BRADLEY/GROMBACHER LLP
CLASS ACTIONS, MASS TORTS & CATASTROPHIC INJURIES

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<u>Via Online Filing System (https://dir.tfaforms.net/128)</u>
Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: **<u>Written Notice – Private Attorney General Act ("PAGA") – Labor Code § 2698 *et seq.*</u>**
Jennifer Larssen v. Saint Agnes Home Health and Hospice, LLC, et al.

PAGA Administrator:

Notice is hereby provided that, pursuant to *Labor Code* § 2699.3, Jennifer Larssen ("Employee") contends that Saint Agnes Home Health and Hospice, LLC ("Saint Agnes") and Trinity Home Health Services ("Trinity Home Health") (collectively referred to as "Employers") have violated, and continue to violate, provisions of the California Labor Code ("*Labor Code*") and wage orders promulgated by the Industrial Welfare Commission ("IWC wage orders"), including, but not limited to, *Labor Code* §§ 201-203, 204, 221, 223, 226(a), 510, 1174, and the applicable wage order.

In accordance with the required notice under *Labor Code* § 2699.3 of the Private Attorney General Act ("PAGA"), this letter shall serve as Employee's formal written notice to the Labor and Workforce Development Agency ("LWDA") of Employers violations of the *Labor Code*.

Employee worked for Employers as a 'Registered Nurse' from her start date of October 9, 2023, until her date of termination on November 17, 2025.

Employee is an "aggrieved employees" as defined in *Labor Code* § 2699(a) and brings this action on behalf of herself and all other aggrieved employees of Employers and seeks penalties under PAGA for Employers' violations of the *Labor Code*.

Employers operated a network home health care providers that services residents and does business throughout the State of California.

Employer Saint Agnes is a member of the Trinity Home Health network, operating in 11 states, including California. Employer Saint Agnes provides home care services for individuals recovering from illness or surgery, end of life hospice care and support and bereavement support for families grieving and dealing with sick or dying loved ones. Employer Saint Agnes provides services throughout the state of California as well as the County of Fresno.

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Employer Trinity Home Health, is a Michigan based non-profit network of healthcare providers, including skilled nursing care, home health aides, physical therapy, occupational therapy, speech therapy, and social workers, servicing residents throughout the State of California, including the County of Fresno.

At all relevant times, Employers issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all aggrieved, hourly paid employees in California, including Employee and others similarly situated, regardless of their location or position.

Employee and other aggrieved employees seek penalties and other compensation from Employers for the Relevant Time Period because Employers:

1. Failed to Pay Employees for All Overtime Worked (*Lab. Code* §§ 510, 1198);
2. Failed to Pay Employees for All Hours Worked (*Lab. Code* §§ 210, 221, 223);
3. Failed to Pay All Wages Owed at Termination (*Lab. Code* §§ 201-203);
4. Failed to Timely Pay All Wages During Employment (*Lab. Code* § 204);
5. Failed to Provide Employee and Aggrieved Employees with Accurate, Itemized Wage Statements and Failed to Maintain Accurate Records (*Lab. Code* §§ 226(a), 1174);

Below please find the relevant facts and legal theories to support the aforementioned violations.

<u>Failure to Pay Overtime</u>

During the Relevant Time Period, upon information and belief, Employers had, and continue to have, a company-wide policy of failing to pay Employee and aggrieved employees all overtime compensation owed at their regular rate of pay, including premium pay. Additionally, Employee and aggrieved employees were offered a $10,000.00 hiring bonus that was to be paid in increments of $2,500.00 every six months for 1-year and then the remaining $5,000.00 in year two. However, Employee, and based on information and belief, alleges that she and other aggrieved employees did not receive their entire bonus within the 2-year period.

Moreover, this additional compensation should have been calculated into Employee, and aggrieved employees' regular rate of pay for purposes of calculating their overtime compensation rate, including premium pay.

At all times, Employee and other aggrieved employees remained under the control of Employers.

Employers knew or should have known that as a result of these company-wide practices and/or policies, Employee and other aggrieved employees were performing assigned duties and were suffered or permitted to perform work for which they were not properly paid. Because Employee and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this work qualified for overtime premium pay.

For example, Employee was regularly scheduled to work from 8:00 A.M. to 5:00 P.M. However, due to the nature of the business, Employee often arrived to work early to speak with patients and family members, and Employee and other aggrieved employees would also be scheduled to work one Saturday a month during the Relevant Time Period. Employee and aggrieved employees were not compensated at their regular rate for overtime they worked.

California *Labor Code* §§ 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") wage order require Employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC wage order further provides that Employers are required to pay employees working more than twelve (12) hours a day in compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

Accordingly, Employers regularly failed to pay overtime wages to Employee and other aggrieved employees for all overtime hours worked in violation of *Labor Code* §§ 510 and 1198. Employee and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to *Labor Code* §§ 1197.1 and/or 2699(a), (f)-(g).

