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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/28/2022 at 11:16:43 AM
Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

DUSTIN EVERS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

LA-Z-BOY INCORPORATED, a Michigan
corporation; LZB RETAIL, INC., a Michigan
corporation; LA-Z-BOY FURNITURE
GALLERIES; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00007717-CU-OE-CTL

Representative Action Complaint

1. Failure to Pay All Regular and Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Failure to Pay All Wages Upon Separation
8. Failure to Reimburse Business Expenses
9. Paid Sick Leave Violations
10. Recordkeeping Violations
11. Failure to Produce Records

1 Plaintiff DUSTIN EVERS (“Plaintiff”), individually as the State of California’s designated
2 proxy under the Private Attorneys General Act (“PAGA”), and on behalf of other current and
3 former aggrieved employees, brings this representative action against Defendants LA-Z-BOY
4 INCORPORATED; LZB RETAIL, INC.; LA-Z-BOY FURNITURE GALLERIES; and DOES 1
5 through 50 (collectively, “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a case filed by Plaintiff, an aggrieved employee, seeking civil penalties
8 against Defendants for violations of the California Labor Code.

9 2. Defendants paid Plaintiff and the aggrieved employees less than the lawful minimum
10 wage for every hour worked, including during rest periods. Defendants paid the employees less
11 than the statutory minimum wage, but maintained a policy and practice of using commission
12 earnings to offset their respective minimum wage obligation, in a matter contrary to the California
13 Labor Code and IWC Wage Orders.

14 3. Defendants also miscalculated and underpaid overtime wages, because of an
15 inaccurate “regular rate of pay” calculation method. Defendants edited time records, such that
16 Plaintiff and other employees were not paid for work performed during uncompensated 30-minute
17 meal periods. Defendants did not pay Labor Code § 226.7 premiums at the regular rate of
18 compensation for non-compliant meal periods and rest periods—including late, short, and missed
19 meal periods evident on the face of Defendants’ employment and payroll records. Defendants
20 failed to provide paid sick leave at the correct rate and also failed to pay sick leave at the proper
21 rate. As a result of these violations, Defendants failed to timely pay Plaintiff and aggrieved
22 employees each pay period on paydays and upon separation of employment, and thus are liable for
23 waiting time and other statutory penalties. Defendants required Sales Associates and other hourly
24 employees to use La-Z-Boy-branded emails on their personal cell phones and to communicate with
25 customers, but Plaintiff and aggrieved employees were not issued a reasonable reimbursement or
26 stipend for such use. Defendants also failed to timely provide Plaintiff and other aggrieved
27 employees’ records upon request.

4. In connection with Plaintiff's employment and the employment of others within the State of California, Defendants committed numerous systemic Labor Code violations for which Plaintiff now seeks to receive civil penalties pursuant to Labor Code § 2698 *et seq.*

JURISDICTION & VENUE

5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution.

6. Venue as to each defendant is proper in this judicial district under Code of Civil Procedure sections 395 and 395.5 because Defendants conduct business in this county, employed Plaintiff in this county, and committed some of the alleged violations in this county.

PARTIES

A. The Plaintiff Dustin Evers

7. Plaintiff DUSTIN EVERS is an individual over 18 years of age who worked for Defendants in San Diego County as an hourly, non-exempt “Sales Associate” employee.

8. Plaintiff was employed in California from January 2021 through October 2021.

B. The La-Z-Boy Defendants

9. Throughout the PAGA Period, each of the named La-Z-Boy defendants was a legal employer of Plaintiff and aggrieved employees, and were identified in defendants' records as employees of each of these entities.

10. Plaintiff is informed, believes, and alleges that Defendant LA-Z-BOY INCORPORATED is a corporation incorporated in the State of Michigan, doing business and employing labor throughout California, including San Diego, California.

11. Plaintiff is informed, believes, and alleges that Defendant LZB RETAIL, INC. is a corporation incorporated in the State of Michigan, doing business and employing labor throughout California, including San Diego, California.

12. Plaintiff is informed, believes, and alleges that Defendant LA-Z-BOY FURNITURE GALLERIES is an employer entity and agent, doing business and employing labor throughout California, including San Diego, California.

1 13. The true names and capacities, whether individual, corporate, or otherwise, of the
2 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such
3 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and
4 alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions
5 alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and
6 capacities when they become known.

