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CLASS ACTIONS, MASS TORTS & CATASTROPHIC INJURIES

Marcus J. Bradley
Kiley L. Grombacher
Brandon J. Sweeney
Maya Hussein
Theodore H. Chase
Marie Appel

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Labor and Workforce Development Agency

Attn: PAGA Administrator

455 Golden Gate Avenue, 9th Floor

San Francisco, CA 94102

**Re: Amended Written Notice – Private Attorney General Act (“PAGA”) –
Labor Code section 2698 et seq.**

Krystal Lopez v. Glendale Adventist Medical Center
LWDA Case No. LWDA-CM-985356-23

PAGA Administrator:

Notice is hereby provided that, pursuant to *California Labor Code Section* (“*Labor Code*” or “*Labor Code Section(s)*”) 2699.3, Krystal Lopez (“Employee”) contends that Glendale Adventist Center (“Employer(s)”) has violated, and continues to violate, provisions of the *Labor Code Section* and wage orders promulgated by the Industrial Welfare Commission (“IWC wage order”), including, but not limited to, *Labor Code Section* 98.6, 201-203, 204, 206, 206.5, 208, 221, 223, 224, 225, 226, 226.7, 227.3, 551, 552, 246, 248, 1174, 1174.5, 1198, 6310, 6311, 6400, and the applicable wage order.

In accordance with the required notice under *Labor Code Section* 2699.3 of the Private Attorney General Act (“PAGA”), this letter shall serve as formal written notice to the Labor and Workforce Development Agency (“LWDA”).

Employee worked for Employer in Glendale California from approximately February 2022 through approximately April 17, 2023. Employee was employed as a diagnostic image associate and earned approximately \$18.50 per hour.

Employee is an “aggrieved employee” as defined in *Labor Code Section* 2699(a). Employee, on behalf of herself and all other aggrieved employees, seeks penalties under PAGA for Employer’s violations of the Labor Code.

Glendale Adventist Medical Center is a hospital located in Glendale, California. Glendale Adventist Medical Center is a California nonprofit corporation that does business in California.

At all relevant times, Employer issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Employee and other aggrieved employees, regardless of their position.

Employee and other aggrieved employees seek penalties and other compensation from Employer for the relevant time period because Employer:

1. Failed to pay Employee and aggrieved employees all wages;
2. Failed to pay Employee and aggrieved employees sick pay wages at the regular rate;
3. Failed to provide Employee and aggrieved employees with Covid-19 supplemental sick pay wages (Lab. Code, § 248.6);
4. Failed to provide Employee and aggrieved employees with accurate, itemized wage statements (Lab. Code, § 226(a)), 1174, 1174.5;
5. Failed to timely pay Employees and aggrieved employees all final wages in a timely manner (Lab. Code, §§ 201-203);
6. Failed to timely pay Employee and aggrieved employees all wages during employment (Lab. Code, § 204);
7. Failed to pay Employee and aggrieved employees all pay absent conditions (Lab. Code §§ 206, 206.5);
8. Failed to Pay Employee and aggrieved employees at the location of discharge or separation of employment (Lab. Code § 208);
9. Failed to time pay Employee and aggrieved employees earned vacation pay (Lab. Code § 227.3);
10. Failed to provide Employee and aggrieved employees with one day's rest (Lab. Code §§ 551, 552);
11. Retaliation in Violation of Lab. Code, § 98.6;
12. Retaliation in Violation of Lab. Code, § 6310 *et seq.*;
13. Retaliation in Violation of Lab. Code, § 6311 *et seq.*; and
14. Failure to Provide a Safe and Healthful Workplace (Lab. Code, § 6400(a).)

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

Failure to Pay All Wages

During the Relevant Time Period, upon information and belief, Employer had, and continues to have, a company-wide policy of failing to pay employee and aggrieved employee all wages.

Specifically, Employer implemented policies that actively prevented employees from being compensated for all wages by failing to pay sick pay wages at the regular rate of pay.

Employee is informed and believes, and therefore alleges, that Employer's compensation schemes do not fairly compensate Employee and aggrieved employees all wages.

The failure to pay designated wages to Employee and aggrieved employees violates Labor

Code section 221, 223, 1198; and the applicable IWC wage order. Employee and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to *Labor Code Sections* 1197.1 and/or 2699(a), (f)-(g).

Failure to Provide Sick Pay Wages

Sick pay must be compensated at the employee's regular rate of pay, for the workweek in which the paid leave was taken, or at a rate determined by averaging over 90-days. (Lab. Code § 246(1).)

