide basis, denied Plaintiff and other non-party Aggrieved Employees suitable
11 seating altogether.

12 108. As a result of Defendants' company-wide policy and/or practice prohibiting
13 employees from sitting at any time, even when they were not engaged in active duties
14 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
15 work areas, Plaintiff and other non-party Aggrieved Employees were forced to stand during
16 shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiff and other
17 non-party Aggrieved Employees violated and continues to violate California Labor Code
18 section 1198 and IWC Wage Order 5-2001, Section 14(B).

19 109. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
20 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

21 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

22 **VIOLATION OF LABOR CODE SECTION 2802**

23 110. At all times herein set forth, California Labor Code section 2802 provides that
24 an employer must reimburse employees for all necessary expenditures and losses incurred by
25 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
26 to prevent employers from passing off their cost of doing business and operating expenses on
27 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
28 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: "[w]hen the

1 employer requires the use of tools or equipment or they are necessary to the performance of a
2 job, such tools and equipment shall be provided and maintained by the employer, except that
3 an employee whose wages are at least two (2) times the minimum wage may provide and
4 maintain hand tools and equipment customarily required by the particular trade or craft.”

5 111. During the relevant time period, Defendants, on a company-wide basis,
6 required to purchase basic office supplies that were necessary for completion of assigned
7 tasks. For example, Plaintiff was required to buy pens in order to take down customers’
8 orders and spent \$50-\$60 each year on this expense. Defendants failed to provide basic
9 supplies to Plaintiff and other non-party Aggrieved Employees, forcing them to procure their
10 own, and failed to reimburse Plaintiff and other non-party Aggrieved Employees for the costs
11 of these supplies.

12 112. Additionally, as stated, Defendants had a company-wide policy and/or practice
13 of requiring other non-party Aggrieved Employees to travel in their own personal vehicles to
14 medical facilities to undergo mandatory drug testing and/or physical examinations, but did not
15 reimburse them for their travel expenses, including mileage. Although Defendants required
16 other non-party Aggrieved Employees to undergo drug testing and/or physical examinations,
17 Defendants failed to reimburse them for these expenses.

18 113. Defendants could have provided Plaintiff and other non-party Aggrieved
19 Employees with the actual tools for use on the job, including company vehicles and office
20 supplies, or, Defendants could have reimbursed employees for the costs of their travel,
21 mileage, and office supply expenses, but instead, Defendants passed these operating costs off
22 onto Plaintiff and other non-party Aggrieved Employees. Thus, Defendants had, and continue
23 to have, a company-wide policy and/or practice of not reimbursing employees for expenses
24 necessarily incurred. At all relevant times, Plaintiff did not earn at least two (2) times the
25 minimum wage.

26 114. Defendants’ company-wide policy and/or practice of passing on their operating
27 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
28 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and

1 other non-party Aggrieved Employees for necessary business-related expenses and costs.

2 115. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
3 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

4 **REQUEST FOR JURY TRIAL**

5 Plaintiff requests a trial by jury.

6 **PRAYER FOR RELIEF**

7 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
8 judgment against Defendants, jointly and severally, as follows:

9 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
10 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

11 **As to the First Cause of Action**

12 2. That the Court declare, adjudge and decree that Defendants violated the
13 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
14 Employees: 226.2 (by failing to separately compensate for rest periods and other
15 nonproductive time); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum
16 wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal
17 periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a),
18 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate
19 payroll records); 201, 202, 203 (by failing timely to pay all earned wages upon termination);
20 204 (by failing timely to pay all earned wages during employment); 221 and 224 (by
21 collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than
22 required by statute); 222.5 (by failing to pay for costs of mandatory physical examinations
23 and/or drug testing); 1198 (by failing to provide suitable seating); and 2802 (by failing to
24 reimburse business expenses).

