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STK-CV-UOE-2021-0003989

Attorneys for Plaintiff Dora Berry

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

DORA BERRY, an individual,

Plaintiff,

v.

**ENGLISH CHANNEL HOLDINGS, LLC, a
limited liability company dba Lodi Creek Post-
Acute; and DOES 1-100, inclusive,**

Defendants.

Case No.:

CLASS ACTION COMPLAINT

- 1. FAILURE TO PROPERLY
CALCULATE AND PAY OVERTIME**
- 2. FAILURE TO PROPERLY CALCULATE
AND PAY SICK PAY**
- 3. FAILURE TO PROVIDE MEAL
PERIODS OR PAY PREMIUMS
(INDIVIDUAL ALLEGATIONS)**
- 4. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS**
- 5. UNLAWFUL BUSINESS PRACTICES**
- 6. PRIVATE ATTORNEYS GENERAL
ACT**

Plaintiff Dora Berry brings this class action against English Channel Holdings, LLC, and Does 1 through 100, for violations of the California Labor Code and the Business and Professions Code.

PARTIES

1. Plaintiff Dora Berry ("Plaintiff" or "Berry") is and at all times relevant herein was employed in San Joaquin County, California, and was an "employee" as defined by the California Labor Code ("Labor Code") and the applicable California Industrial Wage Commission ("IWC") Order(s).

2. English Channel Holdings, LLC (“ECH”) is a California limited liability company dba Lodi Creek Post-Acute, formed under the laws of California. At all times relevant herein, English Channel Holdings, LLC has been an “employer” as defined by the Labor Code and the applicable IWC Order(s).

3. ECH and Does 1-100 are collectively referred to as Defendants.

4. Berry is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sue such Defendants by these fictitious names. Berry will amend this Complaint to allege their true names and capacities when ascertained. Berry is informed and believe, and on that basis allege, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Berry’s injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

5. Berry is informed and believe and thereupon allege that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

JURISDICTION AND VENUE

6. This Court is the proper Court, and this action is properly filed in the Superior Court of California for the County of San Joaquin because Defendants conduct business in this County and Berry has performed work for Defendants in this County. Berry hereby demands a jury trial.

GENERAL ALLEGATIONS

7. Berry was hired by ECH on or around October 7, 2019 as a card nurse at the Lodi Creek Post Acute nursing home in Lodi, California. In or around February 2020, Berry was promoted to the

1 position of Director of Staff Development. At all times relevant during her employment with ECH,
2 Berry was properly classified as an hourly, nonexempt employee and earned overtime on a regular
3 basis.

4 8. However, ECH failed to properly calculate its California employees' "regular rate of
5 pay" for overtime purposes, resulting in an underpayment of wages. During her employment, Berry and
6 other employees received, among other items of compensation, nondiscretionary bonuses for working
7 with residents who tested positive for the novel coronavirus. By way of example, in the pay period of
8 August 2-15, 2020, Berry earned a nondiscretionary bonus in the amount of \$160. (**Exhibit 1.**) During
9 this same pay period, Berry worked 61.75 hours of overtime and 17.1 hours of doubletime. However,
10 ECH did not account for the value of this earned bonus when calculating her regular rate for purpose of
11 overtime and doubletime; instead, it merely took Berry's base hourly rate of \$36 and multiplied it by
12 1.5 or 2, as appropriate. Accordingly, ECH violated Labor Code section 510.

13 9. Berry is informed and believes and thereon alleges that other nonexempt employees of
14 ECH in California similarly received nondiscretionary bonuses and other items of compensation,
15 including but not limited to nondiscretionary bonuses paid for working with COVID patients.

16 10. However, Berry is informed and believes and thereon alleges that these other nonexempt
17 employees were also not paid earned overtime wages at their "regular rate of pay" since Defendants did
18 not factor into that rate the value of earned nondiscretionary bonuses and other items of compensation,
19 including but not limited to nondiscretionary bonuses paid for working with COVID patients.

