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November 6, 2024

LWDA
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(***Via Online Submission***)

Registered Agents, Inc.
Agent for Service of Process for
Developmental Pathways, Inc.
1401 21st Street, Suite R
Sacramento, CA 95811
(***Via Certified Mail, Return Receipt Requested***)

Re: ***Emilia Jordan-Lemus and Yaira Torres-Vasquez v. Developmental Pathways, Inc.***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Emilia Jordan-Lemus ("Ms. Jordan-Lemus") and Yaira Torres-Vasquez ("Ms. Torres-Vasquez") (collectively, "Plaintiffs") to pursue a Labor Code Private Attorneys General Act of 2004 ("PAGA") representative action (Cal. Lab. Code §§ 2699, *et seq.*) against Developmental Pathways, Inc. ("DPI" or "Employer"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Employer engaged in with respect to Plaintiffs and all Aggrieved Employees.

Plaintiffs wish to pursue this action on behalf of themselves, on behalf of the State of California, and on behalf of potentially all other persons who worked for DPI in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, "Aggrieved Employees").

Plaintiffs allege they and Aggrieved Employees suffered the Labor Code violations described below.

Plaintiffs' Employment with DPI

DPI provides behavioral intervention services. Ms. Jordan-Lemus worked for DPI as a behavioral therapist, and her primary job function was to provide therapy services to clients. Ms. Torres-Vasquez worked for DPI as a scheduler, and her primary job function was to schedule therapy visits with clients. In performing Plaintiffs' duties, Plaintiffs were regularly required to perform work (off-the-clock), without compensation. Due to understaffing and high workloads, Plaintiffs were also frequently deprived of an opportunity to take legally compliant meal and rest breaks. Employer failed to provide Plaintiffs with meal and rest break premiums as required by the Labor Code. Additionally, Plaintiffs necessarily incurred business-related expenses, but Employer failed to reimburse such business-related expenses. These are just non-exhaustive examples of the facts and theories Plaintiffs assert, which are described in more detail below.

Employer owns/owned and operates/operated an industry, business, and establishment within the State of California. As such and based upon all the facts and circumstances incident to Employer's business in California, Employer is subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Ms. Jordan-Lemus is a resident of Commerce, California who worked for Employer in Los Angeles County, California as an hourly-paid, non-exempt employee from approximately April 2023 to approximately June 2024. Ms. Torres-Vasquez is a resident of Los Angeles, California who worked for Employer in Los Angeles County as an hourly-paid, non-exempt employee in approximately August 2024.

During Plaintiffs' employment for Employer, Employer paid Plaintiffs an hourly wage and classified Plaintiffs as non-exempt from overtime. Employer typically scheduled Plaintiffs to work at least five days in a workweek and at least eight hours per day, but Plaintiffs also worked more than eight hours in a workday and more than forty (40) hours in a workweek.

Throughout Plaintiffs' employment, Employer failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Plaintiffs with legally compliant meal periods, failed to authorize and permit Plaintiffs to take rest periods, failed to timely pay all final wages to Plaintiffs when Plaintiffs' employment terminated, failed to furnish accurate wage statements to Plaintiffs, failed to indemnify Plaintiffs for business expenditures, and failed to timely produce Plaintiffs' requested employment records. As discussed below, Plaintiffs' experience working for Employer was typical and illustrative.

<u>Failure to Pay for All Hours Worked, Including Minimum, Straight, and Overtime Wages</u>

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is 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.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

Throughout the statutory period, Employer failed to pay Plaintiffs and other Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Employer required Plaintiffs and other Aggrieved Employees to work "off-the-clock," uncompensated, by, for example, requiring Plaintiffs and other Aggrieved Employees to perform work during uncompensated meal periods and requiring Plaintiffs and other Aggrieved Employees to perform work before clocking in and/or after clocking out. Some of this unpaid work should have been paid at the overtime rate. California Labor Code § 510 requires that employers compensate employees 1.5 times their regular rate of pay when employees work over eight hours per day, 40 hours per week, or when employees work up to eight hours on any seventh day of a workweek. Employer failed to properly calculate Plaintiffs' and other Aggrieved Employees' regular rate of pay when paying overtime, by failing to include all compensation in overtime calculations. In failing to pay for all hours worked, Employer also failed to maintain accurate records of the hours Plaintiffs and other Aggrieved Employees worked.

