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County of Sonoma
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Attorney for Plaintiffs Shantell Reed and Chad Schisler, on behalf of themselves and on behalf of all persons similarly situated, and on behalf of Plaintiff Reed, the Labor & Workforce Development Agency, and similarly situated aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA – UNLIMITED JURISDICTION

SHANTELL REED and CHAD SCHISLER on behalf of themselves and on behalf of all persons similarly situated, and on behalf of REED, the Labor & Workforce Development Agency, and similarly situated aggrieved employees Plaintiffs vs. BECOMING INDEPENDENT, a California nonprofit corporation, and DOES 1-20 inclusive, Defendants	Case Number: 24CV05535 FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT (1) FAILURE TO PROVIDE MEAL PERIODS (2) FAILURE TO AUTHORIZE AND PERMIT REST BREAKS (3) FAILURE TO PAY ALL WAGES DUE UPON SEPARATION (4) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS, (5) VIOLATION OF BUSINESS AND PROFESSIONS CODE, AND (6) VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT ASSIGNED FOR ALL PURPOSES TO THE HONORABLE OSCAR A. PARDO - COURTROOM 19 DEMAND FOR JURY TRIAL

Plaintiffs Shantell Reed and Chad Schisler, on behalf of themselves and on behalf of all persons similarly situated, and on behalf of Reed, the Labor & Workforce Development Agency, and similarly situated aggrieved employees, complain and allege the following:

Introduction

1. This is a class action pursuant to Code of Civil Procedure section 382 by Plaintiffs Shantell Reed and Chad Schisler, on behalf of themselves and a proposed Class, against their former employer, Becoming Independent, and a representative action pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698 et seq., by Plaintiff Reed, on behalf of herself, and other aggrieved employees against Becoming Independent.

The Parties

2. Plaintiff Reed is an adult female formerly employed by Becoming Independent. Plaintiff Reed is a resident of Santa Rosa, California.

3. Plaintiff Schisler is an adult male formerly employed by Becoming Independent. Plaintiff Schisler is a resident of Santa Rosa, California.

4. Defendant Becoming Independent is a California nonprofit corporation with its principal place of business in Santa Rosa, California.

5. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 20, and therefore sue the Defendants by such fictitious names. Plaintiffs will amend this complaint to allege their true names and capacities when they are ascertained. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Defendant is responsible in some manner for the wrongful conduct herein alleged, and that Plaintiffs' alleged damages as herein alleged were proximately caused by that conduct.

6. Defendants at all times mentioned were the agents and the employees of their codefendants and in doing the things hereinafter alleged were acting within the course and scope of such agency and with the permission and consent of their codefendants.

Venue and Jurisdiction

7. Plaintiffs brings this class action pursuant to Code of Civil Procedure section 382 and Plaintiff Reed brings this PAGA action pursuant to Labor Code sections 2698 et seq. for violation of

California law. The amount in controversy exceeds the minimum required by this court.

8. Venue is proper in this court because Becoming Independent conducts business in the County of Sonoma and because many of the facts of this action occurred in the County of Sonoma.

General Allegations

9. Becoming Independent provides services to individuals with intellectual and developmental disabilities in the North Bay.

10. Plaintiff Reed worked for Becoming Independent as a nonexempt hourly employee from approximately August 16, 2017 through October 11, 2023, starting as an Instructor II. On October 13, 2021, Plaintiff Reed's job titled changed to Direct Support Professional II, and, on May 15, 2023, Plaintiff Reed received a promotion to a Direct Support Professional III. Plaintiff Reed is informed and believes and on that basis alleges that similarly situated Instructors and Direct Support Professionals worked for Becoming Independent as nonexempt hourly employees.

11. Plaintiff Schisler worked for Becoming Independent as a nonexempt hourly employee from approximately March 27, 2023 to August 2, 2024 as a Direct Support Professional II. Plaintiff Schisler is informed and believes and on that basis alleges that similarly situated Direct Support Professionals worked for Becoming Independent as nonexempt hourly employees.

12. As an Instructor and Direct Support Professional for Becoming Independent, Plaintiff Reed assisted individuals with intellectual and developmental disabilities in identifying and achieving personal goals in their lives. As a Direct Support Professional for Becoming Independent, Plaintiff Schisler assisted individuals with intellectual and developmental disabilities in identifying and achieving personal goals in their lives. Becoming Independent often assigned Plaintiffs a small group of individuals to work with during their shifts, and Plaintiffs often would transport a small group of individuals to community sites for activities. Plaintiffs are informed and believe and on that basis allege that similarly situated Instructors and Direct Support Professionals had job responsibilities similar to Plaintiffs'.

