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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/19/2024 at 01:03:00 PM

Clerk of the Superior Court
By Shiela Retez, Deputy Clerk

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

SOMBOUN HEUANGPASEUD, individually
and on behalf of all others similarly situated and
the State of California under the Private
Attorneys General Act,

Plaintiffs,

vs.

MENTAL HEALTH SYSTEMS, INC. and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2024-00008454-CU-OE-CTL

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Minimum Wage Violations
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Paid Sick Leave Violations
6. Unpaid Vacation Wages
7. Untimely Payment of Wages
8. Wage Statement Violations
9. Waiting Time Penalties
10. Failure to Reimburse Business Expenses
11. Unfair Competition
12. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff SOMBOUN HEUANGPASEUD, individually and on behalf of all others similarly
2 situated and the State of California under the Private Attorneys General Act (“Plaintiff”) brings this
3 FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants
4 MENTAL HEALTH SYSTEMS, INC. and DOES 1 through 50, inclusive (collectively “Defendants”),
5 alleging as follows:

6 **INTRODUCTION**

7 1. This is a class action filed for wage and hour violations of the California Labor Code
8 against Mental Health Systems, which operates mental health care facilities across the State of
9 California.

10 2. Mental Health Systems failed to provide Plaintiff and class members compliant meal
11 and rest breaks. When Plaintiff and class members suffered non-compliant meal and rest breaks,
12 Mental Health Systems failed to pay applicable premiums.

13 3. Mental Health Systems deprived Plaintiff and other class members wages for all hours
14 worked because it compelled class members to work off the clock.

15 4. Mental Health Systems also underpaid Plaintiff and class members by failing to include
16 non-discretionary forms of remuneration in the “regular rate” used to calculate and pay overtime, sick
17 wages, vacation wages, and meal/rest period premiums.

18 5. As a result, Mental Health Systems is liable to Plaintiff and class members for the
19 underlying wages and premiums, interest and penalties, including waiting time, late payment of wages,
20 and wage statement penalties, in amounts according to proof.

21 **JURISDICTION & VENUE**

22 6. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
23 California Constitution as the causes of action are premised upon violations of California law.

24 7. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
25 the Superior Court.

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

3 9. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
4 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
5 of the alleged violations in this county.

6 **PARTIES**

7 **A. Plaintiff Somboun Heuangpaseud**

8 10. Plaintiff Somboun Heuangpaseud is an individual over 18 years of age who worked for
9 Defendants in California as a non-exempt employee from about January 1, 2020, to September 26,
10 2023. Plaintiff worked as a Housing Specialist and helped patients move in and out of care facilities,
11 and transported patients to and from appointments, among other responsibilities.

12 11. The State of California, via the Labor and Workforce Development Agency
13 (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal.
14 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in
15 interest.”])

16 **B. Defendants**

17 12. Defendant Mental Health Systems, Inc. is a California corporation that operates mental
18 health assistance and substance abuse treatment centers throughout the State of California, including
19 in this county.

20 13. The true names and capacities, whether individual, corporate, or otherwise, of the
21 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued
22 by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,
23 each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some
24 manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true
25 names and capacities once ascertained.

26 14. Upon information and belief, Defendants in this action are employers, co-employers,
27 joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised
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control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

15. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

16. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

17. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

18. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

19. The class is ascertainable and shares a well-defined community of interest in this litigation:

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants,

1 which resulted in losses to the class. Proof of common unlawful business
2 practices, which Plaintiff experienced, will establish the right of the class to
3 recover on the causes of action alleged herein.

4 c. Adequacy: Plaintiff is an adequate class representative; will take all necessary
5 steps to protect the class members' interests adequately and fairly; has no
6 interest antagonistic to other class members; and is represented by attorneys
7 who have substantial experience prosecuting, defending, resolving, and
8 litigating wage and hour class, collective, and representative actions in
9 California state and federal courts.

10 d. Superiority: A class action is superior to other means for adjudicating this
11 dispute. Individual joinder is impractical. Class treatment will allow for
12 common issues to be resolved in a single forum, simultaneously, and without
13 duplication of effort and expense.

14 e. Public Policy Considerations: Certification of this lawsuit as a class action
15 advances the State of California's strong public interest in ensuring its
16 approximately millions of employed residents are properly paid the wages they
17 earned for the hours they worked. Class actions provide a mechanism for
18 enforcement of labor laws and allow for vindication of employee rights by
19 unnamed class members.

20 20. Common questions of law and fact as to the class members predominate over questions
21 affecting only individual members. The common questions of law and fact exist as to whether the
22 employment policies and practices formulated by Defendants and applied to the class members
23 constitute violations of California law.

