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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**01/06/2021** at 08:05:00 PM  
Clerk of the Superior Court  
By Ashley Carini, Deputy Clerk

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 MARIA BERNABE,

11 Plaintiff,

12 v.

13 MERAKEY ALLOS; and DOES 1-100,  
14 inclusive,

15 Defendants.

Case No.: 37-2020-00037390-CU-OE-NC

FIRST AMENDED COMPLAINT

1. Private Attorneys General Act Claim – LC § 2699
2. Failure to Pay Minimum Wages – LC § 1194
3. Failure to Pay Overtime Wages – LC § 1194
4. Failure to Provide Compliant Wage Statements and Keep Records – LC § 226
5. Waiting Time Penalties – LC § 203
6. Failure to Indemnify Business Expenses – LC § 2802
7. Unfair Business Practices – BPC § 17200
8. Retaliation – LC § 98.6
9. Retaliation – LC § 1102.5
10. Disability-Based Association Discrimination – GC § 12940
11. Gender Discrimination – GC § 12940
12. Marital Status Discrimination – GC § 12940
13. Wrongful Termination in Violation of Public Policy

24 Complaint Filed: 10/13/2020  
25 Dept.: N-31  
26 Judge: Timothy M. Casserly

1 Plaintiff MARIA BERNABE (hereinafter “Plaintiff” or “BERNABE”, or collectively  
2 referred to with other aggrieved employees as “Plaintiffs” or “Plaintiff and other aggrieved  
3 employees”), for causes of action against Defendants MERAKEY ALLOS; and DOES 1-100,  
4 inclusive (hereinafter collectively referred to as “Defendants”), alleges as follows:

### 5 JURISDICTION

6 1. This action arises out of acts, representations and events occurring within the  
7 jurisdiction of the County of San Diego and the San Diego Judicial District.

8 2. BERNABE is, and at all relevant times mentioned herein was, an individual residing  
9 in the state of California, County of San Diego.

10 3. Defendants, at all relevant times mentioned herein, were businesses, organizations,  
11 and people doing business in San Diego County.

12 4. Whenever in this Complaint reference is made to any act, deed, or conduct of  
13 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through  
14 one or more of their officers, directors, agents, employees, or representatives, who were actively  
15 engaged in the management, direction, control, or transaction of the ordinary business and affairs of  
16 Defendants.

17 5. BERNABE is ignorant of the true names and capacities, whether individual,  
18 corporate, associate or otherwise, of the Defendants sued herein as DOES 1-100, inclusive and  
19 therefore sues said Defendants (the “Doe Defendants”) by such fictitious names. BERNABE will  
20 amend this Complaint to plead the true names and capacities of the Doe Defendants at such  
21 time as the identities of the Doe Defendants have been ascertained.

22 6. BERNABE is informed and believes, and thereon alleges, that Defendants  
23 MERAKEY ALLOS; and DOES 1-100, inclusive, are the partners, agents, or principals and co-  
24 conspirators of Defendants, and of each other; that named Defendants and the Doe Defendants  
25 performed the acts and conduct herein alleged directly, aided and abetted the performance thereof,  
26 or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and  
27 therefore each of the named Defendants and Doe Defendants are liable to Plaintiffs to the extent of  
28 the liability of the Defendants as alleged herein.

7. BERNABE is further informed and believes, and thereon alleges, that at all times herein material, MERAKEY ALLOS and entity Doe Defendants were completely dominated and controlled by unknown Doe Defendants and each was the alter ego of the other in a single enterprise. At those times, a unity of interest and ownership between MERAKEY ALLOS and entity Doe Defendants on the one hand, and unknown Doe Defendants on the other hand existed such that the separate personalities of these entities did not in reality exist. Additionally, Plaintiffs would suffer an inequitable harm if the actions of MERAKEY ALLOS and entity Doe Defendants were not treated as the acts of all Defendants. BERNABE is further informed and believes, and thereon alleges, that at all times relevant to this action MERAKEY ALLOS and entity Doe Defendants, *inter alia*, failed to observe the requisite corporate formalities, was inadequately capitalized, and its ownership and control were inappropriately concentrated in unknown Doe Defendants.

8. BERNABE is further informed and believes, and thereon alleges, that at all times herein material, each defendant, was completely dominated and controlled by its co-defendants and each was the alter ego of the other. Whenever and wherever reference is made in this operative Complaint to any conduct by Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly and severally. Whenever and wherever reference is made to individuals who are not named as defendants in this Complaint, but were employees or agents of, such individuals at all relevant times acted on behalf of Defendants named in this Complaint within the scope of their respective employments.

9. Whenever and wherever reference is made in this Complaint to any conduct by a defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly and severally. Whenever and wherever reference is made to individuals who are not named as defendants in this Complaint, but were employees or agents of, such individuals at all relevant times acted on behalf of Defendants named in this Complaint within the scope of their respective employments.

## GENERAL ALLEGATIONS

10. With a staff of over 10,000 nationwide, Defendants' operate an organization that provides developmental, behavioral health, and educational services in several states and counties

1 throughout the United States, including San Diego County, California. Defendants hired  
2 BERNABE as a salaried Program Administrator to work at Defendants' various locations on or  
3 about February 10, 2020. BERNABE is informed and believes that Defendants employed many  
4 other aggrieved employees in California who may also be victims of the same unlawful conduct  
5 outlined below which Defendants perpetrated against BERNABE.

6 11. BERNABE informed Defendants in the interviewing process that she had a 13-year-  
7 old special needs daughter who went to boys and girls club right after school and could not be left  
8 alone because she suffered a disability from childhood trauma. At other times, BERNABE made  
9 Defendants well aware of her daughter's special needs and that BERNABE was an unmarried single  
10 mother.

11 12. Defendants purportedly classified BERNABE as an exempt employee and paid her  
12 a salary while BERNABE typically worked over 50 hours per week during the workdays Monday  
13 through Friday, without including work on the weekends. However, for approximately the first  
14 month which BERNABE worked for Defendants the substantial majority, if not all, of duties  
15 Defendants instructed BERNABE to perform were non-exempt Direct Support Professional duties  
16 working directly with clients at Defendants' facilities because Defendants refused to train  
17 BERNABE on Program Administrator duties or put her in charge of a facility until BERNABE  
18 complete a 40-hour Registered Behavior Technician ("RBT") course and obtain the certification.

19 13. As a result, BERNABE worked many hours for Defendants as a non-exempt  
20 employee without receiving timely pay of at least minimum wage or overtime rates for many hours  
21 exceeding 8 hours in a workday or 40 hours in a workweek.

22 14. On or about March 6, 2020, Defendants changed their minds about the RBT  
23 certification and assigned BERNABE standard Program Administrator duties including, but not  
24 limited to, command or charge of Defendants' facility without ever having provided BERNABE the  
25 Program Administrator training. Even while taking on the new Program Administrator duties,  
26 BERNABE still continued to perform a substantial amount of Direct Support Professional duties.

27 15. Defendants' Program Administrator pay policies and practices required Defendants  
28 to pay BERNABE an additional \$150 every weekend which BERNABE had to remain on call for

1 Defendants' facilities, and to pay BERNABE an additional \$22 per hour for the hours she actually  
2 worked while on call. Defendants regularly assigned Plaintiff on call during weekends, which  
3 required her to perform actual work for Defendants including, but not limited to, going into facilities  
4 to deal with various issues, clients, and covering for staff.

5 16. Defendants also required BERNABE to drive her own car between Defendants'  
6 facilities and offices without reimbursing her for all mileage expenses, including on the day when  
7 Defendants required BERNABE to drive from one of Defendants' facilities after working several  
8 hours that day to Defendants' offices at another location to terminate BERNABE.

9 17. In or around March 2020, the COVID-19 pandemic expanded in the United States  
10 and California's Governor, Gavin Newsom, ordered the closures of non-essential businesses,  
11 schools, afterschool programs, etc., including BERNABE's daughter's school and afterschool  
12 program which normally provided the substantial majority of her care until BERNABE got off of  
13 work during the weekdays.

14 18. On or about April 13, 2020, BERNABE emailed her supervisor, Alisa Dean  
15 ("Dean"), Defendants' Regional Executive Director, informing Dean that BERNABE needed to stay  
16 at home with her daughter because she would have nobody to watch her daughter while she is at  
17 work at Defendants' facilities and asking Dean if they could work something out where BERNABE  
18 worked from home. BERNABE believed that she could competently perform all if not substantially  
19 all of her Program Administrator duties remotely from home. Dean replied, "With current  
20 circumstances and the nature of our services we are not able to permit employees to work from  
21 home as our DSPs and Admin staff are both needed for support in our homes."

22 19. BERNABE returned to work at Defendants' facilities the next day because she felt  
23 terrified that Defendants might terminate her, and she believed she could still go to work at  
24 Defendants' facilities and perform all of her duties without any accommodation.

25 20. On April 16, 2020, in the middle of a workday, Defendants instructed BERNABE to  
26 drive from Defendants' facility to Defendants' offices at another location for a meeting without  
27 advanced notice. Defendants terminated BERNABE and told her it was because she poorly wrote  
28

1 incident reports (despite never Defendants never training BERNABE to write Defendants incident  
2 reports).

3       21.     BERNABE is informed and believes that Defendants' stated reason for the  
4 termination was pretext, and that the true reasons Defendants terminated BERNABE was because  
5 BERNABE attempted to exercise her right to miss work to address a childcare provider or school  
6 emergency caused by the COVID-19 pandemic; Defendants believed that BERNABE might  
7 disclose information about Defendants' unlawful policies and practices to a government agency or  
8 someone who has the authority to correct Defendants' noncompliance with laws that provided  
9 BERNABE the right to take leave; Defendants had a gender discriminatory animus based on a  
10 stereotypical assumption that women teleworking while caring for a child at home would not be  
11 able to effectively complete job tasks; Defendants had a marital status discriminatory animus based  
12 on a stereotypical assumption that BERNABE as a single parent would not be able to work as hard  
13 as married parents with help while managing childcare; and Defendants had a disability-based  
14 association discriminatory animus based on Defendants' fear that BERNABE would not be able to  
15 perform work satisfactorily while caring for a child with a disability from childhood trauma while  
16 schools and after school programs were closed from COVID-19 orders.

17       22.     After Defendants terminated BERNABE, she had to repeatedly ask Defendants for  
18 unpaid earned wages. Approximately one month after Defendants terminated BERNABE,  
19 Defendants finally paid her unpaid wages from an unpaid weekend of working on call for  
20 Defendants.

21       23.     Defendants still have not paid BERNABE at least minimum wage for all hours  
22 worked, and overtime rate wages for overtime worked which BERNABE earned while performing  
23 almost exclusively non-exempt Direct Support Professional duties during approximately her first  
24 month of employment for Defendants before Defendants assigned BERNABE Program  
25 Administrator duties. More than 30 days have passed since BERNABE's employment ended.

26       24.     Defendants also failed to provide BERNABE compliant wage statements and  
27 maintain required records as a result of Defendants' unlawful pay policies and practices. Defendants  
28 wage statement and records non-compliance includes, but is not limited to, missing or inaccurate

1 information about gross wages earned, all hours worked; meal periods taken if any; all applicable  
2 hourly rates and the corresponding number of hours worked at each hourly rate; and accrued paid  
3 sick leave. BERNABE is informed and believes that Defendants may not have even had a compliant  
4 paid sick leave policy and practice

5 25. BERNABE is informed and believes that Plaintiffs are other aggrieved employees  
6 whom Defendants employed and who were victims of the same unlawful policies and practices  
7 which Defendants perpetrated against BERNABE as outlined above and throughout this Complaint.

