

Robert Drexler (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
Molly A. DeSario (SBN 230763)
Molly.DeSario@CapstoneLawyers.com
Jonathan Lee (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Roger Wood

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BY FAX

ROGER WOOD, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

LIVING SPACES FURNITURE, LLC, a
Delaware limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 20STCV16498

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 24 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By , Deputy
Steven Drew

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Labor Code, Pursuant to PAGA, §§ 2698,
et seq.;
- (10) Violation of California Business &
Professions Code §§ 17200, *et seq.*
(Unlawful Business Practices); and
 - (11) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

1 Plaintiff Roger Wood, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants filed a Statement of
5 Information with the California Secretary of State designating a principal place of business in
6 La Mirada, County of Los Angeles, in accordance with California Corporations Code section
7 2105(a)(3). Venue is also proper in this Court because Defendants employ persons in this
8 county, and thus a substantial portion of the transactions and occurrences related to this action
9 occurred in this county.

10 **THE PARTIES**

11 4. Plaintiff Roger Wood is a resident of Moreno Valley, in Riverside County,
12 California. Defendants employed Plaintiff as an hourly paid, non-exempt Yard Goat Driver,
13 Selector Picker, and CPU ("Customer Service PickUps") from approximately October 2019 to
14 December 2019. Plaintiff worked for Defendants at a Living Spaces location in Perris,
15 California. During his employment, Plaintiff typically worked eight (8) hours or more per day
16 and five (5) days or more per week. Plaintiff's primary job duties included, without
17 limitation, moving and packing trailers into docks and around the yard; picking up and loading
18 furniture using a forklift; and fulfilling customers' pickup orders.

19 5. LIVING SPACES FURNITURE, LLC was and is, upon information and belief,
20 a Delaware limited liability company, and at all times hereinafter mentioned, an employer
21 whose employees are engaged throughout this county, the State of California, or the various
22 states of the United States of America.

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

27 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
28 were the partners, agents, owners, or managers of LIVING SPACES FURNITURE, LLC at all

1 relevant times.

2 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
3 acts and omissions alleged herein was performed by, or is attributable to, LIVING SPACES
4 FURNITURE, LLC and/or DOES 1 through 10 (collectively, “Defendants” or “LIVING
5 SPACES”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working
6 in concert with, each of the other co-Defendants and was acting within the course and scope of
7 such agency, employment, joint venture, or concerted activity with legal authority to act on
8 the others’ behalf. The acts of any and all Defendants were in accordance with, and represent,
9 the official policy of Defendants.

10 9. At all relevant times, Defendants, and each of them, ratified each and every act
11 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
12 and abetted the acts and omissions of each and all the other Defendants in proximately causing
13 the damages herein alleged.

14 10. Plaintiff is informed and believes, and thereon alleges, that each of said
15 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
16 omissions, occurrences, and transactions alleged herein.

17 **GENERAL ALLEGATIONS**

18 11. Defendants are a home furnishings retailer catering to customers in California,
19 Nevada, Arizona, and Texas. Upon information and belief, Defendants maintain a single,
20 centralized Human Resources (“HR”) department at their company headquarters in La Mirada,
21 California, which is responsible for the recruiting and hiring of new employees, and
22 communicating and implementing Defendants’ company-wide policies, including timekeeping
23 policies and meal and rest period policies, to employees throughout California.

24 12. In particular, Plaintiff and class members, on information and belief, received
25 the same standardized documents and/or written policies. Upon information and belief, the
26 usage of standardized documents and/or written policies, including new-hire documents,
27 indicate that Defendants dictated policies at the corporate level and implemented them
28 company-wide, regardless of their employees’ assigned locations or positions. Upon

1 information and belief, Defendants set forth uniform policies and procedures in several
2 documents provided at an employee's time of hire.

3 13. Upon information and belief, Defendants maintain a centralized Payroll
4 department at their company headquarters in La Mirada, California, which processes payroll
5 for all non-exempt, hourly paid employees working for Defendants at their various locations
6 and jobsites in California, including Plaintiff and class members. Based upon information and
7 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
8 employees in California, irrespective of their work locations. Upon information and belief,
9 Defendants process payroll for departing employees in the same manner throughout the State
10 of California, regardless of the manner in which each employee's employment ends.

11 14. Defendants continue to employ non-exempt or hourly paid employees in
12 California.

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

17 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
18 members were not paid for all hours worked because all hours worked were not recorded.

19 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive certain wages for
21 overtime compensation and that they were not receiving certain wages for overtime
22 compensation.

23 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to receive at least minimum
25 wages for compensation and that they were not receiving at least minimum wages for work
26 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
27 and class members were not paid at least minimum wages for work done off-the-clock.

28 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to meal periods in
2 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
3 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
4 periods and that Plaintiff and class members were not provided with all meal periods or
5 payment of one (1) additional hour of pay at their regular rates of pay when they did not
6 receive a timely, uninterrupted, thirty (30) minute meal period.

7 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to rest periods in
9 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
10 additional hour of pay at their regular rates of pay when they were not authorized and
11 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
12 and class members were not authorized and permitted to take compliant rest periods, nor did
13 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
14 pay at their regular rates of pay when they were not authorized and permitted to take a
15 compliant rest period.

16 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to receive complete and
18 accurate wage statements in accordance with California law. In violation of the California
19 Labor Code, Plaintiff and class members were not provided complete and accurate wage
20 statements.

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

25 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to timely payment of all
27 wages earned upon termination of employment. In violation of the California Labor Code,
28 Plaintiff and class members did not receive payment of all wages due, including, but not

1 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
2 permissible time periods.

3 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to timely payment of wages
5 during their employment. In violation of the California Labor Code, Plaintiff and class
6 members did not receive payment of all wages, including, but not limited to, overtime wages,
7 minimum wages, and/or meal and rest period premiums, within permissible time periods.

8 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
10 and expenses Plaintiff and class members incurred obtaining mandatory physical examinations
11 and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

12 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to receive full
14 reimbursement for all business-related expenses and costs they incurred during the course and
15 scope of their employment and that they did not receive full reimbursement of applicable
16 business-related expenses and costs incurred.

17 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants knew or should have known that Defendants had a duty to provide
19 Plaintiff and class members with written notice of the material terms of their employment with
20 Defendants as required by the California Wage Theft Prevention Act, but willfully,
21 knowingly, and intentionally failed to do so.

22 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
23 mentioned, Defendants knew or should have known that they had a duty to compensate
24 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
25 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
26 falsely represented to Plaintiff and class members that they were properly denied wages, all in
27 order to increase Defendants' profits.

28 //

PAGA REPRESENTATIVE ALLEGATIONS

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

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

31. Plaintiff and other current and former employees of Defendants are “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former employees and one or more of the alleged violations were committed against them.

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.
- (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of the postmark date of the aggrieved employee’s notice. Upon receipt of

1 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
2 (65) calendar days of the postmark date of the aggrieved employee's
3 notice, the aggrieved employee may commence a civil action pursuant
4 to California Labor Code section 2699 to recover civil penalties.

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

- 9 (a) The aggrieved employee or representative shall give written notice by
10 online filing with the LWDA and by certified mail to the employer of
11 the specific provisions of the California Labor Code alleged to have
12 been violated (other than those listed in Section 2699.5), including the
13 facts and theories to support the alleged violation.
- 14 (b) An aggrieved employee's notice filed with the LWDA pursuant to
15 2699.3(c) and any employer response to that notice shall be
16 accompanied by a filing fee of seventy-five dollars (\$75).
- 17 (c) The employer may cure the alleged violation within thirty-three (33)
18 calendar days of the postmark date of the notice sent by the aggrieved
19 employee or representative. The employer shall give written notice
20 within that period of time by certified mail to the aggrieved employee or
21 representative and by online filing with the LWDA 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 aggrieved employee may
25 commence a civil action pursuant to Section 2699.

