COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

COHELAN KHOURY & SINGER
Michael D. Singer (SBN 115301)
msinger@ckslaw.com
Marta Manus (SBN 260132)
mmanus@ckslaw.com
605 C Street, Suite 200
San Diego, CA 92101
Tel.: (619) 595-3001/Fax: (619) 595-3000

NAKASE LAW FIRM, INC.
Brad Nakase (SBN 236226)
brad@NakaseLawFirm.com
Jared Peterson, Esq. (SBN 270473)
jared@nakaselawfirm.com
2221 Camino Del Rio South, Suite 300
San Diego, CA 92108
Tel: (619) 550-1321

KINGSLEY & KINGSLEY, APC
Eric B. Kingsley (SBN 185123)
eric@kingsleykingsley.com
Kelsey M. Szamet (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel.: (818) 990-8300/Fax (818) 990-2903

Attorneys for Plaintiffs STEPHEN CLEGG and MICHAEL EMMENS

FILED
Superior Court of California
County of Los Angeles
03/28/2024
David W. Slayton, Executive Officer / Clerk of Court
By: J. Shuton Deputy

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

[Case Assigned for All Purposes to Hon. Jon R. Takasugi in Dept. 17]

FIRST AMENDED 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*.

3. **PAGA PENALTIES FOR FAILURE TO REIMBURSE EXPENSES**
4. **PAGA PENALTIES FOR FAILURE TO PAY WAGES AND/OR OVERTIME**
5. **PAGA PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
6. **PAGA PENALTIES FOR UNLAWFUL DEDUCTIONS**
7. **PAGA PENALTIES FOR SECRET UNDERPAYMNET OF WAGES**
8. **PAGA PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS OR PAY IN LIEU THEREOF**
9. **PAGA PENALTIES FOR FAILURE TO PROVIDE REST PERIODS OR PAY IN LIEU THEREOF**
10. **PAGA PENALTIES FOR FAILURE TO PROVIDE PAID SICK LEAVE**
11. **PAGA PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
12. **PAGA PENALTIES FOR FAILURE TO PAY ALL WAGES OWED**

DEMAND FOR JURY TRIAL

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605 C Street, Suite 200
San Diego, CA 92101

Plaintiff STEPHEN CLEGG, individually, and Plaintiffs STEPHEN CLEGG and MICHAEL EMMENS ("Plaintiffs") on behalf of themselves and others aggrieved and as Representatives of the State of California's Labor and Workforce Development Agency ("LWDA"), hereby allege as follows:

GENERAL ALLEGATIONS

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

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

3. Specifically, during all or a significant part of the applicable limitations period for the time period covered by the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq*., Plaintiff CLEGG alleges Defendants did not pay him or other aggrieved employees all wages for all hours worked because they did not pay for time spent working during purported meal periods. Plaintiff CLEGG also seeks to recover penalties for Defendant's failure to reimburse for costs and expenses, sick leave wages, and additional labor code violations as set forth herein. Plaintiff EMMENS alleges Defendants required him or other aggrieved employees to forgo at least one of their rest breaks. Defendants did not compensate Plaintiff EMMENS or other aggrieved employees for each missed rest period. Plaintiff EMMENS alleges Defendants failed to properly compensate him and the aggrieved employees all minimum wages and overtime wages due in a given pay period. Plaintiff EMMENS also seeks to recover penalties for Defendants' failure to pay all wages, failure to maintain accurate records, unauthorized deductions, and additional labor code violations as set forth herein.

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

5. Pursuant to Labor Code sections 2698, *et seq*., Plaintiffs seek to recover civil penalties and reasonable attorney's fees and costs. Plaintiffs, by operation of law, have standing and capacity to sue as representatives of the State of California. Plaintiffs mailed written notices of the specific provisions of the Labor Code that Defendants violated, including the facts and theories to support the alleged violations, to the LWDA and to Defendant BOB'S DISCOUNT FURNITURE, LLC pursuant to Labor Code section 2699.3 on January 12, 2021 for Plaintiff CLEGG, and February 8, 2021, October 5, 2023, and October 24, 2023, for Plaintiff EMMENS. True and correct copies of the notices are attached as **Exhibits A, B, C, and D,** respectively, and are incorporated by this reference. Defendants did not provide notice of cure and the LWDA did not provide notice of investigation in the 65 days after the mailing of the PAGA notices.

