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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:

Avantgarde Senior Living
21747 Erwin Street, Second Floor
Woodland Hills, CA 91367

Avantgarde Senior Living
5645 Lindley Avenue
Tarzana, CA 91356

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Erika Pineda
Employer: Avantgarde Senior Living

Dear Sir or Madam:

Claimant Erika Pineda 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, Avantgarde Senior Living (hereafter “Employer”). Claimant worked for Employer as a housekeeper on an hourly, non-exempt basis until June 20, 2023.

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 §§218, 510, 558, 1194, 1197, 1198, 1199, 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 prior to their shifts and participate in off the clock COVID screenings prior to clocking in. Employees were also frequently interrupted with work during their unpaid meal periods.

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 requiring off the clock COVID health screenings and requiring work off the clock during meal breaks. 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. 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, for example, was not paid her final wages until six days following her termination.

Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days of 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, requiring that they work straight through their shifts.

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 breaks. Paying only minimum wage, 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 or take a much needed break from 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 the Wage Order. 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.

Although the meal period was the only break in the shift Claimant and aggrieved employees received, it was frequently interrupted or cut short.

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 clock in and out as well as 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 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 fail to reflect the actual hours, including overtime hours, worked by employees. Wage statements also fail to state meal and rest penalty wages, and reimbursements for business expenses.

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.*

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,

Nazo Koulloukian, Esq.
Attorneys for Claimant

Cc:

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