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Superior Court of California,
County of Alameda

12/01/2021 at 03:03:53 PM

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individual, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

LUIS BETANCO, an individual, and on behalf
of All Other Similarly Situated Individuals,

Plaintiff,

v.

LIVING SPACES FURNITURE, LLC, A
Delaware Limited Liability Company; OF
SERVICE TRANSPORTATION, LLC., a
California Limited Liability Company; and
DOES 1 through 25, Inclusive,

Defendants.

CASE NO. **21CV003410**

COMPLAINT FOR:

**1. CIVIL PENALTIES UNDER LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE
2698, ET. SEQ**

1 Plaintiff LUIS BETANCO, an individual (“Plaintiff”), hereby files this Complaint against
2 Defendants OF SERVICE TRANSPORTATION INC., a California Limited Liability Company,
3 and Does 1 to 25 (hereinafter collectively, “Defendants”). Plaintiff, in his representative capacity, is
4 informed and believes and on the basis of that information and belief allege as follows:

5 **INTRODUCTION**

6 1. This lawsuit challenges Defendants’ employment practices with respect to their non-
7 employee workers who worked in California as a Contract Carrier, Driver, and/or Helper, based on
8 Defendants’ policy and practice of denying earned wages, including overtime pay, and failing to
9 provide legally compliant meal and rest breaks due to the misclassification of these workers as
10 independent contractors. In particular, Defendants require these workers to be present and perform
11 work in excess of eight hours per day and/or forty hours per work week, but fail to pay them
12 overtime wages accordingly, and further fail to pay such workers for all straight time hours they
13 worked due to their misclassification. Moreover, Defendants fail to provide meal and rest breaks to
14 these workers, fail to timely compensate them for all wages earned, and fail to properly and
15 accurately calculate overtime and report wages earned, hours worked, and wage rates.

16 2. At all times relevant hereto, and with certain defined exceptions, Defendants’
17 compensation scheme did not fully compensate Plaintiff and the other aggrieved employees with at
18 least minimum wages and/or designated rates for all hours worked.

19 3. At all times relevant hereto, and with certain defined exceptions, Defendants’
20 compensation scheme did not fully compensate Plaintiff and the other aggrieved employees with
21 overtime compensation for all overtime hours worked.

22 4. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
23 failed to provide Plaintiff and the other aggrieved employees with adequate off-duty meal periods
24 and meal period compensation in violation of Labor Code sections 226.7, 512, and 516 and IWC
25 Wage Order No. 9 section 11.

26 5. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
27 failed to provide Plaintiff and the other aggrieved employees with paid rest periods and rest period
28

1 compensation in violation of Labor Code sections 226.7 and 516 and IWC Wage Order No. 9
2 section 12.

3 6. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
4 knowingly and intentionally failed to provide Plaintiff and the other aggrieved employees with
5 wage statements that, among others, show all wages earned, all hours worked, or all applicable
6 rates.

7 7. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
8 failed to maintain documentation of the actual hours worked each day by Plaintiff and the other
9 aggrieved employees, all wages earned, and meal breaks taken in violation of Labor Code sections
10 1174 and IWC Wage Order No. 9 section 11.

11 8. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
12 failed to pay Plaintiff and the other aggrieved employees all wages due and owing upon termination
13 of employment including, but not limited to, payment of wages for off-the-clock work, overtime
14 compensation and missed meal and rest periods compensation.

15 9. In this case, Plaintiff seeks penalties established by Labor Code section 2699, the
16 Private Attorneys General Act (“PAGA”), against Defendants for their unlawful employment
17 practices.

18 **PARTIES**

19 ***Plaintiff Luis Betanco***

20 10. Plaintiff LUIS BETANCO is an individual over the age of eighteen (18) and is now
21 and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State
22 of California. Within the Relevant Time Period, Mr. Betanco was unlawfully classified by
23 Defendant Of Service Transportation, Inc. as an independent contractor and worked as a Contract
24 Carrier out of the warehouse owned and operated by Living Spaces Furniture, LLC, in Fremont,
25 California.

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1 ***Defendant Of Service Transportation, LLC***

2 11. Plaintiff is informed and believes and based thereon alleges that Defendant Of
3 Service Transportation, LLC is now and/or at all times mentioned in this Complaint was a
4 California limited liability company registered with the State of California's Secretary of State.

5 12. Plaintiff is informed and believes and based thereon alleges that Defendant OST
6 provides logistics and delivery services to its retail merchants like Living Spaces, and others, to
7 deliver product and services to their clients' customers. OST utilizes Delivery Drivers to pick up
8 the merchandise at the merchants' stores or warehouses and to deliver and install them at the
9 customers' homes or businesses. OST is therefore a provider of managed transportation services
10 including the planning and execution for delivery of its retail merchant clients. OST has engaged in
11 unlawful employment practices addressed in this Complaint throughout California and in Alameda
12 County.

13 ***Defendant Living Spaces Furniture, LLC***

14 13. Plaintiff is informed and believes and based thereon alleges that Defendant Living
15 Spaces Furniture, LLC is now and/or at all times mentioned in this Complaint was a Delaware
16 limited liability company registered with the State of California's Secretary of State.

17 14. Plaintiff is informed and believes and based thereon alleges that Defendant Living
18 Spaces owns and operates a warehouse in Fremont, California located at 41008 Boyce Road in
19 Fremont, California. Upon information and belief, Living Spaces maintains other locations and
20 warehouse throughout California during the Class Period. Living Spaces retained OST to provide
21 logistics and delivery services, specifically to deliver product and services to their customers.
22 Living Spaces, through OST, utilizes Delivery Drivers to pick up the merchandise at Living Spaces'
23 warehouses and to deliver them at the customers' homes or businesses. Living Spaces is therefore a
24 Client Employer under Labor Code § 2810.3. Living Spaces has engaged in unlawful employment
25 practices addressed in this Complaint throughout California and in Alameda County.

26 ***Does 1 through 25, Inclusive***

27 15. DOES 1 through 25 inclusive are now and/or at all times mentioned in this
28 Complaint were, licensed to do business and/or actually doing business in the State of California.