26 34. On May 19, 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 confirmed receipt of Plaintiff's written notice and assigned
4 Plaintiff PAGA Case Number LWDA-CM-787160-20. A true and correct copy of Plaintiff's
5 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

9 36. Thus, Plaintiff has satisfied the administrative prerequisites under California
10 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
11 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
12 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

13 37. Labor Code section 558(a) provides "[a]ny employer or other person acting on
14 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
15 provision regulating hours and days of work in any order of the Industrial Welfare
16 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
17 dollars (\$50) for each underpaid employee for each pay period for which the employee was
18 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
19 underpaid employee for each pay period for which the employee was underpaid" Labor
20 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
21 to any other civil or criminal penalty provided by law."

22 38. Defendants, at all times relevant to this complaint, were employers or persons
23 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
24 rights by violating various sections of the California Labor Code as set forth above.

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

28 40. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),

1 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
2 private attorney general, seeks assessment and collection of civil penalties for himself, all
3 other aggrieved employees, and the State of California against Defendants for violations of
4 California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516,
5 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

6 **CLASS ACTION ALLEGATIONS**

7 41. Plaintiff brings this action on his own behalf, as well as on behalf of each and
8 all other persons similarly situated, and thus seeks class certification under California Code of
9 Civil Procedure section 382.

10 42. All claims alleged herein arise under California law for which Plaintiff seeks
11 relief authorized by California law.

12 43. Plaintiff's proposed class consists of and is defined as follows:

13 All persons who worked for Defendants as non-exempt, hourly
14 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

15 44. Plaintiff's proposed subclass consists of and is defined as follows:

16 All persons who worked for Defendants as non-exempt, hourly
17 paid employees in California and who received at least one wage
18 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

19 45. Members of the Class and Subclass are referred to herein as "class members."

20 46. Plaintiff reserves the right to redefine the Class and Subclass and to add
21 additional subclasses as appropriate based on further investigation, discovery, and specific
22 theories of liability.

23 47. There are common questions of law and fact as to class members that
24 predominate over questions affecting only individual members, including, but not limited to:

- 25 (a) Whether Defendants required Plaintiff and class members to work over
26 eight (8) hours per day, over twelve (12) hours per day, or over forty
27 (40) hours per week and failed to pay all legally required overtime
28 compensation to Plaintiff and class members;

- 1 (b) Whether Defendants failed to pay Plaintiff and class members at least
2 minimum wages for all hours worked;
- 3 (c) Whether Defendants failed to provide Plaintiff and class members with
4 meal periods;
- 5 (d) Whether Defendants failed to authorize and permit Plaintiff and class
6 members to take rest periods;
- 7 (e) Whether Defendants provided Plaintiff and class members with
8 complete and accurate wage statements as required by California Labor
9 Code section 226(a);
- 10 (f) Whether Defendants maintained accurate payroll records as required by
11 California Labor Code section 1174(d);
- 12 (g) Whether Defendants failed to pay earned overtime wages, minimum
13 wages, and meal and rest period premiums due to Plaintiff and class
14 members upon their discharge;
- 15 (h) Whether Defendants failed timely to pay overtime wages, minimum
16 wages, and meal and rest period premiums to Plaintiff and class
17 members during their employment;
- 18 (i) Whether Defendants failed to pay Plaintiff and class members for the
19 costs of mandatory physical examinations and/or drug testing;
- 20 (j) Whether Defendants failed to reimburse Plaintiff and class members for
21 necessary and required business-related expenditures and/or losses
22 incurred by them in the scope of their employment;
- 23 (k) Whether Defendants failed to provide written notice of information
24 material to Plaintiff's and class members' employment with Defendants;
- 25 (l) Whether Defendants engaged in unlawful and unfair business practices
26 in violation of California Business & Professions Code sections 17200,
27 *et seq.*; and
- 28 (m) The appropriate amount of damages, restitution, or monetary penalties

1 resulting from Defendants' violations of California law.

2 48. There is a well-defined community of interest in the litigation and the class
3 members are readily ascertainable:

- 4 (a) Numerosity: The class members are so numerous that joinder of all
5 members would be unfeasible and impractical. The membership of the
6 entire class is unknown to Plaintiff at this time; however, the class is
7 estimated to be greater than one hundred (100) individuals and the
8 identity of such membership is readily ascertainable by inspection of
9 Defendants' employment records.
- 10 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
11 protect the interests of each class member with whom he has a well-
12 defined community of interest, and Plaintiff's claims (or defenses, if
13 any) are typical of all class members as demonstrated herein.
- 14 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
15 protect the interests of each class member with whom he has a well-
16 defined community of interest and typicality of claims, as demonstrated
17 herein. Plaintiff acknowledges that he has an obligation to make known
18 to the Court any relationship, conflicts or differences with any class
19 member. Plaintiff's attorneys, the proposed class counsel, are versed in
20 the rules governing class action discovery, certification, and settlement.
21 Plaintiff has incurred, and throughout the duration of this action, will
22 continue to incur costs and attorneys' fees that have been, are, and will
23 be necessarily expended for the prosecution of this action for the
24 substantial benefit of each class member.
- 25 (d) Superiority: The nature of this action makes the use of class action
26 adjudication superior to other methods. A class action will achieve
27 economies of time, effort, and expense as compared with separate
28 lawsuits, and will avoid inconsistent outcomes because the same issues

1 can be adjudicated in the same manner and at the same time for the
2 entire class.

3 (e) Public Policy Considerations: Employers in the State of California
4 violate employment and labor laws every day. Current employees are
5 often afraid to assert their rights out of fear of direct or indirect
6 retaliation. Former employees are fearful of bringing actions because
7 they believe their former employers might damage their future
8 endeavors through negative references and/or other means. Class
9 actions provide the class members who are not named in the complaint
10 with a type of anonymity that allows for the vindication of their rights
11 while simultaneously protecting their privacy.

12 **FIRST CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

14 **(Against all Defendants)**

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

17 50. Labor Code section 1198 makes it illegal to employ an employee under
18 conditions of labor that are prohibited by the applicable wage order. California Labor Code
19 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
20 be the . . . standard conditions of labor for employees. The employment of any employee . . .
21 under conditions of labor prohibited by the order is unlawful.”

22 51. California Labor Code section 1198 and the applicable IWC Wage Order
23 provide that it is unlawful to employ persons without compensating them at a rate of pay
24 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
25 number of hours worked by the person on a daily or weekly basis.

26 52. Specifically, the applicable IWC Wage Order provides that Defendants are and
27 were required to pay Plaintiff and class members working more than eight (8) hours in a day
28 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all

1 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
2 workweek.

3 53. The applicable IWC Wage Order further provides that Defendants are and were
4 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
5 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
6 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
7 employee, including nondiscretionary bonuses and incentive pay.

8 54. California Labor Code section 510 codifies the right to overtime compensation
9 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
10 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
11 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
12 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
13 in a day on the seventh (7th) day of work.

14 55. First, during the relevant time period, Defendants willfully failed to pay all
15 overtime wages owed to Plaintiff and class members. During the relevant time period,
16 Plaintiff and class members were not paid overtime premiums for all of the hours they worked
17 in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess
18 of forty (40) hours in a week, because all hours worked were not recorded.

19 56. First, during the relevant period, Defendants had, and continue to have, a
20 company-wide policy and/or practice of assigning heavy workloads and/or quotas, resulting in
21 a lack of adequate meal period coverage. On information and belief, for example, Defendants
22 imposed quotas on Plaintiff and class members to meet strict hourly metrics for "picking" or
23 "selecting" furniture. Additionally, Defendants had a policy and/or practice of requiring that
24 Plaintiff and class members carry a company-issued radio at all times in order to respond to
25 calls from supervisors and management, even during unpaid meal periods. Defendants'
26 supervisors and management contacted Plaintiff and class members on their radios during
27 their meal periods to discuss work-related matters. Thus, Plaintiff and class members were
28 required to perform their duties, such as meeting their quotas, responding to their company-

1 issued radios, and continuing to assist customers, during unpaid meal periods, or would have
2 their meal periods interrupted to complete such work-related tasks. As a result, Plaintiff and
3 class members were not always afforded uninterrupted 30-minute meal periods during shifts
4 when they were entitled to receive a meal period. Defendants did not pay Plaintiff and class
5 members for the time they continued to perform tasks during meal periods.

