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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF CONTRA COSTA

DANIEL VILLANUEVA, individually, and  
on behalf of other members of the general  
public similarly situated, and as an  
aggrieved employee pursuant to the Private  
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

MANCINI'S SLEEPWORLD, INC., a  
California corporation; and DOES 1  
through 10, inclusive,

Defendants.

Case No.: C24-02943

**FIRST AMENDED CLASS ACTION  
COMPLAINT & ENFORCEMENT  
ACTION UNDER THE PRIVATE  
ATTORNEYS GENERAL ACT,  
CALIFORNIA LABOR CODE §§ 2698, *ET  
SEQ.***

- (1) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (2) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (3) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (4) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (5) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (6) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (7) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (8) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and

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(9) Violation of California Business &  
Professions Code §§ 17200, *et seq.* (Unfair  
Business Practices)

**Jury Trial Demanded**

1 Plaintiff Daniel Villanueva, individually and on behalf of all other members of the  
2 public similarly situated, and as an aggrieved employee and on behalf of all aggrieved  
3 employees, alleges as follows:

#### 4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure  
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil  
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other  
8 current and former employees who worked for Defendants in California as non-exempt,  
9 hourly paid employees and received at least one wage statement and against whom one or  
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any  
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission  
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,  
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the  
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction  
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes  
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s  
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either  
19 citizens of California, have sufficient minimum contacts in California, or otherwise  
20 intentionally avail themselves of the California market so as to render the exercise of  
21 jurisdiction over them by the California courts consistent with traditional notions of fair play  
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action  
23 because there is no complete diversity, and this case falls within the statutory exceptions to  
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).  
25 Upon information and belief, two-thirds or more of the class members and Defendants are  
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens  
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant  
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed  
2 within the past three (3) years on behalf of the same proposed class against Defendants  
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court because Defendants employ persons in this  
5 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions  
6 and occurrences related to this action occurred in this county.

### 7 **THE PARTIES**

8 4. Plaintiff Daniel Villanueva is a resident of Oakland, in Alameda County,  
9 California. Defendants employed Plaintiff as a non-exempt, commissions paid and/or hourly  
10 paid employee from approximately October 2013 to March 2024. Plaintiff worked as a Sales  
11 Manager and Mattress Specialist at the Defendants' various store locations in California,  
12 including, but not limited to, Berkeley, Pinole, Dublin, and Concord. During his employment,  
13 Plaintiff typically worked eight (8) or more hours per day and five (5) days per week.  
14 Plaintiff's primary job duties included, without limitation, making sales, providing customer  
15 service, answering the phone, completing inventory, organizing the salesfloor, training  
16 employees, and filling out weekly and monthly paperwork.

17 5. MANCINI'S SLEEPWORLD, INC. was and is, upon information and belief, a  
18 California corporation, and at all times hereinafter mentioned, an employer whose employees  
19 are engaged throughout this county and the State of California.

20 6. Plaintiff is unaware of the true names or capacities of the Defendants sued  
21 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to  
22 amend the complaint and serve such fictitiously named Defendants once their names and  
23 capacities become known.

24 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10  
25 were the partners, agents, owners, or managers of MANCINI'S SLEEPWORLD, INC. at all  
26 relevant times.

27 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the  
28 acts and omissions alleged herein was performed by, or is attributable to, MANCINI'S

1 SLEEPWORLD, INC. and/or DOES 1 through 10 (collectively, “Defendants” or  
2 “MANCINI’S”), each acting as the agent, employee, alter ego, and/or joint venturer of, or  
3 working in concert with, each of the other co-Defendants and was acting within the course and  
4 scope of such agency, employment, joint venture, or concerted activity with legal authority to  
5 act on the others’ behalf. The acts of any and all Defendants were in accordance with, and  
6 represent, the official policy of Defendants.

7 9. At all relevant times, Defendants, and each of them, ratified each and every act  
8 or omission complained of herein. At all relevant times, Defendants, and each of them, aided  
9 and abetted the acts and omissions of each and all the other Defendants in proximately causing  
10 the damages herein alleged.

11 10. Plaintiff is informed and believes, and thereon alleges, that each of said  
12 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,  
13 omissions, occurrences, and transactions alleged herein.

#### 14 **GENERAL ALLEGATIONS**

15 11. Defendants own and operate a mattress retail chain store, with approximately  
16 49 locations in California. Upon information and belief, Defendants maintain a single,  
17 centralized Human Resources (“HR”) department at their company headquarters in Livermore,  
18 California, which is responsible for the recruiting and hiring of new employees, and  
19 communicating and implementing Defendants’ company-wide policies, including timekeeping  
20 policies and meal and rest period policies, to employees throughout California.

21 12. In particular, Plaintiff and class members, on information and belief, received  
22 the same standardized documents and/or written policies. Upon information and belief, the  
23 usage of standardized documents and/or written policies, including new-hire documents,  
24 indicate that Defendants dictated policies at the corporate level and implemented them  
25 company-wide, regardless of their employees’ assigned locations or positions. Upon  
26 information and belief, Defendants set forth uniform policies and procedures in several  
27 documents provided at an employee’s time of hire.

28 13. Upon information and belief, Defendants maintain a centralized Payroll

1 department at their company headquarters in Livermore, California, which processes payroll  
2 for all non-exempt, commissions paid and hourly paid employees working for Defendants at  
3 their various locations in California, including Plaintiff and class members. Based upon  
4 information and belief, Defendants issue the same formatted wage statements to all non-  
5 exempt, commissions paid and hourly paid employees in California, irrespective of their work  
6 locations. Upon information and belief, Defendants process payroll for departing employees  
7 in the same manner throughout the State of California, regardless of the manner in which each  
8 employee's employment ends.

9 14. Defendants continue to employ non-exempt, commissions paid, or hourly paid  
10 employees in California.

11 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
12 mentioned, Defendants were advised by skilled lawyers and other professionals, employees  
13 and advisors knowledgeable about California labor and wage law, employment and personnel  
14 practices, and about the requirements of California law.

15 16. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
16 should have known that Plaintiff and class members were entitled to meal periods in  
17 accordance with the California Labor Code and applicable IWC Wage Order or payment of  
18 one (1) additional hour of pay at their regular rates of pay when they were not provided with  
19 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members  
20 were not provided with all meal periods or payment of one (1) additional hour of pay at their  
21 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal  
22 period.

23 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
24 should have known that Plaintiff and class members were entitled to rest periods in  
25 accordance with the California Labor Code and applicable IWC Wage Order or payment of  
26 one (1) additional hour of pay at their regular rates of pay when they were not authorized and  
27 permitted to take a compliant rest period and that Plaintiff and class members were not  
28 authorized and permitted to take compliant rest periods or provided with payment of one (1)

1 additional hour of pay at their regular rates of pay when they were not authorized and  
2 permitted to take a compliant rest period.

3 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
4 should have known that Plaintiff and class members were entitled to receive complete and  
5 accurate wage statements in accordance with California law. In violation of the California  
6 Labor Code, Plaintiff and class members were not provided complete and accurate wage  
7 statements.

