

OTKUPMAN LAW FIRM, A LAW CORPORATION

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January 21, 2025

VIA ELECTRONIC FILING

Labor & Workforce Development Agency

VIA CERTIFIED MAIL

Dreamstyle Remodeling of California, LLC
1460 N. Renaissance Blvd. NE
Albuquerque, NM 87107
Defendant certified mail # 9589 0710 5270 2390 8664 61

VIA CERTIFIED MAIL

Agent for Service of Process
Amanda Garcia
330 N. Brand Blvd
Glendale, CA 91203
Agent certified mail # 9589 0710 5270 2390 8664 78

VIA CERTIFIED MAIL

Dreamstyle Remodeling of California
5520 Midway Park Lane
Albuquerque, NM 87109
Defendant certified mail # 9589 0710 5270 2390 8664 85

VIA CERTIFIED MAIL

Dreamstyle Remodeling
8260 Miralani Dr.
San Diego, CA 92126
Defendant certified mail # 9589 0710 5270 2390 8664 92

Re: ***Scott Shank v. Dreamstyle Remodeling of California, LLC, Dreamstyle Remodeling of California, Dreamstyle Remodeling – Labor Code Violations of Dreamstyle Remodeling of California, LLC, Dreamstyle Remodeling of California, Dreamstyle Remodeling – Compliance Letter of California Labor Code § 2698 – Private Attorneys General Act***

Dear Sir or Madam:

This office represents Scott Shank (“Plaintiff”), a former California employee of Dreamstyle Remodeling of California, LLC, Dreamstyle Remodeling of California, Dreamstyle Remodeling

(“Defendants”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client works for Defendant in Southern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its California non-exempt employees.

Plaintiff began working for Defendants on or about January 1, 2018. While working for Defendant as a Regional Operations Manager/Senior Design Consultant, Plaintiff was paid by commission.

Defendants improperly classified Plaintiff as a 1099 independent contractor, rather than an employee, presumably to avoid paying employment taxes. Plaintiff was not free from the control and direction of Defendant in connection with the performance of the work. Defendants set his work hours, designed where he needed to work, and Plaintiff specifically worked under Defendants’ directions. Plaintiff was not performing work that is outside the usual course of Defendants’ business. Plaintiff was not customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed. Despite Plaintiff’s status as an employee, Defendants willfully and knowingly misclassified Plaintiff as an independent contractor.

Plaintiff and Defendant’s California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant’s California employees were forced to continue working through their meal and rest breaks in order to assist Defendant’s needs. Because of this, Plaintiff and Defendant’s California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour’s pay for each missed meal and rest break to Plaintiff and Defendant’s California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

Plaintiff, on behalf of herself and all other California employees of Defendant claims that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays their employees bonuses and commissions which are not included in the employees regular rate of pay for the purposes of computing the proper overtime rate. As a result, employees are not properly compensated for work performed in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, and 1194.2.

Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-exempt employees. As a result, employees are not properly compensated for work performance in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek

at a rate of no less than one and one-half times the regular rate of pay. Employees of Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per week and do not receive overtime compensation at a rate of one and one half of their regular rate. Plaintiff and Defendant's California employees were forced to work overtime and were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

Defendants failed to issue Plaintiff and Defendant's California employees accurately itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5). Plaintiff and the California employees wage statements' failed to accurately state the name and address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants' California employees.

Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's California employees timely, accurate, itemized wage statements in accordance with Labor Code § 226 and keep accurate records and required by §1174(d). The statements provided to Plaintiff and Defendant's California employees, and the records maintained by Defendants, have not accurately reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest premiums, and total hour worked.

Our client further alleges that Defendants paid him and Defendant's California employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they were not paid all wages due and owing throughout the course of their employment as a result of Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-203.

Defendant pays Plaintiff and it's California employees on a bi-weekly basis and has failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must be paid no later than seven calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendant's California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

Defendant failed to reimburse Plaintiff and Defendant's California employees for the tools and equipment they purchased to use at work such as desk, chair, printer, ink, cartridges, temperature gun, tape measure, office supplies, paper, calculator, home internet, personal computer, and

notepads to perform his job. Plaintiff was also required to use his personal vehicle for work and Defendant failed to reimburse Plaintiff and Defendant's California employees for vehicle expenses. Moreover, Defendant also failed to reimburse Plaintiff and Defendant's California employees for the mileage they incurred performing certain tasks or running errands on behalf of Defendant. Defendant failed to reimburse Plaintiff and Defendant's California employees for shipping and sample costs. Defendant also failed to reimburse Plaintiff and Defendant's California employees for their uniforms and uniform maintenance. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." As such, Plaintiff and Defendant's California employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

Plaintiff was being compensated on a piece-rate basis only and was further not compensated for his down time and was further not compensated for time driving between jobs and time preparing for the jobs. Plaintiff alleges that Defendant failed to comply with Labor Code § 2751, which states that (a) whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid; (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party. Defendant violated Labor Code § 2751 because they failed to give Plaintiff and Defendant's California employees a signed copy of the contract and shall obtain a signed receipt for the contract from each employee.

Defendants failed to pay all wages earned to Plaintiff and Defendant's California employees as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff and Defendant's California employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

We invite Defendants or its attorney(s) to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

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A handwritten signature in black ink, appearing to read 'Roman Otkupman', is written over a horizontal line. The signature is stylized with a large, sweeping 'R'.

ROMAN OTKUPMAN