6 57. Moreover, Defendants had a practice of failing to schedule meal periods, which
7 further caused Plaintiff and class members to not be relieved of their duties for compliant
8 meal periods. Also, Defendants' company-wide timekeeping system further prevented
9 Plaintiff and class members from recording all hours worked when their meal periods were
10 shortened or interrupted because the system locked Plaintiff and class members out once they
11 clocked out for a meal period and would not permit them to clock back in from a meal before
12 30 minutes elapsed. Consequently, Plaintiff and class members performed work during meal
13 periods for which they were not paid.

14 58. Second, Defendants had, and continue to have, a company-wide policy and/or
15 practice of requiring Plaintiff and class members to perform tasks off-the-clock, such as
16 traveling to attend mandatory training or meetings. For example, Plaintiff was required to
17 drive his own vehicle for 45-60 minutes roundtrip to and from a mandatory two-day CPU
18 training in Rialto, California, but was not paid for the time he spent traveling to and from the
19 meetings.

20 59. Defendants knew or should have known that as a result of these company-wide
21 practices and/or policies, Plaintiff and class members were performing assigned duties during
22 their meal periods and performing work off-the-clock before and after their shifts, and were
23 suffered or permitted to perform work for which they were not paid. Because Plaintiff and
24 class members worked shifts of eight (8) hours a day or more or forty (40) hours a week or
25 more, some of this off-the-clock work qualified for overtime premium pay. Therefore,
26 Plaintiff and class members were not paid overtime wages for all of the overtime hours they
27 actually worked.

28 60. Defendants' failure to pay Plaintiff and class members the balance of overtime

1 compensation as required by California law, violates the provisions of California Labor Code
2 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
3 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
4 and attorneys' fees.

5 **SECOND CAUSE OF ACTION**

6 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 7 **Minimum Wages** 8 **(Against all Defendants)**

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

11 62. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
12 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
13 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
14 fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as "the time
15 during which an employee is subject to the control of an employer, and includes all the time
16 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
17 Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

18 63. As stated, due to Defendants' company-wide policies, including the assignment
19 of heavy workloads/quotas, requirement that employees carry their radios at all times, failure
20 to schedule meal periods, and resultant lack of meal period coverage, Plaintiff and class
21 members were forced to forego meal periods, have their meal periods interrupted by work,
22 and/or were otherwise not relieved of all duties during meal periods. And, as stated above,
23 Defendants' timekeeping system did not permit Plaintiff and class members to clock back in
24 early when their meal periods were interrupted or cut short. Additionally, as stated above,
25 Plaintiff and class members were required to travel off-the-clock to attend company training
26 sessions in Rialto, California.

27 64. Further, Defendants maintained and implemented a company-wide policy of
28 requiring all employees to travel to a medical clinic on their own time and using their own

1 personal vehicles to undergo mandatory drug testing and/or physical examinations. At all
2 times, Defendants were in control of scheduling the date and time for the testing and/or
3 physical examinations, selecting the provider or clinic where the testing and/or physical
4 examinations were to take place, and determining the scope of the testing and/or physical
5 examinations. For example, Defendants gave Plaintiff strict instructions to obtain drug
6 testing, and Plaintiff underwent the testing for the sole benefit of Defendants. Plaintiff
7 followed Defendants' instructions and traveled 4-6 miles (roundtrip) for approximately 10
8 minutes to and from the medical clinic designated by Defendants in Moreno Valley,
9 California, and spent 20 minutes waiting at the medical clinic and undergoing the requisite
10 testing. However, Defendants did not compensate Plaintiff and class members for the time
11 they spent traveling to and from the medical clinics and undergoing the mandatory drug
12 testing and/or physical examinations.

13 65. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff
14 and class members worked through that qualified for overtime premium payment. To the
15 extent that these off-the-clock hours did not qualify for overtime premium payment,
16 Defendants did not pay at least minimum wages for those hours worked off-the-clock in
17 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

18 66. Defendants' failure to pay Plaintiff and class members minimum wages violates
19 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
20 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
21 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

22 **THIRD CAUSE OF ACTION**

23 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

24 **Violations**

25 **(Against all Defendants)**

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

28 68. At all relevant times herein set forth, California Labor Code section 512(a)

1 provides that an employer may not require, cause, or permit an employee to work for a period
2 of more than five (5) hours per day without providing the employee with a meal period of not
3 less than thirty (30) minutes, except that if the total work period per day of the employee is
4 not more than six (6) hours, the meal period may be waived by mutual consent of both the
5 employer and the employee. Under California law, first meal periods must start after no more
6 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
7 2012).

8 69. At all relevant times herein set forth, California Labor Code sections 226.7,
9 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
10 meal period mandated by an applicable order of the IWC.

11 70. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
12 the applicable IWC Wage Order also require employers to provide a second meal period of
13 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
14 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
15 hours worked is no more than twelve (12) hours, the second meal period may be waived by
16 mutual consent of the employer and the employee only if the first meal period was not waived.

17 71. During the relevant time period, as stated, Defendants had, and continue to
18 have, a company-wide policy and/or practice of assigning heavy workloads and/or quotas,
19 which resulted in a lack of meal period coverage and prevented Plaintiff and class members
20 from taking all timely, uninterrupted meal periods to which they were entitled. Additionally,
21 as described above, Defendants' requirement that employees carry radios at all times also
22 prevented Plaintiff and class members from taking compliant meal periods. Further, as stated,
23 Defendants had a company-wide practice of failing to schedule meal periods, which further
24 caused Plaintiff and class members to not be relieved of their duties for compliant meal
25 periods.

26 72. Additionally, as stated, Defendants implemented an electronic timekeeping
27 system that locked out Plaintiff and class members and prevented them from clocking in early
28 before the end of their 30-minute meal period. As a result of Defendants' timekeeping

1 system, Plaintiff and class members were prevented from accurately recording when they had
2 to return early from a meal period so that they could be compensated for that time. Plaintiff
3 and class members did not sign valid meal period waivers on days that they were entitled to
4 meal periods and were not relieved of all duties.

5 73. Defendants' practice of assigning heavy workloads, failure to schedule meal
6 periods, and requirement that employees carry radios, and resultant lack of adequate meal
7 period coverage, prevented Plaintiff and class members from taking all compliant meal
8 periods to which they were entitled. As a result, Plaintiff and class members would be forced
9 to work in excess of five (5) hours before taking a meal period and, at times, had their meal
10 periods interrupted and/or had to forgo their meal periods altogether.

11 74. At all times herein mentioned, Defendants knew or should have known that, as
12 a result of these policies, Plaintiff and class members were prevented from being relieved of
13 all duties and required to perform some of their assigned duties during meal periods.
14 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
15 members meal period premium wages when meal periods were late, interrupted, shortened, or
16 missed.

17 75. Moreover, Defendants engaged in a company-wide practice and/or policy of
18 not paying all meal period premiums owed when compliant meal periods are not provided.
19 Because of Defendants' practices and/or policies, Plaintiff and class members have not
20 received premium pay for all missed, late, and interrupted meal periods. As a result,
21 Defendants failed to provide Plaintiff and class members compliant meal periods in violation
22 of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period
23 premiums due.

24 76. Defendants' conduct violates the applicable IWC Wage Order, and California
25 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
26 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
27 rate of compensation for each work day that the meal period was not provided.

28 //

1 **FOURTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**
3 **(Against all Defendants)**

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

6 78. At all relevant times herein set forth, the applicable IWC Wage Order and
7 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
8 members' employment by Defendants.

9 79. At all relevant times, the applicable IWC Wage Order provides that "[e]very
10 employer shall authorize and permit all employees to take rest periods, which insofar as
11 practicable shall be in the middle of each work period" and that the "rest period time shall be
12 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
13 hours or major fraction thereof" unless the total daily work time is less than three and one-half
14 (3½) hours.