8 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
9 should have known that they had a duty to maintain accurate and complete payroll records in  
10 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,  
11 knowingly, and intentionally failed to do so.

12 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
13 should have known that Plaintiff and class members were entitled to timely payment of all  
14 wages earned upon termination of employment. In violation of the California Labor Code,  
15 Plaintiff and class members did not receive payment of all wages due, including, but not  
16 limited to, meal and rest period premiums, within permissible time periods.

17 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
18 should have known that Plaintiff and class members were entitled to timely payment of wages  
19 during their employment. In violation of the California Labor Code, Plaintiff and class  
20 members did not receive payment of all wages, including, but not limited to, meal and rest  
21 period premiums, within permissible time periods.

22 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
23 should have known that Plaintiff and class members were entitled to suitable resting facilities  
24 to cease work and recover during meal or rest periods, but failed to provide suitable resting  
25 facilities.

26 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
27 should have known that Plaintiff and class members were entitled to receive full  
28 reimbursement for all business-related expenses and costs they incurred during the course and

scope of their employment and that they did not receive full reimbursement of applicable business-related expenses and costs incurred.

24. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and class members for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and class members that they were properly denied wages, all in order to increase Defendants' profits.

### **PAGA REPRESENTATIVE ALLEGATIONS**

25. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

26. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as "any person who was employed by the alleged violator and personally suffered each of the violations alleged."

27. Plaintiff and other current and former employees of Defendants are "aggrieved employees" as defined by Labor Code section 2699(c)(1) in that they are all Defendants' current or former employees and each of the alleged violations were committed against them.

28. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have

1                   been violated, including the facts and theories to support the alleged  
2                   violation.

3                   (b)    An aggrieved employee's notice filed with the LWDA pursuant to  
4                   2699.3(a) and any employer response to that notice shall be  
5                   accompanied by a filing fee of seventy-five dollars (\$75).

6                   (c)    The LWDA shall notify the employer and the aggrieved employee or  
7                   representative by certified mail that it does not intend to investigate the  
8                   alleged violation ("LWDA Notice") within sixty (60) calendar days of  
9                   the postmark date of the aggrieved employee's notice. Upon receipt of  
10                  the LWDA Notice, or if no LWDA Notice is provided within sixty-five  
11                  (65) calendar days of the postmark date of the aggrieved employee's  
12                  notice, the aggrieved employee may commence a civil action pursuant  
13                  to California Labor Code section 2699 to recover civil penalties.

14               29.     Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,  
15               through Plaintiff, may pursue a civil action arising under PAGA for violations of any  
16               provision other than those listed in Section 2699.5 after the following requirements have been  
17               met:

18                   (a)    The aggrieved employee or representative shall give written notice by  
19                   online filing with the LWDA and by certified mail to the employer of  
20                   the specific provisions of the California Labor Code alleged to have  
21                   been violated (other than those listed in Section 2699.5), including the  
22                   facts and theories to support the alleged violation.

23                   (b)    An aggrieved employee's notice filed with the LWDA pursuant to  
24                   2699.3(c) and any employer response to that notice shall be  
25                   accompanied by a filing fee of seventy-five dollars (\$75).

26                   (c)    The employer may cure the alleged violation within thirty-three (33)  
27                   calendar days of the postmark date of the notice sent by the aggrieved  
28                   employee or representative. The employer shall give written notice

1 within that period of time by certified mail to the aggrieved employee or  
2 representative and by online filing with the LWDA if the alleged  
3 violation is cured, including a description of actions taken, and no civil  
4 action pursuant to Section 2699 may commence. If the alleged violation  
5 is not cured within the 33-day period, the aggrieved employee may  
6 commence a civil action pursuant to Section 2699.

7 30. On November 19, 2024, Plaintiff provided written notice by online filing to the  
8 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor  
9 Code alleged to have been violated, including facts and theories to support the alleged  
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written  
11 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The  
12 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned  
13 Plaintiff PAGA Case Number LWDA-CM-1062496-24. A true and correct copy of Plaintiff's  
14 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

15 31. As of the filing date of this complaint, over 65 days have passed since Plaintiff  
16 sent the notice described above to the LWDA, and the LWDA has not responded that it  
17 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

18 32. Thus, Plaintiff has satisfied the administrative prerequisites under California  
19 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for  
20 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 512(a), 516,  
21 1174(d), 1198, and 2802.

22 33. Labor Code section 558(a) provides "[a]ny employer or other person acting on  
23 behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
24 provision regulating hours and days of work in any order of the Industrial Welfare  
25 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty  
26 dollars (\$50) for each underpaid employee for each pay period for which the employee was  
27 underpaid . . . . (2) For each subsequent violation, one hundred dollars (\$100) for each  
28 underpaid employee for each pay period for which the employee was underpaid . . . ." Labor

Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

34. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

35. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

36. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 512(a), 516, 1174(d), 1198, and 2802.

### **CLASS ACTION ALLEGATIONS**

37. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

38. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

39. Plaintiff’s proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, commissions paid and/or hourly paid employees in California, at any time from December 1, 2022, until the date of trial (“Class”).

40. Plaintiff’s proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, commissions paid and/or hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial (“Subclass”).

1           41.     Members of the Class and Subclass are referred to herein as “class members.”

2           42.     Plaintiff reserves the right to redefine the Class and Subclass and to add  
3 additional subclasses as appropriate based on further investigation, discovery, and specific  
4 theories of liability.

5           43.     There are common questions of law and fact as to class members that  
6 predominate over questions affecting only individual members, including, but not limited to:

- 7                   (a)     Whether Defendants failed to provide Plaintiff and class members with  
8 meal periods;
- 9                   (b)     Whether Defendants failed to authorize and permit Plaintiff and class  
10 members to take rest periods;
- 11                   (c)     Whether Defendants provided Plaintiff and class members with  
12 complete and accurate wage statements as required by California Labor  
13 Code section 226(a);
- 14                   (d)     Whether Defendants maintained accurate payroll records as required by  
15 California Labor Code section 1174(d);
- 16                   (e)     Whether Defendants failed to pay earned meal and rest period premiums  
17 due to Plaintiff and class members upon their discharge;
- 18                   (f)     Whether Defendants failed timely to pay meal and rest period premiums  
19 due to Plaintiff and class members during their employment;
- 20                   (g)     Whether Defendants failed to provide Plaintiff and class members with  
21 suitable resting facilities;
- 22                   (h)     Whether Defendants failed to reimburse Plaintiff and class members for  
23 necessary and required business-related expenditures and/or losses  
24 incurred by them in the scope of their employment;
- 25                   (i)     Whether Defendants engaged in unlawful and unfair business practices  
26 in violation of California Business & Professions Code sections 17200,  
27 *et seq.*; and
- 28                   (j)     The appropriate amount of damages, restitution, or monetary penalties

1 resulting from Defendants' violations of California law.

