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Via Certified Mail

All American Healthcare Services, Inc.
494 Broad Street
FL 4
Newark, NJ 07102

Subject: *Emma Jean Elwood v. All American Healthcare Services, Inc.*

Dear Representative:

This office represents Emma Jean Elwood ("Plaintiff") in connection with Labor Code violation claims related to their employment with All American Healthcare Services, Inc. ("Employer"). Employer can be contacted at:

All American Healthcare Services, Inc.
494 Broad Street
FL 4
Newark, NJ 07102

Plaintiff was subjected to at least one of the Labor Code violations alleged in this letter while employed by Employer. As such, Plaintiff intends to seek PAGA penalties on behalf of herself and all other non-exempt employees of Employer employed in California and who were subjected to any or all of the Labor Code violations referenced herein during the PAGA Period ("Aggrieved Employees"). The PAGA Period begins one year prior to the date of this letter and, because the violations alleged herein are ongoing, the PAGA Period extends beyond the date of this letter.

This letter is sent pursuant to the requirements of Labor Code section 2699.3. The Labor Code violations being alleged are as follows:

Overtime Violations

Labor Code section 510 and the applicable Wage Order provides that an employee shall be paid one and one-half times their regular rate of pay for any work in excess of eight hours in one workday or 40 hours in any one workweek. Labor Code section 510 and the applicable Wage Order further provides that an employee shall be paid twice their regular rate of pay for any work in excess of 12 hours in one day.

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Overtime Paid at the Wrong Regular Rate

Overtime must be paid based off an employee's regular rate of pay. Here, Employer failed to incorporate all remunerations, including shift differentials, into the calculation of the regular rate of pay for purposes of calculating the Aggrieved Employees overtime rates.

Civil Penalties Applicable to Overtime Violations

As a result of the above overtime violations, Employer is subject to the civil penalties listed in Labor Code sections 558, 1197.1, and 2699.

Derivative Wage Statement Penalties

Labor Code section 226 requires an employer to provide wage statements to its employees which include, among other things, gross and net wages earned, total hours worked, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. As a result of the overtime violations set forth above, Employer failed to provide the Aggrieved Employees with wage statements which accurately listed all overtime wages earned. Employer is therefore subject to the civil penalties listed in Labor Code sections 226.3 and 2699.

Derivative Waiting Time Penalties

Labor Code sections 201 and 202 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee's resignation. When an employer fails to comply with the above, the employee is entitled to the equivalent of a day's wage at their regular rate of pay for each day the employer is late, for up to 30 days. (Labor Code section 203).

Because Employer did not pay the Aggrieved Employees all overtime wages owed during their employment, it follows that the Aggrieved Employees were also never paid these wages after the conclusion of their employment. Thus, Employer had an obligation to pay waiting time penalties, but intentionally failed to do so, and is therefore subject to the civil penalties listed in Labor Code section 2699.

Meal Break Violations

Labor Code section 512 and the applicable Wage Order provides that an employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, or more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Meal periods must be uninterrupted, and the employee must be relieved of all duty.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal period was not provided.

Premium Pay Paid at the Wrong Regular Rate

Premium pay for missed meal breaks must be paid at the employees' regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021)). The regular rate of pay includes all remunerations, including shift differentials, incentive pay, and other non-discretionary bonuses. Here, the Aggrieved Employees received shift differentials, however, this pay was not included in the calculation of premium pay paid for missed meal breaks.

Non-Compliant Meal Breaks

An employer provides compliant meal breaks to its employees "if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break." (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012)).

Here, the Aggrieved Employees were generally unable to take meal breaks as a result of the significant workload. Furthermore, when they were able to take meal breaks, the meal breaks were non-compliant because the Aggrieved Employees were required to remain on call and on premises during their meal breaks.

Civil Penalties Applicable to Meal Break Violations

As a result of the above meal break violations, Employer is subject to the civil penalties listed in Labor Code sections 558 and 2699.

Derivative Wage Statement Penalties

Labor Code section 226 requires an employer to provide wage statements to its employees which include, among other things, gross and net wages earned. As a result of Employer's failure to pay all premium pay for missed meal breaks as set forth above, Employer failed to provide the Aggrieved Employees with wage statements which accurately listed all wages earned. Employer is therefore subject to the civil penalties listed in Labor Code sections 226.3 and 2699.

Derivative Waiting Time Penalties

Labor Code sections 201 and 202 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee's resignation. When an employer fails to comply with the above, the employee is entitled to the equivalent of a day's wage at their regular rate of pay for each day the employer is late, for up to 30 days. (Labor Code section 203).

Because Employer did not pay the Aggrieved Employees all premium pay owed during their employment, it follows that the Aggrieved Employees were also never paid these wages after the conclusion of their employment. Thus, Employer had an obligation to pay waiting time

penalties, but intentionally failed to do so, and is therefore subject to the civil penalties listed in Labor Code section 2699.

Rest Break Violations

Labor Code section 226.7 and the applicable Wage Order requires employers to authorize and permit its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours or major fraction thereof. Employees must be relieved of all duties during their rest breaks.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant rest break was not provided.

