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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

AUG 24 2012

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14 and all others similarly situated

15 **SUPERIOR COURT OF CALIFORNIA BC 490673**

16 **COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST**

17 RICARDO BERMUDEZ VAQUERO,)
on behalf of himself and all others)
18 similarly situated,)

**CLASS ACTION COMPLAINT FOR
DAMAGES, RESTITUTION, PENALTIES
AND INJUNCTIVE RELIEF**

19 Plaintiff,

1. Failure to Pay Minimum/Overtime Wages
(Lab. Code §§ 510, 1194);

20 v.

2. Failure to Provide Meal Periods or
Compensation in Lieu of
(Lab. Code §§226.7);

21 ASHLEY FURNITURE INDUSTRIES,)
22 INC., a Wisconsin Corporation;)
STONELEDGE FURNITURE LLC, a)
23 Wisconsin Limited Liability Corporation,)
and DOES 1 through 10, Inclusive,)

3. Failure to Provide Paid Rest Periods or
Compensation in Lieu of
(Lab. Code §§226.7, 512);

25 Defendants.

4. Failure to Timely Pay Wages at
Separation (Lab. Code §§201-203);
5. Failure to Provide Accurate Itemized
Wage Statements (Lab. Code §226(a)(b));
6. Violation of Unfair Business Practices Act
(Bus. & Prof. Code §§17200-17208);
7. Violation of Private Attorneys General Act
(PAGA) (Lab. Code §§ 2698, et seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff RICARDO BERMUDEZ VAQUERO, on behalf of himself, and all others
2 similarly situated, complains and alleges as follows:

3 I.

4 INTRODUCTION

5 1. This case arises from Defendants' use of compensation policies which result in
6 the failure to pay employees minimum wages for all hours worked, failure to pay overtime
7 compensation, failure to provide meal periods, failure to authorize and permit paid rest periods,
8 failure to provide proper wage statements, and failure to pay all wages owed to separated
9 employees in a timely manner. Plaintiff was employed with Defendants in California from
10 December 2010 to June 2012 as a Sales Associate and this action is brought on behalf of Sales
11 Associates and other similarly situated California employees of Defendants ASHLEY
12 FURNITURE INDUSTRIES, INC., STONELEDGE FURNITURE LLC, and Does 1-10
13 (referred to as "ASHLEY FURNITURE" "Company," or "Defendants").

14 2. During the class period, Defendants had a consistent policy of failing to pay for
15 all hours worked, including time spent on non-sales activities. Defendants failed to pay wages,
16 including minimum wages and overtime wages for all hours worked to Sales Associates in
17 California, including Plaintiff, in violation of California state wage and hour laws.

18 3. During the class period, Defendants had a consistent policy requiring Sales
19 Associates in California, including Plaintiff, to work through meal periods or work without a
20 meal period for at least five (5) hours of a shift and of failing to pay such employees one (1) hour
21 of pay at the employees' regular rate of compensation for each workday that the meal period was
22 not provided, or other compensation, as required by California state wage and hour laws.

23 4. During the class period, Defendants had a consistent policy of failing
24 to authorize, or permit Sales Associates in California, including Plaintiff, rest periods of at least
25 ten (10) minutes per four (4) hours, or major fraction, worked, and failing to pay such employees
26 one (1) hour of pay at their regular rate of compensation for each workday that the rest period is
27 not provided, or other compensation, as required by California state wage and hour laws.

28 5. During the class period, Defendants knowingly provided inaccurate wage

1 statements to Sales Associates, including Plaintiff, that did not correctly include, among other
2 things, the number of hours worked, including overtime hours, the hourly rate of pay, or
3 compensation for meal periods not provided and rest periods not authorized or permitted.

4 6. During the class period, Defendants had a consistent policy of failing to pay
5 Sales Associates in California, including Plaintiff, all wages due at termination, in violation of
6 California state wage and hour laws.

7 7. Plaintiff, on behalf of himself and all Class Members, brings this
8 action pursuant to Labor Code §§ 201, 202, 203, 204, 226.7, 510, 1194, and 1194.2 seeking
9 unpaid wages, penalties, equitable relief, and reasonable attorneys' fees and costs.

