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February 24, 2025

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.govfa.net/308)

Subject: *Mbongue Nyango v. Institute for Applied Behavior Analysis, A California Corporation*

Dear PAGA Administrator:

This office represents Mbongue Nyango in connection with his claims under the California Labor Code. Mr. Nyango was an employee of INSTITUTE FOR APPLIED BEHAVIOR ANALYSIS, A CALIFORNIA CORPORATION ("IABA").

The employer may be contacted directly at the address below:

INSTITUTE FOR APPLIED BEHAVIOR ANALYSIS,
A CALIFORNIA CORPORATION
5601 W. SLAUSON AVE., SUITE 290
CULVER CITY, CA 90230

Mr. Nyango intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Nyango seeks relief on behalf of himself, the State of California, and other persons who are or were employed by IABA as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

IABA employed Mr. Nyango as an hourly paid, non-exempt employee from approximately January 2024 to August 2024. Mr. Nyango worked for IABA as a Behavioral Therapist out of its location in Sherman Oaks, California. During his employment, Mr. Nyango typically worked eight (8) hours or more per day and five (5) days per week. At the time Mr. Nyango's employment with IABA ended, he earned approximately $21.00 per hour. His job duties included, without limitation, supervising students with developmental and/or intellectual disabilities during the school day.

IABA has committed each of the following Labor Code violations against Mr. Nyango, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1): [1]

<u>IABA's Company-Wide and Uniform Payroll and HR Practices</u>

INSTITUTE FOR APPLIED BEHAVIOR ANALYSIS, A CALIFORNIA CORPORATION provides services for people with developmental and intellectual disabilities, such as supported living, supported employment, and behavioral interventions. Upon information and belief, IABA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Culver City, California, for all non-exempt, hourly paid employees working for IABA in California, including Mr. Nyango and other aggrieved employees. At all relevant times, IABA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Nyango and other aggrieved employees, regardless of their location or position.

Upon information and belief, IABA maintains a centralized Payroll department at its corporate headquarters in Culver City, California, which processes payroll for all non-exempt, hourly paid employees working for IABA in California, including Mr. Nyango and other aggrieved employees. Further, IABA issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Nyango and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, IABA utilized the same methods and formulas when calculating wages due to Mr. Nyango and other aggrieved employees in California.

<u>Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime</u>

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

IABA willfully failed to pay all overtime wages owed to Mr. Nyango and other aggrieved employees. During the relevant time period, Mr. Nyango and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

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[1] These facts, theories, and claims are based on Mr. Nyango's experience and counsel's review of those records currently available relating to Mr. Nyango's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Nyango reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, IABA had, and continues to have, a company-wide policy and/or practice of requiring Mr. Nyango and other aggrieved employees to perform various work-related tasks off-the-clock before and after their scheduled shifts. For example, Mr. Nyango was sometimes required to arrive at his assigned school 20-30 minutes before the start of his shift to supervise his client if the client was dropped off early, but IABA did not allow Mr. Nyango to record this time worked on his timesheet. Further, after the end of his shifts when he had signed out, Mr. Nyango was required to speak to his manager over the phone recapping the day's events for about an hour per instance. Thus, IABA failed to track the time Mr. Nyango and other aggrieved employees spent performing work-related tasks outside of their shifts, and Mr. Nyango and other aggrieved employees received no compensation for this time.

Second, IABA had, and continues to have, company-wide policies and/or practices of understaffing by adopting a single-staffing model for some positions, such as Behavioral Therapists, while assigning heavy workloads, including providing one-on-one supervision of students with developmental and intellectual disabilities during the school day. IABA's policies and/or practices resulted in a failure to provide Mr. Nyango and other aggrieved employees with adequate meal period coverage, and thus, Mr. Nyango and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period.

IABA also had a practice of failing to schedule meal periods, which further caused Mr. Nyango and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, about three (3) days per week, Mr. Nyango would work through his meal periods because there was no one available to supervise his clients. Additionally, IABA had, and continues to have, a company-wide policy and/or practice of requiring that Mr. Nyango and other aggrieved employees respond to their personal mobile devices at all times, including during meal periods. As a result, IABA's management contacted Mr. Nyango and other aggrieved employees on their personal cellular phones during meal periods to discuss work-related matters. Thus, Mr. Nyango and other aggrieved employees worked through meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and meet IABA's expectations. IABA did not compensate Mr. Nyango and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Third, during the relevant time period, on information and belief, IABA implemented a company-wide policy and/or practice of automatically deducting meal periods from Mr. Nyango's and other aggrieved employees' time records, instead of allowing employees to clock in and out for meal periods on their handwritten timesheets. As a result of this policy, IABA falsified and deducted meal periods from Mr. Nyango's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, IABA did not record all hours worked during meal periods, and Mr. Nyango and other aggrieved employees performed work during meal periods for which they were not paid.