7 14. Plaintiff is informed, believes, and alleges that all defendants in this action are
8 employers and/or joint employers and part of an integrated employer enterprise, as each defendant
9 exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved
10 employees, suffers and permits them to work, and engages the workforce creating a common law
11 employment relationship. Additionally, all defendants have common ownership, common
12 management, interrelationship of operations, and centralized control over labor relations and are
13 therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
14 omissions alleged herein. Defendants operate as employers of the employees in their operation of
15 the La-Z-Boy Furniture Galleries and related operations.

16 15. Further, Defendant La-Z-Boy Incorporated is responsible for overseeing and
17 implementing the day-to-day payroll operations, systems, and functions for its subsidiary and
18 affiliated entities, which include Defendant LZB Retail, Inc. La-Z-Boy Incorporated maintains and
19 controls the personnel, payroll, timekeeping, and wage records for employees of LZB Retail, Inc.
20 La-Z-Boy Incorporated also exercises control over the wages, hours, and working conditions of the
21 aggrieved employees, including but not limited to through the implementation of unlawful policies,
22 practices, and compensation agreements that are the subject of this action. Finally, Plaintiff and the
23 aggrieved employees' Employee Handbook, offer letter, and compensation agreement, among other
24 documents, identify them as employees of La-Z-Boy Incorporated. Plaintiff is further informed,
25 beliefs, and alleges that Defendant La-Z-Boy Furniture Galleries are the store locations where Class
26 Members work, subject to the control, direction, and employment of all aforementioned joint
27 employer and/or integrated enterprise defendants.

16. Plaintiff is informed, believes, and alleges that each defendant acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant are legally attributable to all others.

17. Plaintiff is informed, believes and alleges that the above-mentioned defendants violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating minimum wages and days of work and other provisions of the Labor Code with respect to the aggrieved employees. As a result, they may be held personally liable under Labor Code sections 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.)

PAGA ALLEGATIONS

18. Plaintiff seeks to recover civil penalties as an individual aggrieved employee, on behalf of the State of California and the “aggrieved employees,” defined as follows:

a. All current and former hourly non-exempt employees of Defendants who work or worked within the State of California at any time from October 7, 2020, through the date of judgment (the “PAGA Period”)

19. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to the PAGA claims. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

20. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants and personally experienced one or more of the alleged Labor Code violations. Therefore, Plaintiff is properly suited to act on behalf of the State of California and collect civil penalties for violations committed against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”])

21. “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development

Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, 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.” (Labor Code § 2699(a)).

22. On **October 7, 2021**, Plaintiff gave written notice by online filing with the LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations (the “**PAGA Notice**”). Plaintiff paid the requisite filing fee to the LWDA. On February 10, 2022, Plaintiff filed an amended PAGA Notice with the LWDA. A true and correct copy of the most recent PAGA Notice is attached hereto as **Exhibit 1** and incorporated by reference.

23. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, Defendants did not give written notice by certified mail to Plaintiff providing a description of any actions taken to cure the alleged violations.

24. Now that at least 65 days have passed from Plaintiff first notifying Defendants of these violations, without any notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff exhausted all prerequisites and commences this civil action under Labor Code § 2699.

25. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

GENERAL ALLEGATIONS

26. The facts and theories as set forth in the PAGA Notices (Exhibit 1) are incorporated herein by reference as though fully set forth herein.

27. Defendants failed to pay minimum wage to Plaintiff and aggrieved employees for each hour worked (including rest periods) in violation of Labor Code § 1182.12 (state minimum wage) and 1197 (local ordinances), and the IWC Wage Orders. Starting in the pay period beginning on March 28, 2021, and continuing throughout the remainder of his employment,

Defendants paid Plaintiff \$13.00 per hour worked, which was \$1.00 less than the California minimum wage, and less than all applicable local minimum wage ordinances in effect. On information and belief, Plaintiff alleges that this practice was equally applied to other aggrieved employees, who were paid less than the lawful state, local, or county minimum wage. Plaintiff and the aggrieved employees were paid the sub-minimum wage base rate for *each hour worked*, including during non-productive hours like 10-minute rest periods, which must be paid at a rate of no less than the minimum wage. (IWC Wage Order No. 7; Cal. Code Regs., tit. 8, § 11070, subd. 12 (stating rest periods are treated as “hours worked”); see *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 108-110 (explaining that rest periods must be compensated at a minimum hourly rate); see also *Balasanyan v. Nordstrom* (S.D. Cal. 2012) 913 F. Supp. 2d 1001 [addressing and rejecting subminimum wage rates on sales floor where employees earn commissions]).

