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By D. FISHER Deputy Clerk
Clerk of the Superior Court

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

LAWRENCE COLEY,

Plaintiffs,

v.

THE RESOURCE ENVIRONMENT FOR
UNDERPRIVILEGED GROUPS
ENTERPRISE, INC. D/B/A THE
R.E.F.U.G.E.; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

HC 21105773

COMPLAINT FOR CIVIL PENALTIES

1. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Recovery of Unpaid Wages Including Regular Wages and Overtime Wages;
2. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq for Failure to Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq for Failure to Pay Wages Due Upon Termination of Employment; and
6. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Indemnify for Expenditures or Losses in Discharge of Duties.

DEMAND FOR JURY TRIAL

1 Plaintiff LAWRENCE COLEY (“Plaintiff”), complains and alleges as follows:

2 **PRELIMINARY STATEMENT**

3 1. This is an action brought on behalf of Plaintiff and similarly aggrieved employees
4 who were subjected to one or more of the violations alleged herein by Defendant THE
5 RESOURCE ENVIRONMENT FOR UNDERPRIVILEGED GROUPS ENTERPRISE, INC.
6 D/B/A THE R.E.F.U.G.E. (“Defendants”).

7 2. The term “PAGA Period” is defined as one (1) year and sixty-five (65) days prior
8 to the filing of this action. Plaintiff reserves the right to amend this complaint to reflect a different
9 PAGA Period as further discovery is conducted.

10 3. “Aggrieved Employee(s)” is defined as non-exempt hourly-paid employees
11 throughout California employed by Defendants during the PAGA Period.

12 4. Plaintiff, individually, and on behalf of the Aggrieved Employees, seeks relief
13 against Defendants for their: (1) failure to pay all wages due, including regular and overtime
14 wages; (2) failure to provide meal periods or premium pay in lieu thereof; (3) failure to provide
15 rest periods or premium pay in lieu thereof; (4) failure to provide accurate itemized wage
16 statements; (5) failure to pay wages due upon termination of employment; and (6) failure to
17 reimburse for necessary business expenditures. Plaintiff seeks penalties pursuant to Labor Code
18 section 2608 et seq., the Private Attorneys General Act of 2004 (hereinafter “PAGA”) in
19 connection with Defendants’ Labor Code violations.

20 5. Plaintiff further seeks equitable remedies in the form of declaratory relief, and
21 relief under Business and Professions Code section 17200 et seq. for unfair business practices.

22 6. At all relevant times herein, Defendants consistently maintained and enforced
23 against Plaintiff and Aggrieved Employees the following unlawful practices and policies: a)
24 willfully refusing to pay Plaintiff and Aggrieved Employees for all hours worked, including
25 minimum wage and overtime; b) willfully refusing to provide Plaintiff and Aggrieved Employees
26 with meal breaks or premium pay in lieu thereof; c) willfully refusing to provide Plaintiff and
27 Aggrieved Employees with rest breaks or premium pay in lieu thereof; d) willfully refusing to
28 compensate Plaintiff and Aggrieved Employees wages due and owing at the time Plaintiff’s and

1 Aggrieved Employees' employment with Defendants ended; e) willfully refusing to furnish to
2 Plaintiff and Aggrieved Employees accurate itemized wage statements upon payment of wages;
3 and f) willfully failing to reimburse Plaintiff and Aggrieved Employees for necessary
4 expenditures.

5 **JURISDICTION AND VENUE**

6 7. This Court has subject matter jurisdiction over the causes of action alleged in this
7 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
8 excluded from exercising subject matter jurisdiction over said causes of action. The penalties
9 recoverable for Plaintiff individually does not exceed seventy-five thousand dollars (\$75,000.00),
10 and collectively amongst all aggrieved employees do not exceed five million dollars
11 (\$5,000,000.00.)

12 8. Defendants are California nonprofit corporations doing business throughout the
13 State of California. There is no federal question at issue, as the issues herein are based solely on
14 California statutes and law, including the Labor Code, Industrial Welfare Commission ("IWC")
15 Wage Orders, Code of Civil Procedure, Business and Professions Code, and Rules of Court. By
16 doing business in the state of California, Defendants have purposefully availed themselves of the
17 state's jurisdiction. Accordingly, as personal jurisdiction over Defendants would be
18 constitutional, California's long-arm statute provides that California courts may exercise personal
19 jurisdiction over Defendants. (Code Civ. Pro., § 410.10.)

20 9. Venue is proper in the County of Alameda, because Defendants perform business
21 in the County of Alameda, and the acts set forth herein occurred in the County of Alameda.

22 **THE PARTIES**

23 **Plaintiff**

24 8. Plaintiff worked for Defendants as a Direct Care Counselor from approximately
25 February 1, 2020 to April 24, 2020. Plaintiff and Aggrieved Employees consist of identifiable,
26 current, and/or former similarly situated persons who worked for Defendants as hourly-paid non-
27 exempt employees during the PAGA Period.

