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October 21, 2024

VIA ONLINE SUBMISSION

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

Subject: *Kamure Kizart v. Public Health Foundation Enterprises, Inc. dba Heluna Health*

Dear PAGA Administrator:

This office represents Kamure Kizart in connection with her claims under the California Labor Code. Ms. Kizart was an employee of PUBLIC HEALTH FOUNDATION ENTERPRISES, INC. d/b/a HELUNA HEALTH ("PHFE").

The employer may be contacted directly at the address below:

PUBLIC HEALTH FOUNDATION ENTERPRISES, INC.
13300 CROSSROADS PARKWAY NORTH, SUITE 450
INDUSTRY, CA 91746

Ms. Kizart 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"). Ms. Kizart seeks relief on behalf of herself, the State of California, and other persons who are or were employed by PHFE in California as a non-exempt, hourly paid employee 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.

PHFE employed Ms. Kizart as a non-exempt Shelter Specialist from approximately July 2023 to April 2024. Ms. Kizart worked at PHFE's Brookside Shelter location in Richmond, California. During her employment, Ms. Kizart typically worked eight (8) hours or more per day and five (5) days per week from 8:00 a.m. to 4:00 p.m. Ms. Kizart's job duties included, without limitation, monitoring clients, cleaning, preparing food, and monitoring property.

PHFE has committed each of the following Labor Code violations against Ms. Kizart, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1):[1]

PHFE's Company-Wide and Uniform Payroll and HR Practices

PUBLIC HEALTH FOUNDATION ENTERPRISES, INC. is a California corporation. PHFE is a non-profit organization and national leader in providing program and support services to improve the health and well-being of communities, with a large number of locations in California. Upon information and belief, PHFE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Industry, California, for all non-exempt, hourly paid employees working for PHFE in California, including Ms. Kizart and other aggrieved employees. At all relevant times, PHFE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Kizart and other aggrieved employees, regardless of their location or position.

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

PHFE willfully failed to pay all overtime wages owed to Ms. Kizart and other aggrieved employees. During the relevant time period, Ms. Kizart 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.

[1] These facts, theories, and claims are based on Ms. Kizart's experience and counsel's review of those records currently available relating to Ms. Kizart'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, Ms. Kizart reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

During the relevant time period, PHFE had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Kizart 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. PHFE implemented an overtime policy that states, in part "Heluna Health policy requires that any overtime . . . must be approved by an employee's manager or supervisor before it is worked." On information and belief, this policy of limiting overtime, coupled with PHFE's practices of single-staffing and/or understaffing and assigning heavy workloads (*see infra*), led Ms. Kizart and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. For example, a few times per month, Ms. Kizart worked off the clock prior to the start of her shifts assisting clients. As another example, approximately once per week, Ms. Kizart worked after clocking out from her shifts handling client issues, such as attending to client medical emergencies, filling out incident reports, and/or waiting for the following shift's employees to report to work before she could leave. This work took 20 to 30 minutes on average, time for which Ms. Kizart was not paid. As a further example, PHFE management called Ms. Kizart outside of her scheduled shifts and/or on her days off to discuss work-related matters and ask questions about clients, which took approximately one (1) hour per month. Finally, on approximately two (2) occasions, PHFE's management required that Ms. Kizart attend meetings in Pleasant Hill, California. Ms. Kizart spent approximately 30 minutes driving to these mandatory meetings, and Ms. Kizart had no way of recording this time worked and thus was not paid for the drive time. This off-the-clock work could have been recorded by PHFE, but it refused to do so to avoid the payment of additional wages to Ms. Kizart and other aggrieved employees.

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

PHFE's failure to pay Ms. Kizart 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. Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE 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").

As set forth above, as a result of PHFE's policy of limiting the amount of overtime employees could accrue, PHFE required Ms. Kizart and other aggrieved employees to perform work off-the-clock before and after their scheduled shifts to complete work-related tasks, such as assisting clients, preparing incident reports, waiting for the following shift's employees to report to work, communicating with PHFE's management, and driving to attend meetings. PHFE failed to track this time that Ms. Kizart and other aggrieved employees spent working off-the-clock, and Ms. Kizart and other aggrieved employees received no compensation for this time.

Thus, PHFE did not pay minimum wages for all hours worked by Ms. Kizart and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PHFE 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, PHFE regularly failed to pay at least minimum wages to Ms. Kizart 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. Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE 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.

