

LAW OFFICES OF  
**THOMAS M. DIACHENKO, APC**  
ATTORNEYS AT LAW  
1916 Third Avenue  
San Diego, California 92101  
(619) 699-5870

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

**06/17/2021** at 11:23:00 AM  
Clerk of the Superior Court  
By Keira McCray, Deputy Clerk

Thomas M. Diachenko, Esq. (SBN 140763)

Attorney for Plaintiff, Jamie Thomas

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

JAMIE THOMAS, an individual and on  
behalf of other aggrieved employees and the  
state of California

Plaintiffs,

v.

SAN DIEGO YOUTH SERVICES, a  
California corporation; WALTER PHILLIPS,  
ANTHONY PARHAM KAYLA KELLY  
and STEVEN JELLA, individuals, and;  
DOES 1-100 inclusive,

Defendants.

Case No: 37-2021-00006092-CU-OE-CTL

**FIRST AMENDED COMPLAINT FOR  
DAMAGES**

1. RETALIATION
2. WRONGFUL DISCHARGE  
AGAINST PUBLIC POLICY
3. FAILURE TO INDEMNIFY
4. FAILURE TO PAY WAGES
5. FAILURE TO PAY OVERTIME
6. RECORD VIOLATIONS
7. PAYSTUB VIOLATIONS
8. WAITING TIME PENALTIES
9. UNFAIR BUSINESS PRACTICES
10. LABOR CODE SECTION 2699  
PAGA CLAIMS

Filed: February 9, 2021  
Judge: Ronald F. Frazier  
Dept: C-65

Plaintiff, JAMIE THOMAS (hereinafter, also referred to as "Plaintiff", or "THOMAS"), by  
and through his attorneys of record, brings this action individually, and intends to do so on behalf  
of other aggrieved employees and the state of California pursuant to California Labor Code section

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

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

2. Defendant, SAN DIEGO YOUTH SERVICES (hereinafter, also referred to as “SDYS”) is believed to be a California Domestic Nonprofit corporation with its headquarters located at 3255 Wing Street, San Diego, California 92110-4368. Established as a “domestic nonprofit” corporation (with an entity file number of C0596808) by WALTER PHILIPS (hereinafter, also referred to as “PHILIPS) in April of 1970, SDYS developed eighteen different programs and has typically received approximately \$25 million in county, state and federal funding per year.

3. During the relevant times at issue, PHILIPS was SDYS's "Chief Executive Officer", ANTHONY PARHAM (hereinafter also referred to as "PARHAM") was SDYS's Program Manager, KAYLA KELLY (hereinafter also referred to as "KELLY") was SDYS's Director of Services, and STEVEN JELLA (hereinafter also referred to as "JELLA") was SDYS's Associate Executive Director. SDYS and its employees acting on its behalf (including PHILIPS, PARHAM, KELLY and JELLA) are also sometimes hereinafter also collectively referred to as "Defendants".

4. Plaintiff is informed and believes that PHILLIPS, PARHAM, KELLY and JELLA, at all times mentioned herein were individuals residing in the State of California, County of San Diego. SDYS also employed Plaintiff in San Diego, California. Therefore, jurisdiction and venue are properly with this court.

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

6. The true names and capacities of Defendants sued under California Code of Civil Procedure section 474 as DOES 1 through 100, inclusive, and each of them, are unknown to Plaintiff who therefore sues these Defendants by fictitious names. Plaintiff will seek to amend this Complaint to set forth the true names and capacities of the fictitiously named Defendants when the true names

1 and capacities of these fictitiously named Defendants have been fully ascertained. Plaintiff is  
2 informed and believes and thereon alleges, that each of the fictitiously named Defendants are  
3 responsible in some manner for the events and occurrences alleged by Plaintiff, and Plaintiff, and  
4 other aggrieved employees', damages were directly and proximately caused by the conduct, acts and  
5 omissions of these Defendants.

#### 6 GENERAL ALLEGATIONS

7 7. At all times mentioned herein, Plaintiff THOMAS was an "employee" (as defined  
8 by Labor Code section 350) of Defendants SDYS.

9 8. THOMAS has devoted his professional and personal life to foster children. THOMAS  
10 has a master's degree in Human Services with specialization in Child & Family Services and  
11 Interventions, has written and obtained multiple grants for the care of foster children and has been  
12 a foster parent to seven children.

13 9. THOMAS was employed by SDYS, as a Director of Services from November 2017,  
14 through October of 2019 and as Professional Therapeutic Foster Parent (PTFP) from November of  
15 2019 to May 20, 2020, when SDYS terminated his employment without cause..

16 10. Established as a "domestic nonprofit" corporation (with an entity file number of  
17 C0596808) by PHILIPS in April of 1970, San Diego Youth Services (SDYS) developed eighteen  
18 different programs and receives approximately \$25 million in county, state and federal funding each  
19 year. PHILIPS, JELLA and KELLY engaged in and ratified PARHAM's illegal conduct, including  
20 violations of specific provisions contained within the California Labor Code and California  
21 Department of Social Services (CDSS) regulations not only to the detriment of THOMAS, but also  
22 to the detriment of other aggrieved employees, including but not limited to other PTFPs. Inclusion  
23 of other aggrieved employees gives rise to a Private Attorney General Act (PAGA) claim (as  
24 codified in Labor Code §2699, et.seq.), which Plaintiff intends to add to this Complaint, by way of  
25 amendment, at the procedurally correct time.

26 11. When SDYS first hired THOMAS in 2017, he was employed as the Director of  
27 Services overseeing six programs which included the: Storefront Youth Homeless Shelter;  
28 Counseling Cove homeless youth therapeutic services program; Take Wing Transitional Age Youth

(TAY) Housing program; East County Behavioral Health Outpatient Clinic for youth and families; Adoption Support Services program, and; Foster Family Agency (FFA) foster care program.

12. THOMAS focused on the FFA foster care program. THOMAS saw this program as the most dysfunctional and ineffective SDYS program, as was typical for almost every other foster care program throughout San Diego, California, and the rest of the United States. THOMAS was very familiar with the dismal foster care system statistics, including the fact that approximately seventy percent (70%) of foster children will end up homeless, incarcerated or dead within a year of aging out of the foster care system which was supposed to be designed to protect them and avert such outcomes. THOMAS also was aware that foster children are diagnosed with Post-Traumatic Stress Disorder (PTSD) at six times the rate of the general population and double the rate of veterans returning from war. THOMAS' goal was to improve these outcomes. To that end, THOMAS re-built the SDYS foster care program from the ground up. He implemented the necessary standards and best practices that he had developed from his "Foster Care 2.0" model of care. This was a model which THOMAS created after completing his master's program in Human Services, specializing in Child & Family Studies and Interventions (almost exclusively focused on foster care) in 2015.

13. The most significant intervention developed by THOMAS to improve outcomes, was the Professional Therapeutic Foster Parent (PTFP) project. As the Director of Services, THOMAS wrote and obtained a grant for the financial benefit of SDYS for the first-of-its-kind project. The amount of the grant awarded to SDYS was \$300,000 a year to pay for the PTFPs \$50,000 a year (\$200,000 total for 4 PTFPs) and cover administrative costs. In addition to this salary, the PTFP (and any foster parent, for that matter) were also entitled to receive at least \$1,000 per month for reimbursement and/or indemnification of expenses incurred to care for each foster child. This payment to the PTFP for expenses, was legally mandated by the California Department of Social Services (CDSS) regulations, specifically, sections 11-400 (12) and (13), entitled "AFDC-FOSTER CARE RATES". In addition, SDYS also had a statutory mandate to indemnify/reimburse the foster parents pursuant to California Labor Code section 2802. The grant money was intended to continue for five years and was funded by the State of California's Governor's Office of Emergency Services

1 (CALOES) for “Innovative Response to Marginalized Victims in 2018”. The grant money was not  
2 to be used for expense reimbursement and/or indemnification. Rather, these expenses were to be  
3 funded (paid to SDYS) by the County of San Diego as determined by the CDSS.

4 14. With the grant being awarded, THOMAS began the implementation process which  
5 included the recruitment, screening, and hiring of experienced, qualified, and committed  
6 professional foster parents (PTFPs) to pilot this program. The goal of the new program was to  
7 finally and adequately screen and hire therapeutic foster parents based on their previous professional  
8 and personal experience in caring for the most challenging and traumatized children in our  
9 community, rather than begging inexperienced and uncommitted volunteers.

10 15. As professionals, THOMAS saw these new PTFPs as being best equipped to bring  
11 desperately needed expertise to the organization and would be held accountable for the important  
12 work for which they were hired to do. By paying these professional foster parents a salary for the  
13 complex 24/7/365 work they did, they would also be clearing up the age-old misconception that the  
14 child's food and clothing reimbursement from the county is payment for the foster parent's labor,  
15 which it is not, but rather reimbursement/indemnification for costs associated with care for a foster  
16 child (such as food, clothing, etc.).

17 16. During this aforementioned hiring process from August to October of 2019,  
18 THOMAS learned that one of his previous foster children (and his sister) that THOMAS' wife  
19 (Kimberly Yager) and he had cared for, had been abandoned by their grandmother who had adopted  
20 them 10 years ago. The two children (10 and 12 years old) were housed at the Polinsky Center and  
21 had no place to go and no one to care for them because their adoptive mother (grandmother) was  
22 refusing to reunify with them. At that time, THOMAS had already fostered six children over the  
23 years. Four of those foster children were reunified with their biological families and the remaining  
24 two children were adopted by THOMAS and his wife, when they were 4 and 3 years old in 2013.