15 80. At all relevant times, California Labor Code section 226.7 provides that no
16 employer shall require an employee to work during any rest period mandated by an applicable
17 order of the California IWC. To comply with its obligation to authorize and permit rest
18 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
19 employer must "relinquish any control over how employees spend their break time, and
20 relieve their employees of all duties — including the obligation that an employee remain on
21 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
22 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
23 California Labor Code section 226.7(b), Plaintiff and class members are entitled to recover
24 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
25 that a required rest period was not authorized and permitted.

26 81. During the relevant time period, Defendants regularly failed to authorize and
27 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
28 period worked or major fraction thereof. As with meal periods, Defendants' company-wide

1 practices, including assigning heavy workloads, prevented Plaintiff and class members from
2 being relieved of all duty to take their rest periods. Additionally, Defendants failed to
3 schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period
4 coverage, further led to Plaintiff and class members not being authorized and permitted to take
5 compliant rest periods. Moreover, Plaintiff and class members were assigned company-issued
6 radios and were expected to carry and keep them on while clocked in for their shifts, including
7 during rest periods.

8 82. Furthermore, upon information and belief, during the relevant time period,
9 Defendants maintained implemented a company-wide on-premises rest period policy, which
10 mandated that Plaintiff and class members remain on the work premises during their rest
11 periods. Upon information and belief, Defendants' company-wide on-premises rest period
12 policy prevented Plaintiff and class members from being relieved of all duties for rest periods
13 and caused them to perform work during rest periods.

14 83. As a result of Defendants' practices and policies, Plaintiff and class members
15 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
16 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
17 during his employment, Plaintiff missed his rest periods due to the workload and the lack of
18 coverage for rest periods.

19 84. Defendants have also engaged in a systematic, company-wide practice and/or
20 policy of not paying rest period premiums owed when rest periods are not authorized and
21 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
22 to pay them rest period premium wages due, in violation of Labor Code section 226.7, 516,
23 and the applicable IWC Wage Order.

24 85. Defendants' conduct violates the applicable IWC Wage Order and California
25 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
26 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
27 compensation for each work day that a compliant rest period was not authorized and
28 permitted.

1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
3 **Statements and Failure to Maintain Accurate Payroll Records**
4 **(Against all Defendants)**

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

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

12 88. At all relevant times, Defendants have knowingly and intentionally provided
13 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
14 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
15 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
16 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
17 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
18 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

19 89. Because Defendants did not record the time Plaintiff and Subclass members
20 spent working off the clock, Defendants did not list the correct amount of gross wages and net
21 wages earned by Plaintiff and Subclass members in compliance with section 226(a)(1) and
22 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours
23 worked by Plaintiff and Subclass members in violation of section 226(a)(2), and failed to list
24 the applicable hourly rates of pay in effect during the pay period and corresponding accurate
25 number of work hours worked at each hourly rate in violation of section 226(a)(9).

26 90. The wage statement deficiencies also include, without limitation, failing to list
27 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
28 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and

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

6 91. California Labor Code section 1198 provides that the maximum hours of work
7 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
8 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
9 employment of any employees for longer hours than those fixed by the order or under
10 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
11 Wage Order, employers are required to keep accurate time records showing when the
12 employee begins and ends each work period and meal period. During the relevant time
13 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
14 and meal period start and stop times for Plaintiff and class members, in violation of section
15 1198.

16 92. California Labor Code section 1174(d) provides that “[e]very person employing
17 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
18 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
19 plants or establishments at which employees are employed, payroll records showing the hours
20 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
21 applicable piece rate paid to, employees employed at the respective plants or establishments . .
22 . . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants
23 willfully failed to maintain accurate payroll records for Plaintiff and Subclass members
24 showing the daily hours they worked and the wages paid thereto as a result of failing to record
25 the off-the-clock hours that they worked.

26 93. Plaintiff and Subclass members are entitled to recover from Defendants the
27 greater of their actual damages caused by Defendants’ failure to comply with California Labor
28 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per

1 employee.

2 **SIXTH CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

4 **Upon Termination**

5 **(Against all Defendants)**

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

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

15 96. On information and belief, Defendants had a company-wide practice or policy
16 of paying departing employees their final wages on the next regular pay cycle, instead of
17 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
18 Plaintiff was terminated on or about December 10, 2019. However, Defendants did not
19 provide Plaintiff with his final paycheck for some of his last days worked until the next
20 regular payday, on December 13, 2019. Thus, Defendants failed to pay Plaintiff his final
21 wages immediately, in violation of Labor Code section 201.

22 97. Additionally, Defendants willfully failed to pay Plaintiff and class members
23 who are no longer employed by Defendants the earned and unpaid wages set forth above,
24 including but not limited to, overtime wages, minimum wages, and/or meal and rest period
25 premium wages, either at the time of discharge, or within seventy-two (72) hours of their
26 leaving Defendants' employ.

27 98. Defendants' failure to pay Plaintiff and class members who are no longer
28 employed by Defendants their wages earned and unpaid at the time of discharge, or within

seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment (Against all Defendants)

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

100. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premium wages, that were not timely paid to Plaintiff and those class members by Defendants during their employment.

101. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

102. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

103. At all times relevant herein, Labor Code section 204 provides 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, at all times relevant herein, 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

1 seven (7) calendar days following the close of the payroll period.

2 104. During the relevant time period, Defendants willfully failed to pay Plaintiff and
3 class members all wages due including, but not limited to, overtime wages, minimum wages,
4 and meal and rest period premium wages, within the time periods specified by California
5 Labor Code section 204.

6 105. Defendants' failure to pay Plaintiff and class members all wages due violates
7 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
8 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

9 **EIGHTH CAUSE OF ACTION**

10 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 11 **(Against all Defendants)**

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

14 107. At all times herein set forth, California Labor Code section 2802 provides that
15 an employer must reimburse employees for all necessary expenditures and losses incurred by
16 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
17 to prevent employers from passing off their cost of doing business and operating expenses on
18 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
19 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: "[w]hen tools or
20 equipment are required by the employer or are necessary to the performance of a job, such
21 tools and equipment shall be provided and maintained by the employer, except that an
22 employee whose wages are at least two (2) times the minimum wage provided herein may be
23 required to provide and maintain hand tools and equipment customarily required by the trade
24 or craft."

25 108. During the relevant time period, Defendants also had a company-wide policy of
26 requiring Plaintiff and class members to travel in their own personal vehicles or alternate
27 transportation for work purposes, but failed to reimburse them for the costs of travel,
28 including mileage. As stated, Defendants had a company-wide policy of requiring Plaintiff

1 and class members to obtain mandatory drug testing and/or physical examinations, but did not
2 reimburse them for their travel expenses, including mileage. Defendants maintained and
3 implemented a company-wide policy of requiring employees to travel to a medical clinic on
4 their own time and using their own personal vehicles to undergo mandatory drug testing
5 and/or physical examinations. At all times, Defendants were in control of scheduling the date
6 and time for the testing and/or physical examinations, selecting the provider or clinic where
7 the testing and/or physical examinations were to take place, and determining the scope of the
8 testing and/or physical examinations. Defendants gave Plaintiff and class members strict
9 instructions to obtain drug testing and/or physical examinations, and Plaintiff and class
10 members underwent the testing and/or physical examinations for the sole benefit of
11 Defendants. For example, Plaintiff followed Defendants' instructions, traveled 4-6 miles
12 roundtrip in his personal vehicle to a medical clinic in Moreno Valley, California, and
13 underwent the drug testing, but was not reimbursed for his mileage to and from the medical
14 clinic. As a further example, Plaintiff was required to drive his own vehicle for nearly 25
15 miles roundtrip to and from mandatory two-day training sessions in Rialto, California.
16 Although Defendants required Plaintiff and class members to use their own vehicles or obtain
17 alternate transportation to carry out their work-related responsibilities, Defendants never
18 reimbursed them for all their travel expenses.

