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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ARLENE ORTIZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

ACHIEVE BEHAVIORAL ASSOCIATES,
LLC, a California limited liability company;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 22STCV21990

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code § 2698, *et seq.* (Private Attorneys General Act of 2004);
- (9) Violation of California Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff ARLENE ORTIZ and TAYLOR FESSENDEN (“Plaintiffs,” “Plaintiff Ortiz,” “Plaintiff Fessenden”), individually, and on behalf of other members of the general public similarly situated, and allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Los Angeles. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California, County of Los Angeles.

PARTIES

5. Plaintiff ARLENE ORTIZ is an individual residing in the State of California, County of Los Angeles. Plaintiff TAYLOR FESSENDEN is an individual residing in the State of California, County of Los Angeles.

6. Defendant ACHIEVE BEHAVIORAL ASSOCIATES, LLC, at all times herein mentioned, is and was, upon information and belief, a California limited liability corporation, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of Los Angeles.

1 7. At all relevant times, Defendants ACHIEVE BEHAVIORAL ASSOCIATES,
2 LLC was the “employer” of Plaintiffs within the meaning of all applicable laws and statutes.

3 8. At all times herein relevant, Defendants ACHIEVE BEHAVIORAL
4 ASSOCIATES, LLC and DOES 1 through 100, and each of them, were the agents, partners,
5 joint venturers, joint employers, representatives, servants, employees, successors-in-interest,
6 co-conspirators and assigns, each of the other, and at all times relevant hereto were acting
7 within the course and scope of their authority as such agents, partners, joint venturers, joint
8 employers, representatives, servants, employees, successors, co-conspirators and assigns, and
9 all acts or omissions alleged herein were duly committed with the ratification, knowledge,
10 permission, encouragement, authorization, and consent of each defendant designated herein.

11 9. The true names and capacities, whether corporate, associate, individual or
12 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sue
13 said defendants by such fictitious names. Plaintiffs are informed and believe, and based on
14 that information and belief allege, that each of the Defendants designated as a DOE is legally
15 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
16 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
17 Plaintiffs will seek leave of court to amend this Complaint to show the true names and
18 capacities when the same have been ascertained.

19 10. Defendants ACHIEVE BEHAVIORAL ASSOCIATES, LLC and DOES 1
20 through 100 will hereinafter collectively be referred to as “Defendants.”

21 11. Plaintiffs further allege that Defendants directly or indirectly controlled or
22 affected the working conditions, wages, working hours, and conditions of employment of
23 Plaintiffs and the other class members so as to make each of said Defendants employers and
24 employers liable under the statutory provisions set forth herein.

25 **CLASS ACTION ALLEGATIONS**

26 12. Plaintiffs bring this action on their own behalf and on behalf of all other
27 members of the general public similarly situated, and, thus, seeks class certification under
28 Code of Civil Procedure section 382.

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13. The proposed class is defined as follows:
- All current and former hourly-paid or non-exempt employees of Defendants within the State of California at any time during the period from January 9, 2018, through May 31, 2023.
14. Plaintiffs reserve the right to establish subclasses as appropriate.
15. The class is ascertainable and there is a well-defined community of interest in the litigation:
- a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs at this time. however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
 - b. Typicality: Plaintiffs' claims are typical of all other class members' claims as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other class members with whom they have a well-defined community of interest.
 - c. Adequacy: Plaintiffs will fairly and adequately protect the interests of each class member, with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs have no interest that is antagonistic to the other class members. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

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1 d. Superiority: A class action is superior to other available methods for the
2 fair and efficient adjudication of this litigation because individual joinder
3 of all class members is impractical.

4 e. Public Policy Considerations: Certification of this lawsuit as a class
5 action will advance public policy objectives. Employers of this great
6 state violate employment and labor laws every day. Current employees
7 are often afraid to assert their rights out of fear of direct or indirect
8 retaliation. However, class actions provide the class members who are
9 not named in the complaint anonymity that allows for the vindication of
10 their rights.

11 16. There are common questions of law and fact as to the class members that
12 predominate over questions affecting only individual members. The following common
13 questions of law or fact, among others, exist as to the members of the class:

14 a. Whether Defendants' failure to pay wages, without abatement or
15 reduction, in accordance with the Labor Code, was willful;

16 b. Whether Defendants failed to pay their hourly-paid or non-exempt
17 employees within the State of California for all hours worked, missed
18 meal periods and rest breaks in violation of the law;

19 c. Whether Defendants required Plaintiffs and the other class members to
20 work over eight (8) hours per day and/or over forty (40) hours per week
21 and failed to pay the legally required overtime compensation to Plaintiffs
22 and the other class members;

23 d. Whether Defendants properly calculated the regular rate for Plaintiffs
24 and the other class members to worked overtime and earned incentive
25 pay and sick leave pay;

26 e. Whether Defendants deprived Plaintiffs and the other class members of
27 meal and/or rest periods or required Plaintiffs and the other class
28 members to work during meal and/or rest periods without compensation;