25 17. In the fall of 2019, THOMAS and his wife had busy lives. THOMAS' wife (Ms.  
26 Yager) was working as a hospice nurse for Sharp, and THOMAS was typically working over 50  
27 hours a week for SDYS, while spending their remaining time raising their two adopted children.  
28 Despite this busy schedule but because THOMAS was concerned for these two children who he

1 believed were terrified and being traumatized daily in Polinsky Center in this interim period.  
2 THOMAS knew that temporary holding facilities, such as the Polinsky Center were only designed  
3 for very short 2-4 day stays. However, these two children had been there for months, without any  
4 potential safe and permanent options. THOMAS was fully aware of the statistically higher risk of  
5 suicidal behaviors, physical abuse, sexual abuse with the potential of be being recruited into sex  
6 trafficking. So, THOMAS decided to figure out a way to rescue (the 12-year-old girl) from Polinsky  
7 Center and bring her into his home and care for her. The timing was such that THOMAS could leave  
8 his position as the Director of Services at SDYS (albeit with a *significant* pay cut) and become the  
9 fourth and last PTFP to care for four foster children for SDYS.

10 18. SDYS then entered into an employment agreement with THOMAS and presented  
11 THOMAS with a "SAN DIEGO YOUTH SERVICES AGREEMENT" wherein THOMAS assumed  
12 the new role of "Professional Therapeutic Foster Parent" for SDYS. This written agreement  
13 specifically promised a salary of \$50,000 per year. The salaries (along with associated  
14 administrative costs) would be fully paid with the grant money which was awarded to SDYS based  
15 upon grant application which was the result of THOMAS' work when he was employed as the  
16 Director of SDYS. The remaining funds from the grant awarded went into the SDYS's coffers.

17 19. The foster children's food and clothing reimbursements continued to be fully paid by  
18 San Diego County Child Welfare, as they had always been. The only exception to this would be in  
19 the cases where the child was classified as Intensive Services Foster Care (ISFC). In those cases,  
20 foster parents were given a balloon payment (more than 2.5 times the basic rate) for food and  
21 clothing for the foster child from the County of San Diego. Since SDYS was paying their PTFPs  
22 a salary for the professional services, they asked each of the PTFPs to put these reimbursement  
23 dollars into a savings account for the foster child's future. As set forth in the CDSS regulations, the  
24 precise amount due to THOMAS for the Level Two foster child for which he cared, was \$1,112 per  
25 month as mandated by the CDSS regulations, specifically, §§ 11-400 (12) and (13).

26 20. Unfortunately, after THOMAS left the director position, laws and regulations were  
27 ignored and broken by the Defendants. The SDYS Foster Care Program Manager, PARHAM,  
28 changed vital components of the program without any discussion with the families or any reasonable

1 explanations for those changes. Among those new illegal practices was the misappropriation of  
2 public funds intended to reimburse/indemnify the all foster parents, including the PTFPs for the  
3 foster children's monthly food and clothing costs incurred. These funds, intended to pay for the costs  
4 of raising foster children were pocketed by SDYS to the financial detriment of THOMAS and the  
5 other three PTFPs ("aggrieved employees"). PHILIPS, KELLY and JELLA all participated in and  
6 ratified PARHAM's this illegal conduct.

7         21. For many years, the County of San Diego paid and continued to pay SDYS  
8 between/either \$1,000 (beginning "Basic Rate") up to \$2,600 (for Intensive Services Foster Care  
9 rate) to foster parents per child, per month. Payment was made by San Diego County Child Welfare  
10 to the Foster Family Agency (FFA) of SDYS on the first of every month, to be redistributed to the  
11 foster parents by the 15th of every month. SDYS routinely reimbursed the foster parents in this  
12 fashion for at least the prior 30 years. However, once PARHAM became the new Program Director  
13 Manager and once KELLY became the new Director of Services, SDYS started keeping the money  
14 which supposed to be paid to the foster parents of at least \$1,000 per month. As noted above,  
15 THOMAS was supposed to be indemnified \$1,112 for his foster child according to the CDSS  
16 regulation which the other 3 PTFPs (and all foster parents) were supposed to be reimbursed at least  
17 \$1,000 per month for the foster children's food, clothing, etc. Despite these regulatory requirements  
18 in play during the time period in question, SDYS knowingly and intentionally, paid the PTFPs only  
19 \$500 per month for reimbursement (keeping the difference for itself). In addition, for the months of  
20 June and July 2020, of THOMAS's foster care with SDYS, SDYS also kept 100% of the food and  
21 clothing reimbursement dollars they received from San Diego County intended for THOMAS and  
22 his foster child. All of the above described knowing and willful failure to adequately pay the PTFPs  
23 was decided and/or ratified by PARHAM, PHILIPS, JELLA and KELLY. There was never any  
24 legitimate reason given by Defendants justifying this misappropriation of public funds.

25         22. THOMAS made repeated attempts to discuss these new and unexplained  
26 reimbursement procedures which were in blatant violation of the California Department of Social  
27 Services (CDSS) regulations, specifically, section 11-400 (12) and (13), entitled "AFDC-FOSTER  
28 CARE RATES". PARHAM and KELLY repeatedly promised that they would "look into it" and

1 meet with the aggrieved employees (PTFPs) to discuss the best practices moving forward. Instead  
2 of remediating their illegal business and employment practices, Defendants chose to punish the  
3 person who brought it to their attention, namely, THOMAS. On April 20, 2020, SDYS terminated  
4 all four of the PTFPs in the middle of the Covid-19 pandemic, which was, by far, the most  
5 challenging time to be a foster parent ever. Although SDYS re-hired three of the PTFPs, they did not  
6 rehire THOMAS nor did they reimburse/indemnify him for his foster parenting for the months of  
7 June and July 2020, while the pandemic numbers were surging.

8         23. Effective foster parents create structure, consistency and use school, extracurricular  
9 activities, therapeutic services, and tutors to build a safe and therapeutic environment for the  
10 traumatized children in their care 24/7/365. Since March 11th, 2020, all such support services and  
11 resources were gone due to the pandemic. The next month, SDYS terminated THOMAS after he  
12 repeatedly raised concerns about the illegal diversion of funds intended for him and the other foster  
13 parents to the corporate bank account of SDYS, as described above including reimbursement and  
14 salaries for the PTFPs, in particular the salary of THOMAS.

15         24. On the date of his termination, JELLA essentially told THOMAS that SDYS was  
16 terminating him without cause. JELLA told THOMAS that his termination had nothing to do with  
17 his performance as a foster parent. THOMAS asked JELLA to provide a reason for SDYS  
18 terminating his employment. In response, JELLA told THOMAS that he was a “heroic parent” but  
19 because he was “a contractor”, SDYS was going to terminate their relationship with THOMAS, and  
20 transfer THOMAS to be “supported by a new organization and new team”.

21         25. Having sent the other foster parents the implicit threat that if they complained about  
22 illegal conduct by SDYS, they would be terminated without cause in retaliation for having done so.  
23 Defendants created a culture of fear of reporting SDYS’s continued illegal conduct and  
24 misappropriation of government funds. As such, SDYS continued to profit from its continued illegal  
25 conduct to the detriment of the foster parents who were deprived of public funds which were  
26 intended for the foster parents to care for their foster children.

27         26. Furthermore, SDYS, continued to falsely represent to the governmental agencies  
28 (from which it received tax-payer money intended for the care of foster children) that the funds

1 intended to be paid to foster parents were in fact, paid to the foster parents. Such lack of fiscal  
2 accountability and diversion of public funds to a corporate bank account, was something which  
3 SDYS sought and intended to keep secret, particularly from the governmental funding sources. Tax  
4 payer money intended to care for foster children was kept by a corporation in violation of its legal  
5 obligations.

6 27. In order to silence employees such as THOMAS, from exposing and holding SDYS  
7 legally accountable, SDYS retaliated against him by terminating his employment without cause.  
8 This placed unnecessary pressures, loss and stress on THOMAS while also putting the foster child's  
9 placement and therefore, her safety and well-being, at significant risk during the pandemic.

10 28. Such misappropriation of public (tax payer) funds intended for the benefit of a  
11 vulnerable population of our society, is not in the public interest. SDYS betrayed a trust placed in  
12 them by governmental agencies which sought to fulfill a public policy of providing financial support  
13 for foster parents who provide care for the most at-risk and innocent in our society. Employing  
14 retaliatory measures to eliminate employees who seek to correct such illegal activity subjects the  
15 Defendants, and each of them to civil liability as set forth in the below causes of action.

#### 16 **FIRST CAUSE OF ACTION**

##### 17 **(Retaliation - Against SDYS Only)**

18 29. Plaintiff alleges and incorporates herein by reference all paragraphs outside this  
19 section as though fully set forth herein.

20 30. An employer is prohibited from discriminating against an employee who engages in  
21 a statutorily protected activity and opposes unlawful conduct by the employer.

22 31. In response to Plaintiff's complaints of failure to reimburse/indemnify him and other  
23 aggrieved employees, SDYS withheld funds from him in violation of the California Department of  
24 Social Services (CDSS) regulations, specifically, sections 11-400 (12) and (13), entitled  
25 "AFDC-FOSTER CARE RATES" and the California Labor Code, specifically, Labor Code §2802.  
26 Instead of following the law, Defendants chose to retaliate against THOMAS by terminating his  
27 employment without legitimate cause and withholding all funds due to him under California law to  
28 cover the costs of foster care.