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Defendants

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant The Resource Environment for Underprivileged Groups Enterprise, Inc., doing business as The R.E.F.U.G.E. (“The R.E.F.U.G.E.”), is a nonprofit corporation that provides “therapeutic environment for emotionally troubled adolescent youth by offering an array of activities and services all with an eye towards developing the education, social and professional potential of each resident.” (California Secretary of State, Statement of Information (“SOI”) California Corporate No. C2083801.) Upon information and belief, Defendant The R.E.F.U.G.E. owns and operates multiple facilities (“group homes”) and its principal office is located at 3033 Rawson Street, Oakland, CA 94619. (SOI, California Corporate No. C2083801.) Plaintiff is informed and believes, and based thereon alleges, that Defendant The R.E.F.U.G.E. is and/or was the employer of Plaintiff and Aggrieved Employees during the PAGA Period.

10. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that said Defendant is legally responsible for the violations alleged herein. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained. Defendant The R.E.F.U.G.E. and Defendants sued herein as DOES 1 through 50 are collectively referred to herein as “Defendants.”

11. Plaintiff is informed believes, and thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or single business enterprise, integrated enterprise and/or are agents of one another, are alter egos, joint employers and conspire with one another to increase profits by engaging in the conduct described in this complaint.

12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned

below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendants.

PAGA ADMINISTRATIVE PREREQUISITE

14. Plaintiff brings this case as a representative action seeking penalties for the State of California in a representative capacity, as provided by the Private Attorney General Act, Labor Code section 2698 et seq. ("PAGA"), as an aggrieved employee, formerly employed by Defendants and did not receive all wages due including at time of termination, was not paid regular wages, was not paid overtime, was not provided meal or rest breaks, or premium pay in lieu therefrom, was not provided with accurate wage statements, and was not reimbursed for necessary business expenditures.

15. Prior to filing this complaint on March 25, 2021, Plaintiff gave written notice by certified electronic mail to the Labor and Workforce Development Agency ("LWDA") and to Defendants of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violation as required by Labor Code section 2699.3. The LWDA assigned case no. LWDA-CM-827026-21 to Plaintiff's notice upon submission on March 25, 2021. A true and correct copy of Plaintiff's original letter sent to the LWDA on March 25, 2021, is attached hereto as "**Exhibit A**".

16. More than sixty-five (65) days have passed since Plaintiff submitted his March 25, 2021, notice to the LWDA and Defendants of the specific alleged Labor Code violations and the LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further has received no notice of Defendants' intent to cure any of the alleged violations. Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard to his March 25, 2021, PAGA notice.

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FACTUAL ALLEGATIONS

17. This lawsuit arises out of an ongoing wrongful scheme by Defendants to deny their employees the benefits due under California's wage and hour laws for work performed in California. Defendants wrongfully refused to pay Plaintiff and the Aggrieved Employees regular wages, overtime compensation, and other statutory benefits mandated by California.

18. Labor Code section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation or minimum wage compensation is entitled to recover in a civil action the unpaid balance of their overtime compensation and/or minimum wage compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

19. Further, Business and Professions Code section 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions Code section 17204 provides that any person who has suffered actual injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

20. During all, or a portion of the PAGA Period, Plaintiff and Aggrieved Employees were employed by Defendants in the State of California.

21. Throughout the PAGA Period, Defendants failed to pay Plaintiff and Aggrieved Employees for all hours worked at the legally mandated wage rates. Specifically, Defendants failed to pay Plaintiff and Aggrieved Employees the legally mandated regular, overtime, and double time rates for all work performed during their shifts in violation of California law. Plaintiff and Aggrieved Employees regularly worked 16-hour shifts, but Defendants only compensated Plaintiff and Aggrieved Employees forty (40) hours of their regular pay rate and the remaining hours at the overtime pay rate of 1.5 times their regular pay rate. Defendants failed to compensate Plaintiff and Aggrieved Employees the double time rate of pay for all hours worked beyond the twelfth (12th) hour of work for each shift.

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1 22. As a result of Defendants' failure to pay all wages owed as described herein,
2 Defendants failed to keep accurate payroll records and failed to provide Plaintiff and Aggrieved
3 Employees with complete and accurate wage statements showing the true number of hours
4 worked and accurate overtime wages earned per pay period. Defendants' actions violated Labor
5 Code sections 1182.12, 1194, 1197 and 510, and IWC Wage Order 4-2001 Sect. 7(B), and subject
6 to penalties under Labor Code section 558 and under PAGA.