10 8. Plaintiff, on behalf of himself and all Class members, brings this action
11 pursuant to Business and Professions Code §§ 17200-17208, seeking injunctive relief, restitution,
12 and disgorgement of all benefits obtained by Defendants by failing to pay minimum and
13 overtime wages.

14 9. Plaintiff brings this case as a representative action seeking penalties for the
15 State of California in a representative capacity, as provided by the Private Attorneys General Act
16 ("PAGA") to the extent permitted by law. A copy of the Notice of Labor Code Violations
17 showing compliance with Labor Code §2699.3 is attached as Exhibit "A" and demonstrates
18 Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of
19 the State of California and the Labor and Workforce Development Agency (LWDA). Defendants
20 did not provide a notice of cure and no notice of investigation was received from the LWDA in
21 the statutorily prescribed 33-day period since mailing of the Notice.

22 II.

23 JURISDICTION AND VENUE

24 10. Venue as to each Defendant is proper in this judicial district, pursuant to Code
25 of Civil Procedure, § 395. Defendants conduct business and commit Labor Code violations in
26 Los Angeles County, and each Defendant is within the jurisdiction of this Court for service of
27 process purposes. The unlawful acts alleged have a direct effect on Plaintiff and those similarly
28 situated within the State of California and within Los Angeles County. Plaintiff was employed

1 by Defendants and suffered the alleged Labor Code violations in Los Angeles County.
2 Defendants employ numerous Class Members in Los Angeles County. The California Superior
3 Court also has jurisdiction in this matter because the individual members of the classes herein are
4 under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court
5 and the aggregate claim is under the five million dollar (\$5,000,000.00) threshold of the Class
6 Action Fairness Act of 2005. Further, there is no federal question at issue, as the issues are based
7 solely on California statutes and law, including the Labor Code, IWC Wage Orders, Code of
8 Civil Procedure, Civil Code, and Business and Professions Code.

9 **III.**

10 **THE PARTIES**

11 **A. The Plaintiff**

12 11. Plaintiff RICARDO BERMUDEZ VAQUERO is a resident of Los Angeles
13 County, California, and was employed by Defendants in Los Angeles County as a Sales
14 Associate from December 2010 through June 2012.

15 **B. The Defendants**

16 12. Plaintiff is informed and believes, and based thereon alleges, that ASHLEY
17 FURNITURE INDUSTRIES, INC. and STONELEDGE FURNITURE LLC are Wisconsin
18 corporations, have conducted business in California, and were the employers of Plaintiff and the
19 members of Plaintiff Class and Subclasses, during the Class Period. Plaintiff is informed and
20 believes, and based thereon alleges, that ASHLEY FURNITURE INDUSTRIES, INC. operates
21 retail outlets selling furniture and related products in California, including as STONELEDGE
22 FURNITURE LLC.

23 13. The true names and capacities, whether individual, corporate, associate, or
24 otherwise, of Defendants sued here in as DOES 1 through 10, inclusive, are currently unknown
25 to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil
26 Procedure § 474. Plaintiff is informed and believes, and based on that alleges, that each of the
27 Defendants designated as a DOE is legally responsible in some manner for the unlawful acts
28 alleged. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and

1 capacities of the Defendants designated as DOES when those identities become known.

2 14. Plaintiff is informed and believes, and based thereon alleges, that each
3 Defendant acted in all respects pertinent to this action as the agent of the other Defendants,
4 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
5 each Defendant are legally attributable to the other Defendants.

6 IV.

7 **GENERAL ALLEGATIONS**

8 15. At all times during the liability period, Defendants have conducted business by
9 operating retail stores and selling furniture and related products in Los Angeles County and
10 elsewhere within California.