1 general public by protecting the public from harm through prevention of repeated and knowing  
2 compliance violations, including but not necessarily limited to the California Department of Social  
3 Services (CDSS) regulations, specifically, §§ 11-400 (12) and (13), entitled "AFDC-FOSTER CARE  
4 RATES" and California Labor Code §2802.

5 40. THOMAS exercised certain statutory rights, namely, those set forth in California  
6 Government Code § 12940, et. seq., and reported concerns regarding violations of certain statutes  
7 of public importance including but not necessarily limited to the care of foster children and  
8 indemnification for work related expenses incurred by foster parents.

9 41. SDYS terminated THOMAS because he raised issues of illegality including knowing  
10 violation of governmental regulations inspired by the public policy of providing financial support  
11 to foster parents with the hope of providing care and guidance and ultimately, outcomes.  
12 Specifically, THOMAS raised concerns about SDYS's knowing violation of compliance regulations  
13 which specifically included SDYS' legal obligation to indemnify foster parents for the costs of  
14 raising these children in the amounts previously described and incorporated herein by way of  
15 reference.

16 42. THOMAS was harmed as a direct result of SDYS's wrongful termination of him.  
17 THOMAS has sustained economic and non-economic damages as a result of SDYS above described  
18 wrongful actions.

19 43. The above-recited actions of Defendants were done with malice, fraud, oppression,  
20 and reckless disregard of the Plaintiff's rights and within the meaning of California Civil Code §  
21 3294 entitling Plaintiff to recover punitive damages from SDYS.

### 22 **THIRD CAUSE OF ACTION**

#### 23 **(Failure to Indemnify - Against SDYS Only)**

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

26 45. Pursuant to California Labor Code § 2802(a), an employer shall indemnify his  
27 employee for all necessary expenditures incurred by the employee in direct consequence of the  
28 discharge of his/her duties. THOMAS incurred necessary expenditures for equipment which

1 were required to perform his/her job for which Defendant has not reimbursed him. This included  
2 but is not limited to food, rent and clothing, etc. for the foster child, plus use of personal car,  
3 computer and cell phone, etc. which were used by Plaintiff to perform services for Defendant.

#### 4 **FOURTH CAUSE OF ACTION**

##### 5 **(Failure to Pay Wages - Against SDYS Only)**

6 46. THOMAS re-alleges and incorporates herein by reference all paragraphs outside  
7 this section as though fully set forth herein.

8 47. THOMAS was a non-exempt employee during the relevant time period in  
9 question and, therefore, was entitled to receive at least minimum wage for *every* hour which  
10 Plaintiff worked for Defendants as a non-exempt employee, but Defendants failed to pay him as  
11 such. Defendants required Plaintiff to work certain hours for which he received no compensation,  
12 including but not limited to required hours fulfilling job duties of caring for a foster child, which  
13 was the business of SDYS for which is generated significant revenue.

14 48. Pursuant to Labor Code § 200, “wages” includes all amounts for labor performed  
15 by employees of every description, whether the amount is fixed or ascertained by the standard of  
16 time, task, piece, commission basis, or other method of calculation. Under California state law  
17 through the Minimum Wage Order MW-2007, Labor Code section 1182.12 and local ordinances,  
18 every employer shall pay to each employee wages: (1) not less than not less than \$12 per hour  
19 beginning January 1, 2019, and not less that \$13 per hour as of January 1, 2020, for all  
20 California employees who work for a business with 26 employees or more. In order to satisfy the  
21 criteria of any of the primary exemptions, Defendants were required to pay THOMAS, and all of  
22 the PTFPs a salary of at least \$54,080 per year (or \$1,040 per week), but failed to do so.

23 49. As described above, Defendants failed to pay THOMAS and the other aggrieved  
24 employees (PTFPs) for all hours worked as a non-exempt employees subjecting SDYS to  
25 liability. Additionally, PARHAM, PHILIPS, JELLA and KELLY were acting on behalf of  
26 Defendants in a manner and capacity subjecting them to personal liability pursuant to Labor  
27 Code sections 558, 558.1 and 1197.1, which will give rise to a separate cause of action once the  
28 procedural requirements are satisfied. Therefore, Plaintiff is entitled to recover the required

1 minimum wage for the time periods in question, multiplied times two for all hours worked  
2 pursuant to Labor Code § 1194.2 as liquidated damages, plus interest pursuant to Labor Code §§  
3 1194, 1194.2, and Civil Code § 3289 from the date payment was due pursuant to Labor Code §  
4 204, attorney fees, expenses, and costs of suit pursuant to Labor Code §§ 1194, 1194.3.  
5 Alternatively, Plaintiff is entitled to recovery of overtime pay owed as set forth below in the Fifth  
6 Cause of Action.

#### 7 **FOURTH CAUSE OF ACTION**

##### 8 **(Failure To Pay Overtime Wages - Against SDYS Only)**

9 50. THOMAS re-alleges and incorporates herein by reference all paragraphs outside  
10 this section as though fully set forth herein.

11 51. At all times mentioned herein, THOMAS was an “employee” (as defined by  
12 §350 of the Labor Code) of Defendant and was paid “wages” (as defined by Labor Code § 200)  
13 by Defendants.

14 52. Pursuant to, Industrial Welfare Commission Order 5 and its corresponding sections  
15 of the California Code of Regulations, and Labor Code §§ 200, 226, 500, 510, and 1198,  
16 Defendant was required to compensate THOMAS for all overtime, which is calculated at one and  
17 one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) hours in one  
18 workday and forty (40) hours in any one workweek, and after the first eight (8) hours on the  
19 seventh consecutive workday in any one workweek; with double (2) time after eight (8) hours on  
20 the seventh day of any workweek, or after twelve (12) hours in any workday.

21 53. Based on THOMAS’ daily duties, he was a non-exempt employee entitled to the  
22 protections of Industrial Welfare Commission Order 5 and its corresponding sections of the  
23 California Code of Regulations and Labor Code §§ 200, 510, and 1198, among others. However,  
24 Defendants failed to compensate THOMAS for overtime hours worked as required by the  
25 aforementioned labor regulations. During THOMAS’ employment with SDYS, Defendants failed  
26 to compensate THOMAS for his hours worked, overtime and his on-call time as required by the  
27 aforementioned labor laws and regulations. Defendants failed to pay THOMAS for all time  
28 worked estimated to typically be over 165 hours worked per week (exclusive of on-call time) for

1 which THOMAS was not compensated.

2 54. Under the aforementioned wage orders, statutes and regulations, THOMAS is  
3 entitled to pay for overtime work performed during the course of his/her employment with  
4 Defendants. THOMAS was not paid for overtime hours worked.

5 55. As a direct result, THOMAS has suffered, and continues to suffer, substantial losses  
6 related to the use and enjoyment of such wages, lost interest on such wages, expenses and  
7 attorneys' fees in seeking to compel Defendants to fully perform its obligation under state law,  
8 all to her respective damage in amounts according to proof at the time of trial, but in amounts in  
9 excess of the minimal jurisdictional requirements of this Court.

10 56. Defendants' conduct described herein violates Industrial Welfare Commission  
11 Order 5-2001, Section 3(A), Labor Code §§ 200, 226, 500, 510 and 1198. As a proximate result  
12 of the aforementioned violations, THOMAS has been damaged in an amount according to proof  
13 at the time of trial, but in an amount in excess of the minimal jurisdictional requirements of this  
14 Court. Furthermore, THOMAS is entitled to recover the unpaid balance of hourly pay owed,  
15 overtime compensation, interest, penalties, attorneys' fees, expenses, and costs of suit.

16 57. Furthermore, pursuant to Labor Code section 1199, "[e]very employer or other  
17 person acting either individually or as an officer, agent, or employee of another person is guilty  
18 of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by  
19 imprisonment for not less than 30 days, or by both, who does any of the following: (a) [r]equires  
20 or causes any employee to work for longer hours than those fixed, or under conditions of labor  
21 prohibited by an order of the commission...." PARHAM, PHILIPS, JELLA and KELLY were  
22 all acting individually or as an officer, agent, or employee of SDYS and caused Plaintiffs to be  
23 paid less than the applicable overtime rate for overtime hours worked. Additionally, PARHAM,  
24 PHILIPS, JELLA and KELLY were directors, officers, and/or managing agents for SDYS and at  
25 all times relevant herein was acting on behalf of Defendants and thus, also personally liable  
26 pursuant to Labor Code sections 558 and 558.1. Therefore, PARHAM, PHILIPS, JELLA and  
27 KELLY are subject to individual liability pursuant to the applicable PAGA provisions which  
28 THOMAS are set forth in the Tenth Cause of Action.

1           58.     Therefore, pursuant to Labor Code sections 218.6, 226, 510, and 1194, 1199 and  
2 Civil Code section 3289, Plaintiff is entitled to recover the unpaid balance of hourly pay owed,  
3 overtime compensation, interest, penalties, attorney fees, expenses, and costs of suit and is  
4 further entitled to penalties under Labor Code section 204 through section 210.

5                           **SIXTH CAUSE OF ACTION**

6                           **(Record Violations - Against SDYS only)**

7           59.     Pursuant to Labor Code § 1174(d), SDYS has a legal obligation to “[k]eep, at a  
8 central location in the state or at the plants or establishments at which employees are employed,  
9 payroll records showing the hours worked daily by and the wages paid to, and the number of  
10 piece-rate units earned by and any applicable piece rate paid to, employees employed at the  
11 respective plants or establishments.”

