



MATERN LAW GROUP, PC

1230 Rosecrans Avenue, Suite 200
Manhattan Beach, California 90266
www.maternlawgroup.com
Tel: (310) 531-1900 | Fax: (310) 531-1901

December 12, 2022

Via Online Submission

California Labor & Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay St., Ste. 801
Oakland, CA 94612

**Via Certified U.S. Mail – Return
Receipt Requested**

Regional Medical Center of San Jose
225 N. Jackson Ave.
San Jose, CA 95116

HCA Healthcare, Inc.
One Park Plaza
Nashville, TN 37203

Re: Notice Pursuant to California Labor Code § 2699.3

Employee: Eflada Agaceta

Employers: HCA Healthcare, Inc. and San Jose, LLC d/b/a Regional Medical
Center of San Jose

To Whom It May Concern:

This office represents Eflada Agaceta (“Ms. Agaceta”), who was employed by San Jose, LLC d/b/a Regional Medical Center of San Jose and HCA Healthcare, Inc. (collectively, “HCA Healthcare”) as a Nurse Assistant in San Jose, California from approximately October 2006 to December 2021. Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 5-2001, which Ms. Agaceta alleges HCA Healthcare violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A), and may lead to immediate action against HCA Healthcare in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against HCA Healthcare.

This letter also serves as notice of Ms. Agaceta’s demand for preservation and non-spoliation of evidence, requesting that all relevant documents and data be saved and that all electronic files and hard-copy documents related to Ms. Agaceta’s employment and potential claims be preserved, even without a court order. Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including “adverse inference” jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

December 12, 2022

Page 2 of 8

We are investigating a potential class and representative action on behalf of HCA Healthcare's current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods in violation of Labor Code §§ 226.7 and 512 and Wage Order No. 5-2001, §§ 11-12; failure to pay one additional hour of compensation at the regular rate of compensation for each work day a meal or rest period is not provided in violation of Labor Code § 226.7 and Wage Order No. 5-2001, §§ 11(D) and 12(B); failure to pay minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197 and 1197.1 and Wage Order No. 5-2001, § 4; failure to pay overtime wages in violation of Labor Code §§ 510 and 1194 and Wage Order No. 5-2001, § 3; failure to timely pay all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226; failure to maintain required records pursuant to Labor Code §§ 226, 1174 and 1174.5 and Wage Order No. 5-2001, § 7; failure to indemnify employees for necessary business expenditures pursuant to Labor Code § 2802; and unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 223 and 224.

The allegations made by Ms. Agaceta on behalf of herself and all other current and former non-exempt employees of HCA Healthcare following facts and theories: meal periods were less than 30 minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after 10 hours of work), or interrupted; rest periods were less than 10 minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay for each work day a meal period was not provided; employees were not provided one hour of pay for each work day a rest break was not authorized and permitted; employees were not reimbursed for necessary business expenditures; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.¹ Given the minimum wage, overtime, and meal and rest break violations, as set forth above, HCA Healthcare failed to timely pay all wages due during employment and upon employees' separation from employment and employees' wage statements were inaccurate and failed to comply with California law. In short, HCA Healthcare's unlawful employment practices and policies have deprived its employees of earned wages and other compensation.

Failure to Provide Meal Periods

Pursuant to Labor Code §§ 226.7 and 512 and Wage Order No. 5-2001, § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five hours and a second meal period to any employee who works a shift of more than 10 hours. Furthermore, an employer must pay one extra hour of compensation for each work day a meal period is not provided.

¹ "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

December 12, 2022

Page 3 of 8

If an employee is not relieved of all duty during a meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal period is permitted only when (1) the nature of the work prevents an employee from being relieved of all duty and (2) the parties have agreed in writing to on duty meal periods.

Ms. Agaceta and other aggrieved employees were and are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7 and 512 and Wage Order No. 5-2001, § 11. HCA Healthcare failed to provide its employees timely and uninterrupted 30-minute meal breaks. Ms. Agaceta’s and other aggrieved employees’ meal periods were short (less than 30 minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted and/or missed.

HCA Healthcare consistently failed to maintain adequate staffing levels at its locations. Additionally, Ms. Agaceta and other aggrieved employees were required to remain available to customers and technicians at HCA Healthcare’s facilities during their meal breaks. As a result, Ms. Agaceta and other aggrieved employees were not authorized to take timely, uninterrupted 30-minute breaks.

