



PROXY LAW FIRM

10880 Wilshire Boulevard, Suite 1101
Los Angeles, CA 90024
Telephone: 310-853-8333
Facsimile: 310-861-5931

Hengameh S. Safaei, Esq.
Email: safaei@proxylawfirm.com
Rana Nader, Esq.
Email: nader@proxylawfirm.com
www.proxylawfirm.com

December 15, 2021

VIA CERTIFIED MAIL

Human Resources
Southern California Permanente Medical Group
393 E. Walnut St.
Pasadena, CA 91188

VIA ONLINE FILING SYSTEM

PAGA Administrator
California Labor & Workforce Development Agency (LWDA)
pagafilings@dir.ca.gov

Re: Cynthia Maria Salgado

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE § 2699.3
AND NOTICE OF INTENT TO FILE REPRESENTATIVE SUIT**

Dear PAGA Administrator at California Labor & Workforce Development Agency:

This firm represents Cynthia Maria Salgado (“Ms. Salgado”) in connection with claims arising from her employment with Southern California Permanente Medical Group, SoCal Permanente Medical Group, and any other employer(s) or person(s) acting on behalf of Employer pursuant to Labor Code Sections 558, subdivision (a), and 558.1. Ms. Salgado is an “aggrieved employee” as defined by Labor Code Section 2699 *et seq.* due to Employer’s violations of the Labor Code as set forth below. The purpose of this Notice is to comply with Labor Code Section 2699.3 which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. This Notice is being sent simultaneously to Employer via certified mail.

Employer is a health maintenance organization. Ms. Salgado is a full-time, hourly, non-exempt employee of Employer. At all times relevant to this Notice, Ms. Salgado has been over the age of eighteen (18) years. Ms. Salgado is employed by Employer as a medical assistant in Employer’s location located in Murrieta, California.

Pursuant to the California Private Attorneys General Act (“PAGA”), Ms. Salgado seeks to represent and recover civil penalties on behalf of herself and other non-exempt “aggrieved employees” who have been subject to the Labor Code violations alleged herein. For purposes of this Notice, “aggrieved employees” includes all of Employer’s current and former non-exempt

employees in California who were subject to the following alleged policies and practices within one-year preceding the date of this Notice.

On information and belief, Employer committed the following violations of the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order(s), including but not limited to Wage Orders 4-2001 and 5-2001. The claims made on behalf of Ms. Salgado and aggrieved employees are based upon the following facts and theories. Ms. Salgado intends to pursue claims for PAGA penalties during the period of time from one year ago and ongoing (the “PAGA Period”). California Judicial Council Emergency Rule 9 tolled the statute of limitations for civil causes of action from April 6, 2020 until October 1, 2020. Therefore, the applicable PAGA Period is extended six months.

Ms. Salgado intends to represent the State of California LWDA and the following group of aggrieved employees: Ms. Salgado and all other individuals who are or were employed by Employer as non-exempt hourly-paid employees who worked at least one shift in California from one year ago (and as tolled by Emergency Rule 9) and ongoing. All such aggrieved employees were subject to Employer’s alleged unlawful policies, as described in further detail below.

Minimum Wage Violations

California law requires employers to compensate employees for all hours worked. Employer was required to pay Ms. Salgado and all other aggrieved employees an hourly rate at least equal to the minimum wage for each hour worked. See LABOR CODE §§ 1182.12, 1194, 1194.2, 1197; Wage Order 4-2001 § 4; Wage Order 5-2001, § 4. Employer required Ms. Salgado and all aggrieved employees to regularly perform work-off-the-clock for which they did not receive any compensation. Employer required Ms. Salgado and all other aggrieved employees to undergo COVID-19 temperature checks and complete screening documents before the start of their shift, and before they “clocked in.” On information and belief, beginning in or around March 2020 and continuing to the present, Ms. Salgado and the aggrieved employees underwent the same temperature checks on Employer’s premises and only afterward were they permitted to clock in for their shifts.

On information and belief, during the PAGA Period and in violation of Labor Code Sections 1194 and 1197 and the applicable IWC Wage Order(s), Employer failed to pay Ms. Salgado and other aggrieved employees the applicable minimum wages for all hours worked in a payroll period by, among other things: requiring, suffering, or permitting Ms. Salgado and other aggrieved employees to work off the clock for COVID-19 temperature checks before the start of their shifts, and before they “clocked in” and to fill out documents.

Although Employer maintained a common policy and practice of requiring Ms. Salgado and the aggrieved employees to undergo pre-shift COVID-19 temperature checks and fill out documents during the PAGA Period, Employer failed to compensate Ms. Salgado and the other aggrieved employees for such time. Employer’s aggrieved employees could not avoid Employer’s COVID-19 temperature checks. As such, Employer exercised compensable control over the aggrieved employees who underwent temperature checks.

The California Department of Industrial Relations recently issued guidance that supports Plaintiff’s claim that Defendants unlawfully failed to pay her and the Aggrieved Employees for

time associated with worksite temperature checks before clocking in for their shifts. See Cal. Dept. of Industrial Relations, Safe Reopening FAQs for Workers and Employers (July 8, 2021), available at https://www.dir.ca.gov/covid19/FAQs_COVID-19_Safe_Reopening.htm, which provides the following in regard to FAQ #10 (titled “Medical Checks, Testing, and Vaccinations”):

10. Q: Must my employer pay me for time spent at my employer’s worksite completing certain medical checks (including temperature checks) before beginning a shift?

A: Yes. Employers must pay workers for all hours worked, including time that a worker is under the control of the employer. Employers that require their workers to complete a medical check in order to begin a shift, even if it is recommended under public health orders, must compensate workers for that time worked.