12           60.     SDYS failed to maintain records of THOMAS’ hours worked which they were  
13 required to keep pursuant to Labor Code § 1174(d). Therefore, SDYS violated Labor Code §  
14 1174(d) by failing to collect and keep records indicating the daily hours worked by Thomas.

15           61.     Pursuant to Labor Code § 1174.5, “any person employing labor who willfully fails  
16 to maintain...accurate and complete records required by subdivision (d) of Section 1174...shall be  
17 subject to a civil penalty of five hundred dollars (\$500).” Accordingly, SDYS is required pay  
18 THOMAS an additional \$500 along with consequential damages.

19                           **SEVENTH CAUSE OF ACTION**

20                           **(Failure to Provide Proper Pay Stubs Against SDYS Only)**

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

23           63.     Defendants failed to provide Plaintiff with proper pay-stubs. This failure was in  
24 clear violation of California Labor code sections 226 and 226.3.

25           64.     Labor Code section 226(a) states, in part, that, “[e]very employer shall,  
26 semimonthly or at the time of each payment of wages, furnish each of his or her employees,  
27 either as a detachable part of the check, draft, or voucher paying the employee's wages, or  
28 separately when wages are paid by personal check or cash, an accurate itemized statement in

1 writing showing (1) gross wages earned . . . [and] (3) the number of piece-rate units earned and  
2 any applicable piece rate if the employee is paid on a piece-rate basis.”

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

9 66. Defendants failed to provide Plaintiff with pay stubs that accurately reflected the  
10 hours worked, wages earned, including overtime wages, and the rate of pay for hours worked.  
11 Consequently, Defendants’ failure to provide accurate pay stubs violated Labor Code section  
12 226(a).

13 67. Defendants knowingly and intentionally failed to comply with Labor Code  
14 section 226(a), as delineated above. Accordingly, SDYS is liable for damages owed to Plaintiff  
15 as specified in Labor Code section 226(e)(1).

## 16 **EIGHTH CAUSE OF ACTION**

### 17 **(Waiting Time Penalties - Against SDYS only)**

18 68. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside  
19 this section as though fully set forth herein.

20 69. Pursuant to Labor Code sections 201 and 202, Plaintiff was entitled to all wages  
21 earned and unpaid within 72 hours of discharge from employment.

22 70. Defendants failed to pay Plaintiff all wages and sums owed within the  
23 time allotted by Labor Code sections 201 and 202.

24 71. Therefore, pursuant to Labor Code section 203, Plaintiff is entitled to receive up  
25 to 30 days worth of pay calculated at their regular rate of pay which Defendants knowingly and  
26 willfully failed to pay after termination of employment.

27 ///

28 ///

**NINTH CAUSE OF ACTION**

**(Unfair Business Practices -Against SDYS Only)**

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

73. In addition to the statutes cited throughout this Complaint, SDYS also violated various Labor Code sections, including, but not limited to, Labor Code sections 215, 216, 223, 225, 226.6.

74. Defendant's actions alleged above and throughout this Complaint constitute unfair business practices in violation of California Business and Professions Code sections 17200, et seq., because they were done repeatedly over a significant period of time, and in a systemic manner to the detriment of Plaintiff.

75. As a result, Plaintiff has suffered damages and requests damages and/or restitution of all monies and further requests that profits be disgorged from Defendant in an amount according to proof at time of trial, but in an amount believed to be in excess of the minimal jurisdictional requirements of this Court.

76. Pursuant to California Business & Professions Code section 17203, Plaintiff requests that this Court order Defendants to disgorge all ill-gotten gains and award Plaintiff full restitution of all monies wrongfully acquired by Defendants by such "unfair" business act and practices as outlined herein above, plus interest and attorneys' fees pursuant to California Code of Civil Procedure section 1021.5. Plaintiff additionally requests that such funds be impounded by the Court or that an asset freeze or constructive trust be imposed upon such revenues and profits to avoid dissipation and/or fraudulent transfers or concealment of such monies by Entity Defendants. Plaintiff may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

77. Pursuant to California Business & Professions Code section 17203, Plaintiff further seeks an order of this Court for equitable and/or injunctive relief in the form of requiring Defendants to correct the unfair business acts and practices referenced herein.

78. Plaintiff reserves the right to allege other violations of law which constitute

1 unlawful acts or practices.

## 2 TENTH CAUSE OF ACTION

### 3 **(Labor Code Section 2699 Private Attorney General Act Claims Against All Defendants)**

4 79. Plaintiff re-alleges and incorporate herein by reference all paragraphs outside this  
5 section as though fully set forth herein.

6 80. On February 25, 2021, pursuant to Labor Code sections 2699(a) and 2699.3, Plaintiff  
7 provided notice in writing, by electronic submission, to the California Labor Workforce  
8 Development Agency ("LWDA") and, by certified mail and regular mail, to Defendants, that  
9 Plaintiff intended to assert PAGA claims pursuant to section 2699(a) on his own behalf, and in a  
10 representative capacity on behalf of other current or former employees, for Defendants' violations  
11 of specified provisions of the California Labor Code. A true and correct copy of the notice is  
12 attached hereto as Exhibit "A" and thereby incorporated by reference herein.

13 81. The LWDA failed to respond to Plaintiff's notice within the statutory period of  
14 sixty-five (65) days from the electronic submission date of February 25, 2021, and, as a result,  
15 Plaintiff has perfected his right to sue Defendants, and each of them, in a civil action, and to collect  
16 statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1).

17 82. As a result of the acts alleged above, Plaintiff brings this action on his own behalf,  
18 and in his representative capacity on behalf of other current or former aggrieved employees, for  
19 penalties pursuant to California Labor Code section 2699 for Defendants' violations of the  
20 enumerated Labor Code sections including, but not limited to sections 201, 202, 203, 204, 210,  
21 218.5, 2018.6, 226, 226.3, 226.7, 510, 512, 552, 558, 558.1, 1174, 1174.5, 1175, 1194, 1197.1,  
22 1198, 1198.5, 1199, 2751, and 2802.

23 83. It should also be noted that Labor Code section 1197.1 specifically states, in part,  
24 as follows: "Any employer or other person acting either individually or as an officer, agent, or  
25 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 and restitution of  
27 wages payable to the employee, as follows: (1) For any initial violation that is intentionally  
28 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which

1 the employee is underpaid. This amount shall be in addition to an amount sufficient to recover  
2 underpaid wages. (2) For each subsequent violation for the same specific offense, two hundred fifty  
3 dollars (\$250) for each underpaid employee for each pay period for which the employee is  
4 underpaid regardless of whether the initial violation is intentionally committed. This amount shall  
5 be in addition to an amount sufficient to recover underpaid wages..." HADDAD was a person acting  
6 individually or as an officer, agent, or employee of all entity Defendants who caused the Plaintiff  
7 and other aggrieved employees to be paid less than the statutorily required minimum wage as  
8 described in this First Amended Complaint. Accordingly, he is subject to individual liability  
9 pursuant to Labor Code section 1197.1. The same holds true pursuant to Labor Code section 558,  
10 as described above.

11 84. Furthermore, Labor Code section 558 states that, "[a]ny employer or other person  
12 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or  
13 any provision regulating hours and days of work in any order of the Industrial Welfare Commission  
14 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each  
15 underpaid employee for each pay period for which the employee was underpaid in addition to an  
16 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred  
17 dollars (\$100) for each underpaid employee for each pay period for which the employee was  
18 underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered  
19 pursuant to this section shall be paid to the affected employee." The Section further states that "[t]he  
20 civil penalties provided for in this section are in addition to any other civil or criminal penalty  
21 provided by law."

22 85. Labor Code section 558.1 (a) also states that, "[a]ny employer or other person acting  
23 on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum  
24 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,  
25 or causes to be violated, sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the  
26 employer for such violation."

27 86. Pursuant to California Labor Code section 2699, Plaintiff and other aggrieved  
28 employees are entitled to be awarded twenty-five percent (25%) of all penalties referenced herein

1 and due under California law, in addition to interest, attorneys' fees, and costs.

2 87. The Court shall award seventy-five percent (75%) of all penalties referenced herein  
3 and due under California law to the State of California.

4 88. Plaintiff therefore seeks to recover from Defendants, and each of them, allowable  
5 penalties, interest, costs, and attorneys' fees, in an amount according to proof at time of trial, in  
6 accordance with Labor Code sections 2699, et seq.

7 89. Defendants, PHILLIPS, PARHAM, KELLY and JELLA and each of them, were  
8 employees and/or persons acting on behalf of all Entity Defendants. Defendants, PHILLIPS,  
9 PARHAM, KELLY and JELLA, violated, or caused to be violated, Labor Code Sections and Wage  
10 Orders including, but not limited to, those requiring: payment of minimum wages, payment of  
11 overtime, payment of wages due at the time of separation, reimbursement of employment related  
12 expenses, delivery of pay stubs, maintenance of time records, and payment of meal and rest period  
13 premiums, alleged herein.

14 90. Accordingly, Plaintiff, and other aggrieved employees, are entitled to personally  
15 recover against Defendants, and all of them, such penalties as set forth in Labor Code section 558,  
16 as delineated above, and for amounts owed under Labor Code sections 203, 226, 226.7, 1194, and  
17 2802, alleged herein, pursuant to Labor Code section 558.1.