13. Throughout Plaintiffs' employment, Becoming Independent systematically failed to provide Plaintiffs with a 30 minute off duty uninterrupted meal period before the start of their sixth hour of work. Instead, Becoming Independent required Plaintiffs to have an on duty meal period

where they were required to work during their meal period, both when Plaintiffs worked inside Becoming Independent's facilities or outside in the field. Plaintiffs are informed and believe and on that basis allege that Becoming Independent systematically failed to provide similarly situated nonexempt hourly employees with a 30 minute off duty uninterrupted meal period before the start of their sixth hour of work and required them to have an on duty meal period where they were required to work during their meal period. In systematically failing to provide Plaintiffs and similarly situated nonexempt hourly employees with an uninterrupted 30 minute off duty meal period before the start of their sixth hour of work, Becoming Independent violated Labor Code sections 226.7, subdivision (b), and 512, Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 11, and 8 California Code of Regulations sections 11040 and 11150, paragraph 11.

14. On July 17, 2019, Becoming Independent required Plaintiff Reed to sign an "Agreement for On-Duty Meal Period." The agreement stated,

> "The undersigned Employee and Employer agree that the nature of Employee's work generally prevents Employee from being relieved of all duty during Employee's meal period and that Employee shall, on those days on which their work prevents a duty-free meal period, work an on-the job-meal period which shall be paid for by Employer at Employee's regular rate of pay. Lunch periods during which Employee is relieved of all duty for at least thirty (30) minutes shall be recorded on Employee's timecard.
>
> "Either Employer or Employer shall be free to rescind this Agreement on written notice to the other on one (1) days written notice. This agreement is freely and voluntarily entered into."

Plaintiff Schisler signed a similar agreement. Plaintiffs are informed and believe and on that basis allege that Becoming Independent required similarly situated nonexempt hourly employees to sign an "Agreement for On-Duty Meal Period" with the same or similar language.

15. On July 25, 2019, Becoming Independent required Plaintiff Reed to sign an "Employment Agreement," which expressly listed an on duty meal period as a condition of employment. Plaintiff Schisler signed a similar agreement. Plaintiffs are informed and believe and on that basis allege that Becoming Independent required similarly situated nonexempt hourly employees to sign an "Employment Agreement," which also expressly listed an on duty meal period as a condition of employment.

16. Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 11, state,

> "An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

17. The nature of Plaintiffs' work did not prevent Plaintiffs from being relieved of all duty during their meal period within the meaning of paragraph 11 of Industrial Welfare Commissions Wage Order Numbers 4 and 15, nor did Becoming Independent's written agreement signed by Plaintiffs Reed and Schisler state that Plaintiffs Reed and Schisler may revoke the agreement at any time. Rather, Becoming Independent required Plaintiffs Reed and Schisler to provide one day's written notice. Plaintiffs are informed and believe and on that basis allege that the nature of the work of similarly situated nonexempt hourly employees also did not prevent them from being relieved of all duty during their meal period, nor did Becoming Independent's written agreement signed by similarly situated nonexempt hourly employees state that they may revoke the agreement at any time. Rather, Becoming Independent required similarly situated nonexempt hourly employees to provide one day's written notice. Accordingly, Becoming Independent's policy requiring Plaintiffs and similarly situated nonexempt hourly employees to have an on duty meal period was invalid and unenforceable.

18. Becoming Independent never paid Plaintiffs premium pay in the form of one hour of pay at Plaintiffs' regular rate of compensation for each occasion when Becoming Independent failed to provide them with a 30 minute off duty uninterrupted meal period. Plaintiffs are informed and believe and on that basis allege that Becoming Independent never paid similarly situated nonexempt hourly employees premium pay in the form of one hour of pay at their regular rate of compensation for each occasion when Becoming Independent failed to provide them with a 30 minute off duty uninterrupted meal period. In failing to pay Plaintiffs and similarly situated nonexempt hourly employees premium pay, Becoming Independent violated Labor Code section 226.7, subdivision (c), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 11, and 8 California Code of Regulations sections 11040 and 11150, paragraph 11.

19. Becoming Independent regularly failed to authorize and permit Plaintiffs to take rest breaks in the middle of four hours of work or major fraction thereof, insofar as practicable, as required by Labor Code section 226.7, subdivision (b), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 12, and 8 California Code of Regulations sections 11040 and 11150, paragraph 12. Plaintiffs are informed and believes and on that basis allege that Becoming Independent regularly failed to authorize and permit similarly situated nonexempt hourly employees to take rest breaks, which, insofar as practicable, were in the middle of four hours of work or major fraction thereof, as required by Labor Code sections 226.7, subdivision (b), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 12, and 8 California Code of Regulations sections 11040 and 11050, paragraph 12.