2 44. There is a well-defined community of interest in the litigation and the class  
3 members are readily ascertainable:

- 4 (a) Numerosity: The class members are so numerous that joinder of all  
5 members would be unfeasible and impractical. The membership of the  
6 entire class is unknown to Plaintiff at this time; however, the class is  
7 estimated to be greater than one hundred (100) individuals and the  
8 identity of such membership is readily ascertainable by inspection of  
9 Defendants' employment records.
- 10 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately  
11 protect the interests of each class member with whom he has a well-  
12 defined community of interest, and Plaintiff's claims (or defenses, if  
13 any) are typical of all class members as demonstrated herein.
- 14 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately  
15 protect the interests of each class member with whom he has a well-  
16 defined community of interest and typicality of claims, as demonstrated  
17 herein. Plaintiff acknowledges that he has an obligation to make known  
18 to the Court any relationship, conflicts or differences with any class  
19 member. Plaintiff's attorneys, the proposed class counsel, are versed in  
20 the rules governing class action discovery, certification, and settlement.  
21 Plaintiff has incurred, and throughout the duration of this action, will  
22 continue to incur costs and attorneys' fees that have been, are, and will  
23 be necessarily expended for the prosecution of this action for the  
24 substantial benefit of each class member.
- 25 (d) Superiority: The nature of this action makes the use of class action  
26 adjudication superior to other methods. A class action will achieve  
27 economies of time, effort, and expense as compared with separate  
28 lawsuits, and will avoid inconsistent outcomes because the same issues

1 can be adjudicated in the same manner and at the same time for the  
2 entire class.

3 (e) Public Policy Considerations: Employers in the State of California  
4 violate employment and labor laws every day. Current employees are  
5 often afraid to assert their rights out of fear of direct or indirect  
6 retaliation. Former employees are fearful of bringing actions because  
7 they believe their former employers might damage their future  
8 endeavors through negative references and/or other means. Class  
9 actions provide the class members who are not named in the complaint  
10 with a type of anonymity that allows for the vindication of their rights  
11 while simultaneously protecting their privacy.

## 12 **FIRST CAUSE OF ACTION**

### 13 **Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period** 14 **Violations** 15 **(Against all Defendants)**

16 45. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
17 and every allegation set forth above.

18 46. At all relevant times herein set forth, California Labor Code section 512(a)  
19 provides that an employer may not require, cause, or permit an employee to work for a period  
20 of more than five (5) hours per day without providing the employee with a meal period of not  
21 less than thirty (30) minutes, except that if the total work period per day of the employee is  
22 not more than six (6) hours, the meal period may be waived by mutual consent of both the  
23 employer and the employee. Under California law, first meal periods must start after no more  
24 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

25 47. At all relevant times herein set forth, California Labor Code sections 226.7,  
26 512(a), 516, and 1198 provide that no employer shall require an employee to work during any  
27 meal period mandated by an applicable order of the IWC.

28 48. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),

1 and the applicable IWC Wage Order also require employers to provide a second meal period  
2 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay  
3 an employee one (1) additional hour of pay at the employee's regular rate, except that if the  
4 total hours worked is no more than twelve (12) hours, the second meal period may be waived  
5 by mutual consent of the employer and the employee only if the first meal period was not  
6 waived.

7         49. First, during the relevant period, Defendants had, and continue to have, a  
8 company-wide policy and/or practice of understaffing and/or single staffing their locations  
9 while assigning heavy workloads, including pressuring employees to meet sales goals, which  
10 resulted in a failure to provide Plaintiff and class members with adequate meal period  
11 coverage, because there were too few employees on duty to handle the workload. For  
12 example, Defendants' management implemented specific sales goals, such as meeting varying  
13 personal and store sales goals, and Plaintiff and class members were reprimanded in writing if  
14 they did not meet them. This practice, coupled with a company-wide policy and/or practice of  
15 failing to schedule meal periods, further caused Plaintiff and class members to not be relieved  
16 of their duties for meal periods. As a result, Plaintiff and class members have had to work  
17 through all or part of their meal periods, had their meal periods interrupted, and/or had to wait  
18 extended periods of time before taking meal periods. For example, Plaintiff missed his meal  
19 periods approximately three (3) times per week or took them late, after the fifth hour of work,  
20 approximately twice per week due to lack of coverage and heavy customer foot traffic.

21         50. Additionally, Defendants had, and continue to have, a policy and/or practice of  
22 pressuring Plaintiff and class members to carry their personal cellphones and respond to calls  
23 at all times to meet the sales goals Defendants imposed. As a result, Plaintiff and class  
24 members answered clients' calls during meal periods to facilitate sales. Defendants knew or  
25 should have known that Plaintiff and class members were performing work during their meal  
26 periods in order to meet Defendants' expectations.

27         51. Second, because Defendants frowned upon employees accruing meal period  
28 premiums, Defendants' management pressured Plaintiff and class members to clock out for

1 meal periods to reflect compliant meal periods, regardless of whether they had received a  
2 compliant meal period or not, in order to strictly limit the meal period premiums that would  
3 need to be paid by Defendants.

4 52. Third, on information and belief, in conjunction with Defendants' policy and/or  
5 practice of single-staffing, Defendants maintained and implemented a company-wide on-  
6 premises meal period policy for employees, which mandated that Plaintiff and class members  
7 remain on the work premises during meal periods because Defendants did not allow the stores  
8 to be left unattended. Because Plaintiff and class members were restricted from leaving the  
9 premises during meal periods, they were denied the ability to use their meal periods freely for  
10 their own purposes, such as running personal errands. Thus, Defendants effectively  
11 maintained control over Plaintiff and class members during meal periods.

12 53. Fourth, Defendants did not provide Plaintiff and class members with second 30-  
13 minute meal periods on days that they worked in excess of ten (10) hours in one day. During  
14 his employment, Plaintiff sometimes worked shifts in excess of ten (10) or more hours per day  
15 but was not provided a second 30-minute meal period. Plaintiff and class members did not  
16 sign valid meal period waivers on days that they were entitled to meal periods and were not  
17 relieved of all duties.

18 54. At all times herein mentioned, Defendants knew or should have known that, as  
19 a result of these policies, Plaintiff and class members were not actually relieved of all duties to  
20 take timely, uninterrupted meal periods. Defendants further knew or should have known that  
21 Defendants did not pay Plaintiff and class members meal period premiums when meal periods  
22 were late, interrupted, shortened, and/or missed.

23 55. Moreover, Defendants engaged in a company-wide practice and/or policy of  
24 not paying all meal period premiums owed when compliant meal periods are not provided.  
25 Because of this practice and/or policy, Plaintiff and class members have not received premium  
26 pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide  
27 Plaintiff and class members compliant meal periods in violation of California Labor Code  
28 sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

1           56. Defendants’ conduct violates the applicable IWC Wage Order, and California  
2 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore  
3 entitled to recover from Defendants one (1) additional hour of pay at the employee’s regular  
4 rate of compensation for each work day that the meal period was not provided.

5                                   **SECOND CAUSE OF ACTION**

6           **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**  
7                                   **(Against all Defendants)**

8           57. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
9 and every allegation set forth above.

10          58. At all relevant times herein set forth, the applicable IWC Wage Order and  
11 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff’s and class  
12 members’ employment by Defendants.

13          59. At all relevant times, the applicable IWC Wage Order provides that “[e]very  
14 employer shall authorize and permit all employees to take rest periods, which insofar as  
15 practicable shall be in the middle of each work period” and that the “rest period time shall be  
16 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
17 hours or major fraction thereof” unless the total daily work time is less than three and one-half  
18 (3 ½) hours.

