

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

TRACEY DEAL, on behalf of the State
of California, as a private attorney
general,

Plaintiff,

vs.

GENEX SERVICES, LLC, a Limited
Liability Company; and DOES 1 through
50, inclusive,

Defendants.

Case No. 37-2021-00010977-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code §
2699, *et seq.*, for violations of Labor Code
§§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
226.7, 351, 510, 512, 558(a)(1)(2), 1194,
1197, 1197.1, 1198, 2802, California Code
of Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B)

1 Plaintiff Tracey Deal ("PLAINTIFF"), on behalf of the people of the State of California
2 and as an "aggrieved employee" acting as a private attorney general under the Labor Code
3 Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, alleges on information
4 and belief, except for her own acts and knowledge which are based on personal knowledge, the
5 following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against GENEX SERVICES, LLC
8 ("DEFENDANT") seeking only to recover PAGA civil penalties for herself, and on behalf of
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
10 **not seek to recover anything other than penalties as permitted by California Labor Code**
11 **§ 2699.** To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the civil
13 penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT's violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 THE PARTIES

24 4. Defendant Genex Services, LLC ("GENEX" or "DEFENDANT") is a limited
25 liability company that conducts regular and substantial business in the State of California.
26 GENEX is the nation's leading provider of integrated managed care services, focused on
27 controlling health costs and reducing disability expenses. The company focuses on 3 critical
28 areas: workers' compensation and disability management, medical cost containment, social

1 security representation. GENEX serves employer groups, insurance and managed care providers,
2 and benefit administrators. Services include workplace injury management, vocational
3 rehabilitation, catastrophic case management, medical bill auditing, and social security disability
4 claim representation. GENEX is owned by Stone Point Capital.

5 5. To successfully compete against the other comprehensive medical management
6 service providers, GENEX substantially reduced its labor costs by placing the labor burden on
7 a smaller number of employees that GENEX classified as exempt from overtime wages. The
8 goal of overtime laws includes expanding employment throughout the workforce by putting
9 financial pressure on the employer and nurturing a stout job market, as well as the important
10 public policy goal of protecting employees in a relatively weak bargaining position against the
11 unfair scheme of uncompensated overtime work. An employer's obligation to pay its employees
12 wages is more than a matter of private concern between the parties. That obligation is founded
13 on a compelling public policy judgment that employees are entitled to work a livable number of
14 hours at a livable wage. In addition, statutes and regulations that compel employers to pay
15 overtime relate to fundamental issues of social welfare worthy of protection. The requirement
16 to pay overtime wages extends beyond the benefits individual workers receive because overtime
17 wages discourage employers from concentrating work in a few overburdened hands and
18 encourage employers to instead hire additional employees. Especially in today's economic
19 climate, the importance of spreading available work to reduce unemployment cannot be
20 overestimated.

21 6. As part of their business, GENEX employs a fleet of Case Managers. The
22 employees employed in positions at GENEX with the titles of "Field Nurse Case Manager,"
23 "Telephonic Nurse Case Manager," "Medical Case Manager," and "Utilization Case Manager"
24 all perform the same primary job duty which is to perform day-to-day routine clerical work in
25 the management of medical conditions of injured workers and/or chronically ill patients and are
26 collectively referred to herein as the "Case Managers" or "CM".

27 7. PLAINTIFF has been employed by GENEX in California as a Field Case Manager
28 and a Telephonic Nurse Case Manager since June of 2000 to present. At all times during her

1 employment with GENEX as a CM, PLAINTIFF has been classified as a salaried employee
2 exempt from overtime pay and the legally required meal and rest breaks.

3 8. As part of their business, GENEX employs a fleet of “Case Managers.”
4 PLAINTIFF, as a CM, is engaged in the core, day-to-day business activities of GENEX. The
5 CMs engage in the finite set of non-exempt clerical tasks of reviewing client’s pre-injury and/or
6 pre-illness position, making appointments with client’s physician or therapist, listening to and
7 reviewing the physician’s or therapist’s diagnosis, obtaining prescriptions, communicating both
8 in-person and by telephone with employers, medical providers, attorneys, insurance carriers and
9 claims adjusters, applying all special instructions required by individual insurance carriers and
10 referral sources, following all pre-established and required case management plans, preparing
11 reports and other required paperwork to document all casework activities, meeting weekly billing
12 requirements, operating office machines, accessing filing cabinets, and attending staff meetings,
13 workshops and/or training programs all in strict compliance with established specific procedures
14 and protocols which governed and controlled every aspect of the work performed by
15 PLAINTIFF and other Case Managers. These standardized procedures mirror the realities of the
16 workplace evidencing a uniformity of the highly skilled clerical work performed by PLAINTIFF
17 and other Case Managers and negate any exercise of independent judgment and discretion as to
18 any matter of significance and negate any role in the participation of formulating GENEX’s
19 business policies.

