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October 23, 2024

VIA ONLINE SUBMISSION

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

Subject: *Cesar Teixeira v. Mercy Housing Management Group, Inc., et al.*

Dear PAGA Administrator:

This office represents Cesar Teixeira in connection with his claims under the California Labor Code. Mr. Teixeira was an employee of MERCY HOUSING MANAGEMENT GROUP, INC.; NEBRASKA MERCY HOUSING, INC.; MERCY HOUSING CALIFORNIA; MERCY HOUSING CALWEST; MERCY HOUSING WEST; MERCY HOUSING CALIFORNIA SPECIAL NEEDS; MERCY HOUSING CALIFORNIA SENIOR PROPERTIES; MERCY HOUSING CALIFORNIA FAMILY PROPERTIES; and/or AFFORDABLE HOUSING INITIATIVES OF MERCY HOUSING. For the purpose of this letter, Mr. Teixeira collectively refers to these entities as "MERCY HOUSING."

The employers may be contacted directly at the addresses below:

MERCY HOUSING MANAGEMENT GROUP, INC.
1600 BROADWAY STE 2000
DENVER, CO 80202

NEBRASKA MERCY HOUSING, INC.
1600 BROADWAY STE 2000
DENVER, CO 80202

MERCY HOUSING CALIFORNIA
1256 MARKET STREET
SAN FRANCISCO, CA 94102

MERCY HOUSING CALWEST
1600 BROADWAY STE 2000
DENVER, CO 80202

MERCY HOUSING WEST
1256 MARKET STREET
SAN FRANCISCO, CA 94102

MERCY HOUSING CALIFORNIA
SPECIAL NEEDS
1600 BROADWAY STE 2000
DENVER, CO 80202

MERCY HOUSING CALIFORNIA
SENIOR PROPERTIES
1600 BROADWAY STE 2000
DENVER, CO 80202

MERCY HOUSING CALIFORNIA
FAMILY PROPERTIES
1600 BROADWAY, SUITE 2000
DENVER, CO 80202

AFFORDABLE HOUSING INITIATIVES
OF MERCY HOUSING
1600 BROADWAY STE 2000
DENVER, CO 80202

Mr. Teixeira intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Teixeira seeks relief on behalf of himself, the State of California, and other persons who are or were employed by MERCY HOUSING as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

MERCY HOUSING employed Mr. Teixeira as an hourly paid, non-exempt employee from approximately June 2022 to November 2023. Mr. Teixeira worked for MERCY HOUSING as a Maintenance Technician in San Leandro, California. During his employment, Mr. Teixeira typically worked eight (8) hours or more per day, and five (5) days per week. At the time Mr. Teixeira's employment with MERCY HOUSING ended, he earned approximately \$22.60 per hour. His job duties included, without limitation, handling maintenance issues such as plumbing, restoration, groundskeeping, and residents' maintenance requests.

MERCY HOUSING has committed each of the following Labor Code violations against Mr. Teixeira, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1):¹

MERCY HOUSING's Company-Wide and Uniform Payroll and HR Practices

MERCY HOUSING MANAGEMENT GROUP, INC. and NEBRASKA MERCY HOUSING, INC. are Nebraska corporations. MERCY HOUSING CALIFORNIA; MERCY HOUSING CALWEST; MERCY HOUSING WEST; MERCY HOUSING CALIFORNIA SPECIAL NEEDS; MERCY HOUSING CALIFORNIA SENIOR PROPERTIES; MERCY HOUSING CALIFORNIA FAMILY PROPERTIES; and AFFORDABLE HOUSING INITIATIVES OF MERCY HOUSING are California corporations. Together, they provide affordable, program-enriched housing to a variety of people across the country, including low-income families, seniors, and people with special needs. Upon information and belief, MERCY HOUSING maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Denver, Colorado, and San Francisco, California, for all non-exempt, hourly paid employees working for MERCY HOUSING in California, including Mr. Teixeira and other aggrieved employees. At all relevant times, MERCY HOUSING issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Teixeira and other aggrieved employees, regardless of their location or position.

