



MESSRELIAN LAW
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VIA ELECTRONIC FILING

May 24, 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)

SINGLE ROOM OCCUPANCY HOUSING CORPORATION
ANITA U. NELSON
1055 W. 7th St., Suite 3250
Los Angeles, CA 90017

KIM ANDERSON v. SINGLE ROOM OCCUPANCY HOUSING CORPORATION;
ANITA U. NELSON

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

Please be informed that our client, Ms. Kim Anderson (hereinafter “Ms. Anderson” or “our client”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees (“aggrieved employees”) who worked for SINGLE ROOM OCCUPANCY HOUSING CORPORATION; ANITA U. NELSON (hereinafter collectively referred to as “SRO”) 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 ANITA U. NELSON is being included in this PAGA Notice pursuant to Labor Code section 558.1 in that she was and is the owner, director, and/or managing agent of SINGLE ROOM OCCUPANCY HOUSING CORPORATION, is and was involved in the day-to-day operations of the business including wage and hour policies and practices, and as such, controlled the wages, hours, and/or working conditions of the employees, including Ms. Anderson.

Ms. Anderson started working at SRO on or around early late 2023/early 2024 as an intensive care manager. Ms. Anderson was and is classified as an hourly, non-exempt employee and is still currently employed at SRO.

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. Anderson 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 who worked for SRO at any of their locations in California during the relevant PAGA period.

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

SRO 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 SRO 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. In addition and since meal periods were interrupted while “off the clock” due to urgent emails or correspondence having to be sent or if a client came in, the latter would amount to a minimum wage violation. Moreover, SRO failed to provide its employees with proper and accurate reporting time pay.

Due to the above “off the clock” violations, SRO also violated Labor Code §510 because it failed to pay other Ms. Anderson and aggrieved employees 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. Anderson’s typical schedule was at least 8.5 hours per day with a supposed meal period. As such, it follows that when Ms. Anderson’s and others’ meal periods were interrupted

due to work obligation, the latter would amount to not only a minimum wage violation but also overtime compensation, which was not paid to Ms. Anderson and others. Ms. Anderson's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, SRO did not compensate its hourly, non-exempt employees with overtime or the correct amount of overtime due to the "off the clock" work and time shaving as described above. Furthermore, SRO 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/sick pay were also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

SRO 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. SRO did not completely relieve our client and others of all duty during said rest periods. SRO 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. Anderson to consistently take at least two rest breaks per shift. The idea of rest breaks was not consistently implemented. The latter was due to being understaffed and not having enough personnel and having to consistently deal with client needs. The concept of timely, uninterrupted rest breaks was not implemented as it was not company policy. As such, the culture as well as the policies and procedures of SRO did not lend itself to the employees receiving consistent timely, statutory rest breaks wherein they were relieved of all work duties. The environment at SRO was not conducive to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

SRO 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. Anderson and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. SRO did not completely relieve Ms. Anderson and other employees of all duty during said meal periods. SRO did not pay to Ms. Anderson 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. The hourly, non-exempt employees were not always able to take meal periods before the 5th hour. Moreover, the meal periods would be interrupted by work obligations such as having to send emails or helping out clients if they came in to the location. Like the rest breaks, receiving a thirty-minute timely meal break was not part of the company culture and was not enforced by SRO. Consequently, it was the normal practice and custom of SRO not to authorize, permit, and enforce timely statutory meal periods. If SRO 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. Anderson 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 for our client to revoke such an agreement even if it was signed. To the extent that SRO

argues that Ms. Anderson and others were paid to work through their meal period, this argument is not compelling due to the position that there was no valid meal period waiver in place and even if there was, it is still a violation to prevent an employee from taking a meal break in order to rest and recover. To the extent that SRO argues that employees receive meal break premium pay for missed, late or short meal and rest 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 SRO 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/sick pay as well as overtime compensation.

Furthermore, during the relevant time period, and due to the above labor code violations, SRO 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. SRO 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, SRO did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

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

SRO also violated Labor Code § 203 because it willfully failed to pay 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. Anderson and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed or adequately reimbursed by SRO. These costs include, but are not limited to, use of personal cell phones for work purposes and use of personal vehicles for work purposes. For instance, Ms. Anderson would utilize her cell phone to call specific clients and had utilized her vehicle to drive to a different facility to visit a client



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without getting reimbursed for mileage. Accordingly, SRO was in violation of California Labor Code sections 2800 and 2802.

Furthermore, SRO 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, there were no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 4-2001/5-2001.

Furthermore, we believe your companies have also violated Labor Code Section 558 and has engaged in business practices which violate Business and Professions Code Section 17200.

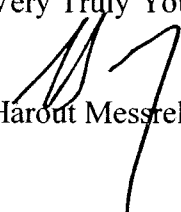
Each of the aforementioned violations, except the violations for inaccurate pay statements under Labor Code section 226(a), is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Ms. Anderson 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.

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 SRO.

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.