20 9. PLAINTIFF and other Case Managers job duties include monitoring a recovery
21 plan controlled by a physician and a claims adjuster and do not have the power to alter that
22 course of treatment. Any advice PLAINTIFF and other Case Managers provide is on an
23 individual level, far from questions affecting management or general operations of the business.
24 Rather, PLAINTIFF and other Case Managers use their RN training to coordinate care, act as
25 intermediary between patients, adjusters, and doctors and operated in a framework in which
26 these employees do not exercise ultimate decision-making power.

27 10. To perform their finite set of tasks, the CMs do not engage in a supervisory role
28 given the constraints placed upon them by company policy. CMs do not determine what work

1 is to be done by other employees or in what time frame. Furthermore, the CMs also do not have
2 a distinct role in training other employees or determining what training they are to receive.
3 Lastly, PLAINTIFF and other CMs do not have the authority to hire, fire, or promote employees,
4 determine their pay rates or benefits, or give raises as they are unable to make employment-
5 related, personnel decisions. Consequently, PLAINTIFF and the other CMs do not have the
6 authority to decide whether or not an employee should be disciplined for an infraction.
7 Disciplinary decisions are made by the human resources department or dictated by company
8 policies. Overall, PLAINTIFF's and other CMs recommendations are given little, if any, weight
9 on all the above issues. As a result, PLAINTIFF and the other CMs are engaged in a type of
10 work that requires no exercise of independent judgment or discretion as to any matter of
11 significance.

12 11. PLAINTIFF, and such persons that may be added from time to time who satisfy
13 the requirements and exhaust the administrative procedures under the Private Attorney General
14 Act, brings this Representative Action on behalf of the State of California with respect to herself
15 and all persons who are or previously were employed by DEFENDANT in California in the
16 positions of Field Nurse Case Manager and/or Telephone Nurse Case Manager, and/or Medical
17 Case Manager, and/or Utilization Case Manager and were classified as exempt from overtime
18 wages ("AGGRIEVED EMPLOYEES") during the time period of November 5, 2019, until a
19 date as determined by the Court (the "PAGA PERIOD").

20 12. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
21 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
22 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
23 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
24 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
25 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
26 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
27
28

1 the meaning of Labor Code § 2699, *et seq.*¹

2 13. The work schedule for PLAINTIFF and other AGGRIEVED EMPLOYEES is set
3 by GENEX. PLAINTIFF and other AGGRIEVED EMPLOYEES work from time to time in
4 excess of eight (8) hours in a workday and/or more than forty (40) hours in any given workweek.

5 14. PLAINTIFF and the other AGGRIEVED EMPLOYEES are not provided with
6 overtime compensation and other benefits required by law as a result of being classified as
7 "exempt" by GENEX.

8 15. As a matter of company policy, practice, and procedure, GENEX has unlawfully,
9 unfairly and/or deceptively classified every CM as exempt from overtime pay and other related
10 benefits, fails to pay the required overtime compensation and otherwise fails to comply with all
11 applicable labor laws with respect to these CMs.

12 16. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently
14 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
15 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
16 the true names and capacities of DOES 1 through 50, inclusive, when they are ascertained.
17 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
18 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
19 responsible in some manner for one or more of the events and happenings that proximately
20 caused the injuries and damages hereinafter alleged.

21 17. The agents, servants and/or employees of the Defendants and each of them acting
22 on behalf of the Defendants acted within the course and scope of his, her] or its authority as the
23 agent, servant and/or employee of the Defendants, and personally participated in the conduct
24 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
25 Consequently, the acts of each Defendants are legally attributable to the other Defendants and
26 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
27

28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
2 agents, servants and/or employees.

3 THE CONDUCT

4 18. The finite set of tasks required of the CMs as defined by DEFENDANT are
5 executed by the CMs through the performance of non-exempt labor within a defined manual skill
6 set.