1 Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of
2 DOES 1 through 25, inclusive and for that reason, DOES 1 through 25 are sued under such
3 fictitious names pursuant to California Code of Civil Procedure, Section 474. Plaintiff will seek
4 leave of court to amend this Complaint to allege such names and capacities as soon as they are
5 ascertained. DOES 1 through 25 are believed to be business entities who were also co-employers of
6 the Plaintiff and the other aggrieved employees.

7 ***All Defendants***

8 16. Plaintiff is informed and believes and based thereon alleges that at all times herein
9 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
10 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting
11 within the course and scope of said employment and/or agency; furthermore, that each and every
12 Defendant herein, while acting as a high corporate officer, director and/or managing agent,
13 principal and/or employer, expressly directed, consented to, approved, affirmed and ratified each
14 and every action taken by the other co-Defendants, as herein alleged and was responsible in whole
15 or in part for the matters referred to herein.

16 17. Plaintiff is informed and believes and based thereon alleges that at all times herein
17 mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly
18 situated and the general public to be subjected to the unlawful practices, wrongs, complaints,
19 injuries and/or damages alleged in this Complaint.

20 18. Plaintiff is informed and believes and based thereon alleges that Defendants, and
21 each of them, are now and/or at all times mentioned in this Complaint were members of and/or
22 engaged in a joint venture, partnership, and common enterprise, and were acting within the course
23 and scope of, and in pursuit of said joint venture, partnership and common enterprise and, as such
24 were co-employers of the Plaintiffs and the other aggrieved employees.

25 19. Plaintiff is informed and believes and based thereon alleges that Defendants, and
26 each of them, at all times mentioned in this Complaint, concurred with, contributed to, approved
27 of, aided and abetted, condoned and/or otherwise ratified, the various acts and omissions of each

1 and every one of the other Defendants in proximately causing the injuries and/or damages alleged
2 in this Complaint.

3 **JURISDICTION AND VENUE**

4 20. This Court has jurisdiction over this matter, and under the Code of Civil Procedure
5 Section 395, venue is proper in that Defendants operate in Alameda County and work was
6 performed by Plaintiff and other members of the Class for Defendants in the County of Alameda,
7 California.

8 21. Plaintiff does not seek more than seventy-five thousand dollars (\$75,000) and
9 waives seeking more than seventy-five thousand dollars (\$75,000), including attorneys' fees but
10 excluding costs and interest, as to his share or portion of penalties or any other recovery with
11 respect to the violations alleged herein against Defendants. This case also raises no federal
12 question.

13 22. The Relevant Time Period for this matter encompasses April 6, 2019 and continues
14 through the present. By letter dated September 1, 2021, Plaintiff, on behalf of himself and the
15 other aggrieved employees, gave written notice by electronic mail and certified mail to the Labor
16 and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the
17 California Labor Code alleged to have been violated, including the facts and theories to support
18 the alleged violations. However, as of July 29, 2020, the statute of limitations for the PAGA
19 claims asserted by Plaintiff on behalf of himself and the aggrieved employees were tolled as a
20 result of California Rules of Court, Emergency Rule 9(a). As such, the one-year statute of
21 limitations extends back from the start of this tolling period, i.e., one year back from April 6,
22 2020.

23 **FACTUAL ALLEGATIONS**

24 23. Defendants unlawfully classified Plaintiff Luis Betanco and other aggrieved
25 employees as independent contractors when, in fact, they were heavily regulated through a series
26 of work-related restrictions and directives through Defendants.

27 24. Specifically, OST secures truck owners and contracts with such truck owners for
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1 purposes of delivering, installing, and picking up of merchandise and products to OST's clients'
2 customers, such as Living Spaces. These truck owners go to the warehouses of OST's clients, like
3 Living Spaces, and go through a hiring process with OST's employees who are officed at the same
4 site. Truck owners are hired by OST. Truck owners then bring on drivers and driver assistants who
5 are also evaluated by OST for hiring purposes. Delivery Drivers provide delivery, installation, and
6 haul away services. These services are integral and essential to OST and Living Spaces' core
7 business.

8 25. OST's written agreements with Delivery Drivers provide that the Delivery Drivers
9 are independent contractors. The agreements are contracts of adhesion that are drafted exclusively
10 by OST and/or on its behalf by its agents. The terms of the agreements are non-negotiable.
11 Through this agreement, OST reserves and actually exercises the right to control the manner and
12 means by which the Delivery Drivers perform their duties for OST.

13 26. OST and Living Spaces have a series of directives that Delivery Drivers must abide
14 by despite the fact that OST and living Spaces unlawfully classify them as independent contractors.
15 OST and living Spaces reserve the right to determine the locations where the Delivery Drivers pick
16 up and drop off the merchandise assigned to them; the time of day when they must report to work;
17 and the order and timing of their deliveries. OST and Living Spaces provide each Delivery Driver a
18 daily manifest of work assignments that includes the delivery address, the "service window" time
19 when the delivery must be made, and whether the Delivery Driver is required to call the customer
20 30 minutes ahead of arrival to give notice of when they will make the delivery. The Delivery
21 Drivers must complete all of the work assigned to them and are not allowed to refuse assignments.
22 OST and Living Spaces reserve the right to control the Delivery Drivers' physical appearance,
23 including requiring them to wear uniforms. OST also reserves the right to require the Delivery
24 Drivers to know and follow OST and Living Spaces' customer service standards in performing their
25 work and conduct surveys to determine whether customers are satisfied with the Delivery Drivers'
26 work.

27 27. OST and Living Spaces further reserve the right to require the Delivery Drivers to
28 follow certain work methods related to, for example, how to move and install the appliances and

1 how to interact with customers. OST determines the year, branding, and other specifications of the
2 vehicles that the Delivery Drivers use to perform their work. OST prescribes how the Delivery
3 Drivers document their work and require the Delivery Drivers to contact OST upon arrival at each
4 stop and then again after the delivery is completed. OST and Living Spaces also reserve the right to
5 require the Delivery Drivers to call each customer 30 minutes before making the delivery to let the
6 customers know they are on their way. OST and Living Spaces employ a variety of managerial and
7 supervisory employees who instruct the Delivery Drivers on their job performance and their
8 delivery assignments. The Delivery Drivers interact with OST and Living Spaces' personnel on a
9 daily basis. OST's managerial and supervisory employees also hold regular in-person and/or
10 telephonic meetings where the Delivery Drivers' attendance is mandatory.