- 1 f. Whether Defendants failed to pay minimum wages to Plaintiffs and the
2 other class members for all hours worked;
- 3 g. Whether Defendants failed to pay all wages due to Plaintiffs and the
4 other class members within the required time upon their discharge or
5 resignation;
- 6 h. Whether Defendants failed to timely pay all wages due to Plaintiffs and
7 the other class members during their employment;
- 8 i. Whether Defendants complied with wage reporting as required by the
9 Labor Code, including, *inter alia*, section 226;
- 10 j. Whether Defendants failed to reimburse Plaintiffs and the other class
11 members for necessary business-related expenses and costs;
- 12 k. Whether Defendants' conduct was willful or reckless;
- 13 l. Whether Defendants engaged in unfair business practices in violation of
14 Business & Professions Code section 17200, *et seq.*;
- 15 m. The appropriate amount of damages, restitution, and/or monetary
16 penalties resulting from Defendants' violation of the law; and
- 17 n. Whether Plaintiffs and the other class members are entitled to
18 compensatory damages pursuant to the Labor Code.

19 **GENERAL ALLEGATIONS**

20 17. During the relevant time period set forth herein, Defendants employed Plaintiffs
21 and other persons as hourly-paid or non-exempt employees within the State of California.

22 18. Defendants, jointly and severally, employed Plaintiffs as hourly-paid non-
23 exempt employees during the relevant time period in the State of California, County of Los
24 Angeles.

25 19. Defendants had the authority to hire and terminate Plaintiffs and the other class
26 members; to set work rules and conditions governing Plaintiffs' and other class members'
27 employment; and to supervise their daily employment activities.

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1 20. Defendants exercised sufficient authority over the terms and conditions of
2 Plaintiffs and other class members' employment for them to be joint employers of Plaintiffs
3 and the other class members.

4 21. Defendants directly hired and paid wages and benefits to Plaintiffs and the other
5 class members.

6 22. Defendants continue to employ hourly-paid or non-exempt employees within the
7 State of California.

8 23. Plaintiffs and the other class members worked over eight (8) hours in a day,
9 and/or forty (40) hours in a week during their employment with Defendants.

10 24. Plaintiffs are informed and believe, and based thereon allege, that Defendants
11 engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or
12 non-exempt employees within the State of California. This scheme involved, *inter alia*, failing
13 to pay them for all hours worked, sick leave, missed meal periods, and missed rest breaks in
14 violation of the law.

15 25. Plaintiffs are informed and believe, and based thereon allege, that Defendants
16 knew or should have known that Plaintiffs and the other class members were entitled to receive
17 certain wages for overtime compensation and that Plaintiffs and the other class members were
18 not receiving wages for overtime compensation.

19 26. Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 failed to provide Plaintiffs and the other class members the required rest and meal periods
21 during the relevant time period as required under the Industrial Welfare Commission Wage
22 Orders and thus they are entitled to any and all applicable penalties.

23 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants
24 knew or should have known that Plaintiffs and the other class members were entitled to receive
25 all timely and complete meal periods or payment of one additional hour of pay at Plaintiffs'
26 and the other class members' regular rate of pay when a meal period was missed, late or
27 interrupted, and that Plaintiffs and the other class members did not receive all timely and
28 proper meal periods or payment of one additional hour of pay at their regular rate of pay when

1 a meal period was missed.

2 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants
3 knew or should have known that Plaintiffs and other class members were entitled to receive all
4 timely rest periods without interruption or payment of one additional hour of pay at Plaintiffs
5 and the other class members' regular rate of pay when a rest period was missed, late or
6 interrupted, and that Plaintiffs and the other class members did not receive all rest periods or
7 payment of one additional hour of pay at their regular rate of pay when a rest period was
8 missed.

9 29. Plaintiffs are informed and believe, and based thereon allege, that Defendants
10 knew or should have known that Plaintiffs and the other class members were entitled to receive
11 at least minimum wages for compensation and that Plaintiffs and the other class members were
12 not receiving at least minimum wages for all hours worked.

13 30. Plaintiffs are informed and believe, and based thereon allege, that Defendants
14 knew or should have known that Plaintiffs and the other class members were entitled to receive
15 the wages owed to them upon discharge or resignation, including overtime and minimum
16 wages and meal and rest period premiums, and that Plaintiffs and the other class members did
17 not, in fact, receive such wages owed to them at the time of their discharge or resignation.

18 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
19 knew or should have known that Plaintiffs and the other class members were entitled to receive
20 complete and accurate wage statements in accordance with the law, but, in fact, Plaintiffs and
21 the other class members did not receive complete and accurate wage statements from
22 Defendants. The deficiencies included, *inter alia*, the failure to include the total number of
23 hours worked by Plaintiffs and the other class members.

24 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants
25 knew or should have known that Plaintiffs and the other class members were entitled to
26 reimbursement for necessary business-related expenses.

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1 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Defendants had to keep complete and accurate payroll records
3 for Plaintiffs and the other class members in accordance with the law, but, in fact, did not keep
4 complete and accurate payroll records for Plaintiffs and the other class members.

