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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Gabriel Lopez, Deputy Clerk

Attorneys for Plaintiff and the Aggrieved Employees

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

ERICA CHRISTIAN KNOX, an individual,
on behalf of herself and others similarly
situated,

Plaintiff,

vs.

SAN DIEGO CENTER FOR CHILDREN;
and DOES 1 to 50, inclusive,

Defendants.

Case No.: 37-2022-00029638-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

1. Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 203, 226(a), 226.7, 245-248.5, 510, 512, 558, 1194, 1197, 1199, and 2802

JURY TRIAL DEMANDED

Plaintiff ERICA CHRISTIAN KNOX (“Plaintiff”), an individual, on behalf of herself and the people of the State of California and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”) complains against Defendant SAN DIEGO CENTER FOR CHILDREN (“Defendant”), a corporation, and DOES 1 to 50 (collectively “Defendant”), as follows:

I

INTRODUCTION

1. This is a Representative Action, pursuant to Labor Code § 2699, *et seq.*, on

1 behalf of the following individuals: All persons who are employed or have been employed by
2 SAN DIEGO CENTER FOR CHILDREN, in the State of California since one (1) year prior to
3 the date of Plaintiff's notice letter to the Labor and Workforce Development Agency ("LWDA")
4 and continuing to the present. ("Aggrieved Employees")

5 2. For at least one (1) year prior to the date of the letter sent to the LWDA and
6 Defendant giving notice of this claim pursuant to PAGA and continuing to the present,
7 Defendant has had a consistent policy of failing to pay wages and/or overtime to all hourly
8 employees for all work perform at the proper rate of compensation. Defendant required Plaintiff
9 and the Aggrieved Employees to perform work "off the clock" without compensation. In
10 addition, Defendant violated California's overtime laws by, inter alia, failing to pay for all hours
11 worked, including overtime and double time, and failing to correctly calculate the regular rate of
12 pay (i.e., failing to include bonuses, incentive pay, and other non-discretionary pay in the
13 regular rate calculation). Due to the failure to include all required compensation in the regular
14 rate compensation, employees that were paid overtime, were not fully paid. As a result, Plaintiff
15 and the Aggrieved Employees were not properly paid for these work tasks as a condition of
16 employment at the proper rate of pay. This resulted in underpayment of wages and/or overtime.

17 3. For at least one (1) year prior to the date of the letter sent to the LWDA and
18 Defendant giving notice of this claim pursuant to PAGA and continuing to the present,
19 Defendant failed to provide paid sick leave to employees, failed to put employees on notice of
20 their paid sick leave rights, failed to maintain accurate records of used sick leave and the
21 balance of employees' sick leave, and failed to include sick leave balance on employees' wage
22 statements. Further, Defendant did not correctly calculate the rate of pay at which employees
23 should be compensated for their sick leave.

24 4. For at least one (1) year prior to the date of the letter sent to the LWDA and
25 Defendant giving notice of this claim pursuant to PAGA and continuing to the present,
26 Defendant has had a consistent policy of failing to inform employees of their right to take meal
27 periods and requiring employees within the State of California, including Plaintiff, to work at
28 least five (5) hours without a meal period and failing to pay such employees one (1) hour of pay

1 at the employees' regular rate of compensation for each workday that the meal period is not
2 provided or provided after five (5) hours, as required by California state wage and hour laws.

3 5. For at least one (1) year prior to the date of the letter sent to the LWDA and
4 Defendant giving notice of this claim pursuant to PAGA and continuing to the present,
5 Defendant has had a consistent policy of failing to keep accurate time records. Wage Order 4-
6 2001 Section 7(A)(3) requires an employer to keep records of when the employee begins and
7 ends each work period and meal periods. Labor Code § 1199(c) requires employers to comply
8 with any order of the commission. As such, Defendant has violated this statute and the Wage
9 Order by failing to keep accurate records.