IABA knew or should have known that as a result of these company-wide practices and/or policies, Mr. Nyango and other aggrieved employees were performing their assigned duties off-the-clock outside of their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Nyango and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Nyango and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

IABA's failure to pay Mr. Nyango and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Nyango and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring IABA into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11040(2)(L) (defining "Hours Worked").

First, as set forth above, during the relevant time period, IABA had a company-wide policy and/or practice of requiring Mr. Nyango and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts, including having to meet their clients before their scheduled shift-start time and telephonically communicating with managers after signing out from their scheduled shifts.

Second, as also stated, due to IABA's policies and/or practices of understaffing and/or single-staffing certain positions, assigning heavy workloads, failing to schedule meal periods, and requiring employees to respond to text messages during meal periods, Mr. Nyango and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Third, as stated above, on information and belief, during the relevant time period, IABA implemented a company-wide policy and/or practice of automatically deducting meal periods from Mr. Nyango's and other aggrieved employees' time records, even when meal periods were missed, short, and/or interrupted. Thus, IABA did not record all hours worked during meal periods, and Mr. Nyango and other aggrieved employees performed work during meal periods for which they were not paid.

IABA did not pay at least minimum wages for all hours worked by Mr. Nyango and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, IABA did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, IABA regularly failed to pay at least minimum wages to Mr. Nyango and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Nyango and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring

IABA into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

First, as stated, IABA had, and continues to have, company-wide policies and/or practices of understaffing and/or single-staffing certain positions while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Nyango and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, IABA had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Nyango and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Second, as also stated, IABA had a company-wide policy and/or practice of requiring that Mr. Nyango and other aggrieved employees respond to their personal mobile devices at all times, including during meal periods, in order to meet IABA's expectations. As a result, IABA's management contacted Mr. Nyango and other aggrieved employees on their personal cellular phones during meal periods to discuss work-related matters, resulting in noncompliant, interrupted meal periods.

IABA's practices and policies prevented Mr. Nyango and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Nyango and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, about three (3) days per week, Mr. Nyango's meal periods were missed because there was no one available to supervise his clients. For the same reason, Mr. Nyango took his meal periods late, after the fifth hour of work, because he had to wait for a teacher with the requisite training to be available to supervise his clients before he could take his meal period. Mr. Nyango and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Furthermore, to the extent that IABA implemented an "on-duty" meal period policy, upon information and belief, its practices and/or policies do not comply with IWC Wage Order No. 4-2001's requirements for on-duty meal periods. On information and belief, IABA took the position that the nature of work performed by Mr. Nyango and other aggrieved employees called for "on-duty" meal periods and on that basis, did not provide off-duty meal periods and did not pay Mr. Nyango and other aggrieved employees all meal period premiums for non-compliant meal periods. However, IABA's use of an "on-duty" meal period policy is and was unlawful.

Under California law, an on-duty meal period agreement does not absolve employers of the duty to provide timely, 30-minute meal periods.[2] IABA's on-duty meal policy did not inform Mr. Nyango and other aggrieved employees that they are entitled to a 30-minute on-duty meal period and that on-duty meal periods must be timely, and therefore is invalid. Moreover, under California law, "on-duty" meal periods are a limited alternative to the requirement to provide off-duty meal periods and can only be utilized under certain circumstances. IWC Wage Order 4-2001, subdivision 11(A) provides that an "on duty" meal period "shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to."

IABA's "on-duty" meal period policy results from the company's own staffing and business decisions, not because the nature of the work required on-duty meal periods. The work of IABA's employees is not of the kind that could be said to meet the "nature of the work" exception. Mr. Nyango and other aggrieved employees provided support services for their clients and supervised them in a school setting. None of these tasks is akin to the kind that the California Division of Labor Standards Enforcement ("DLSE") has found warrant an "on-duty" meal period, such as transporting hazardous materials via vehicles that must be monitored at all times pursuant to federal regulation. Therefore, IABA's use of an "on-duty" meal period policy is improper and unlawful.

Because of IABA's company-wide "on-duty" meal period policy, Mr. Nyango and other aggrieved employees did not receive all required off-duty meal periods and did not receive premium pay for missed, late, or interrupted meal periods. Alternatively, as also stated, on information and belief, IABA implemented a company-wide policy and/or practice of automatically deducting meal periods from Mr. Nyango's and other aggrieved employees' time records, instead of allowing employees to clock in and out for meal periods on their handwritten timesheets. As a result of this policy, IABA

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[2] Employers must provide employees a timely 30-minute meal period even though that meal period may be on-duty instead of off-duty. See *L'Chaim*, 38 Cal. App. 5th at 149 ("If an employee is entitled to an off-duty meal period of 30 minutes, yet work obligations intrude on a portion of that time, the off-duty period is converted to an on-duty period—no matter how small the portion of the period that work intruded upon—and the employee is paid for the entire period. There is no suggestion that once work interrupts an employee's meal period, the period simply ends even if 30 minutes have not yet passed.") and 147 ("[A]n on-duty meal period is not the functional equivalent of no meal period at all. On-duty meal periods are an intermediate category requiring more of employees than off-duty meal periods but less of employees than their normal work.").

deducted 30 minutes from Mr. Nyango's and other aggrieved employees' time records even when meal periods were missed, short, interrupted, and/or late.