5 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
6 knew or should have known that they had a duty to compensate Plaintiffs and the other class
7 members pursuant to the law, and that Defendants had the financial ability to pay such
8 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
9 represented to Plaintiffs and the other class members that they were properly denied wages, all
10 in order to increase Defendants' profits.

11 35. During the relevant time period set forth herein, Defendants failed to pay
12 overtime wages to Plaintiffs and the other class members for all hours worked. Plaintiffs and
13 other class members were required to work more than eight (8) hours per day and/or forty (40)
14 hours per week without overtime compensation.

15 36. During the relevant time period set forth herein, Defendants failed to properly
16 calculate and pay sick leave to Plaintiff and the other class members.

17 37. During the relevant time period set forth herein, Defendants failed to provide the
18 requisite uninterrupted and timely meal and rest periods to Plaintiffs and the other class
19 members.

20 38. During the relevant time period set forth herein, Defendants failed to pay
21 Plaintiffs and the other class members at least minimum wages for all hours worked.

22 39. During the relevant time period set forth herein, Defendants failed to pay
23 Plaintiffs and the other class members the wages owed to them upon discharge or resignation.

24 40. During the relevant time period set forth herein, Defendants failed to provide
25 complete or accurate wage statements to Plaintiffs and the other class members.

26 41. During the relevant time period set forth herein, Defendants failed to keep
27 complete or accurate payroll records for Plaintiffs and the other class members.

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42. During the relevant time period set forth herein, Defendants failed to properly compensate Plaintiffs and the other class members pursuant to the law in order to increase Defendants' profits.

43. Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against ACHIEVE BEHAVIORAL ASSOCIATES, LLC and DOES 1 through 100)

44. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 43, and each and every part thereof with the same force and effect as though fully set forth herein.

45. Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

46. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and the other class members employed by Defendants, who work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

47. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiffs and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

48. Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess of

1 twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

2 49. During the relevant time period set forth herein, Plaintiffs and the other class
3 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
4 week.

5 50. During the relevant time period set forth herein, Defendants intentionally and
6 willfully failed to pay overtime wages owed to Plaintiffs and the other class members.

7 51. Defendants' failure to pay Plaintiffs and the other class members the unpaid
8 balance of overtime compensation, as required by the laws, violates the provisions of Labor
9 Code sections 510 and 1198, and is therefore unlawful.

10 52. Pursuant to Labor Code section 1194, Plaintiffs and the other class members are
11 entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys'
12 fees.

13 **SECOND CAUSE OF ACTION**

14 **(Violation of California Labor Code §§ 226.7 and 512(a))**

15 **(Against ACHIEVE BEHAVIORAL ASSOCIATES, LLC and DOES 1 through 100)**

16 53. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
17 through 52, and each and every part thereof with the same force and effect as though fully set
18 forth herein.

19 54. During the relevant time period set forth herein, the IWC Wage Order and Labor
20 Code sections 226.7 and 512(a) were applicable to Plaintiffs' and the other class members'
21 employment by Defendants.

22 55. During the relevant time period set forth herein, Labor Code section 226.7
23 provides that no employer shall require an employee to work during any meal or rest period
24 mandated by an applicable order of the IWC Wage Order.

25 56. During the relevant time period set forth herein, the applicable IWC Wage
26 Order and Labor Code section 512(a) provide that an employer may not require, cause or
27 permit an employee to work for a work period of more than five (5) hours per day without
28 providing the employee with a meal period of not less than thirty (30) minutes, except that if

1 the total work period per day of the employee is no more than six (6) hours, the meal period
2 may be waived by mutual consent of both the employer and employee.

3 57. During the relevant time period set forth herein, the applicable IWC Wage
4 Order and Labor Code section 512(a) further provide that an employer may not require, cause,
5 or permit an employee to work for a work period of more than ten (10) hours per day without
6 providing the employee with a second uninterrupted meal period of not less than thirty (30)
7 minutes, except that if the total hours worked is no more than twelve (12) hours, the second
8 meal period may be waived by mutual consent of the employer and the employee only if the
9 first meal period was not waived.

10 58. During the relevant time period set forth herein, Plaintiffs and the other class
11 members who were scheduled to work for a period of time no longer than six (6) hours, and
12 who did not waive their legally-mandated meal periods by mutual consent, were required to
13 work for periods longer than five (5) hours without an uninterrupted meal period of not less
14 than thirty (30) minutes and/or without a rest period.

15 59. During the relevant time period set forth herein, Plaintiffs and the other class
16 members who were scheduled to work for a period of time no longer than twelve (12) hours,
17 and who did not waive their legally-mandated meal periods by mutual consent, were required
18 to work for periods longer than ten (10) hours without an uninterrupted meal period of not less
19 than thirty (30) minutes and/or without a rest period.

20 60. During the relevant time period set forth herein, Plaintiffs and the other class
21 members who were scheduled to work for a period of time in excess of six (6) hours were
22 required to work for periods longer than five (5) hours without an uninterrupted meal period of
23 not less than thirty (30) minutes and/or without a rest period.