11 28. The Delivery Drivers are paid each week by OST a flat amount for each delivery, or
12 for each day or week of work, in amounts that are unilaterally determined by OST. OST makes
13 deductions from the Delivery Drivers' pay for reasons including customer complaints, late
14 deliveries, and damaged items and property. This "flat rate" constitutes an unlawful piece-rate
15 compensation system because Delivery Drivers had no control over how many hours they worked
16 and could do nothing to change the amount of pay through their own efficiencies.

17 29 OST requires the Delivery Drivers to purchase multiple forms of insurance coverage
18 in amounts determined by OST through insurance plans specified and sometimes negotiated by
19 OST, and to name OST and its clients, like Living Spaces, as additional "insureds." OST further
20 requires the Delivery Drivers to purchase or rent from OST's clients, certain tools, and equipment.

21 30. OST directs Delivery Drivers to engage helpers to deliver the assigned merchandise.
22 OST prohibits the Delivery Drivers from working with helpers who have not been screened,
23 qualified, and approved in advance by OST. OST expects helpers to follow the same work methods
24 and standards it requires the Delivery Drivers to follow and to comply with all other requirements
25 communicated by OST and Living Spaces, including attendance at meetings held by OST
26 management and/or its clients.

27 31. OST permits Delivery Drivers to engage other Drivers and/or Helpers at their own

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1 expense who have been screened, qualified, and approved by OST. Delivery Drivers may engage
2 such Drivers and/or Helpers so that they are able to take a day off from work, such as for example
3 when they are unable to come to work due to illness or so that they may have a day of rest. OST
4 expects Drivers and/or Helpers to follow the same work methods and standards it requires the
5 Delivery Drivers to follow and to comply with all other requirements communicated by OST and
6 Living Spaces, including following instructions given by OST managers and attending mandatory
7 meetings.

8 32. The Delivery Drivers are economically dependent for their financial livelihood on
9 OST, and OST is entirely dependent on the Delivery Drivers for the retail merchandise delivery
10 service provided by OST to its clients, like Living Spaces. The Delivery Drivers are terminable at
11 will. They may be terminated upon fifteen- or thirty-days written notice without cause or
12 immediately for alleged breaches of the broadly worded standards and obligations described in the
13 agreement, or arbitrarily.

14 33. Most of the Delivery Drivers have worked, or did work, for OST for several years.
15 Despite OST and Living Spaces' pervasive control over all aspects of its delivery service operation,
16 including the details of the Delivery Drivers' work, OST has classified and treated the Delivery
17 Drivers as "independent contractors." OST and Living Spaces' classification and treatment of the
18 Delivery Drivers as "independent contractors" rather than as "employees" is and during all relevant
19 times has been unlawful.

20 34. Plaintiff has complied with the procedures for bringing suit specified in California
21 Labor Code Section 2699.3. By letter dated September 1, 2021, Plaintiff, on behalf of himself and
22 the other aggrieved employees, gave written notice by electronic mail and certified mail to the
23 Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions
24 of the California Labor Code alleged to have been violated, including the facts and theories to
25 support the alleged violations. Attached as Exhibit "1" is a true and correct copy of the referenced
26 letter.

27 35. More than sixty-five (65) calendar days have passed since Plaintiff provided the
28 LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified

1 from the LWDA that it does intend to investigate the violations of the California Labor Code
2 alleged herein.

3 **FIRST CAUSE OF ACTION**

4 **(On Behalf of Plaintiff and the Other Aggrieved Employees Against All Defendants)**

5 36. Plaintiff incorporates by reference the allegations set forth above.

6 37. As set forth above, Plaintiff has complied with the procedures for bringing suit
7 specified in California Labor Code Section 2699.3. By letter dated September 1, 2021, Plaintiff,
8 on behalf of himself and the other aggrieved employees, gave written notice by certified mail to
9 the LWDA and to Defendants of the specific provisions of the California Labor Code alleged to
10 have been violated, including the facts and theories to support the alleged violations. More than
11 sixty-five (65) calendar days have passed since Plaintiff provided the LWDA with written notice.
12 To date, Plaintiff has not received any written notice nor been notified from the LWDA that it
13 does intend to investigate the violations of the California Labor Code alleged herein.

14 38. This action arises out of the allegedly unlawful labor practices of Defendants in
15 California. Through this private attorneys' general action, Plaintiff represents himself and other
16 aggrieved employees of Defendants that were in California, against whom Defendants have
17 allegedly committed labor law violations alleged herein. As a result of the allegedly unlawful
18 conduct described herein, Plaintiff now seeks to recover civil penalties, attorneys' fees, and costs,
19 pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et*
20 *seq.*

21 39. Labor Code Section 1198 makes it unlawful for an employer to employ an
22 employee under conditions that violate the applicable Wage Order.

23 40. Plaintiff is informed and believes that throughout the Relevant Time Period,
24 Defendants have applied centrally devised policies and practices to Plaintiff and the other
25 aggrieved employees with respect to wages, hours, and working conditions.

26 **Failure to Pay Minimum Wages and Designated Wage Rates**

27 41. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1
28 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid

1 to employees and the payment of a wage less than the minimum so fixed is unlawful.

2 Additionally, Code Section 1198 makes it unlawful for an employer to employ an employee under
3 conditions that violate the applicable Wage Order.

4 42. Where any statute or contract requires an employer to maintain the designated wage
5 scale, Labor Code Section 223 makes it unlawful for an employer to secretly pay a lower wage
6 while purporting to pay the wage designated by statute or by contract.

7 43. At all relevant times, Defendants maintained a policy and practice of
8 misclassifying Plaintiff and the other aggrieved employees as independent contractors, which
9 resulted in them earning less than the legal minimum wage in the State of California for all hours
10 worked.

11 44. Defendants' failure to pay Plaintiff and other aggrieved employees minimum
12 wages and designated wage rates violates California Labor Code sections 223, 1182.12, 1194, and
13 1197. Plaintiff and other aggrieved employees are entitled to recover civil penalties pursuant to
14 sections 1197.1 and 2699(a), (f), and (g).