Throughout the statutory period, Employer also engaged in a practice of improper rounding. Under *Camp v. Home Depot U.S.A., Inc.*, 84 Cal.App.5th 638 (2022), because Employer could and did track the exact time in minutes that Plaintiffs and other Aggrieved Employees worked, it must pay for all time worked. When an employer uses an electronic timekeeping system to record time worked, this ability to "precisely capture time worked" means that "the employer must pay the employee for that worktime when due." *Id.* at 671. As a result of Employer's rounding policy, Plaintiffs and other Aggrieved Employees were not compensated for all hours that Plaintiffs and other Aggrieved Employees worked.

As a result, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s). Despite these legal requirements, Employer wrongfully failed to provide Plaintiffs and other Aggrieved Employees with legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law (and also including but not limited to failing to provide Plaintiffs and other Aggrieved Employees the opportunity to leave the work premises to take meal periods). Employer also continued to assert control over Plaintiffs and other Aggrieved Employees by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiffs and other Aggrieved Employees, or some of them, permission to take a meal period under the conditions required by law, and without properly compensating Plaintiffs and other Aggrieved Employees for meal periods that were not provided as required by law. Employer also did not inform Plaintiffs and other Aggrieved Employees of their right to, nor permitted Plaintiffs and other Aggrieved Employees to take, all of Plaintiffs and other Aggrieved Employees' second meal periods when Plaintiffs and other Aggrieved Employees worked at least ten hours of work in a workday and otherwise unlawfully pressured Plaintiffs and other Aggrieved Employees to waive such breaks. Accordingly, Employer failed to provide meal periods to Plaintiffs and other Aggrieved Employees in compliance with California law.

Plaintiffs and other Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s). Employer, however, failed to pay Plaintiffs and other Aggrieved Employees the additional wages to which they were entitled for meal periods that were not provided.

As a result, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employer is required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e., more than three and a half hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Employer has wrongfully failed to authorize and permit Plaintiffs and other Aggrieved Employees to take legally compliant rest periods in a manner required by law (and also including but not limited to failing to authorize and permit Plaintiffs and other Aggrieved Employees the opportunity to leave the work premises to take rest periods). Employer required Plaintiffs and other Aggrieved Employees to work in excess of three and a half consecutive hours a day without authorizing and permitting Plaintiffs and other Aggrieved Employees to take a 10-minute, uninterrupted, duty-free rest period, or without compensating Plaintiffs and other Aggrieved Employees for rest periods that were not authorized or permitted.

Instead, Employer continued to assert control over Plaintiffs and other Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiffs and other Aggrieved Employees permission to take a rest period. Accordingly, Employer failed to authorize and permit Plaintiffs and other Aggrieved Employees to take rest periods in compliance with California law. Plaintiffs and other Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday they were not authorized and permitted to take all required rest period(s). Employer, however, failed to pay Plaintiffs and other Aggrieved Employees all of the additional wages to which they were entitled for rest periods that they were not authorized and permitted to take.

As a result, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on Employer's failure to pay Plaintiffs and other Aggrieved Employees for all wages as discussed above, Employer also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, Employer failed and refused to pay Plaintiffs and other Aggrieved Employees all wages due, and failed to pay those wages twice a month, in that Plaintiff and other Aggrieved Employees were not paid all wages for all meal periods not provided by Employer, all wages for all rest periods not authorized and permitted by Employer, and all wages for all hours worked. As a result, Employer owes Plaintiffs and other Aggrieved Employees the legally required wages for unpaid wages, and Plaintiffs and other Aggrieved Employees suffered damages in those amounts.

Moreover, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiffs seek penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when employees begin and end each work period. Meal periods and total hours worked daily shall also be recorded.

Employer, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiffs and other Aggrieved Employees.

Employer's failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Plaintiffs and other Aggrieved Employees the ability to know, understand, and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Employer's records. Therefore, Plaintiffs and other Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Employer. As a direct result, Plaintiffs and other Aggrieved Employees have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorneys' fees in seeking to compel Employer to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Employer's knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiffs and other Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 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. Direct deposits of wages to an employee's bank, saving and loan, or credit union account that were previously authorized by the employee are immediately terminated when an employee quits or is discharged, and the payment of wages upon termination of employment in the manner described above shall apply unless the employee has voluntarily authorized that deposit and provided that the employer complies with the provisions of Labor Code § 213(d) relating to the payment of wages upon termination or quitting of employment.

