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December 2, 2022

VIA ONLINE SUBMISSION

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

Subject: *Natasha Le v. Independent Options, Inc.*

Dear PAGA Administrator:

This office represents Natasha Le in connection with her claims under the California Labor Code. Ms. Le was an employee of INDEPENDENT OPTIONS, INC. ("INDEPENDENT OPTIONS").

The employer may be contacted directly at the address below:

INDEPENDENT OPTIONS, INC.
391 CORPORATE TERRACE CIRCLE
SUITE # 102
CORONA, CA 92879

Ms. Le intends to seek civil penalties, attorney's 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"). Ms. Le seeks relief on behalf of herself, the State of California, and other persons who are or were employed by INDEPENDENT OPTIONS 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.

INDEPENDENT OPTIONS employed Ms. Le as an hourly paid, non-exempt employee from approximately May 2021 to August 2022. Ms. Le worked for INDEPENDENT OPTIONS as a Registered Nurse at its facility in Fullerton, California. During her employment, Ms. Le typically worked eight (8) hours or more per day and five (5) days per week. At the time Ms. Le's employment with INDEPENDENT OPTIONS ended, she earned \$45.00 per hour. Her job duties included, without limitation, giving clients their treatments and medications; repositioning, feeding, and entertaining clients; and training other healthcare workers at the site.

INDEPENDENT OPTIONS committed one or more of the following Labor Code violations against Ms. Le, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

INDEPENDENT OPTIONS’s Company-Wide and Uniform Payroll and HR Practices

INDEPENDENT OPTIONS, INC. is a California corporation that offers residential programs, supported and independent living services, and day programs for adults and children with developmental disabilities. Upon information and belief, INDEPENDENT OPTIONS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Corona, California for all non-exempt, hourly paid employees working for INDEPENDENT OPTIONS in California, including Ms. Le and other aggrieved employees. At all relevant times, INDEPENDENT OPTIONS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Le and other aggrieved employees, regardless of its location or position.

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

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).

¹ These facts, theories, and claims are based on Ms. Le’s experience and counsel’s review of those records currently available relating to Ms. Le’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, Ms. Le reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

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. The applicable IWC Wage Order further provides that employees in the health care industry who work shifts in excess of eight (8) hours in a workday may waive one of their two meal periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8, § 11050(11)(D).

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, during the relevant time period, INDEPENDENT OPTIONS maintained and implemented a company-wide unlawful written meal period policy that does not comply with Wage Order No. 5-2001's requirements for on-duty meal periods. Wage Order No. 5-2001 permits on-duty meal periods only when (a) the employees eat with the clients during their meals and are provided with the same meal the clients eat at no charge; or (b) the employee is the sole person in charge and, on the day shift, is provided a meal at no charge. Cal. Code Regs., tit. 8, § 11050(11)(E). Further, an on-duty meal period permitted by Wage Order No. 5-2001 does not absolve employers of the duty to provide timely, 30-minute meal periods. *L'Chaim*, 38 Cal. App. 5th at 147 ("an employee subject to subdivision 11(E) is still entitled to a 30-minute meal period even though that meal period may be on-duty instead of off-duty."). INDEPENDENT OPTIONS's "Agreement for On-Duty Meal Period" states, in relevant part, "I . . . agree that the nature of my work prevents me from being relieved of all duty during my shift to take a thirty (30)[]minute unpaid meal period. I agree to **waive** the required meal period and agree to work during the meal period." (Emphasis added.) INDEPENDENT OPTIONS's on-duty meal policy did not inform Ms. Le 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. Indeed, INDEPENDENT OPTIONS's policy incorrectly states that the employee waives the meal period entirely, and therefore is facially invalid.

INDEPENDENT OPTIONS, on information and belief, does not have any policies with respect to providing Ms. Le and other aggrieved employees with compliant meal periods, pursuant to Wage Order No. 5-2001. For example, throughout her employment, Ms. Le was required to attend to residents during her meal periods and thus remained on-duty. Ms. Le was not the sole person in charge, nor was she provided with the same meal as residents at no charge, but instead ate food that she brought from home or ate staff meals.

Moreover, Ms. Le 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. To the extent that INDEPENDENT OPTIONS's "Agreement for On-Duty Meal Period" functioned as a blanket meal period waiver, it is invalid as it does not specify that employees are entitled to two meal periods during shifts of more than eight hours, and it is not signed by the employer, as required by Wage Order No. 5-2001, subd. 11(D).