10 6. For at least one (1) year prior to the date of the letter sent to the LWDA and
11 Defendant giving notice of this claim pursuant to PAGA and continuing to the present,
12 Defendant has had a consistent policy of failing to inform employees of their right to take rest
13 periods and of failing to provide employees within the State of California, including Plaintiff,
14 rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and
15 failing to pay such employees one (1) hour of pay at the employees regular rate of compensation
16 for each workday that the rest period was not provided, as required by California state wage and
17 hour laws.

18 7. For at least one (1) year prior to the date of the letter sent to the LWDA and
19 Defendant giving notice of this claim pursuant to PAGA and continuing to the present,
20 Defendant has failed to comply with Labor Code § 226(a) by failing to include necessary and
21 required information on wage statements provided to Plaintiff and the Aggrieved Employees.
22 Defendant failed to include the total hours worked, all applicable hourly rates in effect during
23 the pay period, and the corresponding number of hours worked at each hourly rate by the
24 employee.

25 8. For at least one (1) year prior to the date of the letter sent to the LWDA and
26 Defendant giving notice of this claim pursuant to PAGA and continuing to the present,
27 Defendant has not reimbursed Plaintiff and the Aggrieved Employees the cost and maintenance
28 of their personal cell phones and home internet necessary to perform their job duties during the

1 relevant time period in violation of Labor Code § 2802.

2 9. For at least one (1) year prior to the date of the letter sent to the LWDA and
3 Defendant giving notice of this claim pursuant to PAGA and continuing to the present,
4 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff
5 and the Aggrieved Employees.

6 10. Plaintiff, on behalf of herself and all Aggrieved Employees, brings this
7 representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's
8 violation of California Labor Code §§ 203, 226(a), 226.7, 245-248.5, 510, 512, 558, 1194, 1197,
9 1199, and 2802.

10 II

11 JURISDICTION AND VENUE

12 11. This Court has subject matter jurisdiction over all causes of action asserted
13 herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil
14 Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
15 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
16 arises under the laws of the State of California or is subject to adjudication in the courts of the
17 State of California.

18 12. This Court has personal jurisdiction over Defendant because Defendant has
19 caused injuries in the County of San Diego and the State of California through their acts, and by
20 their violation of the California Labor Code and California state common law.

21 13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
22 Civil Procedure § 395. Defendant operates within California and does business within the
23 County of San Diego. The unlawful acts alleged herein have a direct effect on Plaintiff and all
24 Aggrieved Employees within the State of California and the County of San Diego.

25 14. This case should be classified as complex according to Rule 3.400 of the
26 California Rules of Court, and assigned to a complex litigation judge and department, as it will
27 involve substantial documentary evidence, a large number of witnesses, and is likely to involve
28 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve

1 and would require substantial post judgment judicial supervision.

2 **III**

3 **PARTIES**

4 **A. PLAINTIFF**

5 15. Plaintiff ERICA CHRISTIAN KNOX is a resident of California.

6 16. Plaintiff and the Aggrieved Employees were regularly required to:

7 a. Work without being paid for all hours worked at the proper rate;

8 b. Work without being provided sick pay and appropriate leave;

9 c. Work without being provided their meal periods;

10 d. Work without Defendant maintaining accurate time records showing
11 when the employee begins and ends each work period, meal periods, and total daily hours
12 worked; and

13 e. Work without being provided their rest periods;

14 f. Work without Defendant maintaining accurate time records showing
15 when the employee begins and ends each work period, meal periods, and total daily hours
16 worked and work without being provided an accurate itemized wage statement that reflects all
17 deductions from payment of wages and accurately report total hours worked, including when the
18 employee begins and ends each work period, meal periods, and total daily hours worked, and
19 the applicable rates of pay by Plaintiff and the Aggrieved Employees; and

20 g. Work without being reimbursed for expenses as a condition of
21 employment.

22 17. Defendant willfully failed to compensate Plaintiff and the Aggrieved Employees
23 for wages at the termination of their employment with Defendant.

24 18. Plaintiff, on behalf of herself and the Aggrieved Employees, brings this
25 representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's
26 violation of California Labor Code §§ 203, 226(a), 226.7, 245-248.5, 510, 512, 558, 1194, 1197,
27 1199, and 2802.

