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February 17, 2022

Via LWDA Website:

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<https://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail:

El Centro Regional Medical Center
Foundation
1415 Ross Avenue
El Centro, CA 92243
Receipt No.: 7018 1130 0001 8270 4005

Aya Healthcare, Inc.
5930 Cornerstone Court West, Suite 300
Riverside, CA 92501
Receipt No.: 7018 1130 0001 8270 4012

Aya Healthcare Services, Inc.
5930 Cornerstone Court West, Suite 300
Riverside, CA 92501
Receipt No.: 7018 1130 0001 8270 4029

Agent for Service of Process for
El Centro Regional Medical Center
Foundation
Carla Kuhns
625 Tiger Lily Lane
Imperial, CA 92251
Receipt No.: 7018 1130 0001 8270 3329

Agent for Service of Process for
Aya Healthcare, Inc.
and Aya Healthcare Services, Inc.
CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Receipt No.: 7018 1130 0001 8270 3336

RE: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Bethany G. Labranche individually and on behalf of all others similarly situated, give NOTICE of her intent to commence a civil action pursuant to California Labor Code Section 2698, *et seq.* Plaintiff hereby gives written notice electronically to the Labor and Workforce Development Agency, and by certified mail to Defendants El Centro Medical Center Foundation, Aya Healthcare, Inc., and Aya Healthcare Services, Inc. (collectively “Defendants”) via their agent for service of process.

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Plaintiff was employed by Defendants as an hourly, non-exempt employees. Plaintiff began her employment with Defendants on or about September 21, 2020, and continued such employment to February 17, 2021. She worked at Defendants' facility in the City of El Centro, California. Plaintiff was employed by Defendants in the position of a Registered Nurse.

The group of aggrieved employees that Plaintiff seeks to represent is a group of non-exempt employees working in Defendants' locations in the State of California during the relevant time period ("Aggrieved Employees"). This notice is timely as it is provided within one year of the violations.

Plaintiff has attached her Complaint, and incorporate the allegations in the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants in the Complaint.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing to pursue penalties on behalf of the state for violations affecting all the Aggrieved Employees working for Defendants at their locations in the State regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

Plaintiff claims that Defendants implemented legally non-compliant policies and practices which led to Defendants' (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to authorize and permit legally compliant rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) failure to reimburse necessary expenses; (8) knowing and intentional failure to comply with itemized wage statement provisions; and (9) violation of the Unfair Competition Law.

During all relevant periods, the California Labor Code sections 204, 1194, 1197, 1198, and wage orders required that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all hours worked. Employers are required to pay at least minimum wage for each hour worked. Labor Code section 1194(a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit. The IWC Wage Orders define "hours worked" 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." At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours for which they were not paid because Defendants frequently required Plaintiff and Aggrieved Employees to work off the clock. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the Aggrieved Employees were working off the clock and that they should have been paid for this time. However, such time was not paid in violation of the law.

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During the relevant periods, Defendants required Plaintiff and the Aggrieved Employees to work shifts in an Alternative Workweek Schedule. The pertinent wage order 5-2001(3)(B)(1) states, “[n]o employer shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate compensation.” Further, “[a]ll work performed in any workday beyond the schedule established by the agreement up to twelve (12) hours a day or beyond 40 hours per week shall be paid at one and one-half times the employee’s regular rate of pay.” Here, Plaintiff and Aggrieved Employees, as a matter of Defendants’ policy, were required to work on a “3/12 schedule” meaning Plaintiff and other Aggrieved Employees were scheduled to work 12 hours a day for three days in a single workweek, however, the Department of Industrial Relations’ website shows that Defendants did not elect to adopt an Alternative Workweek Schedule. By requiring Plaintiff and Aggrieved Employees to remain on a 3/12 schedule, Defendants acted in violation of the named wage order and did not conform to the requirements of adopting an Alternative Workweek Schedule. Thus, employees were undercompensated in violation of the law.