20 11. Because Berry and other California employees were paid nondiscretionary bonuses, the
21 value of which was not incorporated into their regular rate of pay for overtime and doubletime
22 purposes, then, as evidenced in the sample of Berry's wage statement attached hereto as **Exhibit 1**, the
23 wage statements furnished by Defendants to its nonexempt California employees violate California
24 Labor Code section 226(a) insofar as they fail to accurately show:

- 25 a. The gross wages earned, in violation of section 226(a)(1);
- 26 b. The net wages earned, in violation of section 226(a)(5); and
- 27 c. All applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate in violation of section 226(a)(9).

1 12. Defendants were, at all times relevant herein, aware of the requirements of California
2 Labor Code section 226.

3 13. Defendants have, at all times relevant herein, furnished wage statements to each of its
4 California employees pursuant to an established set of policies, procedures and practices.

5 14. Berry and Defendants' other California employees, both current and former, have
6 suffered injury as a result of Defendants' knowing and intentional failure to comply with California
7 Labor Code section 226(a).

8 15. Berry and Defendants' other nonexempt California employees, both current and former,
9 were unable to promptly and easily determine their gross wages earned, net wages earned, and all
10 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
11 from the wage statements furnished by Defendants.

12 16. Berry and Defendants' other nonexempt California employees, both current and former,
13 have suffered injury as a result of Defendants' knowing and intentional failure to furnish wage
14 statements accurately showing all information required by Labor Code section 226(a).

15 17. Furthermore, during the applicable statutory period, Defendants failed and continue
16 to fail to pay sick time at employees' regular rate of pay as required by law. When Berry and other
17 nonexempt employees took paid sick leave, Defendants paid this sick leave at exactly that
18 employee's base rate of pay, without accounting for the value of earned nondiscretionary bonuses
19 and other items of compensation. (**Exhibit 2.**)

20 18. Similarly, Plaintiff and all of Defendants' other nonexempt employees who took
21 paid sick leave and/or received non-discretionary bonuses, commissions, and/or other items of
22 compensation aside from their base hourly rate, were not adequately paid for their sick leave.

23 19. From at least four years prior to the filing of this action, Defendants has adopted and
24 employed unfair business practices. These unfair business practices include, but are not limited to,
25 failing to properly calculate and pay overtime wages due, and failing to properly calculate and pay
26 accrued sick leave.

27 20. On February 26, 2021, Berry provided written notice to the Labor and Workforce
28 Development Agency ("LWDA") and ECH regarding the specific provisions of the Labor Code

1 alleged to have been violated, including the facts and theories to support those alleged violations.

2 **(Exhibit 3.)**

3 21. As of the filing of this Complaint, more than 65 calendar days after Berry's initial
4 written notice, the LWDA has not provided written notice that it intends to investigate any of
5 Berry's allegations as set forth above. Accordingly, Berry has satisfied the administrative
6 prerequisites under Labor Code section 2699.3 to bring a civil action to recover civil penalties
7 against Defendants, in addition to other remedies, for violations of the California Labor Code.

8 22. In addition to the foregoing, Berry was not provided with all meal periods to which
9 she was entitled. During her employment with ECH, the demands of the job were such that, on
10 many occasions, nobody relieved Berry of all duty and afforded her the opportunity to take a thirty-
11 minute meal period. Yet ECH falsely recorded, in its timekeeping system, that Berry indeed
12 punched out of duty and took a meal period. ECH did not pay Berry an hour of pay at her regular
13 rate of compensation for every meal period she was not permitted to take.

14 23. The foregoing list of misconduct is a partial list only and is set forth by way of example.

15 **CLASS ACTION ALLEGATIONS**

16 24. Berry seek to maintain this action as a class action as to the First, Second, Fourth, and
17 Fifth Causes of Action, on behalf of herself and all others similarly situated, pursuant to Code of Civil
18 Procedure 382. The classes which Berry seek to represent consist of the following:

- 19
- 20 a. All current and former nonexempt California employees of Defendants who
21 worked some amount of overtime at any time from four years prior to the
22 filing of this complaint through the entry of final judgment in this action, and
23 who were also paid nondiscretionary bonuses or other items of compensation
24 in addition to their base hourly pay (the "Regular Rate Class");
- 25 b. All current and former nonexempt California employees of Defendants who
26 received nondiscretionary bonuses and/or other items of compensation and
27 received sick pay during one or more pay periods at any time from four years
28 prior to the filing of this complaint through the entry of final judgment in this
action (the "Sick Pay Class"); and
- c. All members of the Regular Rate Class and the Sick Pay Class who received
one or more wage statements at any time from one year prior to the filing of
this complaint through the entry of final judgment in this action (the "Wage
Statement Class").