7 23. Plaintiff and Aggrieved Employees also regularly worked during meal and rest
8 periods due to Defendants' policy and practices which prioritized work tasks over rest and meal
9 period compliance, as well as severely understaffing their group homes such that there was no
10 other staff member who could relieve Plaintiff and Aggrieved Employees for their meal or rest
11 breaks. When Plaintiff and Aggrieved Employees asked to be relieved for their rest and/or meal
12 breaks, they were informed by Defendants' human resources personnel and/or supervisors that
13 Plaintiff and Aggrieved Employees were not allowed any meal or rest breaks, including a second
14 meal break to which Plaintiff and Aggrieved Employees were entitled as they regularly worked
15 beyond ten (10) hours. Plaintiff and Aggrieved Employees never agreed to waive their meal
16 periods, nor were asked by Defendants to sign a waiver. Plaintiff and Aggrieved Employees were
17 not paid premiums for the missed meal and rest periods.

18 24. As a result of Defendants' policies and practices of failing to provide Plaintiff and
19 Aggrieved Employees with meal or rest breaks, or premium pay in lieu therefrom, Defendants
20 violated Labor Code sections 226.7 and 512, and IWC Wage Order 4-2001 Sects. 11 and 12, and
21 is subject to penalties under PAGA.

22 25. Defendants also failed to keep accurate wage statements by failing to provide
23 Plaintiff and Aggrieved Employees with complete and accurate wage statements showing the true
24 number of hours worked and accurate overtime, double time, and premium wages earned per pay
25 period. Defendants also do not have the accurate address of the employer in wage statements. In
26 particular, the wage statements list the employer's name and address as: THE R.E.F.U.G.E., P.O.
27 Box 19275, Oakland, CA 94619. Upon information and belief, Defendant's business address is
28 listed in its California Secretary of State, Statement of Information as "3033 Rawson Street,

Oakland, CA 94619.” (SOI, California Corporate No. C2083801.) These blatant inaccuracies in Plaintiff and Aggrieved Employees’ wage statements, including Defendants’ failure to include the correct address of the employer, is in violation of Labor Code sections 226 and 1174 and is subject to penalties under PAGA.

26. During the PAGA Period, Defendants failed and/or refused to indemnify Plaintiff and Aggrieved Employees for necessary expenditures or losses incurred by them in direct consequence of the discharge of their duties, or their obedience to the directions of the employer. Specifically, Defendants required Plaintiff and Aggrieved Employees to use their personal cellphones to communicate with coworkers, all without reimbursement from Defendants. Further, Plaintiff and Aggrieved Employees also drove residents to and from Defendants’ group homes such as for scheduled “outings,” and required them to use the Defendants’ company van to do so. However, Defendants failed to maintain current vehicle registrations for their company vans which caused Plaintiff and Aggrieved Employees to receive traffic citations which they had to pay themselves, all without reimbursement from Defendants. Defendants’ failure to provide full and complete reimbursement for all necessary business expenditures incurred by Plaintiff and Aggrieved Employees is in violation of Labor Code § 2802, and subject to penalties under PAGA.

27. Finally, Plaintiff and Aggrieved Employees ended their employment during the PAGA Period, but were not paid the above due compensation for all hours worked, including minimum wage for regular hours and overtime compensation, timely upon the termination of their employment as required by Labor Code sections 201-203, are entitled to penalties as provided by Labor Code section 203.

28. Plaintiff, by virtue of his employment with Defendants, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Labor Code section 2699.5.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of PAGA For Recovery of Unpaid Minimum Wage and Overtime**
3 **(Labor Code §§ 510, 1182.12, 1194, 1197, and 204, and IWC Wage Order 4-2001, Sect. 3)**
4 **(Plaintiff Against All Defendants)**

5 29. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
6 complaint as if fully set forth herein.

7 30. Labor Code section 1182.12 provides that on and after July 1, 2014, the minimum
8 wage for all industries shall not be less than nine dollars (\$9.00) per hour, and on and after January
9 1, 2016, the minimum wage for all industries shall not be less than ten (\$10.00) per hour. For
10 employers who employed 26 or more people from January 1, 2017 to December 31, 2017, the
11 minimum wage rate in California was ten dollars and fifty cents (\$10.50) per hour. From January
12 1, 2018 to December 31, 2018, the minimum wage rate in California was eleven dollars (\$11.00)
13 per hour. From January 1, 2019 to December 31, 2019, the minimum wage rate in California was
14 twelve dollars (\$12.00) per hour. As of January 1, 2020, through December 31, 2020, the
15 minimum wage rate in California is thirteen dollars (\$13.00) per hour. Plaintiff is informed and
16 believes Defendants employ more than 26 employees and thus fall within all requirements of
17 section 1182.12.

18 31. Additionally, many California cities and counties impose a separate minimum
19 wage higher than that set by Labor Code section 1182.12, which may be applicable to Plaintiff
20 and Aggrieved Employees.