HCA Healthcare further violated Labor Code § 226.7 and Wage Order No. 5-2001 by failing to compensate Ms. Agaceta and other aggrieved employees who were not provided with meal periods in accordance with California law one additional hour of pay at each employee’s regular rate of compensation for each work day a meal period was not provided.

Failure to Authorize and Permit Rest Periods

Pursuant to Labor Code § 226.7 and Wage Order No. 5-2001, § 12, an employer is required to provide rest periods to its employees. An employer must provide a 10 minute rest period for every four hours worked or major fraction thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each work day a rest period is not authorized and permitted.

Ms. Agaceta and other aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and Wage Order No. 5-2001. HCA Healthcare failed to authorize and permit its employees to take required rest periods. HCA Healthcare failed to maintain adequate staffing levels at its facilities. As a result, Ms. Agaceta and other aggrieved employees often were forced to forego their rest breaks. When Ms. Agaceta and other aggrieved employees were able to take rest breaks, HCA Healthcare failed to authorize and permit Ms. Agaceta and other aggrieved employees to take their rest breaks in the middle of each work period insofar as practicable.

HCA Healthcare further violated Labor Code § 226.7 and Wage Order No. 5-2001, § 12 by failing to pay Ms. Agaceta and other aggrieved employees one additional hour of pay at each employee’s regular rate of compensation for each work day a rest period was not authorized and permitted.

December 12, 2022

Page 4 of 8

Failure to Pay Minimum Wages

Pursuant to Labor Code §§ 1194 and 1197 and Wage Order No. 5-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Ms. Agaceta and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1194 and 1197 and Wage Order No. 5-2001, § 4. HCA Healthcare failed to pay Ms. Agaceta and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Ms. Agaceta and other similarly-situated individuals to work off-the-clock; requiring, suffering or permitting Ms. Agaceta and other aggrieved employees to work during their meal breaks without compensation; illegally and inaccurately recording time worked by Ms. Agaceta and other aggrieved employees; and other methods to be discovered.

HCA Healthcare's conduct violates Labor Code §§ 1194 and 1197 and Wage Order No. 5-2001, § 4.

Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510 and 1194 and Wage Order No. 5-2001, § 3, an employer must compensate its employees for all overtime, which is calculated at one and one-half times the regular rate of pay for hours worked in excess of eight hours per day and/or 40 hours per week, and for the first eight hours on the seventh consecutive work day, with double time for all hours worked in excess of eight hours on the seventh day of any workweek, or after 12 hours in any work day.

Ms. Agaceta and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510 and 1194 and Wage Order No. 5-2001. HCA Healthcare failed to compensate Ms. Agaceta and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and Wage Order No. 5-2001, § 3; requiring, suffering or permitting Ms. Agaceta and other aggrieved employees to work off-the-clock; requiring, suffering or permitting Ms. Agaceta and other aggrieved employees work during meal periods without compensation; illegally and inaccurately recording time worked by Ms. Agaceta and other aggrieved employees; and other methods to be discovered.

In violation of California law, HCA Healthcare has refused to perform its obligations to compensate Ms. Agaceta and other aggrieved employees for all wages earned and all hours worked. HCA Healthcare's conduct violates Labor Code §§ 510 and 1194 and Wage Order No. 5-2001, § 3.

December 12, 2022

Page 5 of 8

Failure to Timely Pay All Wages Earned

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

HCA Healthcare failed to pay Ms. Agaceta and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. For example, HCA Healthcare required Ms. Agaceta and other aggrieved employees to work off-the-clock, including during meal breaks, without compensation. Additionally, HCA Healthcare failed to pay Ms. Agaceta and other aggrieved employees premium wages owed for each work day a meal period was not provided and each work day a rest period was not authorized and permitted.

HCA Healthcare also failed to pay Ms. Agaceta and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. HCA Healthcare knew it was required to pay overtime wages, yet on many occasions failed to pay Ms. Agaceta and other aggrieved employees overtime wages on any payday.

Failure to Pay All Wages Due Upon Separation

Pursuant to Labor Code §§ 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 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. Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 days.

