

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

October 4, 2023

VIA LWDA WEBSITE

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

Re: *Sharese Casey v. Ridgecrest Regional Hospital dba Bella Sera Nursing Facility*

To Whom It May Concern:

Please be advised that this law firm represents Sharese Casey (“Ms. Casey”) in claims arising from her employment with Ridgecrest Regional Hospital dba Bella Sera Nursing Facility (“Defendants”). Ms. Sharese is an “aggrieved employee” within the meaning of Labor Code section 2699.3 as to all of the violations alleged herein. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754 (“any Labor Code penalties recoverable by state authorities may be recovered in a PAGA action by a person who was employed by the alleged violator and affected by at least *one* of the violations alleged in the complaint.”) (emphasis added). The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants operate a nursing facility in Ridgecrest, California. Ms. Casey was employed by Defendants as a non-exempt “Certified Nurse Assistant” or “CNA.” Ms. Casey was employed by Defendants as a non-exempt employee from approximately September 2022, until approximately April 2023. Ms. Casey’s primary job duties included monitoring 8 to 10 residents with serious developmental disabilities who required constant care and providing them assistance with basic life tasks.

During Ms. Casey’s employment with Defendants, Defendants failed to compensate Ms. Casey and other aggrieved employees for all hours actually worked, resulting in unpaid minimum wages and additional unpaid overtime wages. Specifically, Defendants failed to provide sufficient staffing coverage, and as a result, Ms. Casey was frequently interrupted during her meal periods and told to return to her job duties, without clocking back into her shift before returning to her job duties. Defendants’ practice resulted in Ms. Casey and other aggrieved employees performing off-the-clock work during their purported meal periods. Further, Defendants required that Ms. Casey and other aggrieved

employees clock in and out of their shifts at a time clock using their employee badge yet rounded and/or time-shaved their hours to the nearest quarter hour, which resulted in Ms. Casey and other aggrieved employees not being compensated for all hours actually worked. Defendants' supervisors also manually deducted 30-minutes from Ms. Casey and other aggrieved employees' timecards for meal periods, without verifying if Ms. Casey or other aggrieved employees received timely and uninterrupted meal periods. Due to Defendants' timekeeping policies and practices that fail to compensate for all hours worked, Ms. Casey and other aggrieved employees were deprived of all required minimum wages. *See Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 654 ("[I]f an employer, as in this case, can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for "all the time" worked."). Further, on occasions when Ms. Casey worked over eight hours in a day and/or forty hours in a workweek, this process of time-shaving or rounding also deprived her of all overtime wages owed. As such, Ms. Casey and other aggrieved employees were not credited with all hours actually worked and were not paid all minimum and overtime wages earned.

Defendants also failed to provide Ms. Casey and other aggrieved employees with all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices that failed to provide timely, uninterrupted, duty-free 30-minute meal periods before the fifth hour of work. Ms. Casey was frequently unable to take her meal period before the end of the fifth hour of work. Specifically, Defendants maintained a policy/practice of intentionally understaffing the nursing home while simultaneously requiring that Ms. Casey and other aggrieved employees remain at their post and monitor residents unless relieved. Similarly, due to Ms. Casey's work demands, she was frequently unable to take uninterrupted 30-minute meal periods. Specifically, during Ms. Casey's meal periods, Ms. Casey's supervisors frequently looked for Ms. Casey in the breakroom and mandated that Ms. Casey return to her job duties before the end of her meal period. Moreover, Defendants' supervisors manually deducted 30-minutes from Ms. Casey and other aggrieved employees' timecards without verifying if Ms. Casey and other aggrieved employees received an uninterrupted and timely 30-minute meal period. On occasions when Ms. Casey was not provided with all legally compliant meal periods to which she was entitled, Defendants failed to compensate Ms. Casey and other aggrieved employees with meal periods premiums for each workday in which a meal period violation occurred, as required by Labor Code § 226.7. When Defendants paid meal period premium payments (denoted on paystubs as "Missed Meal"), they paid meal periods premiums at Ms. Casey's base hourly rate of pay, rather than at Ms. Casey's regular rate of pay. Specifically, Ms. Casey and other aggrieved employees earned non-discretionary bonuses (denoted on paystubs as "Bonus-Retention" and "Night Diff"), and other forms of pay that cannot be excluded from the regular rate of pay as a matter of law (hereinafter "Incentive Pay"). As a result, Ms. Casey and other aggrieved employees did not receive an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code § 226.7.

