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SUBMITTED ONLINE

November 5, 2024

California Labor & Workforce Development Agency

Re: Amani Jackson; Tiffany Ross & Jasmine Smith v. BHC Alhambra Hospital, Inc.; UHS of Delaware, Inc., et al. - PAGA Notice

To whom it may concern:

Pursuant to the applicable provisions of the California Labor Code Private Attorneys General Act (“PAGA”), Amani Jackson, Tiffany Ross and Jasmine Smith (each a “Plaintiff” and collectively “Plaintiffs”) hereby allege with respect to their employment with BHC Alhambra Hospital, Inc. and UHS of Delaware, Inc. (each a “Defendant” and collectively “Defendants”), that Defendant violated provisions of the California Labor Code (hereinafter the “Code”) and applicable Industrial Welfare Commission Wage Order 5 (“Applicable Wage Order”).

Plaintiffs are informed and believe and thereon allege that Defendant BHC Alhambra Hospital, Inc. and UHS of Delaware, Inc. is each a Delaware company, which at all times relevant herein, conducted business within the County of Los Angeles of the State of California. Each Plaintiff is currently ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants named herein under fictitious names and therefore gives notice of the existence of such other defendants by such fictitious names. Each Plaintiff will seek leave to amend this PAGA Notice to allege the true names and capacities of said fictitiously named defendants when their true names and capacities have been ascertained. Each Plaintiff is informed, believe and thereon alleges that each of the fictitiously named defendants is legally responsible in some manner for the events and occurrences alleged herein, and for the damages suffered by Plaintiff and other employees.

Defendants employed Plaintiffs and the Aggrieved Employees as non-exempt hourly psychiatric technicians, therapists, nurses, medical personnel, coordinators, and support staff during the PAGA Period. Plaintiff and Aggrieved Employees were not paid proper minimum wages, overtime, and final wages. Plaintiff and Aggrieved Employees were not provided proper meal and rest breaks. Each Plaintiff and Aggrieved Employees were not reimbursed for their necessary expenses. Each Plaintiff wishes to bring a representative action on behalf of themselves and the State of California as well as on behalf of a group of Aggrieved Employees defined as: Plaintiff and/or other persons who performed services as nonexempt hourly employees for Defendant during the period from one year prior to the filing of the PAGA Notice until this case is resolved ("Aggrieved Employees"). This includes:

- All persons who are employed or have been employed by BHC Alhambra Hospital, Inc. in the State of California who worked one or more pay periods as an hourly employee since one (1) year prior to the date of this letter and continuing to the present.
- All persons hired by BHC Alhambra Hospital, Inc., as a contract employee pursuant to Code § 2810.3 and staffed or employed by BHC Alhambra Hospital, Inc., with a client employer who maintains a workforce of greater than twenty-five (25) workers and maintains more than five (5) workers supplied by a labor contractor in the State of California since one (1) year prior to the date of this letter and continuing to the present.
- All person employed by BHC Alhambra Hospital, Inc. in California who worked one or more pay periods as an hourly employee since one (1) year prior to the date of this letter and continuing to the present.

Plaintiff and other Aggrieved Employees worked many hours at the BHC Alhambra Hospital, Inc. and other projects but were not timely paid for their work, or paid certain sums at all. In addition, Defendants misclassified Plaintiff and Aggrieved Employees, failed to provide them wage statements with the information required by Labor Code section 226(a), and did not properly compensate Plaintiff and Aggrieved Employees for overtime.

Plaintiff contends that the Labor Code sections listed below and the Applicable Wage Order enables Plaintiff to recover civil penalties under PAGA, as well as attorneys' fees and costs from Defendants through a civil action on behalf of all Aggrieved Employees. Plaintiff will seek to recover the PAGA penalties through a representative action permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969 (2009) and Huff v. Securitas Sec'y Servs. USA, Inc., 23 Cal. App. 5th 745, 756 (2018). Plaintiff will seek civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

1. **Failure to provide payroll records in violation of Code § 226(b).**

Employers must afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. Aggrieved Employees have requested but have not been provided with an opportunity to inspect or copy all payroll records within 21 days of request. Upon information and belief, many Aggrieved Employees have requested their payroll records but have not been given access to them pursuant to section 226(b). Code § 2699(f)(2) imposes a civil penalty of $100 per pay period per Aggrieved Employee for initial violations, and $200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