25 3. For civil penalties, pursuant to California Labor Code sections 210, 225.5,
26 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
27 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a), 226.2, 226.7, 512(a), 516, 1174(d), 1182.12,
28 1194, 1197, 1198, and 2802;

1 4. For attorneys' fees and costs pursuant to California Labor Code section
2 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
3 Labor Code sections 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a), 226.2, 226.7, 512(a),
4 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

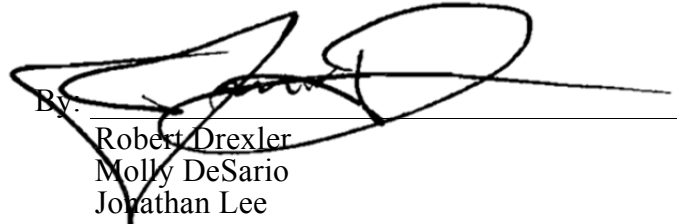
5 5. For pre-judgment and post-judgment interest as provided by law; and

6 6. For such other and further relief as the Court may deem equitable and
7 appropriate.

8
9 Dated: June 8, 2020

Respectfully submitted,

Capstone Law APC

11
12  By: _____
13 Robert Drexler
14 Molly DeSario
15 Jonathan Lee

Attorneys for Plaintiff Walter Cuellar

Exhibit 1

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

April 3, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Walter Cuellar v. Mor Furniture for Less, Inc.*

Dear PAGA Administrator:

This office represents Walter Cuellar in connection with his claims under the California Labor Code. Mr. Cuellar was an employee of MOR FURNITURE FOR LESS, INC. ("MOR").

The employer may be contacted directly at the address below:

MOR FURNITURE FOR LESS, INC.
6965 CONSOLIDATED WAY
SAN DIEGO CA 92121

Mr. Cuellar intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Cuellar seeks relief on behalf of himself, the State of California, and other persons who are or were employed by MOR as a non-exempt, commissions-paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

MOR employed Mr. Cuellar as a non-exempt, commissions-paid employee from approximately October 2010 to April 2019. Mr. Cuellar worked for MOR as a Sales at the MOR retail store located in Rancho Cucamonga, California. During his employment, Mr. Cuellar typically worked eight (8) to eleven (11) hours or more per day, four (4) to five (5) days per week, from 9:00 a.m. to 5:00 p.m. or later. At the time his employment ended, Mr. Cuellar was compensated on a commission basis, earning five (5) percent of his sales (furniture delivered) or an hourly draw or "guarantee" of approximately \$15.00, whichever was greater. His job duties included, without limitation, selling furniture and tracking sales and deliveries to customers.

MOR committed one or more of the following Labor Code violations against Mr. Cuellar, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

MOR’s Company-Wide and Uniform Payroll and HR Practices

MOR FURNITURE FOR LESS, INC. is a California corporation and one of the largest furniture retailers in the United States. MOR has approximately 50 retail stores nationwide, with 15 store locations in California. Upon information and belief, MOR maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Diego, California, for all non-exempt, commissions-paid employees working for MOR in California, including Mr. Cuellar and other aggrieved employees. At all relevant times, MOR issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, commissions-paid employees in California, including Mr. Cuellar and other aggrieved employees, regardless of its location or position.

Upon information and belief, MOR maintains a centralized Payroll department at its corporate headquarters in San Diego, California, which processes payroll for all non-exempt, commissions-paid employees working for MOR in California, including Mr. Cuellar and other aggrieved employees. Further, MOR issues the same formatted wage statements in the same manner for all non-exempt, commissions-paid employees working in California, including Mr. Cuellar and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, MOR utilized the same methods and formulas when calculating wages due to Mr. Cuellar and other aggrieved employees in California.

Violation of California Labor Code § 226.2 – Failure to Separately Compensate for Rest Periods and Other Nonproductive Time

California Labor Code section 226.2 requires employers that utilize a piece-rate compensation plan to separately compensate employees for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates. Labor Code section 226.2 further requires that employers provide employees compensated on a piece-rate basis with itemized statements stating the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and the total hours of other nonproductive time, as specified, the rate of compensation, and the gross wages paid for that time during the pay period. Under California law, employers who pay employees on a commission basis must separately compensate them for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates. *Vaquero v. Stoneledge Furniture, LLC*, 9 Cal.App.5th 98, 108 (2017).

