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March 25, 2025

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

Encompass Health Rehabilitation Hospital of Tustin, L.P.
15120 Kensington Park Dr,
Tustin, CA 92782
(***Via Certified Mail, Return Receipt Requested***)

1505 Corporation aka CSC - Lawyers Incorporating Service
Agent for Service of Process for:
Encompass Health Rehabilitation Hospital of Tustin, L.P.
2710 Gateway Oaks Drive,
Sacramento, CA 95833
(***Via Certified Mail, Return Receipt Requested)***

Encompass Health Rehabilitation Hospital of Tustin, L.P.
9001 Liberty Pkwy
Birmingham, AL 35242
(***Via Certified Mail, Return Receipt Requested)***

Re: ***Diana Driscoll v. Encompass Health Rehabilitation Hospital of Tustin, L.P.***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Diana Driscoll ("Ms. Driscoll" or "Employee") to pursue a Labor Code Private Attorneys General Act of 2004 ("PAGA") representative action (Cal. Lab. Code §§ 2699, et seq.) against Employee's former employer, Encompass Health Rehabilitation Hospital of Tustin. ("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 Employee and potentially all of Employer's Aggrieved Employees.

Employee wishes to pursue this action as an Aggrieved Employee, on behalf of the State of California, as well as on behalf of potentially all other persons who worked for Employer in California as a non-exempt or hourly-paid Employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Employee and the Aggrieved Employees, or some of them, suffered the Labor Code violations described below.

Employer owns and operates an industry, business, and establishment within the State of California and is, therefore, subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Throughout Employee’s tenure, Employer compensated him with an hourly wage and classified him as non-exempt from overtime. Employer generally scheduled Employee for at least five days a week and at least eight hours each day. However, Employee often worked more than eight hours per day and exceeded forty hours in a workweek.

Throughout Employee’s tenure, Employer failed to provide legally compliant uninterrupted meal periods and failed to reimburse business expenses.

Ms. Driscoll’s Employment with Employer

Employer is a California corporation that offers inpatient rehabilitation for stroke, brain injury, hip fracture and other complex neurological and orthopedic conditions, including Tustin County, where Employee was employed. Employee was an hourly, non-exempt worker. Ms. Driscoll worked for Employer as a unit secretary from approximately December 2014 to May 2024, with primary responsibilities in unit secretary.

Due to understaffing and heavy workloads, Employee was often unable to take timely and compliant meal breaks. Additionally, Employer failed to provide Employee and other Aggrieved Employees with the required meal and rest break premiums mandated by the Labor Code for every noncompliant break. EXAMPLES: For instance, Employee’s meal breaks were frequently delayed by approximately two hours and often interrupted.

Employee and the Aggrieved Employees also incurred unreimbursed business expenses, which included, but were not limited to, using EXAMPLES their personal cell phones for work-related communications and purchasing water boots every four months to perform their job duties, all without reimbursement.

Employee's pay stubs did not include all the necessary information, such as EXAMPLES: incorrect rest and meal break premiums.

Further, by not paying all meal penalties due, Employer failed to pay all full and owed final wages in a timely manner.

Additionally, Employer failed to timely produce all the requested records.

These are just non-exhaustive examples of the facts and theories Employee asserts, which are described in more detail below.

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 end of the employee's fifth hour of work in a workday, and to allow the employee 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 occasionally failed to provide Employee and some of the Aggrieved Employees with their legally mandated 30-minute uninterrupted and duty-free meal periods. Employer maintained control over Employee and the Aggrieved Employees by requiring, pressuring, or encouraging them to complete work tasks that could not be done without skipping mandatory meal breaks. Additionally, Employer denied Employee and some Aggrieved Employees permission to take meal periods as required by law, without properly compensating them for missed meal breaks. EXAMPLES: For example, Employee's meal breaks were often delayed by six to seven hours and frequently interrupted. During the summer months, Employee often did not receive any meal breaks at all. Employer also did not provide Employee and the Aggrieved Employees the opportunity to leave the work premises for their meals. CHECK THIS FACT: Employer also did not provide employees with the opportunity to correct noncompliant meal break hours. As a result, Employer failed to provide meal periods to Employee and some Aggrieved Employees in accordance with California law.