Second, INDEPENDENT OPTIONS did not schedule second meal periods and had no policy for permitting Ms. Le and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Ms. Le would sometimes work in excess of ten (10) hours per day, and was not provided her second meal period during these shifts. INDEPENDENT OPTIONS did not present Ms. Le and other aggrieved employees with the opportunity to voluntarily choose whether to waive their second 30-minute meal period on any given day.

Third, during the relevant time period, INDEPENDENT OPTIONS had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, which resulted in a lack of adequate meal period coverage because there were too few employees on duty to handle the heavy workloads and provide meal coverage. Moreover, INDEPENDENT OPTIONS had a company-wide practice of failing to schedule meal periods all together, which further prevented Ms. Le and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Le and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period, have their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, because of INDEPENDENT OPTIONS's policy and/or practice of understaffing while assigning heavy workloads, Ms. Le missed all of her meal periods in order to provide care and supervision for residents.

Fourth, in conjunction with INDEPENDENT OPTIONS's practice of understaffing, INDEPENDENT OPTIONS forced Ms. Le and other aggrieved employees to work through their meal periods by requiring them to remain on the premises for their meal periods. Because Ms. Le and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, INDEPENDENT OPTIONS effectively maintained control over Ms. Le and other aggrieved employees during meal periods.

INDEPENDENT OPTIONS knew or should have known that as a result of its policies and practices, Ms. Le and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. INDEPENDENT OPTIONS further knew or should have known that it did not pay Ms. Le and other aggrieved employees meal period premiums when meal periods were missed, late, shortened, and/or interrupted.

Furthermore, INDEPENDENT OPTIONS 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, Ms. Le and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that INDEPENDENT OPTIONS did pay Ms. Le and other aggrieved employees premium pay for missed, late, and interrupted meal periods, INDEPENDENT OPTIONS did so at the incorrect rates. In addition to an hourly wage, INDEPENDENT OPTIONS paid Ms. Le and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, INDEPENDENT OPTIONS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. Therefore, during times when Plaintiff and class members received meal period premiums and these other forms of pay, Defendants failed to pay full meal period premiums by paying a lower rate than required. As a result, Defendants failed to provide Plaintiff and class members compliant meal periods in violation of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period premiums due.

Accordingly, INDEPENDENT OPTIONS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Le and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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, 269-270 (2016).

During the relevant time period, INDEPENDENT OPTIONS regularly failed to authorize and permit Ms. Le 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, INDEPENDENT OPTIONS's company-wide practices, including understaffing and assignment of heavy workloads, prevented Ms. Le and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, INDEPENDENT OPTIONS failed to schedule rest periods which, coupled with INDEPENDENT OPTIONS's failure to provide adequate rest period coverage, further led to Ms. Le and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, INDEPENDENT OPTIONS maintained and implemented a company-wide on-premises rest period policy, which mandated Ms. Le and other aggrieved employees remain on the work premises during their rest periods, even when they were not in sole charge of residents. Because Ms. Le 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, INDEPENDENT OPTIONS effectively maintained control over Ms. Le and other aggrieved employees during rest periods.

As a result, Ms. Le 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 being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Ms. Le had to forego her rest periods altogether due to the heavy workload and INDEPENDENT OPTIONS's failure to schedule rest periods for employees.

INDEPENDENT OPTIONS has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Le and other aggrieved employees have not received all premium pay for missed rest periods. Alternatively, to the extent that INDEPENDENT OPTIONS did pay Ms. Le and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, INDEPENDENT OPTIONS did not pay Ms. Le and other aggrieved employees at the correct rate of pay for premiums because INDEPENDENT OPTIONS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, INDEPENDENT OPTIONS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Le and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

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.

INDEPENDENT OPTIONS willfully failed to pay all overtime wages owed to Ms. Le and other aggrieved employees. During the relevant time period, 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 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.

As stated, INDEPENDENT OPTIONS's policies and/or practices of understaffing its facilities while assigning heavy workloads resulted in a failure to provide other aggrieved employees with adequate meal period coverage, and thus, other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. INDEPENDENT OPTIONS also had a company-wide practice of failing to schedule meal periods altogether, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, other aggrieved employees missed meal periods and/or had meal periods interrupted in order to complete their assigned workloads. INDEPENDENT OPTIONS did not compensate other aggrieved employees for the time they spent working off the clock during meal periods.

