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July 29, 2024

LWDA  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612  
***(Via Online Submission)***

Agent for Service of Process for  
COHEN SEDGH, MANAVI & PAKRAVAN  
DENTAL CORPORATION  
MIGUEL REYES  
12121 WILSHIRE BLVD., SUITE 1111  
LOS ANGELES, CA 90025  
***(Via Certified Mail, Return Receipt Requested)***

Re: ***Carlos Esparza v. Cohen Sedgh, Manavi & Pakravan Dental Corporation***  
**Notice of Labor Code and PAGA Penalties**

To Whom It May Concern:

Please be advised that my office has been retained by Carlos Esparza (“Mr. Esparza” or “Employee”) to pursue a Labor Code Private Attorneys General Act of 2004 (“PAGA”) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against Employee’s former employer, COHEN SEDGH, MANAVI & PAKRAVAN DENTAL CORPORATION (“CSMPDC” or “Employer”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Employer engaged in with respect to Employee and potentially all of Employer’s Aggrieved Employees.

Mr. Esparza wishes to pursue this action on behalf of Employees as Aggrieved Employees, on behalf of the State of California, as well as on behalf of potentially all other persons who worked for CSMPDC in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Employee and the Aggrieved Employees, or some of them, suffered the Labor Code violations described below.

**Mr. Esparza’s Employment with CSMPDC**

CSMPDC is a dental practice. Employee worked for CSMPDC as a Dental Assistant. Employee’s primary job function was to assist dentists and take patients’ X-rays.

In performing Employee’s duties, Employee was regularly required to perform work off-the-clock, without compensation, including responding to work-related messages and calls on his personal cell phone.

Employee and the Aggrieved Employees also incurred unreimbursed business expenses that included, but were not limited to, having to use personal cell phones for work and having to buy required uniforms, all without reimbursement.

Employer also engaged in altering, falsifying, and conducting timekeeping on employees' behalf without their involvement and failed to produce any of the requested records.

These are just non-exhaustive examples of the facts and theories the Employee asserts, which are described in more detail below.

Employer own/owned and operate/operated an industry, business, and establishment within the State of California. As such and based upon all the facts and circumstances incident to Employer's business in California, Employer are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Mr. Esparza is a resident of Los Angeles County, California, who worked for Employer in Los Angeles County, California, as an hourly-paid, non-exempt employee from approximately January 2023 to approximately September 2023.

During Employee's employment for Employer, Employer paid Employee an hourly wage and classified Employee as non-exempt from overtime. Employer typically scheduled Employee to work at least five days in a workweek and at least eight hours per day, but Employee also worked more than eight hours in a workday and more than forty (40) hours in a workweek.

Throughout Employee's employment, Employer failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to furnish accurate wage statements to Employee, failed to timely produce Employee's requested employment records, and failed to indemnify for business expenses. As discussed below, Employee's experience working for Employer was typical and illustrative.

#### **Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages**

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is 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.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

Throughout the statutory period, Employer failed to pay Employee and the Aggrieved Employees, or some of them, for all hours worked, including minimum, straight time, and overtime wages. Employer at time required Employee and the Aggrieved Employees, or some of them, to work "off-the-clock," uncompensated. Some of this unpaid work should have been paid at the overtime rate. California Labor Code § 510 requires that Employer compensate employees 1.5 times their regular rate of pay when employees work over eight hours per day, 40 hours per week, or when employees work up to eight hours on any seventh day of a workweek. Employer failed to properly calculate Employee's regular rate of pay when paying overtime, by failing to include all compensation in Employee's overtime calculations. In failing to pay for all hours worked,

Employer also failed to maintain accurate records of the hours Employee and the Aggrieved Employees, or some of them. Employer also altered, falsified, and manipulated the time records in order to pay them less.

As a result, Employer are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

#### **Failure to Pay All Earned Wages Twice Per Month**

Based on Employer's failure at times to pay Employee and the Aggrieved Employees, or some of them, for all wages as discussed above, Employer also violated Labor Code § 204.

Labor Code § 204 requires Employer to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including wages owed for overtime hours worked. However, at times, Employer failed and refused to pay the Employee all wages due, and failed to pay those wages twice a month, in that Employee was not paid all wages for all wages for all hours worked. As a result, Employer owe Employee the legally required wages for unpaid wages, and Employee and the Aggrieved Employees, or some of them, suffered damages in those amounts.