11 16. Defendants' stores are staffed by, among other positions, Sales Associates.
12 Sales Associates are compensated solely by commission based on sales of Defendants' products,
13 but are not paid for time spent in non-sales activities, such as cleaning the store, dis-assembling
14 and assembling furniture, delivering and loading furniture into the cars of Defendants'
15 customers, and attending meetings. Upon information and belief, these employees have not been
16 paid wages for all hours worked, including overtime hours worked, have not been provided
17 uninterrupted thirty-minute meal periods for work periods of at least five (5) hours, and have not
18 been permitted to take paid ten-minute rest periods for work periods of four (4) hours or major
19 fractions, pursuant to the Labor Code, Industrial Welfare Commission Wage Order 7-2001
20 ("Wage Order"), and other applicable Wage Orders

21 17. During all, or a substantial portion, of the proposed Class Period, Plaintiff and
22 each member of the Plaintiff Class was employed by Defendants, and each of them, in the State
23 of California.

24 18. Plaintiff and each Plaintiff Class member were Sales Associates covered under
25 one or more Industrial Welfare Commission (IWC) Wage Orders, including Wage Order 7-2001,
26 Labor Code § 510, and/or other applicable wage orders, regulations and statutes, which imposed
27 an obligation on the part of Defendants to pay Plaintiff and Plaintiff Class members for all hours
28 worked, including overtime hours worked, provide uninterrupted thirty-minute meal periods for

1 work periods of at least five (5) hours, and paid ten-minute rest periods for work periods of four
2 (4) hours or major fractions, throughout the Class Period.

3 19. Plaintiff is informed and believes, and based thereon alleges that Defendants
4 failed to maintain necessary records to failed to monitor and record time and tasks showing when
5 Plaintiff and the members of the Plaintiff Class engaged in non-sales activities.

6 20. During the class period, Plaintiff and members of the Plaintiff Class were
7 employed by Defendants and paid on a commission or minimum wage basis.

8 21. During the class period, Plaintiff and members of the Plaintiff Class were
9 required to report to work, remain on the premises, and perform tasks for which they were not
10 compensated.

11 V.

12 **CLASS ACTION ALLEGATIONS**

13 22. Plaintiff brings this action on behalf of himself, the general public and all other
14 similarly-situated persons as a class action pursuant to California Code of Civil Procedure §
15 382. The class which Plaintiff seeks to represent is composed of and defined as follows:

16 **Plaintiff Class**

17 All Defendants' California Sales Associates who worked under a
18 pay plan which compensated them only with sales commissions,
19 during the four years before the filing of this Complaint through
20 the time of trial.

21 23. Plaintiff seeks to certify a subclass of employees defined as follows:

22 **Plaintiff "Supplemental Minimum Wage Subclass"**

23 All members of the Plaintiff Class who were not paid supplemental
24 minimum wage for hours worked performing non-sales duties.

25 24. Plaintiff seeks to certify a subclass of employees defined as follows:

26 **Plaintiff "Minimum Wage Subclass"**

27 All members of the Plaintiff Class who were not paid for all hours
28 worked during workweeks they were not paid at least 1.5 times
minimum wage for all hours worked.

1 25. Plaintiff seeks to certify a subclass of employees defined as follows:

2 **Plaintiff "Overtime Subclass"**

3 All members of the Plaintiff Class who were not paid overtime
4 wages for hours worked in excess of eight per day or forty per
5 week during workweeks they were not paid at least 1.5 times
6 minimum wage for all hours worked.

7 26. Plaintiff seeks to certify a subclass of employees defined as follows:

8 **Plaintiff "Meal Period Subclass"**

9 All members of the Plaintiff Class who (1) worked periods
10 exceeding five hours without an uninterrupted, off-duty, 30-minute
11 meal period and/or periods in excess of ten hours without a second
12 uninterrupted, off-duty, 30-minute meal periods, and (2) were not
13 provided compensation of one hour's pay ("premium wage") at the
14 employee's regular rate for each such day that a meal period was
15 not provided.

16 27. Plaintiff seeks to certify a subclass of employees defined as follows:

17 **Plaintiff "Rest Period Subclass"**

18 All members of the Plaintiff Class who worked periods of four
19 hours or a major fraction thereof without a duty free rest period of
20 at least 10-minutes and who were not compensated one hour's pay
21 ("premium wage") at the employee's regular rate for each day that
22 a rest period was not permitted.