19          60. At all relevant times, California Labor Code section 226.7 provides that no  
20 employer shall require an employee to work during any rest period mandated by an applicable  
21 order of the California IWC. To comply with its obligation to authorize and permit rest  
22 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an  
23 employer must “relinquish any control over how employees spend their break time, and  
24 relieve their employees of all duties—including the obligation that an employee remain on  
25 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*  
26 *Inc.*, 2 Cal. 5th 257, 273 (2016).

27          61. Under California law, employers who pay employees on a commission basis  
28 must separately compensate them for rest and recovery periods and other nonproductive time

1 at or above specified minimum hourly rates. *Vaquero v. Stoneledge Furniture, LLC*, 9 Cal.  
2 App. 5th 98, 108 (2017). Pursuant to the applicable IWC Wage Order and California Labor  
3 Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants  
4 one (1) additional hour of pay at their regular rates of pay for each work day that a required  
5 rest period was not authorized and permitted.

6 62. During the relevant time period, Defendants regularly failed to authorize and  
7 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour  
8 period worked or major fraction thereof. As with meal periods, Defendants' company-wide  
9 practices, including understaffing, and assigning heavy workloads, including implementing  
10 sales goals, prevented Plaintiff and class members from being relieved of all duty to take rest  
11 periods. Additionally, Defendants failed to schedule rest periods, which, coupled with  
12 Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and class  
13 members not being authorized and permitted to take rest periods.

14 63. Furthermore, upon information and belief, during the relevant time period,  
15 Defendants maintained and implemented a company-wide on-premises rest period policy,  
16 which mandated that Plaintiff and class members remain on the work premises during their  
17 rest periods. Because Plaintiff and class members were restricted from leaving the premises  
18 during rest periods, they were denied the ability to use their rest periods freely for their own  
19 purposes, such as running personal errands. Thus, Defendants effectively maintained control  
20 over Plaintiff and class members during rest periods.

21 64. As a result of Defendants' practices and policies, Plaintiff and class members  
22 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without  
23 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,  
24 throughout his employment, Plaintiff had to forgo his rest periods entirely due to the heavy  
25 workload, sales expectations, and lack of coverage. In addition, Defendants had, and continue  
26 to have, a company-wide policy of failing to separately pay Plaintiff and class members for  
27 rest periods as required by law.

28 65. Defendants have also engaged in a company-wide practice and/or policy of not

1 paying rest period premiums owed when compliant rest periods are not authorized and  
2 permitted. Because of this practice and/or policy, Plaintiff and class members have not  
3 received premium pay for all missed rest periods. Accordingly, Defendants failed to authorize  
4 and permit all compliant rest periods and failed to pay the full rest period premiums due.

5 66. Defendants' conduct violates the applicable IWC Wage Order and California  
6 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled  
7 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of  
8 compensation for each work day that a compliant rest period was not authorized and  
9 permitted.

### 10 **THIRD CAUSE OF ACTION**

#### 11 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 12 **Statements and Failure to Maintain Accurate Payroll Records** 13 **(Against all Defendants)**

14 67. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
15 and every allegation set forth above.

16 68. At all relevant times herein set forth, California Labor Code section 226(a)  
17 provides that every employer shall furnish each of his or her employees an accurate and  
18 complete itemized wage statement in writing, including, but not limited to, the name and  
19 address of the legal entity that is the employer, the inclusive dates of the pay period, total  
20 hours worked, and all applicable rates of pay.

21 69. At all relevant times, Defendants have knowingly and intentionally provided  
22 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.  
23 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members  
24 that fail to correctly list: gross wages earned; net wages earned; and all applicable hourly rates  
25 in effect during the pay period, including rates of pay for meal and rest period premium  
26 wages, and the corresponding number of hours worked at each hourly rate. Specifically,  
27 Defendants violated sections 226(a)(1), 226(a)(5), and 226(a)(9).

28 70. Because Defendants did not pay Plaintiff and Subclass members meal and rest

1 period premium wages for noncompliant meal and rest periods, Defendants did not list the  
2 correct amount of gross wages and net wages earned by Plaintiff and Subclass members in  
3 compliance with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to  
4 list the applicable hourly rates of pay in effect during the pay period namely, the rates of pay  
5 for meal and rest period premium wages, in violation of section 226(a)(9).

6 71. The wage statement deficiencies also include, among other things, failing to list  
7 the total hours worked by the employee; failing to list the number of piece-rate units earned  
8 and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all  
9 deductions; failing to list the inclusive dates of the period for which employees were paid;  
10 failing to list the name of the employee and only the last four digits of his or her social  
11 security number or an employee identification number other than a social security number;  
12 and/or failing to list the name and address of the legal entity that is the employer.

13 72. California Labor Code section 1174(d) provides that “[e]very person employing  
14 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees  
15 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the  
16 plants or establishments at which employees are employed, payroll records showing the hours  
17 worked daily by and the wages paid to, and the number of piece-rate units earned by and any  
18 applicable piece rate paid to, employees employed at the respective plants or  
19 establishments . . . .” At all relevant times, and in violation of Labor Code section 1174(d),  
20 Defendants willfully failed to maintain accurate payroll records for Plaintiff and/or Subclass  
21 members showing the daily hours they worked and the wages paid thereto as a result of failing  
22 to record all wages owed, including meal and rest period premium wages.

23 73. California Labor Code section 1198 provides that the maximum hours of work  
24 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as  
25 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he  
26 employment of any employees for longer hours than those fixed by the order or under  
27 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC  
28 Wage Order, employers are required to keep accurate time records showing when the

1 employee begins and ends each work period and meal period. During the relevant time  
2 period, Defendants engaged in company-wide practices and/or policies of failing to keep  
3 accurate records of meal period start and end times for Plaintiff and Subclass members, in  
4 violation of section 1198. Also, in light of Defendants' failure to provide Plaintiff and  
5 Subclass members with second 30-minute meal periods to which they were entitled,  
6 Defendants kept no records of meal start and end times for second meal periods.

7 74. Plaintiff and Subclass members are entitled to recover from Defendants the  
8 greater of their actual damages caused by Defendants' failure to comply with California Labor  
9 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per  
10 employee.

#### 11 **FOURTH CAUSE OF ACTION**

##### 12 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 13 **Termination** 14 **(Against all Defendants)**

15 75. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
16 and every allegation set forth above.

17 76. This cause of action is dependent upon, and wholly derivative of the meal and  
18 rest period premium wages that were not timely paid to Plaintiff and those class members no  
19 longer employed by Defendants upon their termination.

20 77. At all times relevant herein set forth, Labor Code sections 201 and 202 provide  
21 that if an employer discharges an employee, the wages earned and unpaid at the time of  
22 discharge are due and payable immediately, and that if an employee voluntarily leaves his or  
23 her employment, his or her wages shall become due and payable not later than seventy-two  
24 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of  
25 his or her intention to quit, in which case the employee is entitled to his or her wages at the  
26 time of quitting.