Employee and the Aggrieved Employees, or some of them, 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, at times, failed to pay Employee and the Aggrieved Employees, or some of them, the additional wages to which they were entitled for meal periods that were not provided.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, 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 Indemnify for Necessary Expenditures

Labor Code § 2802(a) states that employers must indemnify their employees for all necessary business expenditures or losses incurred while directly discharging their duties.

Throughout the statutory period relevant to this cause of action, Employer has, at times, wrongfully required Employee and some of the Aggrieved Employees to cover expenses they incurred in the direct performance of their duties for Employer. Employee and the Aggrieved Employees, at times, paid out-of-pocket for essential employment-related expenses. These employees incurred significant expenses as a direct result of their job duties for Employer, yet Employer failed to indemnify them for these costs. EXAMPLES: Employee used his personal cell phone for work-related communications and purchased uniforms to perform her job duties, all without reimbursement.

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

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 their employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by an 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 their 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 an 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 employers 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).)

DERIVATIVE (remove if you have paid sick leave on paystubs): In addition, California Labor Code § 246(i) required employers to provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either employee's itemized wage statement described in § 226 or in a separate writing provided on the designated pay date with employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or employee's itemized wage statement "unlimited."

During the statutory period, Employer has occasionally failed, and continues to fail, to provide Employee and some of the Aggrieved Employees with timely, accurate, itemized wage statements that meet all legal requirements. EXAMPLES FROM PAYSTUBS: For instance, Employee's pay stubs do not accurately reflect the rest and meal break premiums or the total wages for all hours worked, among other things.

Accordingly, Employee and similarly the Aggrieved Employees, or some of them, are entitled to recover from Employer the greater of their actual damages caused by Employer's failure to comply with Labor Code § 226(a) and § 246(i) (REMOVE IF PSL IS ON PAYSTUBS), or an aggregate penalty not exceeding four thousand dollars ($4,000) per employee. Moreover, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 226(e)(2)(B)(iii) for failing to timely furnish accurate itemized wage statements.

<u>Failure to Maintain Accurate Records of Hours Worked and Meal Periods</u>

Employee seeks 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 an employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

However, Employer occasionally failed to keep accurate records of the hours worked and all meal periods taken or missed by Employee and some of the Aggrieved Employees. Employer also altered, falsified, and manipulated these records. CHECK THIS FACT: Despite Employee bringing these violations to management's attention, no corrective action was taken. Furthermore, EXAMPLES IF ANY: the management instructed Employee to enter inaccurate meal break times to cover up these violations.

Moreover, during the relevant time period, Employer engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Employee and the Aggrieved Employees, in violation of § 1198.

Employer's failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Employee and the Aggrieved Employees, or some of them, 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, Employee and the Aggrieved Employees, or some of them, 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, Employee and the Aggrieved Employees, or some of them, 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 their obligation under state law, all to their respective damage in amounts according to proof at trial.

As a result of Employer's knowing failure, at times, to comply with the California Labor Code and applicable IWC Wage Orders, Employee and the Aggrieved Employees, or some of them, 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 employers discharge an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves their employment, their 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 their intention to quit, in which case the employee is entitled to their 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 the 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 employers comply 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 Employee and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Employer, at times, failed, and continue, at times, to fail, to pay Employee and terminated Aggrieved Employees, or some of them, without abatement, all wages required to be paid by Labor Code §§ 201 or 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 time, and overtime wages), and/or missed meal and rest period premium wages. CHECK THIS FACT: Employee also has not timely produced the final paycheck after termination.

Action for Civil Penalties Under PAGA

Pursuant to Labor Code Sections 2699(a) and (f), Employee and the Aggrieved Employees are entitled to civil penalties for Employer's violations of Labor Code sections, 201, 202, 210, 213, 226, 226.7, 246, 246.5, 1174, 1174.5, 1198, 1198.5, 2699, 2802 and the applicable IWC Wage Order.

Employee has 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.

WILSHIRE LAW FIRM

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Molly DeSario, Esq.