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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

SHAE PALKOVIC, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

BOB'S DISCOUNT FURNITURE, LLC., a
Connecticut Limited Liability Company; and
DOES 1-50, inclusive.

Defendants.

CASE NO.: **24CV010833**

**REPRESENTATIVE ACTION
COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Shae Palkovic (“Plaintiff”), on behalf of the State of California, hereby brings this
2 PAGA Representative Action Complaint (“Complaint”) against Defendant Bob’s Discount Furniture,
3 LLC. (“Defendant”) and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant is a company focusing on affordable, quality furniture and philanthropic
6 efforts.

7 2. Plaintiff brings this PAGA representative action solely on behalf of the State of
8 California against Defendant for alleged violations of the California Labor Code.

9 3. **Plaintiff does not seek to recover anything other than penalties as permitted by**
10 **California Labor Code § 2699.**

11 4. As set forth below, Plaintiff alleges that Defendant failed to pay for all hours worked
12 due to its failure to record and pay for all time worked off-the-clock. Plaintiff further alleges that
13 Defendant failed to pay all overtime compensation and sick pay wages at the proper legal rates by
14 failing to calculate the “regular rate of pay” properly. Moreover, Plaintiff alleges that Defendant’s
15 meal and rest period policies and practices failed to allow and permit aggrieved employees to take all
16 compliant and timely meal and rest periods or pay premium wages at the “regular rate of pay” in lieu
17 thereof. Plaintiff further alleges that Defendant failed to provide aggrieved employees with accurate
18 written itemized wage statements in violation of Labor Code § 226(a), failed to reimburse all
19 necessary business expenses incurred, and failed to timely pay all final wages upon separation of
20 employment in violation of Labor Code §§ 201-203.

21 **JURISDICTION**

22 5. Plaintiff, on behalf the State of California brings this representative action pursuant to
23 Labor Code § 2699, *et seq.* seeking penalties for Defendant’s violation of California Labor Code §§
24 201-204, 210, 226(a), 226(a)(6), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199,
25 2802-2804, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”).

26 6. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved
27 employees within the meaning of Labor Code §2699, *et seq.*

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7. This Court has jurisdiction over Defendant because, upon information and belief, Defendant has sufficient minimum contacts in California, or otherwise intentionally avail themselves to the State of California so as to render the exercise of jurisdiction over them by California courts consistent with the traditional notions of fair play and substantial justice.

VENUE

8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County of Sacramento. Defendant owns, maintain offices, transact business, have an agent or agents within the County of Sacramento, and/or otherwise are found within the County of Sacramento, and Defendant is within the jurisdiction of this Court for purposes of service of process.

PARTIES

9. At all relevant times herein, Plaintiff, who is over 18, was and currently is a California resident residing in the State of California.

10. Plaintiff is informed and believes and alleges that Defendants are authorized to do business within the County of Sacramento and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1199, 2802-2804, and applicable Wage Orders.

11. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of Sacramento.

12. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and

1 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
2 alleged herein.

3 13. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
4 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
5 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
6 alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them,
7 were the agents, servants, and employees of each and every one of the other Defendants, as well as
8 the agents of all Defendants, and at all times herein mentioned were acting within the course and
9 scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or
10 otherwise ratified each and every one of the acts or omissions complained of herein.

11 14. At all times mentioned herein, Defendants and each of them, were members of and
12 engaged in a joint venture, partnership, and common enterprise and acting within the course and
13 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
14 alleges that all Defendants were joint employers for all purposes of Plaintiff and aggrieved
15 employees.

16 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

17 15. Defendant is a company focusing on affordable, quality furniture across California.

18 16. Plaintiff was employed by Defendant as a non-exempt employee with the title of
19 “Guest Experience Specialist” out of its Folsom, California location.

20 17. Plaintiff began working for Defendant on October 14, 2023, until her separation from
21 employment on December 28, 2023. Plaintiff and other aggrieved employees (including, but not
22 limited to, Warehouse Forklift Operator, Guest Experience Specialists, Sales, Furniture Repair
23 Technician, Warehouse Material Handler, Leave of Absence Specialist, and all other aggrieved
24 positions) were responsible for all aspects of Defendant’s business in the State of California.
25 However, in these roles, Plaintiff and other aggrieved employees were often not afforded all
26 protections and rights conferred under the California Labor Code and applicable wage orders.