27 78. Defendants willfully failed to pay Plaintiff and class members who are no  
28 longer employed by Defendants the earned and unpaid wages set forth above, including but

1 not limited to, meal and rest period premium wages, either at the time of discharge, or within  
2 seventy-two (72) hours of their leaving Defendants' employ.

3 79. Defendants' failure to pay Plaintiff and class members who are no longer  
4 employed by Defendants their wages earned and unpaid at the time of discharge, or within  
5 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201  
6 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the  
7 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a  
8 thirty (30) day maximum pursuant to California Labor Code section 203.

### 9 **FIFTH CAUSE OF ACTION**

#### 10 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 11 **Employment** 12 **(Against all Defendants)**

13 80. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
14 and every allegation set forth above.

15 81. This cause of action is dependent upon, and wholly derivative of the meal and  
16 rest period premium wages that were not timely paid to Plaintiff and class members during  
17 their employment.

18 82. At all times relevant herein set forth, Labor Code section 204 provides that all  
19 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)  
20 days, inclusive, of any calendar month, other than those wages due upon termination of an  
21 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of  
22 the month during which the labor was performed. Labor Code section 204 further provides  
23 that all wages earned by any person in any employment between the sixteenth (16th) and the  
24 last day, inclusive, of any calendar month, other than those wages due upon termination of an  
25 employee, are due and payable between the first (1st) and the tenth (10th) day of the following  
26 month.

27 83. At all times relevant herein, Labor Code section 204 provides that all wages  
28 earned for labor in excess of the normal work period shall be paid no later than the payday for

1 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section  
2 204 provides that the requirements of this section are deemed satisfied by the payment of  
3 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than  
4 seven (7) calendar days following the close of the payroll period.

5 84. During the relevant time period, Defendants willfully failed to pay Plaintiff and  
6 class members all wages due including, but not limited to, meal and rest period premium  
7 wages, within the time periods specified by California Labor Code section 204.

8 85. Defendants' failure to pay Plaintiff and class members all wages due violates  
9 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from  
10 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

## 11 **SIXTH CAUSE OF ACTION**

### 12 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 13 **(Against all Defendants)**

14 86. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
15 and every allegation set forth above.

16 87. At all times herein set forth, California Labor Code section 2802 provides that  
17 an employer must reimburse employees for all necessary expenditures and losses incurred by  
18 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is  
19 to prevent employers from passing off their cost of doing business and operating expenses on  
20 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144  
21 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen  
22 tools or equipment are required by the employer or they are necessary to the performance of a  
23 job, such tools and equipment shall be provided and maintained by the employer, except that  
24 an employee whose wages are at least two (2) times the minimum wage may provide and  
25 maintain hand tools and equipment customarily required by the particular trade or craft."

26 88. First, during the relevant time period, Defendants had a company-wide policy  
27 of requiring Plaintiff and class members to utilize their own personal mobile devices,  
28 including cellular phones and/or mobile data, to carry out their job duties, but Defendants

1 failed to reimburse them for the costs of their work-related mobile device expenses. For  
2 example, Plaintiff and class members were required to use their personal mobile devices to  
3 communicate with Defendants' management regarding work-related issues and clients to  
4 make sales. As a further example, Plaintiff and class members were required to use their  
5 personal mobile data in order to complete training sessions at home. Although Defendants  
6 required Plaintiff and class members to utilize their personal mobile devices to carry out their  
7 work-related responsibilities, Defendants failed to reimburse them for these costs.

8         89. Second, during the relevant time period, Defendants, on a company-wide basis,  
9 required that Plaintiff and class members use their own personal vehicles to run company  
10 errands. For example, at least twice a week during the relevant time period, Plaintiff was  
11 required to use his personal vehicle and drive to the bank to make deposits. Additionally,  
12 during the relevant time period, Plaintiff was required to use his personal vehicle and drive to  
13 customers' homes to complete paperwork or deliveries. Finally, during the relevant time  
14 period, and approximately once a month, Plaintiff used his personal vehicle to drive to a  
15 different store location to attend mandatory employee meetings. Although Defendants  
16 required Plaintiff and class members to utilize their personal vehicles to carry out their work-  
17 related responsibilities, Defendants failed to reimburse them for their mileage or travel  
18 expenses.

19         90. Defendants could have provided Plaintiff and class members with the actual  
20 equipment for use on the job, such as company mobile devices and company vehicles, or,  
21 Defendants could have reimbursed employees for the costs of their mobile device usage,  
22 mileage, and travel expenses. Instead, Defendants passed these operating costs onto Plaintiff  
23 and class members.

24         91. Defendants' company-wide policy and/or practice of not reimbursing  
25 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff  
26 and class members violates California Labor Code section 2802. Defendants have  
27 intentionally and willfully failed to reimburse Plaintiff and class members for necessary  
28 business-related expenses and costs.

1           92.     Plaintiff and class members are entitled to recover from Defendants their  
2 business-related expenses incurred during the course and scope of their employment, plus  
3 interest.

4                               **SEVENTH CAUSE OF ACTION**

5                               **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

6                               **(Against all Defendants)**

7           93.     Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
8 and every allegation set forth above.

9           94.     California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover  
10 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code  
11 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and  
12 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to  
13 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,  
14 including sections 226(a), 226.7, 512(a), 516, and 2802.

15          95.     Defendants’ conduct, as alleged herein, violates numerous sections of the  
16 California Labor Code, including, but not limited to, the following:

- 17                   (a)     Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the  
18 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff  
19 and other aggrieved employees with meal periods, as alleged herein;
- 20                   (b)     Violation of Labor Code sections 226.7, 516, and 1198, and the  
21 applicable IWC Wage Order for Defendants’ failure to authorize and  
22 permit Plaintiff and other aggrieved employees to take rest periods, as  
23 alleged herein;
- 24                   (c)     Violation of Labor Code sections 226(a) and 1198, and the applicable  
25 IWC Wage Order for failure to provide accurate and complete wage  
26 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 27                   (d)     Violation of Labor Code sections 1174(d) and 1198, and the applicable  
28 IWC Wage Order for failure to maintain payroll records, as alleged

herein;

- (e) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (f) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (g) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable resting facilities to Plaintiff and other aggrieved employees, as set forth below; and
- (h) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

96. California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

97. Defendants’ California stores are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. Defendants could have provided Plaintiff and other aggrieved employees with a resting facility within all of their stores, with reasonable or no modification, but instead denied, and continue to deny, employees suitable areas to rest (e.g., a breakroom). As a result, Plaintiff and other aggrieved employees were forced to adjust to areas not conducive to resting or search for areas outside of the store which are not designated or reserved for their rest.

98. Defendants did not provide Plaintiff and other aggrieved employees with

1 suitable resting facilities during their work hours, particularly during rest or meal periods. In  
2 other words, during the times when Plaintiff and other aggrieved employees were legally  
3 allowed to forgo assigned tasks, as in during a meal or rest period, Defendants denied them  
4 any area within their stores to cease work and recover. Moreover, Defendants did not inform  
5 Plaintiff and other aggrieved employees of their rights to suitable resting facilities under  
6 California law.