During the relevant time period, MOR adopted a company-wide compensation plan whereby it has paid Mr. Cuellar and other aggrieved employees on a commission basis for the sales and delivery of

¹ These facts, theories, and claims are based on Mr. Cuellar’s experience and counsel’s review of those records currently available relating to Mr. Cuellar’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Cuellar reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

furniture. *See infra*. On information and belief, MOR did not record their actual hours worked and/or did not pay them for all hours that they worked. Thus, MOR failed to separately compensate Mr. Cuellar and other aggrieved employees for all nonproductive time, including, but not limited to, such non-selling activities as handling returns for repeat customers and providing post-sales customer service. In addition, MOR had, and continues to have, a company-wide policy of failing to separately pay Mr. Cuellar and other aggrieved employees for rest periods as required by law. During the relevant time period, MOR never separately paid Mr. Cuellar and other aggrieved employees paid on a commission-only basis for rest periods.

On information and belief, MOR also failed to provide Mr. Cuellar and other aggrieved employees with itemized statements listing the total hours of all nonproductive time and total hours of compensable rest periods, and other required details regarding payment for nonproductive time and rest periods. MOR further did not provide Mr. Cuellar and other aggrieved employees with itemized statements showing the rates at which they were paid for compensable nonproductive time and rest periods.

MOR's failure to separately compensate Mr. Cuellar and other aggrieved employees for rest periods and other nonproductive time at or above specified minimum hourly rates, as well as MOR's failure to provide Mr. Cuellar and other aggrieved employees with the requisite itemized statements, violates Labor Code section 226.2.

Mr. Cuellar and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

First, during the relevant time period, MOR implemented a company-wide compensation plan for commissioned employees that systematically failed to compensate Mr. Cuellar and other aggrieved employees for all hours worked. As previously stated, MOR did not record Mr. Cuellar's and other aggrieved employees' actual hours worked and/or did not pay them for all hours that they worked. Specifically, MOR required Mr. Cuellar and other aggrieved employees paid on a commission basis to perform other non-commission producing activities without compensation. MOR had a company-wide policy of pressuring Mr. Cuellar and other aggrieved employees to maintain a monthly sales quota based on the amount of furniture delivered ("minimum delivered business"), upon threat of termination. Toward the end of his employment, Mr. Cuellar was required to deliver \$57,500 worth of furniture per each 28-day period, but furniture was not delivered in a predictable manner, as many items he sold could be out of stock for long periods of time. This resulted in Mr. Cuellar and other aggrieved employees having to remain available for customers' and supervisors' requests at all times in order to meet this quota, by keeping current and potential customers satisfied at all times while selling as much inventory as possible. This practice and/or policy of requiring employees to meet monthly sales quotas resulted in Mr. Cuellar and other aggrieved employees performing work-related

tasks while off-the-clock. For example, every few months, Mr. Cuellar would be required to write up sales for return customers after he had clocked out for the day. Thus, MOR failed to record the time spent by Mr. Cuellar and other aggrieved employees on nonproductive tasks, such as processing returns for repeat customers and providing post-sales customer service, and, as a result, failed to pay them for all hours worked when they received commissions in lieu of the hourly draw. MOR also failed to separately pay Mr. Cuellar and other aggrieved employees for rest periods.

Second, MOR, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Mr. Cuellar and/or other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of these policies and/or practices, Mr. Cuellar and other aggrieved employees were required to work during and/or to return early from meal periods, in order to complete their assigned tasks, such as closing a deal with a customer. Moreover, on information and belief, because MOR frowned upon employees accruing meal period penalties, when Mr. Cuellar and other aggrieved employees failed to clock themselves out at their designated meal period start times, they were subject to MOR altering their time records and deducting time for meal periods that were not taken. Alternatively, MOR's management falsified employee time records by clocking out Mr. Cuellar and other aggrieved employees at designated start and end times to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that MOR would otherwise owe. Consequently, Mr. Cuellar and other aggrieved employees performed work during meal periods for which they were not paid.