28 ///

1 **B. DEFENDANTS**

2 19. Defendant SAN DIEGO CENTER FOR CHILDREN is believed to be a
3 California corporation operating within the State of California. Defendant's corporate address is
4 believed to be 3002 Armstrong Street, San Diego, CA 92111. Upon information and belief,
5 Defendant employed Plaintiff and similarly situated persons as employees within California.
6 Defendant has done and does business throughout the State of California.

7 20. The true names and capacities, whether individual, corporate, associate, or
8 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
9 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
10 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
11 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
12 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names
13 and capacities of the Defendants designated hereinafter as DOES when such identities become
14 known.

15 21. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
16 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
17 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
18 Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all
19 respects acted as the employer and/or joint employer of Plaintiff and the Aggrieved Employees.

20 **IV**

21 **FACTUAL BACKGROUND**

22 22. Plaintiff and the Aggrieved Employees are, and at all times pertinent hereto, have
23 been classified as employees by Defendant.

24 23. Upon information and belief, Plaintiff and the Aggrieved Employees are covered
25 by California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8
26 Cal. Code of Regs. § 11040).

27 24. On a regular and consistent basis, Plaintiff and the Aggrieved Employees were
28 not paid at the proper rate of compensation. Defendant required Plaintiff and the Aggrieved

1 Employees to work “off the clock” at the beginning and/or end of their shifts without
2 compensation. In addition, Defendant violated California’s overtime laws by, inter alia, failing
3 to pay for all hours worked, including overtime and double time, and failing to correctly
4 calculate the regular rate of pay (i.e., failing to include bonuses, incentive pay, and other non-
5 discretionary pay in the regular rate calculation). Due to the failure to include all required
6 compensation in the regular rate compensation, employees that were paid overtime, were not
7 fully paid. As a result, Plaintiff and the Aggrieved Employees were not properly paid for these
8 work tasks as a condition of employment at the proper rate of pay. This resulted in
9 underpayment of wages and/or overtime.

10 25. On a regular and consistent basis, Defendant failed to provide paid sick leave to
11 employees, failed to put employees on notice of their paid sick leave rights, failed to maintain
12 accurate records of used sick leave and the balance of employees’ sick leave, and failed to
13 include sick leave balance on employees’ wage statements. Further, Defendant did not correctly
14 calculate the rate of pay at which employees should be compensated for their sick leave.

15 26. Plaintiff and the Aggrieved Employees have been forced by Defendant to work
16 over five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal
17 break and not being compensated one (1) hour of pay at the regular rate of compensation for
18 each workday that a meal period was not provided or provided after five (5) hours, all in
19 violation of California labor laws, regulations, and Industrial Welfare Commission Wage
20 Orders. Additionally, Defendant failed to inform Plaintiff and the Aggrieved Employees of
21 their right to take meal periods by way of a lawful policy.

22 27. On a regular and consistent basis Defendant has had a consistent policy of failing
23 to keep accurate time records. IWC Wage Order 4-2001 and Labor Code specifically require
24 that Defendant maintains time records showing when the employee begins and ends each work
25 period. *See* IWC Wage Order 4-2001(7). Further, meal periods, split shift intervals and total
26 daily hours worked shall also be recorded. *Id.* Defendant does not maintain accurate records of
27 meal periods for Plaintiff and the Aggrieved Employees. As such, Defendant has violated this
28 statute and the Wage Order by failing to keep accurate records.

28. Plaintiff and the Aggrieved Employees have been required to work four-hour increments (or major fractions thereof) without being provided with a ten (10) minute rest period. Additionally, Defendant failed to inform Plaintiff and the Aggrieved Employees of their right to take rest periods by way of a lawful policy.

29. Defendant has failed to provide accurate itemized wage statements in compliance with Labor Code § 226(a) by failing to maintain time records showing when the employee begins and ends each work period, meal periods, total daily hours worked by itemizing in wage statements all deductions from payment of wages, accurately reporting total hours and applicable rates of pay for Plaintiff and the Aggrieved Employees.