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

Furthermore, INDEPENDENT OPTIONS did not pay Ms. Le and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, INDEPENDENT OPTIONS paid Ms. Le and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, INDEPENDENT OPTIONS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Ms. Le and other aggrieved employees worked overtime and received these other forms of pay, INDEPENDENT OPTIONS failed to pay all overtime wages by paying a lower overtime rate than required.

For example, INDEPENDENT OPTIONS paid Ms. Le and other aggrieved employees nondiscretionary bonuses which were listed on Ms. Le's and other aggrieved employees' wage statements as "Bonus." During pay periods that Ms. Le and other aggrieved employees were paid overtime wages, INDEPENDENT OPTIONS did not incorporate the nondiscretionary bonuses into Ms. Le's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, INDEPENDENT OPTIONS paid Ms. Le and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. INDEPENDENT OPTIONS's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Le and other aggrieved employees on a company-wide basis.

INDEPENDENT OPTIONS's failure to pay Ms. Le 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. Ms. Le and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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. 5-2001 as "the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated above, due to INDEPENDENT OPTIONS's uniform practice of understaffing, assignment of heavy workloads, failure to schedule meal periods, and resultant lack of meal period coverage, 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. As a result, other aggrieved employees were not relieved of all duties during unpaid meal periods.

Thus, INDEPENDENT OPTIONS did not pay at least minimum wages for all hours worked by and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, INDEPENDENT OPTIONS 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, INDEPENDENT OPTIONS regularly failed to pay at least minimum wages to 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. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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. 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, INDEPENDENT OPTIONS has knowingly and intentionally provided Ms. Le and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, INDEPENDENT OPTIONS issued uniform wage statements to Ms. Le and/or 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, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, INDEPENDENT OPTIONS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because INDEPENDENT OPTIONS did not record the time other aggrieved employees spent working off-the-clock, INDEPENDENT OPTIONS did not list the correct amount of gross wages and net wages earned by other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, INDEPENDENT OPTIONS failed to accurately list the total number of hours worked by 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).

Second, because INDEPENDENT OPTIONS did not calculate Ms. Le's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, INDEPENDENT OPTIONS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, INDEPENDENT OPTIONS also failed to list the correct amount of net wages in violation of section 226(a)(5). INDEPENDENT OPTIONS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, 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 the hours they 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), INDEPENDENT OPTIONS willfully failed to maintain accurate payroll records for 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, INDEPENDENT OPTIONS failed, on a company-wide basis, to keep accurate records of work period and/or meal period start and end times for Ms. Le and other aggrieved employees in violation of section 1198. Furthermore, in light of INDEPENDENT OPTIONS’s failure to provide Ms. Le and other aggrieved employees with second 30-minute meal periods to which they were entitled, INDEPENDENT OPTIONS kept no records of meal start and end times for second meal periods.

Because INDEPENDENT OPTIONS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Le and/or 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, Ms. Le 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.

Ms. Le and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

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, INDEPENDENT OPTIONS failed to pay Ms. Le and/or other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Ms. Le and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

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.

INDEPENDENT OPTIONS willfully failed to pay Ms. Le and/or other aggrieved employees who are no longer employed by INDEPENDENT OPTIONS the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving INDEPENDENT OPTIONS's employ.

Ms. Le and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Unpaid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, INDEPENDENT OPTIONS did not pay other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, INDEPENDENT OPTIONS paid Ms. Garcia and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, INDEPENDENT OPTIONS failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, INDEPENDENT OPTIONS failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, INDEPENDENT OPTIONS paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

INDEPENDENT OPTIONS's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code 246(l). Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

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." INDEPENDENT OPTIONS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Le's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Le seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Le, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against INDEPENDENT OPTIONS for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

Therefore, on behalf of all aggrieved employees, Ms. Le 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,

A handwritten signature in black ink, reading "Sairah Budhwani". The signature is fluid and cursive, with a small dot at the end.

Sairah Budhwani

Copy: INDEPENDENT OPTIONS, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



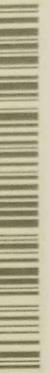
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