1 The Regular Rate Class, the Sick Pay Class, and the Wage Statement Class are collectively referred to
2 as “the Class.”

3 25. The Class is so numerous that joinder of all members is impracticable, and the
4 disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is
5 informed and believes, and based thereon alleges, that Defendants employ more than 100 employees
6 who satisfy the class definition. Although the exact number and identity of class members is not
7 presently known, they can be identified in Defendants’ records through coordinated discovery pursuant
8 to this class action.

9 26. This action may be maintained as a class because the questions of law and fact which are
10 common to class members clearly predominate over any questions affecting only individual members
11 and because a class action is superior to other available methods for adjudicating the controversy.

12 27. There are numerous common questions of law and fact arising out of Defendants’
13 conduct. This class action focuses on Defendants’: (a) systematic failure to properly pay employees for
14 overtime hours; (b) systematic failure to properly provide employees with paid sick leave, and (c)
15 systematic failure to comply with Labor Code section 226(a).

16 28. Furthermore, common questions of fact and law predominate over any questions
17 affecting only individual members of the class. The predominating common or class-wide questions of
18 law and fact include the following:

- 19 a. Whether Defendants failed to properly calculate and pay their nonexempt
20 California employees’ overtime pay;
- 21 b. Whether Defendants failed to properly calculate and pay their nonexempt
22 California employees with paid sick leave;
- 23 c. Whether the wage statements Defendants furnished to their California employees
24 comply with Labor Code section 226;
- 25 d. Whether the alleged violations of the Labor Code constitute unfair business
26 practices;
- 27 e. Whether the Class is entitled to injunctive relief; and
28

1 f. Whether the Class is entitled to unpaid wages, statutory penalties, and/or
2 restitutionary relief, and the amount of the same.

3 29. Berry's claims are typical of the claims of the members of the Class as a whole, all of
4 whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the
5 alleged violations of Defendants. Berry's claims are typical of those of the Class because Defendants
6 subjected Plaintiff and each member of the Class to the same violations alleged herein.

7 30. The defenses of Defendants, to the extent that such defenses apply, are applicable
8 generally to the whole Class and are not distinguishable as to the proposed class members.

9 31. Berry will fairly and adequately protect the interests of all members of the Class, and has
10 retained attorneys with extensive experience in litigation, including class and representative actions.
11 Plaintiff has no interests that conflict with those of the Class. Berry are able to fairly and adequately
12 protect the interests of all members of the class because it is in their best interest to prosecute the claims
13 alleged herein in order to obtain the full compensation due themselves and the other class members.

14 32. A class action is superior to any other method available for fairly and efficiently
15 adjudicating the controversy because 1) joinder of individual class members is not practicable, 2)
16 litigating the claims of individual class members would be unnecessarily costly and burdensome and
17 would deter individual claims, 3) litigating the claims of individual class members would create a risk
18 of inconsistent or varying adjudications that would establish incompatible standards of conduct for
19 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
20 bring individual claims, 5) class members would be discouraged from pursuing individual claims
21 because the damages available to them are relatively small, and 6) public policy encourages the use of
22 the class actions to enforce employment laws and protect individuals who, by virtue of their
23 subordinate position, are particularly vulnerable.

24 33. Judicial economy will be served by maintenance of this lawsuit as a class action. To
25 process numerous virtually identical individual cases will significantly increase the expense on the
26 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
27 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action by
28

1 this Court and doing so will provide multiple benefits to the litigating parties including, but not limited
2 to, efficiency, economy, and uniform adjudication with consistent results.

3 34. Notice of a certified class action and any result or resolution of the litigation can be
4 provided to class members by mail, email, publication, or such other methods of notice as deemed
5 appropriate by the Court.