24 **GENERAL ALLEGATIONS**

25 21. On occasion, Defendants required Plaintiff and class members to continue working
26 through their meal periods while they were off-the-clock. This resulted in Defendants paying Plaintiff
27 and class members below the minimum wage during their on-duty meal periods.

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22. Defendants required Plaintiff and class members to complete online training modules while they were off-the-clock. Defendants did not allow Plaintiff and class members to complete these trainings during their scheduled shifts. Defendants did not pay Plaintiff and other class members for the time they spent completing training modules.

23. Defendants did not correctly calculate Plaintiff and class members' overtime hours worked. Because Defendants required Plaintiff and class members to work unpaid hours during meal periods, and complete off-the-clock training, Plaintiff and class members' time records inaccurately reflected their hours worked, resulting in overtime hours that were recorded as regular hours.

24. Even when employee hours were properly recorded, Defendants did not compensate Plaintiff and class members for some overtime hours worked. One illustrative example of this violation is found on the wage statement Defendants issued to Plaintiff for the pay period January 16, 2023, to January 31, 2023.

Wed	01/25/2023	08:00 AM - 12:00 PM	4.00	
Wed	01/25/2023	12:30 PM - 04:30 PM	4.00	8.00
Thu	01/26/2023	04:00 PM - 12:00 AM	9.00	9.00
Fri	01/27/2023	09:00 AM - 12:00 PM	3.00	
Fri	01/27/2023	12:30 PM - 05:30 PM	5.00	8.00

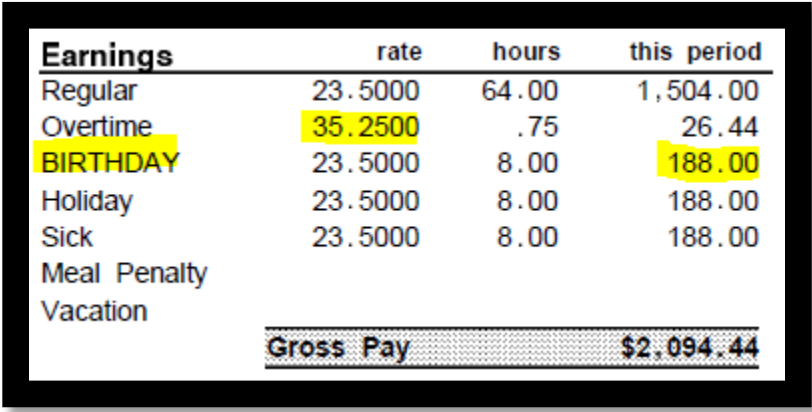
Earnings	rate	hours	this period
Regular	23.5000	80.00	1,880.00
BIRTHDAY	23.5000	8.00	188.00
Holiday	23.5000	8.00	188.00
Meal Penalty	23.5000	1.00	23.50
Overtime			
Vacation			
Gross Pay			\$2,279.50

25. Plaintiff's time records show that he worked nine hours on January 26, 2023, however his wage statement for the pay period shows that he was not paid any overtime hours.

26. Defendants failed to pay Plaintiff and class members overtime wages at the lawful rate of pay. Plaintiff and class members received non-discretionary remuneration in the form of a paid day off. Defendants' employee handbook states that employees received one paid day off to celebrate a

1 birthday or recovery anniversary and another paid day off to celebrate their employment anniversary.
2 These days off were recorded in Plaintiff and class members' wage statements as "birthday" days off.
3 However, Plaintiff is unsure of the true reason for these days off as he experienced four "birthday"
4 days off during the 2023 calendar year. Plaintiff alleges that these days off are forms of non-
5 discretionary remuneration that Defendants failed to calculate in their regular rate of pay for overtime
6 wages, meal and rest period premiums, paid sick leave, and vacation wages.

7 27. An illustrative example of this violation is found on the wage statement Defendants
8 issued to Plaintiff for the pay period July 1, 2023, to July 15, 2023.



Earnings	rate	hours	this period
Regular	23.5000	64.00	1,504.00
Overtime	35.2500	.75	26.44
BIRTHDAY	23.5000	8.00	188.00
Holiday	23.5000	8.00	188.00
Sick	23.5000	8.00	188.00
Meal Penalty			
Vacation			
Gross Pay			\$2,094.44

16 28. In this pay period, Plaintiff earned \$188 for a "birthday" day off and worked overtime.
17 Defendants failed to include Plaintiff's "birthday" day off in his regular rate of pay and instead paid
18 Plaintiff's overtime at \$35.25, which is 1.5 times his base hourly rate. Plaintiff alleges this payment is
19 some form of non-discretionary remuneration as neither his birthday nor work anniversary fall in the
20 month of July.