8 26. Defendants violations were all knowing and willful in disregard of the Labor Code  
9 and Industrial Welfare Commission (“IWC”) Wage Orders. Accordingly, Plaintiffs are entitled to  
10 recovery of civil penalties pursuant to various regulations and statutes including, but not limited to,  
11 IWC Order 5-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections including, but  
12 not limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 210, 212, 215, 216, 218.6, 221,  
13 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256,  
14 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2,  
15 1194.3, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al.

16 27. BERNABE met the Private Attorneys General Act (“PAGA”) notice requirement  
17 with the Labor and Workforce Development Agency (“LWDA”) through the filing of a PAGA  
18 notice on October 13, 2020 and sending copies to all named Defendants via certified mail more than  
19 65 days ago. See a true and correct copy of the PAGA notice attached hereto as Exhibit 1.

20 28. BERNABE has exhausted administrative remedies with the Department of Fair  
21 Employment and Housing (“DFEH”) and has obtained a right-to-sue letter from the DFEH. A copy  
22 of the right-to-sue letter is attached hereto as Exhibit 2.

## 23 **FIRST CAUSE OF ACTION**

### 24 **(Private Attorneys General Act Claim – LC § 2699)**

#### 25 **(Against all Defendants)**

26 29. BERNABE re-alleges and incorporates herein by reference all paragraphs outside  
27 this section as though fully set forth herein.

28 30. Labor Code section 2699 states that, “(a) Notwithstanding any other provision of

1 law, any provision of this code that provides for a civil penalty to be assessed and collected by the  
2 Labor and Workforce Development Agency or any of its departments, divisions, commissions,  
3 boards, agencies, or employees, for a violation of this code, may, as an alternative be recovered  
4 through a civil action brought by an aggrieved employee on behalf of himself or herself and other  
5 current or former employees pursuant to the procedures specified in Section 2699.3.”

6         31.       As a result of the acts alleged above, BERNABE brings this action on her own  
7 behalf, and in her representative capacity on behalf of all aggrieved employees, Plaintiffs, who are  
8 current or former employees of Defendants, for civil penalties pursuant to IWC Order 5-2001,  
9 sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections including, but not limited to,  
10 sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 210, 212, 215, 216, 218.6, 221, 222, 223, 224,  
11 225, 225.5, 226, 226.3, 226.7, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510,  
12 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197,  
13 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al.

14         32.       Labor Code section 98.6 states that, “[a] person shall not discharge an employee or  
15 in any manner discriminate, retaliate, or take any adverse action against any employee or applicant  
16 for employment ... because of the exercise by the employee or applicant for employment on behalf  
17 of himself, herself, or others of any rights afforded to him or her... In addition to other remedies  
18 available, an employer who violates this section is liable for a civil penalty not exceeding ten  
19 thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the  
20 employee or employees who suffered the violation.”

21         33.       Labor Code section 210 states that, “(a) In addition to, and entirely independent and  
22 apart from, any other penalty provided in this article, every person who fails to pay the wages of  
23 each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall  
24 be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for  
25 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional  
26 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the  
27 amount unlawfully withheld.”

28         34.       Labor Code section 225.5 states that “...every person who unlawfully withholds

1 wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil  
2 penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay  
3 each employee. (b) For each subsequent violation, or any willful or intentional violation, two  
4 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount  
5 unlawfully withheld.” Labor Code section 216 provides that, “In addition to any other penalty  
6 imposed by this article, any person, or agent, manager, superintendent, or officer thereof is guilty of  
7 a misdemeanor who: (a) Having the ability to pay, willfully refuses to pay wages due and payable  
8 after demand has been made. (b) Falsely denies the amount or validity thereof, or that the same is  
9 due, with the intent to secure for himself, his employer or other person, any discount upon such  
10 indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom  
11 such indebtedness is due.”

12         35. Labor Code section 226.3 states that, “[a]ny employer who violates subdivision (a)  
13 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)  
14 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for  
15 each violation in a subsequent citation, for which the employer fails to provide the employee a wage  
16 deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil  
17 penalties provided for in this section are in addition to any other penalty provided by law.”

18         36. Labor Code section 256 states that, “[t]he Labor Commissioner shall impose a civil  
19 penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

20         37. Labor Code section 558 states that, “(a) Any employer or other person acting on  
21 behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
22 provision regulating hours and days of work in any order of the Industrial Welfare Commission  
23 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each  
24 underpaid employee for each pay period for which the employee was underpaid in addition to an  
25 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred  
26 dollars (\$100) for each underpaid employee for each pay period for which the employee was  
27 underpaid in addition to an amount sufficient to recover underpaid wages... (d) The civil penalties  
28 provided for in this section are in addition to any other civil or criminal penalty provided by law.”

1           38.       Labor Code section 1102.5 states that, “[a]n employer, or any person acting on  
2 behalf of the employer, shall not retaliate against an employee for disclosing information, or because  
3 the employer believes that the employee disclosed or may disclose information, to a government or  
4 law enforcement agency, to a person with authority over the employee or another employee who  
5 has authority to investigate, discover, or correct the violation of noncompliance... if the employee  
6 has reasonable cause to believe that the information discloses a violation of state or federal statute,  
7 or a violation of or noncompliance with a local, state, or federal rule or regulation... In addition to  
8 other penalties, an employer that is a corporation or limited liability company is liable for a civil  
9 penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.”

10           39.       Labor Code section 1174.5 states that, “Any person employing labor who willfully  
11 fails to maintain the records required by subdivision (c) of section 1174 or accurate and complete  
12 records required by subdivision (d) of Section 1174, or to allow any member of the commission or  
13 employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be  
14 subject to a civil penalty of five hundred dollars (\$500).”

15           40.       Labor Code section 1197.1 states that, “(a) Any employer or other person acting  
16 either individually or as an officer, agent, or employee of another person, who pays or causes  
17 to be paid to any employee a wage less than the minimum fixed by an order of the commission shall  
18 be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and  
19 any applicable penalties imposed pursuant to Section 203 as follows: (1) For any initial violation  
20 that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each  
21 pay period for which the employee is underpaid. This amount shall be in addition to an amount  
22 sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any  
23 applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the  
24 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay  
25 period for which the employee is underpaid regardless of whether the initial violation is intentionally  
26 committed. This amount shall be in addition to an amount sufficient to recover underpaid wages,  
27 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to  
28 Section 203...”

1           41.       Labor Code section 2802 states that, “(a) An employer shall indemnify his or her  
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
3 of the discharge of his or her duties... (d) In addition to recovery of penalties under this section in  
4 a court action or proceedings pursuant to Section 98, the commissioner may issue a citation against  
5 an employer or other person acting on behalf of the employer who violates reimbursement  
6 obligations for an amount determined to be due to an employee under this section. The procedures  
7 for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the  
8 commissioner shall be the same as those set forth in Section 1197.1.”

9           42.       Labor Code section 2699 states that, “(f) For all provisions of this code except those  
10 for which a civil penalty is specifically provided, there is established a civil penalty for a violation  
11 of these provisions, as follows: (1) If, at the time of the alleged violation, the person does not employ  
12 one or more employees, the civil penalty is five hundred dollars (\$500). (2) If, at the time of the  
13 alleged violation, the person employs one or more employees, the civil penalty is one hundred  
14 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred  
15 dollars (\$200) for each aggrieved employee per pay period for each aggrieved employee per pay  
16 period for each subsequent violation.”

17           43.       BERNABE is informed and believes that Defendants knowingly and willfully failed  
18 to pay Plaintiffs, who were all non-exempt, all wages earned which were due at least twice each  
19 calendar month pursuant to Labor Code section 204, by failing to timely pay employees at least  
20 minimum wage for all hours worked, failing to pay employees applicable overtime and overtime  
21 rates, failing to pay employees an additional one hour of wages for each workday with a missed  
22 meal period which was required by Labor Code section 226.7, and failing to pay employees an  
23 additional one hour of wages for each workday with a missed rest period which was required by  
24 Labor Code section 226.7. BERNABE is also informed and believes Defendants failed to indemnify  
25 Plaintiffs for business expenses such as for driving mileage using a personal car for Defendants’  
26 benefit.

27           44.       BERNABE is informed and believes that Defendants failed to provide Plaintiffs  
28 compliant wage statements at the time wages were paid or semimonthly. The wage statements

1 Defendants provided to Plaintiffs were inaccurate and noncompliant due to Defendants' unlawful  
2 policies and practices including, but not limited to, not paying all earned wages for all hours worked  
3 at the applicable hourly rates such as minimum wage or overtime rates, not tracking and paying all  
4 hours worked; and not indicating gross earned wages, all applicable hourly rates and corresponding  
5 number of hours worked, and accrued paid sick leave hours among other inadequacies in the wage  
6 statements in violation of Labor Code sections 226, 1174, and IWC Wage Order 5-2001, section 7.  
7 BERNABE is informed and believes that Defendants may not have even had a compliant paid sick  
8 leave policy and practice, in violation of Labor Code section 246 et al. BERNABE is informed and  
9 believes that Defendants' records keeping violations relate to recording meal periods and  
10 Defendants failure to accurately track and record the referenced as missing or inaccurate information  
11 in the wage statements.

12         45.       BERNABE is also informed and believes that Defendants failed to pay Plaintiffs all  
13 earned wages within 72 hours after their employment relationships ended with Defendants, and  
14 Defendants continue to willfully fail to pay those earned unpaid wages, or falsely deny the amount  
15 or validity thereof, and continue to fail to pay the waiting time penalties of up to 30 days of additional  
16 daily wages which are authorized by Labor Code section 203 despite having an ability to pay all  
17 amounts due because Defendants still have not paid BERNABE all of her earned unpaid wages far  
18 longer than 30 days after Defendants terminated BERNABE on April 16, 2020.

19         46.       Labor Code section 558.1 states that, "(a) Any employer or other person acting on  
20 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum  
21 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or  
22 causes to be violated, sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the  
23 employer for such violations.

24         47.       Defendants also violated the Labor Code on April 13, 2020, by refusing to allow  
25 BERNABE to exercise her right to miss up to 40 hours of work to care for her special needs daughter  
26 instead of going to work when the emergency COVID-19 pandemic school and after school child  
27 care program shutdown orders left BERNABE without child care. Further, BERNABE is informed  
28 and believes that Defendants also violated the Labor Code by terminating BERNABE a few days

1 later on April 16, 2020, in retaliation for asking for time off due to the COVID-19 emergency and  
2 because Defendants believed BERNABE might disclose Defendants' violations of the law to  
3 someone with authority to remedy Defendants' noncompliance.

## 4 **SECOND CAUSE OF ACTION**

### 5 **(Failure to Pay Wages Including Minimum Wages – LC § 1194)**

#### 6 **(Against all Defendants)**

7 48. BERNABE re-alleges and incorporates herein by reference all paragraphs outside  
8 this section as though fully set forth herein.