27 18. At all relevant times, Plaintiff and other aggrieved employees regularly worked
28 various shifts, many of which were more than 8.0 hours in a workday and 40.0 hours in a workweek.

1 Plaintiff alleges that other aggrieved employees were also subjected to the same policies, procedures,
2 practices, working conditions, and corresponding wage and hour violations to which she was
3 subjected during her employment.

4 19. First, at all relevant times, Defendant has consistently failed to accurately record all
5 time worked, including all-time under which aggrieved employees were under the employer's
6 control. This included a policy and practice of failing to properly record aggrieved employees' time
7 worked, including all time spent working off-the-clock. As a result of this company-wide
8 policy/practice, Plaintiff and other aggrieved employees are not compensated for all the hours that
9 they actually work and all of the overtime hours they actually work, in violation of Labor Code §§
10 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

11 20. As a result, over a period of time, Plaintiff and other aggrieved employees were not
12 properly paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 1194, 1197.1, 1199,
13 and applicable Wage Orders. Additionally, due to the unlawful timekeeping policy/practices, Plaintiff
14 and other aggrieved employees were also not properly paid at the correct overtime rate for hours
15 worked in excess of eight hours per shift in violation of Labor Code § 510.

16 21. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
17 by an applicable state or local law or by an order of the commission a civil penalty, restitution of
18 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,
19 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
20 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
21 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
22 underpaid regardless of whether the initial violation is intentionally committed.

23 22. Labor Code § 510 requires an employer to compensate an employee who works more
24 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
25 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
26 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
27 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
28 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the

1 applicable Wage Orders, aggrieved employees shall not be employed more than eight (8) hours in
2 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
3 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

4 23. Furthermore, at all relevant times, Plaintiff and other aggrieved employees worked
5 regular shifts that lasted longer than 8.0 hours in a workday and resulted in aggrieved employees
6 regularly working more than 40 hours in a workweek. However, Defendant uniformly failed to
7 properly calculate and pay overtime wages at the proper legal rate due to Defendant's uniform failure
8 to include all forms of compensation/remuneration, including, but not limited to, commissions,
9 incentives, non-discretionary bonuses, and all other forms of remuneration in calculating the "regular
10 rate of pay" for purposes of overtime compensation.

11 24. Under the California Labor Code (as well as the FLSA), courts have consistently held
12 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
13 determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v.*
14 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
15 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F.
16 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgment to Plaintiff under California
17 and federal law on the grounds, that Defendant improperly calculated overtime by excluding annual
18 bonuses paid to employees from the "regular rate of compensation"]; see *Walling v. Youngerman-*
19 *Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect
20 all payments which the parties have agreed shall be received regularly during the workweek,
21 exclusive of overtime payments. It is not an arbitrary label chosen by the parties but an actual fact.
22 Once the parties have decided upon the amount of wages and the mode of payment, the determination
23 of the regular rate becomes a matter of mathematical computation, the result of which is unaffected
24 by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§ 778.110
25 ("production bonus") and 778.111 ("piece-rate").

26 25. By their policy of requiring Plaintiff and the other aggrieved employees to work in
27 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
28 them at the lawful rate of one-half (1 1/2) their "regular rate of pay," Defendant willfully violated the

1 provisions of Labor Code § 510 and the applicable Wage Orders.

2 26. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and other
3 aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510,
4 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and for
5 attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

6 27. Furthermore, at all relevant times, Defendant also failed in its obligation to provide
7 Plaintiff and other aggrieved employees the legally required paid sick days at the legal rate pursuant
8 to Labor Code §§ 246(a),(b), which requires that “[a]n employee who, on or after July 1, 2015, works
9 in California for the same employer for 30 or more days within a year from the commencement of
10 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
11 worked, beginning at the commencement of employment.” Labor Code § 246(l)(1) provides that paid
12 sick time for aggrieved employees must be “calculated in the same manner as the regular rate of pay
13 for the workweek in which the employee uses paid sick time, whether or not the employee actually
14 works overtime in that workweek.”

15 28. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
16 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
17 hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
18 requires employers to “provide an employee with written notice that sets forth the amount of paid
19 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
20 the employee’s itemized wage statement described in Section 226 or in a separate writing provided
21 on the designated pay date with the employee’s payment of wages.”