20. Becoming Independent never paid Plaintiffs premium pay in the form of one hour of pay at Plaintiffs' regular rate of compensation for each occasion when Becoming Independent failed to authorize and permit Plaintiffs to take rest breaks in the middle of four hours of work or major fraction thereof, insofar as practicable. Plaintiffs are informed and believe and on that basis allege that Becoming Independent never paid similarly situated nonexempt hourly employees premium pay in the form of one hour of pay at their regular rate of compensation for each workday when Becoming Independent failed to authorize and permit similarly situated nonexempt hourly employees to take rest breaks in the middle of four hours of work or major fraction thereof, insofar as practicable. In failing to pay Plaintiffs and similarly situated nonexempt hourly employees premium pay, Becoming Independent violated Labor Code section 226.7, subdivision (c), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 12, and 8 California Code of Regulations sections 11040 and 11150, paragraph 12.

21. Upon Plaintiffs' separation of employment, Becoming Independent did not pay Plaintiffs all their wages due, including unpaid premium pay. Plaintiffs are informed and believe and on that basis allege that Becoming Independent did not pay similarly situated nonexempt hourly employees, upon their separation of employment, all their wages due, including unpaid premium pay. By failing to pay Plaintiffs and similarly situated nonexempt hourly employees all their wages

due upon separation of employment, including unpaid premium pay, Becoming Independent violated Labor Code sections 201, 202, and 203.

22. Becoming Independent issued inaccurate wage statements to Plaintiffs in that the wage statements did not provide an additional hour of pay at the regular rate of compensation for each workday in which a meal period and/or rest break violation occurred, nor did it provide all wages due upon Plaintiffs' separation of employment. Plaintiffs are informed and believe and on that basis allege that Becoming Independent issued inaccurate wage statements to similarly situated nonexempt hourly employees in that the wage statements did not provide an additional hour of pay at the regular rate of compensation for each workday in which a meal period and/or rest break violation occurred, nor did it provide all wages due upon Plaintiffs' separation of employment. By failing to issue accurate wage statements to Plaintiffs and similarly situated nonexempt hourly employees, Becoming Independent violated Labor Code section 226, Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 7, and 8 California Code of Regulations sections 11040 and 11150, paragraph 7.

Class Action Allegations

23. Plaintiffs bring claims for violations of the California Labor Code, 8 California Code of Regulations sections 11040 and 11150, Industrial Welfare Commission Wage Order Numbers 4 15, and the California Business and Professions Code on behalf of themselves and the following Classes of similarly situated nonexempt hourly employees:

a. Meal Break Class: All current and former nonexempt hourly employees whom Becoming Independent did not provide 30 minute off duty uninterrupted meal periods and whom Becoming Independent failed to pay an additional hour of pay at the regular rate of compensation for each workday in which a meal period violation occurred at any time during the period beginning four years prior to the date of filing of this action and through the date of trial.

b. Rest Break Class: All current and former nonexempt hourly employees whom Becoming Independent did not authorize and permit to take rest breaks in the middle of four hours of work or major fraction thereof, insofar as practicable, and whom Becoming Independent failed to pay an additional hour of pay at the regular rate of compensation for each workday in which a rest break violation occurred at any time during the period beginning four years prior to the date of filing of this action and through the date of trial.

c. Waiting Time Penalties Class: All former nonexempt hourly employees whom Becoming Independent failed to pay all wages due immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice, or within 72 hours of resignation made without 72 hours' notice.

d. Wage Statement Class: All current and former nonexempt hourly employees whom Becoming Independent issued inaccurate wage statements at any time during the period beginning four years prior to the date of filing of this action and through the date of trial.

(References herein to "the Class" or "Class Members" is inclusive of the Meal Break Class, Rest Break Class, Waiting Time Penalties Class, and Wage Statement Class.)

24. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Code of Civil Procedure section 382 in that:

a. Numerosity - The Class for whose benefit this action is brought is so numerous that joinder of all Class Members is impracticable and the disposition of their claims will benefit the parties and the court. Plaintiffs are informed and believe and on that basis allege that there are at least forty Class Members and that Becoming Independent knows the names and addresses of the Class Members.

b. Commonality - There are questions of law and fact common to the Class that are answerable on a common basis, and these questions predominate over individual questions. The questions of law and fact common to the Class, include without limitation:

i. Whether Becoming Independent failed to provide current and former nonexempt hourly employees meal periods, in violation of Labor Code sections 226.7, subdivision (b), and 512, Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 11, and 8 California Code of Regulations sections 11040 and 11150, paragraph 11.

ii. Whether Becoming Independent failed to provide current and former nonexempt hourly employees rest breaks, in violation of Labor Code section 226.7, subdivision (b), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 12, and 8 California Code of Regulations sections 11040 and 11150, paragraph 12.

iii. Whether Becoming Independent failed to pay former nonexempt hourly employees all wages due immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice, or within 72 hours of resignation made without 72 hours' notice in violation of Labor Code sections 201, 202, and 203.

iv. Whether Becoming Independent issued wages statements to current and former nonexempt hourly employees which were inaccurate in violation of Labor Code section 226, Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 7, and 8 California Code of Regulations sections 11040 and 11150, paragraph 7.