9 49. Pursuant to Labor Code section 200, "wages" includes all amounts for labor  
10 performed by employees of every description, whether the amount is fixed or ascertained by the  
11 standard time, task, piece, commission basis, or other method of calculation. Pursuant to IWC  
12 Minimum Wage Order MW-2016, IWC Minimum Wage Order MW-2019, and Labor Code section  
13 1182.12, every employer with 26 employees or more shall pay each employee wages not less than  
14 \$10.50 per hour beginning January 1, 2017; not less than \$11.00 per hour beginning January 1,  
15 2018; not less than \$12.00 per hour beginning January 1, 2019; and not less than \$13.00 per hour  
16 beginning January 1, 2020. Pursuant to Labor Code section 1197, payment of a wage less than the  
17 minimum wage as delineated by the commission is unlawful.

18 50. Labor Code section 1194(a), provides that, "...any employee receiving less than the  
19 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to  
20 recover in a civil action the unpaid balance of this minimum wage or overtime compensation,  
21 including interest thereon, reasonable attorney's fees, and costs of suit." Pursuant to Labor Code  
22 section 1194.2, "... an employee shall be entitled to recover liquidated damages in an amount equal  
23 to the wages unlawfully unpaid and interest thereon." Labor Code section 1197.1 specifically states,  
24 in part, as follows: "Any employer or other person acting either individually or as an officer, agent,  
25 or employee of another person who pays or causes to be paid to any employee a wage less than the  
26 minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages,  
27 [and] liquidated damages payable to the employee..."

28 51. Defendants hired BERNABE as a salaried Program Administrator on or about

1 February 10, 2020. BERNABE worked over 50 hours per week. However, during her first month  
2 of employment, Defendants gave BERNABE almost exclusively non-exempt Direct Support  
3 Professional duties working directly with Defendants' clients at facilities because Defendants  
4 initially declined to provide BERNABE Program Administrator duties until she completed a 40-  
5 hour RBT course and obtain certification. BERNABE was a non-exempt employee who worked  
6 many overtime hours without receiving any wages at all for the work, much less minimum wage or  
7 overtime rate wages.

8 52. Accordingly, BERNABE is entitled to recover the amount of their unpaid wages,  
9 liquidated damages equal to the unpaid minimum wages, interest, penalties, attorney fees, and costs  
10 pursuant to Labor Code sections 204, 210, 215, 558, 1194, 1194.2, 1194.3, 1197.1, 2699, Civil Code  
11 section 3289, and the IWC Wage Orders. Defendants are further subject to criminal penalties  
12 pursuant to Labor Code sections 215 and 1199.

13 **THIRD CAUSE OF ACTION**

14 **(Failure to Pay Overtime Wages – LC § 1194)**

15 **(Against all Defendants)**

16 53. BERNABE re-alleges and incorporates herein by reference all paragraphs outside  
17 this section as though fully set forth herein.

18 54. Pursuant to Labor Code section 200, "wages" includes all amounts for labor  
19 performed by employees of every description, whether the amount is fixed or ascertained by the  
20 standard time, task, piece, commission basis, or other method of calculation. Pursuant to IWC  
21 Minimum Wage Order MW-2016, IWC Minimum Wage Order MW-2019, and Labor Code section  
22 1182.12, every employer with 26 employees or more shall pay each employee wages not less than  
23 \$10.50 per hour beginning January 1, 2017; not less than \$11.00 per hour beginning January 1,  
24 2018; not less than \$12.00 per hour beginning January 1, 2019; and not less than \$13.00 per hour  
25 beginning January 1, 2020. Pursuant to Labor Code section 1197, payment of a wage less than the  
26 minimum wage as delineated by the commission is unlawful.

27 55. Pursuant to the applicable IWC Wage Order 5-2001, section 3(A) and Labor Code  
28 sections 200, 500, 510, and 1198, Defendants were required to compensate BERNABE for all

1 overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked  
2 in excess of eight (8) hours in one workday and forty (40) hours in any one workweek, and for the  
3 first eight (8) hours on the seventh consecutive workday in any one workweek; with double (2) time  
4 after eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

5         56. Defendants hired BERNABE as a salaried Program Administrator on or about  
6 February 10, 2020. BERNABE worked over 50 hours per week. However, during her first month  
7 of employment, Defendants gave BERNABE almost exclusively non-exempt Direct Support  
8 Professional duties working directly with Defendants' clients at facilities because Defendants  
9 initially declined to provide BERNABE Program Administrator duties until she completed a 40-  
10 hour RBT course and obtain certification. As a result, BERNABE was a non-exempt employee who  
11 worked many overtime hours without receiving any wages at all for the work, much less minimum  
12 wage or overtime rate wages.

13         57. Accordingly, BERNABE is entitled to recover the amount of their unpaid wages,  
14 liquidated damages equal to the unpaid minimum wages, interest, penalties, attorney fees, and costs  
15 pursuant to Labor Code sections 204, 210, 215, 510, 558, 1194, 1194.2, 1194.3, 1197.1, 2699, Civil  
16 Code section 3289, and the IWC Wage Orders. Defendants are further subject to criminal penalties  
17 pursuant to Labor Code sections 215 and 1199.

#### 18                                   **FOURTH CAUSE OF ACTION**

#### 19                   **(Failure to Provide Compliant Wage Statements and Keep Records – LC § 226)**

#### 20                                   **(Against all Defendants)**

21         58. BERNABE re-alleges and incorporates herein by reference all paragraphs outside  
22 this section as though fully set forth herein.

23         59. Labor Code section 226(a) states in pertinent part, as follows: “[a]n employer,  
24 semimonthly or at the time of each payment of wages, shall furnish to his or her employee ... an  
25 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by  
26 the employee ..., (5) net wages earned ..., and (9) all applicable hourly rates in effect during the  
27 pay period and the corresponding number of hours worked at each hourly rate by the employee...”  
28 Labor Code section 226(a) also requires employers to keep a copy of the wage statements. Labor

1 Code section 246 requires employers to include the amount of paid sick leave available in the wage  
2 statement or in a separate writing on pay dates. Labor Code section 226(e) provides that, “[a]n  
3 employee suffering injury as a result of a knowing and intentional failure by an employer to comply  
4 with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for  
5 the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for  
6 each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand  
7 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.”

8 60. Defendants failed to provide BERNABE compliant wage statements at the time  
9 wages were paid or semimonthly. The wage statements Defendants provided to BERNABE were  
10 inaccurate and noncompliant due to Defendants’ unlawful policies and practices including, but not  
11 limited to, not paying all earned wages for all hours worked at the applicable hourly rates such as  
12 minimum wage or overtime rates, not tracking and paying all hours worked; and not indicating gross  
13 earned wages, all applicable hourly rates and corresponding number of hours worked, and accrued  
14 paid sick leave hours among other inadequacies in the wage statements. BERNABE is informed  
15 and believes that Defendants may not have even had a compliant paid sick leave policy and practice,  
16 in violation of Labor Code section 246 et al. BERNABE is also informed and believes that  
17 Defendants failed to maintain the records required by Labor Code sections 226, 1174, and the IWC  
18 Wage Orders, section 7.

19 61. Accordingly, Defendants are liable to BERNABE for damages, interest, penalties,  
20 attorneys’ fees, and costs pursuant to Labor Code sections 226, 226.3, 2699, and the IWC Wage  
21 Orders.

22 **FIFTH CAUSE OF ACTION**  
23 **(Waiting Time Penalties – LC § 203)**  
24 **(Against all Defendants)**

25 62. BERNABE re-alleges and incorporates herein by reference all paragraphs outside  
26 this section as though fully set forth herein.

27 63. Pursuant to Labor Code section 203(a), “[i]f an employer willfully fails to pay any  
28 wages of an employee who is discharged or who quits, the wages of the employee shall continue as

1 a penalty from the due date thereof at the same rate until paid or until an action therefor is  
2 commenced; but the wages shall not continue for more than 30 days.” Labor Code section 201  
3 requires that, “[i]f an employer discharges and employee, the wages earned and unpaid at the time  
4 of discharge are due and payable immediately.”

5 64. Defendants terminated BERNABE on or about April 16, 2020.

6 65. On April 16, 2020, Defendants were obligated to pay BERNABE all of her earned  
7 and unpaid wages, immediately at the time of termination. Defendants did not pay BERNABE all  
8 of the earned unpaid wages. After Defendants terminated BERNABE, she had to repeatedly ask  
9 Defendants for unpaid earned wages. Approximately one month after Defendants terminated  
10 BERNABE, Defendants finally paid her unpaid wages from an unpaid weekend of working on call  
11 for Defendants.

12 66. Defendants still have not paid BERNABE at least minimum wage for all hours  
13 worked, and overtime rate wages for overtime worked which BERNABE earned while performing  
14 almost exclusively non-exempt Direct Support Professional duties during approximately her first  
15 month of employment for Defendants before Defendants assigned BERNABE Program  
16 Administrator duties. Defendants committed the acts stated herein knowingly and willfully

17 67. More than 30 days have passed since BERNABE’s employment ended, and  
18 Defendants continue to fail to pay these earned unpaid wages.

19 68. Accordingly, BERNABE is entitled to receive from 30 days of her daily wage rate  
20 from Defendants as a waiting time penalty, interest, penalties, attorneys’ fees, and costs pursuant to  
21 Labor Code sections 201, 203, 204, 210, 215, 510, 558, 1194, 1194.2, 1194.3, 1197.1, 2699, Civil  
22 Code section 3289, and the IWC Wage Orders.

23 **SIXTH CAUSE OF ACTION**

24 **(Failure to Indemnify Business Expenses – LC § 2802)**

25 **(Against all Defendants)**

26 69. BERNABE re-alleges and incorporates herein by reference all paragraphs outside  
27 this section as though fully set forth herein.

28 70. Pursuant to California Labor Code section 2802(a), “[a]n employer shall indemnify

1 his or her employee for all necessary expenditures or losses incurred by the employee in direct  
2 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the  
3 employer, even though unlawful, unless the employee, at the time of obeying the directions, believed  
4 them to be unlawful.”

5 71. Defendants violated Labor Code section 2802 by requiring BERNABE to drive her  
6 own car between Defendants’ facilities without reimbursing her for all mileage expenses, including  
7 from April 16, 2020, when Defendants required BERNABE to drive from one of Defendants’  
8 facilities in the middle of a workday to Defendants’ other location for Defendants to terminate  
9 BERNABE.

10 72. Accordingly, BERNABE seeks damages, interest, penalties, attorney fees, and costs  
11 available pursuant to the Labor Code section 2802 and Civil Code section 3289.

12 **SEVENTH CAUSE OF ACTION**  
13 **(Unfair Business Practices – BPC § 17200)**  
14 **(Against all Defendants)**

15 73. BERNABE re-alleges and incorporates herein by reference all paragraphs outside  
16 this section as though fully set forth herein.

17 74. The acts, omissions, and practices of Defendants as alleged throughout this  
18 Complaint for violations of the Labor Code constitute unlawful and unfair business acts and  
19 practices within the meaning of sections 17200, et seq. of the California Business & Professions  
20 Code.

21 75. BERNABE is informed and believes Defendants have engaged in “unlawful”  
22 business acts and practices with their employees, through Defendants’ failure to pay at least  
23 minimum wage for all hours worked to non-exempt employees, failure to pay overtime at applicable  
24 rates to non-exempt employees, failure to pay wages timely, failure to provide meal or rest periods  
25 to non-exempt employees, failure to pay a one hour wage premium for each workday with a missed  
26 meal period and for each workday with a missed rest period, failure to indemnify business expenses,  
27 failure to provide compliant paystubs and keep records, failure to pay all earned unpaid wages due  
28 when employment ends, failure to pay accrued waiting time penalties, etc. These failures are all in

1 violation of the statutes and regulations referenced throughout this Complaint.

