HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

October 20, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Osvaldo Leon v. Renal Treatment Centers – California, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Osvaldo Leon ("Mr. Leon") in claims arising from his employment with Renal Treatment Centers – California, Inc.; DaVita Inc.; and Does 1 through 100 (collectively "DaVita"). Mr. Leon is an "aggrieved employee" as defined by Labor Code Section 2698 *et seq*., due to DaVita's numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, "aggrieved employees" include all of DaVita's non-exempt employees who worked for DaVita in California during the one year immediately preceding the date of this letter through the present.

DaVita employed Mr. Leon in the non-exempt job position of "Patient Care Technician I Chronic" (or similarly titled position). Mr. Leon was initially hired by DaVita in approximately July of 2019 and worked for DaVita up until approximately October of 2022.

During Mr. Leon's employment with DaVita, DaVita did not compensate its hourly non-exempt employees for all the time that they worked, including but not limited to the time that the employees were subject to the control and direction of DaVita; and/or the time that the employees were suffered or permitted to work. Specifically, DaVita required Mr. Leon and other aggrieved employees to undergo COVID-19 temperature checks and screenings at the beginning of the workday, but DaVita failed to compensate Mr. Leon and other aggrieved employees for this time because the temperate checks and screenings were performed off-the-clock. As a result, DaVita failed to pay Mr. Leon and other aggrieved employees minimum and overtime wages for all hours worked.

During Mr. Leon's and other aggrieved employees' employment with DaVita, Mr. Leon and other aggrieved employees worked in excess of 8.0 hours per workday and/or in excess of 40.0 hours per workweek, but did not receive overtime compensation at one and one-half times their regular rate of pay for working overtime hours. Specifically, Mr.

Leon and other aggrieved employees received non-discretionary incentive pay, including a "Village Lives" productivity-based bonus, shift differentials, lump sum differentials, on-call pay, and/or other forms of pay that are not excludable from an employee's "regular rate" of pay (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite DaVita's payment of Incentive Pay to Mr. Leon and other aggrieved employees, DaVita failed to properly calculate Mr. Leon's Mr. Leon and other aggrieved employees' "regular rate" of pay, thereby causing Mr. Leon and other aggrieved employees to be underpaid for his required overtime wages, in addition to being underpaid for his "sick pay" as well as for any meal period premium payments.

DaVita also failed to provide Mr. Leon and other aggrieved employees with all legally compliant meal periods due to DaVita's meal period policies/practices, which have resulted in late (commencing after the fifth hour of work), short (less than 30 minutes), and missed meal periods. In addition, DaVita failed to provide Mr. Leon and other aggrieved employees with second meal periods on shifts over 10.0 hours. On those occasions when Mr. Leon and other aggrieved employees were not provided with all legally-required meal periods to which he was entitled, DaVita failed to compensate Mr. Leon and other aggrieved employees with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7, and in those instances when DaVita did pay a meal period premium, it was not paid at the regular rate of pay as it was required to be paid under California law.

DaVita have also failed to authorize and permit all required rest periods for Mr. Leon and other aggrieved employees. Specifically, DaVita have often failed to authorize and permit a net 10-minute rest period for every four hours worked or major fraction thereof, and Mr. Leon and other employees often have had to take short (less than 10 minutes) rest periods, due to their workload. On those occasions when Mr. Leon and other aggrieved employees were not authorized and permitted to take all legally-required meal periods to which he was entitled, DaVita failed to compensate Mr. Leon and other aggrieved employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7, and in those instances when DaVita did pay a rest period premium, it was not paid at the regular rate of pay as it was required to be paid under California law.

DaVita also failed to adequately reimburse Mr. Leon and other aggrieved employees for all reasonable and necessary work expenditures, including, but not limited to, use of personal cellular phones to communicate with doctors, nurses, and other staff. Despite requiring Mr. Leon and other aggrieved employees to use their personal cell phones to communicate with other employees throughout their work shifts, DaVita did not adequately reimburse Mr. Leon and other aggrieved employees for their cellular phone expenses, even though they used their personal cellular phones for business purposes.