19 109. Defendants could have provided Plaintiff and class members with the actual
20 tools for use on the job, such as company vehicles to be used for fulfilling work-related tasks,
21 or Defendants could have reimbursed employees for the costs of their travel and mileage.
22 Instead, Defendants passed these operating costs off onto Plaintiff and class members. At all
23 relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

24 110. Defendants' company-wide policy and/or practice of passing on their operating
25 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
26 have intentionally and willfully failed to reimburse Plaintiff and other class members for
27 necessary business-related expenses and costs.

28 111. Plaintiff and class members are entitled to recover from Defendants their

1 business-related expenses incurred during the course and scope of their employment, plus
2 interest.

3 **NINTH CAUSE OF ACTION**

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

5 **(Against all Defendants)**

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

8 113. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
9 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
10 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
11 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
12 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
13 violations of those Labor Code sections not found in section 2699.5, including sections 516,
14 1182.12, and 2810.5.

15 114. Defendants’ conduct, as alleged herein, violates numerous sections of the
16 California Labor Code, including, but not limited to, the following:

- 17 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
18 wage order for Defendants’ failure to compensate Plaintiff and other
19 aggrieved employees with all required overtime pay, as set forth below;
- 20 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
21 and the applicable IWC wage order for Defendants’ failure to
22 compensate Plaintiff and other aggrieved employees with at least
23 minimum wages for all hours worked, as alleged herein;
- 24 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
25 applicable IWC wage order for Defendants’ failure to provide Plaintiff
26 and other aggrieved employees with meal periods, as alleged herein;
- 27 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
28 IWC wage order for Defendants’ failure to authorize and permit

1 Plaintiff and other aggrieved employees to take rest periods, as alleged
2 herein;

3 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
4 wage order for failure to provide accurate and complete wage statements
5 to Plaintiff and other aggrieved employees, as alleged herein;

6 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
7 IWC wage order for failure to maintain payroll records as alleged
8 herein;

9 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
10 earned wages upon termination, as alleged herein;

11 (h) Violation of Labor Code section 204 for failure to pay all earned wages
12 during employment, as alleged herein;

13 (i) Violation of Labor Code section 222.5 for failure to compensate
14 Plaintiff and other aggrieved employees for mandatory physical
15 examinations and/or drug testing as set forth below;

16 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
17 and other aggrieved employees for all business expenses necessarily
18 incurred, as alleged herein; and

19 (k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
20 provide written notice of information material to Plaintiff's and other
21 aggrieved employees' employment with Defendants, as set forth below.

22 115. At all relevant times herein, California Labor Code section 222.5 requires
23 employers to pay for the costs an employee incurs for obtaining any medical or physical
24 examination taken.

25 116. At all times relevant herein, Defendants implemented, on a company-wide
26 basis, an employer-imposed requirement that Plaintiff and other aggrieved employees undergo
27 a mandatory physical examination and/or drug test, but required them to do so at their own
28 expense. As stated, Defendants had a company-wide policy requiring that all employees,

1 including Plaintiff and other aggrieved employees, travel to a specified medical clinic on their
2 own time and using their own personal vehicles to undergo physical examinations and/or drug
3 testing. At all times, Defendants were in control of scheduling the date and time for the
4 examination and/or testing, selecting the provider/clinic where the examination and/or testing
5 was to take place, and determining the scope of the examination and/or testing.

6 117. During the relevant time period, Plaintiff was instructed by Defendants to travel
7 to a medical clinic in Moreno Valley, California, and obtain a drug test. Plaintiff followed
8 Defendants' instructions, traveled to the clinic Defendants selected using his own vehicle, and
9 underwent the testing. Plaintiff followed Defendants' instructions and drove 4-6 miles
10 roundtrip for approximately 10 minutes, going to and from the medical clinic designated by
11 Defendants in Moreno Valley, and then spent 20 minutes waiting at the medical clinic and
12 undergoing the requisite testing.

13 118. However, Defendants did not compensate Plaintiff and other aggrieved
14 employees for the time they spent traveling to and from their drug tests and/or physical
15 examinations, or for the time they spent undergoing the testing and/or examinations, or
16 reimburse them for the travel expenses they incurred getting to and from the medical clinics.
17 Defendants' policy and/or practice of not paying for all costs Plaintiff and other aggrieved
18 employees incurred obtaining mandatory drug tests and/or physical examinations violates
19 California Labor Code section 222.5. Plaintiff and other aggrieved employees are therefore
20 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

21 119. California's Wage Theft Prevention Act was enacted to ensure that employers
22 provide employees with basic information material to their employment relationship at the
23 time of hiring, and to ensure that employees are given written and timely notice of any
24 changes to basic information material to their employment. Codified at California Labor
25 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
26 employer must provide written notice to employees containing basic and material payroll
27 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
28 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for

overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code section 2810.5(a)(1)(A)-(C).

120. During the relevant time period, Defendants failed to provide Plaintiff and other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of basic information regarding their employment with Defendants are in violation of Labor Code section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

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

122. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

123. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

124. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

125. A violation of California Business & Professions Code sections 17200, *et seq.*

1 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
2 policies and practices have violated state law in at least the following respects:

- 3 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
4 class members, to work overtime without paying them proper
5 compensation in violation of California Labor Code sections 510 and
6 1198 and the applicable IWC Order, as alleged herein;
- 7 (b) Failing to pay at least minimum wage to Plaintiff and class members in
8 violation of California Labor Code sections 1182.12, 1194, 1197,
9 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 10 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
11 members in violation of California Labor Code sections 226.7, 512(a),
12 516, 1198, and the applicable IWC Order, as alleged herein;
- 13 (d) Failing to authorize and permit Plaintiff and class members to take
14 uninterrupted rest periods in violation of California Labor Code sections
15 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 16 (e) Failing to provide Plaintiff and class members with accurate wage
17 statements and failing to maintain accurate payroll records in violation
18 of California Labor Code sections 226(a), 1174(d), 1198, and the
19 applicable IWC Order, as alleged herein;
- 20 (f) Failing timely to pay all earned wages to Plaintiff and class members in
21 violation of California Labor Code section 204 and the applicable IWC
22 Order, as alleged herein;
- 23 (g) Failing to pay Plaintiff and class members the costs of mandatory
24 physical examinations and/or drug testing in violation of California
25 Labor Code section 222.5, as set forth below;
- 26 (h) Failing to reimburse Plaintiff and class members for all business
27 expenses necessarily incurred in violation of California Labor Code
28 sections 2802, as alleged herein; and

1 (i) Failing to provide written notice of information material to Plaintiff's
2 and class members' employment with Defendants in violation of Labor
3 Code section 2810.5(a)(1)(A)-(C), as set forth below.

4 126. At all relevant times herein, California Labor Code section 222.5 requires
5 employers to pay for the costs an employee incurs for obtaining any medical or physical
6 examination taken.

7 127. At all times relevant herein, Defendants implemented, on a company-wide
8 basis, an employer-imposed requirement that Plaintiff and class members undergo a
9 mandatory physical examination and/or drug test, but required them to do so at their own
10 expense. As stated, Defendants had a company-wide policy requiring that all employees,
11 including Plaintiff and class members, travel to a specified medical clinic on their own time
12 and using their own personal vehicles to undergo physical examinations and/or drug testing.
13 At all times, Defendants were in control of scheduling the date and time for the examination
14 and/or testing, selecting the provider/clinic where the examination and/or testing was to take
15 place, and determining the scope of the examination and/or testing.

16 128. During the relevant time period, Plaintiff was instructed by Defendants to travel
17 to a medical clinic in Moreno Valley, California, and obtain a drug test. Plaintiff followed
18 Defendants' instructions, traveled to the clinic Defendants selected using his own vehicle, and
19 underwent the testing. Plaintiff followed Defendants' instructions and drove 4-6 miles
20 roundtrip for approximately 10 minutes, going to and from the medical clinic designated by
21 Defendants in Moreno Valley, and then spent 20 minutes waiting at the medical clinic and
22 undergoing the requisite testing.