2         76. Defendants “unfair” business acts and practices, alleged above, caused harm to  
3 Plaintiffs which outweighs the utility of such conduct. Such conduct offends public policy, is  
4 unethical and dishonest, caused and continues to cause substantial injury to BERNABE and  
5 Defendants’ other current and former employees, and provides Defendants with an unfair  
6 competitive advantage over those employers that abide by the law, properly pay earned wages,  
7 properly provide required meal and rest periods or premiums in lieu thereof, properly provide  
8 compliant wage statements, properly keep compliant records, and properly indemnify employees  
9 for all necessary expenditures and losses incurred during the course of employment.

10         77. As a result of the conduct described above, Defendants have been and will be  
11 unjustly enriched at the expense of Plaintiffs. Specifically, Defendants have been unjustly enriched  
12 by the retention of a significant sum of dollars in wages earned and wrongfully withheld from  
13 Plaintiffs.

14         78. Pursuant to section 17203 of the California Business & Professions Code,  
15 BERNABE requests that this Court order Defendants to disgorge all ill-gotten gains and award  
16 BERNABE and Plaintiffs full restitution of all monies wrongfully acquired by Defendants by such  
17 “unfair” business act and practices as outlined herein above, plus interest and attorneys’ fees  
18 pursuant to, *inter alia*, section 1021.5 of the California Code of Civil Procedure. BERNABE  
19 additionally request that such funds be impounded by the Court or that an asset freeze or constructive  
20 trust be imposed upon such revenues and profits to avoid dissipation or fraudulent transfers or  
21 concealment of such monies by Defendants. BERNABE may be irreparably harmed or denied an  
22 effective and complete remedy if such an order is not granted.

23         79. Pursuant to section 17203 of the California Business & Professions Code,  
24 BERNABE further seeks an order of this Court for equitable or injunctive relief in the form of  
25 requiring Defendants to correct their unfair business acts and practices by way of properly paying  
26 all earned wages timely; providing meal and rest periods when required by law; paying one hour of  
27 additional wages as a premium for every workday with an unlawfully missed meal period and every  
28 workday with a missed rest period; refrain from unlawful collection, deduction, and taking of

1 employees' wages including tips, and indemnifying employees for all business expenses.

2 80. Accordingly, BERNABE seeks injunctive relief, restitution, damages, interest,  
3 penalties, attorney fees, and costs available pursuant to the Labor Code, Business & Professions  
4 Code, and IWC Wage Orders.

5 **EIGHTH CAUSE OF ACTION**

6 **(Retaliation – LC § 98.6)**

7 **(Against all Defendants)**

8 81. BERNABE re-alleges and incorporates herein by reference all paragraphs outside  
9 this section as though fully set forth herein.

10 82. Labor Code section 98.6(a) states that, “[a] person shall not discharge an employee  
11 or in any manner discriminate, retaliate, or take any adverse action against any employee or  
12 applicant for employment ... because of the exercise by the employee or applicant for employment  
13 on behalf of himself, herself, or others of any rights afforded to him or her.”

14 83. Pursuant to Labor Code section 230.8(a)(1), “[a]n employer who employs 25 or  
15 more employees working at the same locations shall not discharge or in any way discriminate against  
16 an employee who is a parent... for taking off up to 40 hours each year, for the purposes of either of  
17 the following child-related activities:... (B) To address a child care provider or school emergency,  
18 if the employee gives notice to the employer.”

19 84. Here, BERNABE had a legal right to take up to 40 hours of work off to address her  
20 special needs daughter's child care because in March 2020, Governor Newsom issued COVID-19  
21 pandemic orders closing BERNABE's daughter's school and after school programs. Governor  
22 Newsom's COVID-19 orders created childcare provider and school emergencies for BERNABE,  
23 who had no spouse or anyone else readily available to assist in watching her special needs daughter  
24 at all times. Further, Defendants were aware of BERNABE's daughter's special needs and knew or  
25 reasonably should have known that California law provided BERNABE a right to take time off to  
26 address the COVID-19 emergency.

27 85. On or about April 13, 2020, BERNABE exercised her right to take time off of work  
28 to address her daughter's child care provider and school emergency by emailing Defendants a

1 request to stay at home with her daughter because she no longer had anyone to care for her daughter  
2 while BERNABE was at work. Defendants denied BERNABE's request and BERNABE continued  
3 going to work as normal because she feared Defendants would retaliate or terminate her.

4 86. On or about April 16, 2020, three days after BERNABE attempted to exercise her  
5 legal right to take time off of work, Defendants terminated BERNABE. BERNABE is informed  
6 and believes that Defendants terminated BERNABE in retaliation because she exercised a legal right  
7 to take time off to address her special needs daughter's COVID-19 child care program and school  
8 emergencies.

9 87. As a direct, foreseeable and proximate result of Defendants' wrongful acts,  
10 BERNABE has lost earnings, and suffered expected severe humiliation, embarrassment, mental and  
11 emotional distress, and discomfort, all to her detriment, in an amount to be established according to  
12 proof at trial.

13 88. BERNABE is informed and believes that in taking the actions alleged herein,  
14 Defendants acted with malice, fraud and oppression, and in reckless disregard of BERNABE's rights  
15 to take time away from working at Defendants' facilities to address child care for her special needs  
16 daughter caused by Governor Newsom's COVID-19 shut down orders creating child care and school  
17 emergencies.

18 89. Accordingly, BERNABE seeks reinstatement, other injunctive relief, declaratory  
19 relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be  
20 proven at trial.

21 **NINTH CAUSE OF ACTION**

22 **(Retaliation – LC § 1102.5)**

23 **(Against all Defendants)**

24 90. BERNABE re-alleges and incorporates herein by reference all paragraphs outside  
25 this section as though fully set forth herein.

26 91. Labor Code section 1102.5(b) mandates that, "[a]n employer, or any person acting  
27 on behalf of the employer, shall not retaliate against an employee for disclosing information, or  
28 because the employer believes that the employee disclosed or may disclose information, to a

1 government or law enforcement agency, to a person with authority over the employee or another  
2 employee who has authority to investigate, discover, or correct the violation of noncompliance... if  
3 the employee has reasonable cause to believe that the information discloses a violation of state or  
4 federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation...”

5 92. Pursuant to Labor Code section 230.8(a)(1), “[a]n employer who employs 25 or  
6 more employees working at the same locations shall not discharge or in any way discriminate against  
7 an employee who is a parent... for taking off up to 40 hours each year, for the purposes of either of  
8 the following child-related activities:... (B) To address a child care provider or school emergency,  
9 if the employee gives notice to the employer.”

10 93. Here, BERNABE had a legal right to take up to 40 hours of work off to address her  
11 special needs daughter’s child care because in March 2020, Governor Newsom issued COVID-19  
12 pandemic orders closing BERNABE’s daughter’s school and after school programs. Governor  
13 Newsom’s COVID-19 orders created childcare provider and school emergencies for BERNABE,  
14 who had no spouse or anyone else readily available to assist in watching her special needs daughter  
15 at all times. Further, Defendants were aware of BERNABE’s daughter’s special needs and knew or  
16 reasonably should have known that California law provided BERNABE a right to take time off to  
17 address the COVID-19 emergency.

18 94. On or about April 13, 2020, BERNABE exercised her right to take time off of work  
19 to address her daughter’s child care provider and school emergency by emailing Defendants a  
20 request to stay at home with her daughter because she no longer had anyone to care for her daughter  
21 while BERNABE was at work. Defendants denied BERNABE’s request and BERNABE continued  
22 going to work as normal because she feared Defendants would retaliate or terminate her.

23 95. On or about April 16, 2020, three days after BERNABE attempted to exercise her  
24 legal right to take time off of work, Defendants terminated BERNABE. BERNABE is informed  
25 and believes that Defendants terminated BERNABE in retaliation because Defendants believed that  
26 BERNABE might disclose Defendants’ violation of the law to a government agency or someone  
27 with authority to investigate, discover, or correct Defendants’ noncompliance.

28 96. As a direct, foreseeable and proximate result of Defendants’ wrongful acts,

1 BERNABE has lost earnings, and suffered expected severe humiliation, embarrassment, mental and  
2 emotional distress, and discomfort, all to her detriment, in an amount to be established according to  
3 proof at trial.

4 97. BERNABE is informed and believes that in taking the actions alleged herein,  
5 Defendants acted with malice, fraud and oppression, and in reckless disregard of BERNABE's rights  
6 to disclose information, to people with remedying authority, about Defendants' noncompliance with  
7 laws granting BERNABE a legal right to take time away from working at Defendants' facilities to  
8 address her special needs daughter's child care and school emergencies caused by Governor  
9 Newsom's COVID-19 shut down orders.

10 98. Accordingly, BERNABE seeks reinstatement, other injunctive relief, declaratory  
11 relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be  
12 proven at trial.

13 **TENTH CAUSE OF ACTION**

14 **(Disability-Based Association Discrimination – GC § 12940)**

15 **(Against all Defendants)**

16 99. BERNABE re-alleges and incorporates herein by reference all paragraphs outside  
17 this section as though fully set forth herein.

18 100. Government Code section 12940(a) provides that it is unlawful for an employer to  
19 refuse to hire or employ any person or refuse to select any person for a training program leading to  
20 employment, or discharge a person from employment or from a training program leading to  
21 employment, or discriminate against any person in compensation or in terms, conditions, or  
22 privileges of employment on the basis of a disability. Pursuant to Gov. Code section 12926(o),  
23 disability "includes a perception that the person has any of those characteristics or that the person is  
24 associated with a person who has, or is perceived to have, any of those characteristics."

25 101. BERNABE informed Defendants in the interviewing process that she had a 13-year-  
26 old special needs daughter who went to boys and girls club right after school and could not be left  
27 alone because she suffered a disability from childhood trauma before BERNABE began working  
28 for Defendants on or about February 10, 2020. At other times, BERNABE made Defendants well

1 aware of her daughter's special needs disability and that BERNABE was an unmarried single  
2 mother.

3 102. In or around March 2020, the COVID-19 pandemic expanded in the United States  
4 and California's Governor, Gavin Newsom, ordered the closures of non-essential businesses,  
5 schools, afterschool programs, etc., including BERNABE's daughter's school and afterschool  
6 programs, which normally provided the substantial majority of her care until BERNABE got off of  
7 work during the weekdays.

8 103. On or about April 13, 2020, BERNABE emailed Defendants that she needed to stay  
9 at home with her daughter because she would have nobody to watch her daughter while she is at  
10 work at Defendants' facilities and asked Defendants if they could work something out where  
11 BERNABE worked from home. Defendants denied BERNABE's request.

12 104. BERNABE returned to work at Defendants' facilities the next day because she felt  
13 terrified that Defendants might terminate her, and she believed she could still go to work at  
14 Defendants' facilities and perform all of her duties competently without any accommodation.

15 105. On or about April 16, 2020, Defendants terminated BERNABE. BERNABE is  
16 informed and believes that BERNABE's association with her daughter, who has a special needs  
17 disability, was a substantial factor in Defendants' decision to terminate Bernabe, which is unlawful  
18 discrimination.