The term “hours worked” means the time during which a worker is subject to the control of an employer and includes all the time the worker is suffered or permitted to work, whether or not required to do so. Under this definition, one way to determine whether time a worker spends performing a task is compensable—that is, whether it is time “worked”—is whether the employer exercised control over the worker by requiring the worker to perform that task.

If an employer requires that all workers perform a medical check (such as a temperature check) onsite before beginning a shift, the time completing the medical check, including any time waiting in line, would constitute time worked. This requirement applies even if such tasks were performed pursuant to a state or local public health guideline, because the check is done at the request and thus under the control of the employer.

As a result of Employer’s unlawful practices, which failed to compensate for all hours worked, Ms. Salgado and all other aggrieved employees were deprived of all required minimum wages. As a further result of Employer’s failure to pay all minimum wages, Employer failed to timely pay Ms. Salgado and all other aggrieved employees all wages owed at the time of their separation from employment. As a further result of Employer’s failure to pay minimum wages, Employers failed to timely pay Ms. Salgado and other aggrieved employees all wages earned at least twice during each calendar month. LAB. CODE § 204.

Failure to Reimburse Business Expenses Incurred on Behalf of Employer

California Labor Code Section 2802 states, “an employer shall indemnify his or her employee 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Labor Code § 2802, subd. (a). For purposes of this statute, the term “necessary expenditures or losses” means all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” *Id.*, subd. (c). “The elements of a claim under Section 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses were incurred in direct consequence of the employee’s discharge of his or her duties, or obedience to the directions of the employer; and (iii) the expenditures or losses were reasonable and necessary.” *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868, at *3 (N.D.

Cal. March 8, 2011) (citing *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 568 (2007). “In addition, the employer ‘must either know or have reason to know that the employee has incurred [the] expense.’” *Id.* (citing *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901 (N.D. Cal. 2009). Where an employer has knowledge that employees are incurring a reimbursable expense, the employer must “exercise due diligence to ensure that each employee is reimbursed.” *Stuart*, 641 F.Supp.2d at 903. The right of an employee to expense reimbursements from his or her employer is not waivable. See Labor Code § 2804; *Edwards v. Arthur Anderson*, 44 Cal.4th 937, 951 (2008).

On information and belief, aggrieved employees incurred necessary business expenses and costs that were not reimbursed by Employer. These expenses and costs include cell phone charges in connection with work related calls on personal cell phones. Aggrieved employees were not reimbursed by Employer for the cell phone charges they incurred during the term of their employment. Employer had the obligation to reimburse aggrieved employees for their cell phone usage, and because of its failure to do so, it is subject to penalties, interest, and attorneys’ fees. LABOR CODE § 2802 (b)-(d).

Wage Statement Violations

Employer was required to furnish Ms. Salgado and other aggrieved employees with timely, complete, and accurate itemized wage statements that showed, among other things: (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 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. LABOR CODE § 226(a); *see also*, LABOR CODE § 1174, subd. (d).

Employer knowingly and intentionally failed to pay Ms. Salgado and all aggrieved employees all minimum wages associated with COVID-19 temperature checks and completion of documents. Accordingly, all wage statements contained inaccurate information as to hours worked and wages earned since the time spent on pre-shift COVID-19 temperature checks were never included.

As a result of Employer’s unlawful policies and practices and its failure to pay all minimum wages, Employer maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Salgado and other aggrieved employees in violation Labor Code § 226. Employer’s failure to comply with its wage statement obligations was knowing and intentional, and aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code Sections 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Employer failed to timely pay Ms. Salgado and other aggrieved employees all of their final wages at the time of their separation, which final pay was to

include, but did not include all minimum wages associated with COVID-19 temperature checks. Employer's failure to pay all final wages due to Ms. Salgado and other aggrieved employees was willful and thus entitles Ms. Salgado and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Employer failed to pay their final wages after separation, up to a maximum of thirty (30) days. Labor Code § 203.

Failure to Maintain Accurate Records

Despite its record-keeping obligations, Employer failed to maintain accurate records on behalf of Ms. Salgado and all other aggrieved employees. LABOR CODE § 1174.

As an "aggrieved employee" Ms. Salgado intends to initiate a civil action on behalf of herself and all other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations described above.

Based on information and belief and investigation to date, Employer has committed the following alleged Labor Code violations:

1. Labor Code §§ 1194, 1197 by failing to pay Ms. Salgado and all other aggrieved employees all minimum compensation;
2. Labor Code §§ 226, *et seq.*, by failing to furnish timely, accurate and compliant itemized wage statements;
3. Labor Code §§ 201-203 by failing to timely pay all final wages due to Ms. Salgado and all other aggrieved employees upon their separation of employment;
4. Labor Code § 204 by failing to pay Ms. Salgado and all other aggrieved employees all wages earned at least twice during each calendar month;
5. Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Ms. Salgado and all aggrieved employees; and
6. Labor Code § 2802 by failing to reimburse necessary business-related expenses.

Pursuant to Labor Code Section 2699.3, subdivision (a)(2)(A), please notify us within 65 calendar days of the postmark date of this Notice whether the LWDA intends to investigate these alleged violations.

This Notice sets forth the basis of Ms. Salgado's grievances, rights, and remedies under the Labor Code and the PAGA. We appreciate your attention to this matter.

Please do not hesitate to contact us if you require any additional information.

Very truly yours,
PROXY LAW FIRM LLP

A handwritten signature in blue ink, appearing to read "Rana Nader".

Rana Nader, Esq.

December 15, 2021

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cc: (via certified mail)

Southern California Permanente Medical Group
393 E. Walnut St.
Pasadena, CA 91188