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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

GARY MEHTERIAN, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

STONELEDGE FURNITURE, LLC, a
Wisconsin limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: **RIC2001744**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) **VIOLATION OF LABOR CODE §§ 201,
202 AND 203**
(2) **VIOLATION OF LABOR CODE § 2698,
ET SEQ.;**

DEMAND OVER \$25,000.00

FILED
Superior Court of California
County of Riverside
6/15/2020
E. Escobedo
Electronically Filed

1 Plaintiff Gary Mehterian (“Plaintiff”) hereby submits this Class and Representative
2 Action Complaint (“Complaint”) against Defendant Stoneledge Furniture, LLC (“Defendant”),
3 and Does 1 through 50 (collectively, “Defendants”) on behalf of himself and a class of all other
4 similarly situated current and former employees of Defendants for wages and penalties for
5 violations of the California Labor Code, as follows:

6 **INTRODUCTION**

7 1. This class and representative action is within the Court’s jurisdiction under
8 California Labor Code sections 201, 202, 203, 246 and 2698 *et. seq.*, and Wage Order No. 7-
9 2001.

10 2. This complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendant.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by failing to pay sick pay at the regular rate of pay and
15 failing to provide suitable seating to employees.

16 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 have engaged in, among other things a system of willful violations of the California Labor Code
18 by creating and maintaining policies, practices, and customs that knowingly deny employees the
19 above stated rights and benefits.

20 **JURISDICTION AND VENUE**

21 5. The Court has jurisdiction over the violations of California Labor Code sections
22 201, 202, 203, 246 and 2698 *et. seq.*, and Wage Order No. 7-2001.

23 6. Venue is proper in Riverside County because Plaintiff worked at Defendant’s
24 location in Murietta, California.

25 **PARTIES**

26 7. Plaintiff Gary Mehterian worked for Defendant as an hourly, non-exempt
27 employee from in or around April 2018 to on or about January 18, 2020.

28 8. Plaintiff was and is the victims of the policies, practices, and customs of

1 Defendant complained of in this action in ways that have deprived him of the rights guaranteed
2 by California Labor Code sections 201, 202, 203, 246 and 2698 *et. seq.*, and Wage Order No. 7-
3 2001.

4 9. Plaintiff is informed and believes, and based thereon alleges, that Stoneledge
5 Furniture, LLC is a Wisconsin limited liability company, with operations throughout the United
6 States, including the State of California.

7 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
8 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
9 and partnerships, licensed to do business and actually doing business in the State of California.
10 As such, and based upon all the facts and circumstances incident to Defendants' business,
11 Defendants are subject to the California Labor Code and Wage Order No. 7-2001.

12 11. Plaintiff does not know the true names or capacities, whether individual, partner
13 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
14 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
15 complaint when the true names and capacities are known. Plaintiff is informed and believes and
16 based thereon alleges that each of said fictitious defendants was responsible in some way for the
17 matters alleged herein and proximately caused Plaintiff, class members and aggrieved employees
18 to be subject to the illegal employment practices, wrongs and injuries complained of herein.

19 12. At all times herein mentioned, each defendant participated in the doing of the acts
20 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,
21 and each of them, were the agents, servants and employees of each of the other defendants, as
22 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
23 course and scope of said agency and employment.

24 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
25 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
26 joint venturer of, or working in concert with each of the other co-Defendants and was acting
27 within the course and scope of such agency, employment, joint venture, or concerted activity. To
28 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the

1 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
2 Defendants.

3 14. At all times herein mentioned, Defendants, and each of them, were members of,
4 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
5 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

6 15. At all times herein mentioned, the acts and omissions of various Defendants, and
7 each of them, concurred and contributed to the various acts and omissions of each and all of the
8 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
9 herein mentioned, Defendants, and each of them, ratified each and every act or omission
10 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
11 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
12 damages as herein alleged.

13 CLASS ACTION ALLEGATIONS

14 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
15 California Code of Civil Procedure section 382. Plaintiff proposes the following Class: all of
16 Defendant's California non-exempt employees whose employment ended at any time between
17 April 6, 2017 through the present and were paid non-discretionary remuneration, including
18 without limitation sales incentives and/or SPIFFS, in the same workweek as sick pay wages
19 during their employment with Defendant (the "Class" or "Class Members").