23 28. Plaintiff seeks to certify a subclass of employees defined as follows:

24 **Plaintiff "Waiting Time Subclass"**

25 All members of the Plaintiff Class to whom Defendants failed to
26 pay all wages due to them upon termination or resignation under
27 Labor Code, §§ 201-203.

28 29. Plaintiff seeks to certify a subclass of employees defined as follows:

29 **Plaintiff "Wage Statement Subclass"**

30 All members of the Plaintiff Class to whom Defendants
31 improperly failed to provide accurate itemized wage statements
32 under Labor Code § 226(b).

33 30. Plaintiff seeks to certify a subclass of employees defined as follows:

34 **Plaintiff "UCL Subclass"**

35 All members of the "Supplemental Minimum Wage," "Minimum
36 Wage," "Overtime," "Meal Period," and the "Rest Period"
37 Subclasses who (1) were subject to unlawful, illegal, unfair and/or
38 deceptive business acts /and or practices by Defendants and (2) are
entitled to restitution of unpaid wages.

1 31. Plaintiff reserves the right under Rule 3.765(b), California Rules of Court, to
2 amend or modify the Class description with greater specificity or further division into subclasses
3 or limitation to particular issues.

4 32. This action has been brought and may be maintained as a class action pursuant
5 to Code of Civil Procedure § 382 because there is a well-defined common interest of many
6 persons and it is impractical to bring them all before the court.

7 33. **Ascertainable Class:** The proposed class and each subclass are ascertainable
8 in that their members can be identified and located using information contained in Defendants'
9 payroll and personnel records.

10 34. **Numerosity:** The potential members of the Class and Subclasses as defined is
11 so numerous that joinder of all members would be unfeasible and impractical. The disposition of
12 their claims through this class action will benefit both the parties and this Court. The number of
13 members of the Class and Subclasses is unknown to Plaintiff at this time, however, it is
14 estimated that the Class and Subclasses number in excess of 100 individuals. The number and
15 identity of the members is readily ascertainable through inspection of Defendants' records.

16 35. **Typicality:** The claims of Plaintiff are typical of the claims of all members of
17 the Class and Subclasses because all members of the Class and Subclasses sustained similar
18 injuries and damages arising out of Defendants' common course of conduct in violation of law
19 and the injuries and damages of all members of the Class and Subclasses were caused by
20 Defendants' wrongful conduct in violation of law, as alleged.

21 36. **Adequacy:** Plaintiff is an adequate representative of the Class and Subclasses,
22 will fairly protect the interests of the members of the Class and Subclasses, has no interests
23 antagonistic to the members of the Class and Subclasses, and will vigorously pursue this suit.
24 Plaintiff's attorneys are competent, skilled and experienced in litigating large employment law
25 class actions.

26 37. **Superiority:** A class action is superior to other available means for the fair
27 and efficient adjudication of this controversy. Individual joinder of all Class Members is not
28 practicable, and questions of law and fact common to the Class predominate over questions

1 affecting only individual Class members. Each Class member has been damaged and is entitled
2 to recovery by reason of Defendants' illegal policy and/or practice of failing to pay minimum
3 and overtime wages, and provide meal and rest periods. A Class action will allow those similarly
4 situated to litigate their claims in the most efficient and economical manner for the parties and
5 the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the
6 management of this action that would preclude its maintenance as a class action.

7 38. There are common questions of law and fact as to the members of the Class
8 and Subclasses which predominate over questions affecting only individual members of the
9 Class and Subclasses including, without limitation:

- 10 a. Whether Defendants violated California law and IWC Wage Order 7-2001 by
11 failing to properly compensate Plaintiff Class members for all hours worked;
- 12 b. Whether Defendants violated California labor laws by failing to pay Plaintiff
13 Class members for hours worked in non-sales activities;
- 14 c. Whether Defendants violated California labor law and IWC Wage Order 7-2001
15 by failing to provide Plaintiff Class members with paid ten-minute rest periods for
16 each four hours, or major fraction thereof, worked;
- 17 d. Whether Defendants violated California labor law and IWC Wage Order 7-2001
18 by failing to provide Plaintiff Class members with thirty-minute meal periods for
19 work of over five hours;
- 20 e. Whether the Plaintiff Class is entitled to waiting time penalties under § 203;
- 21 f. Whether Defendants violated California labor law by failing to provide Plaintiff
22 Class members with accurate itemized wage statements;
- 23 g. Whether Defendants violated §§ 17200, *et. seq.* of the Business and Professions
24 Code; Labor Code §§ 226, 1194; IWC Wage Order 7-2001, and other applicable
25 IWC Wage Orders which constitutes a violation of fundamental public policy;
- 26 h. Whether Plaintiff Class and Subclasses are entitled to equitable relief pursuant to
27 Business and Professions Code, §§ 17200, *et seq.*

1 VI.
2 CAUSES OF ACTION
3 FIRST CAUSE OF ACTION

4 **Failure to Pay Minimum and Overtime Wages [Labor Code § 510, 1194]**
5 **(Plaintiff and of the Minimum Wage and Overtime Subclasses against each Defendant)**

6 39. Plaintiff incorporates the preceding paragraphs of this Complaint.

7 40. By their failure to wages for hours during which non-sales work was
8 performed, Defendants failed to pay minimum and overtime wages and violated provisions of
9 Labor Code §1194 and IWC Wage Order 7-2001.

10 41. Labor Code § 1194.2 provides for liquidated damages equal to unlawfully
11 unpaid minimum wages, with interest.

12 42. Defendants' unlawful acts deprived Plaintiff and the Class and Subclasses
13 Plaintiff seeks to represent of minimum, straight time and overtime wages in amounts to be
14 determined at trial, and they are entitled to recover these amounts, along with liquidated
15 damages, interest, attorneys' fees, and costs.

16 43. Plaintiff and the Class and Subclasses Plaintiff seeks to represent request relief
17 as described below.

18 SECOND CAUSE OF ACTION

19 **Failure to Provide Meal Periods Or Compensation In Lieu Thereof**
20 **[Labor Code § 226.7, IWC Wage Order 7-2001(11)]**
21 **(Plaintiff and the Meal Period Subclass against each Defendant)**

22 44. Plaintiff incorporates the preceding paragraphs of this Complaint.

23 45. By failing to provide a thirty-minute uninterrupted meal period to Plaintiff and
24 members of the meal period Subclass, Defendants willfully violated the provisions of Labor
25 Code §§ 226.7, 512, and IWC Wage Order 7-2001, § 11.

26 46. Plaintiff and the Class and Subclasses Plaintiff seeks to represent request relief as
27 described below.

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1 **THIRD CAUSE OF ACTION**

2 **Failure to Provide Rest Periods or Compensation In Lieu Thereof**

3 **[Labor Code § 226.7, IWC Wage Order 7-2001(12)]**

4 **(Plaintiff and the Rest Period Subclass against each Defendant)**

5 47. Plaintiff incorporates the preceding paragraphs of this Complaint.

6 48. By failing to provide paid ten-minute rest periods for every four (4) hours or
7 major fraction thereof worked per day, and by failing to provide compensation for these periods,
8 Defendants willfully violated the provisions of Labor Code § 226.7, and IWC Wage Order No.
9 7-2001.

10 49. Defendants' unlawful acts deprived Plaintiff and the members of the Plaintiff
11 Class and Subclasses Plaintiff seeks to represent of premium wages and/or other compensation in
12 amounts to be determined at trial, and they are entitled to recover such amounts, plus interest,
13 attorneys' fees, and costs.

14 50. Plaintiff and the members of the Plaintiff Class and Subclasses Plaintiff seeks to
15 represent request relief as described below.

16 **FOURTH CAUSE OF ACTION**

17 **Failure to Pay Wages Due at Termination [Labor Code § 203]**

18 **(Plaintiff and the Waiting Time Subclass against each Defendant)**

19 51. Plaintiff incorporates the preceding paragraphs of this Complaint.