21 32. Notwithstanding any other provision of the Labor Code, hourly minimum wage
22 rates are set for all industries according to statute. (Lab. Code § 1182.12). Employers must pay
23 employees no less than minimum wage for each hour worked. (Lab. Code § 1194; IWC Wage
24 Order 4-2001, Sect. 4.)

25 33. Any work in excess of eight hours in any workday and any work in excess of 40
26 hours in a workweek shall be compensated at a rate of no less than one and one-half times the
27 regular rate of pay for an employee. (Lab. Code § 510, subd. (a); IWC Wage Order 4-2001, Sect.
28 3(A)). Any work in excess of 12 hours in a workday shall be compensated at the rate of twice the

1 regular rate of pay for an employee. (*Ibid.*)

2 34. Any employee receiving less than the legal minimum wage or legal overtime
3 compensation is entitled to recover in a civil action the amount of unpaid wages and interests
4 thereon, attorneys' fees, and costs of suit. (Lab. Code § 1194, subd. (a)).

5 35. All wages earned in employment are due and payable twice during each calendar
6 month on dates designated in advance by the employer. (Lab. Code § 204).

7 36. Defendants failed to pay Plaintiff and Aggrieved Employees the legally mandated
8 regular, overtime, and double time rates for all work performed during their shifts in violation of
9 California law. Plaintiff and Aggrieved Employees regularly worked 16-hour shifts, but
10 Defendants only compensated Plaintiff and Aggrieved Employees forty (40) hours of their regular
11 pay rate and the remaining hours at the overtime pay rate of 1.5 times their regular pay rate.
12 Defendants failed to compensate Plaintiff and Aggrieved Employees the double time rate of pay
13 for all hours worked beyond the twelfth (12th) hour of work for each shift.

14 37. Defendants willfully violated the Labor Code by failing to pay Plaintiff and
15 Aggrieved Employees all wages, including both minimum wage and overtime. Defendants have
16 regularly violated the Labor Code with respect to meeting the requirements of paying wages
17 earned, including minimum wage, overtime, double-time and remuneration when calculating the
18 employees' regular rate of pay, as herein before alleged. Defendants intentionally excluded
19 remuneration that must be included in all employees' regular rate of pay in order to avoid payment
20 of overtime wages and other benefits in violation of the Labor Code and the order issued by the
21 IWC. Thereby, Defendants are able to reduce their overhead and operating expenses and gain an
22 unfair advantage over competing delivery companies who comply with state law.

23 38. Since the LWDA has not indicated that it will be investigating more than sixty-
24 five (65) days since Plaintiff provided notice, and because Defendants took no corrective action
25 to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State
26 of California, will seek any and all penalties otherwise capable of being collected by the Labor
27 Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This
28 includes each of the following, as set forth in Labor Code section 2699.5, which provides that

1 section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: Labor
2 Code sections 510 and 1194.

3 39. Plaintiff is informed and believes that Defendants have violated, and continue to
4 violate, provisions of the Labor Code and applicable Wage Orders related to the payment of
5 minimum wages and overtime.

6 40. Plaintiff, as a personal representative of the general public, will and does seek to
7 recover any and all penalties for each and every violation shown to exist or to have occurred
8 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise
9 only available to public agency enforcement actions. Funds recovered will be distributed in
10 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered
11 being reimbursed to the LWDA.

12 41. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
13 costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
14 interest.

15 **SECOND CAUSE OF ACTION**

16 **Violation of PAGA For Failure to Provide Meal Periods or Premium Pay in Lieu Thereof**
17 **(Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001, Sect. 11)**

18 **(Plaintiff against All Defendants)**

19 14. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
20 preceding paragraphs of this complaint as if fully set forth herein.

21 15. Labor Code sections 226.7 and 512 provide that no employer shall employ any
22 person for a work period of more than five (5) hours without providing a meal period of not less
23 than thirty (30) minutes or employ any person for a work period of more than ten (10) hours
24 without a second meal period of not less than thirty (30) minutes.

25 16. Labor Code section 226.7 provides that if an employer fails to provide an
26 employee a meal period in accordance with this section, the employer shall pay the employee one
27 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
28 period is not provided in accordance with this section.

1 17. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
2 than five (5) hours in a workday.

3 18. At varying times relevant hereto, Plaintiff and Aggrieved Employees have worked
4 more than ten (10) hours in a workday.