20 17. **Numerosity and Ascertainability:** The members of the Class are so numerous
21 that joinder of all members would be impractical, if not impossible. The identity of the members
22 of the Class is readily ascertainable by review of Defendant's records, including payroll records.
23 Plaintiff is informed and believes, and based thereon alleges, that Defendant failed to pay sick
24 pay wages at the correct regular rate of pay by not including all non-discretionary remuneration
25 in the regular rate, including but not limited to sales incentives and SPIFFS, in violation of Labor
26 Code sections 201-203.

27 18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
28 necessary steps to represent fairly and adequately the interests of the class defined above.

1 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the Class and
2 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
3 actions in the past and currently have a number of wage-and-hour class actions pending in
4 California state and federal courts.

5 19. Defendant uniformly administered a corporate policy and practice of failing to
6 pay sick pay wages at the correct regular rate of pay by not including all non-discretionary
7 remuneration in the regular rate, including but not limited to sales incentives and SPIFFS, in
8 violation of Labor Code sections 201-203.

9 20. **Common Question of Law and Fact:** There are predominant common questions
10 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
11 concerning Defendant's policy and practice of failing to pay sick pay wages at the correct regular
12 rate of pay by not including all non-discretionary remuneration in the regular rate, including but
13 not limited to sales incentives and SPIFFS, in violation of Labor Code sections 201-203.

14 21. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
15 class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
16 manner as the class members. As with all other non-exempt employees in the State of California,
17 Defendant failed to pay sick pay wages at the regular rate of pay. Specifically, Plaintiff and other
18 non-exempt employees routinely earned non-discretionary incentive wages, such as sales
19 incentives and SPIFFS, and thus increased their regular rates of pay. However, when sick pay
20 was paid, it was not paid at the employee's regular rate of pay. Therefore, Plaintiff is a member
21 of the Class and has suffered the alleged violations of California Labor Code sections 201, 202
22 and 203.

23 22. The California Labor Code upon which Plaintiff bases these claims are broadly
24 remedial in nature. These laws and labor standards serve an important public interest in
25 establishing minimum working conditions and standards in California. These laws and labor
26 standards protect the average working employee from exploitation by employers who may seek
27 to take advantage of superior economic and bargaining power in setting onerous terms and
28 conditions of employment.

1 23. The nature of this action and the format of laws available to Plaintiff and
2 members of the Class identified herein make the class action format a particularly efficient and
3 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
4 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable
5 advantage since it would be able to exploit and overwhelm the limited resources of each
6 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
7 Member to pursue an individual remedy would also discourage the assertion of lawful claims by
8 employees who would be disinclined to file an action against their former and/or current
9 employer for real and justifiable fear of retaliation and permanent damage to their careers at
10 subsequent employment.

11 24. The prosecution of separate actions by the individual class members, even if
12 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
13 to individual Class members against the Defendants and which would establish potentially
14 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
15 individual Class members which would, as a practical matter, be dispositive of the interest of the
16 other Class members not parties to the adjudications or which would substantially impair or
17 impede the ability of the Class members to protect their interests. Further, the claims of the
18 individual members of the Class are not sufficiently large to warrant vigorous individual
19 prosecution considering all of the concomitant costs and expenses.

20 25. Such a pattern, practice and uniform administration of corporate policy regarding
21 illegal employee compensation described herein is unlawful and creates an entitlement to
22 recovery by Plaintiff and the Class identified herein, in a civil action, for overtime wages,
23 inaccurate wage statements, applicable penalties, reasonable attorneys' fees, and costs of suit
24 according to the mandate of California Labor Code sections 201-203 and Code of Civil
25 Procedure section 1021.5.

26 26. Proof of a common business practice or factual pattern, which the named Plaintiff
27 experienced and is representative of, will establish the right of each of the members of the
28 Plaintiff Class to recovery on the causes of action alleged herein.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATIONS OF LABOR CODE §§ 201-203**

3 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANTS)**

4 27. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 26 as
5 though fully set forth herein.

6 28. Labor Code section 246(l)(1) requires that paid sick leave wages for non-exempt
7 employees be calculated in the same manner as the regular rate of pay for the workweek in
8 which the employee uses paid sick time, whether or not the employee actually works overtime in
9 that workweek. Labor Code section 246(l)(2) further requires that paid sick leave wages for
10 nonexempt employees be calculated by dividing the employee's total wages, not including
11 overtime premium pay, by the employee's total hours worked in the full pay periods of the prior
12 90 days of employment.

13 29. Defendant violated Labor Code section 246 by failing to pay sick pay at the
14 regular rate of pay. Plaintiff and Class Members routinely earned non-discretionary incentive
15 wages, such as sales incentives and SPIFFS, and thus increased their rates of pay. However,
16 when sick pay was paid, it was not paid at the Class Member's regular rate of pay, as required
17 under Labor Code section 246.