22 29. Here, at all relevant times, Defendant failed in its obligation to provide Plaintiff and
23 other aggrieved employees the legally required paid sick days at the legal rate, including all forms of
24 compensation, pursuant to Labor Code §§ 246(a), (b). As such, Defendant paid sick time below the
25 “regular rate of pay” as required by Labor Code §§ 246(l) (1-2). Based on the foregoing Labor Code
26 violations, Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code
27 § 2699(f)(2), and for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

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1 30. Moreover, at all relevant times, Plaintiff and other aggrieved employees were denied
2 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
3 Defendant's uniform meal period policies/practices, operational requirements, and work demands,
4 Plaintiff and other aggrieved employees often could not take timely and uninterrupted net 30-minute
5 first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other aggrieved
6 employees worked more than 10.0 hours in a shift, they were not allowed and permitted to take a
7 mandated second meal period before the end of the tenth hour of work in violation of the Labor Code
8 and applicable Wage Orders. Indeed, Plaintiff's and other aggrieved employees' meal periods were
9 often interrupted and/or lasted fewer than 30 minutes due to Defendant's meal period
10 policies/procedures, operational requirements, and work demands.

11 31. In addition, for each missed or non-compliant meal period, Defendant failed and
12 continues to fail to maintain a mechanism by which aggrieved employees were paid meal period
13 premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11
14 5th 858 and Labor Code § 226.7.

15 32. Accordingly, due to Defendant's uniform meal period practices, aggrieved employees
16 were also regularly denied legally compliant meal periods in violation of Labor Code §§ 226.7, 510,
17 516, and applicable Wage Orders, and would be entitled to penalties under Labor Code § 2698 *et seq.*

18 33. Next, at all relevant times, Plaintiff and other aggrieved employees were not provided
19 with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to
20 Defendant's uniform rest period policies/practices, operational requirements, and work demands. As
21 a result, Plaintiff and other aggrieved employees were and are often unable to take a net 10-minute
22 duty-free rest period for every major fraction of four hours worked. This includes a second rest period
23 for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in a workday.

24 34. By not relieving all aggrieved employees of all duties during rest periods, Defendant
25 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
26 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all
27 duties and relinquish control over how employees spend their time."] (Emphasis added). In *Augustus*,
28 the California Supreme Court expressly rejected the employer's assertion that it could provide an on-

1 duty rest period to employees who worked as security guards and further explained: “that employers
2 [must] relinquish any control over how employees spend their break time and relieve their employees
3 of all duties.” *Id.* at 273. Each time aggrieved employees were unable to take a compliant rest period,
4 Defendant failed and continues to fail to adequately pay rest period premium payments at the “regular
5 rate of pay” as required by Labor Code § 226.7.

6 35. Accordingly, due to Defendant’s uniform rest period policies/practices, aggrieved
7 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,
8 512, and applicable Wage Orders, and would be entitled to penalties under Labor Code § 2698 *et seq.*

9 36. As a result of Defendant’s failure to pay Plaintiff and other aggrieved employees for
10 all hours they were subject to the control of Defendant, including all minimum and overtime wages,
11 sick pay wages, Defendant’s failure to adequately pay for all overtime/sick pay wages at the
12 appropriate legal rate, and Defendant’s failure to pay all meal and rest period premiums at the “regular
13 rate of pay,” Defendant issued wage statements which failed to identify the gross wages earned
14 accurately, the total hours worked, the net wages earned, and the correct corresponding number of
15 hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

16 37. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
17 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
18 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
19 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
20 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

21 38. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
22 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant’s violations of
23 Labor Code § 226(a). Consequently, because Defendant failed to comply with Labor Code § 226(a),
24 Plaintiff and other aggrieved employees would be entitled to recover penalties under Labor Code §
25 226(e) and/or 2698 *et seq.*

26 39. Moreover, because Defendant failed to pay all minimum, overtime, sick pay wages,
27 and meal and rest period premiums at the “regular rate of pay,” Defendant also failed and continues
28 to fail to pay Plaintiff and other aggrieved employees all wages owed at their time of separation from

1 employment in violation of Labor Code §§ 201-203. Thus, aggrieved employees would be entitled to
2 recover waiting time penalties under Labor Code §§ 201-203 and/or 2698 *et seq.*