6 **FIRST CAUSE OF ACTION**
7 **FAILURE TO PROPERLY CALCULATE AND PAY OVERTIME**
8 **(Labor Code §§ 510 and 1198)**
9 **By the Regular Rate Class Against Defendants**

10 35. Berry hereby realleges and incorporates by reference each and every allegation set forth
11 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
12 this cause of action.

13 36. Pursuant to California Labor Code section 510, any work in excess of eight hours in
14 one workday and any work in excess of 40 hours in any one workweek and the first eight hours
15 worked on the seventh day of work in any one workweek shall be compensated at the rate of no
16 less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12
17 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
18 employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall
19 be compensated at the rate of no less than twice the regular rate of pay of an employee.

20 37. Pursuant to California Labor Code section 1198, the maximum hours of work and
21 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
22 standard conditions of labor for employees and the employment of any employee for longer hours
23 than those fixed by the commission or under conditions of labor prohibited by the order is
24 unlawful.

25 38. The “regular rate of pay” includes all remuneration for employment paid to the
26 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
27 commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. §
28 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

1 39. During the relevant time period, Berry and the other members of the Regular Rate Class
2 regularly worked overtime.

3 40. During the relevant time period, Defendants intentionally and willfully failed to pay the
4 proper overtime wages due to Berry and the other members of the Regular Rate Class.

5 41. Wherefore, Berry and the other members of the Regular Rate Class have been injured as
6 set forth above and request relief as hereafter provided.

7 **SECOND CAUSE OF ACTION**
8 **FAILURE TO PROPERLY CALCULATE AND PAY SICK PAY**
9 **(Labor Code, §§ 218, 233, 246 *et seq.*)**
 By the Sick Pay Class Against Defendants

10 42. Plaintiff hereby realleges and incorporates by reference each and every allegation
11 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
12 allegations of this cause of action.

13 43. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
14 employees at that employee's "regular rate of pay."

15 44. The "regular rate of pay" includes all remuneration for employment paid to the
16 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
17 commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. §
18 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

19 45. During the relevant time period, Defendants failed to include commissions, non-
20 discretionary bonuses and/or other items of compensation when determining the "regular rate of
21 pay" for Plaintiff and their other non-exempt employees for purposes of sick time pay.

22 46. According to the California Supreme Court, sick pay is a form of wages. *Murphy v.*
23 *Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.

24 47. Labor Code section 233 provides that "any employer who provides sick leave for
25 employees shall permit an employee to use in any calendar year the employee's accrued and
26 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
27 during six months at the employee's then current rate of entitlement, for the reasons specified in
28 subdivision (a) of Section 246.5."

1 48. During the relevant time period, Defendants intentionally and willfully failed to pay
2 Plaintiff and the other members of the Sick Pay Class their sick pay at the rate of pay required by
3 law. Accordingly, Plaintiff did not receive the full amount of paid sick time that they were entitled
4 to receive by law, and were therefore denied the right to use sick leave within the meaning of
5 Labor Code sections 233(a) and (c).

6 49. Any employer who violates Labor Code section 233 is liable to employees for the
7 greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys'
8 fees and costs. Labor Code §233(d), (e).

9 50. Further, Labor Code section 218 authorizes a private right of action to recover
10 unpaid wages.

11 51. Wherefore, Plaintiff and the other members of the Sick Pay Class have been injured
12 as set forth above and request relief as hereafter provided.

13 **THIRD CAUSE OF ACTION**
14 **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS**
15 **(Lab. Code, §§ 226.7, 512)**
16 **By Plaintiff Against Defendants**

17 52. Plaintiff hereby realleges and incorporates by reference each and every allegation set
18 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
19 allegations of this cause of action.

20 53. Labor Code section 226.7 requires employers to provide employees meal periods as
21 mandated by Order of the Industrial Welfare Commission. It states:

- 22 a. No employer shall require any employee to work during any meal or rest period
23 mandated by an applicable order of the Industrial Welfare Commission.
- 24 b. If an employer fails to provide an employee a meal period or rest period in
25 accordance with an applicable order of the Industrial Welfare Commission, the
26 employer shall pay the employee one additional hour of pay at the employee's
27 regular rate of compensation for each work day that the meal or rest period is
28 not provided.