7 19. Although PLAINTIFF and the other CMs spend the vast majority of their time
8 performing these non-exempt tasks, DEFENDANT instituted a blanket classification policy,
9 practice and procedure by which all of these CMs are classified as exempt from overtime
10 compensation. By reason of this exemption practice, policy and procedure applicable to
11 PLAINTIFF and the other CMs who perform these non-exempt tasks, DEFENDANT engages
12 in a uniform company-wide policy, practice and procedure which fails to properly classify
13 PLAINTIFF and the other CMs and thereby fails to pay them overtime wages for documented
14 overtime worked. The proper classification of these employees is DEFENDANT's burden. As
15 a result of DEFENDANT's intentional disregard of the obligation to meet this burden,
16 DEFENDANT fails to pay all required overtime compensation for work performed by the
17 AGGRIEVED EMPLOYEES and violates the California Labor Code and regulations
18 promulgated thereunder as herein alleged. Further, DEFENDANT underpaid sick pay wages to
19 PLAINTIFF and other AGGRIEVED EMPLOYEES by failing to pay such wages at the regular
20 rate of pay. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES regularly earn
21 non-discretionary remuneration, including but not limited to, incentives, shift differential pay,
22 and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
23 pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay. In addition,
24 DEFENDANT failed to provide the legally required off-duty meal and rest breaks to
25 PLAINTIFF and the other AGGRIEVED EMPLOYEES as required by the applicable Wage
26 Order and Labor Code. DEFENDANT does not have a policy or practice which provides meal
27 and rest breaks to PLAINTIFF and the other AGGRIEVED EMPLOYEES. As a result,
28 DEFENDANT's failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with

1 legally required meal and rest breaks is evidenced by DEFENDANT's business records which
2 contains no record of these breaks.

3 20. DEFENDANT, as a matter of law, has the burden of proving that (a) employees
4 are properly classified as exempt and that (b) DEFENDANT otherwise complies with applicable
5 laws.

6 21. During their employment with DEFENDANT, PLAINTIFF and the other
7 AGGRIEVED EMPLOYEES, perform non-managerial, non-exempt tasks, but are nevertheless
8 classified by DEFENDANT as exempt from overtime pay and work more than eight (8) hours
9 in a workday and/or more than forty (40) hours in a workweek.

10 22. A crucial requirement to be properly classified as exempt under both the California
11 Professional and Administrative exemptions is the ability to exercise independent discretion and
12 judgment as to matters of significance. PLAINTIFF and the other Case Managers are assigned
13 cases involving injured workers and chronically ill patients and are micro-managed in every
14 aspect of managing their assigned cases. These employees do not exercise discretion in the sense
15 of making important decisions of significance to the employer's business even though they
16 exercise some measure of discretion and judgment as to the manner in which they performed
17 their tasks. PLAINTIFF and other Case Managers perform routine clerical tasks and followed
18 set guidelines that were mandated and authorized by DEFENDANT. 2 Given the
19 circumstances of the job functions performed by PLAINTIFF and the others similarly situated,
20 PLAINTIFF and the others similarly situated are hired as registered nurses for Case Manager
21 positions since their nursing experience is useful for reviewing medical data, but they do not
22 provide "traditional" direct medical services to injured workers or chronically ill patients, render
23 an opinion or make any medical diagnosis (which is prohibited by state law). PLAINTIFF and
24 others similarly situated do not primarily perform office or non-manual staff functions directly
25 related to policymaking and/or the general operation of the DEFENDANT. The work of
26 PLAINTIFF and the others similarly situated do not require the use of "traditional" nursing
27 skills, training, experience and/or knowledge. Instead, PLAINTIFF and the others similarly
28 situated all serve as Case Managers whose primary job duty was and is to perform day-to-day

1 routine clerical work in the management of medical conditions of injured workers and/or
2 chronically ill patients. Courts and State Labor Boards have held that registered nurses, like
3 PLAINTIFF and the others similarly situated, who were not expected to utilize "traditional"
4 nursing skills and instead rely on company manuals to perform administrative services, or who
5 do not need a nursing degree or license to qualify for employment, do not exercise discretion and
6 independent judgment as to matters of significance, and therefore, are non-exempt employees
7 entitled to overtime compensation.