Employer failed to pay Employee and aggrieved employees sick pay at the correct rate. Employee received compensation in addition to hourly wages, but those additional amounts were not included when calculating sick pay wages. By failing to pay Employee and aggrieved employees for sick pay at the correct rate, Employer willfully violated *Labor Code Section* 246.

Failure to Provide Covid-19 Supplemental Paid Sick Leave

California Labor Code sections 248.6 and 248.7 required Employer to provide California Supplemental Sick Paid Leave ("SSPL") through December 31, 2022.

Pursuant to subdivision (i) of Section 246 as it relates to this section, COVID-19 supplemental paid sick leave must be set forth separately from paid sick days. Employer failed to provide Employee and aggrieved employees with written notice that sets forth the amount of COVID-19 supplemental paid sick leave that they had used or were entitled on wage statements.

The employer shall list zero hours used if a worker has not used any COVID-19 supplemental paid sick leave. This requirement is not enforceable until the next full pay period following the date that this section takes effect.

Employee and aggrieved employees were entitled access to this supplemental paid leave and whether any had been utilized if they experience a qualifying need for leave. However, Employer failed to provide Supplemental COVID-19 Sick pay or properly account for it on their wage statements as provided by California law.

Wage Statements

Labor Code section 226(a) requires Employer to make, keep, and provide true, accurate, and complete wage records. Employer has not provided Employee and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in section 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 section 226.3 provides that any employer who violates section 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 employer fails to provide the employee a wage statement or fails to keep the required records pursuant to *Labor Code Section 226(a)*.

During the relevant time period, Employer has knowingly and intentionally provided Employee and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, Employer issued uniform wage statements to Employee and other aggrieved employees that fail to correctly include sick pay wages and supplemental sick pay on wage statements.

Specifically, Employer violated *Labor Code Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9)*. Because Employer did not calculate the correct sick pay rate, Employer did not list the correct amount of gross wages and net wages earned by aggrieved employees in compliance with *Labor Code Sections 226(a)(1) and 226(a)(5)*, respectively. For the same reason, Employer also failed to list the correct amount of net wages in violation of *Labor Code Section 226(a)(5)*. Employer also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages in violation of section 226(a)(9).

Additionally, under *Labor Code Section 1174.5*, Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of *Labor Code Section 1174* shall be subject to a civil penalty of five hundred dollars (\$500). Here, Employer willfully failed to maintain accurate and complete records for Employee and other aggrieved employees by failing to include all an accurate account of all compensation earned and owed to Employee and other aggrieved employees during the Relevant Time Period.

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

Failure to Timely Pay Final Wages Upon Termination

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

Labor Code Sections 201 and 202 provide that if an employer 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, Employer 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 sections 201 and 202*.

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

Failure to Timely Pay Wages During Employment

California *Labor Code* § 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.

California *Labor Code* § 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, California *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, Employers willfully failed to pay Employee and other aggrieved employees all wages owed, including but not limited to, overtime wages, minimum wages, meal period premiums, sick pay, and COVID-19 pay at the regular rate of pay, within the time periods specified by California *Labor Code* § 204. Therefore, Employers are in violation of Labor Code section 204, and Employee and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest.

Failure to Pay All Wages During Employment without Conditions

Under *Labor Code* section 206, In case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to as to any balance claimed.

Pursuant to *Labor Code* 206.5, an employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

During the Relevant Time Period, Employers willfully failed to pay Employee and other aggrieved employees all wages owed, including but not limited to, overtime wages, minimum wages, meal period premiums, sick pay, and COVID-19 pay at the regular rate of pay, without certain conditions and within the time periods specified by the California Labor Code. Therefore, Employers are in violation of *Labor Code* Sections 206 and 206.5, and Employee and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest.

Failure to Pay at Location of Employment

Labor Code Section 208 specifies that every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor.

During the Relevant Time Period, Employer did not pay terminated or separated aggrieved employees at the place where they performed work for Employer. Thus, Employer is in violation of *Labor Code Section 208* for its failure to pay discharged and separated aggrieved employees at the location where they performed work during their employment.

Failure to Pay Earned Vacation Pay

Pursuant to *Labor Code § 227.3*, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken any or all of his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with the terms of the employment or employer policy respecting eligibility or time served. *Labor Code Section 227.3*.

During the Relevant Time Period, Employer failed to provide terminated employees all earned vacation pay in accordance with the terms of their employment, including paying earned and vested vacation pay at the regular rate of pay. As a result, Employee and aggrieved employees did not receive all earned and vested vacation pay they were entitled to during their employment. Therefore, Employer has violated *Labor Code section 227.3*.

