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August 8, 2023

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

To: California Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612
Via Online Submission Only

<u>AMERIHOM MORTGAGE COMPANY, LLC</u> CA Registered Agent for Process Service c/o United Agent Group Inc. 5901 W. Century Blvd #750 Los Angeles, CA 90045 <u>Certified No.: 7022 3330 0002 1393 6301</u>	<u>AMERIHOM MORTGAGE COMPANY, LLC</u> Attn: Legal Department 17885 Von Karman Ave #100 Irvine, CA 92614 <u>Certified No.: 7022 3330 0002 1393 6295</u>
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From: FRANCISCO HAROLDO MELENDEZ, JR., on behalf of himself and all other current and former aggrieved California-based hourly non-exempt employees of AMERIHOM MORTGAGE COMPANY, LLC.

c/o Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
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Email: jlavi@lelawfirm.com
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Our firm has been retained by aggrieved employee FRANCISCO HAROLDO MELENDEZ, JR. concerning a representative action pursuant to the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA") against his employers, AMERIHOM MORTGAGE COMPANY, LLC.

We are filing this written notice with the Labor and Workforce Development Agency ("LWDA") pursuant to the provisions of the California Labor Code Sections 2699, 2699.3, and 2698, *et seq.* The purpose of this letter is to inquire whether LWDA intends to investigate and seek civil penalties associated with my client's allegations of violations of the Labor Code by his Employer. In addition to submitting this letter and the \$75.00 filing fee via the online PAGA filing

system, I am causing a copy of this letter to be mailed to the Department of Industrial Relations – Accounting Unit.

FACTUAL STATEMENT AND THEORIES OF LABOR CODE VIOLATIONS

Aggrieved employee FRANCISCO HAROLDO MELENDEZ, JR. (“Employee”) was employed by AMERIHOM MORTGAGE COMPANY, LLC (“Defendants” or “Employers”) as an hourly non-exempt employee from in or around March 26, 2021, until on or about October 31, 2022.

1. Failure to Pay the Minimum Wage Rate of Pay for All Hours Worked

Employee alleges that during his employment, Employer failed to pay him and other current and former aggrieved California-based hourly non-exempt employees with compensation at the minimum wage rate of pay for all the hours that they worked in violation of Labor Code sections 1194 and 1197. Labor Code section 1197 provides, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” Labor Code section 1194 states, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Employee alleges that during his employment, Employer failed to pay him and other current and former aggrieved California-based hourly non-exempt employees all wages at the applicable minimum wage for all hours worked due to Employer’s policies, practices, and/or procedures including, but not limited to:

- Requiring Employee and other current and former aggrieved California-based hourly non-exempt employees who worked remotely in California to set up their employer-provided computer system;
- Requiring Employee and other current and former aggrieved California-based hourly non-exempt employees who worked remotely in California to:
 - i. Boot up their computers;
 - ii. Wait for their computers to load;
 - iii. Once loaded, enter their credentials to log into Employer’s computer system;
 - iv. Once logged in, request and wait to receive a 2-factor authentication code from Defendants’ computer system on their personal cell phone using an application Employer required them to download;
 - v. Once received, use the code to log into Employer’s computer system;

vi. Once logged into Employer's computer system launch the timekeeping application and wait for it to load; and

vii. Log into the timekeeping application to clock in for the start of their shift.

Employee estimates that he and other current and former aggrieved California-based hourly non-exempt employees spent five to ten (10) minutes on the aforementioned boot up process every workday.

Employee and other current and former aggrieved California-based hourly non-exempt employees were not paid for this time resulting in Employer's failure to pay minimum wage for all the hours Employee and other current and former aggrieved California-based hourly non-exempt employees worked.

Employer's aforementioned policies, practices, and/or procedures resulted in time each day in which Employee and other current and former aggrieved California-based hourly non-exempt employees were subject to the control of Employer without being compensated for that time.

Based on these violations, Employee intends to seek civil penalties pursuant to the Private Attorneys General Act ("PAGA"), California Labor Code sections 2698, *et seq.*, and Labor Code section 1197.1, subdivisions (a)(1)-(2), on behalf of the Labor and Workforce Development Agency ("LWDA") against Employer if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employer's failure to pay wages at a minimum wage rate for all hours worked, Employee will also seek statutory penalties under Labor Code section 226(a)(1) because the failure to pay such minimum wages for all hours worked rendered Employee's and other current and former aggrieved California-based hourly non-exempt employees' pay calculations inaccurate and in violation of Labor Code section 226(e)(2)(B)(i).