23 129. However, Defendants did not compensate Plaintiff and class members for the
24 time they spent traveling to and from the medical clinics, for the time they spent undergoing
25 the physical examinations and/or drug testing, or reimburse them for the travel expenses they
26 incurred getting to and from the medical clinics. Defendants' policy and/or not paying for all
27 costs Plaintiff and class members incurred obtaining mandatory physical examinations and/or
28 drug testing is in violation of California Labor Code section 222.5.

1 130. At all relevant times herein, California's Wage Theft Prevention Act was
2 enacted to ensure that employers provide employees with basic information material to their
3 employment relationship at the time of hiring, and to ensure that employees are given written
4 and timely notice of any changes to basic information material to their employment. Codified
5 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
6 time of hiring, an employer must provide written notice to employees containing basic and
7 material payroll information, including, among other things, the rate(s) of pay and basis
8 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
9 including any rates for overtime, the regular payday designated by the employer, and any
10 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
11 Code § 2810.5(a)(1)(A)-(C).

12 131. At all relevant times, on information and belief, Defendants failed, on a
13 company-wide basis, to provide written notice to Plaintiff and class members that lists the
14 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
15 to provide Plaintiff and class members with written notice of basic information regarding their
16 employment with Defendants is in violation of Labor Code section 2810.5.

17 132. As a result of the violations of California law herein described, Defendants
18 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
19 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
20 herein.

21 133. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
22 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
23 Defendants during a period that commences four years prior to the filing of this complaint; a
24 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
25 class members; and an award of attorneys' fees pursuant to California Code of Civil
26 Procedure section 1021.5 and other applicable laws; and an award of costs.

27 //

28 //

1 **ELEVENTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, et seq. –**

3 **Unfair Business Practices**

4 **(Against all Defendants)**

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

7 135. Defendants are “persons” as defined by California Business & Professions
8 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 136. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
12 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
13 seeks to enforce important rights affecting the public interest within the meaning of Code of
14 Civil Procedure section 1021.5.

15 137. Defendants’ activities, namely Defendants’ company-wide practice and/or
16 policy of not paying Plaintiff and class members all meal and rest period premium wages due
17 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
18 compensation guarantee and enhanced enforcement implemented by section 226.7. The
19 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
20 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
21 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
22 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
23 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
24 unfair business practice in violation of California Business & Professions Code sections
25 17200, *et seq.* (Id.)

26 138. A violation of California Business & Professions Code sections 17200, *et seq.*
27 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
28 and practices have violated the spirit of California’s meal and rest break laws and constitute

1 acts against the public policy behind these laws.

2 139. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
3 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
4 benefits implemented by section 226.7 withheld and retained by Defendants during a period
5 that commences four years prior to the filing of this complaint; a permanent injunction
6 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
7 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
8 Procedure section 1021.5 and other applicable laws; and an award of costs.

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

12 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
13 against Defendants, jointly and severally, as follows:

14 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
15 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
16 reserves the right to amend his prayer for relief to seek a different amount.

17 **Class Certification**

- 18 2. That this case be certified as a class action;
19 3. That Plaintiff be appointed as the representative of the Class and Subclass;
20 4. That counsel for Plaintiff be appointed as class counsel.

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

22 5. That the Court declare, adjudge, and decree that Defendants violated California
23 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
24 pay all overtime wages due to Plaintiff and class members;

25 6. For general unpaid wages at overtime wage rates and such general and special
26 damages as may be appropriate;

27 7. For pre-judgment interest on any unpaid overtime compensation commencing
28 from the date such amounts were due, or as otherwise provided by law;

1 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
2 California Labor Code section 1194(a); and

3 9. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Second Cause of Action**

6 10. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
8 minimum wages to Plaintiff and class members;

9 11. For general unpaid wages and such general and special damages as may be
10 appropriate;

11 12. For pre-judgment interest on any unpaid compensation from the date such
12 amounts were due, or as otherwise provided by law;

13 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
14 California Labor Code section 1194(a);

15 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

16 15. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Third Cause of Action**

19 16. That the Court declare, adjudge, and decree that Defendants violated California
20 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
21 willfully failing to provide all meal periods to Plaintiff and class members;

22 17. That the Court make an award to the Plaintiff and class members of one (1)
23 hour of pay at each employee's regular rate of pay for each workday that a meal period was
24 not provided;

25 18. For all actual, consequential, and incidental losses and damages, according to
26 proof;

27 19. For premiums pursuant to California Labor Code section 226.7(b);

28 20. For pre-judgment interest on any unpaid meal period premiums from the date

1 such amounts were due, or as otherwise provided by law;

2 21. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 22. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Fourth Cause of Action**

7 23. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully
9 failing to authorize and permit Plaintiff and class members to take all rest periods;

10 24. That the Court make an award to the Plaintiff and class members of one (1) hour
11 of pay at each employee's regular rate of pay for each workday that a rest period was not
12 authorized and permitted;

13 25. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 26. For premiums pursuant to California Labor Code section 226.7(b);

16 27. For pre-judgment interest on any unpaid rest period premiums from the date
17 such amounts were due, or as otherwise provided by law;

18 28. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 29. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Fifth Cause of Action**

23 30. That the Court declare, adjudge and decree that Defendants violated the
24 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
25 Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized
26 wage statements thereto;

27 31. For all actual, consequential, and incidental losses and damages, according to
28 proof;

1 32. For injunctive relief pursuant to California Labor Code section 226(h);
2 33. For statutory penalties pursuant to California Labor Code section 226(e);
3 34. For attorneys' fees and costs pursuant to California Labor Code section
4 226(e)(1); and
5 35. For such other and further relief as the Court may deem equitable and
6 appropriate.

7 **As to the Sixth Cause of Action**

8 36. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
10 and/or meal and rest period premiums owed at the time of termination of the employment of
11 Plaintiff and other terminated class members;

12 37. For all actual, consequential, and incidental losses and damages, according to
13 proof;

14 38. For waiting time penalties according to proof pursuant to California Labor
15 Code section 203 for all employees who have left Defendants' employ;

16 39. For pre-judgment interest on any unpaid wages from the date such amounts
17 were due, or as otherwise provided by law;

18 40. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 41. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Seventh Cause of Action**

23 42. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
25 overtime wages, minimum wages, and/or meal and rest period premiums during their
26 employment;

27 43. For all actual, consequential and incidental losses and damages, according to
28 proof;

1 44. For statutory penalties according to proof pursuant to California Labor Code
2 section 210;

3 45. For pre-judgment interest on any unpaid wages from the date such amounts
4 were due, or as otherwise provided by law;

5 46. For attorneys' fees pursuant to California Code of Civil Procedure section
6 1021.5, or as otherwise provided by law; and

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

9 **As to the Eighth Cause of Action**

10 48. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
12 related expenses and costs incurred by Plaintiff and class members;

13 49. For unpaid business-related expenses and such general and special damages as
14 may be appropriate;

15 50. For pre-judgment interest on any unpaid business-related expenses from the
16 date such amounts were due, or as otherwise provided by law;

17 51. For all actual, consequential, and incidental losses and damages, according to
18 proof;

19 52. For attorneys' fees and costs pursuant to California Labor Code
20 section 2802(c), or as otherwise provided by law; and

21 53. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Ninth Cause of Action**

24 54. That the Court declare, adjudge and decree that Defendants violated the
25 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
26 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
27 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
28 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and

1 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
2 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
3 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
4 employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical
5 examinations); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to
6 provide written notice of information material to employment);

7 55. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
8 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
9 sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
10 1197, 1197.1, 1198, 2802, and 2810.5;

11 56. For attorneys' fees and costs pursuant to California Labor Code section
12 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
13 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
14 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

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

16 58. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Tenth Cause of Action**

19 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
20 to provide Plaintiff and class members all overtime wages due to them, failing to provide
21 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
22 class members all meal periods, failing to authorize and permit Plaintiff and class members to
23 take all rest periods, failing to provide Plaintiff and class members accurate and complete
24 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
25 failing timely to pay Plaintiff and class members all earned wages during employment, failing
26 to reimburse Plaintiff and class members for the costs of mandatory physical examinations
27 and/or drug testing, failing to reimburse Plaintiff and class members for business-related
28 expenses, and failing to provide written notice of information material to employment,