7 99. As a result of Defendants' company-wide failure to provide suitable resting  
8 facilities in their stores, Plaintiff and other aggrieved employees were forced to adjust to areas  
9 not conducive to resting or search for facilities outside their stores to cease work and recover.  
10 Defendants' failure to provide suitable resting facilities to Plaintiff and other aggrieved  
11 employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001,  
12 subdivision 13(B). Plaintiff and other aggrieved employees are therefore entitled to recover  
13 civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

#### 14 **EIGHTH CAUSE OF ACTION**

##### 15 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

##### 16 **Unlawful Business Practices**

##### 17 **(Against all Defendants)**

18 100. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
19 and every allegation set forth above.

20 101. Defendants are "persons" as defined by California Business & Professions  
21 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,  
22 and/or associations.

23 102. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
24 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has  
25 suffered injury in fact and has lost money as a result of Defendants' unlawful business  
26 practices. Plaintiff seeks to enforce important rights affecting the public interest within the  
27 meaning of Code of Civil Procedure section 1021.5.

28 103. Defendants' activities, as alleged herein, are violations of California law, and

1 constitute unlawful business acts and practices in violation of California Business &  
2 Professions Code sections 17200, *et seq.*

3 104. A violation of California Business & Professions Code sections 17200, *et seq.*  
4 may be predicated on the violation of any state or federal law. In the instant case, Defendants'  
5 policies and practices have violated state law in at least the following respects:

- 6 (a) Failing to provide uninterrupted meal periods to Plaintiff and class  
7 members in violation of California Labor Code sections 226.7, 512(a),  
8 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 9 (b) Failing to authorize and permit Plaintiff and class members to take  
10 uninterrupted rest periods in violation of California Labor Code sections  
11 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged  
12 herein;
- 13 (c) Failing to provide Plaintiff and class members with accurate wage  
14 statements and failing to maintain accurate payroll records in violation  
15 of California Labor Code sections 226(a), 1174(d), and 1198, and the  
16 applicable IWC Wage Order, as alleged herein;
- 17 (d) Failing timely to pay all earned wages to Plaintiff and class members in  
18 violation of California Labor Code section 204, as alleged herein; and
- 19 (e) Failing to reimburse Plaintiff and class members for all business  
20 expenses necessarily incurred in violation of California Labor Code  
21 section 2802, as alleged herein.

22 105. As a result of the violations of California law herein described, Defendants  
23 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members  
24 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged  
25 herein.

26 106. Pursuant to California Business & Professions Code sections 17200, *et seq.*,  
27 Plaintiff and class members are entitled to restitution of the wages withheld and retained by  
28 Defendants during a period that commences four years prior to the filing of the initial

1 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to  
2 Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of  
3 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

4 **NINTH CAUSE OF ACTION**

5 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

6 **Unfair Business Practices**

7 **(Against all Defendants)**

8 107. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
9 and every allegation set forth above.

10 108. Defendants are "persons" as defined by California Business & Professions  
11 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,  
12 and/or associations.

13 109. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
14 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered  
15 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff  
16 seeks to enforce important rights affecting the public interest within the meaning of Code of  
17 Civil Procedure section 1021.5.

18 110. Defendants' activities, namely Defendants' company-wide practice and/or  
19 policy of not paying Plaintiff and class members all meal and rest period premiums due to  
20 them under Labor Code section 226.7, deprived Plaintiff and class members of the  
21 compensation guarantee and enhanced enforcement implemented by section 226.7. The  
22 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to  
23 compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v.*  
24 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7  
25 were guaranteed to Plaintiff and class members as part of their employment with Defendants,  
26 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an  
27 unfair business practice in violation of California Business & Professions Code sections  
28 17200, *et seq.* (*Id.*)

111. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants' policies and practices have violated the spirit of California's meal and rest period laws and constitute acts against the public policy behind these laws.

112. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of the initial complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

#### **REQUEST FOR JURY TRIAL**

Plaintiff requests a trial by jury.

#### **PRAYER FOR RELIEF**

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

#### **Class Certification**

2. That this case be certified as a class action;
3. That Plaintiff be appointed as the representative of the Class and Subclass;
4. That counsel for Plaintiff be appointed as class counsel.

#### **As to the First Cause of Action**

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

6. That the Court make an award to the Plaintiff and class members of one (1)

hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

7. For all actual, consequential, and incidental losses and damages, according to proof;

8. For premiums pursuant to California Labor Code section 226.7(c);

9. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

10. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

11. For such other and further relief as the Court may deem equitable and appropriate.

#### **As to the Second Cause of Action**

12. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

13. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

14. For all actual, consequential, and incidental losses and damages, according to proof;

15. For premiums pursuant to California Labor Code section 226.7(c);

16. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

17. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

18. For such other and further relief as the Court may deem equitable and appropriate.

//

**As to the Third Cause of Action**

19. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

20. For all actual, consequential, and incidental losses and damages, according to proof;

21. For injunctive relief pursuant to California Labor Code section 226(h);

22. For statutory penalties pursuant to California Labor Code section 226(e);

23. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

24. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Fourth Cause of Action**

25. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay meal and rest period premium wages owed at the time of termination of the employment of Plaintiff and other terminated class members;

26. For all actual, consequential and incidental losses and damages, according to proof;

27. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

28. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

29. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

30. For such other and further relief as the Court may deem equitable and appropriate.

1 **As to the Fifth Cause of Action**

2 31. That the Court declare, adjudge and decree that Defendants violated California  
3 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members meal  
4 and rest period premium wages during their employment;

5 32. For all actual, consequential and incidental losses and damages, according to  
6 proof;

7 33. For statutory penalties according to proof pursuant to California Labor Code  
8 section 210;

9 34. For pre-judgment interest on any unpaid wages from the date such amounts  
10 were due, or as otherwise provided by law;

11 35. For attorneys' fees pursuant to California Code of Civil Procedure section  
12 1021.5, or as otherwise provided by law; and

13 36. For such other and further relief as the Court may deem equitable and  
14 appropriate.

15 **As to the Sixth Cause of Action**

16 37. That the Court declare, adjudge and decree that Defendants violated California  
17 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-  
18 related expenses and costs incurred by Plaintiff and class members;

19 38. For unpaid business-related expenses and such general and special damages as  
20 may be appropriate;

21 39. For pre-judgment interest on any unpaid business-related expenses from the  
22 date such amounts were due, or as otherwise provided by law;

23 40. For all actual, consequential, and incidental losses and damages, according to  
24 proof;

25 41. For attorneys' fees and costs pursuant to California Labor Code section  
26 2802(c), or as otherwise provided by law; and

27 42. For such other and further relief as the Court may deem equitable and  
28 appropriate.