v. Whether Becoming Independent violated Business and Professions Code section 17200 et seq. by violating Labor Code sections 201, 202, 203, 226, 226.7, and 512, Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraphs 7, 11, and 12 and 8 California Code of Regulations sections 11040 and 11150, paragraphs 7, 11, and 12.

c. <u>Typicality</u> - Plaintiffs' claims are typical of the claims of the Class they seek to represent. As set forth herein, Becoming Independent's common course of conduct caused Plaintiffs and similarly situated nonexempt hourly employees the same or similar injuries or damages. Plaintiffs' claims are thereby representative of and co-extensive with the claims of the Class.

d. <u>Adequacy</u> - Plaintiffs will fairly and adequately represent the interests of all members of the Class they seek to represent. Plaintiffs are a member of the Class they seek to represent, do not have any conflicts of interest with the putative Class, will prosecute the case vigorously on behalf of the Class, and have already devoted time and resources to the initial investigation of these claims. Plaintiffs' attorney is competent and experienced in litigation of employment actions, including wage and hour class action claims, and is versed in the rules governing class action, discovery, certification, and settlement.

e. <u>Superiority of Class Action</u> - A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by certain individual members of the Class may be relatively small, the expense and burden of individual litigation make it impracticable for Class Members to pursue their claims separately. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Class action treatment will also avoid inconsistent outcomes because the same issues can be adjudicated in the same manner for all members of the Class.

25. The Class Period is designated as the time from four years prior to the filing of this complaint through the class period cutoff date.

Damages

26. As a direct, foreseeable, and proximate result of Becoming Independent's conduct, Plaintiffs and similarly situated nonexempt hourly employees are owed an additional hour of pay at the regular rate of compensation for each workday in which a meal period violation occurred, an additional hour of pay at the regular rate of compensation for each workday in which a rest break violation occurred, waiting time penalties up to 30 days' wages, damages for failure to provide accurate wages statements, statutory penalties, statutory interest, and other penalties under California law. The precise amount of these damages will be proved at trial.

First Cause of Action
Failure to Provide Meal Periods
[Against Becoming Independent and DOES 1 through 15]

27. Plaintiffs, on behalf of themselves and Class Members, incorporate the allegations contained in paragraphs 1 through 26 as though fully set forth herein.

28. Becoming Independent failed to provide Plaintiffs and Class Members 30 minute off duty uninterrupted meal breaks before the start of the sixth hour of their shift, in violation of Labor Code sections 226.7, subdivision (b), and 512, Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 11, and 8 California Code of Regulations sections 11040 and 11150, paragraph 11.

29. Labor Code section 226.7, subdivision (c), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 11, and 8 California Code of Regulations sections 11040 and

11150, paragraph 11, require an employer to pay an additional hour of pay at the regular rate of compensation for each workday in which a meal period violation occurred.

30. Becoming Independent failed to pay Plaintiffs and Class Members an additional hour of pay at the regular rate of compensation for each workday in which a meal break violation occurred.

31. Becoming Independent's conduct violated Labor Code sections 226.7, subdivision (b)-(c), and 512, Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 11, and 8 California Code of Regulations sections 11040 and 11150, paragraph 11. As a result, Becoming Independent is liable to Plaintiffs and Class Members for an additional hour of pay at the regular rate of compensation for each workday in which a meal period violation occurred, including interest thereon, reasonable attorneys' fees and costs of the action, pursuant to Labor Code section 226.7, subdivision (c), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 11, and 8 California Code of Regulations sections 11040 and 11150, paragraph 11, and as otherwise provided by law.

Second Cause of Action
Failure to Authorize and Permit Rest Breaks
[Against Becoming Independent and DOES 1 through 15]

32. Plaintiffs, on behalf of themselves and Class Members, incorporate the allegations contained in paragraphs 1 through 26 as though fully set forth herein.

33. Becoming Independent failed to authorize and permit Plaintiffs and Class Members to take rest breaks in the middle of four hours of work or major fraction thereof, insofar as practicable, in violation of Labor Code section 226.7, subdivision (b), Industrial Welfare Commission Wage Order Number 4 and 15, paragraph 12, and 8 California Code of Regulations sections 11040 and 11150, paragraph 12.

34. Labor Code section 226.7, subdivision (c), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 12, and 8 California Code of Regulations sections 11040 and 11150, paragraph 12, require an employer to pay an additional hour of pay at the regular rate of compensation for each workday in which a rest break violation occurred.

35. Becoming Independent failed to pay Plaintiffs and Class Members an additional hour of pay at the regular rate of compensation for each workday in which a rest break violation occurred.