8 23. PLAINTIFF and the other Case Managers employed by DEFENDANT are also
9 not engaged in work of a type that was or now is performed at the level of the policy or
10 management of the DEFENDANT. PLAINTIFF and the other Case Managers employed by
11 DEFENDANT are also not engaged in work requiring knowledge of an advanced type in a field
12 or science or learning customarily acquired by a prolonged course of specialized intellectual
13 instruction and study, but rather their work involves the performance of routine mental, clerical,
14 and/or technical processes. California law provides two alternative avenues to Professional
15 exempt status that PLAINTIFF and other Case Managers fail to meet. To be exempt from
16 overtime pay and minimum wage requirements under the California exemption for
17 "professional" employees, the employees must either be licensed by the State of California and
18 "primarily engaged" in an enumerated profession, or "primarily engaged in an occupation
19 commonly recognized as a learned or artistic profession." 8 California Code of Regulations §
20 11010 *et seq.* PLAINTIFF and other Case Managers are not required to be certified by the State
21 of California to perform the finite set of tasks engaged in by Case Managers and/or do not
22 primarily engage in the recognized profession of law, medicine, dentistry, optometry,
23 architecture, engineering, teaching, or accounting. The federal regulations after which the
24 California learned professional exemption was explicitly patterned condition the learned
25 professions exemption upon completion of an advanced course of education. Case Managers do
26 not qualify as exempt learned professionals because an "advanced specialized academic degree"
27 is not a standard prerequisite for entry into the field. To perform the finite set of tasks required
28 of a Case Manager, PLAINTIFF and other AGGRIEVED EMPLOYEES are not required to hold

1 an advanced degree customarily acquired by a prolonged course of specialized intellectual
2 instruction and study, as distinguished from a general four-year baccalaureate degree. Moreover,
3 it is not sufficient that an employee have an advanced degree, but rather the position the
4 employee occupies and the work performed must actually require such a degree. California
5 Industrial Wage Order 4-2001(1)(A)(3)(b)(1). The position of a Case Manager does not actually
6 require an advanced degree. PLAINTIFF and the other Case Managers employed by
7 DEFENDANT are also not engaged in work that is intellectual and varied in character, but rather
8 is routine mental and clerical work that is of such character that the output produced or the result
9 accomplished can be standardized in relation to a given period of time. The work of a Case
10 Manager of DEFENDANT is work wherein PLAINTIFF and the AGGRIEVED EMPLOYEES
11 are engaged in the day-to-day business of DEFENDANT.

12 24. CMs are classified as exempt from California overtime and related laws by
13 DEFENDANT, however, these employees do not have managerial duties or authority. CMs in
14 performing these ongoing day-to-day, non-exempt and non-managerial tasks have no role in
15 supervising employees and have no authority to make employment-related decisions relating to
16 DEFENDANT's employees. Furthermore, the CMs are tightly controlled by company policy and
17 by their supervisors, do not exercise discretion or independent judgment as to matters of
18 significance, and their tasks are not directly related to DEFENDANT's management policies or
19 general business operations.

20 25. PLAINTIFF and all AGGRIEVED EMPLOYEES are uniformly classified and
21 treated by DEFENDANT as exempt at the time of hire and thereafter, DEFENDANT has failed
22 to take the proper steps to determine whether PLAINTIFF, and the AGGRIEVED
23 EMPLOYEES, were properly classified under the applicable Industrial Welfare Commission
24 Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as exempt from applicable
25 California labor laws. Since DEFENDANT affirmatively and willfully misclassified
26 PLAINTIFF and the AGGRIEVED EMPLOYEES in compliance with California labor laws,
27 DEFENDANT's practices violated and continue to violate California law. In addition,
28 DEFENDANT acted deceptively by falsely and fraudulently telling PLAINTIFF and each

1 AGGRIEVED EMPLOYEE that they are exempt from overtime pay when DEFENDANT knew
2 or should have known that this statement is false and not based on known facts.

3 26. DEFENDANT as a matter of corporate policy, practice and procedure,
4 intentionally and knowingly fails to reimburse and indemnify PLAINTIFF and the other
5 AGGRIEVED EMPLOYEES for required business expenses incurred by PLAINTIFF and other
6 AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of
7 DEFENDANT. Under California Labor Code Section 2802, employers are required to
8 indemnify employees for all expenses incurred in the course and scope of their employment.
9 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee
10 for all necessary expenditures or losses incurred by the employee in direct consequence of the
11 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
12 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
13 unlawful."

14 27. In the course of their employment PLAINTIFF and other AGGRIEVED
15 EMPLOYEES as business expenses, are required by DEFENDANT to use their own personal
16 homes offices to work remotely for DEFENDANT as a result of and in furtherance of their job
17 duties as employees for DEFENDANT but are not reimbursed or indemnified by DEFENDANT
18 for the cost associated with the use of their personal home offices for DEFENDANT's benefit.
19 As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other
20 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses.

21 28. When PLAINTIFF and other AGGRIEVED EMPLOYEES work overtime,
22 DEFENDANT also failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES
23 with a wage statement in writing that accurately sets forth gross wages earned, all applicable
24 hourly rates in effect during the pay period and the corresponding amount of time worked at each
25 hourly rate by the PLAINTIFF and the other AGGRIEVED EMPLOYEES. This conduct
26 violated California Labor Code § 226. The pay stub also does not accurately display anywhere
27 PLAINTIFF's and the other AGGRIEVED EMPLOYEES' overtime work and applicable rates
28 of overtime pay for the pay period.