¹ These facts, theories, and claims are based on Mr. Teixeira's experience and counsel's review of those records currently available relating to Mr. Teixeira's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Teixeira reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

MERCY HOUSING willfully failed to pay all overtime wages owed to Mr. Teixeira and other aggrieved employees. During the relevant time period, Mr. Teixeira and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, MERCY HOUSING had a company-wide "on-call" policy, whereby it required Mr. Teixeira and other aggrieved employees to work "on-call" or on standby. During an "on-call" shift, Mr. Teixeira and other aggrieved employees had to be available to work 24 hours per day, seven (7) days per week. While working an "on-call" shift, Mr. Teixeira and other aggrieved employees were required to respond to calls from management and/or residents within 30 minutes, and if necessary, report to the property/site to address the maintenance issue in person. When scheduled to be "on-call," Mr. Teixeira and other aggrieved employees were, in essence, on controlled standby for MERCY HOUSING because they could not use that time freely for their own purposes and were forced to put their lives on hold. For example, Mr. Teixeira refrained from making plans altogether while "on-call" because he knew that he had to drop whatever he was doing at a moment's notice if he received a call. However, MERCY HOUSING failed to pay Mr. Teixeira and other aggrieved employees for the time they spent waiting for a call from MERCY HOUSING and were unable to use their time for their own purposes.

Second, during the relevant time period, on information and belief, MERCY HOUSING had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Teixeira and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. Because MERCY HOUSING discouraged overtime accrual, Mr. Teixeira and other aggrieved employees were required to complete assigned tasks outside of their scheduled shifts without being compensated for the time

they worked. For example, approximately 4-5 times per month, Mr. Teixeira's supervisor pressured him to clock out at his scheduled shift end-time and continue working for 30 minutes and up to a few hours resolving a maintenance issue or waiting for help, such as a plumber, to arrive. As a further example, approximately three times per year, Mr. Teixeira and other aggrieved employees were required to attend employee meetings in San Francisco. Mr. Teixeira spent up to one (1) and a half hours driving to and from San Francisco, time for which he was not paid. Thus, MERCY HOUSING failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Teixeira and other aggrieved employees received no compensation for this time.

Third, MERCY HOUSING had, and continues to have, a company-wide security policy of allowing only certain employees to carry keys to MERCY HOUSING's properties. Specifically, only managerial employees were issued keys to access the properties at any given time. In adherence with this policy, upon arriving to work at their scheduled shift start-times, Mr. Teixeira and other aggrieved employees had to wait up to 20 minutes for a managerial employee to arrive at MERCY HOUSING's premises and unlock the gate in the mornings before they could clock in for their shifts. As a result, Mr. Teixeira and other aggrieved employees were subject to MERCY HOUSING's control before they had clocked in for their shifts but were not compensated for this time.

Fourth, MERCY HOUSING had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads. MERCY HOUSING's policies and/or practices resulted in a failure to provide Mr. Teixeira and other aggrieved employees with adequate meal period coverage, and thus, Mr. Teixeira and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. MERCY HOUSING also had a practice of failing to schedule meal periods, which further caused Mr. Teixeira and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Teixeira had his meal periods interrupted, due to the lack of coverage and heavy workload. MERCY HOUSING did not compensate Mr. Teixeira and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Fifth, MERCY HOUSING had, and continues to have, a policy and/or practice of requiring that Mr. Teixeira and other aggrieved employees carry a company-issued radio and/or their personal cellphone and respond to it at all times, including during meal periods. For example, Mr. Teixeira would regularly have his meal periods interrupted because he was required to answer calls from MERCY HOUSING's management. Thus, Mr. Teixeira and other aggrieved employees worked through meal periods and/or had them interrupted to handle their assigned workloads and responsibilities, and MERCY HOUSING did not pay Mr. Teixeira and other aggrieved employees for the time they continued to perform tasks during meal periods.

MERCY HOUSING knew or should have known that as a result of these company-wide practices and/or policies, Mr. Teixeira and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Teixeira and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Teixeira and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

MERCY HOUSING's failure to pay Mr. Teixeira and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Teixeira and other aggrieved employees are entitled to recover

civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring MERCY HOUSING into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11050(2)(L) (defining "Hours Worked").