#### 18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment against Defendant(s), as follows:

20 1. Liquidated damages, economic damages, non-economic damages and premiums  
21 according to proof;

22 2. Penalties, liquidated damages and compensation pursuant to Labor Code sections  
23 201, 203, 210, 226, 226.3, 226.7, 226.8, 510, 512, 1174, 1194, 1194.2, 1197.1, and 1197.5,  
24 2802 and Government Code 12940;

25 3. Interest pursuant to all applicable statutes, including, but not limited to, Labor  
26 Code section 218.6 and Civil Code section 3289;

27 4. All damages available pursuant to all applicable sections of the Labor Code;

28 5. Restitution and/or disgorgement pursuant to Business & Professions Code

1 sections 17200, et seq. and Labor Code section 1197.1;

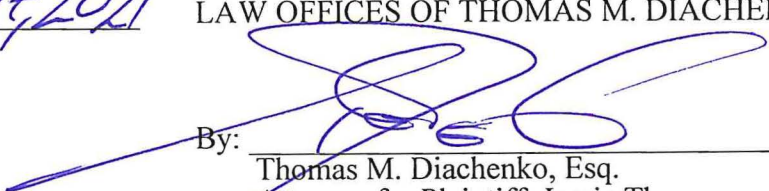
2 6. Reasonable attorneys' fees and costs pursuant to all applicable statutes,  
3 including, but not limited to, Labor Code sections 218.5, 226, 1194, 2802, 2699 et. seq. and  
4 Code of Civil Procedure section 1021.5, and Government Code section 12965(b); and

5 7. Such other and further relief as the Court deems proper.

6 Respectfully Submitted By:

7 Dated: June 17, 2021

LAW OFFICES OF THOMAS M. DIACHENKO, APC

8  
9 By: 

10 Thomas M. Diachenko, Esq.  
11 Attorney for Plaintiff, Jamie Thomas  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Exhibit “A”

LAW OFFICES OF

✧ **THOMAS M. DIACHENKO, APC**

Practice Areas Include:

**Wage, Employment, Personal**

**Injury & Business Litigation**

E-mail: Thom@DiachenkoLaw.com

1916 Third Avenue  
San Diego, California 92101

Tel: (619) 699-5870

Fax: (619) 699-5871

February 24, 2021

Refer to File No:

42420-101920

Sent via electronic mail to:

PAGA Administrator

David M. Lanier

PAGAfilings@dir.ca.gov

***Re: Jamie Thomas, as an individual and on behalf of other aggrieved employees v. San Diego Youth Services, a California Domestic Nonprofit corporation; Walter Philips, Anthony Parham, Kayla Kelly, and Steven Jella, individuals and; DOES 1-100 inclusive***

Dear Mr. Lanier:

I represent Jamie Thomas ("Plaintiff" or "THOMAS"), individually and on behalf of all other aggrieved employees. Plaintiff and the other aggrieved employees as also collectively referred to hereinafter as "PAGA Plaintiffs", "Plaintiffs" or "Plaintiff and other aggrieved employees"). THOMAS is a *former* employee of San Diego Youth Services ("SDYS") but was misclassified as an independent contractor but paid a set monthly salary regardless of the amount of hours suffered or permitted to work, as were other aggrieved employees. Walter Philips, Anthony Parham, Kayla Kelly, and Steven Jella, in their various executive capacities carried out and/or ratified SDYS's illegal employment practices. Walter Philips ("PHILIPS"), Anthony Parham ("PARHAM"), Kayla Kelly ("KELLY"), Steven Jella ("JELLA") and SDYS are also sometime hereinafter collectively referred to as "Defendants".

Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendants' various Labor Code violations and of 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 Department of Industrial Relations, Accounting Unit, 455 Golden Gate Ave., 10<sup>th</sup> Floor, San Francisco, CA 94102.

The following information is based upon best information and belief available at the time of this writing.

#### **INVOLVED ENTITIES AND INDIVIDUALS**

Defendant San Diego Youth Services, hereinafter referred to as "SDYS" is a California Domestic Nonprofit corporation, doing business at 3255 Wing Street, San Diego, California 92110-

4368.

PHILLIPS has been and is believed to be the Chief Executive Officer for SDYS. PARHAM, KELLY, and JELLA served in various executive and director levels. All of these individuals were responsible for making and/or ratifying all decisions relevant to the below claims. During all times relevant herein, these individuals possessed and exerted decision-making power over Plaintiffs' working conditions, classification (as independent contractor instead of employee) and payment of wages (including minimum wages and overtime), indemnification (reimbursement) of work related business expenses and termination after THOMAS expressed concerns about SDYS illegal employment practices. As such, said individuals are personally liable for all recoverable penalties, fees and costs *vis-a-vis* Labor Code sections 226.6, 226.8, 558, 558.1, 1197.1, 2753 and *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. Plaintiffs reserve the right to later name a Defendant currently unknown and relate that amendment back to the date of this letter.

### GENERAL ALLEGATIONS

At all times mentioned herein, THOMAS was an "employee" (as defined by Labor Code section 350) of SDYS.

THOMAS has devoted his professional and personal life to foster children. THOMAS holds a Master's degree in Human Services with specialization in Child & Family Services and Interventions, has written and obtained multiple grants for the care of foster children and has been a foster parent to seven children.

THOMAS was employed by SDYS, as a Director of Services from November 2017, through October of 2019 and as Professional Therapeutic Foster Parent (PTFP) from November of 2019 to May 20, 2020, when SDYS terminated his employment without actual or stated cause.

PHILIPS, JELLA and KELLY engaged in and ratified PARHAM's illegal conduct, including violations of specific provisions of the California Labor Code and California Department of Social Services (CDSS) regulations not only to the detriment of THOMAS, but also to the detriment of other aggrieved employees, including but not limited to other PTFPs. Inclusion of other aggrieved employees gives rise to a Private Attorney General Act (PAGA) claim (as codified in Labor Code §2699, et. seq.).

THOMAS was first employed to oversee six programs which included the: Storefront Youth Homeless Shelter; Counseling Cove homeless youth therapeutic services program; Take Wing Transitional Age Youth (TAY) Housing program; East County Behavioral Health Outpatient Clinic for youth and families; Adoption Support Services program, and; Foster Family Agency (FFA) foster care program.

THOMAS focused on the FFA foster care program. THOMAS saw this program as the most dysfunctional and ineffective SDYS program, as was typical for almost every other foster care program throughout San Diego, California, and the rest of the United States. THOMAS was very familiar with the dismal foster care system statistics, including the fact that approximately seventy

percent (70%) of foster children will end up homeless, incarcerated or dead within a year of aging out of the foster care system which was supposed to be designed to protect them and avert such outcomes. THOMAS also was aware that foster children were generally diagnosed with Post-Traumatic Stress Disorder (PTSD) at six times the rate of the general population and double the rate of veterans returning from war. THOMAS' goal was to improve these outcomes. To that end, THOMAS focused on the SDYS foster care program and implemented the necessary standards and best practices that he had developed from his "Foster Care 2.0" model of care. This was a model which THOMAS created after completing his Master's program in Human Services, specializing in Child & Family Studies and Interventions (almost exclusively focused on foster care) in 2015.

The most significant intervention THOMAS developed to improve outcomes, was the Professional Therapeutic Foster Parent (PTFP) project. As the Director of Services, THOMAS wrote, applied for and obtained a grant for the financial benefit of SDYS for the first-of-its-kind project. The amount of the grant awarded to SDYS was \$300,000 a year to pay the PTFPs a \$50,000 a year salary, totaling \$200,000 for the four PTFPs) with the remained intended to for SDYS (to cover SDYS administrative costs). In addition to their salaries, the PTFPs (and any foster parent, for that matter) were entitled to receive at least \$1,000 per month for reimbursement and/or indemnification of expenses incurred to care for each foster child. This payment to the PTFP for expenses, was legally mandated by the California Department of Social Services (CDSS) regulations, specifically, sections 11-400 (12) and (13), entitled "AFDC- FOSTER CARE RATES". In addition, SDYS also had a statutory mandate to indemnify/ reimburse the foster parents pursuant to California Labor Code section 2802. The grant money was intended to continue for five years and was funded by the State of California's Governor's Office of Emergency Services (CALOES) for "Innovative Response to Marginalized Victims in 2018". The grant money was not to be used for expense reimbursement and/or indemnification. Rather, these costs/expenses incurred by the PTFPs were funded (paid to SDYS) by the County of San Diego as determined by the CDSS.

With the grant being awarded, THOMAS began the implementation process which included the recruitment, screening, and hiring of experienced, qualified, and committed professional foster parents (PTFPs) to pilot this program. The goal of the new program was to finally and adequately screen and hire therapeutic foster parents based on their previous professional and personal experience in caring for the most challenging and traumatized children in the community, rather than begging inexperienced and uncommitted volunteers.

As professionals, THOMAS saw the PTFPs as being best equipped to bring desperately needed expertise to the organization who would be held accountable for the important work for which they were hired to do. By paying these professional foster parents a salary for the complex 24/7/365 work they did, they would also be clearing up the age-old misconception that the childrens' food and clothing reimbursement from the county was payment for the foster parent's labor, which it was not, but rather, represented reimbursement/ indemnification for costs associated with caring for foster children (i.e., food, clothing, etc.).

During this aforementioned hiring process from August to October of 2019, THOMAS learned that one of his previous foster children (and his sister) that THOMAS' wife (Kimberly Yager) and he had cared for in the past, had been recently abandoned by their grandmother who

had adopted them 10 years ago. The two children (10 and 12 years old at this time) were housed at the Polinsky Center, had no other place with no one to care for them because their adoptive mother (grandmother) was refusing to reunify with them. At that time, THOMAS had already fostered six children over the years. Four of those foster children were reunified with their biological families and the remaining two children were adopted by THOMAS and his wife, when they were 4 and 3 years old in 2013.