HCA Healthcare failed to pay accrued wages and other compensation to Ms. Agaceta and other aggrieved employees in accordance with Labor Code §§ 201 and 202. Because HCA Healthcare required Ms. Agaceta and other aggrieved employees to work off-the-clock, including during meal breaks, and failed to pay Ms. Agaceta and other aggrieved employees the premium wages for all meal periods which were not provided and all rest periods which were not authorized

December 12, 2022

Page 6 of 8

or permitted, HCA Healthcare failed and continues to fail to pay the full earned and unpaid wages due to Ms. Agaceta and other aggrieved employees upon separation.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage 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.

HCA Healthcare failed to timely provide Ms. Agaceta and other aggrieved employees accurate itemized wage statements in writing showing the name of all employers, each employee's gross wages earned, total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and Wage Order No. 5-2001, § 7.

HCA Healthcare failed to provide its employees lawful meal and rest breaks; nevertheless, HCA Healthcare failed to include in the wage statements the extra hour of compensation owed for each work day a meal break was not provided and each work day a rest break was not authorized and permitted. In addition, HCA Healthcare had knowledge that Ms. Agaceta and other aggrieved employees performed work off-the-clock and were compensated for such time, yet HCA Healthcare failed to include this time worked on Ms. Agaceta's and other aggrieved employees' wage statements. HCA Healthcare also did not properly calculate Ms. Agaceta's and other aggrieved employees' regular rate of pay. As a result, Ms. Agaceta's and other aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Failure to Maintain Required Records

HCA Healthcare failed to maintain records as required under Labor Code §§ 226 and 1174 and Wage Order No. 5-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

HCA Healthcare failed to provide its employees lawful meal and rest breaks; nevertheless, HCA Healthcare failed to include in the wage statements the extra hour of compensation owed for each work day a meal break was not provided and each work day a rest break was not authorized and permitted. In addition, Ms. Agaceta and other aggrieved employees performed work off-the-clock, including during meal breaks, and were compensated for such time. As a result, HCA

MATERN LAW GROUP, PC

December 12, 2022

Page 7 of 8

Healthcare failed to maintain accurate records of the total daily hours worked by each employee, meals periods, and when each employees began and ended each work period. Employees' wage statements also were inaccurate. In addition, HCA Healthcare did not properly calculate Ms. Agaceta's and other aggrieved employees' regular rate of pay.

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

Labor Code § 2802(a) requires an employer to indemnify an 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. HCA Healthcare failed to indemnify Ms. Agaceta and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of HCA Healthcare, including but not limited to expenses for the purchase of uniforms and uniform accessories, and other employment-related expenses, in violation of Labor Code § 2802.

This notice is hereby given to HCA Healthcare and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of HCA Healthcare, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice shall further represent Ms. Agaceta's reasonable attempt to settle her dispute with HCA Healthcare prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to apprise HCA Healthcare of Ms. Agaceta's aforementioned grievances and the proposed remedies as detailed below, while affording HCA Healthcare reasonable opportunity to meet Ms. Agaceta's demands.

Demand is hereby made that HCA Healthcare shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

MATERN LAW GROUP, PC

December 12, 2022

Page 8 of 8

1. HCA Healthcare shall pay Ms. Agaceta and all other similarly-situated persons employed by HCA Healthcare at any time during the past 48 months back pay and compensation for the above-referenced violations.

2. HCA Healthcare shall comply with all California labor laws and ensure that its non-exempt employees are provided lawful meal and rest breaks and paid minimum and overtime wages for all hours worked.

3. HCA Healthcare shall conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them regarding the number of meal and rest breaks which were not provided, with the investigation to be completed within 60 days.

4. HCA Healthcare shall pay each employee one hour of pay for each work day he or she was not provided one or more meal breaks and each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7.

5. HCA Healthcare shall pay accrued interest to all employees at the rate of 10% per annum for said unpaid wages.

7. HCA Healthcare shall pay waiting time penalties, equal to 30 days of pay, to each former employee who was not paid all wages due as described herein.

8. HCA Healthcare shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698, et seq., including but not limited to penalties under Labor Code §§ 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1199 and 2699 and Wage Order No. 5-2001, § 20.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to Matern Law Group, PC, 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266. Additionally, please advise us if the Agency or HCA Healthcare requires additional information regarding Ms. Agaceta's complaints.

Thank you for your prompt attention to this matter.

Very truly yours,

MATERN LAW GROUP, PC



Kayvon Sabourian, Esq.