

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

May 8, 2024

VIA LWDA WEBSITE

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

Re: *Eduardo Martins v. The Permanente Medical Group, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Eduardo Martins (“Mr. Martins”) in claims arising from his employment with The Permanente Medical Group, Inc.; and Does 1 through 100 (collectively “Permanente Medical Group”). Mr. Martins is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Permanente Medical Group’s 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 Permanente Medical Group’s employees who were classified as exempt under Industrial Welfare Commission Wage Order No. 5 (“Wage Order 5”) and worked for Permanente Medical Group in California during the one year immediately preceding the date of this letter through the present.

Mr. Martins began working for Permanente Medical Group in 1986 and was employed as an Operations Manager in Oakland, California, from approximately 2019 until his retirement on March 1, 2024. During his employment he was classified as an exempt employee. Mr. Martins brings this action on behalf of himself and all other employees of Permanente Medical Group who were classified as exempt employees during the relevant time period (collectively “aggrieved employees”)

During his employment with Permanente Medical Group, Mr. Martins and other aggrieved employees were not provided all required meal periods, which include duty-free 30-minute meal periods commencing prior to the beginning of the fifth hour of work, due to Permanente Medical Group’s classification of Mr. Martins and other aggrieved employees as exempt employees. When Mr. Martins and other aggrieved employees worked shifts in excess of 10.0 hours, Permanente Medical Group did not provide a second duty-free 30-minute meal period. Moreover, Permanente Medical Group did not require Mr. Martins or any other aggrieved employees to clock out for their meal periods, nor did it track the time that meal periods were being provided.

Labor Code Section 512(a) states that: “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Notably, Labor Code Section 512(a) makes no distinction between exempt and non-exempt employees, although Section 512(c) and (e) exclude other classes of workers, and other Sections of the Labor Code (e.g., Sections 204.3, 2810.3, and 2810.5, do expressly exclude exempt workers from coverage). Similarly, the DLSE Manual at Section 45.2.2 confirms that Section 512(a) does not exclude any class of employee. *Id.* (“Note: Labor Code § 512, requiring an employer to provide a meal period, does not exclude any class of employee. Consequently, it would appear that exempt employees are also entitled to meal periods in accordance with that section.”).

As described above, Permanente Medical Group committed the following violations of the Labor Code, and Wage Order 5:

Meal Period Violations

As alleged above, Permanente Medical Group failed to provide Mr. Martins and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 512; Wage Order 5, § 11. As a result, Mr. Martins and other aggrieved employees are owed a PAGA penalty for every pay period that they did not receive complaint meal periods.

Record Keeping Violations

Labor Code § 1174(d) require that every person employing labor in California shall “Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to...employees employed at the respective plants or establishments.” Section 2(k) of Wage Order 5 defines “hours worked” as: “...the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Permanente Medical Group failed to comply with Labor Code section 1174 by failing to keep payroll records showing the hours worked daily by Mr. Martins and other aggrieved employees.

As an “aggrieved employee,” Mr. Martins 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. Martins’ own investigation, and on

information and belief, Permanente Medical Group committed and continues to commit the following Labor Code violations:

- a. Permanente Medical Group violated Labor Code §§ 512 by failing to provide meal periods to Mr. Martins and aggrieved employees as required by law;
- b. Permanente Medical Group violated Labor Code §§ 1174 by failing to maintain accurate records on behalf of Mr. Martins and other aggrieved employees of their hours worked, including the times that they began and ended the workday and the beginning and end of their meal periods.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Permanente Medical Group 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: The Permanente Medical Group, Inc. (via certified mail)