Third, during the relevant time period, MOR also maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug tests and/or physical examinations. At all times, upon information and belief, MOR was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider/facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. However, MOR did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Accordingly, MOR regularly failed to pay at least minimum wages to Mr. Cuellar and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Cuellar and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest period and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53

Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, MOR had, and continues to have, company-wide policies and/or practices of pressuring employees to meet a monthly sales quota, upon threat of termination, which impeded Mr. Cuellar and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, MOR, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Mr. Cuellar and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Cuellar and other aggrieved employees were forced to forego meal periods and/or have their meal periods interrupted by work or delayed by work, and were not relieved of all duties for unpaid meal periods, in order to attend their assigned tasks, such as closing a deal with a customer. Mr. Cuellar and other aggrieved employees had to remain available to respond to requests from current or potential customers or to assist managers with sales, including during their meal periods. For example, two to three times a month, Mr. Cuellar would work over five (5) hours straight before MOR permitted him to take his meal period. As a further example, twice a month, Mr. Cuellar would clock out for his meal period, but would be required to return to work in order to respond to requests from his manager to attend to customers. Additionally, as stated, because MOR frowned upon employees accruing meal period penalties, upon information and belief, MOR's management would adjust employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by MOR.

Furthermore, MOR did not schedule second meal periods and had no policy for permitting Mr. Cuellar and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. As a result, Mr. Cuellar and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Cuellar and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

MOR knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Cuellar and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. MOR further knew or should have known that it did not pay Mr. Cuellar and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, MOR engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Cuellar and other aggrieved employees did not receive premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that MOR did pay meal period premium wages to Mr. Cuellar and other aggrieved employees one (1) additional hour of premium pay for missed meal periods, MOR did not pay Mr. Cuellar and other aggrieved employees at the correct rate of pay for premium wages because MOR systematically failed to include all forms of compensation, such as commissions, nondiscretionary bonuses, incentive pay, and/or other forms of remuneration, in the regular rate of pay. As a result, to the extent MOR paid Mr. Cuellar and other aggrieved employees premium pay for missed meal periods, it did so at a lower rate than required by law. As a

result, MOR failed to provide Mr. Cuellar and other aggrieved employees compliant meal periods and failed to pay the full meal period premiums due.

Accordingly, MOR failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Cuellar and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “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” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, MOR regularly failed to authorize and permit Mr. Cuellar and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, MOR's company-wide practices, including assigning sales quotas, prevented Mr. Cuellar and other aggrieved employees from being relieved of all duty to take compliant rest periods. MOR also failed to schedule rest periods, which further led to Mr. Cuellar and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Additionally, MOR maintained and implemented a company-wide practice and/or policy requiring that Mr. Cuellar and other aggrieved employees remain on MOR's premises during their rest periods. Because Mr. Cuellar and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, MOR effectively maintained control over Mr. Cuellar and other aggrieved employees during rest periods, and as result of this rest period policy, MOR did not relinquish control over Mr. Cuellar and other aggrieved employees during rest periods.

As a result of MOR's practices and policies, Mr. Cuellar and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his employment, Mr. Cuellar missed his rest periods, due to MOR's sales quotas, heavy workload, and failure to schedule rest periods.

MOR also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this

practice and/or policy, Mr. Cuellar and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that MOR did pay rest period premium wages to Mr. Cuellar and other aggrieved employees, it did so at the incorrect rates. Because MOR did not properly calculate Mr. Cuellar's and other aggrieved employees' regular rates of pay by including all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, MOR failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Cuellar and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. MOR has not provided Mr. Cuellar and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, MOR has knowingly and intentionally provided Mr. Cuellar and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, MOR issued uniform wage statements to Mr. Cuellar and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, MOR violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because MOR did not record the time Mr. Cuellar and other aggrieved employees spent working off-the-clock, deducted time from Mr. Cuellar's and other aggrieved employees' records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), and failed to provide itemized statements listing the total hours of all nonproductive time and other required details regarding payment for nonproductive time, MOR did not list the correct amount of gross wages and net wages earned by Mr. Cuellar and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, MOR failed to accurately list the total number of hours worked by Mr. Cuellar and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, 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, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), MOR willfully failed to maintain accurate payroll records for Mr. Cuellar and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, MOR failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Cuellar and other aggrieved employees, in violation of section 1198. As stated, MOR engaged in a company-wide practice and/or policy of falsifying Mr. Cuellar’s and other aggrieved employees’ time records by deducting meal periods or recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Cuellar and other aggrieved employees. Furthermore, in light of MOR’s failure to provide Mr. Cuellar and other aggrieved employees with second 30-minute meal periods to which they were entitled, MOR kept no records of meal start and end times for second meal periods.