5 19. Plaintiff alleges that he and other Aggrieved Employees were often precluded from
6 taking timely and uninterrupted meal and rest breaks in accordance with California law due to the
7 nature of their shifts which were regularly 16 (sixteen) hours straight. Plaintiff and Aggrieved
8 Employees allege that they did not receive at least one (1) duty-free, uninterrupted meal period
9 within the first five (5) hours worked, and a second meal period before the start of the 11th hour
10 of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.) In fact, at times
11 Defendants did not have sufficient employees to provide relief for meal periods and thereby
12 required Plaintiff and Aggrieved Employees to continue working throughout all their meal
13 periods. When Plaintiff and Aggrieved Employees asked to be relieved for their meal breaks, they
14 were informed by Defendants' human resources personnel and/or supervisors that Plaintiff and
15 Aggrieved Employees were not allowed any meal breaks, including a second meal break to which
16 Plaintiff and Aggrieved Employees were entitled as they regularly worked beyond ten (10) hours.
17 Plaintiff and Aggrieved Employees never agreed to waive their meal periods, nor were asked by
18 Defendants to sign a waiver. When employees were prevented from taking timely and complete
19 meal periods, they did not receive premium pay as compensation for the missed meal period.

20 20. By virtue of the Defendants' failure to schedule Plaintiff and Aggrieved
21 Employees in such a way as to provide a meal period, and/or work free meal period, Plaintiff and
22 Aggrieved Employees suffered, and continue to suffer, damages in amounts which are presently
23 unknown, but will be ascertained according to proof at trial.

24 21. Since the LWDA has not indicated that it will be investigating more than sixty-
25 five (65) days since Plaintiff provided notice, and because Defendants took no corrective action
26 to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State
27 of California, will seek any and all penalties otherwise capable of being collected by the Labor
28 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in

1 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
2 alleged violation of the following provisions: Labor Code sections 226.7 and 512.

3 22. Plaintiff is informed and believes that Defendants have violated, and continue to
4 violate, provisions of the Labor Code and applicable Wage Orders related to the provision of meal
5 periods or premium payment in lieu thereof.

6 23. Plaintiff, as a personal representative of the general public, will and does seek to
7 recover any and all penalties for each and every violation shown to exist or to have occurred
8 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise
9 only available to public agency enforcement actions. Funds recovered will be distributed in
10 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered
11 being reimbursed to the LWDA.

12 24. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
13 costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
14 interest.

15 **THIRD CAUSE OF ACTION**

16 **Violation of PAGA For Failure to Provide Rest Periods or Premium Pay in Lieu Thereof** 17 **(Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001, Sect. 12)**

18 **(Plaintiff against All Defendants)**

19 25. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
20 preceding paragraphs of this complaint as if fully set forth herein.

21 26. Labor Code section 226.7 provides that employers authorize and permit all
22 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

23 27. Labor Code section 226.7(b) provides that if an employer fails to provide
24 employee rest periods in accordance with this section, the employer shall pay the employee one
25 (1) hour of pay at the employees' regular rate of compensation for each workday that the rest
26 period is not provided.

27 28. At all times relevant hereto, Plaintiff and Aggrieved Employees worked more than
28 four (4) hours in a workday.

1 29. Plaintiff and Aggrieved Employees allege that they did not receive at least one
2 duty-free, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, as
3 required by the Labor Code. Plaintiff and Aggrieved Employees were generally precluded from
4 taking rest periods due to Defendant's failure to sufficiently staff shifts to provide relief and
5 thereby allow Plaintiff and Aggrieved Employees the opportunity to take rest breaks. When
6 Plaintiff and Aggrieved Employees asked to be relieved for their rest breaks, they were informed
7 by Defendants' human resources personnel and/or supervisors that Plaintiff and Aggrieved
8 Employees were not allowed any rest breaks. When employees were prevented from taking timely
9 and complete rest periods, they did not receive premium pay as compensation for the missed rest
10 period.

11 30. By virtue of Defendant's unlawful failure to provide rest periods to Plaintiff and
12 Aggrieved Employees as a result of their scheduling and shift relief system, Plaintiff and
13 Aggrieved Employees suffered, and will continue to suffer, damages, in amounts which are
14 presently unknown, but will be ascertained according to proof at trial.

15 31. Since the LWDA has not indicated that it will be investigating more than sixty-
16 five (65) days since Plaintiff provided notice, and because Defendants took no corrective action
17 to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State
18 of California, will seek any and all penalties otherwise capable of being collected by the Labor
19 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in
20 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
21 alleged violation of the following provisions: Labor Code sections 226.7 and 512.

22 32. Plaintiff is informed and believes that Defendants have violated, and continue to
23 violate, provisions of the Labor Code and applicable Wage Orders related to the provision of rest
24 periods or premium payment in lieu thereof.

25 33. Plaintiff, as a personal representative of the general public, will and does seek to
26 recover any and all penalties for each and every violation shown to exist or to have occurred
27 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise
28 only available to public agency enforcement actions. Funds recovered will be distributed in

1 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered
2 being reimbursed to the LWDA.

3 34. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
4 costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
5 interest.

6 **FOURTH CAUSE OF ACTION**

7 **Violation of PAGA For Failure to Provide Accurate Itemized Wage Statements**
8 **(Labor Code §§ 1174, 226, subd. (A), (E), and IWC Wage Order 4-2001, Sect. 7(B))**
9 **(Plaintiff against All Defendants)**

10 35. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
11 preceding paragraphs of this complaint as if fully set forth herein.