19 106. As a direct, foreseeable and proximate result of Defendants' wrongful acts,  
20 BERNABE has lost earnings, and suffered expected severe humiliation, embarrassment, mental and  
21 emotional distress, and discomfort, all to her detriment, in an amount to be established according to  
22 proof at trial.

23 107. BERNABE is informed and believes that in taking the actions alleged herein,  
24 Defendants acted with malice, fraud and oppression, and in reckless disregard of BERNABE's rights  
25 to associate with her daughter who has a special needs disability from childhood trauma and  
26 continue working for Defendants without an accommodation for her daughter's disability. Further

27 108. Accordingly, BERNABE seeks reinstatement, other injunctive relief, declaratory  
28 relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be

1 proven at trial.

2 **ELEVENTH CAUSE OF ACTION**  
3 **(Gender Discrimination – GC § 12940)**  
4 **(Against all Defendants)**

5 109. BERNABE re-alleges and incorporates herein by reference all paragraphs outside  
6 this section as though fully set forth herein.

7 110. Government Code section 12940(a) provides that it is unlawful for an employer to  
8 refuse to hire or employ any person or refuse to select any person for a training program leading to  
9 employment, or discharge a person from employment or from a training program leading to  
10 employment, or discriminate against any person in compensation or in terms, conditions, or  
11 privileges of employment on the basis of gender.

12 111. BERNABE informed Defendants in the interviewing process that she had a 13-year-  
13 old special needs daughter who went to boys and girls club right after school and could not be left  
14 alone because she suffered a disability from childhood trauma before BERNABE began working  
15 for Defendants on or about February 10, 2020. At other times, BERNABE made Defendants well  
16 aware of her daughter's special needs disability and that BERNABE was an unmarried single  
17 mother.

18 112. In or around March 2020, the COVID-19 pandemic expanded in the United States  
19 and California's Governor, Gavin Newsom, ordered the closures of non-essential businesses,  
20 schools, afterschool programs, etc., including BERNABE's daughter's school and afterschool  
21 programs, which normally provided the substantial majority of her care until BERNABE got off of  
22 work during the weekdays.

23 113. On or about April 13, 2020, BERNABE emailed Defendants that she needed to stay  
24 at home with her daughter because she would have nobody to watch her daughter while she is at  
25 work at Defendants' facilities and asked Defendants if they could work something out where  
26 BERNABE worked from home. Defendants denied BERNABE's request.

27 114. BERNABE returned to work at Defendants' facilities the next day because she felt  
28 terrified that Defendants might terminate her, and she believed she could still go to work at

1 Defendants' facilities and perform all of her duties competently without any accommodation.

2 115. On or about April 16, 2020, Defendants terminated BERNABE. BERNABE is  
3 informed and believes that BERNABE's gender as a woman, was a substantial factor in Defendants'  
4 decision to terminate Bernabe, because Defendants made a stereotypical assumption that a woman  
5 would not be able to perform all of her job duties competently while managing child care for a son  
6 or daughter who is unable to receive child care at school and after school programs during Governor  
7 Newsom's COVID-19 shutdown orders.

8 116. As a direct, foreseeable and proximate result of Defendants' wrongful acts,  
9 BERNABE has lost earnings, and suffered expected severe humiliation, embarrassment, mental and  
10 emotional distress, and discomfort, all to her detriment, in an amount to be established according to  
11 proof at trial.

12 117. BERNABE is informed and believes that in taking the actions alleged herein,  
13 Defendants acted with malice, fraud and oppression, and in reckless disregard of BERNABE's rights  
14 to work for Defendants as a female parent without an accommodation during the pendency of  
15 California's COVID-19 shutdown orders which closed BERNABE's daughter's school and after  
16 school programs. BERNABE is further informed and believes that Defendants would not have  
17 terminated BERNABE under the same COVID-19 child care circumstances if she were a male  
18 parent.

19 118. Accordingly, BERNABE seeks reinstatement, other injunctive relief, declaratory  
20 relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be  
21 proven at trial.

## 22 **TWELFTH CAUSE OF ACTION**

### 23 **(Marital Status Discrimination – GC § 12940)**

#### 24 **(Against all Defendants)**

25 119. BERNABE re-alleges and incorporates herein by reference all paragraphs outside  
26 this section as though fully set forth herein.

27 120. Government Code section 12940(a) provides that it is unlawful for an employer to  
28 refuse to hire or employ any person or refuse to select any person for a training program leading to

1 employment, or discharge a person from employment or from a training program leading to  
2 employment, or discriminate against any person in compensation or in terms, conditions, or  
3 privileges of employment on the basis of marital status.

4 121. BERNABE informed Defendants in the interviewing process that she had a 13-year-  
5 old special needs daughter who went to boys and girls club right after school and could not be left  
6 alone because she suffered a disability from childhood trauma before BERNABE began working  
7 for Defendants on or about February 10, 2020. At other times, BERNABE made Defendants well  
8 aware of her daughter's special needs disability and that BERNABE was an unmarried single  
9 mother.

10 122. In or around March 2020, the COVID-19 pandemic expanded in the United States  
11 and California's Governor, Gavin Newsom, ordered the closures of non-essential businesses,  
12 schools, afterschool programs, etc., including BERNABE's daughter's school and afterschool  
13 programs, which normally provided the substantial majority of her care until BERNABE got off of  
14 work during the weekdays.

15 123. On or about April 13, 2020, BERNABE emailed Defendants that she needed to stay  
16 at home with her daughter because she would have nobody to watch her daughter while she is at  
17 work at Defendants' facilities and asked Defendants if they could work something out where  
18 BERNABE worked from home. Defendants denied BERNABE's request.

19 124. BERNABE returned to work at Defendants' facilities the next day because she felt  
20 terrified that Defendants might terminate her, and she believed she could still go to work at  
21 Defendants' facilities and perform all of her duties competently without any accommodation.

22 125. On or about April 16, 2020, Defendants terminated BERNABE. BERNABE is  
23 informed and believes that BERNABE's marital status as an unmarried woman with a child was a  
24 substantial factor in Defendants' decision to terminate Bernabe because Defendants made a  
25 stereotypical assumption that an unmarried single mother would not be able to perform all of her  
26 job duties competently while managing child care for a son or daughter who is unable to receive  
27 child care at school and after school programs during Governor Newsom's COVID-19 shutdown  
28 orders.

126. As a direct, foreseeable and proximate result of Defendants' wrongful acts, BERNABE has lost earnings, and suffered expected severe humiliation, embarrassment, mental and emotional distress, and discomfort, all to her detriment, in an amount to be established according to proof at trial.

127. BERNABE is informed and believes that in taking the actions alleged herein, Defendants acted with malice, fraud and oppression, and in reckless disregard of BERNABE's rights to work for Defendants as a single unmarried parent without an accommodation during the pendency of California's COVID-19 shutdown orders which closed BERNABE's daughter's school and after school programs. BERNABE is further informed and believes that Defendants would not have terminated BERNABE under the same COVID-19 emergency child care circumstances if she were married to a spouse who could share child care duties.

128. Accordingly, BERNABE seeks reinstatement, other injunctive relief, declaratory relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be proven at trial.

**THIRTEENTH CAUSE OF ACTION**  
**(Wrongful Termination in Violation of Public Policy)**  
**(Against all Defendants)**

129. BERNABE re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

130. Government Code section 12940(a) provides that it is unlawful for an employer to refuse to hire or employ any person or refuse to select any person for a training program leading to employment, or discharge a person from employment or from a training program leading to employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment on the basis of disability-based association, gender, and marital status.

131. Labor Code section 98.6(a) provides that, “[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment ... because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded to him or her.” Pursuant

1 to Labor Code section 230.8(a)(1), “[a]n employer who employs 25 or more employees working at  
2 the same locations shall not discharge or in any way discriminate against an employee who is a  
3 parent... for taking off up to 40 hours each year, for the purposes of either of the following child-  
4 related activities:... (B) To address a child care provider or school emergency, if the employee gives  
5 notice to the employer.”

6 132. Beginning April 1, 2020, for the nationwide COVID-19 emergency, 29 USC section  
7 2620 provided employees a right to take paid leave “to care for the son or daughter under 18 years  
8 of age of such employee if the school or place of care has been closed, or the child care provider of  
9 such son or daughter is unavailable, due to a public health emergency.” 29 USC 2615 provides that,  
10 “[i]t shall be unlawful for any employer to interfere with, restrain, or deny the exercise or the attempt  
11 to exercise, any right provided under this subchapter.

12 133. Labor Code section 1102.5(b) provides that, “[a]n employer, or any person acting  
13 on behalf of the employer, shall not retaliate against an employee for disclosing information, or  
14 because the employer believes that the employee disclosed or may disclose information, to a  
15 government or law enforcement agency, to a person with authority over the employee or another  
16 employee who has authority to investigate, discover, or correct the violation of noncompliance... if  
17 the employee has reasonable cause to believe that the information discloses a violation of state or  
18 federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation...”

19 134. The above listed statutes establish public policies against employee discrimination  
20 based on disability-based association, gender, and marital status; public policies against employee  
21 retaliation for requesting time off to address a child care emergency during the COVID-19 public  
22 health emergency; and public policies against employee retaliation relating to disclosing  
23 information about an employers’ non-compliance with the law.

24 135. As described throughout this complaint, BERNABE is informed and believes that  
25 these unlawful reasons were all substantial factors in Defendants’ decision to terminate BERNABE  
26 despite her ability to competently perform her job duties even without an accommodation.

27 136. As a direct, foreseeable and proximate result of Defendants’ wrongful acts,  
28 BERNABE has lost earnings, and suffered expected severe humiliation, embarrassment, mental and

1 emotional distress, and discomfort, all to her detriment, in an amount to be established according to  
2 proof at trial.

3 137. BERNABE is informed and believes that in taking the actions alleged herein,  
4 Defendants acted with malice, fraud and oppression, and in reckless disregard of BERNABE's  
5 various legal rights identified above in this thirteenth cause of action.

6 138. Accordingly, BERNABE seeks reinstatement, other injunctive relief, declaratory  
7 relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be  
8 proven at trial.

9 **PRAYER**

10 WHEREFORE, Plaintiff prays for judgment against Defendants in an amount exceeding  
11 \$25,000 as follows:

- 12 1. For civil penalties in an amount to be proven at trial
- 13 2. For compensatory damages in an amount to be proven at trial;
- 14 3. For punitive damages in an amount to be proven at trial;
- 15 4. For liquidated damages in an amount to be proven at trial;
- 16 5. For penalties in an amount to be proven at trial;
- 17 6. For attorney fees in an amount to be proven at trial;
- 18 7. For costs of suit in an amount to be proven at trial;
- 19 8. For interest;
- 20 9. For restitution;
- 21 10. For reinstatement;
- 22 11. For injunctive relief;
- 23 12. For declaratory relief; and
- 24 13. For such other and further and relief as the court may deem just and proper.