In the fall of 2019, THOMAS and his wife had busy lives. THOMAS's wife (Ms. Yager) was working as a hospice nurse for Sharp, and THOMAS was typically working over 50 hours a week for SDYS, while spending their remaining time raising their two adopted (formerly foster) children. Despite his busy schedule, THOMAS became very worried about these two children who he believed were terrified and being traumatized daily in Polinsky Center in this interim period. THOMAS knew that temporary holding facilities, such as the Polinsky Center were only designed for very short 2-4 day stays. However, these two children had been there for months, without any prospects of safe and permanent options. THOMAS was fully aware of the statistically higher incidence of suicidal behaviors, physical abuse, and sexual abuse and exploitation in this environment. So, THOMAS decided to figure out a way to protect one of the children (the 12-year-old girl) being housed in the Polinsky Center and care for her as a foster parent. The timing was such that THOMAS could leave his position as the Director of Services at SDYS (albeit with a significant pay cut) and become the fourth and last PTFP to care for the fourth foster child with a PTFP for SDYS.

SDYS presented an employment agreement to THOMAS, entitled "SAN DIEGO YOUTH SERVICES CONSULTANT AGREEMENT" wherein THOMAS assumed the new role of "Professional Therapeutic Foster Parent" for SDYS. This written agreement specifically promised a salary of \$50,000 per year. The salaries (along with associated administrative costs) were supposed to be fully paid with the grant money which was awarded to SDYS based upon the grant obtained as a result of THOMAS's work when he was employed as the Director of Services at SDYS. The remaining funds from the grant awarded went into the SDYS' coffers.

The foster children's food and clothing reimbursements were to continue to be fully paid by San Diego County Child Welfare, as they had always been. The only exception to this would be in the cases where the child was classified as Intensive Services Foster Care (ISFC). In those cases, foster parents were given a balloon payment (more than 2.5 times the basic rate) for food and clothing for the foster child from the County of San Diego. SDYS told each of the PTFPs to put these reimbursement dollars into a savings account for their respective foster child's future care. As set forth in the CDSS regulations, the precise amount due to THOMAS for the Level Two foster child for which he cared, was \$1,112 per month as mandated by the CDSS regulations, specifically, §§ 11-400 (12) and (13).

Unfortunately, after THOMAS left his director position, laws and regulations were ignored and violated by Defendants. The SDYS Foster Care Program Manager, PARHAM, changed vital components of the program without any discussion with the families or any reasonable explanations for those changes. Among those new illegal practices was the misappropriation of public funds intended to reimburse/indemnify the foster parents, including

the PTFPs for the foster children's monthly food and clothing costs incurred. These funds, intended to pay for the costs of raising foster children were pocketed by SDYS to the financial detriment of THOMAS and the other three PTFPs ("aggrieved employees"). PHILIPS, KELLY and JELLA all participated in and ratified PARHAM's profiteering scheme.

For many years, the County of San Diego paid and continued to pay SDYS between/either \$1,000 (beginning "Basic Rate") up to \$2,600 (for Intensive Services Foster Care rate) to foster parents per child, per month. Payment was made by San Diego County Child Welfare to the Foster Family Agency (FFA) of SDYS on the first of every month, to be redistributed to the foster parents by the 15th of every month. SDYS had routinely reimbursed all foster parents in this fashion for at least the prior 30 years. However, after hiring the PTFPs, SDYS suddenly began withholding and keeping funds which were supposed to be paid to the foster parents. This was on top of the money SDYS was paid for administering the program which was about the same amount due to the foster parents. As noted above, THOMAS was supposed to be indemnified \$1,112 for his foster child according to the CDSS regulation which the other 3 PTFPs (and all foster parents) were supposed to be reimbursed at least \$1,000 per month for the foster children's food, clothing, etc. Despite these regulatory requirements in play during the time period in question, SDYS knowingly and intentionally, paid the PTFPs only \$500 per month for reimbursement (hoarding the differences for itself). In addition, for the months of June and July 2020, of THOMAS's foster care with SDYS, SDYS also kept 100% of the food and clothing reimbursement dollars they received from San Diego County intended for THOMAS and his foster child, in addition to the amount they received to administer the program, the latter of which was roughly the same as the amount intended for the foster parent. The above described knowing and willful failure to properly pay the PTFPs was decided and/or ratified by PARHAM, PHILIPS, JELLA and KELLY. There was never any legitimate reason given by Defendants justifying this misappropriation of public funds.

THOMAS made repeated attempts to discuss his concerns about these new and unexplained reimbursement procedures which were in blatant violation of the California Department of Social Services (CDSS) regulations, specifically, section 11-400 (12) and (13), entitled "AFDC-FOSTER CARE RATES". PARHAM and KELLY repeatedly promised that they would "look into it" and meet with the aggrieved employees (PTFPs) to discuss the best practices moving forward. Instead of remediating their illegal business and employment practices by indemnifying the PTFPs from the accumulating slush fund, Defendants chose to punish the person who brought it to their attention, namely, THOMAS. On April 20, 2020, SDYS terminated all four of the PTFPs in the middle of the Covid-19 pandemic, which was, by far, the most challenging time to be a foster parent ever. Although SDYS re-hired three of the PTFPs, they did not rehire THOMAS nor did they ever reimburse/indemnify him for any of his foster parenting costs for which he was legally entitled to be paid, for the months of June and July 2020. This occurred in the midst of surging pandemic numbers and after THOMAS became jobless unexpectedly, even though he had been performing his job satisfactorily.

It is generally understood that effective foster parents create structure and while utilizing school, extracurricular activities, therapeutic services, and tutors to build a safe and therapeutic environment for the traumatized foster children in their care 24/7/365. As of March 11th, 2020,

these support services and resources were gone due to the pandemic. On April 13, 2020, California Governor Gavin Newsome approved \$42 million in additional funds intended to support the front line foster parents. Despite this, SDYS chose to terminate THOMAS's employment after he repeatedly raised concerns about the illegal diversion of funds intended for the foster parents to the corporate bank account of SDYS. This missappropriation included not only the money for the costs of raising a foster child but also the grant money which was supposed to be paid to the PTFPs. While the foster parents were being deprived of funds intended for them to care for their foster children, SDYS inexplicitly re-routed the money for itself in the midst of the COVID-19 pandemic.

On the day SDYS terminated THOMAS's employment, JELLA told THOMAS that SDYS was terminating him without cause; JELLA specifically told THOMAS that the termination had "nothing to do with" his performance as a foster parent and praised him for the quality of his work. THOMAS asked JELLA to provide a reason for SDYS terminating his employment. In response, JELLA told THOMAS that he was a "heroic parent", but because he was "a contractor", SDYS was going to terminate its relationship with THOMAS.

Having sent the other foster parents the implicit message that if they raised concerns about any of SDYS's illegal conduct (as did THOMAS), they would be terminated without cause in retaliation for having done so. Defendants created a culture of fear to dissuade other PTFPs from discussing SDYS's continued illegal conduct and misappropriation of government funds. SDYS's scheme worked. The SDYS executives have continued to siphon government funds away from the intended recipients and enrich the corporation through unabated illegal conduct to the detriment of the foster parents who actually performed work of caring for these foster children which was part of the very business of SDYS.

Furthermore, SDYS, continued to falsely represent to the governmental agencies (from which it received tax-payer money intended for the care of foster children) that the funds intended to be paid to foster parents were in fact, paid to the foster parents. Such lack of fiscal accountability and diversion of public funds to enhance its corporate revenue stream, was something which the SDYS corporate executives knowingly sought to achieve and intended to keep secret, particularly from the public/governmental funding sources.

In order to silence employees such as THOMAS, from exposing and holding SDYS legally accountable, SDYS retaliated against him by terminating his employment without cause. This placed unnecessary pressures, loss and stress on THOMAS while also putting the foster child's placement, safety and well-being, at significant risk during the pandemic. Employing retaliatory measures to eliminate employees who seek to correct such illegal practices, subjects the Defendants, to civil liability as set forth in the below causes of action.

### **STATUTORY VIOLATIONS**

#### **Misclassification**

Labor Code section 3357 makes the presumption of employee status clear that "[a]ny

person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee.” Furthermore, “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.” Labor Code § 432.5. Any contract which the Plaintiffs may have signed do not divest them of their rights under the Labor Code. Labor Code rights cannot “in any way be contravened or set aside by a private agreement, whether written, oral, or implied.” See Labor Code § 219 (a). As such employee status is not determined by agreement but rather, by law which renders certain rights, such as entitlement to minimum wage, over time pay and indemnification, cannot be waived as a matter of law.

The Defendants knowingly chose to misclassify the Plaintiffs as independent contractors in terms of denying them their rights under the Labor Code yet deriving various benefits from them (such as control) to have them carry out the business of SDYS. The individuals who made and carried out these illegal pay and employment practices are subject to personal liability (for penalties, fees and costs) pursuant to Labor Code sections 223, 226.6, 226.8, 558, 558.1, 1197.1, 2753, 2699 et. seq., and *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. Defendants trained, directed and controlled the

### **Retaliation**

An employer is prohibited from retaliating against an employee who engages in a statutorily protected activity and opposes unlawful conduct by the employer. Labor Code section 1102.5 (entitled “Whistleblower Protection”) prohibits an employer and “any person acting on behalf of an employer” from retaliating “against an employee for disclosing information, or... believes that the employee disclosed or may disclose information, to a government or law enforcement agency”, “a violation of state...statute...or a violation of or noncompliance with a local, state...rule or regulation”. In addition, Labor Code section 98.6 (a), states in pertinent part as follows:

- (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 the employee or applicant engaged in any conduct delineated in this chapter... made a written or oral complaint that he or she is owed unpaid wages,... or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

In response to Plaintiff’s complaints of failure to reimburse/indemnify him and other aggrieved employees, Defendants withheld funds from him in violation of the California Department of Social Services (CDSS) regulations, specifically, sections 11-400 (12) and (13), entitled “AFDC-FOSTER CARE RATES” and the California Labor Code, specifically, Labor Code § 2802. Instead of following the law, Defendants chose to retaliate against THOMAS by terminating his employment without legitimate cause and withholding all funds due to him under

California law to cover the costs of foster care.