21 29. Plaintiff and class members experienced missed, late, short and interrupted meal
22 periods due to understaffing and keeping up with job demands. Plaintiff often worked alone and,
23 because of the nature of the care facility, could not leave his position to take a compliant meal period.
24 When he did not work alone, due to Defendants' staffing practices, Plaintiff and class members lacked
25 proper coverage to be relieved of their duties to take compliant meal periods. When Plaintiff and class
26 members experienced these noncompliant meal periods, they were entitled to a meal period premium
27 at the regular rate of pay.

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30. Defendants failed to pay meal period premiums at the regular rate of pay. Defendants underpaid Plaintiff and class members who earned a meal period premium and a “birthday” day off in the same pay period as the premiums paid did not factor in all forms of remuneration.

31. An illustrative example of this regular rate of pay violation is found on the wage statement Defendants issued to Plaintiff’s for the pay period of January 16, 2023, to January 31, 2023.

Earnings	rate	hours	this period
Regular	23.5000	80.00	1,880.00
BIRTHDAY	23.5000	8.00	188.00
Holiday	23.5000	8.00	188.00
Meal Penalty	23.5000	1.00	23.50
Overtime			
Vacation			
Gross Pay			\$2,279.50

32. In this pay period, Defendants gave Plaintiff a “birthday” day off and paid him a meal period premium. Defendants calculated this premium at his base hourly rate, not his regular rate of pay.

33. Plaintiff and class members experienced interrupted and missed rest periods due to Defendants’ policy and practice. Defendants expected Plaintiff and class members to remain on duty throughout their shifts, without rest periods. Additionally, Defendants did not provide adequate staffing to allow Plaintiff and class members to take compliant rest periods.

34. On information and belief, Plaintiff alleges that to the extent that Defendants ever paid any rest period premiums, such amounts were underpaid due to Defendants’ policy and practice of excluding non-discretionary income from the regular rate of pay.

35. In pay periods where Defendants paid Plaintiff forms of non-discretionary remuneration, Defendants failed to properly calculate and pay paid sick leave at the appropriate regular rate of pay. Defendants paid sick leave at the employees’ regular time hourly rate instead of one of the methods authorized by statute, which required Defendants to factor in employees’ additional remuneration, such as commissions.

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1 36. One example of Defendants' sick leave violations occurs during the pay period of July
2 1, 2023, to July 15, 2023 (see Paragraph 25). In this pay period, Plaintiff earned a "birthday" day off
3 in the amount of \$188.00 and also used 8 hours of paid sick leave. Defendants paid Plaintiff's sick
4 leave at his regular hourly rate of \$23.50 rather than the regular rate of pay. Plaintiff alleges on
5 information and belief that the regular rate miscalculation equally applied with respect to the class,
6 resulting in underpayments of paid sick leave wages.

7 37. Based on Defendants' noncompliance with the regular rate of pay requirements
8 applicable to overtime, meal and rest period premiums, and paid sick leave, Plaintiff alleges on
9 information belief that the regular rate miscalculation equally applied to payment of vacation wages
10 upon separation of employment, resulting in underpayments of vacation wages. The failure to calculate
11 and pay vacation wages at the regular rate of pay was applied as a matter of common policy and
12 practice to class members whose final paycheck included non-discretionary remuneration.

13 38. Defendants' failure to pay regular and overtime, meal and rest period premiums, and
14 paid sick leave each pay period or upon separation of employment, rendered the payments untimely
15 and subject to civil penalties for the violations committed against the class members.

16 39. Further, Defendants failed to provide accurate itemized wage statements to the class
17 members each pay period as a result of these policies and practices.

18 40. Specifically, Defendants violated Labor Code sections 226(a)(1), (2), and (5) by not
19 listing the correct "gross wages earned," "total hours worked," or "net wages earned" on those
20 statements as the amounts listed failed to include and account for unpaid hours worked and meal and
21 rest period premiums Plaintiff and class members earned but were not paid.

22 41. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
23 employee statements each pay period the applicable hourly rates and the number of hours worked at
24 that rate, as Defendants failed to pay all wages and premiums owed to employees each pay period.
25 The amounts and rates stated are instead depreciated and underpaid, resulting in an inaccurate
26 reflection on the pay stub.

27 42. These wage statement violations created significant confusion among Plaintiff and the
28 other class members with respect to what amounts were owed and paid, at what rates, the number of

1 hours worked, and how those amounts should be calculated. The wage statements reflect a false
2 statement of earnings and concealed the underlying problems of underpayment of employee wages.

