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VIA ELECTRONIC SUBMISSION

California Labor and Workforce
Development Agency
Attn: PAGA Administrator
800 Capitol Mall, Suite 5000
Sacramento, CA 95814

VIA CERTIFIED MAIL

Aya Healthcare, Inc.
5930 Cornerstone Court West Suite 300
San Diego, CA 92121

Re: PAGA Notice Pursuant to California Labor Code § 2699.3

Dear PAGA Administrator,

The law firms of Hartley LLP and Stueve Siegel Hanson LLP represents Laura O'Dell, who has worked within California as a travel nurse for Aya Healthcare, Inc. ("Employer"). Pursuant to California Labor Code § 2699.3(a) and (c), this letter shall serve as notice of Employer's violations of the California Labor Code and related regulations arising out of Employer's unlawful conduct with respect to its employment of Ms. O'Dell and other aggrieved employees. These violations give rise to civil penalties under California Labor Code § 2698, *et seq*. The Labor and Workforce Development Agency ("LWDA") may pursue legal redress, including civil and statutory penalties, against Employer for its violations of California's labor laws. If the LWDA elects not to pursue its own action, Ms. O'Dell, on behalf of herself and other aggrieved employees, may seek redress against Employer under the California Private Attorneys General Act of 2004 ("PAGA"). Ms. O'Dell respectfully requests that the LWDA notify undersigned counsel as to whether it intends to investigate Employer's alleged violations so that she can include the LWDA's findings in her action should the Agency decline to proceed.

FACTS, THEORIES, AND ALLEGED VIOLATIONS

Employer is a travel nursing agency, whose business involves placing nurses on short-term assignments at various work sites throughout the country. Hospitals and other healthcare facilities use travel nurses as a remedy to staff shortages, which have been severely exacerbated by the COVID-19 pandemic and its aftermath. In that way, travel nurses have played a vital role in keeping the healthcare system afloat. But traveling requires significant sacrifices from the nurses themselves, including leaving existing employment, traveling hundreds or thousands of miles away from their homes to an unfamiliar location and work environment, securing short-term housing, and bearing significant moving-related expenses.

To induce nurses to take on these roles, staffing agencies like Employer offer guaranteed hourly rates, along with minimum hours during a specified date range. Employer offered Ms. O'Dell a contract providing that she would be paid $51.00 per hour for 36 hours per week at Sutter Santa Rosa Regional Hospital in Santa Rosa, California. The assignment was scheduled to commence on February 8, 2022, and end on May 8, 2022. In reliance on Employer's contractual promises, Ms. O'Dell forwent other employment opportunities, traveled from Indiana to California largely at her own expense, and secured short-term living arrangements for the duration of her assignment. But Employer had no intention of honoring its commitment. Partway through the assignment, Employer informed Ms. O'Dell that it intended to reduce her hourly rate by more than 50% from $51.00 per hour to $35.00 per hour. Ms. O'Dell had little choice but to continue the assignment at the lower rate.

Employer knew that, once Ms. O'Dell had moved away from her home and systems of support, it held all the cards in forcing a pay rate reduction in violation of its contractual obligations. This sort of fraudulent inducement is endemic in the travel nursing industry and serves as a means for companies like Employer to reduce labor costs and increase their own profits. Upon information and belief, Employer has subjected thousands of other aggrieved employees to similar misconduct.

Unlawful Solicitation of Employees By Misrepresentation in Violation of California Labor Code § 970

Under California Labor Code § 970, it is unlawful for an employer to "influence, persuade, or engage any person to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through or by means of knowingly false representations" concerning . . . "[t]he length of time such work will last, or the compensation therefor." As described above, Employer made knowingly false representations concerning the compensation for nursing assignments to Ms. O'Dell and other aggrieved employees, thereby inducing them to travel for work. This violation of California Labor Code § 970 gives rise to civil penalties pursuant to California Labor Code § 2698, *et seq*.

Unlawful Failure to Make Timely Payment of All Wages Due Upon Termination in Violation of California Labor Code §§ 201, 202, 203, and/or 204

Employer's failure to pay Ms. O'Dell and other aggrieved employees for every hour worked at the agreed-upon hourly rate stated in their written employment contracts resulted in Employer failing to make timely payment of the wages aggrieved employees earned on regular paydays, in violation of California Labor Code § 204, and timely payment of the wages aggrieved employees earned when they stopped working for Employer due to discharge, layoff or resignation, in violation of California Labor Code §§ 201, 202, and/or 203. These violations give rise to civil penalties pursuant to California Labor Code § 2698, *et seq*.

Failure to Indemnify Employees for Expenses and Losses in Violation of California Labor Code § 2802

Employer required Ms. O'Dell and other aggrieved employees to pay Employer's business expenses, each of which flow directly from the nurses' work on behalf of the Employer and which inure to the benefit of the Employer. For instance, Employer only reimbursed Ms. O'Dell for $500 of her travel expenses despite the fact that her out-of-pocket expenses exceeded that amount. Pursuant to California Labor Code § 2802, employers must indemnify their employees for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." Employer did not do so, and is therefore liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Failure to Indemnify Employees for Want of Ordinary Care in Violation of California Labor Code § 2800

Pursuant to Labor Code § 2800, "[a]n employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care." As noted above, Ms. O'Dell asserts that Employer's failure to honor the contract was purposeful and fraudulent. However, in the alternative, it was at least negligent. For example, Employer failed to use ordinary care in, *inter alia*, omitting material terms in proffering employment agreements, failing to exercise good faith and fair dealing pursuant to a contractual agreement, and engaging in negligent misrepresentation. These failures resulted in losses to Ms. O'Dell and other aggrieved employees, which Employer has not indemnified. Employer is therefore liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Conclusion

Should the LWDA decline to proceed in this matter, Ms. O'Dell intends to seek all civil penalties, interest, and attorney's fees permitted under the California Labor Code for these violations. Should you require anything further or have additional questions, please do not hesitate to contact us.

Very truly yours,

Jason S. Hartley