Because MOR failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Cuellar and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Cuellar and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Cuellar and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, MOR failed to pay Mr. Cuellar and other aggrieved employees all wages due to them, including, but not limited to, minimum wages, compensation for rest periods and other nonproductive time, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Cuellar and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

On information and belief, MOR has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Cuellar was terminated on or about April 5, 2019. However, MOR did not provide him with his final paycheck until approximately one week later, on April 11, 2019. Thus, MOR failed to pay Mr. Cuellar his final wages immediately, in violation of Labor Code section 201.

Additionally, MOR willfully failed to pay Mr. Cuellar and other aggrieved employees who are no longer employed by MOR all their earned wages, including, but not limited to, minimum wages, compensation for rest periods and other nonproductive time, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving MOR's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Cuellar and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it 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 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee." During the relevant time period, MOR unlawfully deducted a portion of wages previously paid to Mr. Cuellar and other aggrieved employees in violation of California Labor Code section 221.

MOR systematically, and on a company-wide basis, maintained a compensation plan that improperly deducted wages from Mr. Cuellar's and other aggrieved employees' wages. MOR had a company-wide policy of allowing customers to cancel orders and/or return merchandise after several months, and would deduct commissions or incentives earned from employees' wages after the merchandise was originally sold by the employee. These deductions were not expressly authorized in writing by Mr. Cuellar and other aggrieved employees. Thus, MOR's policy of deducting commission chargebacks or incentive payments from Mr. Cuellar's and other aggrieved employees' wages constitutes an unlawful deduction of wages in violation of California Labor Code sections 221 and 224.

Mr. Cuellar and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, as stated above, MOR implemented a policy of failing to pay for rest periods and other nonproductive time and deducting commission chargebacks or incentive payments from employees' wages, which, on information and belief, resulted in the payment of less than statutorily required wages to Mr. Cuellar and other aggrieved employees. In doing so, MOR acted with the intent to deprive Mr. Cuellar and other aggrieved employees of statutory wages, including, but not limited to, minimum wages and compensation for rest periods and other nonproductive time, to which they were entitled to under California law. Thus, MOR paid Mr. Cuellar and other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Cuellar and other aggrieved employees were properly paid.

Mr. Cuellar and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, MOR implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug tests and/or physical examinations, but required them to do so at their own expense. As stated, MOR had a company-wide

policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, MOR was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider/facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug test and/or physical examinations.

However, MOR did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. MOR's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

MOR's California retail stores are generally similar in their layout and design and there was, and continues to be, space near their work areas to allow for the presence and use of a seat or stool by Mr. Cuellar and other aggrieved employees during lulls in operation. MOR could provide Mr. Cuellar and other aggrieved employees with a seat or stool in its work areas, with reasonable or no modification to these work areas, but instead denies employees seating and forces Mr. Cuellar and other aggrieved employees to stand throughout the day.

MOR did not provide Mr. Cuellar and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Cuellar and other aggrieved employees engaged in duties in which the nature of the work required standing, MOR denied them the use of seats nearby during

lulls in their work duties. Moreover, MOR did not inform Mr. Cuellar and other aggrieved employees of their rights to a seat or stool under California law.

As a result of MOR's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, and Mr. Cuellar and other aggrieved employees were forced to stand during shifts and denied seats. MOR's failure to provide suitable seating to Mr. Cuellar and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(B).