30. By reason of this uniform conduct applicable to PLAINTIFF and all the AGGRIEVED EMPLOYEES, DEFENDANT engages in a company-wide policy and procedure which fails to correctly classify PLAINTIFF and the AGGRIEVED EMPLOYEES of CMs as non-exempt. The proper classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT fails to properly calculate and/or pay all required overtime compensation for work performed by the AGGRIEVED EMPLOYEES and violated the applicable Wage Order, the California Labor Code and the regulations promulgated thereunder as herein alleged.

31. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

JURISDICTION AND VENUE

32. This Court has jurisdiction over this action pursuant to Cal. Code of Civ. Proc. § 410.10.

33. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED EMPLOYEES.

///

///

///

///

///

1 **FIRST CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

3 **[Cal. Lab. Code §§ 2698, *et seq.*]**

4 **(By PLAINTIFF and Against All Defendants)**

5 34. PLAINTIFF incorporates by reference the allegations set forth in the prior
6 paragraphs as though fully set forth at this point.

7 35. PAGA is a mechanism by which the State of California itself can enforce state
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
9 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
10 fundamentally a law enforcement action designed to protect the public and not to benefit private
11 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
12 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
13 PAGA, the California Legislature specified that "it was ... in the public interest to allow
14 aggrieved employees, acting as private attorneys general to recover civil penalties for Labor
15 Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to
16 arbitration.

17 36. PLAINTIFF, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, brings this Representative Action on behalf of the State of California with respect to herself
20 and all individuals who are or previously were employed by DEFENDANT in California in the
21 positions of Field Nurse Case Manager and/or Telephone Nurse Case Manager, and/or Medical
22 Case Manager, and/or Utilization Case Manager and were classified as exempt from overtime
23 wages (the "AGGRIEVED EMPLOYEES") during the time period of November 5, 2019 until
24 a date as determined by the Court (the "PAGA PERIOD").

25 37. On November 5, 2020, PLAINTIFF gave written notice by electronic mail to the
26 Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer
27 of the specific provisions of this code alleged to have been violated as required by Labor Code
28 § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein. The

1 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
2 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
3 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
4 to all AGGRIEVED EMPLOYEES as herein defined.

5 38. The policies, acts and practices heretofore described were and are an unlawful
6 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
7 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
8 and provide legally required meal and rest periods, (c) failed to pay overtime wages, and, (d)
9 failed to reimburse for necessary business expenses incurred, all in violation of the applicable
10 Labor Code sections listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
11 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
12 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage
13 Order(s), and thereby gives rise to civil penalties as a result of such conduct.² PLAINTIFF
14 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney
15 General Act of 2004 as the representative of the State of California for the illegal conduct
16 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

17
18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
20 severally, as follows:

- 21 1. On behalf of the State of California and with respect to all AGGRIEVED
22 EMPLOYEES:

23 A) Recovery of civil penalties as prescribed by the Labor Code Private
24 Attorneys General Act of 2004; and,

25 B) An award of attorneys' fees and cost of suit, as allowable under the
26 law, including, but not limited to, pursuant to Labor Code §2699.

27 _____
28 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: March 11, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

November 5, 2020
CA2254

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency Online Filing	Genex Services, LLC Certified Mail #70200640000074883160 C T Corporation System 818 West Seventh Street, Suite 930 Los Angeles, California 90017
---	--

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Genex Services, LLC in California in the positions of Field Nurse Case Manager and/or Telephonic Nurse Case Manager, and/or Medical Case Manager, and/or Utilization Case Manager during the time period of November 5, 2019 until a date as determined by the Court. Our offices represent Plaintiff Tracey Deal (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Genex Services, LLC (“Defendant”). Plaintiff has been employed by Defendant in California as a Field Nurse Case Manager and a Telephonic Case Manager since 2000 as a salaried employee exempt from overtime wages. However, the job duties of Plaintiff and other Aggrieved Employees do not entitle Defendant to claim any exemption from minimum wages, overtime wages, meal and rest periods and reimbursement of business expenses as to Plaintiff and other Aggrieved Employees. Plaintiff and Aggrieved Employees should have been classified by Defendant as non-exempt employees entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. As a result, Plaintiff and other Aggrieved Employees worked time for which they were unlawfully not paid the correct compensation. Further, Defendant unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other

Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 was paid online to the LWDA. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.