12 36. Labor Code section 226, subdivision (a), states in pertinent part that, "every
13 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
14 employees, either as a detachable part of the check, draft, or voucher paying the employee's
15 wages, or separately when wages are paid by personal check or cash, an accurate itemized
16 statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee . .
17 . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (6) the
18 inclusive dates of the period for which the employee is paid; (7) the name of the employee and
19 only the last four digits of his or her social security number or an employee identification number
20 other than a social security number; (8) the name and address of the legal entity that is the
21 employer . . . ; and (9) all applicable hourly rates in effect during the pay period and corresponding
22 number of hours worked at each hourly rate by the employee..." (Lab. Code, § 226; *see also* IWC
23 Wage Order 4-2001, section 7(B).)

24 37. As a result of Defendants' failure to pay all wages owed as described herein,
25 Defendants failed to keep accurate payroll records. Defendants knowingly and intentionally failed
26 to provide timely and accurate itemized wage statements to Plaintiff and Aggrieved Employees
27 in accordance with Labor Code section 226, subdivision (a), by failing to record the accurate
28 number of hours worked, the accurate rate of pay for each hour worked, including regular,

overtime, and double time rates of pay, the accurate amounts of premium wages earned, the accurate net pay, and the accurate gross pay. Such failure caused injury to Plaintiff and Aggrieved Employees.

38. Further, an employee is deemed to suffer injury if the employer fails to provide a wage statement containing all of the required information set forth in Labor Code section 226, subdivision (a). (Lab. Code § 226, subd. (e)(2).) In particular, Defendants also do not have the accurate address of the employer in the wage statements provided to Plaintiff and Aggrieved Employees. In particular, the wage statements list the employer's name and address as: THE R.E.F.U.G.E., P.O. Box 19275, Oakland, CA 94619. Upon information and belief, Defendant's business address is listed in its California Secretary of State, Statement of Information as "3033 Rawson Street, Oakland, CA 94619." (SOI, California Corporate No. C2083801.) These blatant inaccuracies in Plaintiff and Aggrieved Employees' wage statements, including Defendants' failure to include the correct address of the employer, is in violation of Labor Code sections 226 and 1174 and is subject to penalties under PAGA.

39. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code section 226, subdivision (a), and the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one-hundred dollars (\$100.00) per employee for each violation in each subsequent pay period, pursuant to Labor Code section 226, subdivision (e.)

40. Since the LWDA has not indicated that it will be investigating more than sixty-five (65) days since Plaintiff provided notice, and because Defendants took no corrective action to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: Labor Code sections 226 and 1174.

41. Plaintiff is informed and believes that Defendants have violated, and continue to violate, provisions of the Labor Code and applicable Wage Orders related to the provision of

1 accurate itemized wage statements.

2 42. Plaintiff, as a personal representative of the general public, will and does seek to
3 recover any and all penalties for each and every violation shown to exist or to have occurred
4 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise
5 only available to public agency enforcement actions. Funds recovered will be distributed in
6 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered
7 being reimbursed to the LWDA.

8 43. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
9 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

10 **FIFTH CAUSE OF ACTION**

11 **Violation of PAGA For Failure to Pay Wages Due Upon Termination of Employment**

12 **(Labor Code §§ 201, 203)**

13 **(Plaintiff against All Defendants)**

14 44. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
15 preceding paragraphs of this complaint as if fully set forth herein.

16 45. Plaintiff and certain members of the Aggrieved Employees who ended their
17 employment with Defendants during the PAGA Period, were entitled to be promptly paid both
18 minimum wage and lawful overtime compensation and other premiums, as required by Labor
19 Code sections 201 and 203.

20 46. Defendants refused and/or failed to promptly compensate Plaintiff and Aggrieved
21 Employees wages owed at the time of termination and/or separation of their employment with
22 Defendants by virtue of Defendants' failure to pay all wages owed as described herein, including
23 minimum, overtime, and double time wages, as well as any premium wages earned.

24 47. Since the LWDA has not indicated that it will be investigating more than sixty-
25 five (65) days since Plaintiff provided notice, and because Defendants took no corrective action
26 to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State
27 of California, will seek any and all penalties otherwise capable of being collected by the Labor
28 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in

1 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
2 alleged violation of the following provisions: Labor Code sections 201-203.

3 48. Plaintiff, as a personal representative of the general public, will and does seek to
4 recover any and all penalties for each and every violation shown to exist or to have occurred
5 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise
6 only available to public agency enforcement actions. Funds recovered will be distributed in
7 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered
8 being reimbursed to the LWDA.