36. Becoming Independent's conduct violated Labor Code sections 226.7, subdivision (b)-(c), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 12, and 8 California Code of Regulations sections 11040 and 11150, paragraph 12. As a result, Becoming Independent is liable to Plaintiffs and Class Members for an additional hour of pay at the regular rate of compensation for each workday in which a rest break violation occurred, including interest thereon, reasonable attorneys' fees and costs of the action, pursuant to Labor Code section 226.7, subdivision (c), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 12, and 8 California Code of Regulations sections 11040 and 11150, paragraph 12, and as otherwise provided by law.

Third Cause of Action
Failure to Pay All Wages Due upon Separation
[Against Becoming Independent and DOES 1 through 15]

37. Plaintiffs, on behalf of themselves and Class Members, incorporate the allegations contained in paragraphs 1 through 36 as though fully set forth herein.

38. Labor Code sections 201 and 202 require employers to pay all wages due immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice, or within 72 hours of resignation made without 72 hours' notice.

39. Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon separation, as required by Labor Code sections 201 and 202, the employer is liable for waiting time penalties in the form of one day of wages for up to 30 days.

40. Becoming Independent failed to pay Plaintiffs and Class Members all wages due within the time frame specified in Labor Code sections 201 and 202.

41. Pursuant to Labor Code section 203, Plaintiffs and Class Members are entitled to waiting time penalties of up to 30 days' wages, in a sum according to proof, and interest thereon, reasonable attorneys' fees, and costs of the action, as provided by law.

Fourth Cause of Action
Failure to Provide Accurate Wage Statements
[Against Becoming Independent and DOES 1 through 15]

42. Plaintiffs, on behalf of themselves and Class Members, incorporate the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

43. Labor Code section 226, subdivision (a), 8 California Code of Regulations sections 11040 and 11150, paragraph 7, and Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 7 require employers, at the time of each payment of wages, to furnish each employee with an accurate itemized wage statement. Labor Code section 226, subdivision (e), provides that if an employer knowingly and intentionally fails to provide an accurate itemized wage statement, then the employee is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial violation and one hundred dollars ($100) for each subsequent violation, up to four thousand dollars ($4000), and an award of reasonable attorneys' fees and costs of the action.

44. Becoming Independent knowingly and intentionally failed to furnish Plaintiffs and Class Members with timely, itemized accurate wage statements as required by Labor Code section 226, subdivision (a), 8 California Code of Regulations sections 11040 and 11150, paragraph 7, and Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 7. As a result, Becoming Independent is liable to Plaintiffs and Class Members for the amounts provided by Labor Code section 226, subdivision (e), and an award of reasonable attorneys' fees and costs of the action, pursuant to Labor Code section 226, subdivision (e) and as otherwise provided by law.

Fifth Cause of Action
Violation of Unfair Competition Law
[Against Becoming Independent and DOES 1 through 15]

45. Plaintiffs, on behalf of themselves and Class Members, incorporate paragraphs 1 through 44 as through fully stated herein.

46. Business and Professions Code section 17200 et seq. prohibits businesses from engaging in unlawful, unfair, or fraudulent acts or practices. Becoming Independent's failure to provide meal periods, failure to authorize and permit rest breaks, failure to pay an additional hour of pay at the regular rate of compensation for each workday in which a meal period and/or rest break violation occurred, failure to pay all wages due upon separation of employment, and failure to provide accurate wage statements, and constitute business acts and practices that are unlawful,

unfair, and/or fraudulent, in violation of Labor Code sections 201, 202, 203, 226, 226.7, and 512, Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraphs 7, 11, and 12, and 8 California Code of Regulations sections 11040 and 11150, paragraphs 7, 11, and 12.

47. Plaintiffs and Class Members have suffered injury in fact and lost money or property as a result of these unlawful, unfair, and/or fraudulent business acts and practices, within the meaning of Business and Professions Code section 17204.

48. Plaintiffs and Class Members are entitled to an injunction pursuant to Business and Professions Code section 17203, ordering Becoming Independent to cease and desist its unlawful practices. Plaintiffs and Class Members are entitled to an order of restitution requiring Becoming Independent to restore to Plaintiffs and Class Members the money which Becoming Independent has acquired by means of their unlawful, unfair, and/or fraudulent business acts and practices, including meal period premium pay, waiting time penalties, and damages for inaccurate wage statements.

Sixth Cause of Action
Violation of Private Attorneys General Act
[Plaintiff Reed against Becoming Independent and DOES 1 through 15]

49. Plaintiff Reed, on behalf of herself, the Labor & Workforce Development Agency, and similarly situated aggrieved employees, incorporates paragraphs 1 through 31 and 37 through 44 as though fully stated herein.