1 54. Labor Code section 512(a) and applicable Wage Order(s) of the Industrial Welfare
2 Commission provide that an employer may not employ a person for a work period of more than five
3 hours per day without providing that employee a meal period of not less than thirty minutes, except
4 that if the total work period per day is no more than six hours, the meal period may be waived by
5 mutual consent of both the employer and employee. An employer may not employ a person for a
6 work period of more than ten hours per day without providing an employee with a second meal period
7 of not less than thirty minutes, except that if the total work period per day of the employee is no more
8 than twelve hours, the meal period may be waived by mutual consent of both the employer and the
9 employee, and if the first meal period was not waived.

10 55. During the relevant time period, Plaintiff was not provided with meal breaks as
11 required by law and did not receive an additional hour of premium pay for each missed meal period.

12 56. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

13 **FOURTH CAUSE OF ACTION**
14 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**
15 **(Lab. Code, § 226(a))**
 By the Wage Statement Class Against Defendants

16 57. Berry hereby realleges and incorporates by reference each and every allegation set forth
17 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
18 this cause of action.

19 58. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly
20 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
21 part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are
22 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
23 earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any
24 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages
25 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
26 employee and only the last four digits of his or her social security number or an employee identification
27 number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly
28 rates in effect during the pay period and corresponding number of hours worked at each hourly rate by

1 the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total
2 hours worked for each temporary services assignment.”

3 59. An employee suffering injury as a result of the knowing and intentional failure by an
4 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
5 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
6 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
7 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s
8 fees. Labor Code § 226(e)(1).

9 60. An employee is deemed to suffer injury if the employer fails to provide a wage
10 statement or if the employer fails to provide accurate and complete information as required by any one
11 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
12 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
13 during the pay period or any of the other information required to be provided pursuant to Labor Code
14 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
15 and address of the employer and iv) the name of the employee and the last four digits of his or her
16 social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv).
17 “Promptly and easily determine” means a reasonable person would be able to readily ascertain the
18 information without reference to other documents or information. Labor Code § 226(e)(2)(C).

19 61. As set forth above, Defendants intentionally and willfully failed to furnish accurate
20 itemized wage statements which complied with Labor Code section 226.

21 62. Wherefore, Berry and the other members of the Wage Statement Class have been injured
22 as set forth above and request relief as hereafter provided.

23 **FIFTH CAUSE OF ACTION**
24 **UNFAIR BUSINESS PRACTICES**
25 **(Bus. & Prof. Code, § 17200, *et seq.*)**

26 **By the Regular Rate Class and the Sick Pay Class Against Defendants**

27 108. Berry hereby realleges and incorporates by reference each and every allegation set forth
28 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
this cause of action.

1 109. The statutory violations, as alleged above, are unfair business practices within the
2 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq*), and
3 include, but are not limited to, failing to properly pay overtime wages and paid sick leave.

4 110. Wherefore, Berry and the other members of the Regular Rate Class and the Sick Pay
5 Class have been injured as set forth above and request relief as hereafter provided.

6 **SIXTH CAUSE OF ACTION**
7 **PRIVATE ATTORNEYS GENERAL ACT**
8 **(Lab. Code, § 2698 *et seq.*)**
 Against Defendants

9 115. Plaintiff hereby realleges and incorporates by reference each and every allegation
10 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
11 allegations of this cause of action.

12 116. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
13 Code which provides for a civil penalty to be assessed and collected by the LWDA for violations
14 of the Labor Code may, as an alternative, be recovered through a civil action brought by an
15 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
16 to the procedures outlined in Labor Code section 2699.3.

17 117. Plaintiff was employed by Defendants and the alleged violations were committed
18 against him during his time of employment. Plaintiff is therefore an aggrieved employee as
19 defined by Labor Code section 2699, subdivision (c). Other current and former employees are also
20 aggrieved employees in that one or more of the alleged violations were also committed against
21 them during their time of employment with Defendants.