Pursuant to Labor Code section 1102.5, Defendants statutory liability potentially subjects them to civil penalties of up to \$10,000 for each violation of this section, as well as payment of "reasonable attorney's fees to a plaintiff who brings a successful action for violation of these provisions". Violations of Labor Code section 98.6 (a), entitles an aggrieved employee to "reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer". "In addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation." Labor Code § 98.6 (b) (3).

**Failure to Indemnify**

Pursuant to California Labor Code § 2802(a), an employer shall indemnify its/his/her employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his/her duties. Plaintiffs incurred necessary expenditures which were required to perform their jobs for which Defendants have not adequately reimbursed them. This included but is not limited to food, rent and clothing, etc., for the foster child, plus use of personal car, computer and cell phone, etc., which were used by Plaintiffs to perform services for SDYS.

**Minimum Wage Violations**

The PAGA Plaintiffs were a non-exempt employees during the relevant period of employment with SDYS and therefore, were entitled to receive at least minimum wage for every hour and/or pay period during which they worked for Defendants as non-exempt employees but Defendants failed to pay him as such. Defendants required PAGA Plaintiffs to work certain hours for which they received no compensation as described above. As such the applicable wage order appears to be IWC Order No. 2-2001.

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 of time, task, piece, commission basis, or other method of calculation. Under California state law through the Minimum Wage Order MW-2007, Labor Code section 1182.12 and local ordinances, every employer shall pay to each employee wages: not less than \$12 per hour beginning January 1, 2019, for all California employees who work for a business with 26 employees or more and not less than \$11 per hour beginning January 1, 2019, for all California employees who work for a business with 25 employees or less.

Labor Code Section 1197.1 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 and restitution of wages payable to the employee." Defendants failed to pay PAGA Plaintiffs at least minimum wage for all hours worked and also

failed to pay wages for some of the hours worked in the relevant time periods. Thus, Defendants were required by law to pay PAGA Plaintiffs at least the applicable minimum wage for each pay period worked but instead paid PAGA Plaintiffs nothing for some hours which PAGA Plaintiffs worked. The individual persons named herein were persons acting either individually or as an officer, agent, or employee of Defendants, who paid or caused to be paid to PAGA Plaintiffs wages which were less than the minimum fixed by an order of the commission and are therefore individually liable pursuant to California Labor Code section 1197.1.

Accordingly, the PAGA Plaintiffs are entitled to recover the difference between the required minimum wage multiplied times two for all hours worked pursuant to Labor Code § 1194.2 as liquidated damages, plus interest (pursuant to Labor Code §§ 1194, 1194.2, and Civil Code § 3289 from the date payment was due pursuant to Labor Code § 204 and associated penalties set forth in § 210), attorneys' fees, expenses, and costs of suit pursuant to Labor Code §§ 1194, 1194.3 (to enforce a judgment) and penalties pursuant to section 1197.1.

### **Overtime Violations**

Pursuant to Industrial Welfare Commission Order No. 2-2001, Section 3(A), and Labor Code Sections 200, 500, 510, and 1198, Defendants were required to compensate the PAGA Plaintiffs for all overtime during pay periods in which they were non-exempt, 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 after 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 for all worked performed as a non-exempt employee.

Based on the PAGA Plaintiff's daily duties, PAGA Plaintiffs were non-exempt employees entitled to the overtime protections of Industrial Welfare Commission Order and Labor Code Sections identified above. Defendants failed to compensate the PAGA Plaintiffs for overtime hours worked as required by the aforementioned labor regulations.

Labor Code section 558 states, in part, as follows:

- (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.

- (3) Wages recovered pursuant to this section shall be paid to the affected employee.

Labor Code section 558.1 states as follows:

- (a) Any 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.
- (b) For purposes of this section, the term "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, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.
- (c) Nothing in this section shall be construed to limit the definition of employer under existing law.

Therefore, pursuant to Labor Code sections 200-204, 204.1, 210, 218.6, 226, 510, 558, 558.1 and 1194, and Civil Code section 3289, PAGA Plaintiffs are entitled to recover the unpaid balance of hourly pay owed, overtime compensation, interest, penalties, etc. SDYS and all the individual Defendants are personally liable for PAGA/civil penalties as described in and pursuant to the above statutes.

#### **Pay-Stub/Records Violations**

Defendants failed to provide the PAGA Plaintiffs with accurate pay stubs, or for that matter, any pay stubs. This failure was in clear dereliction of its duties as set forth in California Labor code sections 226 and 226.3 Labor Code section 226 states in part, that, "[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an *accurate* itemized statement in writing showing, among other things, "(1) gross wages earned, (2) total hours worked by the employee..." Labor Code § 226 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."

California Labor Code section 226.3, states in pertinent 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 comply with Labor Code Sections 226 and 226.3. Accordingly, Defendants are liable pursuant to Labor Code Section 226 which states that "[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover 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."

Personal liability for violations of section 226 can be found in Labor code section 226.6 which reads as follows: "Any employer who knowingly and intentionally violates the provisions of Section 226, or any officer, agent, employee, fiduciary, or other person who has the control, receipt, custody, or disposal of, or pays, the wages due any employee, and who knowingly and intentionally participates or aids in the violation of any provision of Section 226 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned not to exceed one year, or both, at the discretion of the court. That fine or imprisonment, or both, shall be in addition to any other penalty provided by law."

Pursuant to Labor Code Section 1174(d), Defendants have 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."

Defendants failed to maintain records of the PAGA Plaintiff's hours worked which Defendants were required to keep pursuant to Labor Code Section 1174(d). Therefore, Defendants violated Labor Code Section 1174(d) by failing to collect and keep records indicating the daily hours worked by Plaintiffs and other aggrieved employees.

Pursuant to Labor Code Section 1174.5, "any person employing labor who willfully fails to maintain . . . accurate and complete records required by subdivision (d) of Section 1174 . . . shall be subject to a civil penalty of five hundred dollars (\$500)." Accordingly, Defendants are required to pay an additional \$500 per PAGA Plaintiff in penalties.

### **Waiting Time Penalties**

Pursuant to Labor Code sections 201, 202 and 203, the PAGA Plaintiffs were entitled to all wages earned and unpaid at the time of discharge or within the time allotted by Labor Code sections 201 and 202.

✧ **THOMAS M. DIACHENKO, APC**

February 24, 2021

Page 12

Defendants failed to pay the PAGA Plaintiffs, when they terminated them ("their contracts"), all wages and sums owed at time of discharge, or within the time allowed by Labor Code sections 201 and 202, including, but not limited to, minimum wage, overtime, in accordance with Labor Code section 203. Defendants intentionally failed to pay Plaintiffs all wages owed to him at the time of his termination and that Defendants also failed to pay other aggrieved employees the wages owed to them at their time of discharge from employment as well.

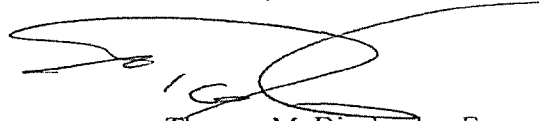
As a direct result, the PAGA Plaintiffs have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law. The PAGA Plaintiffs are also entitled to waiting time penalties as provided by Labor Code §§ 201, 202, and 203.

#### **REQUEST FOR RELIEF**

Accordingly, Plaintiff 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, Plaintiff fully intends to pursue these claims for civil penalties on behalf of themselves and all other current and former aggrieved employees in a Superior Court action. Plaintiffs, through counsel, intend to bring this action as a representative action on behalf of other current or former aggrieved employees, for penalties pursuant to California Labor Code section 2699, et. seq., for Defendants' violations of the various enumerated Labor Code sections set forth throughout this notice letter, including, but not limited to Labor Code sections 98.6, 201-204, 210, 216, 223, 225.5, 226, 226.3, 226.6, 226.7, 226.8, 227, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1, 1198, 1199, 2753, and 2802.

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,



Thomas M. Diachenko, Esq.

Enclosure:  
Proof of Service

cc: service list attached

## SERVICE LIST

Sent via certified mail and USPS to:

Walter Phillips  
Agent for Service of Process  
San Digo Youth Services  
3255 Wing Street  
San Diego, CA 92110

Sent via certified mail and USPS to:

Walter Phillips, CEO  
San Diego Youth Services  
3255 Wing Street  
San Diego, CA 92110

Sent via certified mail and USPS to:

Anthony Parham  
San Diego Youth Services  
3255 Wing Street  
San Diego, CA 92110

Sent via certified mail and USPS to:

Kayla Kelly  
San Diego Youth Services  
3255 Wing Street  
San Diego, CA 92110

Sent via certified mail and USPS to:

Steven Jella  
San Diego Youth Services  
3255 Wing Street  
San Diego, CA 92110

1 **JAMIE THOMAS**

2 **PROOF OF SERVICE**

3 I am employed in the County of San Diego, State of California. I am over eighteen  
4 years of age and not a party to this action; my business address is 1916 Third Avenue, San  
5 Diego, California, 92101.