50. Plaintiff Reed has fully and completely exhausted her administrative remedies under the Private Attorneys General Act prior to proceeding with this PAGA action. On September 19, 2024, Plaintiff Reed filed her PAGA Notice online with the Labor & Workforce Development Agency and sent a letter by certified mail to Becoming Independent setting forth the facts and theories of the violations alleged against Becoming Independent, as prescribed by Labor Code section 2698 et seq. (Exhibit A.) As required by PAGA, Plaintiff Reed submitted the $75.00 filing fee with the Labor & Workforce Development Agency. Since 65 calendar days have elapsed since the filing of the PAGA notice, all administrative prerequisites have been satisfied.

51. During all, or a portion, of the one-year period prior to Plaintiff Reed filing notice of her claims with the Labor & Workforce Development Agency, Becoming Independent failed to provide Plaintiff Reed and similarly situated aggrieved employees a 30 minute off duty

uninterrupted meal period before the start of their sixth hour of work and failed to pay Plaintiff Reed and similarly situated aggrieved employees an additional hour of pay at the regular rate of compensation for each workday in which a meal period violation occurred, in violation of Labor Code sections 226.7, subdivisions (b)-(c), and 512, Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 11, and 8 California Code of Regulations sections 11040 and 11150, paragraph 11.

52. During all, or a portion, of the one-year period prior to Plaintiff Reed filing notice of her claims with the Labor & Workforce Development Agency, Becoming Independent failed to pay Plaintiff Reed and similarly situated aggrieved employees all wages due immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice, or within 72 hours of resignation made without 72 hours' notice in violation and failed to pay corresponding waiting time penalties in violation of Labor Code sections 201, 202, and 203.

53. During all, or a portion, of the one-year period prior to Plaintiff Reed filing notice of her claims with the Labor & Workforce Development Agency, Becoming Independent failed to provide accurate wage statements to Plaintiff Reed and similarly situated aggrieved employees in violation of Labor Code section 226, subdivision (a), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 7, and 8 California Code of Regulations sections 11040 and 11150, paragraph 7.

54. Plaintiff Reed seeks to recover PAGA civil penalties for Plaintiff Reed, the Labor & Workforce Development Agency, and similarly situated aggrieved employees through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969.

55. Labor Code sections 2699, subdivision (f), and 558 impose civil penalties for violations of Labor Code sections 201, 202, 203, 226, 226.7, and 512, Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraphs 7 and 11, and 8 California Code of Regulations sections 11040 and 11150, paragraphs 7 and 11. The civil penalty applicable for a violation of each Labor Code section is one hundred dollars ($100) per pay period, per aggrieved

employee for the initial violation and two hundred dollars ($200) per pay period, per aggrieved employee for each subsequent violation, unless otherwise stated by the Labor Code.

56. As a result of the violations alleged, Plaintiff Reed, on behalf of herself, the Labor & Workforce Development Agency, and similarly situated aggrieved employees, seeks all civil penalties available pursuant to Labor Code section 2699, including attorneys' fees, expenses, and costs of suit as provide by law.

WHEREFORE, Plaintiffs, on behalf of themselves and the Class Members, and Plaintiff Reed on behalf of herself, the Labor & Workforce Development Agency, and similarly situated aggrieved employees, request a jury trial on issues triable by a jury and prays for relief as follows:

1. For an order certifying that this action may be maintained as a class action against Becoming Independent, which also appoints Plaintiffs and their counsel to represent the Class Members and directs that notice be given to the Class Members;

2. For an additional hour of pay at the regular rate of compensation for each workday in which a meal period violation occurred pursuant to Labor Code section 226.7, subdivision (c), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 11, and 8 California Code of Regulations sections 11040 and 11150, paragraph 11;

3. For an additional hour of pay at the regular rate of compensation for each workday in which a rest break violation occurred pursuant to Labor Code section 226.7, subdivision (c), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 12, and 8 California Code of Regulations sections 11040 and 11150, paragraph 12;

4. For waiting time penalties up to 30 days' wages for unpaid wages due upon separation pursuant to Labor Code sections 201, 202, and 203;

5. For actual damages or statutory penalties for inaccurate wage statements pursuant to Labor Code section 226, 8 California Code of Regulations sections 11040 and 11150, paragraph 7, and Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 7;

6. For restitution and disgorgement to the extent permitted by law as authorized by Business and Professions Code sections 17200 et seq.;

7. For all other statutory penalties under applicable law;

8. For an order maintaining this action as a representative action under PAGA and providing Plaintiff Reed and her counsel with all enforcement capability as if this action had been instituted by the Labor & Workforce Development Agency, Division of Labor Standards Enforcement, and/or Labor Commissioner.

9. For recovery of all civil penalties against Becoming Independent during the applicable limitations period for failure to provide meal periods, failure to provide accurate wage statements, and failure to pay all wages due upon separation as permitted by the Labor Code.