15 **Failure to Pay Overtime Compensation**

16 45. Labor Code Section 1194 provides that an employee receiving less than the legal
17 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount
18 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's
19 fees, and costs of suit.

20 46. Labor Code Section 510(a) states: "Any work in excess of eight hours in one
21 workday and any work in excess of 40 hours in any one workweek and the first eight hours
22 worked on the seventh day of work in any one workweek shall be compensated at the rate of no
23 less than one and one-half times the regular rate of pay for an employee." Labor Code Section
24 510(a) further states: "Any work in excess of 12 hours in one day shall be compensated at the rate
25 of no less than twice the regular rate of pay for an employee." Labor Code Section 510(a) further
26 states: "[A]ny work in excess of eight hours on any seventh day of a workweek shall be
27 compensated at the rate of no less than twice the regular rate of pay of an employee."

47. Throughout the Relevant Time Period, Wage Order No. 9-2001 provided for payment of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all hours worked over eight (8) hours per day, over forty (40) hours in a workweek, and/or work on the seventh (7th) consecutive day of the workweek. In addition, Wage Order No. 9-2001 for payment of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in any one workweek.

48. Plaintiff and the other aggrieved employees should have been classified as non-exempt hourly employees by Defendants, not as independent contractors, and were therefore entitled to overtime compensation for all hours worked in excess of the hours and time specified in the Wage Order, statutes and regulations identified herein.

49. As a matter of policy and/or practice, Defendants maintained a policy and practice of misclassifying Plaintiff and the other aggrieved employees as independent contractors, which resulted in them earning less than the legally required overtime rate for all hours worked in excess of eight (8) hours per day, forty (40) hours per week, and/or for work on the seventh (7th) consecutive day of work in any one workweek.

50. As a matter of policy and/or practice, Defendants maintained a policy and practice of misclassifying Plaintiff and the other aggrieved employees as independent contractors, which resulted in them earning less than the legally required double time rate for all hours worked in excess of twelve (12) hours per day and/or in excess of eight (8) hours on the seventh (7th) consecutive day of work in any one workweek.

51. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff and other aggrieved employees, and thus failed to pay overtime wages for the actual amount of overtime hours worked.

Failure to Provide Meal Breaks

52. Labor Code Section 512 and Section 11 of the Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work period of five (5) or more hours, and to

1 provide them with two uninterrupted, duty-free, meal periods of at least thirty (30) minutes for
2 each work period of more than ten (10) hours.

3 53. Labor Code Section 226.7 and Section 11 of the Wage Order prohibit employers
4 from requiring employees to work during required meal periods and require employers to pay non-
5 exempt employees an additional hour of premium wages on each workday that the employee is not
6 provided with a required meal period.

7 54. At relevant times during the applicable limitations period, Defendants failed to
8 provide Plaintiff and other aggrieved employees with an uninterrupted meal period of at least
9 thirty (30) minutes on each day that they worked five (5) or more hours, as required by Labor
10 Code Section 512 and the Wage Order, as a result of their misclassification as independent
11 contractors and as a result of schedules that do not permit them to take all legally required meal
12 periods.

13 55. At relevant times during the applicable limitations period, Defendants failed to
14 provide Plaintiff and other aggrieved employees with two uninterrupted meal periods of at least
15 thirty (30) minutes on each day that they worked ten (10) or more hours, as required by Labor
16 Code Section 512 and the Wage Order, as a result of their misclassification as independent
17 contractors and as a result of duties and schedules that do not permit them to take all legally
18 required meal periods. Additionally, Defendants failed to provide Plaintiff and aggrieved
19 employees with an uninterrupted meal period of at least thirty (30) minutes within five (5) hours
20 of their first meal period, as a result of their misclassification as independent contractors and as a
21 result of duties and schedules that do not permit them to take all legally required meal periods.

22 **Failure to Provide Rest Breaks**

23 56. Section 12 of the Wage Order imposes an affirmative obligation on employers to
24 permit and authorize employees to take required rest periods at a rate of no less than ten (10)
25 minutes of net rest time for each four (4) hour work period, or major portion thereof, that must be
26 in the middle of each work period insofar as is practicable.

27 57. Labor Code Section 226.7 and Section 12 the Wage Order prohibit employers from
28 requiring employees to work during required rest periods and require employers to pay non-

1 exempt employees an additional hour of premium wages on each workday that the employee is not
2 provided with the required rest period.

3 58. At relevant times during the applicable limitations period, Defendants failed to
4 provide Plaintiff and aggrieved employees with a net rest period of at least ten (10) minutes for
5 each four (4) hour work period, or major portion thereof, as required by the Wage Order, as a
6 result of their misclassification as independent contractors and as a result of duties and schedules
7 that do not permit them to take all legally required rest breaks.

8 **Failure to Pay Wages Upon Termination**

9 59. Labor Code Section 201 provides that all earned and unpaid wages of an employee
10 who is discharged, are due and payable immediately at the time of discharge.

11 60. Labor Code Section 202 provides that all earned and unpaid wages of an employee
12 who quits after providing at least 72-hours' notice before quitting, are due and payable at the time
13 of quitting and that all earned and unpaid wages of an employee who quits without providing at
14 least 72-hours' notice before quitting are due and payable within 72 hours.

15 61. Labor Code Section 203 provides that the wages of an employee continue on a
16 daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned
17 and unpaid wages to the employee in accordance with Labor Code Section 201 or Section 202.

18 62. Plaintiff is informed and believes that Defendants' decision to misclassify Plaintiff
19 and aggrieved employees as independent contractors and failure to timely pay them all of their
20 earned and unpaid wages, including unpaid minimum wages and overtime wages, and unprovided
21 rest and meal period premium wages, have been willful in that, at all relevant times, Defendants
22 have deliberately maintained policies and practices that violate the requirements of the Labor
23 Code and the Wage Order even though, at all relevant times, they have had the ability to comply
24 with those legal requirements.