Mr. Cuellar and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring MOR into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: "[w]hen 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, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, MOR, on a company-wide basis, required Mr. Cuellar and other aggrieved employees to purchase basic office supplies that were necessary for completion of assigned tasks. For example, Mr. Cuellar was required to buy pens in order to take down customers' orders and spent \$50-\$60 each year on this expense. MOR failed to provide basic supplies to Mr. Cuellar and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Cuellar and other aggrieved employees for the costs of these supplies.

Additionally, as stated, MOR had a company-wide policy and/or practice of requiring other aggrieved employees to travel in their own personal vehicles to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses. Although MOR required other aggrieved employees to undergo drug testing and/or physical examinations, MOR failed to reimburse them for these expenses.

MOR could have provided Mr. Cuellar and other aggrieved employees with the actual tools for use on the job, such as company vehicles and office supplies, or, MOR could have reimbursed employees for their travel, mileage, and office supply expenses. Instead, MOR passed these operating costs off onto Mr. Cuellar and other aggrieved employees.

Thus, MOR had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Cuellar and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[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 . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” MOR, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Cuellar’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Cuellar seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Cuellar, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against MOR for violations of California Labor Code sections 201, 202, 203, 204, 221, 222.5, 223, 224, 226(a), 226.2, 226.7, 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Cuellar seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Cuellar’s reasonable attempt to settle his dispute with MOR prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform MOR of Mr. Cuellar’s aforementioned grievances and the proposed remedies as detailed below, while affording MOR a reasonable opportunity to satisfy Mr. Cuellar’s demands.

Demand is hereby made that MOR shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. MOR shall pay Mr. Cuellar and all other aggrieved employees employed by MOR at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. MOR shall comply with all California labor laws and ensure that its non-exempt employees are paid minimum wages for all hours worked and compensation for rest periods and other nonproductive time, and provided lawful meal and rest periods.
3. MOR shall conduct a survey or interview all current and former aggrieved employees in California who worked for MOR in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mandatory medical

examinations, travel, and office supply expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. MOR shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. MOR also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. MOR shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for MOR's benefit, including, but not limited to, costs of mandatory medical examinations, travel, and office supply expenses, as required by Labor Code sections 222.5 and 2802.
6. MOR shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful practice of utilizing commission chargebacks, including unlawful deductions (Labor Code sections 221 and 224) and secret payment of lower wages (Labor Code section 223).
7. MOR shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. MOR shall provide Mr. Cuellar and all aggrieved employees employed by MOR at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. MOR shall implement and provide suitable seating to all aggrieved employees.
10. MOR shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
11. MOR shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, 1199, and 2699, and Wage Order No. 7-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Mao Shiokura' with a stylized flourish at the end.

Mao Shiokura

Copy: MOR FURNITURE FOR LESS, INC. (via U.S. Certified Mail)

CERTIFIED MAIL®



7015 0640 0006 1449 0498

tone

LAW APC

1000
Park East, Ste 1000
San Diego, CA 90067

MOR FURNITURE FOR LESS, INC.
6965 CONSOLIDATED WAY
SAN DIEGO CA 92121



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MOR FURNITURE FOR LESS, INC.
6965 CONSOLIDATED WAY
SAN DIEGO CA 92121



9590 9402 4882 9032 7447 55

2. Article Number (Transfer from service label)

7015 0640 0006 1449 0498

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

MOR FURNITURE FOR LESS, INC.

Street and Apt. No., or PO Box No.

6965 CONSOLIDATED WAY

City, State, ZIP+4®

SAN DIEGO CA 92121

Postmark
Here

Cuellar v. Mor
Furniture for
Less, Inc.

7015 0640 0006 1449 0498

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MOR FURNITURE FOR LESS, INC.
6965 CONSOLIDATED WAY
SAN DIEGO CA 92121



9590 9402 4882 9032 7447 55

2. Article Number (Transfer from service label)

7015 0640 0006 1449 0498

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Address

B. Received by (Printed Name)

C. Date of Delivery

4-6-20

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation

☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt