

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Jon Takasugi

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Attorneys for Plaintiffs STEPHEN CLEGG and MICHAEL EMMENS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

STEPHEN CLEGG and MICHAEL
EMMENS, individually, and on behalf of
other aggrieved employees;

Plaintiffs,

vs.

BOB'S DISCOUNT FURNITURE, LLC, a
Massachusetts Limited Liability Company;
and DOES 1 through 10, inclusive,

Defendants.

Case No. 21STCV15281

**COMPLAINT FOR DAMAGES AND
RESTITUTION AND REPRESENTATIVE
ACTION FOR RECOVERY OF CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
("PAGA")**

- 1. VIOLATION OF CALIFORNIA LABOR
CODE SECTIONS §§ 2800, 2802, AND
2804**
- 2. VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW
("UCL") CALIFORNIA BUSINESS &
PROFESSIONS CODE §§ 17200, *et seq.***

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3. **PAGA PENALTIES FOR FAILURE TO REIMBURSE EXPENSES**
4. **PAGA PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS OR PAY IN LIEU THEREOF**
5. **PAGA PENALTIES FOR FAILURE TO PROVIDE PAID SICK LEAVE**
6. **PAGA PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

DEMAND FOR JURY TRIAL

1 Plaintiff STEPHEN CLEGG, individually, and Plaintiffs STEPHEN CLEGG and
2 MICHAEL EMMENS (“Plaintiffs”) on behalf of themselves and others aggrieved and as
3 Representatives of the State of California’s Labor and Workforce Development Agency
4 (“LWDA”), hereby allege as follows:

5 **GENERAL ALLEGATIONS**

6 1. Plaintiff CLEGG brings this action, individually, against Defendants BOB’S
7 DISCOUNT FURNITURE, LLC, and DOES 1 through 10, inclusive (collectively referred to
8 as, “Defendants”) for restitution of unpaid expenses during his employment in violation of
9 Labor Code sections 2802-2804. Further, Plaintiff CLEGG alleges violations of the
10 California’s Unfair Competition Law (“UCL”) Business and Professions Code sections 17200,
11 *et seq.*, as predicated on violations of Labor Code sections 2802-2804 and applicable Industrial
12 Welfare Commission (“IWC”) Wage Order 4-2001, sections 7-9.

13 2. Plaintiffs CLEGG and EMMENS bring this proposed PAGA Representative
14 Action against their employers and Defendants under the California Labor Code to recover civil
15 penalties arising out of Defendants’ multiple labor code violations as described herein.

16 3. Specifically, during all or a significant part of the applicable limitations period
17 for the time period covered by the Private Attorneys General Act of 2004 (“PAGA”), Labor
18 Code sections 2698, *et seq.*, Plaintiffs allege Defendants did not pay them or other aggrieved
19 employees all wages for all hours worked because they did not pay for time spent working
20 during purported meal periods. Plaintiffs also seek to recover penalties for Defendants’ failure
21 to pay all sick leave wages, failure to reimburse for costs and expenses, and additional labor
22 code violations as set forth herein.

23 4. Pursuant to Cal Labor Code sections 2698, *et seq.*, Plaintiffs seek to represent all
24 current and former non-exempt employees who suffered one or more of the alleged violations
25 (“aggrieved employees”) as described herein during the applicable limitations period for the
26 time period covered by the PAGA (which is defined as any time from one year and 65 days
27 prior to the commencement of this action until the commencement of trial in the matter). The
28 applicable limitations period is referred herein as “the PAGA Period.”

6. Plaintiff CLEGG is informed and believes, and based thereon alleges, the following:

a. Defendants employed Plaintiff CLEGG as an exempt salesperson and manager in the state of California since approximately December 5, 2016.

b. During Plaintiff CLEGG's employment, Plaintiff CLEGG was paid a salary of approximately \$60,000, plus performance-based bonuses/commissions.

c. During Plaintiff CLEGG's employment with Defendants, Defendants failed to reimburse Plaintiff CLEGG for the use of his personal cell phone and use of his personal vehicle for business-related purposes, in violation of Labor Codes sections 2800 and 2802.

7. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendants employed Plaintiffs in Los Angeles County and in California, and each Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiffs within the State of California and within Los Angeles County. There is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil Procedure, and Civil Code. Thus, the above entitled court maintains

1 appropriate jurisdiction to hear this matter.

2 8. Further, Business and Professions Code section 17203 provides that any person
3 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
4 Business and Professions Code section 17204 provides that any person acting on his or her own
5 behalf may bring an action in a court of competent jurisdiction. Thus, the above entitled court
6 maintains appropriate jurisdiction to hear this matter. By violating the California Labor Code,
7 Plaintiff CLEGG has suffered injury in fact and loss, sufficient for standing to bring claims
8 under Business & Professions Code sections 17150, *et seq.*

9 9. Based on information and belief, Plaintiffs allege that this entire action arises
10 solely under the laws of the State of California and applicable regulations of the health, safety,
11 and wages of the employee residing in the State of California.

12 **PARTIES**

13 **A. Plaintiff**

14 10. At all relevant times, Plaintiff STEPHEN CLEGG was a resident of the State of
15 California. Plaintiff CLEGG has been employed by Defendants in the state of California as an
16 exempt salesperson and store manager since approximately December 2016.

17 11. At all relevant times, Plaintiff MICHAEL EMMENS was a resident of the State
18 of California. Plaintiff EMMENS was employed by Defendants in the state of California as a
19 receiver from approximately December 1, 2020 to January 26, 2021.

20 **B. Defendants**

21 12. Defendant BOB'S DISCOUNT FURNITURE, LLC is a Massachusetts Limited
22 Liability Company engaged in business and employed Plaintiffs in California and Los Angeles
23 County.

24 13. Plaintiffs are unaware of the true names, capacities, relationships of the
25 Defendants sued as DOES 1 through 10, or the extent of their participation in the conduct
26 alleged herein, but are informed and believe, and thereon allege, that said Defendants are
27 legally responsible for the wrongful conduct alleged herein, and therefore sue these Defendants
28 by such fictitious names. Plaintiffs will amend this complaint when their true names and

capacities are ascertained. This is permitted by law pursuant to California Code of Civil Procedure section 474.

14. Plaintiffs are informed, believe, and allege each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan, or policy in all pertinent respects, and the acts of each Defendant are legally attributable to the other Defendants.

FIRST CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES
[Lab. Code §§ 2800, 2802 and 2804]
(On Behalf of Plaintiff CLEGG Against Each Defendant)

15. Plaintiff CLEGG hereby incorporates all preceding paragraphs of this Complaint.

16. Labor Code section 2800 provides, in pertinent part, that “[a]n employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

17. California Labor Code section 2802 provides:

(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful;

(b) All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss;

(c) For purposes of this section, the term ‘necessary expenditures or losses shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.

18. California Labor Code section 2804 mandates that this statutory right cannot be waived.

19. During Plaintiff CLEGG’s employment, Defendants were required to indemnify and reimburse Plaintiff CLEGG for all expenditures or losses caused by Plaintiff CLEGG’s want of ordinary care and/or incurred in direct consequence of the discharge of Plaintiff CLEGG’s duties, but failed to do so. Plaintiff CLEGG was required to use his personal

1 cellphone and personal vehicle for business-related purposes, as detailed herein, in violation of
2 Labor Codes sections 2800 and 2802. Plaintiff CLEGG also incurred other business and small
3 item expenses without reimbursement by Defendants.

4 20. In addition to associated unreimbursed expenses, Labor Code sections 2802-
5 2804 allow for recovery of attorneys' fees and costs in an amount according to proof.

6 **SECOND CAUSE OF ACTION**
7 **VIOLATION OF THE UNFAIR COMPETITION LAW**
8 **[Business and Professions Code §§ 17200, *et seq.*]**
9 **(On Behalf of Plaintiff CLEGG Against each Defendant)**

10 21. Plaintiff CLEGG hereby incorporates all preceding paragraphs of this
11 Complaint.

12 22. California Business and Professions Code sections 17200, *et seq.*, commonly
13 referred as the Unfair Competition Law or "UCL," prohibits "any unlawful, unfair or
14 fraudulent business act or practice." Unlawful business acts are those acts which are in
15 violation of any federal, state, or municipal statutes or codes, as well as state and federal
16 regulations. As elaborated above, Defendants' failure to properly pay Plaintiff CLEGG's
17 business-related expenses and meal period premiums violates many provisions of the California
18 Labor Code and applicable regulations of hours and wages as promulgated by the IWC.

19 23. Each of the identified statutes and regulations provide lawful basis to pursue
20 restitution from Defendants under the UCL. See, *Cortez v. Purolator Air Filtration Products*
21 *Co.*, 23 Cal.4th 163 (2000) [holding that Labor Code violations serve as sufficient statutory
22 predicate to recover restitution for unpaid wages.] Same, *Gattuso v. Harte-Hanks Shoppers,*
23 *Inc.*, 42 Cal. 4th 554 (2007).

24 24. Plaintiff CLEGG was subjected to a pattern, practice, and policy to use his
25 personal cell phone and personal vehicle for his job without any policy by Defendants to
26 reimburse for such reasonable and necessary expenditures. Accordingly, this conduct violated
27 Labor Code section 2802 and IWC Wage Order 4-2001, sections 8-9 and resulted in
28 Defendants' liability for restitution of such expenses to the Plaintiff CLEGG in an amount
according to proof.

THIRD CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO REIMBURSE EXPENSES
(Labor Code §§ 2802 and 2804)

(On Behalf of Plaintiff CLEGG and each Aggrieved Employee Against Each Defendant)

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

26. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

27. As set forth herein, Defendants failed to properly reimburse and indemnify Plaintiff CLEGG and other aggrieved employees for all necessary expenditures or losses incurred by the Plaintiff CLEGG and other aggrieved employees in the discharge of their duties, including expenses incurred in the mandatory business use of their personal cell phones and personal vehicles.

28. Defendants' conduct violated Labor Code sections 2802, as well as the applicable IWC Wage Order. As a result, Plaintiff CLEGG is entitled to recover civil penalties and pursuant to Labor Code sections 2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

29. Plaintiff CLEGG, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

FOURTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS OR PAY IN LIEU THEREOF

(Labor Code §§ 226.7, 512, and the Applicable IWC Wage Order)
(On Behalf of Plaintiff CLEGG and each Aggrieved Employee Against Each Defendant)

30. Plaintiff CLEGG hereby incorporates all preceding paragraphs of this Complaint.

32. As set forth herein, Defendants failed to provide Plaintiff CLEGG and other aggrieved employees with compliant meal periods as provided in Labor Code sections 226.7 and 512, and failed to pay them the additional pay at the employee's regular rate of compensation for each work day in lieu of providing off-duty meal period(s).

33. Defendants' conduct violated Labor Code sections 226.7, 512, and 1198, as well as the "Meal Periods" section of the applicable IWC wage Order. As a result, Plaintiff CLEGG is entitled to recover, civil penalties and pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

34. Plaintiff CLEGG, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

PAGA PENALTIES FOR FAILURE TO PROVIDE PAID SICK LEAVE
(Labor Code §§ 246, 248.5 and the Applicable IWC Wage Order)
(On Behalf of Plaintiff CLEGG and each Aggrieved Employee Against Each Defendant)

35. Plaintiff CLEGG hereby incorporates all preceding paragraphs of this Complaint.

36. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

37. As described herein, Defendants failed to provide accurate sick pay as required by Cal. Lab. Code section 246. By failing to accurately record all hours actually worked and failing to pay for all hours worked, Defendants failed to provide all paid sick leave in

1 accordance with California law, which requires that paid sick days accrue at the rate of not less
2 than one hour per every 30 hours worked. Defendants also did not provide Plaintiff CLEGG and
3 other aggrieved employees the proper written notice containing the correct amount of paid sick
4 leave.

5 38. Defendants' conduct violated Labor Code sections 246 and 248.5, as well as the
6 applicable IWC Wage Order. As a result, Plaintiff CLEGG is entitled to recover civil penalties
7 and pursuant to Labor Code sections 2699(a) or, in the alternative, section 2699(f)(2), attorney's
8 fees, expenses, and costs of suit.

9 39. Plaintiff CLEGG, as a representative of the general public, will and does seek to
10 recover any and all penalties for each and every violation, in an amount according to proof, as to
11 those penalties available pursuant to the PAGA. Funds recovered will be distributed in
12 accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf
13 of the State of California.