9 49. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
10 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

11 **SIXTH CAUSE OF ACTION**

12 **Violation of PAGA for Failure to Reimburse for Necessary Expenditures,**

13 **(Labor Code § 2802)**

14 **(Plaintiff against All Defendants)**

15 50. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
16 preceding paragraphs of this complaint as if fully set forth herein.

17 51. Labor Code section 2802 states, "An employer shall indemnify his or her
18 employee for all necessary expenditures or losses incurred by the employee in direct consequence
19 of the discharge of his or her duties..."

20 52. Plaintiff and the Aggrieved Employees were not reimbursed by Defendants for
21 necessary expenditures as a direct consequence of the discharge of their duties. Specifically,
22 Defendants required Plaintiff and Aggrieved Employees to use their personal cellphones to
23 communicate with coworkers, all without reimbursement from Defendants. Further, Plaintiff and
24 Aggrieved Employees also drove residents to and from Defendants' group homes such as for
25 scheduled "outings," and required them to use the Defendants' company van to do so. However,
26 Defendants failed to maintain current vehicle registrations for their company vans which caused
27 Plaintiff and Aggrieved Employees to receive traffic citations which they had to pay themselves,
28 all without reimbursement from Defendants.

1 53. Defendants knowingly, willingly and intentionally attempted to offset the cost of
2 doing business on the Plaintiff and Aggrieved Employees.

3 54. Defendants had a practice and policy of requiring Plaintiff and Aggrieved
4 Employees to shoulder the burden of Defendants' cost of doing business by failing to reimburse
5 Plaintiff and Aggrieved Employees for necessary business expenditures as described herein.

6 55. Accordingly, Plaintiff and Aggrieved Employees are entitled to an award of
7 "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to,
8 attorney's fees and interest.

9 56. Since the LWDA has not indicated that it will be investigating more than sixty-
10 five (65) days since Plaintiff provided notice, and because Defendants took no corrective action
11 to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State
12 of California, will seek any and all penalties otherwise capable of being collected by the Labor
13 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in
14 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
15 alleged violation of the following provisions: Labor Code section 2802.

16 57. Plaintiff, as a personal representative of the general public, will and does seek to
17 recover any and all penalties for each and every violation shown to exist or to have occurred
18 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise
19 only available to public agency enforcement actions. Funds recovered will be distributed in
20 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered
21 being reimbursed to the LWDA.

22 58. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
23 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

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1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as provided by law, including, but not limited to, those civil penalties provided by statute, provided by PAGA and for unpaid wages pursuant to Labor Code section 558;
2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis or pursuant to the Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code sections 2699, subdivision (g), and 1194, and any other statutory basis; and
4. For all such other and further relief as the Court may deem just and proper.

MAHONEY LAW GROUP, APC



Kevin Mahoney, Esq.
Kate Nicole G. Blanco, Esq.
Attorney for Plaintiff LAWRENCE COLEY, as an
individual and on behalf of all aggrieved
employees

EXHIBIT A



Kate Blanco, Esq.
562.590.5550 phone
562.590.8400 facsimile
kblanco@mahoney-law.net

March 25, 2021

VIA ELECTRONIC FILING

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

<https://dir.tfaforms.net/308>

VIA U.S. CERTIFIED MAIL #7019 2970 0000 2983 6889

Return Receipt Requested

The Resource Environment for Underprivileged Groups Enterprise, Inc. dba The R.E.F.U.G.E.

3033 Rawson Street

Oakland, CA 94619

VIA U.S. CERTIFIED MAIL #7019 2970 0000 2983 6896

Return Receipt Requested

Jason Henderson

c/o The Resource Environment for Underprivileged Groups Enterprise, Inc. dba The R.E.F.U.G.E.

3033 Rawson Street

Oakland, CA 94619

Re: Lawrence Coley v. The Resource Environment for Underprivileged Groups Enterprise, Inc. dba The R.E.F.U.G.E.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 et seq.**

To: California Labor and Workforce Development Agency, The Resource Environment for Underprivileged Groups Enterprise, Inc. dba The R.E.F.U.G.E.

From: Lawrence Coley on behalf of himself and all other aggrieved employees.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Lawrence Coley ("Mr. Coley"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA") on behalf of himself and all other aggrieved employees.

The Resource Environment for Underprivileged Groups Enterprise, Inc., doing business as The R.E.F.U.G.E. ("Employer"), is a nonprofit corporation that provides "therapeutic environment for emotionally troubled adolescent youth by offering an array of activities and services all with an eye

towards developing the education, social and professional potential of each resident.” (California Secretary of State, Statement of Information (“SOI”) California Corporate No. C2083801.) Upon information and belief, Employer owns and operates multiple facilities (“group homes”) and employs no less than 50 individuals, including Direct Care Counselors who are in charge of ensuring the residents’ health and safety in the group homes. Employer’s principal office is located at 3033 Rawson Street, Oakland, CA 94619. (SOI, California Corporate No. C2083801.)