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.

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San Diego, CA 92101

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605 C Street, Suite 200
San Diego, CA 92101

JURISDICTION AND VENUE

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 appropriate jurisdiction to hear this matter.

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

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

PARTIES

A. Plaintiff

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

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

/ / /

B. Defendants

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

13. Plaintiffs are unaware of the true names, capacities, relationships of the Defendants sued as DOES 1 through 10, or the extent of their participation in the conduct alleged herein, but are informed and believe, and thereon allege, that said Defendants are legally responsible for the wrongful conduct alleged herein, and therefore sue these Defendants 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

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

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

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

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

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

23. Each of the identified statutes and regulations provide lawful basis to pursue restitution from Defendants under the UCL. See, *Cortez v. Purolator Air Filtration Products*

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Co., 23 Cal.4th 163 (2000) [holding that Labor Code violations serve as sufficient statutory predicate to recover restitution for unpaid wages.] Same, *Gattuso v. Harte-Hanks Shoppers, Inc*., 42 Cal. 4th 554 (2007).

24. Plaintiff CLEGG was subjected to a pattern, practice, and policy to use his personal cell phone and personal vehicle for his job without any policy by Defendants to reimburse for such reasonable and necessary expenditures. Accordingly, this conduct violated Labor Code section 2802 and IWC Wage Order 4-2001, sections 8-9 and resulted in 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

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San Diego, CA 92101

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 PAY WAGES AND/OR OVERTIME

(Labor Code §§ 510, 1194, 1194.2, 1197, 1198 and 1199)

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

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

31. 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.

32. As set forth herein, Defendants have violated Labor Code sections 510, 1194, 1194.2, 1197, 1198 and 1199.

33. Labor Code sections 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code section 510(a) states that eight hours of labor constitutes a day's work and any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the *regular rate of pay* for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation, including non-discretionary bonuses, must be included in the regular rate of pay for the purpose of determining the correct overtime rate.

34. Defendants have had a consistent policy of failing to pay wages and/or overtime to Plaintiff EMMENS and other aggrieved employees.

35. Plaintiff EMMENS and the aggrieved employees were not properly compensated at the appropriate rate of pay because Plaintiff EMMENS and the aggrieved

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employees were paid at a regular rate less than the rate required under California law. Plaintiff contends that Defendant made adjustments to the wages and overtime wages during certain pay periods where an overpayment adjustment was made. To the extent that a wage adjustment made the wages paid less than the applicable minimum wages and/or overtime wages due in a given pay period, Defendants failed to pay all applicable minimum wages and/or overtime wages due to Plaintiff EMMENS and other aggrieved employees

36. Plaintiff EMMENS, 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.

FIFTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS
(Labor Code §§ 1174, 1174.5, and 1175)
(On Behalf of Plaintiff EMMENS and each Aggrieved Employee Against Each Defendant)

37. Plaintiff EMMENS hereby incorporates all preceding paragraphs of this Complaint.

38. As set forth herein, Defendants failed to maintain accurate records for Plaintiff EMMENS and the aggrieved employees as required by Labor Code sections 1174, 1174.5, and 1175.

39. Labor Code section 1174 requires employers to maintain a record showing the names and addresses of all employees and 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 for a minimum period of three years. Labor Code section 1174.5 further provides that an employer who fails to maintain these records is subject to a $500 civil penalty.

40. Defendants fail to maintain accurate payroll records that maintain the daily hours worked and the wages paid for Plaintiff EMMENS and other aggrieved employees.

41. Plaintiff EMMENS, as a representative of the general public, will and does seek

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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.

SIXTH CAUSE OF ACTION
PAGA PENALTIES FOR UNLAWFUL DEDUCTIONS
(Labor Code § 221)
(On Behalf of Plaintiff EMMENS and each Aggrieved Employee Against Each Defendant)

42. Plaintiff EMMENS hereby incorporates all preceding paragraphs of this Complaint.

43. 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.

44. Labor Code section 221 states that it is "unlawful for any employer to collect or receive from an employee any part of wages."

45. Moreover, Labor Code section 226.3 provides for heightened penalties where "the employer fails to provide the employee a wage deduction statement or fails to keep [required] records."

46. As set forth herein, Defendants maintain a consistent policy of unlawfully deducting wages from Plaintiff EMMENS and all aggrieved employees in violation of Labor Code section 221. By making these unauthorized deductions from Plaintiff EMMENS and all aggrieved employees' earned wages, Plaintiff EMMENS and all aggrieved employees were paid less than the applicable minimum wage required under California law.

47. Plaintiff EMMENS, 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.

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605 C Street, Suite 200
San Diego, CA 92101

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SEVENTH CAUSE OF ACTION
PAGA PENALTIES FOR SECRET UNDERPAYMENT OF WAGES
(Labor Code § 223)
(On Behalf of Plaintiff EMMENS and each Aggrieved Employee Against Each Defendant)

48. Plaintiff EMMENS hereby incorporates all preceding paragraphs of this Complaint.

49. 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.

50. Labor Code section 223 requires an employer to maintain a designated wage scale and that "it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

51. As set forth herein, Defendants violate Labor Code section 223 maintaining wages lower than the lawful wage scale according to California law. As such, Plaintiff EMMENS is an aggrieved employee within the meaning of PAGA and Defendant violated Labor Code section 223 with respect to Plaintiff and all aggrieved employees.

52. Plaintiff EMMENS, 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.

EIGHTH 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)

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

54. 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.

55. 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).

56. 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.

57. 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.

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NINTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PROVIDE REST PERIODS OR PAY IN LIEU THEREOF
(Labor Code § 226.7 and the Applicable IWC Wage Order)
(On Behalf of Plaintiff EMMENS and each Aggrieved Employee Against Each Defendant)

58. Plaintiff EMMENS hereby incorporates all preceding paragraphs of this Complaint

59. 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.

60. As set forth herein, Defendants failed to provide Plaintiff EMMENS and other aggrieved employees with compliant rest periods as provided in Labor Code section 226.7, and failed to pay them the additional pay at the employee's regular rate of compensation for each

work day in lieu of providing non-compliant rest periods.

61. Defendants failed to apprise Plaintiff EMMENS and the aggrieved employees of their rights associated with rest periods and failed to provide compliant rest periods.

62. Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendants failed to provide Plaintiff EMMENS and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Instead, Defendant required Plaintiff EMMENS and all aggrieved employees to forgo at least one of their rest breaks on a regular and consistent basis during the relevant time period.

63. Moreover, Plaintiff EMMENS and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period as described above and as required by Labor Code § 226.7.

64. On the rare occasion if any that Defendants paid rest period premiums, Defendants have had a consistent policy of improperly paying rest period premiums at the base rate and not blended rate. As with meal periods, Defendants' policies and practices as alleged herein violate Labor Code § 226.7 and are inconsistent with the California Supreme Court's recent decision in *Ferra*, as discussed above.

65. Plaintiff EMMENS, 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.

TENTH CAUSE OF ACTION
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)

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

67. 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

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pursuant to the procedures specified in Section 2699.3.

68. 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 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. Defendants also did not provide Plaintiff CLEGG and other aggrieved employees the proper written notice containing the correct amount of paid sick leave.

69. Defendants' conduct violated Labor Code sections 246 and 248.5, 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.

70. 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.

<u>ELEVENTH CAUSE OF ACTION</u>

PAGA PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226 and the Applicable IWC Wage Order)

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

71. Plaintiff EMMENS hereby incorporates all preceding paragraphs of this Complaint.

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

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

74. 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.

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

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

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

78. Plaintiff EMMENS, 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.

TWELFTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PAY ALL WAGES OWED UPON SEPARATION
(Labor Code § 203)
(On Behalf of Plaintiff EMMENS and each Aggrieved Employee Against Each Defendant)

79. Plaintiff EMMENS hereby incorporates all preceding paragraphs of this Complaint

80. 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

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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.

81. Labor Code section 200 states "'Wages includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation'." Further, Labor Code § 203 provides that if "an employer willfully fails to pay…any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

82. Numerous aggrieved employees, including Plaintiff EMMENS are no longer employed by Defendants.

83. Plaintiff EMMENS and all aggrieved employees were not paid all wages due upon their separation from Defendants' employ.

84. As such, Plaintiff EMMENS is an aggrieved employee and Defendants failed to pay Plaintiff EMMENS and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code section 203.