22 118. Pursuant to Labor Code section 2699, subdivision (f), the civil penalty recoverable
23 in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is
24 specifically provided, one hundred dollars (\$100) for each aggrieved employee per pay period for
25 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
26 each subsequent violation.

27 119. Pursuant to California Labor Code section 2699, subdivision (g), an aggrieved
28 employee may recover the civil penalty on behalf of himself or herself and other current or former

1 employees against whom one or more of the alleged violations was committed. Furthermore, any
2 employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees
3 and costs.

4 120. Wherefore, Plaintiff and other employees (current and former) have been aggrieved
5 and Plaintiff, on behalf of the Labor and Workforce Development Agency, requests relief as
6 hereafter provided.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

9 **As to the First, Second, Fourth, and Fifth Causes of Action:**

- 10 1. That this Court certify the Class;
- 11 2. That this Court appoint Berry as the representative of the Class;
- 12 3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
- 13 4. That this Court award actual, compensatory, special, and general damages as well as
14 restitutionary relief to Berry and the members of the Class;
- 15 5. That this Court award injunctive relief, including that available under Labor Code
16 section 226(h) and Business and Professions Code Section 17203;
- 17 6. That this Court award statutory penalties, including those available under Labor
18 Code section 226(e), to Plaintiff and the members of the Class;
- 19 7. That this Court award statutory attorneys' fees and costs, including those available
20 under Labor Code §§ 218.5, 226(e)(1), 233(e), 1194, and 2699(g), as well as Code
21 of Civil Procedure § 1021.5;
- 22 8. That this Court award prejudgment and post-judgment interest according to any
23 applicable provision of law or as otherwise permitted by law; and
- 24 9. That this Court award such other and further relief as the court deems just and proper.

25 **As to the Third Cause of Action:**

- 26 1. That this Court award unpaid meal period premiums;
- 27 2. That this Court award statutory attorneys' fees and costs, including those available
28 under Labor Code section 218.5 and Code of Civil Procedure section 1021.5;

1 3. That this Court award prejudgment and post-judgment interest according to any
2 applicable provision of law or as otherwise permitted by law, including those
3 available under Civil Code sections 3287(a) and 3289(b); and

4 4. That this Court award such other and further relief as the court deems just and
5 proper.

6 **As to the Sixth Cause of Action:**

7 1. For civil penalties, including but not limited to those available under Labor Code
8 sections 226.3, 558, and 2699(f);

9 2. For injunctive relief;

10 3. For statutory attorneys' fees and costs, including but not limited to those available
11 under Labor Code section 2699(g);

12 4. For prejudgment and post-judgment interest according to any applicable provision
13 of law or as otherwise permitted by law, including those available under Civil Code
14 sections 3287(a) and 3289(b); and

15 5. For such other and further relief as the court deems just and proper.

16 ///

17 **DATED:** May 5, 2021

MAYALL HURLEY P.C.

18 By _____



19 ROBERT J. WASSERMAN
20 JOHN P. BRISCOE
21 Attorneys for Plaintiff
22 DORA BERRY
23
24
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27
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Exhibit 1

ENGLISH CHANNEL HOLDINGS LLC
321 W Turner Rd
Lodi CA 95240

1605-9255
ORG1:6800 Educ
ORG2:10 DSD
EE ID: 10061 DD

Payroll by Paychex, Inc.

DORA BERRY

NON-NEGOTIABLE

NON-NEGOTIABLE

PERSONAL AND CHECK INFORMATION

Dora Berry

Soc Sec #: xxx-xx-xxxx Employee ID: 10061
Clock ID: 10061

Home Department: 10 DSD / 6800 Educ

Pay Period: 08/02/20 to 08/15/20

Check Date: 08/21/20 Check #: 2567

NET PAY ALLOCATIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Check Amount	0.00	0.00
Chkg 5777	4537.33	35679.01
NET PAY	4537.33	35679.01