First, as stated above, MERCY HOUSING systematically, and on a company-wide basis, required Mr. Teixeira and other aggrieved employees to work "on-call" shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Teixeira and other aggrieved employees were subject to MERCY HOUSING's control during "on-call" shifts, MERCY HOUSING did not pay Mr. Teixeira and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work.

Second, as set forth above, due to MERCY HOUSING's restrictions on overtime accrual, MERCY HOUSING systematically failed to pay Mr. Teixeira and other aggrieved employees for actual hours worked after their scheduled shifts, because these hours were not accurately recorded. Because MERCY HOUSING discouraged and impeded Mr. Teixeira and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Teixeira and other aggrieved employees were required to perform work off-the-clock after their shifts, including resolving maintenance issues, traveling to attend employee meetings, and waiting for a managerial employee to arrive and unlock the property gate in the morning.

Third, as also stated, due to MERCY HOUSING's policies and/or practices of understaffing its properties while assigning heavy workloads, and failing to schedule meal periods, Mr. Teixeira and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as also stated, MERCY HOUSING had a company-wide policy and/or practice of requiring that Mr. Teixeira and other aggrieved employees carry a company-issued radio and/or personal cellphone and to respond to requests at all times, including during meal periods.

MERCY HOUSING did not pay at least minimum wages for all hours worked by Mr. Teixeira and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, MERCY HOUSING did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, MERCY HOUSING regularly failed to pay at least minimum wages to Mr. Teixeira and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Teixeira and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring MERCY HOUSING into compliance with the applicable IWC Wage Order and Labor

Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, MERCY HOUSING had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Teixeira and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, MERCY HOUSING had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Teixeira and other aggrieved employees to not be relieved of their duties for compliant meal periods. Moreover, as stated, MERCY HOUSING had a company-wide policy and/or practice of requiring that Mr. Teixeira and other aggrieved employees carry a company-issued radio and/or personal cellphone and to respond to requests at all times, including during meal periods.

As a result, Mr. Teixeira and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Teixeira would sometimes miss his meal periods due to lack of coverage and heavy workload. Mr. Teixeira and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, MERCY HOUSING knew or should have known that, as a result of these policies, Mr. Teixeira and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. MERCY HOUSING further knew or should have known that MERCY HOUSING did not pay Mr. Teixeira and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Furthermore, MERCY HOUSING engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Teixeira and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, MERCY HOUSING failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Teixeira and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring MERCY HOUSING into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, MERCY HOUSING regularly failed to authorize and permit Mr. Teixeira and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, MERCY HOUSING's company-wide practices, including understaffing and assigning heavy workloads, and its requirement that employees carry a company-issued radio and/or personal cellphone at all times, including during rest periods, prevented Mr. Teixeira and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, MERCY HOUSING failed to schedule rest periods, which, coupled with MERCY HOUSING's failure to provide adequate rest period coverage, further led to Mr. Teixeira and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, MERCY HOUSING maintained and implemented a company-wide on-premises rest period policy, which effectively required that Mr. Teixeira and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Teixeira and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, MERCY HOUSING effectively maintained control over Mr. Teixeira and/or other aggrieved employees during rest periods.

As a result of MERCY HOUSING's practices and policies, Mr. Teixeira and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, during

some time periods of his employment, Mr. Teixeira had to forgo his rest periods entirely. Whenever Mr. Teixeira was able to take his rest periods, they were sometimes interrupted by vendors reporting for repairs or MERCY HOUSING calling Mr. Teixeira on his company-issued radio or his personal cellphone to discuss work-related matters.