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Date: 01/06/2021

Respectfully submitted,

  
\_\_\_\_\_  
Jason Whooper (SBN 279972)  
W LAW  
Counsel for Maria Bernabe

**EXHIBIT 1**

October 13, 2020

**UPLOADED VIA DIR WEBSITE**

Department of Industrial Relations  
Accounting Unit  
455 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, CA 94102  
dir.ca.gov

**W LAW**  
1916 3<sup>rd</sup> Ave  
San Diego, CA 92101  
Tel: (619) 432-2836  
Fax: (619) 717-2111  
Email: info@wlawinc.com

**Re: *MARIA BERNABE v. MERAKEY ALLOS; and DOES 1-100, inclusive***

To Whom It May Concern:

I, Jason Whooper, represent MARIA BERNABE (hereinafter also referred to as “BERNABE” or “Plaintiff”), individually and on behalf of all other similarly aggrieved employees (hereinafter also referred to jointly as “Plaintiffs” or “Plaintiff and other aggrieved employees”), who are either former or current employees of MERAKEY ALLOS; and DOES 1-100, inclusive (all of whom are also, hereinafter sometimes referred to collectively as “Defendants”).

Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendants’ various Labor Code violations and our intent to recover statutory penalties under the Labor Code’s Private Attorney General Act of 2004. A copy of this letter is also being sent to the Defendants. A check covering the required fee is being mailed to the Department of Industrial Relations, Accounting Unit, 455 Golden Gate Ave., 10<sup>th</sup> Floor, San Francisco, CA 94102.

**GENERAL ALLEGATIONS**

With a staff of over 10,000 nationwide, Defendants’ operate an organization that provides developmental, behavioral health, and educational services in several states and counties throughout the United States, including San Diego County, California. Defendants hired BERNABE as a salaried Program Administrator to work at Defendants’ various locations on or about February 10, 2020. BERNABE is informed and believes that Defendants employed many other aggrieved employees in California who may also be victims of the same unlawful conduct outlined below which Defendants perpetrated against BERNABE.

BERNABE informed Defendants in the interviewing process that she had a 13-year-old special needs daughter who went to boys and girls club right after school and could not be left alone because she suffered a disability from childhood trauma. At other times, BERNABE made Defendants well aware of her daughter’s special needs and that BERNABE was an unmarried single mother.

Defendants purportedly classified BERNABE as an exempt employee and paid her a salary while BERNABE typically worked over 50 hours per week during the workdays Monday through Friday, without including work on the weekends. However, for approximately the first month which BERNABE worked for Defendants the substantial majority, if not all, of duties Defendants instructed BERNABE to perform were non-exempt Direct Support Professional duties working

directly with clients at Defendants' facilities because Defendants refused to train BERNABE on Program Administrator duties or put her in charge of a facility until BERNABE complete a 40-hour Registered Behavior Technician ("RBT") course and obtain the certification.

As a result, BERNABE worked many hours for Defendants as a non-exempt employee without receiving timely pay of at least minimum wage or overtime rates for many hours exceeding 8 hours in a workday or 40 hours in a workweek.

On or about March 6, 2020, Defendants changed their minds about the RBT certification and assigned BERNABE standard Program Administrator duties including, but not limited to, command or charge of Defendants' facility without ever having provided BERNABE the Program Administrator training. Even while taking on the new Program Administrator duties, BERNABE still continued to perform a substantial amount of Direct Support Professional duties.

Defendants' Program Administrator pay policies and practices required Defendants to pay BERNABE an additional \$150 every weekend which BERNABE had to remain on call for Defendants' facilities, and to pay BERNABE an additional \$22 per hour for the hours she actually worked while on call. Defendants regularly assigned Plaintiff on call during weekends, which required her to perform actual work for Defendants including, but not limited to, going into facilities to deal with various issues, clients, and covering for staff.

Defendants also required BERNABE to drive her own car between Defendants' facilities and offices without reimbursing her for all mileage expenses, including on the day when Defendants required BERNABE to drive from one of Defendants' facilities after working several hours that day to Defendants' offices at another location to terminate BERNABE.

In or around March 2020, the COVID-19 pandemic expanded in the United States and California's Governor, Gavin Newsom, ordered the closures of non-essential businesses, schools, afterschool programs, etc., including BERNABE's daughter's school and afterschool program which normally provided the substantial majority of her care until BERNABE got off of work during the weekdays.

On or about April 13, 2020, BERNABE emailed her supervisor, Alisa Dean ("Dean"), Defendants' Regional Executive Director, informing Dean that BERNABE needed to stay at home with her daughter because she would have nobody to watch her daughter while she is at work at Defendants' facilities and asking Dean if they could work something out where BERNABE worked from home. BERNABE believed that she could competently perform all if not substantially all of her Program Administrator duties remotely from home. Dean replied, "With current circumstances and the nature of our services we are not able to permit employees to work from home as our DSPs and Admin staff are both needed for support in our homes."

BERNABE returned to work at Defendants' facilities the next day because she felt terrified that Defendants might terminate her, and she believed she could still go to work at Defendants' facilities and perform all of her duties without any accommodation.

On April 16, 2020, in the middle of a workday, Defendants instructed BERNABE to drive from Defendants' facility to Defendants' offices at another location for a meeting without advanced notice. Defendants terminated BERNABE and told her it was because she poorly wrote

incident reports (despite never Defendants never training BERNABE to write Defendants incident reports).

BERNABE is informed and believes that Defendants' stated reason for the termination was pretext, and that the true reasons Defendants terminated BERNABE was because BERNABE attempted to exercise her right to miss work to address a childcare provider or school emergency caused by the COVID-19 pandemic; Defendants believed that BERNABE might disclose information about Defendants' unlawful policies and practices to a government agency or someone who has the authority to correct Defendants' noncompliance with laws that provided BERNABE the right to take leave; Defendants had a gender discriminatory animus based on a stereotypical assumption that women teleworking while caring for a child at home would not be able to effectively complete job tasks; Defendants had a marital status discriminatory animus based on a stereotypical assumption that BERNABE as a single parent would not be able to work as hard as married parents with help while managing childcare; and Defendants had a disability-based association discriminatory animus based on Defendants' fear that BERNABE would not be able to perform work satisfactorily while caring for a child with a disability from childhood trauma while schools and after school programs were closed from COVID-19 orders.

After Defendants terminated BERNABE, she had to repeatedly ask Defendants for unpaid earned wages. Approximately one month after Defendants terminated BERNABE, Defendants finally paid her unpaid wages from an unpaid weekend of working on call for Defendants.

Defendants still have not paid BERNABE at least minimum wage for all hours worked, and overtime rate wages for overtime worked which BERNABE earned while performing almost exclusively non-exempt Direct Support Professional duties during approximately her first month of employment for Defendants before Defendants assigned BERNABE Program Administrator duties. More than 30 days have passed since BERNABE's employment ended.

Defendants also failed to provide BERNABE compliant wage statements and maintain required records as a result of Defendants' unlawful pay policies and practices. Defendants wage statement and records non-compliance includes, but is not limited to, missing or inaccurate information about gross wages earned, all hours worked; meal periods taken if any; all applicable hourly rates and the corresponding number of hours worked at each hourly rate; and accrued paid sick leave. BERNABE is informed and believes that Defendants may not have even had a compliant paid sick leave policy and practice.

BERNABE is informed and believes that Plaintiffs are other aggrieved employees whom Defendants employed and who were victims of the same unlawful policies and practices which Defendants perpetrated against BERNABE as outlined above and throughout this Complaint.

Defendants violations were all knowing and willful in disregard of the Labor Code and Industrial Welfare Commission ("IWC") Wage Orders. Accordingly, Plaintiffs are entitled to recovery of civil penalties pursuant to various regulations and statutes including, but not limited to, IWC Wage Order 5-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections including, but not limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 210, 212, 215, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12,

1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al.

## **STATUTORY VIOLATIONS**

### **a. Failure to Pay Wages Including Minimum Wages Pursuant to California Labor Code Sections 1194, 1195, 1197, and 1197.1**

Pursuant to Labor Code section 200, “wages” includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard time, task, piece, commission basis, or other method of calculation. Pursuant to IWC Minimum Wage Order MW-2016, IWC Minimum Wage Order MW-2019, and Labor Code section 1182.12, every employer with 26 employees or more shall pay each employee wages not less than \$10.50 per hour beginning January 1, 2017; not less than \$11.00 per hour beginning January 1, 2018; not less than \$12.00 per hour beginning January 1, 2019; and not less than \$13.00 per hour beginning January 1, 2020. Pursuant to Labor Code section 1197, payment of a wage less than the minimum wage as delineated by the commission is unlawful.

Labor Code section 1197.1(a) specifically states, in part, as follows: “Any employer or other person acting either individually or as an officer, agent, or employee of another person who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, [and] liquidated damages payable to the employee...”

Plaintiffs were non-exempt employees and therefore, were entitled to receive at least minimum wage for every hour they worked for Defendants. However, Defendants failed to pay for all hours worked. For example, Defendants hired BERNABE as a salaried Program Administrator on or about February 10, 2020. BERNABE worked over 50 hours per week. However, during her first month of employment, Defendants gave BERNABE almost exclusively non-exempt Direct Support Professional duties working directly with Defendants’ clients at facilities because Defendants initially declined to provide BERNABE Program Administrator duties until she completed a 40-hour RBT course and obtain certification. As a result, BERNABE was a non-exempt employee who worked many overtime hours without receiving any wages at all for the work, much less minimum wage or overtime rate wages. BERNABE is informed and believes Defendants also failed to pay other Plaintiffs at least minimum wage for all hours worked.

Accordingly, Plaintiffs are entitled to recover the amount of their unpaid wages, liquidated damages equal to the unpaid minimum wages, interest, penalties, attorney fees, and costs pursuant to Labor Code sections 201, 202, 203, 204, 210, 215, 218.6, 558, 1194, 1194.2, 1194.3, 1197.1, 2699, Civil Code section 3289, and the IWC Wage Orders. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

### **b. Failure to Pay Overtime Wages Pursuant to California Labor Code Sections 510, 1194, and 1198**

Pursuant to the applicable IWC Wage Order 5-2001, section 3(A) and Labor Code sections 200, 500, 510, and 1198, Defendants were required to compensate Plaintiffs for all overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of

eight (8) hours in one workday and forty (40) hours in any one workweek, and for the first eight (8) hours on the seventh consecutive workday in any one workweek; with double (2) time after eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Labor Code section 558 states that, “(a) Any 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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages... (d) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

Further, under Labor Code section 1199, “[e]very employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following: (a) [r]equires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission...”

Here for example, Defendants hired BERNABE as a salaried Program Administrator on or about February 10, 2020. BERNABE worked over 50 hours per week. However, during her first month of employment, Defendants gave BERNABE almost exclusively non-exempt Direct Support Professional duties working directly with Defendants’ clients at facilities because Defendants initially declined to provide BERNABE Program Administrator duties until she completed a 40-hour RBT course and obtain certification. As a result, BERNABE was a non-exempt employee who worked many overtime hours without receiving any wages at all for the work, much less minimum wage or overtime rate wages. BERNABE is informed and believes Defendants also failed to pay other Plaintiffs earned overtime wages based similar and different unlawful overtime policies and practices.

As a direct result, Plaintiffs have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, costs and attorneys’ fees in seeking to compel Defendants to fully perform their obligations under state law, all to the detriment of Plaintiffs in amounts according to proof at the time of trial.

