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Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Behavioral Health Services, Inc.
15519 Crenshaw Blvd.
Gardena, CA 90249

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Aracely Aguilar
Employer: Behavioral Health Services, Inc.

Dear Sir or Madam:

Claimant Aracely Aguilar has retained Nazo Koulloukian, Esq. of the Koul Law Firm and Garen Majarian of the Majarian Law Group, APC, to represent her, and all other aggrieved employees, for wage and hour claims against her former employer, Behavioral Health Services, Inc. (hereafter “Employer”). Claimant worked for Employer as a Peer Support Specialist on an hourly, non-exempt basis until November 2, 2022.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 5)

Off the Clock Hours Worked and Unpaid Overtime. Section 2(K) of Wage Order 5 defines “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.”

Employer would require Claimant and her coworkers to arrive and begin working at least 5 minutes prior to her shift start time in order to receive updates on the status of patients from the employee going off shift. This resulted in numerous off the clock hours worked, many of which were overtime hours worked, given that employees work 40 hour workweeks.

Timecard Rounding. Instead of using a timeclock or asking employees to record their time indicating all hours and minutes worked, Employer required employees to manually enter their time on handwritten timecards stating only the shift start time and the shift end time, essentially rounding timecards down to the shift begin and end times. Oftentimes the rounding would cause the Claimant and Aggrieved Employees to not be paid for all hours they worked. When it comes to time shaving and rounding, the California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.)

The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours and overtime hours worked.

Failure to Pay Wages- Required Minimum Wage. Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer’s practice of rounding time-card entries. Based on Employer’s unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer’s failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197,

1197.1, 1199 and Wage Order 5-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Additionally, as a standalone violation, Employer paid wages to employees impermissibly late. For instance, Claimant did not receive wages until July 26, 2022, for the July 1 – 15, 2022, pay period. Claimant and aggrieved employees frequently received their much needed and low wages unlawfully late.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that she and her co-workers never received rest periods as a result of Employer's staffing and business practices.

Rest periods were either less than ten minutes, not provided, interrupted or late, "on duty", or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer chronically understaffed its facilities, failing to schedule a sufficient number of employees to allow Claimant and her coworkers to take rest and meal breaks. Paying only \$18 per hour, and with many nearby facilities, for a small cost Employer could have provided sufficient relief workers but chose instead to require employees to forego their breaks, not permitting them to leave their duties.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A). When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

Failure to Provide Uninterrupted Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may 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..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during

any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11(A) of the Wage Orders provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.” Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees frequently worked straight through their shifts without a meal period on a daily basis. Employer will argue that it required employees to sign On-Duty Meal Period Agreements, however these agreements are invalid for many reasons. The agreement Claimant signed was not completely filled out by Employer. Further, for a meal break waiver to be valid, the Employer must qualify for the nature of the work exception. Here, employees’ job duties are not so specialized that Employer could not have staffed the facility with sufficient employees to permit employees to take meal and rest breaks. Because Employer is unable to meet the nature of the work exception, even if it is determined that the waivers were adequately drafted and completed (and they weren’t), Employer is liable for meal period violations for each shift worked by employees.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy, and/or (6) because Employer used invalid meal period waivers. Employees were not paid a premium payment, paid as an hour’s wage when meal periods were not given to them in compliance with California law. Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Claimant used her personal cell phone for work purposes and was required to regularly use this phone to communicate via text and phone calls with her supervisors. Employer failed to pay any amount for the required use of Claimant and aggrieved employees’ personal phones. Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Pay Split Shift Pay

(Cal. Lab. Code §§1198 and 2698 *et seq.*)

Labor Code §1198 prohibits the employers from subjecting employees to “conditions of labor prohibited by the order.” Wage Order 5-2001 (4C), codified at 8 C.C.R. § 11070(4C), requires that, “[w]hen an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.”

Here, Employer required Claimant and her coworkers to attend meetings and training on days when they were otherwise schedule to work. The block of unpaid time between each required shift is longer than one hour and is not a designated meal period. For instance, on June 23 and 24, 2022, Claimant worked split shifts but did not receive split shift pay in the corresponding pay period.

Moreover, as a derivative claim, Claimant alleges that her pay statements were inaccurate as they failed to indicate required split shift wages, thus failing the requirements of Labor Code §226(a) and liable under 226.3. Employer is further liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

Failure to Properly Accrue and Pay for Unpaid Vacation

(Cal. Lab. Code §227.3 and 2698 *et seq.*)

Cal. Lab. Code §227.3 provides that “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate.” In this case, Employer’s policy is that Claimant and her coworkers accrue vacation wages every pay period. However, during the last pay period worked by Claimant, Employer failed to list the accrued vacation wages on her wage statement and failed to pay her for any accrued vacation wages despite the fact that she was entitled to them. Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

Failure to Comply with California Sick Pay Requirements

(Cal. Lab. Code §§ 246, 247.5, 248.6 and 2698 *et seq.*)

Claimant and aggrieved employees allege that Employer failed to provide required California paid sick days and further failed to distribute and maintain required documentation concerning how may sick dates were available, in violation of Labor Code §§246, 246(a), 246(b)(1), and 247.5 and 248.6. Employer failed to list available and used

Covid-19 sick pay hours on employee wage statements or otherwise distribute documentation to aggrieved employees concerning their Covid-19 sick pay.

Labor Code § 248.6(d) (1)-(2) states:

For purposes of the enforcement of subdivision (i) of Section 246 as it relates to this section, COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days. The employer shall provide an employee with written notice that sets forth the amount of COVID-19 supplemental paid sick leave that the employee has used through the pay period in which it was due to be paid on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. The employer shall list zero hours used if a worker has not used any COVID-19 supplemental paid sick leave.

Labor Code 246(i) (i) requires that the employer "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 the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages." Because Employer failed to list Covid-19 sick pay on wage statements, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 246, 248, 1174, 1174.5, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). Wage statements issued to Claimant and aggrieved employees do not state the total hours worked. Additionally, because Employer requires that employees write in their shift start and end times on their timecards instead of actual hours worked, both the wage statements and the records maintained by Employer fail to reflect the actual hours, including overtime hours, worked by employees. Wage statements also fail to state meal and rest penalty wages, split shift pay, all accrued vacation wages, reimbursements for business expenses, and the number of Covid-19 supplemental sick leave available.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to list all the items

described above. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment related contracts and documents that contained unlawful terms of employment, legally insufficient meal break waivers.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a horizontal line extending from the end of the signature.

Nazo Koulloukian, Esq.
Attorneys for Claimant

Cc:

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