MERCY HOUSING has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Teixeira and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, MERCY HOUSING failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Teixeira and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring MERCY HOUSING into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, MERCY HOUSING has knowingly and intentionally provided Mr. Teixeira and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, MERCY HOUSING issued uniform wage statements to Mr. Teixeira and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, MERCY HOUSING violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because MERCY HOUSING did not record the time Mr. Teixeira and other aggrieved employees spent working off-the-clock, MERCY HOUSING did not list the correct amount of gross wages and net wages earned by Mr. Teixeira and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, MERCY HOUSING failed to accurately list the total number of hours worked by Mr. Teixeira and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), MERCY HOUSING willfully failed to maintain accurate payroll records for Mr. Teixeira and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, MERCY HOUSING engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period start and end times for Mr. Teixeira and other aggrieved employees, in violation of section 1198.

Because MERCY HOUSING failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Teixeira and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Teixeira and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Teixeira and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring MERCY HOUSING into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month

during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, MERCY HOUSING failed to pay Mr. Teixeira and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Teixeira and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring MERCY HOUSING into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

MERCY HOUSING willfully failed to pay Mr. Teixeira and other aggrieved employees who are no longer employed by MERCY HOUSING all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving MERCY HOUSING's employ.

Mr. Teixeira and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring MERCY HOUSING into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, MERCY HOUSING violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because MERCY HOUSING failed to pay Mr. Teixeira and other aggrieved employees reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of their usual or scheduled day’s work.

As stated, MERCY HOUSING had a company-wide “on-call” policy, whereby it scheduled Mr. Teixeira and other aggrieved employees to work “on-call,” or on standby. When scheduled for a “on-call” or standby shift, Mr. Teixeira and other aggrieved employees regularly presented themselves as ready for work by waiting for the MERCY HOUSING to call them after regular business hours regarding responding to maintenance emergencies. When this occurred, MERCY HOUSING did not pay Mr. Teixeira and other aggrieved employees the minimum reporting time pay when they were subject to MERCY HOUSING’s “on-call” policy and were ultimately not called. Furthermore, when Mr. Teixeira and other aggrieved employees reported for work for maintenance emergencies at certain properties, MERCY HOUSING failed to pay them for at least two (2) hours at their regular rate of pay. Instead, MERCY HOUSING only paid Mr. Teixeira and other aggrieved employees for the time that they had worked.

Accordingly, Mr. Teixeira and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5). Mr. Teixeira and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring MERCY HOUSING into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.” IWC Wage Order No. 5-2001 further provides that: “[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.”

First, during the relevant time period, MERCY HOUSING, on a company-wide basis, required Mr. Teixeira and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones and/or mobile data, to carry out their job duties but failed to fully reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Teixeira used his personal mobile device to make work-related phone calls to communicate with MERCY HOUSING's management and to set up repairs with vendors. As a further example, Mr. Teixeira used his personal mobile device and mobile data to communicate with management via email. Finally, Mr. Teixeira used his personal cellular phone to take photos of maintenance issues and send them to MERCY HOUSING's management for record keeping. Although MERCY HOUSING required Mr. Teixeira and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, MERCY HOUSING failed to fully reimburse them for their costs incurred.

Second, during the relevant time period, MERCY HOUSING, on a company-wide basis, required that Mr. Teixeira and other aggrieved employees use their own personal vehicles to travel to attend employee meetings. For example, approximately three (3) times per year, Mr. Teixeira was required to use his personal vehicle and drive to San Francisco, California to attend employee meetings. On average, Mr. Teixeira drove approximately 80 miles roundtrip each time. Although MERCY HOUSING required Mr. Teixeira and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, MERCY HOUSING failed to fully reimburse them for their mileage or travel expenses.

Third, during the relevant time period, MERCY HOUSING required Mr. Teixeira and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Teixeira spent about \$150 on gasoline, paints brushes, and paint rollers because MERCY HOUSING failed to provide employees with sufficient tools and equipment to operate properly and/or meet management's expectations. As a result, Mr. Teixeira was required to purchase his own tools and equipment in order to complete his daily tasks. Although MERCY HOUSING required Mr. Teixeira and other aggrieved employees to purchase supplies and equipment to carry out their work-related responsibilities, MERCY HOUSING failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and equipment.