Theories of Labor Code Violations and Remedies

Mr. Coley alleges Employer violated various sections of the Labor Code, including sections 202, 203, 204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, and relevant Industrial Welfare Commission (“IWC”) Wage Orders by failing to provide Mr. Coley and all other aggrieved employees all wages for all hours worked including, but not limited to, overtime wages, regular hours, meal and rest period premium pay, and reimbursement for necessary business expenditures. Mr. Coley also alleges Employer violated the Labor Code for failing to provide accurate wage statements, including accurate accounting of employees’ hours and pay, and accurate employer address. Mr. Coley worked for Employer as a Direct Care Counselor from approximately February 1, 2020 to April 24, 2020. Mr. Coley and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer as non-exempt employees during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

Based on currently available information, Employer failed to pay Mr. Coley and other aggrieved employees for all hours worked at the legally mandated wage rates. Specifically, Employer failed to pay Mr. Coley and his co-workers the legally mandated regular, overtime, and double time rates for all work performed during their shifts in violation of California law. Mr. Coley and similarly aggrieved employees regularly worked 16-hour shifts, but Employer only compensated Mr. Coley and aggrieved employees forty (40) hours of their regular pay rate and the remaining hours at the overtime pay rate of 1.5 times their regular pay rate. Employer failed to compensate Mr. Coley and other aggrieved employees the double time rate of pay for all hours worked beyond the twelfth (12th) hour of work for each shift. As a result, Employer violated Labor Code sections 1182.12, 1194, 1197 and 510, and applicable IWC Wage Orders, subject to penalties under Labor Code section 558, and actionable under PAGA.

Mr. Coley and other aggrieved employees also regularly worked during meal and rest periods due to Employer’s policy and practices which prioritized work tasks over rest and meal period compliance, as well as severely understaffing their group homes such that there was no other staff member who could relieve Mr. Coley and other aggrieved employees for their meal or rest breaks. When Mr. Coley and other aggrieved employees asked to be relieved for their rest and/or meal breaks, they were informed by Employer’s human resources personnel and/or supervisors that he and other aggrieved employees were not allowed any meal or rest breaks, including a second meal break to which Mr. Coley and other aggrieved employees were entitled as they regularly worked beyond ten (10) hours. Mr. Coley and other aggrieved employees never agreed to waive their meal periods, nor were asked by Employer to sign a waiver. Mr. Coley and other aggrieved employees were not paid premiums for the missed meal and rest periods. As a result of these policies and practices, Employer violated Labor Code sections 226.7 and 512, and applicable IWC Wage Orders, and is actionable under PAGA.

As a result of Employer’s failure to pay all wages owed as described herein, Employer further failed to keep accurate payroll records and failed to provide Mr. Coley and other aggrieved employees

with complete and accurate wage statements showing the true number of hours worked and accurate overtime, double time, and premium wages earned per pay period. Employer also does not have the accurate address of the employer in wage statements. In particular, the wage statements list the employer's name and address as:

**THE R.E.F.U.G.E.
P.O. BOX 19275
OAKLAND, CA 94619**

Upon information and belief, Employer's business address is listed in its California Secretary of State, Statement of Information as "3033 Rawson Street, Oakland, CA 94619." (SOI, California Corporate No. C2083801.) These blatant inaccuracies in Mr. Coley's and other aggrieved employees' wage statements, including Employer's failure to include the correct address of the employer, is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

As a further result of Employer's failure to pay all wages owed as described herein, Employer violated Labor Code sections 202, and 203 by failing to pay all wages earned to former employees at or around the time of their separation from Employer.

Mr. Coley also alleges that he and other similarly aggrieved employees were required to pay for necessary business expenditures for which Employer failed to compensate them. Mr. Coley was required to use his personal cellphone to communicate with coworkers, all without reimbursement from Employer. Further, Mr. Coley, as part of his duties as Direct Care Counselor, also drove residents to and from the group home such as for scheduled "outings," and required him to use the company van. However, Employer failed to maintain a current vehicle registration for the company van which caused Mr. Coley and other aggrieved employees to receive traffic citations which they had to pay themselves, all without reimbursement from Employer. Employer's failure to provide full and complete reimbursement for all necessary business expenditures incurred by Mr. Coley and other similarly aggrieved employees is in violation of Labor Code § 2802, and actionable under PAGA.

The facts and claims contained herein are based on information available as of the date of this letter. If through discovery and/or expert review, Mr. Coley becomes aware of additional compensation owed or losses incurred by Mr. Coley or by any other similarly aggrieved employee, Mr. Coley expressly reserves the right to revise these facts and/or add any new claims by amending her claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Mr. Coley will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by The Resource Environment for Underprivileged Groups Enterprise, Inc. dba The R.E.F.U.G.E. Please advise if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,



Kate Blanco, Esq.

MAHONEY LAW GROUP, APC