25 **Failure to Provide and Maintain Compliant Wage Statements**

26 63. Labor Code Section 1174 requires that every person employing labor in this state
27 shall keep (1) a record showing the names and addresses of all employees employed and the ages
28 of all minors; (2) at a central location in the state or at the plants or establishments at which

1 employees are employed, payroll records showing the hours worked daily by and the wages paid
2 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
3 employed at the respective plants or establishments; (3) such records in accordance with rules
4 established for this purpose by the commission, but in any case, on file for not less than three
5 years. This statute also prevents an employer from prohibiting an employee from maintaining a
6 personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

7 Defendants have willfully failed to keep the records required by Section 1174.

8 64. Pursuant to California Labor Code Section 226(a), Plaintiff and the other aggrieved
9 employees were entitled to receive, semimonthly or at the time of each payment of wages, an
10 accurate itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all
11 applicable hourly rates in effect during the pay period; and (d) the corresponding number of hours
12 worked at each hourly rate by the employee.

13 65. Defendants failed to provide Plaintiff and the other aggrieved employees with
14 accurate itemized statements in accordance with California Labor Code Section 226(a) as they
15 were misclassified as independent contractors and not provided with any itemized wage statements
16 whatsoever.

17 66. Plaintiff is informed and believes and thereon alleges that Defendants' failure to
18 provide her and the aggrieved employees with accurate written wage statements is knowing and
19 intentional.

20 67. Plaintiff is informed and believes and thereon alleges that Defendants had the
21 ability to provide her and the aggrieved employees with accurate wage statements, but
22 intentionally chose to misclassify them as independent contractors and not provide any written
23 wage statements.

24 68. As a result of not being provided any wage statements by Defendants, Plaintiff and
25 the aggrieved employees have suffered an injury. Their legal rights to receive accurate wage
26 statements were violated and they were kept uninformed about the amount in wages they had
27 actually earned and were owed. In addition, the absence of wage statements prevented immediate
28 challenges to Defendants' unlawful pay practices, has required discovery and mathematical

1 computations to determine the amounts of wages owed, has caused difficulty and expense in
2 attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate
3 information about wages and amounts deducted from wages to state and federal government
4 agencies.

5 69. California Labor Code sections 2699(a) and (g) authorize an aggrieved employee,
6 on behalf of themselves and other current or former employees, to bring a civil action to recover
7 civil penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

8 **Failure to Provide Paid Sick Days**

9 70. Labor Code Section 246 requires that employers provide employees with paid sick
10 days at a rate of not less than one hour per every thirty (30) hours worked. An employer can
11 satisfy the accrual requirements of this section by providing not less than twenty-four (24) hours
12 of three days of paid sick leave that is available to the employee to use by the completion of his or
13 her 120th calendar day of employment.

14 71. Labor Code Section 247.5 requires that employers keep for at least three years
15 records documenting the hours worked and paid sick days accrued and used by an employee.
16 Employers must make those records available to an employee in the same manner as required in
17 Labor Code Section 226. If an employer does not maintain adequate records pursuant to this
18 section, it is presumed that the employee is entitled to the maximum number of hours available
19 unless the employer can show otherwise by clear and convincing evidence.

20 72. Defendants failed to provide Plaintiff and the other aggrieved employees with paid
21 sick days in accordance with Labor Code Section 246 as they were misclassified as independent
22 contractors and not provided with any paid sick days whatsoever.

23 73. Plaintiff is informed and believes and thereon alleges that Defendants failed to
24 maintain adequate records documenting the hours worked and paid sick days accrued and used by
25 Plaintiff and the other aggrieved employees in violation of Labor Code Section 247.5.

26 74. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf
27 of themselves and other current or former employees, to bring a civil action to recover civil
28 penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

1 **Section 558 Penalties**

2 75. The PAGA claims are also brought against Defendants pursuant to provisions of
3 the labor code including § 558 which permits liability of persons or employers who violate or
4 cause to be violated Labor Code and IWC regulations. California Labor Code Section 2699.

5 76. The PAGA states:

6 Notwithstanding any other provision of law, any provision of this code that provides for a
7 civil penalty to be assessed and collected by the Labor and Workforce Development
8 Agency or any of its departments, divisions, commissions, boards, agencies, or employees,
9 for a violation of this code, may, as an alternative, be recovered through a civil action
brought by an aggrieved employee on behalf of herself or herself and other current or
former employees...

10 77. One provision of law enforceable through PAGA as to civil penalties, though not
11 unpaid wages, is Labor Code § 558, which states the following:

12 (a) Any employer or other person acting on behalf of an employer who violates, or causes
13 to be violated, a section of this chapter or any provision regulating hours and days of work
14 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as
follows:

15 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
16 period for which the employee was underpaid in addition to any amount sufficient to
recover underpaid wages.

17 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
employee for each pay period for which the employee was underpaid in addition to an
amount sufficient to recover underpaid wages...

18 **Penalties Authorized by PAGA**

19 78. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff and the other
20 aggrieved employees of Defendants are entitled to, and seek to, recover civil penalties for
21 Defendants' violations of California Labor Code sections §§ 201, 202, 203, 204, 210, 216, 221,
22 225.5, 226, 226.3, 226.7, 226.8, 246, 510, 511, 512, 551, 552, 558, 1174, 1194-1197.1, 1198,
23 2802, and 2698, *et seq.*, during the applicable limitations period in the following amounts:

24 a. For violations of California Labor Code sections 201, 202, 203, 226.7, 1198, and
25 2802, 2810.3, one hundred dollars (\$100.00) for each aggrieved employee per pay period
26 for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
27 per pay period for each subsequent violation (penalty amounts established by California
28 Labor Code Section 2699(f)(2));

- b. For violations of California Labor Code Section 1194-1197.1, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars and fifty (\$250.00) for each aggrieved employee per pay period for each subsequent violation regardless of whether the initial violation is intentionally committed (Penalty amounts established by California Labor Code § 1197.1);
- c. For violations of California Labor Code Section 1174, five hundred dollars (\$500.00) for each of Defendants' violations in addition to any other penalties or fines permitted by law (penalty amounts established by California Labor Code § 1174.5);
- d. For violations of California Labor Code Section 226, two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code Section 226.3);
- e. For violations of California Labor Code Section 204, one hundred dollars (\$100.00) per employee for initial violation and two hundred dollars (\$200.00) per employee for each subsequent violation, plus 25 percent of the amount unlawfully withheld (penalty amounts established by California Labor Code Section 210);
- f. For violations of California Labor Code section 510, 511, 512, 551, 552 and, Wage Order 9-2001 Sections 9, 11, and 12, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty amounts established by California Labor Code Section 558);
- g. For violations of California Labor Code Section 558, fifty dollars (\$50.00) for initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay period for which the employee was underpaid; for each subsequent violation, one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code Section 558);

1 h. For violations of California Labor Code Section 246, fifty dollars (\$50.00) for each
2 day for which no paid sick days were made available to the employee pursuant to this
3 section, up to an aggregate penalty of four thousand dollars (\$4,000.00) per individual
4 (Penalty amounts established by California Labor Code § 248.5(b)(3)); and

5 i. For violations of California Labor Code Section 226.8, between ten thousand
6 dollars (\$10,000.00) and twenty-five thousand dollars (\$25,000.00) for each misclassified
7 employee for each pay period for which the employee was misclassified as an independent
8 contractor (penalty amounts established by California Labor Code § 226.8(c)).

9 79. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself
10 and the other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

11 **PRAYER FOR RELIEF**

12 Wherefore, Plaintiff on behalf of himself and on behalf of the aggrieved employees, prays
13 for judgment against Defendants as follows:

- 14 a. Civil penalties;
15 b. Other penalties and fines permitted by law;
16 c. Costs of suit;
17 d. Reasonable attorneys' fees;
18 e. Pre-judgment and post-judgment interest as provided by law; and
19 f. Such other and further relief as the Court deems just and proper.
20

21 DATED: December 1, 2021

BOYAMIAN LAW, INC.

22
23 By:



24 Michael H. Boyamian
25 Heather M. Zermeno
26 Attorneys for Plaintiff LUIS BETANCO and
27 All Others Similarly Situated
28

EXHIBIT 1



BOYAMIAN LAW

September 1, 2021

SUBMITTED ELECTRONICALLY VIA ONLINE SUBMISSION

Labor and Workforce Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

Re: *Magana adv. Living Spaces Furniture, LLC, et al.*
Notice of PAGA Claims Pursuant to Labor Code § 2699.3

To Whom It May Concern:

My office represents Maria Magana, Luis Betanco, and Betanco Trucking, Inc. (hereinafter “Claimants”), with respect to claims on behalf of themselves and other similarly situated current and former Contract Carriers, Drivers and Driver Assistants (commonly referred to as “Helpers”) (collectively, hereinafter referred to as “Delivery Drivers”) of Living Spaces Furniture, LLC (“Living Spaces”) and Of Service Transportation, LLC (“OST”) who worked in California from April 6, 2020¹ and continuing to the present (“Relevant Time Period”). The purpose of this letter is to satisfy the notice requirements of Labor Code § 2699.3(a).

Below we set forth the facts and theories which we believe support our contention that Living Spaces and OST have violated and continue to violate various provisions of the California Labor Code including, but not limited to, the misclassification of Delivery Drivers, including assistant drivers and helpers, and the resulting failures by Living Spaces and OST to pay minimum wages and overtime wages, to provide meal and rest periods, and to reimburse for necessary business expenditures.

Facts & Theories About the Case

Living Spaces and OST have violated California’s labor laws with respect to paying its Contract Carriers, Drivers and Helpers, such as Maria Magana and Luis Betanco, for all hours worked, including overtime payment, among other things. OST provides logistics and delivery services to its retail merchants like Living Spaces, and others, to deliver product and services to their clients’ customers. OST utilizes Delivery Drivers, including assistant drivers and helpers, to pick up the merchandise at the merchants’ stores or warehouses and to deliver and install them at the customers’ homes or businesses. Delivery Drivers, including assistant drivers and helpers, are responsible for, among other things, maintaining quality control, delivering purchased

¹ Pursuant to California Emergency Rule of Court 9, the statute of limitations for this matter was tolled beginning on April 6, 2020.

products to customers at their place of work or residence, and ensuring that customer service is achieved in accordance with the standards set by OST and Living Spaces.

Our investigation has revealed that OST unlawfully classifies its Delivery Drivers, including assistant drivers and helpers, as independent contractors when, in fact, they are heavily regulated through a series of restrictions and directives through OST and Living Spaces. Specifically, OST secures truck owners and contracts with such truck owners for purposes of delivering, installing, and picking up of merchandise and products to OST's clients' customers, including Living Spaces. These truck owners go to the warehouses of OST's clients and go through a hiring process with OST's and Living Spaces' employees. Truck owners are hired by OST and Living Spaces. Truck owners then bring on drivers and driver assistants who are also evaluated by OST and Living Spaces for hiring purposes. Delivery Drivers provide delivery, installation, and haul away services. These services are integral and essential to OST's core business.

Moreover, Delivery Drivers, including Maria Magana and Luis Betanco, are able to assert their claims against Living Spaces in its capacity as a Client Employer. See Labor Code § 2810.3(1)(A) ("Client employer" means a business entity, regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor.") The fact of the matter is, Delivery Drivers, including Maria Magana and Luis Betanco, do not have to show a joint employment relationship between OST and Living Spaces to hold the latter accountable for OST's wage and hour violations. It is enough that the Living Spaces retained OST for delivery services, and that OST's supervisors proceeded to violate California's wage and hour laws as to Maria Magana and Luis Betanco and other Delivery Drivers' work.

OST enters into written agreements with Delivery Drivers which provide that the Delivery Drivers are independent contractors. The Agreements are contracts of adhesion that are drafted exclusively by OST and/or on its behalf by its agents. The terms of the Agreement are non-negotiable. Through this agreement, OST and Living Spaces reserve and actually exercises the right to control the manner and means by which the Delivery Drivers perform their duties for OST and its clients, like Living Spaces.

OST and Living Spaces have a series of directives that Delivery Drivers, including assistant drivers and helpers, must abide by despite the fact that OST unlawfully classifies them as independent contractors. OST and Living Spaces reserve the right to determine the locations where the Delivery Drivers pick up and drop off the merchandise assigned to them; the time of day when they must report to work; and the order and timing of their deliveries. OST provides each Delivery Driver a daily manifest of work assignments that includes the delivery address, the "service window" time when the delivery must be made, and whether the Delivery Driver is required to call the customer 30 minutes ahead of arrival to give notice of when they will make the delivery. The Delivery Drivers must complete all of the work assigned to them and are not allowed to refuse assignments. OST and Living Spaces reserve the right to control the Delivery Drivers' physical appearance, including requiring them to wear uniforms. OST

also reserves the right to require the Delivery Drivers to know and follow OST and Living Spaces' customer service standards in performing their work, and conduct surveys to determine whether customers are satisfied with the Delivery Drivers' work.