30. On a regular and consistent basis, Plaintiff and the Aggrieved Employees have not been properly reimbursed expenses associated with the cost and maintenance of their personal cell phones and home internet necessary to perform their job duties as a condition of employment.

31. Defendant willfully failed to pay wages and compensation, when Plaintiff and Aggrieved Employees quit or were discharged. Defendant failed to pay the wages described above at the time of termination or resignation. This failure was willful, without legal justification, and interfered with Plaintiff's and the Aggrieved Employees' rights.

32. As a result of the acts alleged herein, Defendant violated Labor Code § 2699, *et seq.*

V

FIRST CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.

33. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

34. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Labor Code §§ 1194 and 1199 require an employer to pay

its employees the legal minimum wage and the legal overtime compensation applicable. California law also requires that any compensation, including a bonus, must be included in the regular rate of pay.

35. On a regular and consistent basis, Plaintiff and the Aggrieved Employees were not paid at the proper rate of compensation. Defendant required Plaintiff and the Aggrieved Employees to work “off the clock” at the beginning and/or end of their shifts without compensation. In addition, Defendant violated California’s overtime laws by, inter alia, failing to pay for all hours worked, including overtime and double time, and failing to correctly calculate the regular rate of pay (i.e., failing to include bonuses, incentive pay, and other non-discretionary pay in the regular rate calculation). Due to the failure to include all required compensation in the regular rate compensation, employees that were paid overtime, were not fully paid. As a result, Plaintiff and the Aggrieved Employees were not properly paid for these work tasks as a condition of employment at the proper rate of pay. This resulted in underpayment of wages and/or overtime.

36. Labor Code §§ 245-248.5 require an employer to provide sick pay and leave. Defendant failed to provide paid sick leave to employees, failed to put employees on notice of their paid sick leave rights, failed to maintain accurate records of used sick leave and the balance of employees’ sick leave, and failed to include sick leave balance on employees’ wage statements. Further, Defendant did not correctly calculate the rate of pay at which employees should be compensated for their sick leave.

37. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Defendant failed to maintain a policy informing Plaintiff and the Aggrieved Employees of these rights. Plaintiff and the Aggrieved Employees consistently worked shifts over five (5) hours. Defendant failed to provide Plaintiff and the Aggrieved Employees with proper meal periods as required by the Labor Code during the relevant time period. When Defendant provided these meal periods, they were often less than

thirty (30) minutes in length.

38. Labor Code § 1199 requires employers to comply with any provision of this chapter or any order or ruling of the commission. Further, Wage Order 4-2001 Section 7(A)(3) requires an employer to keep records of when the employee begins and ends each work period and meal periods. Defendant failed to keep accurate records of when an employee begins and ends each work period and accurate meal period times. As such, Defendant has violated this statute and the Wage Order by failing to keep accurate records.

39. Labor Code § 226.7 require an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant failed to maintain a policy informing Plaintiff and the Aggrieved Employees of this right. Plaintiff and the Aggrieved Employees consistently worked shifts with no rest breaks or with only some of their required rest breaks during the relevant time period.

40. Labor Code § 226(a) requires employers to itemize in wage statements all deductions from payment of wages, the appropriate rates of pay, and to accurately report total hours worked by Plaintiff and the Aggrieved Employees.

41. Labor Code § 226(a)(2) requires that the itemized wage statement properly state the total hours worked by the employee. Plaintiff and the Aggrieved Employees are issued wage statements that do not state the total hours worked during the pay period.

42. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the Aggrieved Employees are issued wage statements that do not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

43. Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties. Defendant has failed to

1 reimburse Plaintiff and the Aggrieved Employees the cost and maintenance of their personal cell
2 phones necessary and home internet to perform their job duties during the relevant time period.

3 44. Defendant's failure to pay wages, as alleged above was willful in that Defendant
4 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Aggrieved
5 Employees to penalties under Labor Code § 203, which provides that an employee's wages shall
6 continue as a penalty until paid for a period of up to thirty (30) days from the time they were
7 due. Defendant has failed to pay Plaintiff and others a sum certain at the time of termination or
8 within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty
9 (30) days thereafter in violation of Labor Code § 203.

