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ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
https://dir.tfaforms.net/308

VIA CERTIFIED MAIL

F.C.H., Inc., dba Fireside Health Care Center
c/o Victor Lundquist
25910 Acero Rd Suite 350
Mission Viejo, CA 92691

Re: *Luctama v. F.C.H., Inc., dba Fireside Health Care Center, et al.*
Notice Regarding Private Attorneys General Act of 2004 Claim

To Whom It May Concern:

Pursuant to section 2699.3 of the California Labor Code Private Attorneys General Act of 2004 ("PAGA" or "the Act") (Lab. Code § 2698 *et seq*.), this letter shall serve as written notice of claims for civil penalties that will be pursued by Ms. Betty Luctama ("Ms. Luctama") as proxy for the Labor and Workforce Development Agency ("LWDA") on behalf of all non-exempt aggrieved employees employed by F.C.H., Inc., dba Fireside Health Care Center ("Fireside") in California during the statutory period, against Fireside.

Fireside operates a skilled nursing and health care facility located at 947 Third Street, Santa Monica, California 90403. Ms. Luctama was employed by Fireside from approximately July 28, 2025 to September 30, 2025 as a Certified Nursing Assistant. Pursuant to California law, Fireside was and is at all relevant times Ms. Luctama's employer during the statutory period.

In her representative action, Ms. Luctama will seek civil penalties pursuant to PAGA as a result of Fireside's failure to: (1) provide proper meal periods and/or premium pay for non-compliant meal periods (Lab. Code §§ 226.7, 512, 558, 1198, 1199); (2) provide proper rest periods and/or premium pay for non-compliant rest periods (Lab. Code §§ 226.7, 558, 1197, 1198, 1199); (3) indemnify for business expenses (Lab. Code § 2802); (4) pay accrued sick pay (Lab. Code § 246); (5) furnish complete and accurate itemized wage statements (Lab. Code §§ 226, 226.3, 2699); and (6) timely pay all wages due within the statutory time period upon separation of employment (Lab. Code §§ 201, 202, 203, 2699).

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7, 512(a), 558, 1198, 2699, and the "Meal Periods" Section of the Applicable Wage Order)

Labor Code section 226.7(b) states, in pertinent part, "An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a meal period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

Labor Code section 512(a) states, in pertinent part, "An 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… [a]n employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived."

Labor Code section 1198 states, in pertinent part, "The employment of any employee… under conditions of labor prohibited by the [Wage Order] is unlawful."

In relevant part, Section 2 of the applicable Wage Order states that, "Hours worked means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work."

Section 11 of the applicable Wage Order provides that:

A. No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the 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. An "on-duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

B. If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employer's regular rate of compensation for each workday that the meal period is not provided.

Upon information and belief, Fireside failed and fails to provide Ms. Luctama and aggrieved employees with compliant thirty minute off-duty meal periods for work periods and failed to pay them premium wages at their regular rates of pay thereto. For example, Ms. Luctama's meal periods were frequently interrupted. Ms. Luctama was required to keep her personal cell phone on during meal periods, preventing her from being relieved of all duty during her meal periods. Additionally, Ms. Luctama regularly took meal periods after the fifth hour of work, sometimes not until after 8:00 PM, despite starting her shift at 3:00 PM. Ms. Luctama was not paid meal period premiums for these violations.

Accordingly, Ms. Luctama, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE REST PERIODS

(Labor Code §§ 226.7, 1197, 1198, 2699, and the "Rest Periods" Section of the Applicable Wage Order)

Labor Code section 1198 states, in pertinent part, "The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 226.7(b) states, in pertinent part, "An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission."

Pursuant to *Augustus v. ABM Security Services, Inc.*, (2017) 2 Cal.5th 257, 260, "[d]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time."

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a rest period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

Section 12 of the applicable Wage Order provides that:

A. Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

B. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensations for each workday that the rest period is not provided.

Upon information and belief, Fireside's policies and practices failed and fails to provide Ms. Luctama and aggrieved employees with off-duty rest periods of at least ten minutes for each four hour work period, or major fraction thereof, and failed and fail to pay them a premium wage at their regular rates of pay on workdays they failed to provide them with an opportunity to take rest periods. Ms. Luctama and other employees typically worked and work eight-hour shifts, entitling them to two ten-minute off-duty rest periods per shift. However, Fireside's policies and practices routinely prevented and prevent them from taking the off-duty ten-minute rest breaks they are entitled to by making Ms. Luctama and other aggrieved employees either miss their rest periods altogether, work through their rest periods, take untimely rest periods, or take shortened rest periods. For example, Ms. Luctama often missed her fifteen-minute rest periods due to workload, and her rest breaks were frequently interrupted. Ms. Luctama was required to keep her personal cell phone on during rest periods. Ms. Luctama was not paid rest period premiums for these violations.

Accordingly, Ms. Luctama, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO REIMBURSE BUSINESS EXPENSES
(Labor Code § 2802)

In pertinent part, Labor Code section 2802(a) states that, "An employer shall indemnify his or her employee(s) for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties." At relevant times during the statutory period, Fireside required Ms. Luctama and aggrieved employees to incur business expenses which Fireside failed and/or refused to reimburse them for. For example, Ms. Luctama was required to use her personal cell phone for work-related communications, including answering calls from management, checking her work hours, and being available to be paged when patients needed help. Ms. Luctama was required to keep her personal cell phone on during her work shifts, meal periods, and rest periods to respond to work-related matters, yet was never reimbursed for these costs incurred.