Accordingly, Plaintiffs are entitled to recover the amount of their unpaid wages, liquidated damages equal to the unpaid minimum wages, interest, penalties, attorney fees, and costs pursuant to Labor Code sections 201, 202, 203, 204, 210, 215, 218.6, 510, 558, 1194, 1194.2, 1194.3, 1197.1, 2699, Civil Code section 3289, and the IWC Wage Orders. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

**c. Failure to Provide Meal and Rest Periods or Pay Missed Meal and Rest Period Premiums Pursuant to California Labor Code Sections 226.7 and 512**

Pursuant to California Labor Code sections 226.7 and 512, and IWC Wage Order 4-2001, section 11, duty-free meal periods of no less than 30 minutes are required for all non-exempt

employees who work more than five (5) hours in a work period per workday, except that if the employee's total work period per workday is no more than six (6) hours, the meal period may be waived by mutual consent of the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per workday without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee, but only if the first meal period was not waived. Time records of meal breaks must be kept except that meal periods during which operations cease need not be recorded. However, an employer who fails to provide duty-free meal periods must pay the employee an additional one (1) hour of regular pay for each workday in which a required duty-free meal period is not provided.

Further, pursuant to California Labor Code section 226.7 and IWC Wage Order 5-2001, section 12, employers must also provide non-exempt employees a paid 10-minute duty-free rest period for every four (4) hours worked. Rest periods need not be recorded. An employer who fails to provide duty-free rest periods must pay the employee an additional one (1) hour of regular pay for each workday in which a duty-free rest period is not provided.

During BERNABE's first month of employment for Defendants, Defendants gave BERNABE almost exclusively non-exempt Direct Support Professional duties working directly with Defendants' clients at facilities because Defendants initially declined to provide BERNABE Program Administrator duties until she completed a 40-hour RBT course and obtain certification. As a result, BERNABE was a non-exempt employee, which obligated Defendants to record all of her hours worked, provide her meal and rest periods, and track all meal periods taken. However, Defendants failed to satisfy all of these obligations. BERNABE is informed and believes Defendants failed to provide Plaintiffs meal and rest periods and failed to record all meal periods taken.

Accordingly, Plaintiffs are entitled to recover damages, interest, penalties, attorneys' fees, and costs available pursuant to Labor Code sections 226.7, 512, 558, 2699, Civil Code section 3289, and the IWC Wage Orders. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

**d. Failure to Provide Compliant Wage Statements and Keep Records Pursuant to California Labor Code Section 226**

Labor Code section 226(a) states in pertinent part, as follows: "[a]n employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee ... an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee ..., (5) net wages earned ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee..." Labor Code section 226 also requires employers to keep a copy of the wage statements. Labor Code section 246 requires employers to include the amount of paid sick leave available in the wage statement or in a separate writing on pay dates.

Further, Labor Code section 226.3 states, in part, as follows: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)

per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

Defendants failed to provide Plaintiffs compliant wage statements at the time wages were paid or semimonthly. The wage statements Defendants provided to Plaintiffs were inaccurate and noncompliant due to Defendants’ unlawful policies and practices including, but not limited to, not paying all earned wages for all hours worked at the applicable hourly rates such as minimum wage or overtime rates, not tracking and paying all hours worked; and not indicating gross earned wages, all applicable hourly rates and corresponding number of hours worked, and accrued paid sick leave hours among other inadequacies in the wage statements. BERNABE is informed and believes that Defendants may not have even had a compliant paid sick leave policy and practice, in violation of Labor Code section 246 et al. BERNABE is also informed and believes that Defendants failed to maintain the records required by Labor Code sections 226, 1174, and the IWC Wage Orders, section 7.

As a result, pursuant to Labor Code section 226(e)(1), Plaintiffs are entitled to recover from Defendants, “the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.”

Accordingly, Defendants are liable to Plaintiffs for damages, interest, penalties, attorneys’ fees, and costs pursuant to Labor Code sections 226, 226.3, 2699, and the IWC Wage Orders.

**e. Failure to Maintain Time Records Pursuant to California Labor Code Section 1174**

Pursuant to Labor Code section 1174(d), Defendants had a legal obligation to “[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.”

Pursuant to IWC Wage Order 5-2001, section 7, Defendants are required to “keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. Meal periods, periods, split shift intervals and total daily hours worked shall also be recorded.

Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

Here Defendants hired BERNABE as a salaried Program Administrator on or about February 10, 2020. BERNABE worked over 50 hours per week. However, during her first month

of employment, Defendants gave BERNABE almost exclusively non-exempt Direct Support Professional duties working directly with Defendants' clients at facilities because Defendants initially declined to provide BERNABE Program Administrator duties until she completed a 40-hour RBT course and obtain certification. As a result, BERNABE was a non-exempt employee who worked many overtime hours without receiving any wages at all for the work, much less minimum wage or overtime rate wages. Further, BERNABE's non-exempt status obligated Defendants to record all of her hours worked and meal periods taken, and to provide her meal and rest periods, which Defendants failed to do. BERNABE is informed and believes Defendants failed to keep the required records for Plaintiffs. Therefore, Defendants violated Labor Code section 1174(d) by failing to collect and keep records indicating the daily hours worked and meal periods taken by Plaintiffs.

Accordingly, Defendants are liable for civil penalties, consequential damages, attorneys' fees, and costs pursuant to Labor Code sections 1174, 1174.5, 2699 et al.

**f. Failure to Timely Pay Wages Pursuant to California Labor Code Sections 204 and 210**

Pursuant to Labor Code section 204(a), "[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month."

Labor Code section 210 imposes liability for the violation of Labor Code section 204 calculated as, "[f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

Defendants routinely failed to pay Plaintiffs at least minimum wage for all hours worked and overtime rates when required as previously described. As a result, defendants failed to pay all earned wages timely on regular scheduled paydays after the close of each pay period as mandated by California law and described in the sections above.

Accordingly, Defendants are liable for penalties, damages, attorneys' fees, and costs pursuant to Labor Code sections 204, 210, 1194, 1197.1, 226.7, and 2699 et al.

**g. Failure to Timely Pay Wages Upon Separation Pursuant to Labor Code Sections 201, 202, 203, and 256 (Waiting Time Penalties)**

Pursuant to Labor Code sections 201 and 202, Plaintiffs were entitled to wages earned and unpaid at the time of discharge and no later than within 72 hours after their employment ended under any circumstances. Pursuant to Labor Code section 203(a), "[i]f an employer willfully fails to pay any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor

is commenced; but the wages shall not continue for more than 30 days.” Labor Code section 201 requires that, “[i]f an employer discharges and employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Further, pursuant to Labor Code section 256, employers are also liable for, “...a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

On April 16, 2020, Defendants were obligated to pay BERNABE all of her earned and unpaid wages described throughout this letter when Defendants gave BERNABE notice of her termination. Defendants did not pay BERNABE all of the earned unpaid wages described throughout this letter and BERNABE is informed and believes that other Plaintiffs also were not paid their earned and unpaid wages at the time when Defendants discharged them or within the maximum of 72 hours after their employment for Defendants ended. More than 30 days have passed, and Defendants continue to fail to pay these earned unpaid wages. Defendants committed the acts stated herein knowingly and willfully.

Accordingly, Plaintiffs are entitled to waiting time penalties, interest, penalties, attorneys’ fees, and costs provided by Labor Code sections 201, 202, 203, 256, and 2699.

**h. Failure to Indemnify Business Expenses Pursuant to Labor Code Section 2802**

Labor Code section 2802(a) states, as follows: “[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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Defendants violated Labor Code section 2802 by requiring BERNABE to drive her own car between Defendants’ facilities without reimbursing her for all mileage expenses, including from April 16, 2020, when Defendants required BERNABE to drive from one of Defendants’ facilities in the middle of a workday to Defendants’ other location for Defendants to terminate BERNABE. BERNABE is informed and believes that Defendants also failed to indemnify or compensate other Plaintiffs for expenses they incurred on behalf of Defendants because of Defendants unlawful practices implemented here with BERNABE.

Accordingly, Defendants are liable for damages, interest, penalties, attorneys’ fees, and costs pursuant to Labor Code sections 2802 and 2699.

**i. Individual Personal Liability Under California Labor Code Sections 558, 558.1, and 2699**

Labor Code section 558 states that, “[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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was

underpaid..." The Section goes on to state that, "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

Labor Code section 558.1(a) also states that, "[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Labor Code section 558.1(b) explains that, 'other person acting on behalf of an employer' is limited to a natural person who is an owner, director, officer, or managing agent of the employer..."

Defendants DOES 1-100, inclusive, were directors, officers, employees or agents of Defendant MERAKEY ALLOS. and at all times relevant herein were acting on behalf of Defendants MERAKEY ALLOS. All Defendants violated, or caused to be violated, Labor Code sections and IWC WAGE Orders including, but not limited to, those requiring payment of unpaid earned wages, payment of minimum wages for all hours worked, payment of overtime rates when applicable, and indemnification for Defendants' business expenses as alleged throughout this letter.

Accordingly, Plaintiffs are entitled to recovery of damages, interest, penalties, attorneys' fees, and costs as set forth in Labor Code sections 558.1, and 2699 et al from all defendants named as DOES 1-100 when their true names are discovered.

**j. Retaliation Pursuant to Labor Code Section 98.6 and 230.8**

Pursuant to Labor Code section 98.6(a), "[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment ... because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded to him or her."

Pursuant to Labor Code section 230.8(a)(1), "[a]n employer who employs 25 or more employees working at the same locations shall not discharge or in any way discriminate against an employee who is a parent... for taking off up to 40 hours each year, for the purposes of either of the following child-related activities:... (B) To address a child care provider or school emergency, if the employee gives notice to the employer.

Here, BERNABE had a legal right to take up to 40 hours of work off to address her special needs daughter's child care because in March 2020, Governor Newsom issued COVID-19 pandemic orders closing BERNABE's daughter's school and after school programs. Governor Newsom's COVID-19 orders created childcare provider and school emergencies for BERNABE, who had no spouse or anyone else readily available to assist in watching her special needs daughter at all times. Further, Defendants were aware of BERNABE's daughter's special needs and knew or reasonably should have known that California law provided BERNABE a right to take time off to address the COVID-19 emergency.

On or about April 13, 2020, BERNABE exercised her right to take time off of work to address her daughter's child care provider and school emergency by emailing Defendants a request to stay at home with her daughter because she no longer had anyone to care for her daughter while

BERNABE was at work. Defendants denied BERNABE's request and BERNABE continued going to work as normal because she feared Defendants would retaliate or terminate her.

On or about April 16, 2020, three days after BERNABE attempted to exercise her legal right to take time off of work, Defendants terminated BERNABE. BERNABE is informed and believes that Defendants terminated BERNABE in retaliation because she exercised a legal right to take time off to address her special needs daughter's COVID-19 child care program and school emergencies. BERNABE is informed and believes that Defendants also denied Plaintiffs' right to take up to 40 hours off to address COVID-19 (and other emergencies) child care provider or school emergencies and retaliated against any Plaintiffs who attempted to exercise their rights.

Accordingly, Plaintiffs are entitled to reinstatement, recover of damages, interest, penalties, attorneys' fees, and costs as set forth in Labor Code sections 98.6, 98.7, 230.8, and 2699 et al.

**k. Retaliation Pursuant to Labor Code Section 1102.5**

Labor Code section 1102.5(b) mandates that, "[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has authority to investigate, discover, or correct the violation of noncompliance... if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation..." Pursuant to Labor Code section 1102.5(f), "[i]n addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section."