24 61. During the relevant time period set forth herein, Plaintiffs and the other class
25 members who were scheduled to work for a period of time in excess of twelve (12) hours were
26 required to work for periods longer than ten (10) hours without an uninterrupted meal period of
27 not less than thirty (30) minutes and/or without a rest period.

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62. During the relevant time period set forth herein, Defendants intentionally and willfully required Plaintiffs and the other class members to work during meal periods and failed to compensate Plaintiffs and the other class members the full meal period premium for work performed during meal periods.

63. During the relevant time period set forth herein, Defendants failed to pay Plaintiffs and the other class members the full meal period premium due pursuant to Labor Code section 226.7.

64. Defendants' conduct violates applicable IWC Wage Order and Labor Code sections 226.7 and 512(a).

65. Pursuant to the applicable IWC Wage Order and Labor Code section 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against ACHIEVE BEHAVIORAL ASSOCIATES, LLC and DOES 1 through 100)

66. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 65, and each and every part thereof with the same force and effect as though fully set forth herein.

67. During the relevant time period set forth herein, the applicable IWC Wage Order and Labor Code section 226.7 were applicable to Plaintiffs' and the other class members' employment by Defendants.

68. During the relevant time period set forth herein, 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 IWC Wage Order.

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69. During the relevant time period set forth herein, 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.

70. During the relevant time period set forth herein, Defendants required Plaintiffs and the other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

71. During the relevant time period set forth herein, Defendants willfully required Plaintiffs and the other class members to work during rest periods and failed to pay Plaintiffs and the other class members the full rest period premium for work performed during rest periods.

72. During the relevant time period set forth herein, Defendants failed to pay Plaintiffs and the other class members the full rest period premium due pursuant to Labor Code section 226.7.

73. Defendants' conduct violates applicable IWC Wage Orders and Labor Code section 226.7.

74. Pursuant to the applicable IWC Wage Orders and Labor Code section 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each workday that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194 and 1197)

(Against ACHIEVE BEHAVIORAL ASSOCIATES, LLC and DOES 1 through 100)

75. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 74 and each and every part thereof with the same force and effect as though fully set forth herein.

76. During the relevant time period set forth herein, Labor Code sections 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed, is unlawful.

77. During the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiffs and the other class members as required, pursuant to Labor Code sections 1194 and 1197.

78. Defendants' failure to pay Plaintiffs and the other class members the minimum wage as required violates Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiffs and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

79. Pursuant to Labor Code section 1194.2, Plaintiffs and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against ACHIEVE BEHAVIORAL ASSOCIATES, LLC and DOES 1 through 100)

80. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 79, and each and every part thereof with the same force and effect as though fully set forth herein.

81. During the relevant time period set forth herein, 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 if an employee quits 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' 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.

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82. During the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiffs and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

83. Defendants' failure to pay Plaintiffs and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of Labor Code sections 201 and 202.

84. Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then 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 is commenced; but the wages shall not continue for more than thirty (30) days.

85. Plaintiffs and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against ACHIEVE BEHAVIORAL ASSOCIATES, LLC and DOES 1 through 100)

86. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 85, and each and every part thereof with the same force and effect as though fully set forth herein.

87. During the relevant time period set forth herein, Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the

1 employer, and (9) all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee. The deductions
3 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
4 showing the month, day, and year, and a copy of the statement or a record of the deductions
5 shall be kept on file by the employer for at least three years at the place of employment or at a
6 central location within the State of California.

7 88. Defendants have intentionally and willfully failed to provide Plaintiffs and the
8 other class members with complete and accurate wage statements. The deficiencies include
9 but are not limited to: the failure to include the total number of hours worked by Plaintiffs and
10 other class members.

11 89. As a result of Defendants' violation of Labor Code section 226(a), Plaintiffs and
12 the other class members have suffered injury and damage to their statutorily protected rights.

13 90. More specifically, Plaintiffs and the other class members have been injured by
14 Defendants' intentional and willful violation of Labor Code section 226(a) because they were
15 denied both their legal right to receive, and their protected interest in receiving, accurate and
16 itemized wage statements pursuant to Labor Code section 226(a).

17 91. Plaintiffs and the other class members are entitled to recover from Defendants
18 the greater of their actual damages caused by Defendants' failure to comply with Labor Code
19 section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

20 92. Plaintiffs and the other class members are also entitled to injunctive relief to
21 ensure compliance with this section, pursuant to Labor Code section 226(g).

22 **SEVENTH CAUSE OF ACTION**

23 **(Violation of California Labor Code §§ 2800 and 2802)**

24 **(Against ACHIEVE BEHAVIORAL ASSOCIATES, LLC and DOES 1 through 100)**

25 93. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
26 through 92, and each and every part thereof with the same force and effect as though fully set
27 forth herein.