Premium Pay Paid at the Wrong Regular Rate

Premium pay for missed rest breaks must be paid at the employees' regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021)). The regular rate of pay includes all remunerations, including shift differentials, incentive pay, and other non-discretionary bonuses. Here, the Aggrieved Employees received shift differentials, however, this pay was not included in the calculation of premium pay paid for missed rest breaks.

On Call, On Duty Rest Breaks

The Aggrieved Employees were required to remain on call and generally on duty during their rest breaks. Courts have repeatedly held that employers may not impose any limits on rest breaks. (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 269 (2016) (an employer cannot "satisfy its obligation to relieve employees from duties and employer control during rest periods when the employer [] requires its employees to remain on call")). Thus, Employer violated the Labor Code by requiring the Aggrieved Employees to remain on call and on duty during their rest breaks.

On Premises Rest Breaks

An employer generally may not place restrictions on its employees during their rest breaks, such as requiring its employees to remain on the premises and subject to the employer's control. In fact, the California Division of Labor Standards and Enforcement has provided the following guidance on its website:

Q. Can my employer require that I stay on the work premises during my rest period?

A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all

duties and relinquish control over how employees spend their time." (citation omitted) As a practical matter, however, if an employee is provided a ten minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.

Here, since the Aggrieved Employees were not allowed to leave the work premises during their rest breaks, they were subject to Employer's control during the rest breaks. Thus, the Aggrieved Employees were not provided with compliant rest breaks.

Civil Penalties Applicable to Rest Break Violations

As a result of the above rest break violations, Employer is subject to the civil penalties listed in Labor Code section 2699.

Derivative Wage Statement Penalties

Labor Code section 226 requires an employer to provide wage statements to its employees which include, among other things, gross and net wages earned. As a result of Employer's failure to pay all premium pay for missed rest breaks as set forth above, Employer failed to provide the Aggrieved Employees with wage statements which accurately listed all wages earned. Employer is therefore subject to the civil penalties listed in Labor Code sections 226.3 and 2699.

Derivative Waiting Time Penalties

Labor Code sections 201 and 202 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee's resignation. When an employer fails to comply with the above, the employee is entitled to the equivalent of a day's wage at their regular rate of pay for each day the employer is late, for up to 30 days. (Labor Code section 203).

Because Employer did not pay the Aggrieved Employees all premium pay owed during their employment, it follows that the Aggrieved Employees were also never paid these wages after the conclusion of their employment. Thus, Employer had an obligation to pay waiting time penalties, but intentionally failed to do so, and is therefore subject to the civil penalties listed in Labor Code section 2699.

Unreimbursed Work Expenses

Labor Code section 2802 requires an employer to "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"

Here, the Aggrieved Employees incurred out of pocket expenses in connection with their employment, but these expenses were not reimbursed by Employer. Specifically, the Aggrieved

Employees were required to buy their own equipment to take their patient's vitals, such as blood pressure cuffs, pulse oximeters, thermometers, etc.

Civil Penalties Applicable to Work Expense Violations

As a result of Employer's failure to reimburse all work-related expenses, Employer is subject to the civil penalties listed in Labor Code section 2699.

Wage Statement Violations

Labor Code section 226 requires an employer to provide wage statements to its employees which include, among other things, gross and net wages earned, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate. Employer failed to provide wage statements which accurately reflected this information.

Civil Penalties Applicable to Wage Statement Violations

As a result of the wage statement violations detailed above, Employer is subject to the civil penalties listed in Labor Code sections 226.3 and 2699.

Waiting Time Penalties

Labor Code sections 201 and 202 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee's resignation. When an employer fails to comply with the above, the employee is entitled to the equivalent of a day's wage at their regular rate of pay for each day the employer is late, for up to 30 days. (Labor Code section 203).

Because Employer did not pay the Aggrieved Employees all wages owed during their employment, it follows that the Aggrieved Employees were also never paid these wages after the conclusion of their employment. Thus, Employer had an obligation to pay waiting time penalties, but intentionally failed to do so.

Civil Penalties Applicable to Waiting Time Penalties

Because of Employer's failure to pay all wages at the conclusion of employment and to pay the resulting waiting time penalties, Employer is subject to the civil penalties listed in Labor Code section 2699.

Sick Pay Violation

Labor Code section 246 requires that employers pay sick pay at an employee's regular rate of pay. The regular rate of pay includes all remunerations, including shift differentials, incentive pay, and other non-discretionary bonuses.

Here, the Aggrieved Employees received shift differentials, however, this pay was not included in the calculation of their sick pay in violation of Labor Code section 246. Furthermore, since the Aggrieved Employees' did not receive all sick pay during their employment, it follows that they also did not receive these wages at the conclusion of their employment in violation of Labor Code sections 201 and 202.

Civil Penalties Applicable to Sick Pay Violations

As a result of the sick pay violations detailed above, Employer is subject to the civil penalties listed in Labor Code section 2699.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional facts or theories of liability, they expressly reserve the right to revise these facts and/or add any new claims by amending and/or supplementing this letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Sincerely,

/s/

Manny Starr