At all times herein mentioned, IABA knew or should have known that, as a result of these policies, Mr. Nyango and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. IABA further knew or should have known that IABA did not pay Mr. Nyango and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Furthermore, IABA engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Nyango and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, IABA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Nyango and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring IABA into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, IABA regularly failed to authorize and permit Mr. Nyango and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, IABA's company-wide practices, including understaffing and/or single-staffing certain positions, and assigning heavy workloads, prevented Mr. Nyango and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, IABA failed to schedule rest periods, which, coupled with IABA's failure to provide adequate rest period coverage, further led to Mr. Nyango and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, IABA maintained a company-wide on-premises rest period policy, which effectively required that Mr. Nyango and other aggrieved employees remain on the jobsite premises during their rest periods. Because Mr. Nyango and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, IABA effectively maintained control over Mr. Nyango and other aggrieved employees during rest periods.

As a result of IABA's practices and policies, Mr. Nyango and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Mr. Nyango had to forgo his rest periods altogether due to the lack of rest period coverage.

IABA has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Nyango and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, IABA failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Nyango and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring IABA into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. IABA has not provided Mr. Nyango and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, IABA has knowingly and intentionally provided Mr. Nyango and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, IABA issued uniform wage statements to Mr. Nyango and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, IABA violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because IABA did not record the time Mr. Nyango and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), IABA did not list the correct amount of gross wages and net wages earned by Mr. Nyango and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, IABA failed to accurately list the total number of hours worked by Mr. Nyango and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[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 . . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), IABA willfully failed to maintain accurate payroll records for Mr. Nyango and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, IABA engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Nyango and other aggrieved employees, in violation of section 1198.

Because IABA failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Nyango and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Nyango and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Nyango and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring IABA into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, IABA failed to pay Mr. Nyango and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Nyango and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring IABA into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

IABA willfully failed to pay Mr. Nyango and other aggrieved employees who are no longer employed by IABA all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving IABA's employ.

Mr. Nyango and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring IABA into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

<u>Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 5(A) – Failure to Pay Reporting Time Pay</u>

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11040(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, IABA violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5)(A), because IABA failed to pay Mr. Nyango and other aggrieved employees reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of their usual or scheduled day's work.

IABA had a company-wide practice of sending Mr. Nyango and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Nyango and other aggrieved employees for half of their usual or scheduled shift. For example, when scheduled to work a shift of eight (8) hours, IABA's managers often sent Mr. Nyango home within one (1) hour after the start of his shift when his clients did not show up for school. However, on information and belief, IABA paid Mr. Nyango no more than two (2) hours of pay instead of paying at least half of his scheduled day's work or the minimum reporting time pay. Although Mr. Nyango and other aggrieved employees would report to work based on the schedule that IABA provided to them, IABA would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Mr. Nyango and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5A). Mr. Nyango and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring IABA into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 2699(a), (f), and (k).

<u>Violation of California Labor Code § 2802 – Unreimbursed Business Expenses</u>

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, IABA, on a company-wide basis, required Mr. Nyango and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones and/or mobile data, to carry out their job duties, but failed to fully reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Nyango was required to download the special education health record application, Welligent, onto his personal cellular phone to track his clients' educational plans and services. In addition, he used his personal cellular phone to communicate with IABA's management over phone calls, text messages, and e-mail regarding work-related matters. Although IABA required Mr. Nyango and other aggrieved employees to use their personal mobile devices and/or mobile data to carry out their work-related duties, IABA failed to fully reimburse them for their costs incurred.

IABA could have provided Mr. Nyango and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, or, IABA could have reimbursed employees for the cost of their mobile device usage. Instead, IABA passed these operating costs onto Mr. Nyango and other aggrieved employees. At all relevant times, Mr. Nyango did not earn at least two (2) times the minimum wage.

Thus, IABA had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Nyango and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring IABA into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

On information and belief, IABA failed to provide Mr. Nyango and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

IABA's failure to provide Mr. Nyango and other aggrieved employees with written notice of basic information regarding their employment with IABA is in violation of Labor Code section 2810.5.

Mr. Nyango and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring IABA into compliance with Labor Code section 2810.5, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny 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 . . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid . . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." IABA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Nyango's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Nyango seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and 558, Mr. Nyango acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against IABA for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Nyango seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Sairah Budhwani
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

Sairah Budhwani

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