20 52. Defendant had a consistent and uniform policy, practice and procedure of
21 willfully failing to lawfully pay the earned and unpaid wages of Defendants' former employees.
22 Labor Code §§ 201 and 202 require Defendant to pay its employees all wages due within 72
23 hours of termination of employment. Section 203 of the Labor Code provides that if an
24 employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
25 pay the subject employee's wages until the back wages are paid in full or an action is
26 commenced. The penalty cannot exceed 30 days of wages.

27 53. Members of the Waiting Time Subclass are no longer employed by Defendant.

28 54. Defendant willfully failed to pay Waiting Time Subclass Members a sum due at
the time of their termination or within seventy-two (72) hours of their resignation, and failed to

1 pay those sums for thirty (30) days thereafter.

2 55. Defendants' willful failure to pay wages to the Waiting Time Subclass Members
3 violates Labor Code § 203 because Defendant knew wages were due to the Subclass Members,
4 but Defendant failed to pay them.

5 56. Plaintiff and the members of the Plaintiff Class and Subclasses Plaintiff seeks to
6 represent request relief as described below.

7 **FIFTH CAUSE OF ACTION**

8 **Failure to provide itemized wage statements [Labor Code § 226(a)]**
9 **(Plaintiff and the Wage Statement Subclass against each Defendant)**

10 57. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

11 58. Section 226(a) of the California Labor Code requires Defendant to itemize in
12 wage statements all deductions from payment of wages and to accurately report total hours
13 worked by Plaintiff and the members of the proposed Class. Defendant has knowingly and
14 intentionally failed to comply with Labor Code § 226(a) on wage statements provided to Plaintiff
15 and members of the Wage Statement Subclass because the wage statements failed to accurately
16 set forth all hours worked.

17 59. As a consequence of Defendants' knowing and intentional failure to comply with
18 Labor Code § 226(a), Plaintiff and the members of the Wage Statement Subclass are entitled to
19 actual damages or penalties not to exceed \$4,000 for each employee pursuant to Labor Code §
20 226(b), together with interest and attorneys' fees and costs.

21 60. Plaintiff and the members of the Plaintiff Class and Subclasses Plaintiff seeks to
22 represent request relief as described below.

23 **SIXTH CAUSE OF ACTION**

24 **Violations of the Unfair Competition Law**
25 **[Business and Professions Code §§ 17200 et seq.]**
26 **(Plaintiff and the Class and Subclasses as against each Defendant)**

27 61. Plaintiff incorporates all preceding paragraphs of this Complaint.

28 62. Defendants' failure to pay Plaintiff and members of the Plaintiff Class and sub-
classes for all hours worked, as required by Wage Orders and the Labor Code, as alleged,

1 constitutes unlawful activity prohibited by Business and Professions Code §§ 17200 *et seq.*

2 63. The actions of Defendants in failing to pay Plaintiff and members of the
3 Plaintiff Class in a lawful manner, constitute false, unfair, fraudulent and deceptive business
4 practices, within the meaning of Business and Professions Code, §§ 17200, *et seq.*

5 64. Plaintiff is entitled to an injunction, specific performance under Business and
6 Professions Code, § 17202, and/or other equitable relief against such unlawful practices in order
7 to prevent future loss, for which there is no adequate remedy at law, and to avoid a multiplicity
8 of lawsuits. Plaintiff brings this cause individually and as a member of the general public as a
9 representative of all others subject to Defendants' unlawful acts and practices.

10 65. This cause of action is brought as a cumulative remedy as provided in Business
11 and Professions Code § 17205, and is intended as an alternative remedy for restitution for
12 Plaintiff, each Plaintiff Class Member and each Plaintiff Subclass Member, for the time period
13 starting four (4) years before the filing of this Complaint, and as the primary remedy during the
14 fourth year before the filing of this Complaint.

15 66. As a result of Defendants' unlawful and unfair business practice of failing to pay
16 earned wages, each Plaintiff Class Member and Subclass Member has suffered damages and is
17 entitled to restitution in an amount according to proof.