10 45. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
11 § 2699, *et seq.* because of Defendant's violation of Labor Code §§ 203, 226(a), 226.7, 245-
12 248.5, 510, 512, 558, 1194, 1197, 1199, and 2802, which call for civil penalties.

13 46. For each such violation, Plaintiff and all other Aggrieved Employees are entitled
14 to penalties in an amount to be shown at the time of trial subject to the following formula:

- 15 a. \$100 for the initial violation per employee per pay period; and
16 b. \$200 for each subsequent violation per employee per pay period.

17 47. These penalties will be allocated 75% to the Labor Workforce Development
18 Agency and 25% to the affected employees.

19 48. On May 20, 2022, in compliance with Labor Code § 2699.3(a)(1), Plaintiff gave
20 written notice by online filing to the LWDA, setting forth the facts and theories of the violations
21 alleged against Defendant ("Notice Letter", see Exhibit "1") and paid the filing fee. Plaintiff
22 also mailed notice to Defendant by certified mail, return receipt requested, to the address listed
23 on the California Secretary of State's website as the entity address for SAN DIEGO CENTER
24 FOR CHILDREN, which is 3002 Armstrong Street, San Diego, CA 9211. (See Exhibit "2").

25 49. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff
26 from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of
27 May 20, 2021. Therefore, Plaintiff is entitled to commence a civil action as though the LWDA
28 has chosen not to investigate. Plaintiff will also provide the LWDA with a filed-stamped copy

1 of the Representative Action Complaint immediately.

2 **RELIEF REQUESTED**

3 **WHEREFORE**, Plaintiff prays for the following relief:

- 4 1. For penalties and other relief pursuant to Labor Code § 2699, *et seq.*;
- 5 2. An award of prejudgment and post judgment interest;
- 6 3. An award providing for payment of costs of suit;
- 7 4. An award of attorney's fees; and
- 8 5. Such other and further relief as this Court may deem proper and just.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

11 DATED: July 27, 2022

KINGSLEY & KINGSLEY, APC

12 By: 

13 DARREN M. COHEN

14 *Attorneys for Plaintiff and the Aggrieved Employees*

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EXHIBIT 1

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Friday, May 20, 2022 4:15 PM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

5/20/2022

LWDA Case No. LWDA-CM-884899-22
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Erica Christian Knox
Employer: San Diego Center for Children
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7CKimberly%40kingsleykingsley.com%7C3f17cca779c5468474f708da3ab68903%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C637886852897954894%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=xbS3MjGVSNQBigdZ0v9YJSdrDCI%2Bi505yU7%2B4vIV1E%3D&reserved=0

KINGSLEY & KINGSLEY

| L A W Y E R S |

May 20, 2022

PAGAfilings@dir.ca.gov
<https://dir.tfaforms.net/308>

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

SAN DIEGO CENTER FOR CHILDREN
3002 Armstrong Street
San Diego, CA 92111
Certified Mailing: # 7019 2970 0001 4016 6292

Re: Erica Christian Knox v. San Diego Center for Children
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Erica Christian Knox (“Plaintiff”) for the violations of California Labor Code §§ 203, 226(a), 226.7, 245-248.5, 510, 512, 558, 1194, 1197, 1199, and 2802. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et seq.* We herein set forth the facts and theories of California Labor Code violations, which we allege San Diego Center for Children (“Defendant”) engaged in with respect to our client and all of their California employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by San Diego Center for Children, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’ (“aggrieved employees”).¹

¹ Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”]. Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Specifically, Defendant has violated Labor Code §§ 510, 558, 1194, 1197, and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and the aggrieved employees for all hours worked. Defendant required Plaintiff and the aggrieved employees to perform work “off the clock” without compensation. In addition, Defendant violated California’s overtime laws by, inter alia, failing to pay for all hours worked, including overtime and double time, and failing to correctly calculate the regular rate of pay (i.e., failing to include bonuses, incentive pay, and other non-discretionary pay in the regular rate calculation). Due to the failure to include all required compensation in the regular rate compensation, employees that were paid overtime, were not fully paid. As a result, Plaintiff and the aggrieved employees were not properly paid for these work tasks as a condition of employment at the proper rate of pay. This resulted in underpayment of wages and/or overtime.