85. Plaintiff EMMENS, 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

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

2. On the Second Cause of Action: For restitution for wages and/or overtime, unreimbursed business expenses, meal and rest period premiums, and for a declaratory

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

judgment that the practices complained of herein are unlawful under appropriate state law pursuant to California Business & Professions Code sections 17200, *et seq.*;

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

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

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

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

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

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on claims that may be so tried.

COHELAN KHOURY & SINGER
NAKASE LAW FIRM, INC.
KINGSLEY & KINGSLEY, APC

Dated: March 28, 2024

By:______________________________
Marta Manus, Esq.
Counsel for Plaintiffs STEPHEN CLEGG and MICHAEL EMMENS

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

EXHIBIT A

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC •

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305
Telephone: (619) 595-3001
Facsimile: (619) 595-3000
www.ckslaw.com

JEFF GERACI
J. JASON HILL†
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 allege 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 form 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, and1198)

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.

<u>FAILURE TO PROVIDE PAID SICK LEAVE</u>
(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.

<u>ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES</u>
(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.

<u>CONCLUSION</u>

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:
<u>Via Email only</u>
Brad Nakase, Esq.
Jared Peterson, Esq.
NAKASE LAW FIRM, INC.
2221 Camino Del Rio South, Suite 300
San Diego, CA 92108
brad@NakaseLawFirm.com
jared@nakaselawfirm.com

EXHIBIT B

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)*

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

16133 Ventura Boulevard, Suite 1200, Encino, California 91436
Tel. (818) 990-8300 | Fax. (818) 990-2903

EXHIBIT C

KINGSLEY & KINGSLEY
| LAWYERS |

October 5, 2023

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
Via Certified Mail # 7022 3330 0002 1335 8363

Re: Supplemental PAGA Notice Letter
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. This letter shall serve as a <u>supplement</u> to Plaintiff's PAGA letter sent on February 8, 2021. 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").

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a). 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. Labor Code § 226(a)(9) 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 all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant failed to issue Plaintiff and all aggrieved employees accurate itemized wage statements that show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant has violated Labor Code § 226(a) with respect to Plaintiff and all aggrieved employees.

16133 Ventura Boulevard, Suite 1200, Encino, California 91436
Tel. (818) 990-8300 | Fax. (818) 990-2903

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the *regular rate of pay* for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation, including non-discretionary bonuses, must be included in the regular rate of pay for the purpose of determining the correct overtime rate.

Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and the aggrieved employees were not properly compensated at the appropriate rate of pay because Plaintiff and the aggrieved employees were paid at a regular rate less than the rate required under California law. Plaintiff contends that Defendant made adjustments to the wages and overtime wages during certain pay periods where an overpayment adjustment was made. To the extent that a wage adjustment made the wages paid less than the applicable minimum wages and/or overtime wages due in a given pay period, Defendant failed to pay all applicable minimum wages and/or overtime wages due to Plaintiff sand the aggrieved employees.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 226(a), 510, 1194, 1194.2 and 1199 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/km

Cc:
1. Amended LWDA Letter filed via Electronic Submission: https://dir.tfaforms.net/310
2. BOB'S DISCOUNT FURNITURE, LLC via USPS Certified Mail # 7022 3330 0002 1335 8363
3. Jackson Lewis P.C., 200 Spectrum Center Drive, Suite 500, Irvine, CA 92618 via Electronic Mail Transmission at Michael.Hood@jacksonlewis.com; Kelli.Dreger@jacksonlewis.com
4. Cohelan Khoury & Singer 605 C Street, Suite 200, San Diego, CA 92101 via Electronic Mail Transmission at msinger@ckslaw.com; jhill@ckslaw.com; aworden@ckslaw.com; matlas@ckslaw.com
5. Nakase Law Firm, Inc., 2221 Camino Del Rio South, Suite 300, San Diego, CA 92108 via Electronic Mail Transmission at brad@nakaselawfirm.com; jared@nakaselawfirm.com

EXHIBIT D

KINGSLEY & KINGSLEY
LAWYERS

October 24, 2023

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
Via Certified Mail # 7022 3330 0002 1335 8462

Re: Second Supplemental PAGA Notice Letter
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. This letter shall serve as a supplement to Plaintiff's PAGA letters sent on February 8, 2021 and October 5, 2023. 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").

