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VIA ONLINE FILING

Labor and Workforce Development Agency

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<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Mercedes Colin v. Prime Healthcare Services – San Dimas, LLC, et al.*

Dear Representative:

This office represents Mercedes Colin (“**Ms. Colin**”) with respect to her claims under the California Labor Code against Prime Healthcare Services – San Dimas, LLC; Prime Healthcare Services, Inc.; and Prime Healthcare Management, Inc. (“**Employer**”). This letter is being sent simultaneously to Employer by certified mail.

Employer has employed Ms. Colin since approximately September 2017, as an hourly, non-exempt employee. Employer has employed Ms. Colin as an Environmental Services (“EVS”) Housekeeper at Employer’s location at 1350 West Covina Blvd., San Dimas, CA 91773. Employer is a health system comprised of community hospitals and outpatient facilities.

Ms. Colin intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 (“**PAGA**”). Ms. Colin is seeking penalties solely in a representative capacity on behalf of the State of California and all current and former non-exempt employees of Employer (“**Aggrieved Employees**”). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employer violated several of California’s wage and hour laws during Ms. Colin’s employment, including but not limited to violations of California Labor Code sections 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198, and the Industrial Welfare Commission Wage Orders (“IWC Wage Order”) including *inter alia*, IWC Wage Order No. 5. These claims are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Ms. Colin and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employer regularly required Ms. Colin and Aggrieved Employees to work more than eight (8) hours in a day or forty (40) hours in a workweek, but failed to pay them overtime compensation for such



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work. Employer also failed to provide Ms. Colin and Aggrieved Employees with adequate training as to the payment of overtime compensation, all in an effort to keep its workers uninformed as to their legal right to overtime compensation. In addition, Employer regularly required Ms. Colin and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Ms. Colin and Aggrieved Employees to respond to Employer and work-related requests and perform work while clocked out for purported meal breaks. For instance, Ms. Colin has experienced frequent interruptions during her meal break periods with requests to perform work-related tasks. Ms. Colin and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Ms. Colin and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Ms. Colin and Aggrieved Employees to perform work off-the-clock without compensation, Employer also utilized time rounding practices that resulted in the systematic underpayment of wages to Ms. Colin and Aggrieved Employees, including minimum wages, straight time wages and overtime wages. Employer also failed to accurately record the actual time worked by Ms. Colin and Aggrieved Employees, which resulted in a failure to pay Ms. Colin and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employer failed to pay overtime to Ms. Colin and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employer has failed to pay Ms. Colin and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Ms. Colin and Aggrieved Employees will therefore seek unpaid wages; PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; compensation pursuant to Labor Code Section 1194; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employer failed to provide Ms. Colin and Aggrieved Employees with legally-compliant 30-minute meal periods. Ms. Colin and Aggrieved Employees were required by Employer to work more than five (5) hours per day, but were not provided with timely uninterrupted 30-minute meal periods. Further, Ms. Colin and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Ms. Colin and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Ms. Colin has regularly experienced late meal break periods taken after the fifth (5th) hour of work due



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to work demands to which she was expected to promptly respond and/or complete. Additionally, Employer has required that Ms. Colin monitor a pager as well as her personal cell phone for work-related communications. As a result, Ms. Colin has experienced frequent interruptions during her meal break periods with work-related communications to her pager and/or personal cell phone. Further, Ms. Colin has felt pressured to work through or skip her meal break periods due to work demands.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Ms. Colin and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Ms. Colin and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Ms. Colin and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Ms. Colin and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Ms. Colin and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to telephone calls, pages, and in-person verbal interruptions; and (7) Employer's policy and culture prevented Ms. Colin and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees right to receive timely, uninterrupted, and duty-free meal periods.

Ms. Colin and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 226.7, 512(a) and 1198.

Ms. Colin and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

Employer failed to authorize and permit Ms. Colin and Aggrieved Employees take legally-compliant 10-minute rest periods. Employer required Ms. Colin and Aggrieved Employees to work through rest periods. Ms. Colin and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Ms. Colin and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working



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more than ten (10) hours in day. For instance, Ms. Colin has been authorized to take only one (1) rest break period per shift despite regularly working over eight (8) hours. Further, on the rare occasions when Ms. Colin and Aggrieved Employees took a rest period, it was frequently interrupted or cut short. For example, Employer has required that Ms. Colin carry and monitor a pager along with her personal cell phone for work-related communications, including during her rest break periods. Moreover, Ms. Colin and Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Ms. Colin and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employer failed to adequately inform and train Ms. Colin and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Ms. Colin and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Ms. Colin and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Ms. Colin and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to telephone calls, pages, and in-person verbal interruptions; and (7) Employer's policy and culture prevented Ms. Colin and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees right to receive rest periods.

Ms. Colin and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 226.7, and 1198.

Ms. Colin and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

As to each pay period, Employer has failed to timely pay all wages earned because Ms. Colin and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code section 204(a).



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Ms. Colin and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Ms. Colin and Aggrieved Employees failed to include the actual hours worked, the actual gross wages earned, net wages earned, and all applicable and correct rates of pay. Accordingly, Employer violated California Labor Code section 226(a).

Ms. Colin and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

Employer has failed to maintain accurate records relating to Ms. Colin and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 1198.5 and 1174(d).

Ms. Colin and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

Therefore, on behalf of the State of California and all Aggrieved Employees, Ms. Colin may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Very Truly Yours,

Ryan Chuman

Notice provided to Employer via Certified Mail (9414 7111 0549 5804 2276 60)

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