2. Failure to Pay Overtime Wages for Overtime Hours Work

Employee alleges that during his employment, Employer failed to pay him and other current and former aggrieved California-based hourly non-exempt employees for the overtime hours that they worked at their overtime rate of pay.

Labor Code section 510, subdivision (a), states in relevant part:

"Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Further, Labor Code section 1198 provides,

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code section 1194 provides, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Employee alleges that during his employment, Employer failed to pay him and other current and former aggrieved California-based hourly non-exempt employees overtime wages for overtime hours worked due to Employer’s policies, practices, and/or procedures including, but not limited to:

- Requiring Employee and other current and former aggrieved California-based hourly non-exempt employees who worked remotely in California to set up their employer-provided computer system;
- Requiring Employee and other current and former aggrieved California-based hourly non-exempt employees who worked remotely in California to:
 - i. Boot up their computers;
 - ii. Wait for their computers to load;
 - iii. Once loaded, enter their credentials to log into Employer’s computer system;
 - iv. Once logged in, request and wait to receive a 2-factor authentication code from Defendants’ computer system on their personal cell phone using an application Employer required them to download;
 - v. Once received, use the code to log into Employer’s computer system;
 - vi. Once logged into Employer’s computer system launch the timekeeping application and wait for it to load; and
 - vii. Log into the timekeeping application to clock in for the start of their shift.

Employee estimates that he and other current and former aggrieved California-based hourly non-exempt employees spent five to ten (10) minutes on the aforementioned boot up process every workday.

Overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

In this case, Employee alleges that Employee and other current and former aggrieved California-based hourly non-exempt employees earned overtime wages, Employer failed to pay them overtime wages at the proper overtime rate of pay due to Employers' failure to include all remuneration when calculating the overtime rate of pay. Specifically, Employer maintained a policy, practice, and/or procedure of failing to include all remuneration such as "AMH Annual Bonus," for example, when calculating Employee's and other current and former aggrieved California-based hourly non-exempt employees' regular rate of pay for the purpose of paying overtime.

Employer's aforementioned policies, practices, and/or procedures resulted in time each day in which Employee and other current and former aggrieved California-based hourly non-exempt employees were subject to the control of Employer without being compensated for that time. To the extent that the foregoing unpaid time resulted from Employee and other current and former aggrieved California-based hourly non-exempt employees being subject to the control of Employer when they worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven days in a workweek, Employer failed to pay them at their overtime rate of pay for all the overtime hours they worked.

Employer's foregoing policies, practices, and/or procedures resulted in Employer failing to pay Employee and other current and former aggrieved California-based hourly non-exempt employees at their overtime rate of pay for all overtime hours worked, in violation of Labor Code sections 510, 1194, 1198, and the Wage Order.

Based on these violations, Employee intends to seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, and 558, subdivisions (a)(1)-(2) on behalf of LWDA against Employer if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employer's failure to pay overtime wages for overtime hours worked, Employee will seek statutory penalties under Labor Code 226(a)(1) because the failure to pay such overtime wages rendered Employee's and other current and former aggrieved, California-based, hourly non-exempt employees' pay calculations inaccurate and in violation of Labor Code section 226(e)(2)(B)(i).

3. Failure to Authorize or Permit Meal Periods in Violation of Labor Code Sections 512 and 226.7 and/or Failure to Pay Meal Period Premiums

Employee alleges that during his employment, Employer failed to authorize or permit all legally required and compliant meal periods and/or pay meal period premiums. California law requires an employer to provide an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code §§226.7, 512; Wage Order 4, §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day

without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must be paid. This is true even where the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code §226.7; Wage Order 4, §11.

Employee alleges that Employer failed to authorize or permit him and other current and former aggrieved California-based hourly non-exempt employees to take all legally required and compliant meal periods due to Employer's policies, practices, and/or procedures including, but not limited to, the following:

- Employers failed to provide Employee and other current and former aggrieved California-based hourly non-exempt employees with timely, uninterrupted, duty-free 30-minute meal breaks after every five (5) hours worked.

Additionally, Employee alleges that Employer maintained a policy, practice, and/or procedure whereby they failed to pay Employee and other current and former aggrieved California-based hourly non-exempt employees a meal period premium wage of one (1) additional hour of pay at their regular rate of compensation for each workday that they did not receive all legally required and compliant meal periods, in violation of Labor Code section 226.7 and Wage Order 4 at § 11.