18 67. The illegal conduct alleged is continuing and there is no indication that
19 Defendants will discontinue such activity in the future. Plaintiff alleges that if Defendants are
20 not enjoined from the conduct set forth in this Complaint, they will continue to fail to provide
21 minimum and overtime wages as required by law.

22 68. Plaintiff further requests the court issue a preliminary and permanent injunction
23 prohibiting Defendants from continuing to fail to pay minimum and overtime wages.

24 69. Plaintiff and the members of the Plaintiff Class and sub-classes Plaintiff seeks to
25 represent request relief as described below.

26 ///

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28 ///

1 **SEVENTH CAUSE OF ACTION**

2 **Violations of PAGA - Labor Code § 2698, et seq.**

3 **(Plaintiff, as a Representative of the General Public, on behalf of all aggrieved Employees,
4 against each Defendant)**

5 70. Plaintiff incorporates the preceding paragraphs of this Complaint.

6 71. Plaintiff, by virtue of his employment with Defendants and their failure to pay all
7 overtime wages and unlawful classification scheme, is an aggrieved employee with standing to
8 bring an action under the Private Attorneys General Act (PAGA). Plaintiff has satisfied all
9 prerequisites to serve as a representative of the general public to enforce California's labor laws,
10 including, without limitation, the penalty provisions identified in Labor Code § 2699.5. See
11 Exhibit "A" attached. Since the LWDA took no steps within the time period required to
12 intervene and because Defendants gave no notice of cure, Plaintiff, as a representative of the
13 people of the State of California, will seek any and all penalties otherwise capable of being
14 collected by the Division of Labor Standards Enforcement (DLSE).

15 72. Plaintiff is informed and believes Defendants have violated and continue to
16 violate provisions of the California Labor Code and applicable Wage Orders related to the
17 provision of wages, meal and rest periods, accurate itemized wage statements, and the timely
18 payment of wages due to terminated employees. Although Plaintiff mailed Exhibit "A" at least
19 33-days prior to the filing of this Complaint, no state agency has accepted the Complaint for
20 investigation. By operation of law, Plaintiff is entitled to commence this cause of action in the
21 California Superior Court as a representative action under PAGA.

22 73. In addition to restitution, the recovery of unpaid straight and overtime wages, and
23 interest on wages owed and violations of the applicable Wage Orders, Plaintiff, as a
24 representative of the general public, seeks to recover all penalties for each and every violation
25 during the proposed Class Period, in an amount according to proof, as to those penalties that are
26 otherwise only available through public agency enforcement actions. Funds recovered will be
27 distributed in accordance with the PAGA, with at least 75% of the PAGA penalties recovered
28 distributed to the Labor and Workforce Development Agency (LWDA).

1 VI.

2 **PRAYER FOR RELIEF**

3 Plaintiff prays for judgment as follows:

4 1. That the Court determine this action may be maintained as a class action and
5 certify the Plaintiff Class and each Plaintiff Sub-Class;

6 2. That the Court determine that the failure of the Defendants to pay minimum and
7 overtime compensation to the Plaintiff and each Plaintiff Class member be adjudged and decreed
8 to violate the applicable IWC Wage Orders, regulations and statutes;

9 3. That Defendants be ordered to pay and judgment be entered for minimum and
10 overtime wages for Plaintiff and each Plaintiff Class member on the First Cause of Action,
11 according to proof;

12 4. That Defendants be ordered to pay and judgment be entered for Labor Code §203
13 penalties to Plaintiff and each Plaintiff Sub-Class member, according to proof;

14 5. That Defendants be found to have engaged in unfair competition in violation of
15 Business and Professions Code § 17200;

16 6. That Defendants be ordered and enjoined to pay restitution to Plaintiff, each
17 Plaintiff Class member and each Plaintiff Sub-Class member due to Defendants' unlawful and
18 unfair competition, including disgorgement of their wrongfully obtained profits, wrongfully
19 withheld wages according to proof, and interest thereon pursuant to Business and Professions
20 Code, §§ 17203 and 17204;