3 40. Finally, at all relevant times, Defendant required Plaintiff and other aggrieved
4 employees to incur necessary business expenses for work-related purposes but did not reimburse
5 aggrieved employees adequately for these necessary expenditures in violation of Labor Code §§
6 2802-2804. Here, Defendant uniformly failed to reimburse aggrieved employees for the necessary
7 costs incurred, in discharging their duties. Accordingly, due to Defendant's uniform failure to
8 adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2802
9 and applicable Wage Orders. Plaintiff and other aggrieved employees would be entitled to civil
10 penalties under Labor Code § 2698 *et seq.*

11 **FIRST CAUSE OF ACTION**

12 **PRIVATE ATTORNEYS GENERAL ACT**

13 **(Plaintiff and Similarly Aggrieved Employees Against All Defendants)**

14 41. Plaintiff re-alleges and incorporates by reference each and every allegation outlined
15 in the preceding paragraphs.

16 42. Defendant has committed several Labor Code violations against Plaintiff and other
17 similarly aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code
18 § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action against
19 Defendant to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the
20 State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not
21 limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per employee per
22 pay period for those violations of the Labor Code for which no civil penalty is specifically provided
23 based on the following Labor Code violations:

- 24 a) Defendant's failure to record and pay for all hours worked accurately;
- 25 b) Defendant's failure to pay all overtime wages at the "regular rate of pay" because
- 26 Defendant failed to include all forms of compensation, including, but not limited to, shift differentials,
- 27 non-discretionary bonuses, incentive pay, and other forms of remuneration;
- 28 c) Defendant's failure to pay all sick pay at the "regular rate of pay";

1 d) Defendant's failure to allow and permit legally compliant meal periods or compensation
2 at the "regular rate of pay" in lieu thereof;

3 e) Defendant's failure to allow and permit legally compliant rest periods or compensation
4 at the "regular rate of pay" in lieu thereof;

5 f) Defendant's failure to furnish legally compliant wage statements pursuant to Labor
6 Code § 226(a);

7 g) Defendant's failure to timely pay final wages to aggrieved employees at the time of
8 separation from employment was unlawful; and

9 h) Defendant's failure to reimburse aggrieved employees for all necessary business
10 expenses in violation of Labor Code §§ 2802-2804.

11 43. On or about January 11, 2024, Plaintiff notified Defendant Bob's Discount Furniture,
12 LLC. ("Defendant") via certified mail and the California Labor and Workforce Development Agency
13 ("LWDA") via its website of Defendant's violations of the California Labor Code § 2698 *et. seq.*
14 with respect to violations of the California Labor Code identified in Paragraph 42(a)-(h). Now that
15 sixty-five days (65) have passed from Plaintiff notifying Defendant of these violations, Plaintiff has
16 exhausted her administrative requirements for bringing a claim under the Private Attorneys General
17 Act with respect to these violations.

18 44. Plaintiff was compelled to retain the services of counsel to file this court action to
19 protect her interests and the interests of other similarly aggrieved employees and to assess and collect
20 the civil penalties owed by Defendant. Plaintiff has, therefore, incurred attorneys' fees and costs,
21 which she is entitled to receive under California Labor Code § 2699.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff prays for judgment for herself and all others on whose behalf this
24 suit is brought against Defendant, as follows:

25 1. Upon the First Cause of Action, for civil penalties due to similarly aggrieved
26 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
27 including, but not limited to: (1) \$100 for each initial violation and \$200 for each subsequent violation
28 per employee per pay period for those violations of the Labor Code for which no civil penalty is

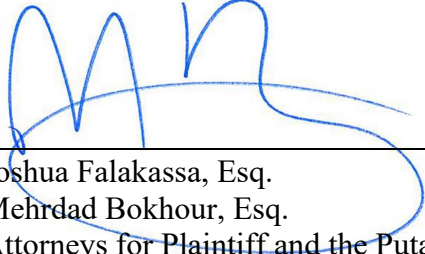
1 specifically provided under the Labor Code;

2 2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq.*, and Code
3 of Civil Procedure §1021.5; and

4 3. For such other relief that the Court may deem just and proper.
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6 Dated: June 3, 2024

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8
9 By: 

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