<u>Failure to Pay All Wages</u>

As stated above, During the Relevant Time Period, upon information and belief, Employers had, and continue to have, a company-wide policy of failing to pay Employee and aggrieved employees all compensation owed at their regular rate of pay. Additionally, Employee and aggrieved employees were offered a $10,000.00 hiring bonus that was to be paid in increments of $2,500.00 every six months for 1-year and the remaining $5,000.00 in year two. However, Employee, and based on information and belief, alleges that she and other aggrieved employees did not receive their entire bonus within the 2-year period, and the additional compensation was never calculated for purposes of calculating their regular rate of pay.

Thus, Employers did not pay Employee and other aggrieved employees all wages for all hours worked at the regular rate of pay.

Labor Code § 221 provides in relevant part: It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Additionally, *Labor Code* § 223 provides in relevant part, "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

Pursuant to *Labor Code* § 210, In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty in the amount of one hundred dollars ($100) for each failure to pay each employee, and $200 for each subsequent failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

Employee is informed and believes, and therefore alleges, that Employers' compensation schemes do not fairly compensate Employee and aggrieved employees for all hours spent performing their job duties at their regular rate of pay, and therefore, the failure to pay designated wages to Employee and aggrieved employees for each and every hour worked violates *Labor Code* §§ 210, 221, 223, and the applicable IWC wage order.

Accordingly, Employers regularly failed to pay Employee and other aggrieved employees for all of the hours they worked, at their regular rate of pay, in violation of *Labor Code* §§ 221 and 223. Employee and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to *Labor Code* §§ 1197.1 and/or 2699(a), (f)-(g).

Failure to Timely Pay Final Wages Upon Termination

As a pattern and practice, Employers regularly failed to pay Employee and aggrieved employees their final wages pursuant to *Labor Code* §§ 201-203.

Labor Code §§ 201 and 202 provide that if an Employers discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her 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 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, Employers has a company-wide practice or policy of failing to pay all accrued wages to departing employees and don't adhere to the time requirements set forth in *Labor Code* §§ 201 and 202.

Employers willfully failed to pay Employee and aggrieved employees the earned and unpaid wages set forth above, including but not limited to regular wages earned, overtime compensation, and bonus and incentive pay, either at the time of discharge, or within seventy-two (72) hours of their leaving their employment with Employers.

Failure to Timely Pay Wages During Employment

California *Labor Code* section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, *Labor Code* § 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the Relevant Time Period, Employer willfully failed to pay Employee and the aggrieved employees all wages due including, but not limited to, overtime wages, all wages, and/or bonus and incentive pay, within the time periods specified by California *Labor Code* § 204.

Employee and aggrieved employees are entitled to recover civil penalties, attorneys' fees and costs, and interest thereon, pursuant to *Labor Code* §§ 210, 218.5 and/or 2699(a), (f)-(g).

Failure to Provide Accurate, Itemized Wage Statements

Labor Code § 226(a) requires Employers make, keep, and provide true, accurate, and complete wage records. Employers has not provided Employee and other aggrieved employees with properly itemized wage statements. *Labor Code* § 226(e) provides that if an Employers fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, *Labor Code* § 226.3 provides that any Employers who violates § 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the Employers fails to provide the employee a wage statement or fails to keep the required records pursuant to § 226(a).

During the relevant time period, Employers has knowingly and intentionally provided Employee and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. Employers issued uniform wage statements to Employee and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable rates of pay in effect during the pay period, including rates of pay for overtime wages and/or regular wages at Employee and aggrieved employees' regular rate of pay.

Employers violated §§ 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Employers did not list the correct amount of gross wages and net wages earned by Employee and other aggrieved employees in compliance with § 226(a)(1) and § 226(a)(5), respectively. For the same reason, Employers failed to accurately list the correct rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of § 226(a)(9). For the same reason, Employers also failed to list the correct amount of net wages in violation of § 226(a)(5). Employers also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or regular hourly wage at the regular rate of pay, in violation of § 226(a)(9).

As a result of not having kept accurate records, Employee and aggrieved employees suffered injuries in the form of confusion over whether they received all wages owed to them, and difficulty and expense in reconstructing pay records in addition to other injuries which may come to light during the discovery process.

Thus, Employee and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon pursuant to *Labor Code* §§ 226.3, 1174.5, and/or 2699(a), (f)-(g).

<u>Conclusion</u>

Enclosed please find a copy of the class action complaint that is in the process of being filed in the Superior Court for the State of California, Fresno County. Employee respectfully requests that the LWDA notify this office within sixty-five (65) days if it wishes to investigate this matter further. A copy is being sent via certified mail to Employers. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.

Thank you for your time and consideration.

Very truly yours,

BRADLEY/GROMBACHER, LLP

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Marcus J. Bradley, Esq.

cc: **<u>SAINT AGNES HOME HEALTH AND HOSPICE</u>**
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