1 constitutes an unlawful business practice in violation of California Business and Professions
2 Code sections 17200, *et seq.*;

3 60. For restitution of unpaid wages to Plaintiff and all class members and
4 prejudgment interest from the day such amounts were due and payable;

5 61. For the appointment of a receiver to receive, manage and distribute any and all
6 funds disgorged from Defendants and determined to have been wrongfully acquired by
7 Defendants as a result of violations of California Business & Professions Code sections 17200
8 *et seq.*;

9 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Code of Civil Procedure section 1021.5; and

11 63. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Eleventh Cause of Action**

14 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
15 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
16 an unfair business practice in violation of California Business and Professions Code sections
17 17200, *et seq.*;

18 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
19 from Plaintiff and class members and prejudgment interest from the day such amounts were
20 due and payable;

21 66. For the appointment of a receiver to receive, manage and distribute any and all
22 funds disgorged from Defendants and determined to have been wrongfully acquired by
23 Defendants as a result of violations of California Business & Professions Code sections 17200
24 *et seq.*;

25 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
26 California Code of Civil Procedure section 1021.5;

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

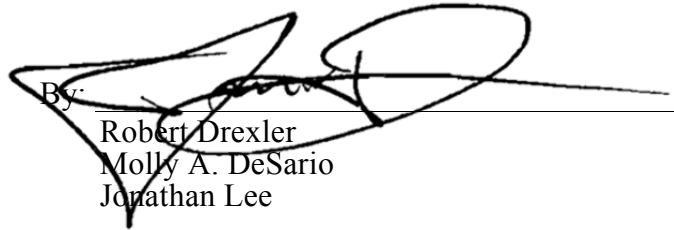
28 //

1 69. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: July 24, 2020

Respectfully submitted,

Capstone Law APC

6
7  By: _____
8 Robert Drexler
9 Molly A. DeSario
Jonathan Lee

10 Attorneys for Plaintiff Roger Wood
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

May 19, 2020

VIA ONLINE SUBMISSION

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

Subject: *Roger Wood v. Living Spaces Furniture, LLC*

Dear PAGA Administrator:

This office represents Roger Wood in connection with his claims under the California Labor Code. Mr. Wood was an employee of LIVING SPACES FURNITURE, LLC (“LSF”).

The employer may be contacted directly at the address below:

LIVING SPACES FURNITURE, LLC
14501 ARTESIA BLVD
LA MIRADA CA 90638

Mr. Wood 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. Wood seeks relief on behalf of himself, the State of California, and other persons who are or were employed by LSF as a non-exempt, hourly 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.

LSF employed Mr. Wood as an hourly paid, non-exempt employee from approximately October 2019 to December 2019. Mr. Wood worked for LSF as a Yard Goat Driver, Selector Picker, and CPU (“Customer Service PickUps”) at a Living Spaces location in Perris, California. During his employment, Mr. Wood typically worked eight (8) hours or more per day and five (5) days or more per week. His job duties included, without limitation, moving and packing trailers into docks and around the yard; picking up and loading furniture using a forklift; and fulfilling customers’ pickup orders.

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

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

LIVING SPACES FURNITURE, LLC is a Delaware limited liability company and a home furnishings retailer catering to customers in California, Nevada, Arizona, and Texas. Upon information and belief, LSF maintains a single, centralized Human Resources (HR) department at its corporate headquarters in La Mirada, California, for all non-exempt, hourly paid employees working for LSF in California, including Mr. Wood and other aggrieved employees. At all relevant times, LSF issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Wood and other aggrieved employees, regardless of its location or position.

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

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

LSF willfully failed to pay all overtime wages owed to Mr. Wood and other aggrieved employees. During the relevant time period, Mr. Wood and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

¹ These facts, theories, and claims are based on Mr. Wood’s experience and counsel’s review of those records currently available relating to Mr. Wood’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. Wood 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.

First, during the relevant period, LSF had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads and/or quotas, resulting in a lack of adequate meal period coverage. On information and belief, for example, LSF imposed quotas on Mr. Wood and other aggrieved employees to meet strict hourly metrics for “picking” or “selecting” furniture. Additionally, LSF had a policy and/or practice of requiring that Mr. Wood and other aggrieved employees carry a company-issued radio at all times in order to respond to calls from supervisors and management, even during unpaid meal periods. LSF’s supervisors and management contacted Mr. Wood and other aggrieved employees on their radios during their meal periods to discuss work-related matters. Thus, Mr. Wood and other aggrieved employees were required to perform their duties, such as meeting their quotas, responding to their company-issued radios, and continuing to assist customers, during unpaid meal periods, or would have their meal periods interrupted to complete such work-related tasks. As a result, Mr. Wood and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. LSF did not pay Mr. Wood and other aggrieved employees for the time they continued to perform tasks during meal periods.

Moreover, LSF had a practice of failing to schedule meal periods, which further caused Mr. Wood and other aggrieved employees to not be relieved of their duties for compliant meal periods. Also, LSF’s company-wide timekeeping system further prevented Mr. Wood and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked Mr. Wood and other aggrieved employees out once they clocked out for a meal period and would not permit them to clock back in from a meal before 30 minutes elapsed. Consequently, Mr. Wood and other aggrieved employees performed work during meal periods for which they were not paid.

Second, LSF had, and continues to have, a company-wide policy and/or practice of requiring Mr. Wood and other aggrieved employees to perform tasks off-the-clock, such as traveling to attend mandatory training or meetings. For example, Mr. Wood was required to drive his own vehicle for 45-60 minutes roundtrip to and from a mandatory two-day CPU training in Rialto, California, but was not paid for the time he spent traveling to and from the meetings.

LSF knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Wood and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. LSF also knew, or should have known, that it did not compensate Mr. Wood and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Wood and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Wood and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. LSF’s failure to pay Mr. Wood and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, LSF did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, LSF paid other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, LSF failed to incorporate all compensation, including shift differential pay, incentive pay, nondiscretionary bonuses, and/or other

forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, LSF failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Wood and other aggrieved employees are entitled to recover 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 §§ 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").

As set forth above, due to LSF's company-wide policies, including the assignment of heavy workloads/quotas, requirement that employees carry their radios at all times, failure to schedule meal periods, and resultant lack of meal period coverage, Mr. Wood and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted by work, and/or were otherwise not relieved of all duties during meal periods. And, as stated above, LSF's timekeeping system did not permit Mr. Wood and other aggrieved employees to clock back in early when their meal periods were interrupted or cut short. Additionally, as stated above, Mr. Wood and other aggrieved employees were required to travel off-the-clock to attend company training sessions in Rialto, California.

Further, LSF maintained and implemented a company-wide policy of requiring all employees to travel to a medical clinic on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, LSF was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider or clinic where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, LSF gave Mr. Wood strict instructions to obtain drug testing, and Mr. Wood underwent the testing for the sole benefit of LSF. Mr. Wood followed LSF's instructions and traveled 4-6 miles for approximately 10 minutes to and from the medical clinic designated by LSF in Moreno Valley, California, and spent 20 minutes waiting at the medical clinic and undergoing the requisite testing. However, LSF did not compensate Mr. Wood and other aggrieved employees for the time they spent traveling to and from the medical clinics and undergoing the mandatory drug testing and/or physical examinations.

Thus, LSF did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, LSF did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, LSF regularly failed to pay at least minimum wages to Mr. Wood 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. Wood 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, LSF had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads and/or quotas, which resulted in a lack of meal period coverage and prevented Mr. Wood and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, as described above, LSF's requirement that employees carry radios at all times also prevented Mr. Wood and other aggrieved employees from taking compliant meal periods. Further, as stated, LSF had a company-wide practice of failing to schedule meal periods, which further caused Mr. Wood and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Additionally, as stated, LSF implemented an electronic timekeeping system that locked out Mr. Wood and other aggrieved employees and prevented them from clocking in early before the end of their 30-minute meal period. As a result of LSF's timekeeping system, Mr. Wood and other aggrieved employees were prevented from accurately recording when they had to return early from a meal period so that they could be compensated for that time. Moreover, LSF did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Wood and other aggrieved employees members did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

LSF's practices and policies prevented Mr. Wood and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Wood and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether.