Moreover, Employer are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

#### **Failure to Maintain Accurate Records of Hours Worked**

Employee seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor, who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Total hours worked daily shall also be recorded.

Employer, however, at times failed to maintain accurate records of hours worked. Employer also altered, falsified, and manipulated these records.

Employer's failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Employee and the Aggrieved Employees, or some of them, the ability to know, understand and question the accuracy and frequency of their hours worked stated in Employer's records. Therefore, Employee and the Aggrieved Employees, or some of them, had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Employer. As a direct result, Employee and the Aggrieved Employees, or some of them, have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorneys' fees in seeking to compel Employer to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Employer's knowing failure, at times, to comply with the California Labor Code and applicable IWC Wage Orders, Employee and the Aggrieved Employees, or some of them, have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

### **Failure to Furnish Accurate Itemized Wage Statements**

Labor Code § 226(a) provides that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or his employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or his social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

In addition, California Labor Code § 246(i) required employer to provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement “unlimited.”

Throughout the statutory period, Employer at times failed to, and continue at times to fail, to timely furnish Employee and the Aggrieved Employees, or some of them, with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked).

Because Employer at times violated Labor Code § 226, Employee and similarly Aggrieved Employees, or some of them, suffered injury and damage to their statutorily protected rights. Accordingly, Employee and similarly Aggrieved Employees, or some of them, are entitled to recover from Employer the greater of their actual damages caused by Employer’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee. Moreover, Employer are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 226.3 for failing to timely furnish accurate itemized wage statements.

### **Failure to Produce Requested Employment Records**

Labor Code § 226 provides that current and former employees have the right to inspect or receive a copy of their payroll records pertaining to their employment, upon reasonable request to their employer. Under this statute, an employer that receives a request to inspect or receive a copy of the payroll records pertaining to a current or former employee must comply with the request as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request.

Labor Code § 1198.5(a) also provides that every current and former employee, or his or his representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employees' performance or to any grievance concerning the employee. Under this statute, upon written request from a current or former employee or his or his representative, an employer must make the contents of those personnel records available for inspection or provide a copy of the personnel records to the current or former employee, or his or his representative, not later than thirty (30) calendar days from the date the employer receives the written request, subject to some limited exceptions. In addition, Labor Code § 432 provides that if an employee or applicant signs any instrument relating to the obtaining or holding of employment, he or she shall be given a copy of the instrument upon request.

On information and belief, Employee and the Aggrieved Employees, or some of them, submitted written request(s) to Employer for their payroll records, timecards, and personnel records but did not timely receive them as required by the Labor Code.

As a result, Employer are liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 226(f), 1198.5(k), and 2699 for failing to timely produce the requested records.

### **Recordkeeping Requirement Violations**

California Labor Code section 1174 requires Employer to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by Employees and Aggrieved Employees. All applicable IWC Wage Orders, section 7 similarly requires Employer to keep accurate time records.

Based on information and belief, Employer at times failed, and continue at times to fail, to keep accurate and complete payroll records as required by law, including, but not limited to, the following records: total daily hours worked, applicable rates of pay, time records showing when Employee and other Aggrieved Employees began and ended each work period, and accurate itemized wage statements.

Based on information and belief, Employer at times failed and continue at times to fail to keep accurate and complete records showing total hours worked by Employee and Aggrieved Employees, or some of them, by virtue of Employer's work policies and practices.

Based on information and belief, Employer further failed at times, and continue at times to fail, to record the true start and end times of some of Employee's and Aggrieved Employees' shifts.

Based on further information and belief, at times, Employer further failed and continues to fail to record the true start and end times of Employee's and Aggrieved Employees' work shifts.

Employer's failure to keep "accurate and complete" payroll records for Employee and Aggrieved Employees, or some of them, violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject Employer to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each Aggrieved Employee (or some of them), results in a separate civil penalty.<sup>1</sup>

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<sup>1</sup> See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

### **Falsifying Records**

Additionally, on information and belief, Employer's management would alter and/or falsify time records to make it look like Employees did not work any overtime or worked fewer hours than they actually did. These overtime-rate work hours should have been recorded by Employer, but it willfully ignored this requirement in an effort to avoid payment of overtime to Employee and the Aggrieved Employees. Thus, Employer failed to track the time employees spent working off the clock, and Employee and the Aggrieved Employees received no compensation for this time.