Fourth, during the relevant time period, MERCY HOUSING required Mr. Teixeira and other aggrieved employees to wear uniforms shirts bearing the company logo. However, MERCY HOUSING only provided Mr. Teixeira with two (2) shirts at the time of hire and then three (3) additional shirts later. Because MERCY HOUSING failed to provide Mr. Teixeira and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Mr. Teixeira and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of maintenance work, Mr. Teixeira's uniform shirts would become stained with paint, sweaty, and/or accumulate dust particles from sanding and drilling such that he was unable to mix these clothes in with other laundry. As a result, he had to wash his uniform shirts separately from his regular clothing and would spend about \$20 per week at the laundromat for the upkeep of his uniforms. Thus, MERCY HOUSING failed to maintain uniforms it required Mr. Teixeira and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

MERCY HOUSING could have provided Mr. Teixeira and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, company vehicles, and supplies and equipment, as well as an adequate number of uniform items or access laundering services; or MERCY HOUSING could have reimbursed employees for the costs of their mobile device usage, travel, mileage, supplies, and laundering expenses or provided a uniform maintenance allowance. Instead, MERCY HOUSING passed these operating costs onto Mr. Teixeira and other aggrieved employees.

Thus, MERCY HOUSING had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Teixeira and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring MERCY HOUSING into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." MERCY HOUSING, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Teixeira's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Teixeira seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Teixeira acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against MERCY HOUSING for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Teixeira seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Teixeira's reasonable attempt to settle his dispute with MERCY HOUSING prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform MERCY HOUSING of Mr. Teixeira's aforementioned grievances and the proposed remedies as detailed below, while affording MERCY HOUSING a reasonable opportunity to satisfy Mr. Teixeira's demands.

Demand is hereby made that MERCY HOUSING shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. MERCY HOUSING shall pay Mr. Teixeira and all other aggrieved employees employed by MERCY HOUSING at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. MERCY HOUSING shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. MERCY HOUSING shall conduct a survey or interview all current and former aggrieved employees in California who worked for MERCY HOUSING in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device expenses; mileage and travel expenses; supply and equipment expenses; uniform maintenance; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. MERCY HOUSING shall pay Mr. Teixeira and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. MERCY HOUSING also shall pay Mr. Teixeira and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. MERCY HOUSING shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
6. MERCY HOUSING shall reimburse Mr. Teixeira and all aggrieved employees who were required to pay for any business expenses incurred for MERCY HOUSING's benefit, including, but not limited to, personal mobile device expenses, personal vehicle expenses and mileage costs, out-of-pocket costs incurred to purchase necessary supplies and equipment, uniform laundering expenses incurred, and other expenditures, as required by Labor Code section 2802.
7. MERCY HOUSING shall pay accrued legal interest to Mr. Teixeira and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. MERCY HOUSING shall provide Mr. Teixeira and all aggrieved employees employed by MERCY HOUSING at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

9. MERCY HOUSING shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. MERCY HOUSING shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, et seq., including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Ninel Kocharyan

Copy: MERCY HOUSING MANAGEMENT GROUP, INC. (via U.S. Certified Mail); NEBRASKA MERCY HOUSING, INC. (via U.S. Certified Mail); MERCY HOUSING CALIFORNIA (via U.S. Certified Mail); MERCY HOUSING CALWEST (via U.S. Certified Mail); MERCY HOUSING WEST (via U.S. Certified Mail); MERCY HOUSING CALIFORNIA SPECIAL NEEDS (via U.S. Certified Mail); MERCY HOUSING CALIFORNIA SENIOR PROPERTIES (via U.S. Certified Mail); MERCY HOUSING CALIFORNIA FAMILY PROPERTIES (via U.S. Certified Mail); AFFORDABLE HOUSING INITIATIVES OF MERCY HOUSING (via U.S. Certified Mail)

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Denver, CO 80202

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7021 1970 0001 9028 3374

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Postmark
Teixeira v. Merry Housing

NEBRASKA MERCY HOUSING, INC.
1600 Broadway
Ste. #2000
Denver, CO 80202

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7530-02-000-9047

NEBRASKA MERCY HOUSING, INC.
1600 Broadway
Ste. #2000
Denver, CO 80202

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☐ Certified Mail
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Teixeira V. Mercy Housing