Finally, on occasions when Employer paid Employee and other current and former aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed, short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1) additional hour of pay at Employee's and other current and former aggrieved California-based hourly non-exempt employees' regular rate of compensation. Specifically, Employer maintained a policy, practice, and/or procedure of failing to include all remuneration such as "AMH Annual Bonus," for example, when calculating Employee's and other current and former aggrieved California-based hourly non-exempt employees' regular rate of compensation for the purpose of paying meal period premium wages.

Based on these violations, Employee intends to seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, on behalf of LWDA against Employer if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employer's failure to authorize or permit all legally required and compliant meal periods and/or failure to pay meal period premium wages, Employee will seek statutory penalties under Labor Code section 226(a)(1) because the failure to pay meal period premiums and/or pay meal period premiums rendered Employee's and other current and former aggrieved California-based hourly non-exempt employees' pay calculations inaccurate and in violation of Labor Code section 226(e)(2)(B)(i).

4. Failure to Pay Wages for Accrued Paid Sick Days at the Regular Rate of Pay in Violation of Labor Code Section 246

Employee alleges that Employer had a policy and/or procedure where Employee and other current and former aggrieved California-based hourly non-exempt employees accrued paid sick time.

Labor Code section 246, subdivision (a), states in relevant part “[a]n employee who...works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days.” Additionally, an employee accrues paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked, beginning at the commencement of employment. Labor Code section 246(b).

Here, Employee and other current and former aggrieved California-based hourly non-exempt employees were employed by Employer for 30 or more days and were entitled to paid sick days. Also, Employee and other current and former aggrieved California-based hourly non-exempt employees began accruing paid sick days since the beginning of each of their respective employment with Employer.

Labor Code section 246, subdivision (l), provides that an employer shall calculate the paid sick time for non-exempt employees in the same manner as the regular rate of pay for the workweek in which the employee elected to use paid sick time. “The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee.” See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

In this case, Employee alleges that when he and other current and former aggrieved California-based hourly non-exempt employees elected to use paid sick time, Employer failed to pay them sick time wages at the proper sick time rate of pay due to Employer’s failure to include all remuneration when calculating the sick time rate of pay. Specifically, Employer maintained a policy, practice, and/or procedure of failing to include all remuneration such as “AMH Annual Bonus,” for example when calculating Employee’s and other current and former aggrieved California-based hourly non-exempt employees’ regular rate of pay for the purpose of calculating and paying sick time.

Employer’s foregoing policy, practice, and/or procedure resulted in Employer failing to pay Employee and other current and former aggrieved California-based hourly non-exempt employees at their sick time regular rate of pay for all sick time accrued, in violation of Labor Code section 246.

Based on these violations, Employee intends to seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, on behalf of LWDA against Employer if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employer’s failure to pay wages for accrued paid sick days at the regular rate of pay, Employee will seek statutory penalties under Labor Code section 226(a)(1) because the failure to pay wages for accrued paid sick days at the regular rate of pay rendered Employee’s and other current and former

aggrieved California-based hourly non-exempt employees' pay calculations inaccurate and in violation of Labor Code section 226(e)(2)(B)(i).

5. Failure to Timely Pay Earned Wages During Employment in Violation of Labor Code Section 204

Employee alleges that during his employment, Employer failed to timely pay Employee's and other current and former aggrieved California-based hourly non-exempt employees' earned wages. In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the payroll period in which wages were earned. Labor Code §204(d).

As a derivative of Employee's claims above, Employee alleges that Employer failed to timely pay him and other current and former aggrieved California-based hourly non-exempt employees' earned wages (including minimum wages, overtime wages, overtime wages to the proper rate, meal period premium wages, and/or meal period premium wages at the proper rate), in violation of Labor Code section 204. Employer's aforementioned policies, practices, and/or procedures resulted in Employer failing to pay Employee and other current and former aggrieved California-based hourly non-exempt employees their earned wages within the applicable time frames outlined in Labor Code 204.

Based on these violations, Employee intends to seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, on behalf of LWDA against Employer if authorized to file a representative action on behalf of the State of California.

6. Failure to Provide Accurate Wage Statements

Labor Code section 226(a) states that "[a]n employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee...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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer...and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...."

Employee alleges that as a derivative of Employee's claims above, Employer failed to provide accurate wage and hour statements to Employee and other current and former aggrieved

California-based hourly non-exempt employees who were subject to Employer's control for uncompensated time and who did not receive all their earned wages (including minimum wages, overtime wages, overtime wages to the proper rate, meal period premium wages, and/or meal period premium wages at the proper rate), in violation of Labor Code section 226.