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94. Pursuant to Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

95. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the other class members for all necessary business-related expenses and costs. Plaintiffs and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 2698, *et seq.*)

(Against ACHIEVE BEHAVIORAL ASSOCIATES, LLC and DOES 1 through 100)

96. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 95, and each and every part thereof with the same force and effect as though fully set forth herein.

97. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 128, and each and every part thereof with the same force and effect as though fully set forth herein.

98. The Private Attorneys General Act of 2004 (“PAGA”) expressly establishes that any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the California Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies, or employees for a violation of the Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

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1 99. On May 25, 2023 Plaintiff Fessenden provided written notice to the LWDA and
2 Defendants of the specific provisions of the Labor Code she contends were violated and the
3 theories supporting her contentions. Attached hereto as **Exhibit 1** and incorporated by
4 reference is a copy of the May 25, 2023 written notice to the LWDA. Plaintiff Fessenden
5 believes that on or about July 31, 2023, the sixty-five (65) day notice period will expire, and
6 the LWDA will not take any action to investigate or prosecute this matter. Therefore, Plaintiff
7 Fessenden exhausted the statutory time period to bring this action.

8 100. Plaintiff Fessenden and the other hourly-paid or non-exempt employees are
9 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are of all current
10 and former hourly-paid or non-exempt employees of Defendants who worked within the State
11 of California at any time during the period from May 25, 2022, through May 31, 2023, and one
12 or more of the alleged violations was committed against them.

13 **Failure to Pay Minimum and Overtime Wages**

14 101. At all times relevant herein, Defendants were required to compensate their non-
15 exempt employees minimum wages for all hours worked and overtime wages for all hours
16 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
17 mandate of Labor Code sections 510, 1194, 1197, and 1198.

18 102. As a policy and practice, Defendants failed to compensate Plaintiff Fessenden
19 and the other aggrieved current and former employees for all hours worked, resulting in a
20 failure to pay all minimum wages and overtime wages, where applicable.

21 **Failure to Provide Meal Periods and Rest Breaks**

22 103. In accordance with the mandates of Labor Code sections 226.7 and 512,
23 Defendants were required to authorize and permit their non-exempt employees to take a 10-
24 minute rest break for every four (4) hours worked or major fraction thereof and were further
25 required to provide their non-exempt employees with a 30-minute meal period for every five
26 (5) hours worked.

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1 104. As a policy and practice, Defendants failed to provide Plaintiff Fessenden and
2 the other aggrieved current and former employees with legally mandated meal periods and rest
3 breaks and failed to pay proper compensation for this failure.

4 **Failure to Timely Pay Wages During Employment**

5 105. At all times relevant herein, Defendants were required to pay their employees
6 within a specified time period pursuant to the mandate of Labor Code section 204.

7 106. As a policy and practice, Defendants failed to pay Plaintiff Fessenden and the
8 other aggrieved current and former employees all wages due and owing them within the
9 required time period.

10 **Failure to Timely Pay Wages Upon Termination**

11 107. At all times relevant herein, Defendants were required to pay their employees all
12 wages owed in a timely fashion at the end of employment pursuant to Labor Code sections 201
13 to 204.

14 108. As a result of Defendants' Labor Code violations alleged above, Defendants
15 failed to pay Plaintiff Fessenden and the other aggrieved former employees their final wages
16 pursuant to Labor Code sections 201 to 204 and accordingly owe waiting time penalties
17 pursuant to Labor Code section 203.

18 **Failure to Provide Complete and Accurate Wage Statements**

19 109. At all times relevant herein, Defendants were required to keep accurate records
20 regarding their California employees pursuant to the mandate of Labor Code sections 226,
21 1174, and 1776.

22 110. As a result of Defendants' various Labor Code violations, Defendants failed to
23 keep accurate records regarding Plaintiff Fessenden and the other aggrieved current and former
24 employees. For example, Defendants failed in their affirmative obligation to keep accurate
25 records regarding Plaintiff Fessenden and the other aggrieved current and former employees'
26 gross wages earned, total hours worked, all deductions, net wages earned, and all applicable
27 hourly rates and the number of hours worked at each hourly rate.

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1 **Failure to Provide and Properly Pay Paid Sick Days**

2 111. At all times relevant herein, Defendants were required to provide their
3 employees with paid sick days at their regular rate of pay pursuant to Labor Code section 246
4 *at seq.*

5 112. As a policy and practice, Defendants failed to provide Plaintiff Fessenden and
6 other aggrieved current and former employees with paid sick days at the proper rate of pay
7 pursuant to Labor Code section 246 *et seq.*

8 **Failure to Reimburse Business Expenses**

9 113. At all times relevant herein, Defendants were required to reimburse its
10 employees for any and all necessary expenditures or losses incurred by the employees in direct
11 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code
12 sections 2800 and 2802.

13 114. As a policy and practice, Defendants failed to reimburse Plaintiff Fessenden and
14 the other aggrieved current and former employees for all business expenses incurred and owing
15 them within the required time period.