MERCY HOUSING CALIFORNIA
1256 Market Street
San Francisco, CA 94102



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94EE 9206 T000 045T T202

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MERCY HOUSING CALIFORNIA
1256 Market Street
San Francisco, CA 94102

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MERCY HOUSING CALIFORNIA
1256 Market Street
San Francisco, CA 94102

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7021 1970 0001 9028 3398
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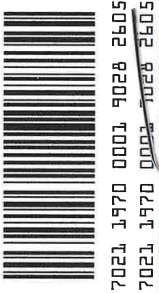
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7021 1970 0001 9028 2505

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☐ Certified Mail Restricted Delivery
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7021 1970 0001 9028 2612

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- ☒ Signature
☐ Agent
☐ Address

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\$ 1.20
Total Postage
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☐ Adult Signature Restricted Delivery
☐ Certified Mail
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Delivery
☐ Insured Delivery Restricted Delivery
☐ Registered Mail
☐ Registered Mail Restricted
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted

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7021 1970 0001 9028 2568
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5252 9206 1000 046T 1204
5252 9206 1000 046T 1204

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3.
Print your name and address on the reverse

**MERCY HOUSING
CALIFORNIA
FAMILY PROPERTIES**
1600 Broadway, Suite #2000
Denver, CO 80202

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Address

B. Received by (Printed Name) ☐ Date of Delivery ☐ Yes ☐ No

D. Is delivery address different from item 17? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
☐ Adult Signature Restricted Delivery
☐ Registered Mail™
☐ Certified Mail Restricted Delivery
☐ Signature Confirmation™
☐ Collect on Delivery
☐ Restricted Delivery

2. Article Number (Transfer from service label)
9590 9402 7420 2055 5431 26
7021 1970 0001 9028 2575

Domestic Return Receipt

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

**MERCY HOUSING
CALIFORNIA
FAMILY PROPERTIES**
1600 Broadway, Suite #2000
Denver, CO 80202

CAPSTONE LAW, APC
1875 Century Park East
Suite #1000
Los Angeles, CA 90067

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee \$
Extra Services & Fees (check box, add fee as appropriate)
Return Receipt (hardcopy) \$
Return Receipt (electronic) \$
Certified ☒
Restricted ☐
Adult Sign ☐
Postage \$
Total Postage \$
Sent To
Street and A
City, State, ZIP+4®
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

*Take care v.
Mercy Housing*

**AFFORDABLE HOUSING
INITIATIVES
OF MERCY HOUSING**
1600 Broadway, Suite #2000
Denver, CO 80202



2552 9206 1000 0661 1202
2552 9206 1000 0661 1202

SENDER: COMPLETE THIS SECTION

1. Complete items 1, 2, and 3.
2. Print your name and address on the reverse

**AFFORDABLE HOUSING
INITIATIVES
OF MERCY HOUSING**
1600 Broadway, Suite #2000
Denver, CO 80202

3. Service Type
a. Adult Signature Restricted Delivery ☐
b. Registered Mail™ ☐
c. Registered Mail™ Restricted Delivery ☐
d. Certified Mail Restricted Delivery ☐
e. Signature Confirmation™ ☐
f. Signature Confirmation™ Restricted Delivery ☐
g. Collect on Delivery Restricted Delivery ☐
h. Restricted Delivery ☒

4. Article Number (Transfer from service label)
9590 9402 7420 2055 5431 19
7021 1970 0001 9024 2562

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

COMPLETE THIS SECTION ON DELIVERY

1. Signature
2. Agent ☐
3. Addressee ☐
4. Received by (Printed Name)
5. Date of Delivery
6. Is delivery address different from item 1? ☐ Yes ☐ No
7. YES, enter delivery address below: ☐ Yes ☐ No

**AFFORDABLE HOUSING
INITIATIVES
OF MERCY HOUSING**
1600 Broadway, Suite #2000
Denver, CO 80202