28. As one illustrative example, Plaintiff’s wage statement with the pay date of 09/03/2021 (pay period of 08/15/2021 to 08/28/2021) reflects that Plaintiff was paid “Regular” wages for 72.21 hours, at the deficient hourly rate of \$13.00 per hour – an amount less than the applicable state and local minimum wages. These violations are evident on the face of Defendants’ own payroll and employment records, including wage statements issued and required to be maintained. As a result of this practice of paying less than the lawful state and/or local minimum wage laws, Defendants have violated Labor Code section 1182.12 (the state minimum wage) and Labor Code section 1197 (codifying local ordinances, including, without limitation, those listed on <https://alpha.ca.gov/find-minimum-wage-your-city/>).

29. Plaintiff and the aggrieved employees earned less than the statutory or local minimum wage during rest periods because Plaintiff and other aggrieved employees did not earn commissions during compliant 10-minute rest periods, and were thus paid for those rest periods at sub-minimum wage rates (*e.g.*, \$13.00 per hour in 2021), in violation of California’s rest break laws and minimum wage laws.

30. To the extent Defendants seek or sought to credit commissions earned by Plaintiff and/or aggrieved employees to make up the underpaid minimum wage amounts, this form of

1 averaging is neither lawful nor permitted, and violates California Labor Code sections 221, 222 and
2 223: “[t]he minimum wage standard affixes to each hour worked by [employees] for which they
3 were not paid.” (*See Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 4th 314, 324. Employees must
4 be compensated for each hour worked (including rest periods) at either the legal minimum wage or
5 the contractual hourly rate, and compliance cannot be determined by averaging hourly
6 compensation. *See Vaquero*, 9 Cal. App. 5th at 109-110.

7 31. Furthermore, when Defendants paid overtime to Plaintiff and other aggrieved
8 employees, Defendants failed to pay the overtime at the lawful regular rate of pay. Plaintiff and
9 other aggrieved employees regularly worked overtime and earned commissions and/or other forms
10 of remuneration in the same pay period. In those pay periods, Defendants paid employees at the
11 straight time hourly rate for the overtime hours, but also made a separate payment entitled “OT –
12 Half” for each overtime hour worked. However, the “OT – Half” – when added together with the
13 base hourly rate – did not fully compensate Plaintiff and other aggrieved employees “at the rate of
14 no less than one and one-half times the regular rate of pay for an employee[,]” or “at the rate of no
15 less than twice the regular rate of pay for an employee” for any applicable double time hours, as
16 required by Labor Code section 510 and the IWC Wage Orders. Setting aside the failure to include
17 bonuses or commissions in the regular rate of pay, Defendants’ overtime payment practices were
18 unlawful because Defendants, in some pay periods, paid overtime as a multiple of the sub-minimum
19 wage base hourly rate (*i.e.*, \$13.00 per hour in 2021) rather than the minimum wage. This resulted
20 in a separate overtime underpayment as the base overtime rate must at a minimum be one and one-
21 half times the minimum wage, even if there are no excess earnings to include in the regular rate of
22 pay.

23 32. Defendants failed to pay for all hours worked as a result of its practice of requiring
24 employees to work off the clock. Plaintiff and the aggrieved employees received emails, text
25 messages, and phone calls on their personal cell phones from customers and employees of
26 Defendants. Plaintiff and the aggrieved employees were required to respond to communications on
27 their personal cell phones, even during times when they were not at work and during their unpaid
28 meal periods. Employees were not paid for this time. Plaintiff and the aggrieved employees were

1 required to respond to customers so that they would not end up losing a sale for Defendants.
2 Defendants knew or should have known that this work was being performed. Plaintiff was also
3 contacted while he was at home (off the clock) to remotely assist with closing the store (*i.e.*, issues
4 with cash registers) and was not paid for this time.