Failure to Provide One Day Rest

Under *Labor Code Section 551*, every person employed in any occupation of labor is entitled to one day's rest every seven days. Additionally, *Labor Code Section 552* outlines that no employer of labor shall cause his employees to work more than six days in seven.

During the Relevant Time Period, Employer failed to provide Employee and aggrieved employees with at least one days rest every seven days. As such, Employer violated *Labor Code Section 551* and *552*.

Retaliation in Violation of California Labor Code Section 98.6

Labor Code Section 98.6 protects employees from retaliation for reporting labor law violations, such as unpaid wages. It prohibits employers from discharging or discriminating against employees who file complaints or claims regarding their rights under labor laws. If an employee is found eligible for rehiring or promotion through a grievance procedure, an employer's refusal to comply can result in misdemeanor charges. The code ensures that employees can exercise their rights without fear of adverse actions from their employers.

On information and belief, Employer has a company-wide practice of discharging and discriminating against employees who file complaints or claims regarding labor law violations, such as unpaid all wages, failure to pay sick time, failure to provide COVID-19 pay, and failure to pay all wages due up termination.

Retaliation in Violation of California Labor Code Section 6310

California Labor Code Section 6310 states:

“(a) No person shall discharge or in any manner discriminate against any employee because the employee has done any of the following:

- (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative.
- (2) Instituted or caused to be instituted any proceeding under or relating to their rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of themselves, or others of any rights afforded to them.
- (3) Participated in an occupational health and safety committee established pursuant to Section 6401.7.
- (4) Reported a work-related fatality, injury, or illness, requested access to occupational injury or illness reports and records that are made or maintained pursuant to Subchapter 1 (commencing with Section 14000) of Chapter 1 of Division 1 of Title 8 of the California Code of Regulations, or exercised any other rights protected by the federal Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.), except in cases where the employee alleges they have been retaliated against because they have filed or made known their intention to file a workers' compensation claim pursuant to Section 132a, which is under the exclusive jurisdiction of the Workers' Compensation Appeals Board.”

On information and belief, Employer has a company-wide practice of discriminating against employees who file complaints or claims regarding employee safety or health, instituted proceedings relating to employee rights or exercised their rights on behalf themselves and other employees, and reported work-related injuries, illness and other occupational health and safety issues.

Retaliation in Violation of California Labor Code Section 6311

Under *California Labor Code* Section 6311, No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including *Section* 6400, any occupational safety or health standard, or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or their fellow

employees.

Any employee who is laid off or discharged in violation of this section or is otherwise not paid because the employee refused to perform work in the performance of which this code, any occupational safety or health standard, or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or their fellow employees shall have a right of action for wages for the time the employee is without work as a result of the layoff or discharge.

On information and belief, Employer has a company-wide practice of discharging, laying off and failing to pay those employees who refuse to perform work for Employer where that work would create a real and apparent hazard to the Employee or their fellow employees.

Failure to Provide a Safe and Healthful Workplace

Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. *California Labor Code* Section 6400(a). On information and belief, Employer has failed to provide Employee and aggrieved employees with a safe and healthful place of employment.

Additional California Labor Code Violations (*Labor Code Sections 221, 224, and 225*)

California Labor Code Section 221 states that it is unlawful for any employer to collect or receive any part of wages previously paid to an employee.’ Additionally, under *California Labor Code* Section 225, it is a misdemeanor to violate Section 221.

California Labor Code Section 224, states in pertinent part, “The provisions of *Sections 221, 222 and 223* shall in no way make it unlawful for an employer to withhold or divert any portion of an employee's wages when the employer is required or empowered so to do by state or federal law prohibits any deductions from an employee's wages unless they are either authorized in writing by the employee or permitted by law...”

During the Relevant Time Period, and on information and belief, Employee and aggrieved employees maintain that Employer violated *Labor Code Sections 221, 224, and 225* by requiring Employee and aggrieved employees to purchase equipment including but not limited to medical scrubs and other articles of clothing specific to Defendant without reimbursing Employee and aggrieved employees for that equipment, and/or on further information and belief that Employer deducted sums from Employee and aggrieved employees’ wages to pay for equipment without appropriate authorization.

Conclusion

Employee respectfully requests that the LWDA notify this office within sixty-five (65) days if it wishes to investigate the additional claims involved in this matter by way of this amended

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notice. A copy is being sent via certified mail to Employers as well as Employer's counsel of record for the existing claims. 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

Brandon J. Sweeney

Brandon J. Sweeney, Esq.

cc: Daniel Whang, Esq.
SEYFARTH SHAW, LLP
c/o Glendale Adventist Medical Center
2029 Century Park East, Suite 2500
Los Angeles, CA 90067-3021
DWhang@seyfarth.com