Accordingly, Ms. Luctama, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PAY ACCRUED SICK PAY
(Labor Code §§ 246, 246.5, 248, 248.5, 558, and 2699)

Labor Code section 246 establishes the Healthy Workplaces, Healthy Families Act of 2014, which requires employers to provide paid sick leave to employees. Labor Code section 246(a) states, in pertinent part, "An employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section."

Labor Code section 246(b) provides that an employer shall provide paid sick days for employee use, which shall be accrued at the rate of not less than one hour per every 30 hours worked. An employer may limit an employee's use of paid sick days to 24 hours or three days in each year of employment.

Labor Code section 246(j) states that accrued paid sick days shall carry over to the following year of employment and may be capped at 48 hours or six days. However, an employer is not required to allow an employee to use more than 24 hours or three days in a year of employment.

Labor Code section 246(h) provides, in pertinent part, that "Paid sick days shall be provided upon the oral or written request of an employee for themselves ... An employer shall provide paid sick days upon the request of an employee to be used for the purposes specified in this section."

Labor Code section 248.5(a) states, "If an employer fails to pay sick leave compensation required by this article to an employee, the Labor Commissioner, in the manner provided by Section 98 for claims for wages, may issue a citation against the employer or other person acting on behalf of the employer."

Labor Code section 246(q) provides, "Paid sick days are compensated at the employee's regular rate of pay, provided that in no case shall the rate of pay be less than the applicable minimum wage."

Upon information and belief, Fireside failed and fails to pay Ms. Luctama and aggrieved employees for accrued sick time shown on their wage statements when such sick time was requested for use or was due upon separation of employment. For example, Ms. Luctama's wage statements clearly reflected accrued sick time throughout her employment, with her sick time balance growing from 1.8572 hours in her first pay period to 5.0978 hours by her final pay period ending September 20, 2025. When Ms. Luctama's employment was terminated on September 30, 2025, Fireside failed to pay out her remaining accrued sick time balance of 5.0978 hours as part of her final wages. Upon information and belief, Fireside's policy and practice of failing to pay accrued sick time when requested by employees or due upon separation similarly affected and affects other aggrieved employees.

Accordingly, Ms. Luctama, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

<u>FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS</u>

(Labor Code §§ 226, 226.3, and 2699)

Labor Code section 226(a) requires an employer to provide an employee with an accurate itemized wage statement that shows: (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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and 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 rate by the employee.

For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty on any employer that violates section 226(a) in the amount of $250.00 per employee per violation in an initial citation and $1,000.00 per employee for each subsequent violation. The civil penalties provided for in Labor Code section 226.3 are in addition to any other penalty provided by law.

Fireside failed to furnish accurate wage statements to Ms. Luctama and aggrieved employees. As a result of the alleged violations discussed above, Fireside furnished wage statements to Ms. Luctama and aggrieved employees that failed to correctly show, among other items: (1) gross wages earned, (2) total hours worked, (3) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate, (4) all deductions, and (5) net wages earned.

Accordingly, Ms. Luctama on behalf of herself and aggrieved employees, will seek to recover available civil penalties for violations of Labor Code 226(a).

<u>FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT</u>

(Labor Code §§ 201, 202, 203, and 2699)

Labor Code section 201 states, in pertinent part, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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 section 203 provides that an employee's wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Upon information and belief, Fireside willfully failed and fails to provide Ms. Luctama and aggrieved employees all wages due and owed upon separation of employment. Ms. Luctama was discharged by Fireside on September 30, 2025. By furnishing Ms. Luctama with a final check that failed to include all earned and owed wages, unpaid meal and rest period premiums, accrued sick pay of 5.0978 hours reflected on her final wage statement, unreimbursed business expenses, and other wages described in the preceding sections, Fireside violated Labor Code section 201 and is subject to waiting time penalties under Labor Code section 203.

Accordingly, Ms. Luctama, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code § 558)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days in any IWC Wage Order, to a civil penalty in the amount of $50 for any initial violation for each pay period in which an employee is underpaid, and $100 for each subsequent violation.

As set forth above, Fireside failed to provide Ms. Luctama and aggrieved employees compliant meal periods and/or rest periods and failed to pay premium wages owed. These violations of the applicable IWC Wage Order provisions regulating hours and days of work subject Fireside to civil penalties under Labor Code section 558. Accordingly, Ms. Luctama, on behalf of aggrieved employees, will seek to recover civil penalties under Labor Code section 558.

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CONCLUSION

The allegations set forth herein are supported by, among other things, records and documents from Ms. Luctama's employment with Fireside, including but not limited to wage statements, personnel records, and Ms. Luctama's confirmation of Fireside's unlawful practices and policies. As a result of the foregoing violations, Ms. Luctama is entitled to file a Complaint and invoke the protections of the Act. Ms. Luctama has placed Fireside on notice by mailing a certified copy of this notice to their corporate headquarters and/or authorized agents.

Very truly yours,

BOUCHER LLP

By: ______________________________
Alexander Gamez, Esq.

cc via email:
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