**As to the Seventh Cause of Action**

43. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and other aggrieved employees: 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 1198 and the applicable IWC Wage Order (by failing to provide suitable resting facilities); and 2802 (by failing to reimburse business expenses);

44. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 512(a), 516, 1174(d), 1198, and 2802;

45. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or 2699(k) to bring Defendants into compliance with the requirements of California Labor Code sections 201, 202, 204, 226(a), 226.7, 512(a), 516, 1174(d), 1198, and 2802;

46. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 512(a), 516, 1174(d), 1198, and 2802;

47. For pre-judgment and post-judgment interest as provided by law; and

48. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Eighth Cause of Action**

49. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, and failing to reimburse Plaintiff and class members for business-

1 related expenses, constitutes an unlawful business practice in violation of California Business  
2 and Professions Code sections 17200, *et seq.*;

3 50. For restitution of unpaid wages to Plaintiff and all class members and  
4 prejudgment interest from the day such amounts were due and payable;

5 51. For the appointment of a receiver to receive, manage, and distribute any and all  
6 funds disgorged from Defendants and determined to have been wrongfully acquired by  
7 Defendants as a result of violations of California Business & Professions Code sections  
8 17200, *et seq.*;

9 52. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
10 California Code of Civil Procedure section 1021.5; and

11 53. For such other and further relief as the Court may deem equitable and  
12 appropriate.

13 **As to the Ninth Cause of Action**

14 54. That the Court declare, adjudge and decree that Defendants' conduct of denying  
15 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes  
16 an unfair business practice in violation of California Business and Professions Code sections  
17 17200, *et seq.*;

18 55. For restitution of the statutory benefits under section 226.7 unfairly withheld  
19 from Plaintiff and class members and prejudgment interest from the day such amounts were  
20 due and payable;

21 56. For the appointment of a receiver to receive, manage, and distribute any and all  
22 funds disgorged from Defendants and determined to have been wrongfully acquired by  
23 Defendants as a result of violations of California Business & Professions Code sections  
24 17200, *et seq.*;

25 57. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
26 California Code of Civil Procedure section 1021.5;

27 58. For pre-judgment and post-judgment interest as provided by law; and

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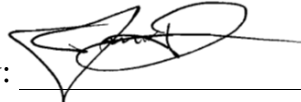
1           59.     For such other and further relief as the Court may deem equitable and  
2 appropriate.

3  
4 Dated: April 28, 2025

Respectfully submitted,

Capstone Law APC

6  
7 By: \_\_\_\_\_



Robert Drexler

Jonathan Lee

Robert Myong

Attorneys for Plaintiff Daniel Villanueva

**EXHIBIT “1”**



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November 19, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency  
ATTN: PAGA Administrator  
(<https://dir.govfa.net/308>)

Subject: *Daniel Villanueva v. Mancini's Sleepworld, Inc.*

Dear PAGA Administrator:

This office represents Daniel Villanueva in connection with his claims under the California Labor Code. Mr. Villanueva was an employee of MANCINI'S SLEEPWORLD, INC. ("MS").

The employer may be contacted directly at the address below:

MANCINI'S SLEEPWORLD, INC.  
599 HAWTHORNE PL  
LIVERMORE, CA 94550

Mr. Villanueva intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Villanueva seeks relief on behalf of himself, the State of California, and other persons who are or were employed by MS as a non-exempt, commissions paid and/or hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

MS employed Mr. Villanueva as a non-exempt, commissions paid and/or hourly paid employee from approximately October 2013 to March 2024. Mr. Villanueva worked for MS as a Sales Manager and Mattress Specialist at its various store locations in California, including, not limited to, Berkeley, Pinole, Dublin, and Concord. During his employment, Mr. Villanueva typically worked eight (8) or more hours per day and five (5) days per week. At the time Mr. Villanueva's employment with MS ended, he earned approximately \$27.11 per hour. His job duties included, without limitation, making sales, providing customer service, answering the phone, completing inventory, organizing the salesfloor, training employees, and filling out weekly and monthly paperwork.

MS committed each of the following Labor Code violations against Mr. Villanueva, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):<sup>1</sup>

**MS’s Company-Wide and Uniform Payroll and HR Practices**

MANCINI’S SLEEPWORLD, INC. is a California corporation that owns and operates a mattress retail chain store, with approximately 49 locations in California. Upon information and belief, MS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Livermore, California, for all non-exempt, commissions paid and/or hourly paid employees working for MS in California, including Mr. Villanueva and other aggrieved employees. At all relevant times, MS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, commissions paid and/or hourly paid employees in California, including Mr. Villanueva and other aggrieved employees, regardless of their location or position.

Upon information and belief, MS maintains a centralized Payroll department at its corporate headquarters in Livermore, California, which processes payroll for all non-exempt, commissions paid and/or hourly paid employees working for MS in California, including Mr. Villanueva and other aggrieved employees. Further, MS issues the same formatted wage statements in the same manner for all non-exempt, commissions paid and/or hourly paid employees in California, including Mr. Villanueva and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, MS utilized the same methods and formulas when calculating wages due to Mr. Villanueva and other aggrieved employees in California.

**Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods**

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or

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<sup>1</sup> These facts, theories, and claims are based on Mr. Villanueva’s experience and counsel’s review of those records currently available relating to Mr. Villanueva’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Villanueva reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant period, MS had, and continues to have, a company-wide policy and/or practice of understaffing and/or single staffing its locations while assigning heavy workloads, including pressuring employees to meet sales goals, which resulted in a failure to provide Mr. Villanueva and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. For example, MS's management implemented specific sales goals, such as meeting varying personal and store sales goals, and Mr. Villanueva and other aggrieved employees were reprimanded in writing if they did not meet them. This practice, coupled with a company-wide policy and/or practice of failing to schedule meal periods, further caused Mr. Villanueva and other aggrieved employees to not be relieved of their duties for meal periods. As a result, Mr. Villanueva and other aggrieved employees have had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Villanueva missed his meal periods approximately three (3) times per week or took them late, after the fifth hour of work, approximately twice per week due to lack of coverage and heavy customer foot traffic.

Additionally, MS had, and continues to have, a policy and/or practice of pressuring Mr. Villanueva and other aggrieved employees to carry their personal cellphones and respond to calls at all times to meet the sales goals MS imposed. As a result, Mr. Villanueva and other aggrieved employees answered clients' calls during meal periods to facilitate sales. MS knew or should have known that Mr. Villanueva and other aggrieved employees were performing work during their meal periods in order to meet MS's expectations.

Second, because MS frowned upon employees accruing meal period premiums, MS's management pressured Mr. Villanueva and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal period premiums that would need to be paid by MS.

Third, on information and belief, in conjunction with MS's policy and/or practice of single-staffing, MS maintained and implemented a company-wide on-premises meal period policy for employees, which mandated that Mr. Villanueva and other aggrieved employees remain on the work premises during meal periods because MS did not allow the stores to be left unattended. Because Mr. Villanueva and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, MS effectively maintained control over Mr. Villanueva and other aggrieved employees during meal periods.

Fourth, MS did not provide Mr. Villanueva and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Villanueva sometimes worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Mr. Villanueva and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, MS knew or should have known that, as a result of these policies, Mr. Villanueva and other aggrieved employees were not actually relieved of all duties to take timely,

uninterrupted meal periods. MS further knew or should have known that MS did not pay Mr. Villanueva and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, MS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Villanueva and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods.