5 33. Moreover, during times in which Plaintiff and aggrieved employees could not take a
6 compliant meal period, Defendants maintained a policy and practice of editing or changing time
7 records to manually enter a 30-minute meal period into the respective employee's time records,
8 even though Plaintiff and other aggrieved employees worked during these meal periods. As a result
9 of this practice, Defendants deprived Plaintiff and other aggrieved employees of 30 minutes of
10 compensation, requiring them to effectively work off the clock without pay due to the time
11 adjustments and edits. Plaintiff and aggrieved employees were deprived of the hourly overtime and
12 minimum wages, as applicable, for these hours worked during periods marked as unpaid meal
13 periods. This common practice was facilitated, at least in part, through Punch Edit Forms, that
14 Defendants state shall be retained in store for a period of 7 years.

15 34. Furthermore, Defendants failed to consistently provide timely, off-duty 30-minute
16 meal periods to aggrieved employees within the first five hours of work, and timely second off-duty
17 30-minute meal periods to the extent they worked shifts of 10 hours or more, in violation of Labor
18 Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. (*See, e.g., Ferra v.*
19 *Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 ["We hold that the terms are
20 synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay"
21 under section 510(a), encompasses all nondiscretionary payments, not just hourly wages."])

22 35. When Defendants did not provide fully compliant meal periods, Defendants failed to
23 pay aggrieved employees a meal period premium at the regular rate of compensation in violation of
24 Labor Code section 226.7. (*See Ferra*, 11 Cal. 5th at 863.) "[T]ime records showing noncompliant
25 meal periods raise a rebuttable presumption of meal period violations, including at the summary
26 judgment stage." (*Donohue v. AMN Servs., LLC* (2021) 11 Cal. 5th 58, 61.) Defendants' policy
27 and practice of not paying all meal period premiums at the lawful rate is a matter of common
28 corporate policy and payroll administration such that it applies and affected all other aggrieved

1 employees and are evident from the time records maintained by Defendants, which show late, short
2 and missed meal periods without an associated meal period premium on the corresponding
3 employee wage statement. Indeed, Plaintiff's time records reveal numerous meal period violations
4 that are apparent from the face of the records. As just one of many examples, on February 19,
5 2021, Plaintiff started work at 10:56 a.m. but was unable to start a 30-minute a meal period until
6 4:20 p.m., after the fifth hour of work.

7 36. Moreover, Defendants failed to authorize or permit ten-minute rest periods for every
8 four hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and
9 section 12 of the applicable IWC Wage Order. When Defendants did not provide a fully compliant
10 rest period to Plaintiff or other aggrieved employees, Defendants failed to pay Claimant and other
11 aggrieved employees a rest period premium at the lawful "regular rate of compensation" in
12 violation of Labor Code section 226.7. Defendants Retail Employee Policy Manual only allows
13 "[a]ssociates who work more than four hours and less than eight hours ... one 10-minute paid break
14 period," even though California law requires more for those employees who work 6 hours but less
15 than 8 hours in a workday.

16 37. Plaintiff is informed, believes, and alleges that Defendants failed to maintain lawful
17 meal and rest period policies in an employee handbook or other governing document that
18 adequately apprised Plaintiff and other aggrieved employees of their respective rights under
19 California law. Specifically, the Retail Employee Policy Manual, revised 12/2018. Per company
20 policy, management was required to designate meal and rest period time for associates, but
21 Defendants did not maintain a policy or practice of actually scheduling or designating those breaks.

22 38. As discussed above in the context of minimum wage violations, Defendants
23 committed separate rest period violations by failing to pay Plaintiff and the aggrieved employees'
24 rest period at the applicable minimum wage. Section 12 of the IWC Wage Orders states that "rest
25 period time shall be counted as hours worked." Defendants violated section 12 of the IWC Wage
26 Orders with respect to their policy and practice of paying for rest period time at a rate of less than
27 the minimum wage, (*i.e.*, \$13.00 in 2021), contrary to the protections of the IWC Wage Orders and
28 Labor Code section 516 and 1198.

1 39. With respect to the unpaid wages and premiums owed to Plaintiff and aggrieved
2 employees, Defendants failed to pay those wages on time each pay period or upon separation of
3 employment. Because Defendants did not pay Plaintiff and the aggrieved employees for all
4 wages/premiums owed each pay period their employment, Defendants failed to timely pay all
5 wages owed each pay day or upon separation of employment (or within 72 hours thereof), in
6 violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays).

7 40. Additionally, Defendants failed to reimburse Plaintiff and aggrieved employees with
8 a stipend or reasonable percentage reimbursement allowance allotted to their use of personal cell
9 phones and data for work activities. Defendants issued Plaintiff and other aggrieved employees La-
10 Z-Boy business cards that contains each person's assigned La-Z-Boy email address, which were
11 given to customers. Plaintiff and other aggrieved employees used their personal cell phones to
12 communicate via email and cell phone with co-workers and customers regarding sales, customer
13 complaints, delivery scheduling and other delivery delays using work related emails, phone calls,
14 and text messages on their personal cell phones. However, Defendants did not reimburse
15 employees, in violation of California Labor Code section 2802. *See generally Cochran v. Schwan's*
16 *Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1140.

17 41. Defendants equally failed in their affirmative obligation to provide accurate itemized
18 wage statements each pay period to Plaintiff and aggrieved employees. Defendants issued wage
19 statements to Plaintiff and, on information and belief, other aggrieved employees, which contain at
20 least three distinct types of violations.

21 42. First, on each wage statement furnished, Defendants failed to accurately state the
22 "gross wages earned" and "net wages earned" in violation of Labor Code § 226(a)(1) and (5), as
23 Plaintiff and aggrieved employees earned overtime at one and one-half times their regular rate of
24 pay, but were underpaid overtime on an hourly basis, and were deprived of all meal and rest period
25 premiums earned, resulting in an inaccurate itemization of gross and net wages earned on those
26 wage statements. Gross and net wages earned remain inaccurate given the foregoing minimum
27 wage violations as well.

1 43. Second, on each wage statement furnished to Plaintiff and, on information and
2 belief, the aggrieved employees, Defendants failed to accurately state “all applicable hourly rates in
3 effect during the pay period and the corresponding number of hours worked at each hourly rate by
4 the employee” in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff
5 and aggrieved employees:

- 6 b. Do not accurately list the applicable hourly overtime rate, but instead what
7 appears to be a half-time calculation intended as an OT premium, but not
8 reflective of the actual hourly overtime rate.
- 9 c. Inaccurately included overtime hours in the “regular” hours category, making it
10 difficult to discern which hours are indeed non-overtime hours and which hours
11 are in fact overtime hours (*e.g.*, in excess of 8 in a workday, 40 in a workweek,
12 12 in a workday, seventh consecutive day, etc.), resulting in an inaccurate
13 statement of regular hours worked and OT hours worked on those wage
14 statements.
- 15 d. Inaccurately stated the hourly rate in effect for certain regular and overtime
16 hours, as Plaintiff and aggrieved employees *earned* overtime at the rate required
17 by Labor Code section 510 and 1182.12 and the local minimum wage
18 ordinances, yet were paid deflated hourly overtime rates and regular (*i.e.*,
19 minimum) wages in those affected pay periods.
- 20 e. Inaccurately list the base rate due to minimum wage underpayments; and
21 inaccurately list make-up pay in subsequent pay periods for prior pay periods’
22 underpayment of wages.

23 44. Third, Defendants inaccurately listed total hours worked during the pay period, as
24 Plaintiff and aggrieved employees worked off-the-clock, including during times when their time
25 records were edited to make it appear as though they took compliant meal periods, resulting in an
26 inaccurate reflection of total hours worked on those corresponding wage statements.

27 45. Defendants’ wage statement issues described above rendered the wage statements
28 inaccurate and confusing to Plaintiff and aggrieved employees, concealing the underpayments and

1 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and
2 aggrieved employees as the sole documentary evidence of their respective earnings.

3 46. Plaintiff and aggrieved employees suffered injury in the form of confusion regarding
4 amounts paid for hours worked, and in the form of concealment of the common payroll practices
5 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
6 this Complaint.

7 47. Indeed, Plaintiff and, on information and belief, aggrieved employees were
8 misinformed and misled by the wage statements wages, hours, rates, and earnings. As a result of
9 the inaccuracies on the wage statements, Plaintiff and, on information and belief, aggrieved
10 employees were led to believe that the hourly rates and net and gross wages reflected were a
11 complete and accurate reflection of the wages actually earned under California law.

12 48. Defendants' wage statement violations were knowing and intentional as a matter of
13 law with respect to Plaintiff and aggrieved employees given that the legal obligation was not
14 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
15 Defendants nevertheless failed to comply despite the means and ability to do so.

16 49. Defendants failed to provide and pay sick leave in the manner required by statute.
17 Specifically, Defendants allowed employees to accrue paid sick leave. However, Plaintiff and the
18 aggrieved employees did not accrue sick leave at the rate required by statute. As one example, for
19 the pay period ending on June 5, 2021, Plaintiff worked 38.65 hours, but only accrued 1 hour of
20 paid sick leave, which is less than what is statutorily required (*i.e.*, 1 hour for every 30 hours
21 worked). On information and belief, Plaintiff alleges that when employees used sick leave,
22 Defendants failed to pay such sick leave at the correct rate, which should have taken into account
23 the commissions, bonuses, and other remuneration paid to the aggrieved employees. Defendants
24 instead unlawfully paid sick leave at employees' straight time hourly rate.

25 50. Defendants also failed to timely provide Plaintiff's employment records upon
26 request. On September 29, 2021, Plaintiff issued a request to Defendants requesting all records due
27 under the IWC Wage Orders (including the Records sections), and Labor Code sections 226, 432,
28 and 1198.5. Despite repeated written requests to Defendants and their counsel over the course of

1 several months, Defendants failed to provide Plaintiff's records by the statutorily required
2 deadlines. On November 16, 2021, Defendants provided Plaintiff's personnel file (after the
3 statutory deadline). On February 18, 2022, nearly four months after the statutory deadline,
4 Defendants provided Plaintiff's wage statements. As of the date of this Complaint, Defendants
5 have refused to provide Plaintiff's time records. Defendants have also failed to provide
6 employment records for multiple other aggrieved employees who issued written requests to
7 Defendants for their records.

8 51. Because of the violations set forth in this Complaint, including Defendants' failure
9 to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay
10 (i.e., unrecorded off-the-clock hours), Defendants violated Labor Code section 1174 and the IWC
11 Wage Orders by failing to maintain records showing accurate daily hours worked at the
12 corresponding wage rate, and the wages paid to each employee.

13 52. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
14 knowingly and intentionally caused harm to Plaintiff and the aggrieved employees. Plaintiff is
15 informed, believes, and alleges that Defendants have engaged in systemic violations of the Labor
16 Code and IWC Wage Orders by maintaining practices, policies, and customs that are inconsistent
17 with their obligations under California law.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY ALL REGULAR AND MINIMUM WAGES**

20 **Labor Code §§ 1182.12, 1194, 1197**

21 53. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

22 54. Labor Code section 2699(f) provides: "For all provisions of this code except those
23 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
24 of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs
25 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
26 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
27 employee per pay period for each subsequent violation."
28

1 55. Labor Code section 558(a) provides: “Any employer or other person acting on behalf
2 of an employer who violates, or causes to be violated, a section of this chapter or any provision
3 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
4 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
5 underpaid employee for each pay period for which the employee was underpaid in addition to an
6 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
7 dollars (\$100) for each underpaid employee for each pay period for which the employee was
8 underpaid in addition to an amount sufficient to recover underpaid wages.”

9 56. Labor Code section 1197.1(a) provides: “Any employer or other person acting either
10 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
11 any employee a wage less than the minimum fixed by an applicable state or local law, or by an
12 order of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed
13 pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one
14 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
15 underpaid ... and any applicable penalties imposed pursuant to Section 203. (2) For each
16 subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each
17 underpaid employee for each pay period for which the employee is underpaid regardless of whether
18 the initial violation is intentionally committed.”

19 57. Defendants willfully failed in their affirmative obligation to pay Plaintiff and
20 aggrieved employees at least the lawful minimum wage for all hours worked in violation of Labor
21 Code sections 1182.12, 1194, 1197 and 1198 and the IWC Wage Orders (the “Hours and Days of
22 Work,” “Rest Periods,” and “Minimum Wages” sections of the applicable orders).

23 58. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
24 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
25 by Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest, attorneys’ fees,
26 and costs to the extent permitted by law, including under Labor Code section 2699(g).

1 compensation for each workday that a fully compliant meal period was not provided, in violation of
2 Labor Code sections 226.7 and the IWC Wage Orders.

3 65. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
4 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
5 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
6 to the extent permitted by law, including under Labor Code section 2699(g).

7 **FOURTH CAUSE OF ACTION**

8 **REST PERIOD VIOLATIONS**

9 **Labor Code §§ 226.7 and 516**

10 66. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

11 67. Defendants willfully failed in their affirmative obligation to consistently authorize
12 and permit Plaintiff and aggrieved employees to receive compliant, duty-free rest periods of not less
13 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor
14 Code sections 226.7, 516, 1198 and the IWC Wage Orders (the "Rest Periods" sections of the
15 applicable orders).

16 68. Further, Defendants willfully failed in their affirmative obligation to consistently pay
17 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
18 compensation for each workday that a fully compliant rest period was not provided, in violation of
19 Labor Code sections 226.7, 1198 and the IWC Wage Orders.

20 69. Defendants also willfully failed in their affirmative obligation to pay Plaintiff and
21 the aggrieved employees for their rest periods at the minimum wage, in violation of Labor Code
22 section 1198, the IWC Wage Orders (the "Rest Periods" and "Minimum Wages" sections of the
23 applicable orders), and applicable law. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.
24 App. 5th 98, 108-110.

25 70. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
26 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
27 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
28 to the extent permitted by law, including under Labor Code section 2699(g).

1 **FIFTH CAUSE OF ACTION**

2 **UNTIMELY PAYMENT OF WAGES**

3 **Labor Code §§ 204, 204b and 210**

4 71. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

5 72. Defendants willfully failed in their affirmative obligation to timely pay all wages and
6 premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days
7 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
8 basis) and on the regularly-scheduled weekly payday for any weekly employees, as applicable, in
9 violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages"
10 sections of the applicable orders).

11 73. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
12 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
13 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
14 to the extent permitted by law, including under Labor Code section 2699(g).

15 **SIXTH CAUSE OF ACTION**

16 **WAGE STATEMENT VIOLATIONS**

17 **Labor Code § 226 and 226.3**

18 74. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

19 75. Labor Code section 226.3 provides: "Any employer who violates subdivision (a) of
20 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
21 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
22 each violation in a subsequent citation, for which the employer fails to provide the employee a
23 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
24 The civil penalties provided for in this section are in addition to any other penalty provided by law."

25 76. Defendants failed in their affirmative obligation provide accurate itemized wage
26 statements to Plaintiff and aggrieved employees in violation of Labor Code section 226(a) because
27 Plaintiff and aggrieved employees were not paid for all hours worked at the proper wage rates and
28

1 the wage statements reflected inaccurate totals, including gross and net wages earned, total hours
2 worked, applicable rates in effect and corresponding number of hours worked.

3 77. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
4 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
5 by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and
6 costs to the extent permitted by law, including under Labor Code section 2699(g).

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO TIMELY PAY ALL WAGES**

9 **UPON SEPARATION OF EMPLOYMENT**

10 **Violation of Labor Code §§ 201 through 203**

11 78. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

12 79. Defendants willfully failed in their affirmative obligation to pay all wages earned
13 and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or
14 within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or
15 her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of
16 Labor Code sections 201 through 203 and the IWC Wage Orders.

17 80. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
18 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
19 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
20 to the extent permitted by law, including under Labor Code section 2699(g).

21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

23 **Violation of Labor Code § 2802**

24 81. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

25 82. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and
26 aggrieved employees for all necessary expenditures, losses, expenses and costs incurred by them in
27 direct discharge of the duties of their employment, in violation of Labor Code section 2802.

83. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

NINTH CAUSE OF ACTION

PAID SICK LEAVE VIOLATIONS

Violation of Labor Code Labor Code §§ 246 *et seq.*

84. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

85. Defendants knowingly and intentionally failed in their affirmative obligation provide and pay paid sick leave to Plaintiff and the aggrieved employees in violation of Labor Code section 246.

86. Labor Code section 246(b)(1) requires that employees accrue sick leave at the commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c) entitles employees to use any accrued sick leave beginning on their 90th day of employment.

87. Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

88. [A]n employer shall calculate paid sick leave using any of the following calculations:

(1) Paid 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, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

1 (3) Paid sick time for exempt employees shall be calculated in the
2 same manner as the employer calculates wages for other forms of paid
3 leave time.

4 89. Defendants failed to pay Plaintiff and aggrieved employees paid sick leave at one of
5 the lawful rates set forth in the statute because Defendants failed to include in their calculation the
6 additional remuneration received by Plaintiff and the aggrieved employees, including but not
7 limited to, bonuses and commissions. Defendants also failed to provide sick leave to employees at
8 the accrual rate required by statute (*i.e.*, 1 hour for every 30 hours worked).