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement,* 38 Cal. App. 5th 141 (2019).

First, as stated, PHFE had, and continues to have, company-wide policies and/or practices of single-staffing and/or understaffing while assigning heavy workloads, such as caring for a large number of clients, which has resulted in a lack of meal period coverage and prevented Ms. Kizart and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, PHFE had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Ms. Kizart and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Ms. Kizart 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, Ms. Kizart had to forgo and work through all of her meal periods.

Second, on information and belief, in conjunction with PFHE's policy and/or practice of single-staffing, PHFE maintained and implemented a company-wide on-premises meal period policy for employees, which mandated that Ms. Kizart and other aggrieved employees remain on the work premises during meal periods because PFHE did not allow clients to be left unattended. Because Ms. Kizart and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, PHFE effectively maintained control over Ms. Kizart and other aggrieved employees during meal periods.

Third, Ms. Kizart and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, during her employment, Ms. Kizart sometimes worked shifts in excess of ten (10) or more hours per day, but was not provided a second 30-minute meal period. Ms. Kizart 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.

Fourth, PHFE maintained a company-wide unlawful written meal period policy insofar as it permits employees who work six (6) hours in a day to waive their meal periods. PHFE's "Employee Statement Re Decision to Forego Meal Period" states, in relevant part, "Heluna Health is aware that there are some non-exempt employees working in the Contra Costa County programs who have advised both their managers/supervisors and Human Resources that they would prefer to work an eight (8) hour shift, with no meal period, rather than an eight and one half hour (8½) shift, with a thirty (30) minute meal period. By signing below, I am requesting to work such a schedule." Under California law, an employee may only waive a meal period for shifts when the total work period is not more than six (6) hours, and PHFE's on-duty meal period policy therefore is facially invalid.

Further, to the extent that PHFE's "Employee Statement Re Decision to Forego Meal Period" form functioned as an "on-duty" meal period policy, it does not comply with California law's requirements for on-duty meal periods. An on-duty meal period permitted by IWC Wage Order No. 5-2001 does not absolve employers of the duty to provide timely, 30-minute meal periods.[2] PHFE's on-duty meal policy failed to inform Ms. Kizart and other aggrieved employees that they are entitled to a 30-minute on-duty meal period and that on-duty meal periods must be timely, and therefore is facially invalid.

Moreover, under California law, on-duty meal periods are a limited alternative to the requirement to provide off-duty meal periods and can only be utilized under certain circumstances. IWC Wage Order 5-2001, subdivision 11(A) provides that an on-duty meal period "shall be permitted only when

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[2] Employers must provide employees a timely 30-minute meal period even though that meal period may be on-duty instead of off-duty. *See L'Chaim*, 38 Cal. App. 5th at 149 ("If an employee is entitled to an off-duty meal period of 30 minutes, yet work obligations intrude on a portion of that time, the off-duty period is converted to an on-duty period—no matter how small the portion of the period that work intruded upon—and the employee is paid for the entire period. There is no suggestion that once work interrupts an employee's meal period, the period simply ends even if 30 minutes have not yet passed.") and 147 ("[A]n on-duty meal period is not the functional equivalent of no meal period at all. On-duty meal periods are an intermediate category requiring more of employees than off-duty meal periods but less of employees than their normal work.").

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." PHFE's "on-duty" meal period policy results from the company's own staffing and business decisions, not because the nature of the work required on-duty meal periods. The work of PHFE's employees is not of the kind that could be said to meet the "nature of the work" exception. Ms. Kizart and other aggrieved employees provide communities support services, including monitoring clients, cleaning, and preparing food. None of these tasks is akin to the kind that the California Division of Labor Standards Enforcement ("DLSE") has found warrant an on-duty meal period, such as transporting hazardous materials via vehicles that must be monitored at all times pursuant to federal regulation. Because of PHFE's on-duty meal period policy, Ms. Kizart and other aggrieved employees did not receive all required off-duty meal periods and did not receive premium pay for missed, late, or interrupted meal periods.

At all times herein mentioned, PHFE knew or should have known that, as a result of these policies, Ms. Kizart and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. PHFE further knew or should have known that PHFE did not pay Ms. Kizart and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late. For example, PHFE's "Employee Statement Re Decision to Forego Meal Period" form requires employees to record their late, shortened, and missed meal periods, but it fails to inform them at all that they are entitled to meal period premiums for noncompliant meal periods.