EARNINGS

DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Hourly	80.00	36.0000	2880.00	1058.54	30279.12
Nurse SD				1.70	49.30
Overtime	61.75	54.0000	3334.50	409.90	17956.80
Double Time	17.10	72.0000	1231.20	63.22	3813.92
Nurse SD OT				2.95	128.33
Bonus			160.00		290.00
Holiday				24.00	672.00
Sick				24.00	672.00
Total Hours	158.85			1584.31	
Gross Earnings			7605.70		53861.47
Total Hrs Worked	158.85				

WITHHOLDINGS

DESCRIPTION	FILING STATUS	THIS PERIOD (\$)	YTD (\$)
Social Security		470.94	3333.22
Medicare		110.14	779.54
Fed Income Tax	M 0	1079.19	5430.09
CA Income Tax	SMI2 0 0	561.58	3092.09
CA Disability		75.96	537.60
TOTAL		2297.81	13172.54

DEDUCTIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Dental EE Preta	8.28	82.80
PX401 EEPRE	760.57	4910.02
Vision EE Preta	1.71	17.10
TOTAL	770.56	5009.92

NET PAY

THIS PERIOD (\$)
4537.33

YTD (\$)
35679.01

Exhibit 2

Γαλιουβος ιου Γαλιουελ. ιιγ.

Payrolls by Paycom, Inc.

Payrolls by Paychex, Inc.

Exhibit 3

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440

MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8258

FAX (209) 473-4818
TELEPHONE (209) 477-3833
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NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

February 26, 2021

SUBMITTED ELECTRONICALLY

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

English Channel Holdings, LLC
321 W. Turner Rd.
Lodi, CA 95240

Re: Dora Berry

To whom it may concern:

This firm represents Dora Berry ("Berry") in relation to her ongoing employment with English Channel Holdings, LLC dba Lodi Creek Post Acute ("ECH"). In accordance with Labor Code section 2699.3, this letter shall serve as Berry's written notice to the Labor and Workforce Development Agency ("LWDA") and ECH regarding the following violations, and facts and theories supporting those violations, on Berry's behalf and, as a proxy for the LWDA, on behalf of former and other current California employees of ECH.

Berry was hired by ECH on or around October 7, 2019 as a card nurse at the Lodi Creek Post Acute nursing home in Lodi, California. In or around February 2020, Berry was promoted to the position of Director of Staff Development. At all times relevant during her employment with ECH, Berry was properly classified as an hourly, nonexempt employee and earned overtime on a regular basis.

However, ECH failed to properly calculate its California employees' "regular rate of pay" for overtime purposes, resulting in an underpayment of wages. During her employment, Berry and other employees received, among other items of compensation, nondiscretionary bonuses for working with residents who tested positive for the novel coronavirus. By way of example, in the pay period of August 2-15, 2020, Berry earned a nondiscretionary bonus in the amount of \$160. (**Exhibit A.**) During this same pay period, Berry worked 61.75 hours of overtime and 17.1 hours of doubletime. However, ECH did not account for the value of this

Labor and Workforce Development Agency
English Channel Holdings, LLC
Re: Dora Berry
February 26, 2021
Page 2 of 2

earned bonus when calculating her regular rate of pay for purposes of overtime and doubletime. Instead, ECH merely took Berry's base hourly rate of \$36 and multiplied it by 1.5 or 2, as appropriate. Accordingly, ECH violated Labor Code section 510.

Additionally, ECH failed to calculate and pay its California employees with paid sick leave at the appropriate rate of pay. When Berry and other nonexempt employees took paid sick leave, ECH paid this sick leave at exactly that employee's base rate of pay, without accounting for the value of earned nondiscretionary bonuses and other items of compensation. **(Exhibit B.)** Accordingly, ECH violated Labor Code sections 233 and 246, *et seq.*

Because Berry was not paid overtime at the appropriate regular rate of pay, the itemized wage statements issued to her failed to show the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate, in violation of Labor Code section 226, subdivisions (a)(1), (5), and (9).

The foregoing violations, and each of them, were committed as against other employees of ECH in California, and within the last year.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Berry intends to file a civil complaint against ECH pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code, § 2698 *et seq.*), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By

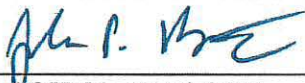

JOHN P. BRISCOE

Exhibit A

ENGLISH CHANNEL HOLDINGS LLC
321 W Turner Rd
Lodi CA 95240

1605-9255
ORG1:6800 Educ
ORG2:10 DSD
EE ID: 10061 DD

Payroll by Paychex, Inc.