Within the applicable statute of limitations, the employment of Plaintiffs and other Aggrieved Employees was terminated. However, during the relevant time period, Employer failed to pay Plaintiffs and other Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Employer's employment. These unpaid wages include wages for unpaid work time (including minimum, straight, and overtime wages), missed meal period premium wages, and missed rest period premium wages. Employer also violated Labor Code section 213(d) by paying final wages (if any are paid at all) via direct deposit without Plaintiffs' and other Aggrieved Employees' voluntary authorization.

Employer's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiffs and other Aggrieved Employees are entitled to recover from Employer their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

Moreover, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination, and for unlawfully making any such payment (if any) via direct deposit without Plaintiffs' and other Aggrieved Employees' voluntary authorization.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Throughout the statutory period, Employer failed to timely furnish Plaintiffs and other Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Employer violated Labor Code § 226, Plaintiffs and other Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiffs and other Aggrieved Employees are entitled to recover from Employer the greater of their actual damages caused by Employer's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) per employee. Moreover, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to timely furnish accurate itemized wage statements.

Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) provides that employers shall indemnify their employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the statute of limitations period applicable to this cause of action, Employer wrongfully required Plaintiffs and other Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Employer, including but not limited to expenses for cell phone, vehicle, internet, and work tools. Plaintiffs and other Aggrieved Employees paid out-of-pocket for necessary employment-related expenses. Plaintiffs and other Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Employer, but Employer failed to indemnify Plaintiffs and other Aggrieved Employees for these employment-related expenses.

As a result, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Plaintiffs and other Aggrieved Employees for necessary business expenditures.

Failure to Produce Requested Employment Records

Labor Code § 226 provides that current and former employees have the right to inspect or receive a copy of their records pertaining to their employment, upon reasonable request to their employer. Under this statute, an employer that receives a request to inspect or receive a copy of records pertaining to a current or former employee must comply with the request as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request. Labor Code § 1198.5(a) also provides that every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employees' performance or to any grievance concerning the employee. Under this statute, upon written request from a current or former employee or his or her representative, an employer must make the contents of those personnel records available for inspection or provide a copy of the personnel records to the current or former employee, or his or her representative, not later than thirty (30) calendar days from the date the employer receives the written request, subject to some limited exceptions.

Labor Code § 432 provides that if an employee or applicant signs any instrument relating to the obtaining or holding of employment, he or she shall be given a copy of the instrument upon request. On information and belief, Plaintiffs and other Aggrieved Employees submitted written request(s) to Employer for their payroll records, timecards, personnel records, and records related to their employment, but did not timely receive them as required by the Labor Code.

As a result, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code §§ 226(f), 1198.5(k), and 2699 for failing to timely produce the requested records.

Recordkeeping Requirement Violations

California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by employees. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, Employer failed to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when Plaintiffs and other Aggrieved Employees began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, Employer failed to keep accurate and complete records showing total hours worked by Plaintiffs and other Aggrieved Employees, or some of them, by virtue of Employer's time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices. Employer failed to keep accurate and complete records showing total hours worked by virtue of Employer's failure to relieve Plaintiffs and other Aggrieved Employees of all duties and Employer's control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, Employer further failed to record the true start and end times of Plaintiffs' and other Aggrieved Employees' meal periods.

Based on further information and belief, Employer further failed to record the true start and end times of Plaintiffs' and other Aggrieved Employees' work shifts, or some of them.

Additionally, Employer failed to keep accurate records and issue accurate wage statements by not documenting accrued sick time for Plaintiffs and other Aggrieved Employees. Employer's failure to keep "accurate and complete" payroll records for Plaintiffs and other Aggrieved Employees, violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject Employer to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each Aggrieved Employee, results in a separate civil penalty.[1]

<u>Action for Civil Penalties Under PAGA</u>

In light of the above, Plaintiffs allege that Employer violated the following provisions of the Labor Code with respect to Aggrieved Employees:

1. Labor Code §§ 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 204 by failing to pay all earned wages two times per month;
5. California Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 2802 by failing to indemnify for necessary expenditures;
9. Labor Code §§ 226, 432, and 1198.5 by failing to timely produce requested payroll records,

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[1] See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved Plaintiff per pay period").

timecards, and personnel records; and

10. Labor Code § 1174 by failing to keep accurate and complete payroll records.

Therefore, on behalf of Aggrieved Employees, Plaintiffs seek applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

Plaintiffs have placed Employer on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM

John G. Yslas, Esq.