3 43. Defendants failed to reimburse Plaintiff and class members for work related expenses.
4 Defendants required Plaintiff and class members to use their personal cell phones to coordinate
5 transportation with patients and communicate with supervisors. Additionally, Defendants required
6 Plaintiff to use his personal car to assist patients moving items in and out of care facilities and to
7 transport them to and from appointments, among other tasks. These expenses were for the benefit of
8 Defendants and in direct consequence of his job duties. Plaintiff alleges that, as a matter of policy and
9 practice, Defendants did not reimburse Plaintiff or class members for their expenses in violation of
10 Labor Code section 2802.

11 44. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
12 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes, and
13 alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage Orders
14 by maintaining policies and practices that are inconsistent with their obligations under California law.

15 **FIRST CAUSE OF ACTION**

16 **MINIMUM WAGE VIOLATIONS**

17 **Violation of Labor Code §§ 1194, 1194.2 and 1197**

18 **(All Claims Alleged by Plaintiff and Class Members Against All Defendants)**

19 45. All outside paragraphs of this Complaint are incorporated into this section.

20 46. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
21 §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days
22 of Work" and "Minimum Wages" sections of the applicable orders), which require non-exempt
23 employees be timely paid at least the state or local minimum wage (if higher) for each hour of work,
24 and further provide a private right of action for an employer's failure to pay all minimum wages (plus
25 liquidated damages).

26 47. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
27 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
28 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of

1 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
2 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
3 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
4 Code § 1194.2.

5 48. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
6 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class
7 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an
8 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’
9 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY ALL OVERTIME WAGES**

12 **Violation of Labor Code §§ 510 and 1194**

13 49. All outside paragraphs of this Complaint are incorporated into this section.

14 50. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
15 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
16 wages all overtime hours worked, and which further provide a private right of action for an employer’s
17 failure to pay all overtime compensation for overtime hours worked.

18 51. Defendants failed in their affirmative obligation to pay Plaintiff and class members no
19 less than one and one-half times their respective “regular rate of pay” for all hours worked in excess
20 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
21 work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours
22 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
23 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
24 Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

25 52. Plaintiff and class members are entitled to recover the full amount of the unpaid
26 overtime, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the
27 extent permitted by law.

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1 59. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
2 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
3 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
4 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
5 regular rate of compensation.

6 60. Defendants willfully failed in their affirmative obligation to consistently authorize and
7 permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten
8 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
9 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the
10 applicable orders).

11 61. Further, Defendants willfully failed in their affirmative obligation to consistently pay
12 Plaintiff and class members one additional hour of pay at the respective regular rate of compensation
13 for each workday that a fully compliant rest period was not provided, in violation of Labor Code
14 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PAY ALL PAID SICK LEAVE WAGES**

17 **Violation of Labor Code §§ 200, 218, 246 *et seq.***

18 62. All outside paragraphs of this Complaint are incorporated into this section.

19 63. Defendants knowingly and intentionally failed in their affirmative obligation to pay
20 sick leave wages to Plaintiff and a paid sick leave subclass in violation of Labor Code section 246
21 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law.
22 (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 ["Courts have recognized
23 that 'wages' also include those benefits to which an employee is entitled as a part of his or her
24 compensation, including money, room, board, clothing, vacation pay, and sick pay"].)

25 64. Labor Code section 246(l) governs how Defendants were required to calculate paid sick
26 leave:

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[A]n employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

65. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one of the lawful rates set forth in the statute because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiff and class members.

66. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19 Supplemental Sick Leave wages to class members at the correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

67. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended thereafter.

68. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

69. Under Labor Code section 248.2, non-exempt employees must be paid supplemental paid sick leave according to the highest of the following four methods:

(I) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.

(II) Calculated by dividing the covered 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.

(III) The state minimum wage.

(IV) The local minimum wage to which the covered employee is entitled.

70. Labor Code section 248.6 requires employers to pay supplemental sick leave using either method (I) or (II), as identified above.

71. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick Leave in the manner described above because Defendants failed to include in their sick leave calculation the additional remuneration received by class members.

72. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

SIXTH CAUSE OF ACTION

UNPAID VACATION WAGES

Violation of Labor Code §§ 201, 202, 203, and 227.3 and 1194, and 1198

73. All outside paragraphs of this Complaint are incorporated into this section.

74. This cause of action is brought by an unpaid vacation wages subclass pursuant to Labor Code §§ 200, 201, 202, 203, and 227.3 and 1194, and 1198, which require non-exempt employees be timely paid all vested vacation wages at their final rate of pay upon separation of employment, and which further provide a private right of action for an employer's timely failure to pay all vacation compensation upon termination.