18 30. As a pattern and practice, Defendant regularly failed to pay Plaintiff and other
19 members of the Class their correct wages and accordingly owe waiting time penalties pursuant to
20 Labor Code section 203. Further, Plaintiff is informed and believes and based thereon alleges
21 that such failure to pay sick pay at regular rate was willful, such that Plaintiff and Class Members
22 are entitled to waiting time penalties.

23 **SECOND CAUSE OF ACTION**

24 **VIOLATIONS OF LABOR CODE § 2698 *ET SEQ.***

25 **(BY PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST DEFENDANTS)**

26 31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as
27 though fully set for herein.

28 //

1 32. Plaintiff brings this cause of action as a proxy for the State of California and in
2 this capacity, seek penalties on behalf of all Aggrieved Employees from April 6, 2019, through
3 the present, for: Defendant's corporate policy and practice of failing to: (1) pay sick pay wages at
4 the correct regular rate of pay by not including all non-discretionary remuneration in the regular
5 rate, including but not limited to sales incentives and SPIFFS, in violation of Labor Code
6 sections 201, 202, 203 and 246; and (2) provide suitable seating to employees, in violation of
7 Wage Order No. 7-2001(14).

8 33. Labor Code section 246(l)(1) requires that paid sick leave wages for non-exempt
9 employees be calculated in the same manner as the regular rate of pay for the workweek in
10 which the employee uses paid sick time, whether or not the employee actually works overtime in
11 that workweek. Labor Code section 246(l)(2) further requires that paid sick leave wages for
12 nonexempt employees be calculated by dividing the employee's total wages, not including
13 overtime premium pay, by the employee's total hours worked in the full pay periods of the prior
14 90 days of employment.

15 34. Defendant violated Labor Code section 246 by failing to pay sick pay at the
16 regular rate of pay. Plaintiff and Aggrieved Employees routinely earned non-discretionary
17 incentive wages, such as sales incentives and SPIFFS, and thus increased their rates of pay.
18 However, when sick pay was paid, it was not paid at the Aggrieved Employee's regular rate of
19 pay, as required under Labor Code section 246.

20 35. Additionally, Wage Order No. 7-2001(14) provides that "[a]ll working employees
21 shall be provided with suitable seats when the nature of the work reasonably permits the use of
22 seats." Defendant failed to provide suitable seats even though the nature of the work performed
23 by Aggrieved Employees reasonably permitted the use of seats.

24 36. Further, Wage Order No. 7-2001(14)(B) states that "[w]hen employees are not
25 engaged in the active duties of their employment and the nature of the work requires standing, an
26 adequate number of suitable seats shall be placed in reasonable proximity to the work area and
27 employees shall be permitted to use such seats when it does not interfere with the performance of
28 their duties." Defendant failed to provide suitable seats in reasonable proximity in the work area

1 to Aggrieved Employees when they were not engaged in the active duties of their employment.
2 Nor were Aggrieved Employees permitted to use any such seats.

3 37. On or about June 1, 2020, Plaintiff sent written notice to the California Labor &
4 Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code sections
5 201, 202 and 203, 246 and Wage Order No. 7-2001, pursuant to Labor Code section 2698, *et*
6 *seq.*, the Private Attorney General Act ("PAGA").

7 38. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
8 and all applicable civil penalties for Defendant's violation of Labor Code sections 201, 202 and
9 203, 246 and Wage Order No. 7-2001(14), for the time periods described above, on behalf of
10 himself and other Aggrieved Employees.

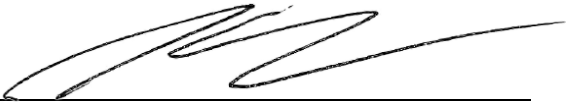
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
13 this suit is brought against Defendants, jointly and severally, as follows:

- 14 1. For an order certifying the proposed Class;
- 15 2. For an order appointing Plaintiff as the representative of the Class as described
16 herein;
- 17 3. For an order appointing counsel for Plaintiff as class counsel;
- 18 4. Upon the First Cause of Action, for penalties pursuant to statute as set forth in
19 Labor Code sections 201, 202 and 203, and for costs and attorneys' fees;
- 20 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
21 to Labor Code section 2698, *et. seq.*; and
- 22 6. For such other and further relief the Court may deem just and proper.

23
24 DATED: June 15, 2020

DIVERSITY LAW GROUP, P.C.

25
26 By: 

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Attorneys for Plaintiff and the Class