OST and Living Spaces further reserve the right to require the Delivery Drivers, including assistant drivers and helpers, to follow certain work methods related to, for example, how to move, wrap, and install the furniture and how to interact with customers. OST determines the year, branding, and other specifications of the vehicles that the Delivery Drivers use to perform their work. OST prescribes how the Delivery Drivers document their work and require the Delivery Drivers to contact OST upon arrival at each stop and then again after the delivery is completed. OST also reserves the right to require the Delivery Drivers to call each customer 30 minutes before making the delivery to let the customers know they are on their way. OST and Living Spaces employ a variety of managerial and supervisory employees who instruct the Delivery Drivers on their job performance and their delivery assignments. The Delivery Drivers interact with OST's and Living Spaces' personnel on a daily basis. OST's managerial and supervisory employees also hold regular in-person and/or telephonic meetings where the Delivery Drivers' attendance is mandatory.

The Delivery Drivers are paid each week by OST a flat amount for each delivery, or for each day or week of work, in amounts that are unilaterally determined by OST and Living Spaces. OST makes deductions from the Delivery Drivers' pay for reasons including customer complaints, late deliveries, and damaged items and property. This "flat rate" constitutes an unlawful piece-rate compensation system because drivers and helpers had no control over how many hours they worked and could do nothing to change the amount of pay through their own efficiencies.

OST and Living Spaces require the Delivery Drivers to purchase multiple forms of insurance coverage in amounts determined by OST through insurance plans specified and sometimes negotiated by OST, and to name OST and Living Spaces as additional "insureds." OST further requires the Delivery Drivers to purchase or rent from OST and Living Spaces, certain tools, and equipment.

OST directs Delivery Drivers to engage helpers to deliver the assigned merchandise. OST prohibits the Delivery Drivers from working with helpers who have not been screened, qualified, and approved in advance by OST and Living Spaces. OST expects helpers to follow the same work methods and standards it requires the Delivery Drivers to follow and to comply with all other requirements communicated by OST and Living Spaces, including attendance at meetings held by OST's managers.

OST permits Delivery Drivers to engage other Drivers and/or Helpers at their own expense who have been screened, qualified, and approved by OST and Living Spaces. Delivery Drivers may engage such Drivers and/or Helpers so that they are able to take a day off from work, such as for example when they are unable to come to work due to illness or so that they may have a day of rest. OST expects Drivers and/or Helpers to follow the same work methods and standards it requires the Delivery Drivers

to follow and to comply with all other requirements communicated by OST and Living Spaces, including following instructions given by OST and Living Spaces' managers and attending mandatory meetings.

The Delivery Drivers are economically dependent for their financial livelihood on OST, and OST is entirely dependent on the Delivery Drivers for the retail merchandise delivery service provided by OST to its clients like Living Spaces. The Delivery Drivers are terminable at will. They may be terminated upon fifteen- or thirty-days written notice without cause or immediately for alleged breaches of the broadly worded standards and obligations described in the agreements the Delivery Drivers sign.

Most of the Delivery Drivers have worked, or did work, for OST for several years. Despite OST's pervasive control over all aspects of its delivery service operation, including the details of the Delivery Drivers' work, OST has classified and treated the Delivery Drivers as "independent contractors." OST's classification and treatment of the Delivery Drivers as "independent contractors" rather than as "employees" is and during all relevant times has been unlawful.

As a result of OST's and Living Spaces' misclassification of the Delivery Drivers, including their assistant drivers and helpers, as "independent contractors," OST and/or Living Spaces has:

- (1) required and/or knowingly permitted Delivery Drivers, including their assistant drivers and helpers, to work hours considerably in excess of eight hours per day, 12 hours per day, and/or 40 hours per week. Claimants are informed and believe, and on that basis allege, that it has been OST's and Living Spaces' policy and practice to require and/or knowingly and willfully permit Delivery Drivers, including their assistant drivers and helpers, to work such overtime hours without paying them overtime compensation required by the California Labor Code;
- (2) failed to indemnify them – specifically as to the Delivery Drivers - for the employment expenses they necessarily incur in performing their assigned job duties for OST, such as the costs of providing and operating a OST-approved delivery vehicle, including fuel, maintenance, repair, cleaning, marking, and licensing; OST uniforms; wages paid to helpers and assistant drivers; insurance, including workers' compensation and employer's liability insurance, automobile liability insurance, general liability insurance, umbrella insurance, and cargo insurance; certain tools and equipment OST requires the Delivery Drivers to purchase or rent from its clients, like Living Spaces; gift cards and other payments made to customers in response to customer complaints; losses associated with lost or damaged merchandise and other property damage; payroll administration services; and the equipment required to perform their duties, including moving pads, dollies, hand tools, and cellular telephones. OST has

taken deductions from Delivery Drivers' compensation to cover many of these, and other, employment-related expenses;

- (3) failed to provide a 30 minute off-duty meal period to the Delivery Drivers, including their assistant drivers and helpers, who worked more than five hours in a day. As a result of OST and Living Spaces' misclassification of the Delivery Drivers, including their assistant drivers and helpers, as "independent contractors," OST and Living Spaces have failed to provide a second 30 minute off-duty meal period to the Delivery Drivers, including their assistant drivers and helpers, who worked more than 10 hours in a day;
- (4) failed to authorize and permit a rest period of ten minutes per every four hours, or major fraction thereof, worked. As a result of OST and Living Spaces' misclassification of the Delivery Drivers, including their assistant drivers and helpers, as "independent contractors," OST has failed to pay Federal and California minimum wage compensation to the Delivery Drivers, including their assistant drivers and helpers, for all hours worked;
- (5) failed to pay to the Delivery Drivers, including their assistant drivers and helpers, all wages due and owing twice per month at the times prescribed by Cal. Labor Code § 204;
- (6) failed to itemize the total hours worked on wage statements furnished to the Delivery Drivers, including their assistant drivers and helpers, as required by Cal. Labor Code §§ 226, 226.3, and Wage Order 9;
- (7) not properly maintained payroll records showing the actual hours the Delivery Drivers, including their assistant drivers and helpers, worked each day as required by Cal. Labor Code § 1174 and IWC wage order No. 9, § 7(A);
- (8) willfully and knowingly failed to pay Delivery Drivers and their assistant drivers and helpers, upon termination of employment, all accrued compensation, including reimbursement of all unlawful deductions from wages, payment of missed meal and rest period compensation, and payment of minimum wage and overtime compensation;
- (9) failed to maintain workers' compensation insurance covering the Delivery Drivers and their assistant drivers and helpers, and instead has required the Delivery Drivers to purchase their own workers' compensation insurance coverage and failed to contribute to the Unemployment Trust Fund on their behalf; and