16 **Penalties**

17 115. Pursuant to Labor Code section 2699, Plaintiff Fessenden, individually, and on
18 behalf of the other current and former aggrieved employees, requests and is entitled to recover
19 from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs,
20 including but not limited to:

- 21 a. Penalties under Labor Code section 2699 in the amount of a hundred
22 dollars (\$100) for each aggrieved employee per pay period for the initial
23 violation, and two hundred dollars (\$200) for each aggrieved employee
24 per pay period for each subsequent violation;
- 25 b. Penalties under Code of Regulations Title 8 section 11040 in the amount
26 of fifty dollars (\$50) for each aggrieved employee per pay period for the
27 initial violation, and one hundred dollars (\$100) for each aggrieved
28 employee per pay period for each subsequent violation;

- 1 c. Penalties under Labor Code section 210 in addition to, and entirely
2 independent and apart from, any other penalty provided in the Labor
3 Code in the amount of a hundred dollars (\$100) for each aggrieved
4 employee per pay period for the initial violation, and two hundred dollars
5 (\$200) for each aggrieved employee per pay period for each subsequent
6 violation;
- 7 d. Penalties under Labor Code section 1197.1 in the amount of a hundred
8 dollars (\$100) for each aggrieved employee per pay period for the initial
9 violation, and two hundred fifty dollars (\$250) for each aggrieved
10 employee per pay period for each subsequent violation;
- 11 e. Any and all additional penalties as provided by the Labor Code and/or
12 other statutes; and
- 13 f. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194,
14 and 2699, and any other applicable statute.

15 **NINTH CAUSE OF ACTION**

16 **(Violation of California Business & Professions Code § 17200, *et seq.*)**

17 **(Against ACHIEVE BEHAVIORAL ASSOCIATES, LLC and DOES 1 through 100)**

18 116. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
19 through 115, and each and every part thereof with the same force and effect as though fully set
20 forth herein.

21 117. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
22 unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants'
23 competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public
24 interest within the meaning of Code of Civil Procedure section 1021.5.

25 118. Defendants' activities as alleged herein are violations of the law, and constitute
26 unlawful business acts and practices in violation of Business & Professions Code section
27 17200, *et seq.*

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119. A violation of Business & Professions Code section 17200, *et seq.* may be predicated on the violation of any state or federal law. In this instant case, Defendants' policy and practice of requiring Plaintiffs and the other class members work overtime hours without paying them proper compensation violate Labor Code sections 510 and 1198. Additionally, Defendants' policy and practice of requiring Plaintiffs and the other class members, to work through their meal and rest periods without paying them proper compensation violate Labor Code sections 226.7 and 512(a). Moreover, Defendants' policy and practice of failing to timely pay wages to Plaintiffs and the other class members violate Labor Code sections 201 and 202. Defendants also violated Labor Code sections 226(a), 1194, 1197, 2800, and 2802.

120. As a result of the herein described violations of the law, Defendants unlawfully gained an unfair advantage over other businesses.

121. Plaintiffs and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

122. Pursuant to Business & Professions Code section 17200, *et seq.*, Plaintiffs and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

DEMAND FOR JURY TRIAL

Plaintiffs, individually, and on behalf of other members of the general public similarly situated, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other members of the general public similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

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Class Certification

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as representatives of the Class;
3. That counsel for Plaintiffs be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current contact information (address, e-mail, and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiffs and the other class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Labor Code section 1194; and
9. For such other and further relief as the court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiffs and the other class members;
11. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;
12. For all actual, consequential, and incidental losses and damages, according to proof;
13. For premium wages pursuant to Labor Code section 226.7(b);
14. For pre-judgment interest on any unpaid wages from the date such amounts

1 were due;

2 15. For reasonable attorneys' fees and costs of suit incurred herein; and

3 16. For such other and further relief as the court may deem just and proper.

4 **As to the Third Cause of Action**

5 17. That the Court declare, adjudge, and decree that Defendants violated Labor
6 Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest
7 periods to Plaintiffs and the other class members;

8 18. That the Court make an award to Plaintiffs and the other class members of one
9 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
10 period was not provided;

11 19. For all actual, consequential, and incidental losses and damages, according to
12 proof;

13 20. For premium wages pursuant to Labor Code section 226.7(b);

14 21. For pre-judgment interest on any unpaid wages from the date such amounts
15 were due; and

16 22. For such other and further relief as the court may deem just and proper.

17 **As to the Fourth Cause of Action**

18 23. That the Court declare, adjudge, and decree that Defendants violated Labor
19 Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiffs and the
20 other class members;

21 24. For general unpaid wages and such general and special damages as may be
22 appropriate;

23 25. For pre-judgment interest on any unpaid compensation from the date such
24 amounts were due;

25 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
26 Labor Code section 1194(a);

27 27. For liquidated damages pursuant to Labor Code section 1194.2; and

28 28. For such other and further relief as the court may deem just and proper.