Plaintiff alleges she and the Aggrieved Employees were regularly required to work shifts in excess of five hours without being provided a lawful first meal period. Plaintiff claims that Defendants violated Labor Code section 512 and 226.7, and IWC Wage Order 5-2001 for failing to provide timely, uninterrupted meal periods. Pursuant to Labor Code section 512 and the Wage Order, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all his or her duties. Here, Defendants failed to provide Plaintiff and all other Aggrieved Employees meal periods of not less than thirty (30) minutes. Due to work demands, Defendants’ policies, practices and scheduling requirements, Plaintiff and the Aggrieved Employees were often not provided legally compliant meal periods prior to the sixth hour worked in violation of the law. Moreover, as a matter of Defendants’ policy and practice, second meal periods were not at all provided to Plaintiff and the Aggrieved Employees.

Plaintiffs allege that Defendants failed to authorize and permit rest periods. This failure violates Labor Code §226.7 and Section 12(A) of Wage Order 5, which provides that employers shall authorize and permit employees to take a rest period of net ten (10) minutes for each four (4) hours, or major fraction thereof, worked. This action is further brought under Labor Code §226.7(b) and Section 12(B) of Wage Order 5, which provides that if an employer fails to authorize and permit a lawful rest period, the employer shall pay the employee one hour of pay for each workday that a rest period was not authorized and permitted. Plaintiff and the Aggrieved Employees were systematically not authorized and permitted to take legally compliant net ten (10) minute rest periods for every four hours worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198, and IWC Wage Order 5. Employees were not authorized and permitted to take a net ten minute rest period as required by law, in part because Defendants maintained and enforced scheduling practices, staffing and communication device policies and practices, and imposed work demands that frequently required employees to forego their breaks or return before a net ten minutes of rest. To the extent, any rest periods were taken they were not compliant because employees were essentially required to remain on duty.

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The law is clear that rest periods must be “duty free” and to provide a compliant rest period, employers must “relieve their employees of all duties” during their breaks and must “relinquish any control over how employees spend their break time.” *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 261 (2016).

Defendants further violated the law by failing to compensate Plaintiff and the Aggrieved Employees with one additional hour of pay at their regular rate of pay when lawful meal or rest periods were not lawfully provided in violation of Labor Code §§ 226.7 and 512, 1198 and the applicable Industrial Welfare Commission Wage Orders.

In addition, Plaintiff and the Aggrieved Employees were required to use their personal cellphones for work-related purposes. Under California Labor Code § 2802, an employee is entitled to be reimbursed by his or her employer “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Here, Defendants failed to reimburse Ms. Labranche for all expenses incurred in the discharge of her duties, including but not limited to cell phone usage. Because Defendants have violated California Labor Code § 2802, Defendants are liable for civil penalties.

In relevant part, Labor code section 226(a) requires: An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, an accurate itemized statement in writing showing (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, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) 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, (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. Here, Defendants failed to provide accurate, lawful itemized wage statements to Plaintiff and the Aggrieved Employees in part because of the violations set forth in Plaintiff’s attached complaint, including the failure to pay one hour of premium pay at the employee’s regular rate of pay for non-provided meal and rest breaks, and the Defendants’ failure to provide the total number of hours worked by the employee on the wage statement.

Plaintiff also contends that Defendants failed to keep accurate records as required by Wage Order 5-2001, Labor Code 1174, and 1198. IWC Wage Order 5-2001 requires in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rate of pay....” Labor Code section 1174 also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the complaint, including without limitation failing to keep records of meal periods and all hours

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worked at the proper rates. Defendants' failure to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

In part, as a result of the above specified violations, Defendants have also failed to pay all wages owed at the time of separation as required by Labor Code sections 201-203. All Aggrieved Employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to unpaid straight time wages, sick pay, minimum wage, overtime compensation and compensation for non-provided meal periods, but to date have not received such compensation, therefore entitling them to civil penalties under PAGA for violations of Labor Code sections 201-203. Plaintiff further alleges that, regardless of any underlying failure to pay wages or premiums, they and the Aggrieved Employees were not paid all earned wages on the date of termination as a matter of Defendants' pattern and practice.

All labor provisions in the Complaint alleged to have been violated pertain to all entities and individuals named in the Complaint, even if not expressly specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

Attached: Class Action Complaint