Based on these violations, Employee will seek civil penalties under Labor Code section 226.3, and PAGA, Labor Code sections 2698, *et seq.*, on behalf of LWDA, against Employer if authorized to file a representative action on behalf of the State of California.

7. Failure to Timely Pay Final Wages

Labor Code section 201(a) states that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202(a) continues, "[i]f 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...." Finally, Labor Code section 203(a) provides, "[i]f an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days...."

As a result of the aforementioned violations of the Labor Code, Employee alleges that he was not paid his final wages in a timely manner as required by Labor Code section 203. Earned wages (including minimum wages, overtime wages, overtime wages to the proper rate, meal period premium wages, and/or meal period premium wages at the proper rate) (all described above), were not paid at the time of Employee's separation of employment. Employee is informed and believes and thereon alleges that former aggrieved California-based hourly non-exempt employees who separated from Employer, whether voluntarily or involuntarily, were not paid all wages due in a timely manner, as required by Labor Code sections 201, 202, and 203.

Based on these violations, Employee will seek civil penalties under PAGA, Labor Code sections 2698, *et seq.*, on behalf of LWDA, against Employer if authorized to file a representative action on behalf of the State of California.

8. Employer's Other Violations of the California Labor Code

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 ("*Huff*"), as an aggrieved employee, Employee has standing, and intends, on behalf of LWDA, to pursue civil penalties against Employer for any and all other Labor Code violations committed by Employer. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the Labor Code under PAGA may also bring PAGA claims against the employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Employee, as an "aggrieved" employee affected by at least one Labor Code violation may, and hereby does, pursue penalties on behalf of LWDA for unrelated Labor Code violations by Employer.

Labor & Workforce Development Agency

Re: FRANCISCO HAROLDO MELENDEZ, JR. v. *AMERIHOM*E MORTGAGE COMPANY, LLC.

August 8, 2023

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CONCLUSION

My client intends to file a representative action pursuant to PAGA concerning his wage claims as warranted by Employer's violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1194, 1197, and the IWC Wage Orders. This letter is being sent to you as an inquiry into whether LWDA wishes to investigate my client's claims for civil penalties associated with Employer's violations of the Labor Code, as alleged herein. Thank you for your assistance and cooperation in this matter. If you have any questions or concerns, please contact me at the above-listed information.

Very truly yours,
LAVI & EBRAHIMIAN, LLP

A handwritten signature in dark ink, appearing to read "Vincent C. Granberry". The signature is fluid and cursive, with a large, stylized "V" at the beginning and a long, sweeping tail that extends to the right.

Vincent C. Granberry, Esq.

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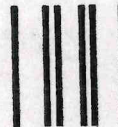
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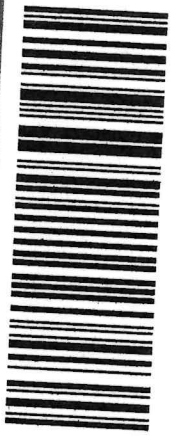
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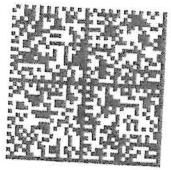
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| ☐ Insured Mail Restricted Delivery (over \$500) | |

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

Domestic Return Receipt

USPS TRACKING#



9590 9402 7625 2122 2104 59

**United States
 Postal Service**

• Se

LAVI & EBRAHIMIAN, LLP
 8889 W. Olympic Blvd., Suite 200
 Beverly Hills, CA 90211

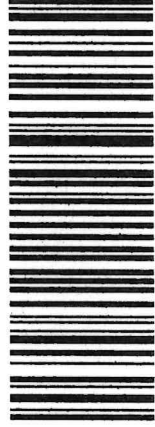
n this box•

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

*JL / VA / WHTY / BC : Mel endia v. AmeriHome
 mortgage company LLC
 PAGA complaint / letter (pages)*

LAW OFFICES OF
LAVI & EBRAHIMIAN, LLP
8889 W. OLYMPIC BLVD., SUITE 200
BEVERLY HILLS, CALIFORNIA 90211

CERTIFIED MAIL®



7022 3330 0002 1393 6301

FIRST-CLASS



US POSTAGE



ZIP 90211, \$ 008.53⁰
02 7H
0006127620 AUG 08 2023

AMERIHOME MORTGAGE COMPANY, LLC

CA Registered Agent for Process Service
c/o United Agent Group Inc.
5901 W. Century Blvd #750
Los Angeles, CA 90045