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a). 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. Labor Code § 226(a)(9) 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 all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant failed to issue Plaintiff and all aggrieved employees accurate itemized wage statements that show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant has violated Labor Code § 226(a) with respect to Plaintiff and all aggrieved employees.

16133 Ventura Boulevard, Suite 1200, Encino, California 91436
Tel. (818) 990-8300 | Fax. (818) 990-2903

Defendant has violated Labor Code §§ 510, 1194, 1194.2, 1197, 1198 and 1199. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the *regular rate of pay* for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation, including non-discretionary bonuses, must be included in the regular rate of pay for the purpose of determining the correct overtime rate.

Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and the aggrieved employees were not properly compensated at the appropriate rate of pay because Plaintiff and the aggrieved employees were paid at a regular rate less than the rate required under California law. Plaintiff contends that Defendant made adjustments to the wages and overtime wages during certain pay periods where an overpayment adjustment was made. To the extent that a wage adjustment made the wages paid less than the applicable minimum wages and/or overtime wages due in a given pay period, Defendant failed to pay all applicable minimum wages and/or overtime wages due to Plaintiff and the aggrieved employees.

Defendant failed to maintain accurate records for Plaintiff and the aggrieved employees as required by Labor Code §§ 1174, 1174.5, and 1175. Labor Code § 1174 requires employers to maintain a record showing the names and addresses of all employees and 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‖ for a minimum period of three years. Labor Code § 1174.5 further provides that an employer who fails to maintain these records is subject to a $500 civil penalty. Here, Defendant fails to maintain accurate payroll records that maintain the daily hours worked and the wages paid for Plaintiff and the aggrieved employees.

Labor Code § 221 states that it is "unlawful for any employer to collect or receive from an employee any part of wages." Moreover, Labor Code § 226.3 provides for heightened penalties where "the employer fails to provide the employee a wage deduction statement or fails to keep [required] records." Defendant maintains a consistent policy of unlawfully deducting wages from Plaintiff and all aggrieved employees in violation of Labor Code § 221. By making these unauthorized deductions from Plaintiff and all aggrieved employees' earned wages, Plaintiff and all aggrieved employees were paid less than the applicable minimum wage required under California law.

Labor Code § 223 requires an employer to maintain a designated wage scale and that "it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract." Defendant violates Labor Code § 223 maintaining wages lower than the lawful wage scale according to California law. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant violated Labor Code § 223 with respect to Plaintiff and all aggrieved employees.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods. Additionally, Defendant has had a consistent policy and practice of: (1) failing to provide Plaintiff and the aggrieved employees with compliant meal periods in violation of Labor Code §§ 226.7 and 512; and (2) failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the complaint meal period was not provided.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with rest periods and failed to provide compliant rest periods. Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Instead, Defendant required Plaintiff and all aggrieved employees to forgo at least one of their rest breaks on a regular and consistent basis during the relevant time period.

Moreover, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period as described above and as required by Labor Code § 226.7. On the rare occasion if any that Defendant paid rest period premiums, Defendant has had a consistent policy of improperly paying rest period premiums at the base rate and not blended rate. As with meal periods, Defendant's policies and practices as alleged herein violate Labor Code § 226.7 and are inconsistent with the California Supreme Court's recent decision in *Ferra*, as discussed above. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code § 226.7 as well as IWC Wage Order No. 4-2001 with respect to Plaintiff and all aggrieved employees.

Labor Code § 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." California Labor Code § 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. Additionally, California Labor Code § 2804 mandates that this statutory right cannot be waived. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the commissioner shall be the same as those set forth in Section 1197.1. Amounts recovered pursuant to this section shall be paid to the affected employee."

Here, Defendant was required to indemnify and reimburse Plaintiff and all aggrieved employees for all expenditures or losses caused by Plaintiff's and other aggrieved employees' want of ordinary care and/or incurred in direct consequence of the discharge of Plaintiff's and the aggrieved employees' duties, but failed to do so. Plaintiff and the aggrieved employees were required to use their personal cellphone and personal vehicle for business-related purposes, as detailed herein, in violation of Labor Codes §§ 2800 and 2802. Plaintiff and the aggrieved employees also incurred other business and small item expenses without reimbursement by Defendants. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant violated Labor Code §§ 2800-2804 with respect to Plaintiff and all aggrieved employees.