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75. Defendant offered Plaintiff and class members an employment contract or policy providing for the accrual of vacation and/or paid time off. Plaintiff and class members accrued vacation and/or PTO pursuant to the contract or policy.

77. Plaintiff and class members are entitled to recover the full amount of the accrued vacation wages owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

UNTIMELY PAYMENT OF WAGES

78. All outside paragraphs of this Complaint are incorporated into this section.

81. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for

each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

EIGHTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

82. All outside paragraphs of this Complaint are incorporated into this section.

83. This cause of action is brought by a wage statement subclass pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

84. Defendants knowingly and intentionally failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and class members. Specifically, the wage statements issued to Plaintiff and class members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

85. Defendants' unlawful acts and omissions deprived Plaintiff and class members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

86. As a result, Plaintiff and class members are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

NINTH CAUSE OF ACTION

WAITING TIME PENALTIES

Violation of Labor Code §§ 201 *et seq.*

87. All outside paragraphs of this Complaint are incorporated into this section.

88. This cause of action is brought by a waiting time subclass pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of

1 employment, and which further provide a private right of action to recover statutory waiting time
2 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
3 wages.

4 89. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
5 wages earned and unpaid to Plaintiff and class members immediately upon termination of employment
6 or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his
7 or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor
8 Code sections 201 through 203 and the IWC Wage Orders.

9 90. Plaintiff and class members are entitled to recover a waiting time penalty for a period
10 of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

11 **TENTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

13 **Violation of Labor Code § 2802**

14 91. All outside paragraphs of this Complaint are incorporated into this section.

15 92. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and a
16 reimbursement subclass for all necessary expenditures, losses, expenses, and costs incurred by them
17 in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

18 93. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
19 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class
20 members are entitled to recover the amount unreimbursed expenses of Plaintiff and class members in
21 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
22 Code section 2802.

23 **ELEVENTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION**

25 **Violation of Business and Professions Code §§ 17200 *et seq.***

26 94. All outside paragraphs of this Complaint are incorporated into this section.

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95. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in the State of California in violation of California Business and Professions Code § 17200 by committing the foregoing wage and hour violations alleged throughout this Complaint.

96. Defendants' dependance on these unfair and/or unlawful business practices deprived Plaintiff and continue to deprive other class members of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

97. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

98. Plaintiff does not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order violations do not provide a private right of action.

99. Plaintiff and class members are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiff and class members have an ownership interest and to prevent future damage and the public interest under Business and Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

TWELFTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

100. All outside paragraphs of this Complaint are incorporated into this section.

1 101. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
2 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
3 codified as Labor Code section 2698 *et seq.*:

4 a. All current and former non-exempt employees who worked for Defendants in
5 California at any time from one year prior to the postmark date of the initial
6 PAGA notice through date of trial.

7 102. Plaintiff reserves the right to amend, supplement, or add to this description of the
8 aggrieved employees, according to proof.

9 103. The State of California, via the Labor and Workforce Development Agency
10 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
11 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
12 files suit is always the real party in interest.”])

13 104. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
14 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
15 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
16 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
17 action brought by an aggrieved employee on behalf of himself or herself and other current or former
18 employees pursuant to the procedures specified in Section 2699.3. “

19 105. Labor Code section 2699(f) provides: “For all provisions of this code except those for
20 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
21 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
22 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
23 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
24 each subsequent violation.”

25 106. Any allegations regarding violations of the IWC Wage Orders are enforceable as
26 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
27 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

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1 107. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
2 penalties under the PAGA.

3 108. On or about **February 13, 2024**, Plaintiff paid the requisite PAGA filing fee and
4 provided written notice (by online electronic filing with the LWDA and by certified mail to
5 Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support
6 the alleged violations.

7 109. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor
8 Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set
9 forth herein (the "PAGA notice").

10 110. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's
11 written PAGA notice from the LWDA.

12 111. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
13 Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant
14 providing a description of any actions taken to cure the alleged violations.

15 112. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
16 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
17 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
18 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

19 113. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
20 Complaint, Defendants committed the following violations and are liable for all corresponding civil
21 penalties:

- 22 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
23 1197, 1198; IWC Wage Orders.
- 24 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
25 Orders.
- 26 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 27 d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
28 1198; IWC Wage Orders.

- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

114. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties and liquidated damages;
- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;
- h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802.
- i. For recovery of damages in amount according to proof;
- j. For all recoverable pre- and post-judgment interest;

- 1 k. For this action to be maintained as a representative action under the PAGA;
2 l. For Plaintiff and counsel of record to be provided with all enforcement capability as if
3 the action were brought by the State of California or the California Division of Labor
4 Enforcement;
5 m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
6 n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
7 permitted by law, including (without limitation) under Labor Code § 2699, and Code
8 of Civil Procedure section 1021.5; and
9 o. For such other relief the Court deems just and proper.

10 Dated: April 19, 2024

Ferraro Vega Employment Lawyers, Inc.

11
12 

13 Nicholas J. Ferraro

14 *Attorneys for Plaintiff Somboun Heuangpaseud*

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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Lauren N. Vega
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619-693-7727
619-350-6855 fax
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February 13, 2024

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Mental Health Systems, Inc.
9465 Farnham Street
San Diego, California 92112

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **SOMBOUN HEUANGPASEUD** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

MENTAL HEALTH SYSTEMS, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Housing Specialist from about January 2020 to September 26, 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Plaintiff and aggrieved employees often suffered deficient meal periods where the employees worked through part or all of their uncompensated meal periods. Defendants failed to adequately staff the care facility such that Plaintiff and employees were unable to take compliant meal breaks, often missing breaks entirely. Because of this, Defendants began instructing Plaintiff and other employees to clock out for their meal breaks despite not actually taking these breaks. During this off the clock time, Plaintiff and employees were pressured to continue working due to the demands of the facility and Defendants’ insufficient staffing practices.

Additionally, Defendants required Plaintiff and the aggrieved employees to complete off-the-clock training. These trainings were online modules that Defendants required Plaintiff to complete off-the-clock. Due to the nature of the care facility, job requirements did not allow Plaintiff and the aggrieved employees to complete the training during their scheduled shifts.

During the on-duty portions of the employees’ meal periods and the off-the-clock training time, Defendants failed to pay Plaintiff and the aggrieved employees at least the lawful minimum wage for those hours worked.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny 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;” and “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;” and “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.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Due to Defendants’ policy of requiring Plaintiff and employees to work through unpaid meal periods, Plaintiff and employees were not fully compensated for overtime hours. Defendants also required Plaintiff and the aggrieved employees to complete off-the-clock training. Any employee who worked through a meal period or completed off-the-clock training and worked 8 hours in a workday, or 40 hours in a workweek, as calculated by Defendants, worked unpaid overtime.

Additionally, Defendants failed to pay Plaintiff for all their overtime hours worked. Below is an example of Defendants’ failing to pay Plaintiff an overtime hour.

Wed	01/25/2023	08:00 AM - 12:00 PM	4.00	
Wed	01/25/2023	12:30 PM - 04:30 PM	4.00	8.00
Thu	01/26/2023	04:00 PM - 12:00 AM	9.00	9.00
Fri	01/27/2023	09:00 AM - 12:00 PM	3.00	
Fri	01/27/2023	12:30 PM - 05:30 PM	5.00	8.00

Plaintiff’s time records for the week of 1/23/2023

Earnings	rate	hours	this period
Regular	23.5000	80.00	1,880.00
BIRTHDAY	23.5000	8.00	188.00
Holiday	23.5000	8.00	188.00
Meal Penalty	23.5000	1.00	23.50
Overtime			
Vacation			
Gross Pay			\$2,279.50

Plaintiff's wage statement for the pay period 1/16/2023 to 1/31/2023

As Plaintiff's records show, Plaintiff worked 9 hours on 1/26/2023 and did not receive any overtime pay in the corresponding pay period. Defendants' failure to compensate Plaintiff and the aggrieved employees for all hours worked is a clear violation of Labor Code sections 510, 1194, and 1198.

Further, Defendants failed to pay Plaintiff and the aggrieved employees' overtime wages at the lawful rate of pay, resulting in unpaid overtime wages. Plaintiff and the aggrieved employees earned various forms of compensation in addition to their hourly earnings. Plaintiff earned these additional payments in the form of "birthday" days off. According to Defendants' employee handbook, employees receive these "birthday" paid days off for: (1) their actual birthday or recovery anniversary; and (2) their work anniversary. An excerpt from the employee handbook is included below.

5.3.1. Birthday/Recovery Anniversary:

Employees have the option of receiving a paid day off work to celebrate a birthday or the date of recovery. Employees must select which date to celebrate upon hire, or the date will default to an employee's birthday. All employees are encouraged to use the birthday/recovery anniversary benefit on their actual birthday or recovery anniversary and should use the benefit within 30 days following the actual birthday/recovery anniversary, with supervisory approval, or this holiday benefit is forfeited for the calendar year.