LSF knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Wood and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. LSF further knew or should have known that it did not pay Mr. Wood

and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, LSF 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. Wood and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that LSF did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because LSF did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, LSF failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Wood 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, LSF regularly failed to authorize and permit Mr. Wood 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, LSF's company-wide practices, including assigning heavy workloads, prevented Mr. Wood and other aggrieved employees from being relieved of all duty to take their rest periods. Additionally, LSF failed to schedule rest periods, which, coupled with LSF's failure to provide adequate rest period coverage, further led to Mr. Wood and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, Mr. Wood and other aggrieved employees were assigned company-issued radios and were expected to carry and keep them on while clocked in for their shifts, including during rest periods.

Furthermore, upon information and belief, during the relevant time period, LSF maintained implemented a company-wide on-premises rest period policy, which mandated that Mr. Wood and other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, LSF's company-wide on-premises rest period policy prevented Mr. Wood and other

aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result of LSF's practices and policies, Mr. Wood 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. Wood missed his rest periods due to the workload and the lack of coverage for rest periods.

LSF 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. Wood and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that LSF did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because LSF did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as shift differential pay, 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, LSF failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Wood 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. LSF has not provided Mr. Wood 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, LSF has knowingly and intentionally provided Mr. Wood and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, LSF issued uniform wage statements to Mr. Wood and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name and address 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, LSF violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because LSF did not record the time Mr. Wood and other aggrieved employees spent working off-the-clock, LSF did not list the correct amount of gross wages and net wages earned by Mr. Wood

and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, LSF failed to accurately list the total number of hours worked by Mr. Wood 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).

Second, because LSF did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, LSF did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). LSF also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, LSF issued uniform wage statements to Mr. Wood and other aggrieved employees that fail to list the correct name and address of the legal entity of the actual employer in violation of Labor Code section 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, obtain unemployment benefits, etc. Mr. Wood's wage statement for the pay period ending December 8, 2019, lists the entity "LIVING SPACES FURNITURE LLC" with the address "14501 E. Artesia Blvd., La Mirada, CA 90638," but, according to the California Secretary of State's website, there is no such entity by that name with that address. However, a similarly named entity, "LIVING SPACES FURNITURE, LLC," is listed on the California Secretary of State's website with a different address, "14501 ARTESIA BLVD, LA MIRADA CA 90638." *See example paystub below.*

Earnings Statement

Page 001 of 001
Period Beg/End: 12/02/2019 - 12/08/2019
Advice Date: 12/13/2019
Advice Number: 0000151033
Batch Number: SC4AWKFK52DL

Living Spaces Furniture LLC
14501 E. Artesia Blvd.
La Mirada, CA 90638

Taxable Marital Status: [REDACTED]
Exemptions/Allowances:
Federal: [REDACTED]
State: [REDACTED]

Roger Wood
[REDACTED]

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 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 "[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, 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), LSF willfully failed to maintain accurate payroll records for Mr. Wood 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, LSF failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Wood and other aggrieved employees, in violation of section 1198. Furthermore, in light of LSF’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, LSF kept no records of meal start and end times for second meal periods.

Because LSF failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Wood 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. Wood 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. Wood 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, LSF failed to pay Mr. Wood and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Wood 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, LSF 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. Wood was terminated on or about December 10, 2019. However, LSF did not provide him with his final paycheck for some of his last days worked until the next regular payday, on December 13, 2019. Thus, LSF failed to pay Mr. Wood his final wages immediately, in violation of Labor Code section 201.

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

Mr. Wood 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 § 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.

At all times relevant herein, LSF implemented, on a company-wide basis, an employer-imposed requirement that Mr. Wood and other aggrieved employees undergo a mandatory drug test and/or physical examination, but required them to do so at their own expense. As stated, LSF had a company-wide policy requiring that all employees, including Mr. Wood and other aggrieved employees, travel to a specified medical clinic on their own time and using their own personal vehicles to undergo drug testing and/or physical examinations. At all times, LSF was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider/clinic where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations.

For example, Mr. Wood was instructed by LSF to travel to a medical clinic and obtain a drug test. Mr. Wood followed LSF's instructions, traveled to the clinic LSF selected, and underwent the testing. Mr. Wood was required to travel to and from the medical clinic selected by LSF using his

own vehicle. Mr. Wood drove 4-6 miles roundtrip to and from the medical clinic designated by LSF, and then spent 20 minutes waiting at the medical clinic undergoing the requisite testing.

However, LSF did not compensate Mr. Wood and 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 clinics. LSF's policy and/or practice of not paying for all costs Mr. Wood and other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Mr. Wood and other aggrieved employees are therefore 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 § 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, LSF had a company-wide policy of requiring Mr. Wood and other aggrieved employees to travel in their own personal vehicles or alternate transportation for work purposes, but failed to reimburse them for the costs of travel, including mileage. As stated, LSF had a company-wide policy of requiring Mr. Wood and other aggrieved employees to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. For example, as stated, Mr. Wood followed LSF's instructions, traveled 4-6 miles roundtrip in his personal vehicle, and underwent the drug testing, but was not reimbursed for his mileage to and from the medical clinic. As a further example, Mr. Wood was required to drive his own vehicle for nearly 25 miles roundtrip to and from mandatory two-day training sessions in Rialto, California. Although LSF required Mr. Wood and other aggrieved employees to use their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, LSF never reimbursed them for all their travel expenses.

LSF could have provided Mr. Wood and other aggrieved employees with the actual tools for use on the job, such as company vehicles to be used for fulfilling work-related tasks, or could have reimbursed employees for their travel expenses and mileage. Instead, LSF passed these operating costs off onto Mr. Wood and other aggrieved employees. At all relevant times, Mr. Wood did not earn at least two (2) times the minimum wage.

Thus, LSF 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. Wood 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 § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

LSF failed to provide Mr. Wood and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). LSF's failure to provide Mr. Wood and other aggrieved employees with written notice of basic information regarding their employment with LSF is in violation of Labor Code section 2810.5.

Mr. Wood and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 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." LSF, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Wood's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Wood 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. Wood, 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 LSF for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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: LIVING SPACES FURNITURE, LLC (via U.S. Certified Mail)

CERTIFIED MAIL®



7020 0090 0001 3768 4445

stone
LAW APC
Century Park East, Ste 1000
Irvine, CA 92614

LIVING SPACES FURNITURE, LLC
14501 ARTESIA BLVD
LA MIRADA CA 90638



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:

LIVING SPACES FURNITURE, LLC
14501 ARTESIA BLVD
LA MIRADA CA 90638



9590 9402 4882 9032 7440 52

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4445

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

LIVING SPACES FURNITURE, LLC

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

14501 ARTESIA BLVD

City, State, ZIP+4®

LA MIRADA CA 90638

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

Wood v. Living Space
Furniture, LLC

7020 0090 0001 3768 4445

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:

LIVING SPACES FURNITURE, LLC
14501 ARTESIA BLVD
LA MIRADA CA 90638



9590 9402 4882 9032 7440 52

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4445

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

C-19

☐ 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

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

Domestic Return Receipt

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

**FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION
UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR
CODE §§ 2698, *ET SEQ.***

Michael S. Chamberlin
Vartan Madoyan
Joseph S. Persoff
Baker Hostetler
11601 Wilshire Blvd, Suite 1400
Los Angeles, CA 90025
mchamberlin@bakerlaw.com
vmadoyan@bakerlaw.com
jpersoff@bakerlaw.com

- EXECUTED** this document on July 24, 2020, at Los Angeles, California.


Sandy S. Acevedo