Also, Defendant has violated Labor Code §§ 245-248.5. Plaintiff alleges that Defendant failed to provide paid sick leave to employees, failed to put employees on notice of their paid sick leave rights, failed to maintain accurate records of used sick leave and the balance of employees’ sick leave, and failed to include sick leave balance on employees’ wage statements. Plaintiff further alleges that Defendant did not correctly calculate the rate of pay at which employees should be compensated for their sick leave.

Defendant has violated Labor Code § 512. Labor Code § 512 states that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes. Additionally, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty-minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner. Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant required Plaintiff and the aggrieved employees to work shifts without providing them with meal periods. When employees were required to work through meal periods, Defendant failed to pay such employees one hour of pay at their regular rate of compensation.

Further, IWC Wage Order 4, ¶ 7 imposes on employers an obligation to record and maintain accurate records of “meal periods.” Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the IWC or from violating, refusing, or neglecting to comply with any order of the commission’s orders regarding wages, hours, and working conditions. Defendant does not maintain accurate records of meal periods for Plaintiff and the aggrieved employees. As such, Defendant has violated this statute and the Wage Order by failing to keep accurate records.

In addition, pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to provide Plaintiff and the aggrieved employees with these rest periods and failed to inform them of their right to rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at their regular rate of compensation for each missed rest period as required by Labor Code § 226.7.

Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement. Specifically, Labor Code § 226(a)(2) requires that the itemized wage statement properly state the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not state the total hours worked during the pay period. Further, Labor Code § 226(a)(9) requires that the itemized wage statement properly state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the applicable regular rate, overtime rate, and double time rates. Also, Plaintiff and the aggrieved employees are issued wage statements that do not include the correct number of hours worked at each applicable hourly rate and do not include meal/rest period premiums. Thus, Plaintiff is an aggrieved employee within the meaning PAGA and Defendant has violated Labor Code § 226(a) with respect to Plaintiff and the aggrieved employees.

In addition, Labor Code § 2802 and Wage Order 4-2001 require employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties. Defendant has failed to properly reimburse Plaintiff and aggrieved employees the cost of using and maintaining their personal cell phones and home internet. These expenses were incurred as a necessary part of the performance of Plaintiff's and the aggrieved employees' job duties. As such, Defendant violated Labor Code § 2802.

Lastly, Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not timely paid all wages due upon their separation from Defendant's employ as required. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code § 203.

Defendant's failure to provide wages and/or overtime for all hours worked at the proper rate, failure to provide sick pay at the proper regular rate, failure to provide meal and rest periods, failure to provide compliant itemized wage statements, failure to reimburse expenses, and failure to pay all wages upon termination/resignation were all done on a regular and consistent basis.

LABOR & WORKFORCE DEVELOPMENT AGENCY

SAN DIEGO CENTER FOR CHILDREN

California Labor Code § 2699 Penalties

May 20, 2022

Page 4 of 4

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 203, 226(a), 226.7, 245-248.5, 510, 512, 558, 1194, 1197, 1199, and 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 
DARREN M. COHEN

DMC/km

LWDA Filed Electronic Submission via <https://dir.tfaforms.net/308>

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

SAN DIEGO CENTER FOR CHILDREN # 7019 2970 0001 4016 6292

EXHIBIT 2

USPS TRACKING #



SAN DIEGO CA 920

25 MAY 2022 PM 5 L

9590 9402 7136 1251 6484 17

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY, APC
16133 VENTURA BLVD.
SUITE 1200
ENCINO, CA 91436

PAGA Letter
San Diego Center for Children

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:

San Diego Center for Children
3002 Armstrong Street
San Diego, CA 92111



9590 9402 7136 1251 6484 17

2. Article Number (Transfer from service label)

7019 2970 0001 4016 6292

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

for B. Mgul

X

Agent

Addresssee

B. Received by (Printed Name)

S.D. Ctr. for children

C. Date of Delivery

05/25/22

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
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt