



Moss Bollinger
LLP

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December 21, 2021

VIA PAGA ONLINE FILING

Secretary Natalie Palugyai
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Living Spaces Furniture, LLC
c/o Capitol Corporate Services, Inc.
455 Capitol Mall # 217,
Sacramento, CA 95814

Re: Notice pursuant to Labor Code Section 2699.3(a)(1), (c)(2)
Labor Code Private Attorneys General Act ("PAGA")

Employer: Living Spaces Furniture, LLC

Employee: Juana Aguilera, on behalf of herself and on behalf of (a) all current and former hourly individuals employed by Living Spaces Furniture, LLC who were paid a break premium and a shift differential, DC Floater differential, a monthly bonus or other form of non-discretionary pay in the same relevant period and (b) all current and former hourly individuals employed by Living Spaces Furniture, LLC who were paid a sick leave pay and a shift differential, DC Floater differential, a monthly bonus or other form of non-discretionary pay in the same relevant period.

Dear Secretary Palugyai:

Pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee, Juana Aguilera ("Plaintiff"), brings this complaint on behalf of the State of California and two groups of aggrieved employees: (a) on behalf of herself

and all similarly situated current and former California employees who work(ed) for Living Spaces Furniture, LLC (“Defendant”) on a non-exempt, hourly basis and were paid a break premium and a shift differential, DC Floater differential, a monthly bonus or other form of non-discretionary pay in the same relevant period and (b) on behalf of all similarly situated current and former California employees who work(ed) for Defendant on a non-exempt, hourly basis and were paid sick leave pay and a shift differential, DC Floater differential, a monthly bonus or other form of non-discretionary pay in the same relevant period. Plaintiff gives notice that her employer violated the California Labor Code within the one year prior to the mailing of this letter.

Living Spaces Furniture, LLC is a Delaware limited liability company that does business throughout California. Plaintiff was employed by Defendant on an hourly basis in West Sacramento, California, from August 2020 until May 2021. During her employment by Defendant in California, and within the one-year period of the date of this letter, Defendant paid Plaintiff several meal break premiums for its failure to provide her compliant meal periods under California law as well as paid sick leave. In addition, Defendant also paid Plaintiff different forms of non-discretionary pay. Plaintiff alleges that Defendant failed to factor non-discretionary remuneration paid to her and other aggrieved employees into its calculation of their regular rate of pay/compensation for the payment of break premiums and paid sick leave.

Meal and Rest Period Premiums Rate Calculation

Wage Order 9-2001(11) provides: “If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s ***regular rate of compensation*** for each workday that the meal period is not provided.” Wage Order 9-2001(11)(B), (12)(B) (same re rest periods) (emphasis added); *see also* Labor Code § 226.7(c) (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, ..., the employer shall pay the employee one additional hour of pay at the employee’s ***regular rate of compensation*** for each work day that the meal or rest period is not provided.” (Emphasis added)).

Defendant paid aggrieved employees one hour of pay at the employee’s base hourly rate when compensating those employees for violations of the meal and rest period requirements, including on shifts when the employee earned a shift differential (or other form of non-discretionary pay) required to be factored into an employee’s regular rate of compensation. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 489 P.3d 1166, 1178 (2021) (“we hold that the term “regular rate of compensation” in section 226.7(c) has the same meaning as “regular rate of pay” in section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee.”).

As Defendant failed to pay meal and rest period premiums as required by California law when such violations occurred, Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Violation of Paid Sick Leave Law

During their employment with Defendant, Plaintiff and similarly employed individuals at Defendant's facilities in California were entitled to "paid sick days" pursuant to the California Healthy Workplaces, Healthy Families Act of 2014, California Labor Code sections 245, et seq. Pursuant to Labor Code § 245.5(b), all employers in California are required to provide paid sick leave to their employees, unless the employee is exempt from coverage, which Plaintiff was not. Employees who work in California for 30 or more days within a year from the commencement of employment are entitled to paid sick leave on the 90th day of employment. Labor Code § 246.

Labor Code section 246(*l*) requires that employers pay sick time pay to non-exempt employees at the employee's "regular rate of pay." Employers may either calculate "paid sick days" for non-exempt employees in California at the regular rate of pay for the workweek in which the employee uses paid sick time or 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. Labor Code § 246(*l*)(1-2). The "regular rate of pay" includes all remuneration for employment paid to the employee and includes, but is not limited to, shift differentials, incentive bonuses and other non-discretionary remuneration.

During the one-year period preceding the submission of this notice letter, Plaintiff and similarly employed individuals at Defendant's facilities accrued and took paid sick leave. However, Defendant failed to include such DC Floater differentials and monthly incentive bonuses (and other non-discretionary pay) when determining the "regular rate of pay" for Plaintiff and similarly employed individuals for purposes of sick time pay when Plaintiff and similarly employed individuals were paid sick time pay and non-discretionary pay in the same relevant period. Instead, Defendant only paid Plaintiff and similarly employed individuals paid sick leave at their base hourly rate, rather than at their "regular rate of pay."

As Defendant failed to pay paid sick leave as required by California law when such violations occurred, Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Violation of Labor Code § 233

Labor Code § 233 provides: "Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in

an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.”

During the relevant time period, Defendant intentionally and willfully failed to pay Plaintiff and the similarly employed individuals at Defendant’s facilities in California their sick pay wages at the regular rate of pay required by law, as alleged above. Accordingly, Plaintiff and the other similarly employed individuals at Defendant’s facilities in California did not receive the full amount of paid sick time that they were entitled to receive by law, and were therefore denied the right to use sick leave within the meaning of Labor Code §§ 233(a) and (c).

Unpaid Final Wages and Waiting Time Penalties

Plaintiff (and other similarly employed individuals at Defendant’s facilities) have ceased their employment by Defendants. Upon the cessation of that employment relationship (and as prescribed by statute), Plaintiff (and the others whose employment has ended) did not receive all wages owed. Namely, said former employees (including Plaintiff) did not receive all wages due to Defendant’s failure to pay the correct regular rate of pay for premium wages for non-compliant rest and meal periods and all sick leave pay to which they were entitled. *See Murphy v. Kenneth Cole Prods.*, 40 Cal.4th 1094, 1103 (2007) (sick pay is a form of wages).

Plaintiff and those similarly situated, upon termination, did not receive all owed wages on the date of termination, or within 72 hours if they resigned. Therefore, Defendant has violated and continues to violate Labor Code Sections 201 and 202, because it has not paid the aforementioned wages and are owes penalties pursuant to PAGA for each pay period in which Defendant failed to pay Plaintiff and other former employees their final wages in violation of Sections 201 and 202, and failed to pay the required waiting time penalties in violation of Section 203.

Civil Penalties

As a result of the foregoing, Defendant is liable for civil penalties as provided for by California law. Consequently, Plaintiff and all other similarly aggrieved employees of Defendant are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Conclusion

Defendant violated and continues to violate the California law as described above. Plaintiff requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA. If Defendant fails to cure those alleged curable violations, Plaintiff requests that the agency inform him if it does not intend to investigate these violations so that he may file a lawsuit with respect to the allegations discussed in this letter. Thank you for

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your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,

MOSS BOLLINGER, LLP

A handwritten signature in blue ink, appearing to read 'J. Bollinger', enclosed within a thin black rectangular border.

Jeremy F. Bollinger