14 **SIXTH CAUSE OF ACTION**
15 **PAGA PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE**
16 **STATEMENTS**
17 **(Labor Code § 226 and the Applicable IWC Wage Order)**
18 **(On Behalf of Plaintiff EMMENS and each Aggrieved Employee Against Each**
19 **Defendant)**

20 40. Plaintiff EMMENS hereby incorporates all preceding paragraphs of this
21 Complaint.

22 41. Section 226(a) of the California Labor Code requires Defendants to itemize in
23 wage statements wages earned, all deductions from payment of wages and to accurately report
24 total hours worked and all rates of pay. Defendants have knowingly and intentionally failed to
25 comply with Labor Code section 226(a) by failing to provide adequate wage statements to
26 Plaintiff EMMENS and other aggrieved employees.

27 42. Labor Code section 226.3 provides for civil penalties for violations of Labor
28 Code section 226. The civil penalty is \$250 for the initial violation and \$1000 for each
subsequent violation.

43. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection

1 of civil penalties for violations of the labor code, to be recovered through a civil action brought
2 by an aggrieved employee on behalf of himself or herself and other current or former employees
3 pursuant to the procedures specified in Section 2699.3.

4 44. As alleged herein, Defendants failed to provide adequate wage statements and
5 thus violated Labor Code section 226(a).

6 45. Additionally, with respect to any wage statements which were issued,
7 Defendants failed to list the total hours worked, all applicable rates of pay, and the total number
8 of hours worked at each rate, all in violation of Labor Code section 226.

9 46. As a result, Defendants willfully violated the Labor Code and are liable to
10 Plaintiff EMMENS, and other aggrieved employees, for civil penalties as required by Labor
11 Code section 226.3 and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's
12 fees and costs, all recoverable in an amount according to proof.

13 47. Plaintiff EMMENS, as a representative of the general public, will and does seek
14 to recover any and all penalties for each and every violation, in an amount according to proof, as
15 to those penalties available pursuant to the PAGA. Funds recovered will be distributed in
16 accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf
17 of the State of California.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for relief as follows:

20 1. On the First Cause of Action: For damages for unreimbursed business expenses
21 in an amount according to proof;

22 2. On the Second Cause of Action: For restitution for unreimbursed business
23 expenses and meal period premiums, and for a declaratory judgment that the practices
24 complained of herein are unlawful under appropriate state law pursuant to California Business
25 & Professions Code sections 17200, *et seq.*;

26 3. For maintenance of this claim as a Representative Action under the PAGA, and
27 providing Plaintiffs and their counsel with all enforcement capability as if this action had been
28 instituted by the Division of Labor Standards Enforcement ("DLSE");

1 4. For recovery of civil penalties as permitted by Labor Code section 226.3, for
2 failing to provide accurate itemized wage statements, in an amount to be assessed and
3 according to proof;

4 5. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the
5 extent that Section 2699(a) does not apply and/or where a statutory civil penalty is not
6 provided, including but not limited to failing to comply with Labor Code sections 226.7, 246,
7 and 2802;

8 6. Attorneys' fees and costs of suit, including necessary litigation costs, expert fees
9 and/or fees for an accounting pursuant to California Labor Code sections 2802 and the PAGA,
10 as well as California Code of Civil Procedure section 1021.5, or other applicable state law;

11 7. For such other legal and/or equitable relief as this Court deems necessary, just,
12 and proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff CLEGG demands a jury trial on claims that may be so tried.

15 **COHELAN KHOURY & SINGER**
16 **NAKASE LAW FIRM, INC.**
17 **KINGSLEY & KINGSLEY, APC**

18
19 Dated: April 22, 2021

20 By:  _____
21 J. Leon Hill, Esq.
22 Counsel for Plaintiffs STEPHEN CLEGG and
23 MICHAEL EMMENS
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EXHIBIT A

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
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JEFF GERACI
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KRISTINA DE LA ROSA
ROSEMARY C. KHOURY

(† Also admitted in Illinois)

January 12, 2021

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency ("LWDA")

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Bob's Discount Furniture, LLC
c/o Agent for Service of Process
CT Corporation System
818 West Seventh Street, Suite 390
Los Angeles, CA 90017