5.3.2. Employment Anniversary:

MHS appreciates your service and celebrates you by providing you with a day off each year on the anniversary of your hire date. All employees are encouraged to use the employment anniversary benefit on their actual employment anniversary and should use the benefit within 30 days following the actual anniversary, with supervisory approval, or this holiday benefit is forfeited for the calendar year.

Excerpt from the employee handbook

Despite only having two possible dates that would qualify as a birthday and an employment anniversary, Plaintiff took four “birthday” days off during the 2023 calendar year. Plaintiff’s time records show he took these “birthday” days off on the following dates: 1/24/2023; 7/11/2023; 9/13/2023 and 9/14/2023. None of these days off coincide with Plaintiff’s actual birthday. His birthday is on 12/23, which is more than 30 days prior to all four of the “birthday” days off. The only plausible “birthday” day off was the 1/24/2023 day off as this is within 30 days of his work anniversary. However, this still leaves three implausible “birthday” days off. Because of the unknown nature of these paid days off, Plaintiff alleges that these days off are a form of non-discretionary remuneration that Defendants failed to calculate in their regular rate of pay for overtime wages, meal and rest period premiums, and sick time pay.

Accordingly, Defendants failed to adjust the aggrieved employees’ overtime rates to reflect the regular rate of pay. Instead, Defendants based overtime rate on only the aggrieved *base hourly rate*. Below is an example of Defendants’ regular rate of pay overtime violations.

Earnings	rate	hours	this period
Regular	23.5000	64.00	1,504.00
Overtime	35.2500	.75	26.44
BIRTHDAY	23.5000	8.00	188.00
Holiday	23.5000	8.00	188.00
Sick	23.5000	8.00	188.00
Meal Penalty			
Vacation			
Gross Pay			\$2,094.44

Plaintiff’s wage statement for the pay period 7/1/2023 to 7/15/2023

As Plaintiff’s records show, he earned a “birthday” payment of \$188 in the same period as he worked overtime. Instead of paying Plaintiff at the regular rate of pay multiple, inclusive of the “birthday” payment, Plaintiff’s 0.75 overtime hours were paid at an hourly rate of \$35.25, which reflects a 1.5x multiple of his base rate of \$23.50. Any employee that worked overtime in the same pay period as receiving a “birthday” payment likely had a depreciated and underpaid amount of overtime pay due to Defendants’ policy and practice of excluding forms of non-discretionary income from the regular rate of pay.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants failed to provide compliant meal periods to Plaintiff and the aggrieved employees. Due to Defendants' inadequate staffing practices, Plaintiff and other aggrieved employees were unable to be relieved from their work responsibilities to take a compliant meal period. Plaintiff would often work graveyard shifts alone and because of the nature of the facility, Plaintiff could not leave his position to take a compliant meal break. Plaintiff's time records show numerous shifts with a late or missing meal period without a meal period premium.

Additionally, as previously stated, Plaintiff and employees worked through meal periods at the instruction of Defendants. Although on Plaintiff's time records these shifts appear to be compliant, meal periods were either taken after the fifth hour of work or not taken at all. When these noncompliant meal periods were taken, Defendants did not pay Plaintiff and employees a meal period premium, in violation of Labor Code section 226.7.

Further, Defendants failed to pay Plaintiff and the aggrieved employees' meal premiums at the lawful rate of pay. When Plaintiff and the aggrieved employees earned "birthday" days off, Defendant did not adjust the meal period premium rate to reflect the regular rate of pay. Below is an example of Defendants' regular rate of pay violations.

Earnings	rate	hours	this period
Regular	23.5000	80.00	1,880.00
BIRTHDAY	23.5000	8.00	188.00
Holiday	23.5000	8.00	188.00
Meal Penalty	23.5000	1.00	23.50
Overtime			
Vacation			
Gross Pay			\$2,279.50

Plaintiff's wage statement for the pay period 1/16/2023 to 1/31/2023

In the above pay period, Plaintiff received both a meal period premium and a "birthday" day off. As reflected in the wage statement, Defendants paid Plaintiff's meal period premium at his base hourly rate of \$23.50 instead of a 1.5x multiple of his regular rate of pay.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages

Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at

the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Defendants failed to provide compliant rest periods to Plaintiff and the aggrieved employees. Defendants maintained a common policy and practice of not authorizing or permitting Plaintiff and the aggrieved employees to take all their rest breaks. As previously described, employees were expected to remain on-duty at all times throughout their shifts, without rest breaks. Plaintiff often worked alone, prohibiting him from taking a rest period. When he did not work alone, Defendants did not provide adequate staffing to relieve him from his duties to take compliant rest periods. Defendants did not pay rest period premiums to Plaintiff and aggrieved employees in violation of Labor Code section 226.7.