10. Pre-judgment and post-judgment interest as provided by law;

11. For attorneys' fees and costs of suit pursuant to Labor Code sections 218.5, 226, and 2699, Code of Civil Procedure section 1021.5, and as otherwise provided by law; and

12. Such other and further relief that the court may deem just and proper.

Dated: February 28, 2025

Law Office of G. Martin Velez

Martin Velez

G. Martin Velez
Attorney for Plaintiffs Shantell Reed and Chad Schisler, on behalf of themselves and on behalf of all persons similarly situated, and on behalf of Plaintiff Reed, the Labor & Workforce Development Agency, and similarly situated aggrieved employees

Demand For Jury Trial

Plaintiffs, on behalf of themselves and on behalf of all persons similarly situated, hereby demand a jury trial on all issues triable to a jury.

Dated: February 28, 2025

Law Office of G. Martin Velez

G. Martin Velez
Attorney for Plaintiffs Shantell Reed and Chad Schisler, on behalf of themselves and on behalf of all persons similarly situated, and on behalf of Plaintiff Reed, the Labor & Workforce Development Agency, and similarly situated aggrieved employees

Exhibit A

LAW OFFICE OF G. MARTIN VELEZ

3558 Round Barn Boulevard, Suite 200
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martinvelez@comcast.net

September 19, 2024

Via Online

PAGA Administrator
Labor & Workforce Development Agency
800 Capitol Mall, Suite 5000
Sacramento, CA 95814

Re: *Shantell Reed v. Becoming Independent*
Private Attorneys General Act Notice

Dear PAGA Administrator:

I represent Shantell Reed regarding a wage and hour dispute involving her former employer, Becoming Independent. On behalf of Ms. Reed, I am submitting this Private Attorneys General Act claim notice pursuant to Labor Code section 2699.3 et seq. against Becoming Independent.

1. *Relevant Facts*

Becoming Independent is a California nonprofit corporation which provide services to individuals with intellectual and developmental disabilities in the North Bay. Ms. Reed worked for Becoming Independent in Santa Rosa, California as a nonexempt hourly employee from approximately August 16, 2017 to October 11, 2023, starting as an Instructor II. On October 13, 2021, Ms. Reed's job titled changed to Direct Support Professional II, and on May 15, 2023 Ms. Reed received a promotion to a Direct Support Professional III.

As an Instructor and Direct Support Professional for Becoming Independent, Ms. Reed assisted individuals with intellectual and developmental disabilities in identifying and achieving goals in their lives. Becoming Independent often assigned Ms. Reed a small group of individuals to work with during her shifts, and on occasion Ms. Reed transported a small group of individuals to community sites for activities. Ms. Reed is informed and believes and on that basis alleges that similarly aggrieved Instructors and Direct Support Professionals had job responsibilities similar to Ms. Reed's.

2. *Labor Code Violations*

a. *Meal Period Violations - Labor Code sections 226.7 and 512*

Becoming Independent systematically failed to provide Ms. Reed with a 30 minute off duty uninterrupted meal break before the start of her sixth hour of her shift. Instead, Becoming Independent required Ms. Reed to have an on duty meal period where she was required to work during her meal period, both when Ms. Reed worked inside Becoming Independent's facilities and outside in the field. Ms. Reed is informed and believes and on that basis alleges that Becoming Independent systematically failed to provide similarly aggrieved Instructors and Direct Support Professionals with a 30 minute off duty uninterrupted meal break before the start of their sixth hour of their shift, both when they worked inside Becoming Independent's facilities or outside in the field, and, instead, required them to have an on duty meal period where they were required to work during their meal period. In systematically failing to provide Ms. Reed and similarly aggrieved Instructors and Direct Support Professionals with an off duty uninterrupted 30 minute meal period before the start of their sixth hour of work, Becoming Independent violated Labor Code sections 226.7, subdivision (b), and 512, Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 11, and 8 California Code of Regulations sections 11040 and 11150, paragraph 11.

On July 17, 2019, Becoming Independent required Ms. Reed to sign an "Agreement for On-Duty Meal Period." The agreement stated,

> "The undersigned Employee and Employer agree that the nature of Employee's work generally prevents Employee from being relieved of all duty during Employee's meal period and that Employee shall, on those days on which their work prevents a duty-free meal period, work an on-the job-meal period which shall be paid for by Employer at Employee's regular rate of pay. Lunch periods during which Employee is relieved of all duty for at least thirty (30) minutes shall be recorded on Employee's timecard.
>
> "Either Employer or Employer shall be free to rescind this Agreement on written notice to the other on one (1) days written notice. This agreement is freely and voluntarily entered into."

Ms. Reed is informed and believes and on that basis alleges that Becoming Independent required similarly aggrieved Instructors and Direct Support Professionals to sign an "Agreement for On-Duty Meal Period" with the same or similar language.

On July 25, 2019, Becoming Independent required Ms. Reed to sign an "Employment Agreement," which expressly listed an on duty meal period as a condition of employment. Ms. Reed is informed and believes and on that basis alleges that Becoming Independent required similarly aggrieved Instructors and Direct Support Professionals to sign an "Employment Agreement," which also expressly listed an on duty meal period as a condition of employment.