21 7. That Defendants be enjoined from further acts of unfair competition and
22 specifically from failing to pay minimum and overtime compensation to Class members;

23 8. That Plaintiff, Plaintiff Class members, and Plaintiff Sub-Class members be
24 awarded attorneys' fees and costs pursuant to statute, including but not limited to, Labor Code §
25 1194 and Code of Civil Procedure, § 1021.5;

26 9. Otherwise determine the appropriate remedy to compensate Plaintiff, and each
27 Plaintiff Class and Sub-Class member, as required to promote fairness and justice, including but
28 not limited to establishing procedures for compensation, amounts of compensation, and fluid

1 recovery if appropriate;

2 10. To declare this action a Representative Action brought on behalf of the LWDA
3 and the general public;

4 11. To award Penalties as provided, per violation, under the Private Attorneys
5 General Act (PAGA) Labor Code § 2698, et seq.;

6 12. Prejudgment Interest; and

7 13. Any other relief as this court deems proper.

8
9 Dated: August 23, 2012

**COHELAN KHOURY & SINGER
LAW OFFICE OF KEVIN T. BARNES
LAW OFFICES OF RAPHAEL A. KATRI**

11
12 By: 

Michael D. Singer, Esq.

Jeff Geraci, Esq.

13
14 Attorneys for Plaintiff RICARDO BERMUDEZ
VAQUERO and the putative class

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

17
18 Dated: August 23, 2012

**COHELAN KHOURY & SINGER
LAW OFFICE OF KEVIN T. BARNES
LAW OFFICES OF RAPHAEL A. KATRI**

19
20
21 By: 

Michael D. Singer, Esq.

Jeff Geraci, Esq.

22
23 Attorneys for Plaintiff RICARDO BERMUDEZ
VAQUERO and the putative class

EXHIBIT A

LAW OFFICES OF
KEVIN T. BARNES

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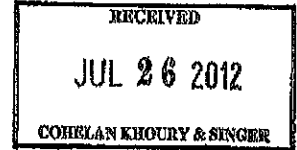
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July 19, 2012

VIA CERTIFIED MAIL

Deputy Secretary, Special Counsel
California Labor & Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814



Re: Stoneledge Furniture LLC (the "Employer")

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

To: California Labor and Workforce Development Agency

From: Ricardo Bermudez (the "Employee"), who was subjected to the wage and hour practices set forth below

The Employee submits this Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3(a), and alleges as follows:

The Employer employed the Employee during the applicable time period. During this time period, the Employer utilized consistent policies and procedures, allegedly in violation of Labor Code §1194, et seq., Labor Code §200, et seq., Labor Code §500, et seq., Labor Code §§2698, et seq., and the applicable Wage Orders issued by the California Industrial Welfare Commission, as follows:

The Employer employed the Employee as a "Sales Associate" and paid him in the form of commissions with a draw against commissions, also using sales requirements to determine how he was ultimately paid. The Employee and all others similarly situated were also required by the Employer to perform various non-sales activities during their shifts. As such, due to the large number of hours that the Employee and all others similarly situated were required to be under the control of the Employer, the Employee and all others similarly situated did not always earn at least minimum wage for all hours worked and/or overtime wages for all overtime hours worked. Further, the Employer also failed to provide to the Employee and all others similarly situated all requisite meal periods, failed to authorize and permit all rest periods, failed to timely furnish itemized wage statements and violated Labor Code §203.

Therefore, pursuant to Labor Code §2699.3(a)(2)(A), please advise within thirty (30) calendar days of the postmark date of this notice whether the LWDA intends to investigate the violations alleged above. We understand that if we do not receive a response within thirty-three (33) calendar days of the postmark date of this notice that the LWDA intends to investigate these allegations, that the aggrieved employee may immediately thereafter commence a civil action against the Employer pursuant to Labor Code §2699.

Thank you for your consideration.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Kevin T. Barnes". The signature is stylized and cursive.

Kevin T. Barnes
Gregg Lander

cc: (via Certified Mail)
STONELEDGE FURNITURE LLC
One Ashley Way
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