



VIA ELECTRONIC FILING

March 15, 2024

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

UNIVERSITY OF SOUTHERN CALIFORNIA
BEONG-SOO KIM
3551 TROUSDALE PARKWAY, ADM 352
LOS ANGELES, CA 90089

WESTWAYS STAFFING SERVICES, INC.
HAROLD STERLING
790 THE CITY DRIVE S, #180
ORANGE, CA 92868

CECILIA CESPEDES v. UNIVERSITY OF SOUTHERN CALIFORNIA; WESTWAYS STAFFING SERVICES, INC.; HAROLD STERLING

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

Please be informed that our client, Ms. Cecilia Cespedes (hereinafter “Ms. Cespedes” or “our client”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees or those employees who were misclassified and should have been hourly, non-exempt employees (“aggrieved employees”) who worked for UNIVERSITY OF SOUTHERN CALIFORNIA, WESTWAYS STAFFING SERVICES, INC.; and HAROLD STERLING (hereinafter collectively referred to as “WESTWAYS”) at all of their locations in the State of California, during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. Individual HAROLD STERLING is being included in this PAGA notice pursuant to Labor Code section 558.1 in he was and is the owner, managing agent, and/or director of WESTWAYS STAFFING SERVICES INC., is and was involved in the day-to-day operations of the business, and control the wages, hours, and/or working conditions of our client and other hourly, non-exempt employees. Note that UNIVERSITY OF SOUTHERN CALIFORNIA and WESTWAYS STAFFING SERVICES



INC. are considered joint employers under California law in that they each controlled the wages, hours, and/or working conditions of Ms. Cespedes and other employees.

Ms. Cespedes started working for WESTWAYS at Keck Hospital on or around 2023 as a sterile processing technician. Ms. Cespedes was classified as an hourly, non-exempt employee. Ms. Cespedes' employment was wrongfully terminated in February 2024.

In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves and others. The statute also states that an "aggrieved employee" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas' motion.

In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is our position that Ms. Cespedes can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees, irrespective of job title or job duties.

It is our position that WESTWAYS has violated the following Labor Code Sections against Ms. Cespedes and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for WESTWAYS at ALL of their locations in the State of California during the relevant PAGA period.

WESTWAYS violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay our client and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for "off the clock" work. This is so because WESTWAYS had a company policy wherein they would disproportionately round down the number of hours worked, resulting in "time shaving" and further resulting in aggrieved employees not being paid for all hours worked. Furthermore, and to the extent that Ms. Cespedes and others worked through their meal periods while "off the clock" and while clocked out, they were not



compensated for all hours worked, which would be akin to a minimum wage violation. Furthermore, WESTWAYS did not pay proper reporting time pay to employees and did not compensate for all training hours.

Due to the above “off the clock” violations, WESTWAYS also violated Labor Code §510 because it failed to pay our client and other aggrieved employees proper and complete overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Ms. Cespedes’ and other aggrieved employees’ actual work hours, including the “off the clock” work and time shaving, entitled them to overtime compensation, however, WESTWAYS did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the “off the clock” work and time shaving as described above. Furthermore, WESTWAYS failed to include bonuses/incentive payments/sick pay in calculating employees’ regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into employees’ regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

WESTWAYS also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/5 because it failed to provide our client and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. WESTWAYS did not completely relieve our client and others of all duty during said rest periods. WESTWAYS did not pay to our client and others one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not part of the company policy for employees such as Ms. Cespedes to consistently take at least two UNINTERRUPTED rest breaks per shift. The concept of uninterrupted, timely, and full rest breaks was not consistently implemented as it was not company policy. There were definitely instances wherein Ms. Cespedes and others were not able to take a rest break due to understaffing and work obligations. As such, the culture as well as the policies and procedures of WESTWAYS did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at WESTWAYS was not conducive to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks were not always and consistently authorized or enforced.

WESTWAYS violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/5 because it failed to provide hourly, non-exempt employees, including Ms. Cespedes and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. WESTWAYS did not completely relieve Ms. Cespedes and other employees of all duty during said meal periods. WESTWAYS did not pay to Ms. Cespedes and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. Ms. Cespedes and the hourly, non-exempt employees would not always be able to receive timely meal periods before the 5th hour worked that were actually uninterrupted. The latter was due to understaffing and scheduling issues, especially in a fast-paced medical environment. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not always enforced by WESTWAYS. Consequently, it was the normal practice and custom of WESTWAYS not to



consistently authorize, permit, and enforce timely statutory meal periods. If WESTWAYS had our client sign a meal period waiver, it would not be valid and enforceable since our client and others generally worked more than a 6-hour shift. Even if Ms. Cespedes' and others' shifts were less than 6 hours, Ms. Cespedes did not sign a meal period waiver wherein she was able to revoke the agreement. If WESTWAYS had our client sign an on-duty meal period agreement wherein our client agreed to work through the meal periods, it would be invalid and unenforceable because the nature of our client's job does not and did not prevent her from taking a meal period and the company could have hired "breakers" to relieve Ms. Cespedes of her job duties so that she can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow our client and others to revoke such an agreement even if it was signed. As such, our client and others did not receive statutory, timely meal periods during their employment. To the extent that WESTWAYS argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at WESTWAYS was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

Furthermore, during the relevant time period, and due to the above labor code violations, WESTWAYS failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. Since Ms. Cespedes was personally not compensated for all hours worked and did not receive all meal and rest break premium payments for missed, late, or short meal/rest periods, WESTWAYS would have certainly violated section 204 as to Ms. Cespedes. WESTWAYS was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. As such, WESTWAYS did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

During the relevant time period, WESTWAYS also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Ms. Cespedes and others pursuant to California Labor Code sections 1174(d).



WESTWAYS also violated Labor Code § 203 because it willfully failed to pay our client and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

During the relevant time period, Ms. Cespedes and other aggrieved employees incurred necessary, business-related expenses and costs that were not fully reimbursed by WESTWAYS. These costs include, but are not limited to, uniforms and use of personal cell phones for work purposes. Accordingly, WESTWAYS was in violation of California Labor Code sections 2800 and 2802.

Furthermore, WESTWAYS did not provide proper and correct/accurate sick pay that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and 246. Moreover, WESTWAYS violated the applicable Industrial Welfare Commission Wage Order no. 4/5-2001, sections 13 and 14 in that there was no adequate rest break facilities and seating for the employees.

In addition, Ms. Cespedes would have individual claims against WESTWAYS (which includes the University of Southern California) for wrongful termination in violation public policy, sexual harassment under the Fair Employment and Housing Act (FEHA), including quid-pro-quo harassment, retaliation under Labor Code section 1102.5, among other causes of action. Ms. Cespedes was essentially in a coerced sexual relationship with her direct supervisor in the department in which Ms. Cespedes was working at Keck USC Hospital. Not shockingly, after Ms. Cespedes actually reported the sexual harassment and the coerced sexual relationship to WESTWAYS, she was terminated the NEXT DAY in a retaliatory fashion.

Each of the aforementioned violations, except the violations for inaccurate pay statements under Labor Code section 226(a), is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Ms. Cespedes also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

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Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by WESTWAYS.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very Truly Yours,

Harout Messrelian, Esq.