As a result of DaVita's failure to compensate Mr. Leon and other aggrieved employees for all minimum wages, overtime wages, and all meal and rest period premium wages, DaVita failed to pay Mr. Leon and other aggrieved employees all wages owed at the time of their separation of employment with DaVita. In addition, as part of DaVita's failure to properly calculate Mr. Leon's and other aggrieved employees' regular rate of pay, DaVita failed to pay Mr. Leon and other aggrieved employees his sick pay at the regular rate of pay, and therefore failed to pay all final due wages due at the end of their employment in violation of Labor Code §§ 201-203.

As described above, DaVita committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"):

Minimum Wage Violations

DaVita was required to pay Mr. Leon and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197; Wage Order 4, § 4. As alleged above, DaVita failed to conform their pay practices to the requirements of the law by failing to pay Mr. Leon and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of DaVita and/or suffered or permitted to work under the California Labor Code and Wage Order 4. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Leon and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

DaVita was required to pay Mr. Leon and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; Wage Order 4, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." As alleged above, DaVita caused Mr. Leon and other aggrieved employees to work overtime hours, but did not compensate Mr. Leon and other aggrieved employees with one and one-half times their regular rate of pay for such hours. As a result of these policies/practices, Mr. Leon and other aggrieved employees were not compensated for all overtime and double-time wages.

Meal Period Violations

As alleged above, DaVita failed to provide Mr. Leon and other aggrieved employees with all required and compliant meal periods, due to DaVita's meal period policies/practices that often fail to provide first meal periods before the end of the fifth hour of work, and which fail to provide second meal periods for shifts of over 10.0 hours.

See Labor Code §§ 226.7 and 512; Wage Order 4, § 11. As a result, Mr. Leon and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with … [an] 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 workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

As alleged above, DaVita also failed to authorize and permit Mr. Leon and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 4, § 12. Specifically, DaVita did not schedule rest periods, nor otherwise maintained or maintains any policy or practice for ensuring that non-exempt employees are authorized and permitted to take rest periods. As a result, Mr. Leon and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with 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 workday that the meal or rest period is not provided.")

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. DaVita failed to timely pay Mr. Leon and other aggrieved employees all of their final wages at the time of separation, which included all overtime, double-time, and minimum wages as well as all meal and rest period premium wages. Pursuant to Labor Code § 203, DaVita's failure to pay all final wages due to Mr. Leon and other aggrieved employees was willful and, consequently, entitles Mr. Leon and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day DaVita failed to pay their final wages after their separation, up to a maximum of thirty days.

Failure to Reimburse Employees for Necessary Business Expenditures

As alleged above, DaVita failed to reimburse Mr. Leon and other aggrieved employees for necessary work expenses, including the use of their personal cellular phones for business purposes. DaVita's policy of not providing reimbursement for necessary work-related expenses is in violation of Wage Order 4, § 9, and Labor Code §§ 2802 and 2804 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer.") Mr. Leon and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

As an "aggrieved employee," Mr. Leon will initiate a civil action on behalf of himself and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Leon's own investigation, and on information and belief, DaVita committed and continues to commit the following Labor Code violations:

a. DaVita violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Leon and other aggrieved employees the statutory minimum wage for all hours worked;

b. DaVita violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Leon and other aggrieved employees all overtime compensation earned;

c. DaVita violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Leon and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

d. DaVita violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Mr. Leon and other aggrieved employees all required rest periods and failing to pay rest period premiums to Mr. Leon and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;

e. DaVita violated Labor Code §§ 201, 202, and 203 by failing to timely pay all final wages due to Mr. Leon and other aggrieved employees;

f. DaVita violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Leon and other aggrieved employees for all necessary expenditures incurred;

g. DaVita violated Labor Code § 204 by failing to pay Mr. Leon and other aggrieved employees all wages earned at least twice during each calendar month; and

h. DaVita violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Leon and other aggrieved employees.

/ / /

/ / /

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and DaVita if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC

Paul K. Haines

cc: Renal Treatment Centers – California, Inc. (via certified mail)
DaVita Inc. (via certified mail)