9 90. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
10 aggrieved employees and the State of California for civil penalties as required by Labor Code
11 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
12 by law, including under Labor Code section 2699(g). Plaintiff may also be entitled to penalties
13 under Labor Code section 248.5.

14 **TENTH CAUSE OF ACTION**
15 **RECORDKEEPING VIOLATIONS**
16 **Labor Code § 1174**

17 91. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

18 92. Labor Code section 1174 provides: "Every person employing labor in this state shall:
19 ... (d) Keep, at a central location in the state or at the plants or establishments at which employees
20 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
21 number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
22 the respective plants or establishments. These records shall be kept in accordance with rules
23 established for this purpose by the commission, but in any case shall be kept on file for not less than
24 three years."

25 93. Labor Code section 1174.5 provides: "Any person employing labor who willfully
26 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete
27 records required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five
28 hundred dollars (\$500)."

1 94. Defendants willfully failed in their affirmative obligation to maintain accurate
2 records showing the hours worked daily and wages paid to the aggrieved employees, in violation of
3 Labor Code sections 1174, 1198 and the IWC Wage Orders (the “Records” sections of the
4 applicable orders).

5 95. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
6 aggrieved employees and the State of California for civil penalties as required by Labor Code
7 section 1174.5, in addition to interest, attorneys’ fees, and costs to the extent permitted by law,
8 including under Labor Code section 2699(g).

9 **ELEVENTH CAUSE OF ACTION**

10 **FAILURE TO PRODUCE RECORDS**

11 **Violation of Labor Code §§ 226, 432, 1198.5**

12 96. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

13 97. Labor Code section 432 states that [i]f an employee. . . signs any instrument relating
14 to the obtaining or holding of employment, he shall be given a copy of the instrument upon
15 request.”

16 98. Labor Code section 226(b) grants employees the right to inspect or receive “a copy
17 of records pertaining to their employment.” Labor Code section 226(f) authorizes a penalty of \$750
18 for an employer’s failure to comply with a request for records made under section 226.

19 99. Labor Code section 1198.5 requires employers to provide an employee’s “personnel
20 records” within 30 days of receipt of the request. Section 1198.5(k) authorizes a penalty of \$750
21 for an employer’s failure to provide a copy of or permit inspection of personnel records. Section
22 1198.5(l) allows an employee to seek injunctive relief to obtain an employer’s compliance with this
23 section and authorizes the recovery of attorneys’ fees and costs.

24 100. Section 7 of the IWC Wage Orders, which may be enforced through Labor Code
25 section 1198, requires that employers maintain records of when an employee begins and ends each
26 work period and when the employee takes meal periods. Section 7(C) states that “[a]n employee’s
27 records shall be made available for inspection by the employee upon reasonable request.”
28

1 101. Plaintiff issued a records request to Defendants requesting all records due under the
2 IWC Wage Orders (including the Records sections) and Labor Code sections 226, 432, and 1198.5.
3 Defendants willfully refused to timely provide Plaintiff with his records and eventually provided
4 some records well after the statutory deadlines. To date, Defendants have refused to provide
5 Plaintiff's time records despite repeated requests to Defendants and their counsel over the course of
6 nearly five months. Defendants have also refused to provide records for multiple other aggrieved
7 employees who issued written requests to Defendants for their records.

8 102. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
9 aggrieved employees and the State of California for civil penalties as required by Labor Code
10 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
11 by law, including under Labor Code section 2699(g).

12 **PRAYER FOR RELIEF**

13 Plaintiff prays for judgment as follows:

- 14 a. For an award of all civil penalties under the Labor Code section 2698 *et seq.*;
- 15 b. For an award of reasonable attorneys' fees and costs of suit, including expert fees, to
16 the extent permitted by law, including under Labor Code section 2699(g);
- 17 c. For any recoverable pre- and post-judgment interest; and
- 18 d. For such other relief the Court deems just and proper.

19
20 Respectfully submitted,

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22 Dated: February 28, 2022

Ferraro Vega Employment Lawyers, Inc.

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25 Nicholas J. Ferraro
26 Attorney for Plaintiff Dustin Evers
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