DORA BERRY

NON-NEGOTIABLE

NON-NEGOTIABLE

PERSONAL AND CHECK INFORMATION

Dora Berry

Soc Sec #: xxx-xx-xxxx Employee ID: 10061
Clock ID: 10061

Home Department: 10 DSD / 6800 Educ

Pay Period: 08/02/20 to 08/15/20

Check Date: 08/21/20 Check #: 2567

NET PAY ALLOCATIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Check Amount	0.00	0.00
Chkg 5777	4537.33	35679.01
NET PAY	4537.33	35679.01

EARNINGS

DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Hourly	80.00	36.0000	2880.00	1058.54	30279.12
Nurse SD				1.70	49.30
Overtime	61.75	54.0000	3334.50	409.90	17956.80
Double Time	17.10	72.0000	1231.20	63.22	3813.92
Nurse SD OT				2.95	128.33
Bonus			160.00		290.00
Holiday				24.00	672.00
Sick				24.00	672.00
Total Hours	158.85			1584.31	
Gross Earnings			7605.70		53861.47
Total Hrs Worked	158.85				

WITHHOLDINGS

DESCRIPTION	FILING STATUS	THIS PERIOD (\$)	YTD (\$)
Social Security		470.94	3333.22
Medicare		110.14	779.54
Fed Income Tax	M 0	1079.19	5430.09
CA Income Tax	SMI2 0 0	561.58	3092.09
CA Disability		75.96	537.60
TOTAL		2297.81	13172.54

DEDUCTIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Dental EE Preta	8.28	82.80
PX401 EEPRE	760.57	4910.02
Vision EE Preta	1.71	17.10
TOTAL	770.56	5009.92

NET PAY

THIS PERIOD (\$)
4537.33

YTD (\$)
35679.01

Exhibit B

ENGLISH CHANNEL HOLDINGS LLC
321 W Turner Rd
Lodi CA 95240

1605-9255
ORG1:6800 Educ
ORG2:10 DSD
EE ID: 10061 DD

Payroll by Paychex, Inc.

DORA BERRY

NON-NEGOTIABLE

NON-NEGOTIABLE

PERSONAL AND CHECK INFORMATION			EARNINGS					
Dora Berry			DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Soc Sec #: xxx-xx-xxxx Employee ID: 10061			Hourly	38.43	24.3300	935.00	1253.95	36865.40
Clock ID: 10061			Nurse SD				1.70	49.30
Home Department: 10 DSD / 6800 Educ			Retro Pay					6491.96
Pay Period: 09/27/20 to 10/10/20			Overtime	5.53	36.4950	201.82	471.15	21167.50
Check Date: 10/16/20 Check #: 2851			Double Time				67.80	4143.68
NET PAY ALLOCATIONS			Nurse SD OT				2.95	128.33
			Bonus					540.00
			Covid Sick				80.00	2880.00
			Holiday				32.00	960.00
			Sick	14.05	24.3300	341.84	38.05	1013.84
			Vacation	27.07	24.3300	658.61	27.07	658.61
			Total Hours	85.08			1974.67	
			Gross Earnings			2137.27		74898.62
			Total Hrs Worked	43.96				
			WITHHOLDINGS	DESCRIPTION	FILING STATUS	THIS PERIOD (\$)		YTD (\$)
				Social Security		131.89		4635.04
				Medicare		30.84		1084.00
				Fed Income Tax	M 0	159.51		7744.95
				CA Income Tax	SMI2 0 0	65.49		4344.01
				CA Disability		21.27		747.57
				TOTAL		409.00		18555.57
			DEDUCTIONS	DESCRIPTION		THIS PERIOD (\$)		YTD (\$)
				Dental EE Preta		8.28		115.92
				PX401 EEPRE		213.73		7013.75
				Vision EE Preta		1.71		23.94
				TOTAL		223.72		7153.61

Payroll by Paychex, Inc.