(10) failed to provide Delivery Drivers, including their assistant drivers and helpers, with paid sick time off in accordance with Cal. Labor Code § 246.

Claimants seek to recover the unpaid compensation for all hours worked as defined by the Labor Code and the applicable Industrial Welfare Commission wage order as to the time during which an employee is subject to the control of an employer, and includes all the time the employee is engaged, suffered or permitted to work, whether or not required to do so, or as otherwise set forth in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, 4 Cal.5th 903 (2018). California law requires that all hours worked over 8 in a day or 40 in a week or worked on the 7th consecutive day of a work week be paid 1.5 times an employee's regular rate of pay. *See, e.g.*, Lab. Code §§ 510, 1194; Cal. Code Regs., tit. 8, § 11090, *et seq.* In addition, hours worked over 12 in a day or hours over 8 worked on the 7th consecutive day in a week are paid at 2 times an employee's regular rate of pay.

Likewise, the pre-arranged delivery schedule, for which Delivery Drivers, including their assistant drivers and helpers, have no discretion to change or alter, does not account for meal or break time. California law also requires that an employer provide an employee who works more than five hours a meal break that is no less than 30 minutes in duration. 8 CCR 11090(11)(A). Unless an employee is relieved of all duty during the 30-minute meal period, the meal period is considered an on-duty meal period and counted as time worked. However, an on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-the-job paid meal period. *Id.* If an employer fails to provide an employee a lawful meal period, the employer must pay the employee one hour of pay for each violation. 8 CCR 11090(11)(D). Additionally, California law mandates that an employer must "authorize and permit" an employee to take a duty-free rest period not less than 10 minutes in duration for every four hours of work. 8 CCR 11090(12)(A). Violation of the rest break provisions requires the employer pay the employee one hour of pay for each workday a rest period was not provided. 8 CCR 11090(12)(B). Lastly, in California, the employer is required to keep records of all hours worked. Labor Code § 1174(d).

Additionally, Labor Code §226.8 states: (a) It is unlawful for any person or employer to engage in any of the following activities;

- (1) Willful misclassification of an individual as an independent contractor,
- (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose ... arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified."

Claimants will likewise establish that OST and/or Living Spaces willfully misclassified them and all other similarly situated Delivery Drivers, including assistant drivers and helpers, as independent contractors based on the numerous practices and

policies in place during the Relevant Time Period. Furthermore, OST did charge these people and make deductions from compensation for damages and charges they chose to impose on these individuals. The penalty for this wrongdoing by any *de facto* employer appears in Labor Code §226.8 (b), to wit,

“If ... a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or the employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.”

Because Claimants and other similarly situated Delivery Drivers, including assistant drivers and helpers, were misclassified as “independent contractors,” and therefore not fully compensated for all hours worked, were deprived of overtime compensation, OST also failed to provide accurate wage statements in a violation of Labor Code Section 226, and failed to fully compensate former employees in a timely manner when their employment ended, in violation of Labor Code Section 201 *et seq.*

Accordingly, we believe that OST and/or Living Spaces have violated, and continue to violate, numerous provisions of California law, including, without limitation Labor Code Sections §§ 201, 202, 203, 204, 210, 216, 221, 225.5, 226, 226.3, 226.7, 226.8, 246, 510, 511, 512, 551, 552, 558, 1194-1197.1, 1198, 2802, and 2698, *et seq.*, as well as the relevant IWC orders and regulations, and that Claimant and other similarly situated Delivery Drivers, including assistant drivers and helpers, are entitled to all statutory penalties allowed by law. Our investigation is continuing, and there may be more violations uncovered.

We respectfully request that the Labor Workforce Development Agency notify this office within thirty (60) days if it wishes to investigate this matter further. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.

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August 30, 2021

Page 8 of 8

If OST and/or Living Spaces wishes to resolve these claims without resorting to protracted litigation, please contact the undersigned forthwith to discuss this matter further.

Thank you for your immediate attention to this matter.

Very truly yours,



Michael H. Boyamian

Cc: Living Spaces Furniture, LLC (*Sent via Certified U.S. Mail*)
Capitol Corporate Services, Inc. (C1990324) (Agent of Service of Process)
Attention: Lo Saechao (Authorized Employee)
Attention: Leigh Johnson (Authorized Employee)
Attention: Mary Viducich (Authorized Employee)
455 Capitol Mall Complex, Suite 217
Sacramento, California 95814

Of Services Transportation, LLC (*Sent via Certified U.S. Mail*)
Attention: Michael A. Roberts (Agent of Service of Process)
3410 La Sierra Ave., #F1148
Riverside, California 92503

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 550 North Brand Boulevard, 15th Floor, Glendale, California 91203. My electronic service address is demiah@boyamianlaw.com

On December 6 2021, I served the foregoing document described as

**COMPLAINT FOR CIVIL PENALTIES UNDER LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

For the following case: **Betanco v. Living Spaces Furniture, LLC**
LWDA/Court Case No.: **LWDA-CM-843241-21**
21CV003410
Alameda County Superior Court

on the interested parties in this action as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

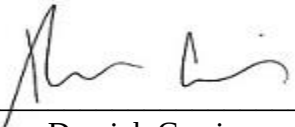
 X **BY ELECTRONIC SUBMISSION**

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

 X **STATE**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 6, 2021 at Glendale, California.



Demiah Cseri