As also stated, due to Employer's practices of management altering and/or falsifying time records, Employee and the Aggrieved Employees were prevented from recording the entire time worked outside of their scheduled shifts, and thus were not paid for this time.

Thus, Employer engaged in company-wide practices and/or policies of failing to record actual hours worked and thereby failed to keep accurate records of work period start and end times for Employee and the Aggrieved Employees, in violation of section 1198.

### **Refusal to Make Payment**

Labor Code section 216 declares unlawful an Employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

Employer at times violated and continue at times to violate Labor Code section 216 by failing to pay Employee and Aggrieved Employees, or some of them, for all hours worked at the proper wage rate. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject Employer to civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for each Aggrieved Employee (or some of them) so affected, for each pay period (or some of them) during which the statute's provisions were violated.<sup>2</sup>

### **Statutory Wage Violations**

Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, Employer at times willfully and systematically denied Employee and other Aggrieved Employees, or some of them, of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. Employer at times acted with the intent to deprive some or all of them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, Employer at times paid Employee and other Aggrieved Employees, or some of them, lower wages than those to which they were entitled, while purporting that Employee and all Aggrieved

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<sup>2</sup> Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

Employees were properly paid. As such, Employee and Aggrieved Employees, or some of them, are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

#### **Failure to Indemnify for Necessary Expenditures**

Labor Code § 2802(a) provides that Employer shall indemnify their employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of their duties. Throughout the statute of limitations period applicable to this cause of action, Employer at times wrongfully required Employee and the Aggrieved Employees, or some of them, to pay expenses that they incurred in direct discharge of their duties for Employer. Employee and the Aggrieved Employees, or some of them, at times paid out-of-pocket for necessary employment-related expenses. Employee and the Aggrieved Employees, or some of them, incurred substantial expenses as a direct result of performing their job duties for Employer, but Employer failed to indemnify Employee and the Aggrieved Employees, or some of them, for these employment-related expenses.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Employee and the Aggrieved Employees, or some of them, for necessary business expenditures.

#### **Failure to Timely Pay All Wages at Termination**

Labor Code §§ 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 their employment, their 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 their intention to quit, in which case the employee is entitled to their wages at the time of quitting. Direct deposits of wages to an employee's bank, saving and loan, or credit union account that were previously authorized by the employee are immediately terminated when an employee quits or is discharged, and the payment of wages upon termination of employment in the manner described above shall apply unless the employee has voluntarily authorized that deposit and provided that the employer complies with the provisions of Labor Code § 213(d) relating to the payment of wages upon termination or quitting of employment.

Within the applicable statute of limitations, the employment of Employee and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Employer at times failed, and continue at times to fail, to pay Employee and terminated Aggrieved Employees, or some of them, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Employer's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages). Employer also violated, and continue to violate, Labor Code section 213(d) by paying final wages (if any are paid at all) via direct deposit without the employee's voluntary authorization.

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**Action for Civil Penalties Under PAGA**

In light of the above, Employee alleges that Employer violated the following provisions of the Labor Code with respect to the Aggrieved Employees, or some of them:

1. Labor Code §§ 204, 510, 1194, 1197, and 1198 by failing at times to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 204 by failing at times to pay all earned wages two times per month;
3. Labor Code §§ 226, 432, and 1198.5 by failing at times to timely produce requested payroll records, timecards, and personnel records;
4. Labor Code § 226 by failing at times to provide accurate itemized wage statements;
5. Labor Code § 1174 by failing at times to keep accurate and complete payroll records;
6. Labor Code § 216 for refusal at times to pay wages due and payable and/or denial at times of the validity of any claim to wages due;
7. Labor Code § 223 for at times secretly paying wages lower than required by statute while purporting to pay legal wages; and
8. Labor Code § 2802 by failing at times to indemnify for necessary expenditures;

Therefore, on behalf of potentially Aggrieved Employees, Employee seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

Employee has placed Employer on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

WILSHIRE LAW FIRM

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Molly DeSario, Esq.