Industrial Welfare Commission Wage Orders 4 and 15, paragraph 11, state,

> "An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

The nature of Ms. Reed's work did not prevent Ms. Reed from being relieved of all duty during her meal period, nor did Becoming Independent's written agreement signed by Ms. Reed state that Ms. Reed may revoke the agreement at any time. Rather, Becoming Independent required Ms. Reed to provide one day's written notice. Ms. Reed is informed and believes and on that basis alleges that the nature of similarly aggrieved Instructors and Direct Support Professionals' work also did not prevent them from being relieved of all duty during their meal periods, nor did Becoming Independent's written agreement signed by similarly aggrieved Instructors and Direct Support Professionals state they may revoke the agreement at any time. Rather, Becoming Independent required similarly aggrieved Instructors and Direct Support Professionals to provide one day's written notice. Accordingly, Becoming Independent's policy requiring Ms. Reed and similarly aggrieved Instructors and Direct Support Professionals to have an on duty meal period was invalid and unenforceable.

Becoming Independent never paid Ms. Reed premium pay in the form of one hour of pay at Ms. Reed's regular rate of compensation for each occasion when Becoming Independent failed to provide her with a 30 minute off duty uninterrupted meal period. Ms. Reed is informed and believes and on that basis alleges that Becoming Independent never paid similarly aggrieved Instructors and Direct Support Professionals premium pay in the form of one hour of pay at their regular rate of compensation for each occasion when Becoming Independent failed to provide them with a 30 minute off duty uninterrupted meal period. In failing to pay Ms. Reed and similarly aggrieved Instructors and Direct Support Professionals premium pay, Becoming Independent violated Labor Code section 226.7, subdivision (c), Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 11, and 8 California Code of Regulations sections 11040 and 11150, paragraph 11.

By not providing Ms. Reed and similarly aggrieved employees with a 30 minute off duty uninterrupted meal period before the start of the sixth hour of work and thereafter not paying an additional hour of pay, Becoming Independent violated Labor Code sections 512 and 226.7 and Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 11, and 8 California Code of Regulations sections 11040 and 11150, paragraph 11, and is subject to civil penalties under Labor Code sections 558 and 2699, subdivision (a), and attorneys' fees and costs pursuant to Labor Code section 218.5.

b. Waiting Time Penalties - Labor Code sections 201, 202, and 203

Labor Code sections 201 and 202 specify that an employer must pay its employees all wages due immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice, or within 72 hours of resignation made without 72 hours' notice. (Lab. Code, §§ 201, 202.) When an employer fails to do so, the employer is required to pay waiting time penalties of up to 30 days' wages. (Lab. Code, § 203.)

Becoming Independent did not pay Ms. Reed all her wages due upon her separation of employment, including unpaid premium pay. Ms. Reed is informed and believes and on that basis alleges that similarly aggrieved Instructors and Direct Support Professionals have not been paid all wages due at the time of their separation, including unpaid premium pay. In failing to do so, Becoming Independent violated Labor Code sections 201, 202, and 203 and is subject to civil penalties under Labor Code sections 558 and 2699, subdivision (a), and attorneys' fees and costs pursuant to Labor Code section 218.5.

c. Wage Statement Violations - Labor Code section 226

Becoming Independent issued wage statements to Ms. Reed which were inaccurate in that the wage statements did not provide an additional hour of pay for each meal period violation. Ms. Reed is informed and believes and on that basis alleges that Becoming Independent did not provide accurate wage statements to similarly aggrieved Instructors and Direct Support Professionals.

Labor Code section 226 requires employers, at the time of each payment of wages, to furnish each employee with an accurate itemized wage statement. (Lab. Code, § 226, subd. (a).) By failing to provide accurate itemized wage statements to Ms. Reed and similarly aggrieved Instructors and Direct Support Professionals, Becoming Independent violated Labor Code section 226, Industrial Welfare Commission Wage Order Numbers 4 and 15, paragraph 7, 8 California Code of Regulations sections 11040 and 11150, paragraph 7, and is subject to civil penalties under Labor Code sections 226, subdivision (e), 226.3, 558, and 2699, subdivision (a), and attorneys' fees and costs pursuant to Labor Code sections 218.5 and 226, subdivision (e)(1).

3. Conclusion

I have provided this letter on Ms. Reed's behalf as notice pursuant to the Private Attorneys General Act. Ms. Reed requests that the agency investigate the above allegations. Alternatively, Ms. Reed requests that the agency inform her through her counsel if it does not intend to investigate these violations so that she may pursue them through a lawsuit.

Very truly yours,

G. Martin Velez

cc: Luana Vaetoe
Chief Executive Officer
Becoming Independent
1455 Corporate Center Parkway
Santa Rosa, CA 95407
[Via Certified Mail]