Further, Defendants regularly failed to authorize and permit Ms. Casey and other aggrieved employees to take *any* duty-free 10-minute rest periods for every four hours

worked, or major fraction thereof, due to Defendants' unlawful rest period policies/practices. As with meal periods, Defendants did not provide sufficient staff coverage during Ms. Casey's scheduled rest periods, leaving Ms. Casey and other aggrieved employees frequently unable to take rest periods. In the event Ms. Casey was able to take a rest period, Defendants required Ms. Casey and other aggrieved employees to remain on Defendants' premises during rest periods and as a result failed to relinquish all control over how Ms. Casey and other aggrieved employees spent their break time, in violation of *Augustus v. ABM Security Services, Inc.* (2016) 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."). As a result, Defendants have failed to compensate Ms. Casey with the required rest period premium at her regular rate of pay for each workday in which she experienced a rest period violation as mandated by Labor Code § 226.7.

Defendants also failed to pay Ms. Casey and other aggrieved employees all sick pay wages owed to them. Defendants' policies and practices dictated that sick pay payments be made at an employee's base rate of pay, as opposed to their regular rate of pay. Because Ms. Casey and other aggrieved employees received Incentive Pay that was required to be included in their regular rate of pay, but were not, Ms. Casey and other aggrieved employees have not been paid all sick pay wages owed to them.

As a result of Defendants' failure to pay all overtime wages, minimum wages, meal and rest period premium wages owed, and sick pay wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements and failed to pay all final wages to Ms. Casey and other aggrieved employees upon their separation of employment. As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 5 ("Wage Order 5"):

Overtime Wage Violations

Defendants were required to properly pay Ms. Casey and other aggrieved employees for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Defendants caused Ms. Casey and other aggrieved employees to work overtime hours but did not compensate Ms. Casey or other aggrieved employees at one and one-half times their regular rate of pay for all such hours.

Minimum Wage Violations

Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes Defendants' failure to pay Ms. Casey and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 5. Wage Order 5 § 4 and California Labor Code §§ 1182.12 and

1197 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the Industrial Welfare Commission prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

Meal Period Violations

As alleged above, Defendants failed to provide Ms. Casey and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 5, § 11. As a result, Ms. Casey 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 described above, Defendants also failed to authorize and permit Ms. Casey and other aggrieved employees to take all required and compliant rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 5, § 12. As a result, Ms. Casey and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that all rest periods were not authorized and permitted. *See* Labor Code § 226.7.

Sick Time Pay Violations

Defendants were required to properly pay Ms. Casey and other aggrieved employees for all vested sick time at their regular rate of compensation pursuant to Labor Code § 246. Defendants compensated Ms. Casey and other aggrieved employees at their base rate of pay but did not compensate Ms. Casey or other aggrieved employees at their regular rate of pay for all such hours.

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Ms. Casey and other aggrieved employees with complete and accurate wage statements with respect to gross wages earned, total hours worked, net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226 *et seq.* Defendants’ failures in furnishing Ms. Casey and other

aggrieved employees with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages as well as meal and rest period premium wages and deprived them of the information necessary to identify the discrepancies in Defendants' reported data and whether they have been paid all wages earned.

Waiting Time Penalties

Labor Code §§ 201-203 require an employer to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of his/her intent to quit, said employee's wages become due and payable no later than 72 hours upon said employee's last date of employment. Defendants failed to timely pay Ms. Casey and other aggrieved employees all final wages due to them at the time of their separation, which includes, among other things, overtime and minimum wages, meal and rest period premium wages, and underpaid sick pay wages. Further, as a matter of uniform policy and practice, Defendants continue to fail to pay aggrieved employees all earned wages at the end of employment in a timely manner pursuant to Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Ms. Casey and other aggrieved employees their earned wages upon separation from employment, results in a continued payment of wages up to thirty (30) days from the time the wages were due.

As an "aggrieved employee," Ms. Casey will initiate a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations alleged herein. Based on Mr. Casey's own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 204, 510, 558, 1194 and 1198 by failing to pay Ms. Casey and other aggrieved employees all overtime compensation earned;
- b. Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Ms. Casey and other aggrieved employees the statutory minimum wage for all hours worked;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558, by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. Casey and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

- d. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Ms. Casey and similarly aggrieved employees to take all of their statutorily-mandated, duty-free rest periods and failing to pay rest period premiums to Ms. Casey and similarly aggrieved employees;
- e. Defendants violated Labor Code § 246 by failing to pay Ms. Casey and other aggrieved employees sick time pay at their regular rate of compensation;
- f. Defendants violated Labor Code § 226 by failing to furnish Ms. Casey and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Defendants violated Labor Code §§ 201- 203 by failing to timely pay all final wages due to Ms. Casey and other aggrieved employees;
- h. Defendants violated Labor Code § 204 by failing to pay Ms. Casey and other aggrieved employees all wages earned at least twice during each calendar month; and
- i. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Ms. Casey and aggrieved employees.

Pursuant to Labor Code § 2699.3, please notify us and Defendants 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



Fletcher W. Schmidt

cc: Ridgecrest Regional Hospital, c/o James A Suver, Agent for Service of Process, 1081 N China Lake Blvd, Ridgecrest, CA 93555

PROOF OF ACCEPTANCE (ELECTRONIC)

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