Bob's Discount Furniture, LLC
434 Tolland Turnpike
Manchester, CT 06042

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Stephen Clegg on behalf of himself and all exempt sales employees of Bob's Discount Furniture, LLC in the State of California, as an individual and as proposed a Representative of the State of California

Dear PAGA Administrator and Bob's Discount Furniture, LLC:

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

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

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

FACTUAL STATEMENT

Claimant is a California based employee who worked for the Employer as an exempt employee in the job position(s) of floor salesperson and manager from approximately December 5, 2016 through December 2020. During his employment, Claimant was subject to a pattern,

practice and policy of a failure by the Employer to reimburse business expenses for required cell phone use, and was required by the Employer to remain on premises without any break period for as many as 12 hours at a time. Other aggrieved employees were subjected to the identical practices in violation of California Labor Codes section 2802-2804 and section 512.

At all relevant times at least one year prior to the date of this Notice, the Employer subjected Claimant and other aggrieved employees to policies and practices which caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties individually and on behalf of other aggrieved employees based on the alleged violations of the California Labor Code set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order(s) on behalf of himself and all other aggrieved employees.

FAILURE TO PROVIDE MEAL PERIODS
(Labor Code §§ 226.7, 512, and 1198)

Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes”

Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

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

The Employer failed to provide Claimant and other aggrieved employees with legally compliant meal and rest periods on eligible workdays. The Employer regularly failed to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than 10 hours, as required under California law. Furthermore, the meal periods provided to Claimant and other aggrieved employees were often short, insofar as they were not at least 30 minutes in length, as required under California law. On information and belief, Claimant and other aggrieved employees did not waive their right to receive meal periods with the ability to leave store premises. During Claimant’s employment, the Employer failed to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512.

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

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
(Labor Code §§ 2802 and 2804)

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

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

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

As stated above, Claimant and other aggrieved employees were not reimbursed for the cost of their business use of their cell phone in violation of law and the holding in *Cohran v. Schwan’s Home Service, Inc.* (2015) 228 Cal.App.4th 1137

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

The Employer failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties, including for the use of personal cell phones for work-related purposes.

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

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

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

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

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

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

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

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

On information and belief, the Employer failed to comply with Labor Code sections 246 and 248.5 by failing to provide all paid sick leave due and earned and failing to set forth in a written notice the accurate amount of paid sick leave Claimant and other aggrieved employees accrued. By failing to accurately record all hours actually worked and failing to pay for all hours worked, the Employer failed to provide all paid sick leave in accordance with California law, which requires that paid sick days accrue at the rate of not less than one hour per every 30 hours worked.

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

California LWDA
Bob's Discount Furniture Pool Systems, LLC
Re: Stephen Clegg
January 12, 2021
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ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES
(Labor Code §§ 2802-2804, and 2699, *et seq.*)

Labor Code sections 2802-2804, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

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

CONCLUSION

Claimant requests the Labor and Workforce Development Agency initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Claimant will pursue claims for civil penalties and will seek all remedies available for violations of the Labor Code and the applicable Industrial Welfare Commission Wage Orders, including all available penalties set forth in Labor Code section 2699(f).

Sincerely,
COHELAN KHOURY & SINGER



J. Jason Hill, Esq.

cc:
Via Email only
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EXHIBIT B

KINGSLEY & KINGSLEY

| L A W Y E R S |

February 8, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

BOB'S DISCOUNT FURNITURE, LLC
434 Tolland Turnpike
Manchester, CT 06042

Re: MICHAEL EMMENS v. BOB'S DISCOUNT FURNITURE, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents MICHAEL EMMENS (“Plaintiff”) and a proposed group of current and former employees working for BOB'S DISCOUNT FURNITURE, LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by BOB'S DISCOUNT FURNITURE, LLC, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Defendant issues Plaintiff and the aggrieved employees itemized wage statements that do not include the total hours worked by the employee. As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

(Continues on next page)

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

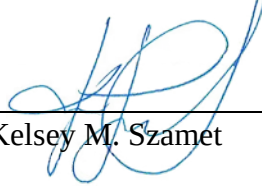
February 8, 2021

Page 2 of 2

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code § 226(a) with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/jl

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. BOB'S DISCOUNT FURNITURE, LLC via USPS Certified Mail # 7015 0640 0003 6595 5840