Labor Code §245.5 and 246 provide that "[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages." Here, Defendant has failed to set forth the amount of sick leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage statements described in Section 226 that it issues to Plaintiff and all aggrieved employees. Furthermore, Labor Code §245.5 defines "[p]aid sick days" as "time that is compensated at the same wage as the employee normally earns during regular work hours and is provided by an employer to an employee." Moreover, Labor Code §246(l)(1) states "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time." Further, Labor Code § 248.5(a) provides that "the Labor Commissioner shall enforce this article, including investigating an alleged violation, and ordering appropriate temporary relief to mitigate the violation or to maintain the status quo pending the completion of a full investigation or hearing through the procedures set forth in Sections 98, 98.3, 98.7, 98.74, or 1197.1, including by issuance of a citation against an employer who violates this article, and by filing a civil action. If a citation is issued, the procedures for issuing, contesting, and enforcing judgments for citations and civil penalties issued by the Labor Commissioner shall be the same as those set out in Section 98.74 or 1197.1, as appropriate."

Plaintiff and all aggrieved employees were not paid for their sick days or vacation days at their regular rates of pay. Instead, all aggrieved employees, regardless of their regular rates of pay, were paid at a lower rate of compensation. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§ 245.5 and 246 with respect to Plaintiff and all aggrieved employees.

Labor Code § 200 states "'Wages includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation'." Further, Labor Code § 203 provides that if "an employer willfully fails to pay…any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant's employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

Given these allegations, Plaintiff requests that Defendant pay back any wages owed from one year prior to the date of this letter to the present, pursuant to Labor Code § 558.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 200-203, 226(a), 221, 223, 226.3, 245.5, 246, 558, 248.5, 226.7, 510, 1174. 1174.5, 1175, 1194, 1194.2, 1197, 1198, and 1199, 1197.1, 2800-2804 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/km

Cc:

1. Second Amended LWDA Letter filed via Electronic Submission: https://dir.tfaforms.net/310
2. BOB'S DISCOUNT FURNITURE, LLC via USPS Certified Mail # *7022 3330 0002 1335 8462*
3. Jackson Lewis P.C., 200 Spectrum Center Drive, Suite 500, Irvine, CA 92618 via Electronic Mail Transmission at Michael.Hood@jacksonlewis.com; Kelli.Dreger@jacksonlewis.com
4. Cohelan Khoury & Singer 605 C Street, Suite 200, San Diego, CA 92101 via Electronic Mail Transmission at msinger@ckslaw.com; jhill@ckslaw.com; aworden@ckslaw.com; matlas@ckslaw.com
5. Nakase Law Firm, Inc., 2221 Camino Del Rio South, Suite 300, San Diego, CA 92108 via Electronic Mail Transmission at brad@nakaselawfirm.com; jared@nakaselawfirm.com

PROOF OF SERVICE

Clegg, et al. v. Bob's Discount Furniture, LLC

Los Angeles Superior Court Case No. 21STCV15281

I, Karla Sousa, declare as follows:

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to this action. My business address is 605 "C" Street, Suite 200, San Diego, California 92101.

On March 28, 2024, I instituted service of the forgoing document(s) described as:

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

on the following interested parties:

Counsel for Defendant
Kathy E. Le, Esq.
Kelli Dreger, Esq.
JACKSON LEWIS P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618
Kathy.Le@jacksonlewis.com
Kelli.Dreger@jacksonlewis.com

Counsel for Plaintiffs
Brad Nakase, Esq.
NAKASE LAW FIRM, INC.
2221 Camino Del Rio South, Suite 300
San Diego, CA 92108
brad@NakaseLawFirm.com

Eric B. Kingsley, Esq.
Kelsey M. Szamet, Esq.
KINGSLEY & KINGSLEY, APC
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
eric@kingsleykingsley.com
kelsey@kingsleykingsley.com

in the manner described below:

[XX] BY ELECTRONIC SERVICE – ONE LEGAL: Pursuant to Cal. Rules of Court, Rule 2.251(c)(3), I submitted an electronic version of the document(s) through the user interface of the e-filing vendor at www.onelegal.com.

[XX] STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed March 28, 2024, at San Diego, California.

Karla Sousa
Karla Sousa