Furthermore, PHFE 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, Ms. Kizart and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods.

Accordingly, PHFE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE 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, PHFE regularly failed to authorize and permit Ms. Kizart 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, PHFE's company-wide practices, including single-staffing and/or understaffing and assigning heavy workloads, such as caring for a large number of clients, prevented Ms. Kizart and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, PHFE failed to schedule rest periods, which, coupled with PHFE's failure to provide adequate rest period coverage, further led to Ms. Kizart and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, PHFE maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Kizart and other aggrieved employees remain on the premises during their rest periods. Because Ms. Kizart and other aggrieved employees were restricted from leaving PHFE's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, PHFE maintained control over Ms. Kizart and other aggrieved employees during rest periods.

As a result of PHFE's practices and policies, Ms. Kizart 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, Ms. Kizart missed her rest periods entirely due to the lack of coverage and heavy workload.

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

Accordingly, PHFE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE 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).

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. PHFE has not provided Ms. Kizart and other aggrieved employees with properly itemized wage statements. 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, PHFE has knowingly and intentionally provided Ms. Kizart and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PHFE issued uniform wage statements to Ms. Kizart 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, PHFE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because PHFE did not record the time Ms. Kizart and other aggrieved employees spent working off-the-clock, PHFE did not list the correct amount of gross wages and net wages earned by Ms. Kizart and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5). For the same reason, PHFE failed to accurately list the total number of the hours worked by Ms. Kizart 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), PHFE willfully failed to maintain accurate payroll records for Ms. Kizart 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, PHFE 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 Ms. Kizart and other aggrieved employees in violation of section 1198. Furthermore, in light of PHFE's failure to provide Ms. Kizart and other aggrieved employees with second 30-minute meal periods to which they were entitled, PHFE kept no records of meal start and end times for second meal periods.

Because PHFE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Kizart 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, Ms. Kizart 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.

Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE 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 § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

During the relevant time period, PHFE had a company-wide policy and practice of failing to pay Ms. Kizart and other aggrieved employees all vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3. Specifically, PHFE failed to properly calculate and pay all earned vested vacation time due to the hours Ms. Kizart and other aggrieved employees worked off-the-clock pursuant to its company-wide policies and/or practices.

PHFE's failure to pay other Ms. Kizart and aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3. Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE into compliance with Labor Code section 227.3, pursuant to Labor Code sections 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, PHFE failed to pay Ms. Kizart and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE 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.

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

Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE 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 § 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."

During the relevant time period, PHFE, on a company-wide basis, required that Ms. Kizart and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Kizart and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls from management and contacting other employees, doctors, and case managers regarding client needs. Although PHFE required Ms. Kizart and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, PHFE failed to reimburse them for these costs.

PHFE could have provided Ms. Kizart and other aggrieved employees with company mobile devices; or PHFE could have reimbursed employees for the costs of their mobile device usage. Instead, PHFE passed these operating costs onto Ms. Kizart and other aggrieved employees. At all relevant times, Ms. Kizart did not earn at least two (2) times the minimum wage.

Thus, PHFE 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. Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE 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." PHFE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Kizart's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Kizart seeks the remedies set forth in Labor Code section 558 for herself, 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, Ms. Kizart, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against PHFE for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

Pre-Litigation Demand

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

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

1. PHFE shall pay Ms. Kizart and all other aggrieved employees employed by PHFE at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. PHFE 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. PHFE shall conduct a survey or interview all current and former aggrieved employees in California who worked for PHFE 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; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. PHFE shall reimburse Ms. Kizart and all aggrieved employees who were required to pay for any business expenses incurred for PHFE's benefit, including, but not limited to, mobile device usage, as required by Labor Code section 2802.

5. PHFE shall pay accrued legal interest to Ms. Kizart and all aggrieved employees at the rate of 10% per annum for said unpaid wages.

6. PHFE shall provide Ms. Kizart and all aggrieved employees employed by PHFE 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).

7. PHFE 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.

8. PHFE shall pay former aggrieved employees their vested vacation wages at their final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served, as required by Labor Code section 227.3.

PHFE 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 IWC 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

Ninel Kocharyan

Copy: PUBLIC HEALTH FOUNDATION ENTERPRISES, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

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