1 **As to the Fifth Cause of Action**

2 29. That the Court declare, adjudge, and decree that Defendants violated Labor
3 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time
4 of termination of the employment of Plaintiffs and other class members no longer employed by
5 Defendants;

6 30. For all actual, consequential, and incidental losses and damages, according to
7 proof;

8 31. For statutory wage penalties pursuant to Labor Code section 203 for the other
9 class members who have left Defendants' employ;

10 32. For pre-judgment interest on any unpaid compensation from the date such
11 amounts were due; and

12 33. For such other and further relief as the court may deem just and proper.

13 **As to the Sixth Cause of Action**

14 34. That the Court declare, adjudge, and decree that Defendants violated the record
15 keeping provisions of Labor Code section 226(a) and applicable IWC Wage Orders as to
16 Plaintiffs and the other class members, and willfully failed to provide accurate itemized wage
17 statements thereto;

18 35. For actual, consequential, and incidental losses and damages, according to
19 proof;

20 36. For statutory penalties pursuant to Labor Code section 226(e);

21 37. For injunctive relief to ensure compliance with this section, pursuant to Labor
22 Code section 226(g); and

23 38. For such other and further relief as the court may deem just and proper.

24 **As to the Seventh Cause of Action**

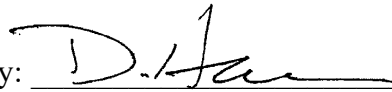
25 39. That the Court declare, adjudge, and decree that Defendants violated Labor
26 Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and the other class
27 members for all necessary business-related expenses as required by Labor Code sections 2800
28 and 2802;

1 52. For injunctive relief to ensure compliance with this section, pursuant to
2 Business and Professions Code sections 17200, *et seq.*; and

3 53. For such other and further relief as the court may deem just and proper.
4

5 Dated: June 13, 2023

JUSTICE LAW CORPORATION

6
7 By: _____

8 Douglas Han
9 Shunt Tatavos-Gharajeh
10 Talia Lux
11 *Attorneys for Plaintiffs*
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EXHIBIT 1

May 25, 2023

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: Achieve Behavioral Associates, LLC

Dear Representative:

We have been retained to represent Taylor Fessenden against Achieve Behavioral Associates, LLC (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, for violations of California wage-and-hour laws (collectively referred to as "ACHIEVE BEHAVIORAL ASSOCIATES").

Ms. Fessenden is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Fessenden may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

ACHIEVE BEHAVIORAL ASSOCIATES is a California limited liability company headquartered at 2108 N St., Sacramento, California 95816.

ACHIEVE BEHAVIORAL ASSOCIATES employed Ms. Fessenden as an hourly-paid, non-exempt Direct Staff employee until in or around March 2023 in the State of California. ACHIEVE BEHAVIORAL ASSOCIATES directly controlled the wages, hours, and/or working conditions of Ms. Fessenden and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Ms. Fessenden may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees of ACHIEVE BEHAVIORAL ASSOCIATES within the State of California.

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ACHIEVE BEHAVIORAL ASSOCIATES failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for noncompliant meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751, an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Fessenden has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at ACHIEVE BEHAVIORAL ASSOCIATES, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

ACHIEVE BEHAVIORAL ASSOCIATES has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 229, 246(l), 510, 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission ("IWC") Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates.

During the relevant time period, Ms. Fessenden and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. ACHIEVE BEHAVIORAL ASSOCIATES maintained policies that pressured Ms. Fessenden and other aggrieved employees to work off-the-clock without recording their additional hours worked. These policies included generally discouraging overtime work by requiring Ms. Fessenden and other aggrieved employees to obtain prior authorization from supervisors before working overtime hours with the threat of termination attached for noncompliance. Next, ACHIEVE BEHAVIORAL ASSOCIATES would force Ms. Fessenden and other aggrieved employees to spend time reviewing notes and gathering necessary supplies for their upcoming shifts before permitting them to clock in for the day. By the extension, ACHIEVE BEHAVIORAL ASSOCIATES would regularly assign Ms. Fessenden and other aggrieved employees heavy workloads. As a result, Ms. Fessenden and other aggrieved employees were pressured into working additional hours off-the-clock post-shift to meet ACHIEVE BEHAVIORAL ASSOCIATES' expectations while avoiding working unauthorized overtime hours. Finally, ACHIEVE BEHAVIORAL ASSOCIATES failed to compensate Ms. Fessenden and other aggrieved employees for traveling to and from clients' homes to perform their duties. Thus, Ms. Fessenden and other aggrieved employees were entitled to receive certain wages for minimum and overtime compensation, but they were not paid for all hours worked.

During the relevant time period, ACHIEVE BEHAVIORAL ASSOCIATES also failed to include non-discretionary bonuses/incentives in Ms. Fessenden and other aggrieved employees' regular rate of pay for purposes of overtime compensation. Ms. Fessenden and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate 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, ACHIEVE BEHAVIORAL ASSOCIATES failed to pay Ms. Fessenden and other aggrieved employees paid sick leave that complied with California Labor Code section 246. This included failing to pay paid sick leave at non-exempt employees' regular rate of pay or at a rate 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. Instead, ACHIEVE BEHAVIORAL ASSOCIATES paid sick leave at rates lower than Ms. Fessenden and other aggrieved employees' base hourly rate of pay.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided.