6 On February 25, 2021, I served a true copy of the foregoing document(s):

7 **1. CORRESPONDENCE, PAGA LETTER**

8 on all interested parties in this action as follows:

|                     |                                                                                                                                         |                                                                                                              |
|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| 9<br>10<br>11<br>12 | Walter Phillips <i>Defendant</i><br>Agent for Service of Process<br>San Diego Youth Services<br>3255 Wing Street<br>San Diego, CA 92110 | Walter Phillips, CEO <i>Defendant</i><br>San Diego Youth Services<br>3255 Wing Street<br>San Diego, CA 92110 |
| 13<br>14<br>15      | Anthony Parham <i>Defendant</i><br>San Diego Youth Services<br>3255 Wing Street<br>San Diego, CA 92110                                  | Kayla Kelly <i>Defendant</i><br>San Diego Youth Services<br>3255 Wing Street<br>San Diego, CA 92110          |
| 16<br>17<br>18      | Steven Jella <i>Defendant</i><br>San Diego Youth Services<br>3255 Wing Street<br>San Diego, CA 92110                                    |                                                                                                              |

19 ☒ **(VIA U.S. MAIL & CERTIFIED U.S. MAIL):** I caused each such  
20 envelope to be placed in the U.S. Post Office at San Diego, California. I am  
21 readily familiar with the firm's practice of collection and processing of  
22 correspondence for overnight delivery. Under that practice it would be  
23 deposited directly with the U.S. Postal Service or other facility maintained by  
the U.S. Postal Service, in an envelope or package designated for use by U.S.  
Postal service and with delivery fees prepaid.

24 ☒ **(VIA ELECTRONIC MEANS):** To the PAGA Administrator ONLY.  
25 I caused such document(s) to be sent by electronic means, pursuant to written  
agreement between the parties.

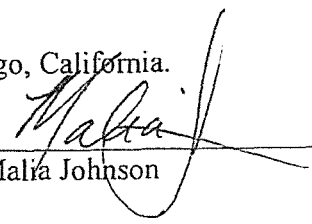
26 ///

27 ///

LAW OFFICES OF  
**THOMAS M. DIACHENKO, APC**  
ATTORNEYS AT LAW  
1916 Third Avenue  
San Diego, California 92101

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct.

3 Executed on February 25, 2021 at San Diego, California.

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  
Malia Johnson

U.S. Postal Service<sup>™</sup>  
**CERTIFIED MAIL<sup>®</sup> RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL**

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

|                                                              |    |
|--------------------------------------------------------------|----|
| <input type="checkbox"/> Return Receipt (hardcopy)           | \$ |
| <input type="checkbox"/> Return Receipt (electronic)         | \$ |
| <input type="checkbox"/> Certified Mail Restricted Delivery  | \$ |
| <input type="checkbox"/> Adult Signature Required            | \$ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ |

Postage \$

Total Postage and Fees \$

Sent to: Walter Phillips, Agent for

Street and Apt. No., or PO Box No. 3255 Wing Street

City, State, ZIP+4<sup>®</sup> San Diego, CA 92110

PS Form 3800, April 2015 PSN 7530-02-000-9053

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Walter Phillips  
Agent for Service of Process  
San Diego Youth Services  
3255 Wing Street  
San Diego, CA 92110



9590 9402 5272 9154 7349 44

2. Article Number (Transfer from sending label)  
7018 1830 0001 8697 5701

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature X W. Phillips ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No  
If YES, enter delivery address below:

3. Service Type

|                                                                        |                                                                     |
|------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express <sup>®</sup>         |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail <sup>™</sup>               |
| <input checked="" type="checkbox"/> Certified Mail <sup>®</sup>        | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation <sup>™</sup>        |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                                  |                                                                     |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) |                                                                     |

Domestic Return Receipt

U.S. Postal Service<sup>™</sup>  
**CERTIFIED MAIL<sup>®</sup> RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL**

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

|                                                              |    |
|--------------------------------------------------------------|----|
| <input type="checkbox"/> Return Receipt (hardcopy)           | \$ |
| <input type="checkbox"/> Return Receipt (electronic)         | \$ |
| <input type="checkbox"/> Certified Mail Restricted Delivery  | \$ |
| <input type="checkbox"/> Adult Signature Required            | \$ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ |

Postage \$

Total Postage and Fees \$

Sent to: Walter Phillips, CEO

Street and Apt. No., or PO Box No. 3255 Wing Street

City, State, ZIP+4<sup>®</sup> San Diego, CA 92110

PS Form 3800, April 2015 PSN 7530-02-000-9053

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Walter Phillips, CEO  
San Diego Youth Services  
3255 Wing Street  
San Diego, CA 92110



9590 9402 5272 9154 7349 37

2. Article Number (Transfer from sending label)  
7018 1830 0001 8697 5718

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No  
If YES, enter delivery address below:

3. Service Type

|                                                                        |                                                                     |
|------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express <sup>®</sup>         |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail <sup>™</sup>               |
| <input checked="" type="checkbox"/> Certified Mail <sup>®</sup>        | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation <sup>™</sup>        |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                                  |                                                                     |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) |                                                                     |

Domestic Return Receipt

U.S. Postal Service<sup>™</sup>  
**CERTIFIED MAIL<sup>®</sup> RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL**

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

|                                                              |    |
|--------------------------------------------------------------|----|
| <input type="checkbox"/> Return Receipt (hardcopy)           | \$ |
| <input type="checkbox"/> Return Receipt (electronic)         | \$ |
| <input type="checkbox"/> Certified Mail Restricted Delivery  | \$ |
| <input type="checkbox"/> Adult Signature Required            | \$ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ |

Postage \$

Total Postage and Fees \$

Sent to: Anthony Parham

Street and Apt. No., or PO Box No. 3255 Wing Street

City, State, ZIP+4<sup>®</sup> San Diego, CA 92110

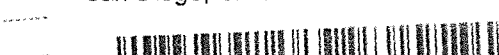
PS Form 3800, April 2015 PSN 7530-02-000-9053

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Anthony Parham  
San Diego Youth Services  
3255 Wing Street  
San Diego, CA 92110



9590 9402 5272 9154 7349 20

2. Article Number (Transfer from sending label)  
7018 1830 0001 8697 5725

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature X W. Phillips ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No  
If YES, enter delivery address below:

3. Service Type

|                                                                        |                                                                     |
|------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express <sup>®</sup>         |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail <sup>™</sup>               |
| <input checked="" type="checkbox"/> Certified Mail <sup>®</sup>        | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation <sup>™</sup>        |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                                  |                                                                     |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) |                                                                     |

PROOF OF SERV

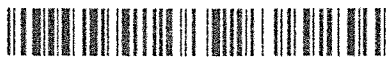
Thomas PAGE Notice Letter

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kayla Kelly  
San Diego Youth Services  
3255 Wing Street  
San Diego, CA 92110



9590 9402 5272 9154 7349 13

2. Article Number (from front of mailpiece)  
7018 1830 0001 8697 5732

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature  
X *[Signature]* ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
  - ☐ Adult Signature Restricted Delivery
  - ☒ Certified Mail®
  - ☐ Certified Mail Restricted Delivery
  - ☐ Collect on Delivery
  - ☐ Collect on Delivery Restricted Delivery
  - ☐ Insured Mail
  - ☐ Insured Mail Restricted Delivery (over \$500)
  - ☐ Priority Mail Express®
  - ☐ Registered Mail™
  - ☐ Registered Mail Restricted Delivery
  - ☐ Return Receipt for Merchandise
  - ☐ Signature Confirmation™
  - ☐ Signature Confirmation Restricted Delivery

U.S. Postal Service™  
CERTIFIED MAIL® RECEIPT  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

Total Postage and Fees

\$ Kayla Kelly

Sent to  
San Diego Youth Services  
3255 Wing Street

City, State, ZIP+4®  
San Diego, CA 92110

PS Form 3800, April 2015 PSN 7530-02-000-9053

See Reverse for Instructions

U.S. Postal Service™  
CERTIFIED MAIL® RECEIPT  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

Total Postage and Fees

\$ Steven Jella

Sent to  
San Diego Youth Services  
3255 Wing Street

City, State, ZIP+4®  
San Diego, CA 92110

PS Form 3800, April 2015 PSN 7530-02-000-9053

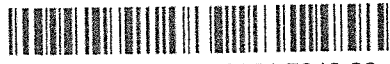
See Reverse

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Steven Jella  
San Diego Youth Services  
3255 Wing Street  
San Diego, CA 92110



9590 9402 5272 9154 7348 83

2. Article Number (from front of mailpiece)  
7018 1830 0001 8697 5749

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature  
X *[Signature]* ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
  - ☐ Adult Signature Restricted Delivery
  - ☒ Certified Mail®
  - ☐ Certified Mail Restricted Delivery
  - ☐ Collect on Delivery
  - ☐ Collect on Delivery Restricted Delivery
  - ☐ Insured Mail
  - ☐ Insured Mail Restricted Delivery (over \$500)
  - ☐ Priority Mail Express®
  - ☐ Registered Mail™
  - ☐ Registered Mail Restricted Delivery
  - ☐ Return Receipt for Merchandise
  - ☐ Signature Confirmation™
  - ☐ Signature Confirmation Restricted Delivery

19  
20  
21  
22  
23  
24  
25  
26  
27  
28