Additionally, to the extent that Defendants ever paid any rest period premiums, such amounts were underpaid due to Defendants' policy and practice of excluding non-discretionary income from the regular rate of pay, as discussed in the above sections.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.7**

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "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;" or (3) "for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be

paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. When Plaintiff and the aggrieved employees earned “birthday” days off and sick pay in the same period, Defendants failed to factor in forms of non-discretionary income to the aggrieved employee’s sick leave. For example, in Plaintiff’s wage statement below, Plaintiff earned a “birthday” day off, however, Defendants only paid sick leave at Plaintiff’s base hourly rate rather than the regular rate of pay inclusive of the “birthday” day off.

Earnings	rate	hours	this period
Regular	23.5000	64.00	1,504.00
Overtime	35.2500	.75	26.44
BIRTHDAY	23.5000	8.00	188.00
Holiday	23.5000	8.00	188.00
Sick	23.5000	8.00	188.00
Meal Penalty			
Vacation			
Gross Pay			\$2,094.44

Plaintiff’s wage statement for the pay period 7/1/2023 to 7/15/2023

Plaintiff records show that Plaintiff earned a “birthday” day off, however Defendants only paid sick leave at Plaintiff’s base hourly rate rather than the regular rate of pay inclusive of all forms of non-discretionary income. Due to Defendants’ common policy and practice, Defendants underpaid Plaintiff and the aggrieved employees in every pay period where the employees simultaneously earned sick leave and extra remuneration.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Vacation Wages
Violation of Labor Code § 227.3

Defendants violated Labor Code section 227.3 with respect to the aggrieved employees.

Labor Code section 227.3 requires “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.”

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. Because of Defendants’ policy and practice of excluding forms of non-discretionary income from the regular rate of pay, Plaintiff alleges that any employee who received a “birthday” day off in the same pay period as their payment of vested vacation time received a depreciated and underpaid payment.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the

policies and practices set forth in this notice. Because Defendants failed to compensate Plaintiffs for their hours worked, and failed to pay overtime hours, sick and vacation pay, and meal and rest period premiums at the regular rate of pay Defendants failed to pay all wages and premiums in the pay period in which such wages were earned.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203. Specifically, Defendants did not fully compensate Plaintiff's and aggrieved employees for their hours worked and overtime. Additionally, they did not pay applicable meal and rest period premiums. Plaintiff alleges that Defendant failed to timely pay wages upon separation of employment to him and all aggrieved employees as a matter of policy and practice.

Due to Defendants' policy and practice of not including all forms of remuneration in the regular rate of pay, Plaintiff alleges that any employee who received a "birthday" day off and overtime, sick pay, vacation pay, or meal and rest period premium in the same period as their separation of employment did not receive a complete and accurate final payment.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1), (2), and (5) by not listing the correct “gross wages earned,” “total hours worked,” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include Plaintiff and employees’ uncompensated hours worked through unpaid meal periods. Defendants violated Labor Code section 226(a)(1) and (5) as the wage statements did not accurately reflect Plaintiff and employees’ total hours worked, overtime hours, and meal and rest period premiums. Defendants violated Labor Code section 226(a)(9) by failing to accurately calculate the regular rate of pay.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unreimbursed Employee Expenses
Violation of Labor Code §§ 2802, 2804

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Due to Plaintiff's duties as a housing specialist, Defendants required Plaintiff to use his personal car without reimbursement. Plaintiff's duties included assisting patients move items in and out of the caregiving facilities and transporting patients to and from their appointments, among other tasks. Plaintiff used his personal car for the benefit of the employer in direct consequence of his duties, and is thus entitled to any and all expenses, including but not limited to mileage, gas, and other expenses.

Additionally, Defendants required Plaintiff and the aggrieved employees to use their personal cell phones for work-related purposes. These communications were for the benefit of the employer and in direct consequence of their job duties. Defendants required Plaintiff and employees to coordinate transportation with patients and communicate with supervisors using their personal cell phones. Defendants did not reimburse Plaintiff and the aggrieved employees for any portion of their personal cell phone bills or other related expenses in violation of Labor Code section 2802.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699

(\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Attorneys’ Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys’ fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants’ written employment and payroll policies and handbooks; the aggrieved employees’ personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also

be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,



Nicholas J. Ferraro

Cc Plaintiff Somboun Heuangpaseud

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