During the relevant time period, ACHIEVE BEHAVIORAL ASSOCIATES frequently prevented employees from receiving compliant meal and rest breaks. Firstly, ACHIEVE BEHAVIORAL ASSOCIATES' policies failed to advise Ms. Fessenden and other aggrieved employees of their right to receive duty-free meal breaks. By extension, ACHIEVE BEHAVIORAL ASSOCIATES' policies also did not inform Ms. Fessenden and other aggrieved employees of the timing and length of their meal breaks. Finally, ACHIEVE BEHAVIORAL ASSOCIATES' policies did not include the necessary "major fraction thereof" language when describing rest breaks. Secondly, ACHIEVE BEHAVIORAL ASSOCIATES prioritization of Ms. Fessenden and other aggrieved employees completing their tasks (work and attend to clients' needs, traveling to meet clients) often came at the expense of receiving full and timely meal and rest breaks. Even when Ms. Fessenden and other aggrieved employees had rare opportunities to take their meal and rest breaks, they were usually interrupted by having to meet and work with clients. Thirdly, despite these facts, ACHIEVE BEHAVIORAL ASSOCIATES failed to compensate Ms. Fessenden and other aggrieved employees all the premium wages they were owed.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, 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.

During the relevant time period, ACHIEVE BEHAVIORAL ASSOCIATES failed to pay Ms. Fessenden and other aggrieved employees all wages, including as a result of uncompensated off-the-clock work, unpaid sick leave, unpaid overtime wages, and unpaid premium wages for failing to provide legally mandated meal and rest breaks owed within any time period specified by California Labor Code sections 201 through 203. Therefore, ACHIEVE BEHAVIORAL ASSOCIATES is liable under California Labor Code section 203.

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. California Labor Code section 204 also requires 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. In addition, California Labor Code section 204 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.

During the relevant time period, ACHIEVE BEHAVIORAL ASSOCIATES failed to pay Ms. Fessenden and other aggrieved employees all wages due to them, including as a result of uncompensated off-the-clock work, unpaid sick leave, unpaid overtime wages, and unpaid premium wages owed for failing to provide legally mandated meal and rest breaks owed within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees.

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During the relevant time period, ACHIEVE BEHAVIORAL ASSOCIATES did not provide Ms. Fessenden and other aggrieved employees with complete and accurate itemized wage statements. The wage statements Ms. Fessenden and other aggrieved employees received from ACHIEVE BEHAVIORAL ASSOCIATES were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include: (1) gross wages earned by Ms. Fessenden and other aggrieved employees; (2) total hours worked by Ms. Fessenden and other aggrieved employees; (3) all deductions for Ms. Fessenden and other aggrieved employees; (4) net wages earned by Ms. Fessenden and other aggrieved employees; and (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Ms. Fessenden and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the IWC Wage Order shall be subject to a civil penalty. The civil penalty is as follows: (1) for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) wages recovered pursuant to this section shall be paid to the affected employee.

During the relevant time period, Ms. Fessenden and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep 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 employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than 3 years.

During the relevant time period, ACHIEVE BEHAVIORAL ASSOCIATES failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Ms. Fessenden and other aggrieved employees.

California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

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During the relevant time period, ACHIEVE BEHAVIORAL ASSOCIATES did not provide Ms. Fessenden and other aggrieved employees with the minimum wages to which they were entitled despite having constructive and actual knowledge of off-the-clock work, including pre-shift and post-shift work and work performed during meal and rest breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

During the relevant time period, Ms. Fessenden and other aggrieved employees incurred various necessary business-related expenses that were not fully reimbursed by ACHIEVE BEHAVIORAL ASSOCIATES. This included Ms. Fessenden and other aggrieved employees having to use their personal vehicles to drive to clients' homes for which they were not reimbursed. Similarly, ACHIEVE BEHAVIORAL ASSOCIATES expected Ms. Fessenden and other aggrieved employees to use their personal cell phones to speak with supervisors and clients' caregivers and parents for which they were not reimbursed. Finally, ACHIEVE BEHAVIORAL ASSOCIATES required Ms. Fessenden and other aggrieved employees to purchase various office supplies to provide high quality care to clients for which they were not reimbursed.

We believe that Ms. Fessenden and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 229, 246(l), 510, 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant must send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Fessenden will seek these penalties on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of ACHIEVE BEHAVIORAL ASSOCIATES within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", written over a horizontal line.

Douglas Han, Esq.

CC: (By Email Only):

Todd Scherwin

tscherwin@fisherphillips.com

Marianna Bertikian

mbertikian@fisherphillips.com

Counsel for ACHIEVE BEHAVIORAL ASSOCIATES

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is manderson@justicelawcorp.com

On June 14, 2023, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Ortiz, et al. v. Achieve Behavioral Associates, LLC**
LWDA/Court Case No.: **LWDA-CM-957549-23**
22STCV21990
Los Angeles County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on June 14, 2023, at Pasadena, California.


Mariah Anderson