On or about April 13, 2020, BERNABE exercised her right to take time off of work to address her daughter's child care provider and school emergency by emailing Defendants a request to stay at home with her daughter because she no longer had anyone to care for her daughter while BERNABE was at work. Defendants denied BERNABE's request and BERNABE continued going to work as normal because she feared Defendants would retaliate or terminate her.

On or about April 16, 2020, three days after BERNABE attempted to exercise her legal right to take time off of work, Defendants terminated BERNABE. BERNABE is informed and believes that Defendants terminated BERNABE in retaliation because Defendants believed that BERNABE might disclose Defendants' violation of the law to a government agency or someone with authority to investigate, discover, or correct Defendants' noncompliance. BERNABE is informed and believes that Defendants retaliated against other Plaintiffs who disclosed, or Defendants believed may disclose, Defendants' violations of the law.

Accordingly, Plaintiffs are entitled to reinstatement, recover of damages, interest, penalties, attorneys' fees, and costs as pursuant to Labor Code sections 98.7, 230.8, 1102.5, and 2699 et al.

**REQUEST TO THE LWDA**

Accordingly, BERNABE respectfully requests that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, BERNABE fully intends to bring a Superior Court action on his/her/their own behalf and in a representative capacity on behalf of other current or former aggrieved employees, for penalties pursuant to various regulations and statutes including, but not limited to, IWC Wage Order 5-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections including, but not limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 210, 212, 215, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al.

If you have any questions or concerns regarding the above, please do not hesitate to contact my office. Thank you for your attention to this matter.

Sincerely,



Jason Whooper

cc:

**SENT VIA CERTIFIED U.S. MAIL**

Merakey Allos  
620 Germantown Pike  
Lafayette Hill, PA 19444

**EXHIBIT 2**



## DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711  
<http://www.dfeh.ca.gov> | Email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

October 13, 2020

Jason Whooper  
1916 3rd Ave  
San Diego, California 92101

RE: **Notice to Complainant's Attorney**  
DFEH Matter Number: 202010-11520013  
Right to Sue: Bernabe / Merakey Allos

Dear Jason Whooper:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

**Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer.** You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



## DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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<http://www.dfeh.ca.gov> | Email: [contact.center@dfefh.ca.gov](mailto:contact.center@dfefh.ca.gov)

October 13, 2020

RE: **Notice of Filing of Discrimination Complaint**  
DFEH Matter Number: 202010-11520013  
Right to Sue: Bernabe / Merakey Allos

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



## DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711  
<http://www.dfeh.ca.gov> | Email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

October 13, 2020

Maria Bernabe  
1916 3rd Ave  
San Diego, California 92101

RE: **Notice of Case Closure and Right to Sue**  
DFEH Matter Number: 202010-11520013  
Right to Sue: Bernabe / Merakey Allos

Dear Maria Bernabe:

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective October 13, 2020 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION  
BEFORE THE STATE OF CALIFORNIA  
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING  
Under the California Fair Employment and Housing Act  
(Gov. Code, § 12900 et seq.)**

**In the Matter of the Complaint of**

Maria Bernabe

DFEH No. 202010-11520013

Complainant,

vs.

Merakey Allos  
620 Germantown Pike  
Lafayette Hill, Pennsylvania 19444

Respondents

1. Respondent **Merakey Allos** is an **employer Merakey Allos** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2.

3. Complainant **Maria Bernabe**, resides in the City of **San Diego**, State of **California**.

4. Complainant alleges that on or about **October 13, 2020**, respondent took the following adverse actions:

**Complainant was discriminated against** because of complainant's sex/gender, gender identity or expression, family care or medical leave (cfra) (employers of 50 or more people), genetic information or characteristic, disability (physical or mental), medical condition (cancer or genetic characteristic), marital status, association with a member of a protected class and as a result of the discrimination was terminated, denied any employment benefit or privilege, denied reasonable accommodation for a disability, denied family care or medical leave (cfra) (employers of 50 or more people), denied work opportunities or assignments.

**Complainant experienced retaliation** because complainant requested or used a disability-related accommodation, requested or used leave under the california family rights act or fmla (employers of 50 or more people) and as a result was terminated, denied any employment benefit or privilege, denied reasonable accommodation for a disability, denied family care or medical leave (cfra) (employers of 50 or more people), denied work opportunities or assignments.

1 **Additional Complaint Details:** With a staff of over 10,000 nationwide, Defendants' operate  
2 an organization that provides developmental, behavioral health, and educational services in  
3 several states and counties throughout the United States, including San Diego County,  
4 California. Defendants hired BERNABE as a salaried Program Administrator to work at  
5 Defendants' various locations on or about February 10, 2020. BERNABE is informed and  
6 believes that Defendants employed many other aggrieved employees in California who may  
7 also be victims of the same unlawful conduct outlined below which Defendants perpetrated  
8 against BERNABE.

9 BERNABE informed Defendants in the interviewing process that she had a 13-year-old  
10 special needs daughter who went to boys and girls club right after school and could not be  
11 left alone because she suffered a disability from childhood trauma. At other times,  
12 BERNABE made Defendants well aware of her daughter's special needs and that  
13 BERNABE was an unmarried single mother.

14 Defendants purportedly classified BERNABE as an exempt employee and paid her a salary  
15 while BERNABE typically worked over 50 hours per week during the workdays Monday  
16 through Friday, without including work on the weekends. However, for approximately the  
17 first month which BERNABE worked for Defendants the substantial majority, if not all, of  
18 duties Defendants instructed BERNABE to perform were non-exempt Direct Support  
19 Professional duties working directly with clients at Defendants' facilities because Defendants  
20 refused to train BERNABE on Program Administrator duties or put her in charge of a facility  
21 until BERNABE complete a 40-hour Registered Behavior Technician ("RBT") course and  
22 obtain the certification.

23 As a result, BERNABE worked many hours for Defendants as a non-exempt employee  
24 without receiving timely pay of at least minimum wage or overtime rates for many hours  
25 exceeding 8 hours in a workday or 40 hours in a workweek.

26 On or about March 6, 2020, Defendants changed their minds about the RBT certification  
27 and assigned BERNABE standard Program Administrator duties including, but not limited to,  
28 command or charge of Defendants' facility without ever having provided BERNABE the  
Program Administrator training. Even while taking on the new Program Administrator duties,  
BERNABE still continued to perform a substantial amount of Direct Support Professional  
duties.

Defendants' Program Administrator pay policies and practices required Defendants to pay  
BERNABE an additional \$150 every weekend which BERNABE had to remain on call for  
Defendants' facilities, and to pay BERNABE an additional \$22 per hour for the hours she  
actually worked while on call. Defendants regularly assigned Plaintiff on call during  
weekends, which required her to perform actual work for Defendants including, but not  
limited to, going into facilities to deal with various issues, clients, and covering for staff.

Defendants also required BERNABE to drive her own car between Defendants' facilities and  
offices without reimbursing her for all mileage expenses, including on the day when  
Defendants required BERNABE to drive from one of Defendants' facilities after working  
several hours that day to Defendants' offices at another location to terminate BERNABE.

1 In or around March 2020, the COVID-19 pandemic expanded in the United States and  
2 California's Governor, Gavin Newsom, ordered the closures of non-essential businesses,  
3 schools, afterschool programs, etc., including BERNABE's daughter's school and  
4 afterschool program which normally provided the substantial majority of her care until  
5 BERNABE got off of work during the weekdays.

6 On or about April 13, 2020, BERNABE emailed her supervisor, Alisa Dean ("Dean"),  
7 Defendants' Regional Executive Director, informing Dean that BERNABE needed to stay at  
8 home with her daughter because she would have nobody to watch her daughter while she is  
9 at work at Defendants' facilities and asking Dean if they could work something out where  
10 BERNABE worked from home. BERNABE believed that she could competently perform all if  
11 not substantially all of her Program Administrator duties remotely from home. Dean replied,  
12 "With current circumstances and the nature of our services we are not able to permit  
13 employees to work from home as our DSPs and Admin staff are both needed for support in  
14 our homes."

15 BERNABE returned to work at Defendants' facilities the next day because she felt terrified  
16 that Defendants might terminate her, and she believed she could still go to work at  
17 Defendants' facilities and perform all of her duties without any accommodation.

18 On April 16, 2020, in the middle of a workday, Defendants instructed BERNABE to drive  
19 from Defendants' facility to Defendants' offices at another location for a meeting without  
20 advanced notice. Defendants terminated BERNABE and told her it was because she poorly  
21 wrote incident reports (despite never Defendants never training BERNABE to write  
22 Defendants incident reports).

23 BERNABE is informed and believes that Defendants' stated reason for the termination was  
24 pretext, and that the true reasons Defendants terminated BERNABE was because  
25 BERNABE attempted to exercise her right to miss work to address a childcare provider or  
26 school emergency caused by the COVID-19 pandemic; Defendants believed that BERNABE  
27 might disclose information about Defendants' unlawful policies and practices to a  
28 government agency or someone who has the authority to correct Defendants'  
noncompliance with laws that provided BERNABE the right to take leave; Defendants had a  
gender discriminatory animus based on a stereotypical assumption that women teleworking  
while caring for a child at home would not be able to effectively complete job tasks;  
Defendants had a marital status discriminatory animus based on a stereotypical assumption  
that BERNABE as a single parent would not be able to work as hard as married parents with  
help while managing childcare; and Defendants had a disability-based association  
discriminatory animus based on Defendants' fear that BERNABE would not be able to  
perform work satisfactorily while caring for a child with a disability from childhood trauma  
while schools and after school programs were closed from COVID-19 orders.

After Defendants terminated BERNABE, she had to repeatedly ask Defendants for unpaid  
earned wages. Approximately one month after Defendants terminated BERNABE,  
Defendants finally paid her unpaid wages from an unpaid weekend of working on call for  
Defendants.

1 Defendants still have not paid BERNABE at least minimum wage for all hours worked, and  
2 overtime rate rages for overtime worked which BERNABE earned while performing almost  
3 exclusively non-exempt Direct Support Professional duties during approximately her first  
4 month of employment for Defendants before Defendants assigned BERNABE Program  
Administrator duties. More than 30 days have passed since BERNABE's employment  
ended.

5 Defendants also failed to provide BERNABE compliant wage statements and maintain  
6 required records as a result of Defendants' unlawful pay policies and practices. Defendants  
7 wage statement and records non-compliance includes, but is not limited to, missing or  
8 inaccurate information about gross wages earned, all hours worked; meal periods taken if  
any; all applicable hourly rates and the corresponding number of hours worked at each  
hourly rate; and accrued paid sick leave. BERNABE is informed and believes that  
Defendants may not have even had a compliant paid sick leave policy and practice.

9 BERNABE is informed and believes that Plaintiffs are other aggrieved employees whom  
10 Defendants employed and who were victims of the same unlawful policies and practices  
11 which Defendants perpetrated against BERNABE as outlined above and throughout this  
Complaint.

1 VERIFICATION

2 I, **Jason Whooper**, am the **Attorney** in the above-entitled complaint. I have read the  
3 foregoing complaint and know the contents thereof. The matters alleged are based  
4 on information and belief, which I believe to be true.

5 On October 13, 2020, I declare under penalty of perjury under the laws of the State of  
6 California that the foregoing is true and correct.

7 **San Diego, California**  
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