Accordingly, MS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Villanueva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring MS into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

**Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods**

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

Under California law, employers who pay employees on a commission basis must separately compensate them for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates. *Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 108 (2017). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Mr. Villanueva and other aggrieved employees are entitled to recover from MS one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

During the relevant time period, MS regularly failed to authorize and permit Mr. Villanueva and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, MS's company-wide practices, including understaffing, and assigning heavy workloads, including implementing sales goals, prevented Mr. Villanueva and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, MS failed to schedule rest periods, which, coupled with MS's failure to provide

adequate rest period coverage, further led to Mr. Villanueva and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, MS maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Villanueva and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Villanueva and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, MS effectively maintained control over Mr. Villanueva and other aggrieved employees during rest periods.

As a result of MS's practices and policies, Mr. Villanueva and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Villanueva had to forgo his rest periods entirely due to the heavy workload, sales expectations, and lack of coverage. In addition, MS had, and continues to have, a company-wide policy of failing to separately pay Mr. Villanueva and other aggrieved employees for rest periods as required by law.

MS has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Villanueva and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, MS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Villanueva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring MS into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

**Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records**

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, MS has knowingly and intentionally provided Mr. Villanueva and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, MS issued uniform wage statements to Mr. Villanueva and other aggrieved employees that fail to correctly list: gross wages earned; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for meal and rest period premium wages, and the

corresponding number of hours worked at each hourly rate. Specifically, MS violated sections 226(a)(1), 226(a)(5), and 226(a)(9).

Because MS did not pay Mr. Villanueva and other aggrieved employees meal and rest period premium wages for noncompliant meal and rest periods, MS did not list the correct amount of gross wages and net wages earned by Mr. Villanueva and other aggrieved employees in compliance with sections 226(a)(1) and 226(a)(5). For the same reason, MS failed to list the applicable hourly rates of pay in effect during the pay period namely, the rates of pay for meal and rest period premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the total hours worked by the employee; failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and/or failing to list the name and address of the legal entity that is the employer.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . . .” At all relevant times, and in violation of Labor Code section 1174(d), MS willfully failed to maintain accurate payroll records for Mr. Villanueva and/or other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record all wages owed, including meal and rest period premium wages.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, MS engaged in company-wide practices and/or policies of failing to keep accurate records of meal period start and end times for Mr. Villanueva and other aggrieved employees, in violation of section 1198. Also, in light of MS’s failure to provide Mr. Villanueva and other aggrieved employees with second 30-minute meal periods to which they were entitled, MS kept no records of meal start and end times for second meal periods.

Because MS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Villanueva and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Villanueva and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Villanueva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring MS into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

**Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment**

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, MS willfully failed to pay Mr. Villanueva and other aggrieved employees all wages due including, but not limited to, meal and rest period premium wages, within the time periods specified by California Labor Code section 204.

Mr. Villanueva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring MS into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

**Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination**

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

MS willfully failed to pay Mr. Villanueva and other aggrieved employees who are no longer employed by MS the earned and unpaid wages set forth above, including but not limited to, meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving MS's employ.

Mr. Villanueva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring MS into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

**Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities**

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

MS’s California stores are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. MS could have provided Mr. Villanueva and other aggrieved employees with a suitable resting facility within all of its stores, with reasonable or no modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom with seats). As a result, Mr. Villanueva and other aggrieved employees were forced to adjust to areas not conducive to resting or search for areas outside of the store which are not designated or reserved for their rest.

MS did not provide Mr. Villanueva and other aggrieved employees with suitable resting facilities during their work hours, particularly during rest or meal periods. In other words, during the times when Mr. Villanueva and other aggrieved employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, MS denied them any area within its stores to cease work and recover. Moreover, MS did not inform Mr. Villanueva and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of MS’s company-wide failure to provide suitable resting facilities in all of its stores, Mr. Villanueva and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their stores to cease work and recover. MS’s failure to provide suitable resting facilities to Mr. Villanueva and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 13(B).

Mr. Villanueva and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring MS into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

**Violation of California Labor Code § 2802 – Unreimbursed Business Expenses**

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, MS had a company-wide policy of requiring Mr. Villanueva and other aggrieved employees to utilize their own personal mobile devices, including cellular phones and/or mobile data, to carry out their job duties, but MS failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Villanueva and other aggrieved employees were required to use their personal mobile devices to communicate with MS's management regarding work-related issues and clients to make sales. As a further example, Mr. Villanueva and other aggrieved employees were required to use their personal mobile data in order to complete training sessions at home. Although MS required Mr. Villanueva and other aggrieved employees to utilize their personal mobile devices to carry out their work-related responsibilities, MS failed to reimburse them for these costs.

Second, during the relevant time period, MS, on a company-wide basis, required that Mr. Villanueva and other aggrieved employees use their own personal vehicles to run company errands. For example, at least twice a week during the relevant time period, Mr. Villanueva was required to use his personal vehicle and drive to the bank to make deposits. Additionally, during the relevant time period, Mr. Villanueva was required to use his personal vehicle and drive to customers' homes to complete paperwork or deliveries. Finally, during the relevant time period, and approximately once a month, Mr. Villanueva used his personal vehicle to drive to a different store location to attend mandatory employee meetings. Although MS required Mr. Villanueva and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, MS failed to reimburse them for their mileage or travel expenses.

MS could have provided Mr. Villanueva and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and company vehicles, or, MS could have reimbursed employees for the costs of their mobile device usage, mileage, and travel expenses. Instead, MS passed these operating costs onto Mr. Villanueva and other aggrieved employees.

Thus, MS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Villanueva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring MS into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

### **California Labor Code § 558(a)**

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." MS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Villanueva's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Villanueva seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Villanueva acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against MS for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 512(a), 516, 1174(d), 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Villanueva seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan  
Capstone Law APC  
1875 Century Park East, Suite 1000  
Los Angeles, CA 90067  
(310) 556-4811

Best Regards,



Ninel Kocharyan

Copy: MANCINI'S SLEEPWORLD, INC. (via U.S. Certified Mail)

Capstone Law, APC  
1875 Century Park, East, 1000  
Los Angeles, CA 90067

7022 2410 0000 2265 0847



MANCINI'S SLEEPWORLD, INC.  
599 HAWTHORNE PL  
LIVERMORE, CA 94550

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MANCINI'S SLEEPWORLD, INC.  
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LIVERMORE, CA 94550

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C. Date of Delivery

D. Is delivery address different from Item 1? If YES, enter delivery address below:

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Article Number (Transfer from service label)

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  - ☐ Certified Mail®
  - ☐ Certified Mail Restricted Delivery
  - ☐ Collect on Delivery
  - ☐ Collect on Delivery Restricted Delivery
  - ☐ Mail Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
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PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

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☐ Registered Mail (hardcopy) ☐ Registered Mail (electronic)

☐ Priority Mail Express (hardcopy) ☐ Priority Mail Express (electronic)

☐ Insured Mail (hardcopy) ☐ Insured Mail (electronic)

☐ Signature Confirmation Restricted Delivery

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MANCINI'S SLEEPWORLD, INC.

599 HAWTHORNE PL

LIVERMORE, CA 94550

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**599 HAWTHORNE PL**  
**LIVERMORE, CA 94550**



9590 9402 8803 4005 5745 52

2 Article Number (Transfer from service label)

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**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

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☐ Agent  
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

E. Service Type

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- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

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