2. **Failure to personnel records in violation of Code § 1198.5.**

Employers must afford current and former employees the right to inspect or copy the personnel records pertaining to that current or former employee, upon reasonable request to the employer. Aggrieved Employees have requested have not been provided with an opportunity to inspect or copy all personnel records within 30 days of request. Upon information and belief, many Aggrieved Employees have requested their personnel records but have not been given access to them pursuant to section 1198.5. Code § 2699(f)(2) imposes a civil penalty of $100 per pay period per Aggrieved Employee for initial violations, and $200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

3. **Failure to provide records in violation of Code § 432.**

Employers are required to give a copy of any instrument relating to the obtaining or holding of employment, if signed by an employee, upon request. Plaintiff have requested such documents but have not received them. Upon information and belief, other Aggrieved Employees have requested their signed documents but have not been provided a copy. Code § 2699(f)(2) imposes a civil penalty of $100 per pay period per Aggrieved Employee for initial violations, and $200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

4. **Failure to timely pay wages during employment in violation of Code §§ 204 and 210.**

Aggrieved Employees were not compensated during their employment by the times prescribed by section 204 due to the failure to allocate sufficient resources to the payroll function. The failure of Defendants to make timely payments within the time provided for has been and is "willful" within the meaning of such word as used in Section 210 of the Code.

Defendants failed to pay Plaintiff and Aggrieved Employees all wages for weekly payroll period within 7 calendar days following the close of the payroll period in violation of Code §§ 204(d) and 210. Plaintiff and Aggrieved Employees were paid after the 7th day following the close of the payroll period in violation of these statutes.

Defendants failed to timely pay Plaintiff and Aggrieved Employees all wages for a bimonthly payroll period. Section 204 requires that wages be issued no more than 10 calendar days after the last day of the payroll period: "Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month" However, Plaintiff and Aggrieved Employees were paid after the 10th day following the close of the payroll period in violation of these statutes.

Accordingly, each Aggrieved Employee who was not timely paid his or her timely wages during their employment is entitled to civil penalties. Code section 210 provides for a penalty of
$100 for each initial violation and $200 for each subsequent, or willful or intentional violation plus 25 percent of the amount unlawfully withheld.

5. **Failure to pay wages and/or final wages in violation of Code §§ 203.**

With respect to violations of Code § 203, the failure of Defendants to make final payments within the time provided for has been and is "willful" within the meaning of such word as used in Section 203 of the Code. Code section 203 provides that if "an employer willfully fails to pay…any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

Here, Plaintiff and Aggrieved Employees were not timely paid all wages due upon their separation from Defendants' employ. For example, Plaintiff are still unpaid thousands of dollars for their work at the BHC Alhambra Hospital, Inc. despite repeated requests for payment. As such, Defendants failed to pay Plaintiff and Aggrieved Employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Code § 203. Accordingly, each Aggrieved Employee who was not timely paid his or her final wages is entitled to civil penalties. Code § 2699(f)(2) imposes a civil penalty of $100 per pay period per Aggrieved Employee for initial violations, and $200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

6. **Failure to provide itemized wage statements in violation of Code § 226(a).**

Aggrieved Employees have not been provided a wage statement as required by Code section 226(a). The foregoing was the intentional misconduct of Defendants that was intended to mislead and injure Aggrieved Employees insofar as they were subjected to confusion and deprived of information to which they were legally entitled.

a. Aggrieved Employees were misclassified as independent contractors and did not receive a wage statement at all
b. Many Aggrieved Employees did not receive a wage statement all.
c. The wage statements failed to include, among other required information, the "gross wages earned" as it only shows the gross wages eventually paid.
d. The wages statements failed to include, among other required information, the "total hours worked by the employee" as it only shows the total hours eventually paid.
e. The wage statements failed to include, among other required information, "all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item"
f. The wage statements failed to include, among other required information, the "net wages earned"
g. The wage statements failed to include, among other required information, the "inclusive dates of the period for which the employee is paid" as it appears to only show the date/dates worked and do not show the start and end date for each pay period.
h. The wage statements failed to include, among other required information, "the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number" as the statement shows:

- no identifying number at all
- all nine digits of the social security number

i. The wage statements failed to include, among other required information, the "name and address of the legal entity that is the employer" as it
   - does not reflect the full legal name of the employer
   - misstates that the employer is only a "Client"

j. The wage statements failed to include, among other required information, "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee"

Section 226(e) provides that any employee who suffers injury as a result of a knowing and intentional failure by the employer to comply with its obligation to provide wage statements containing all of the information referenced above is entitled to recover. Section 226.3 provides for a civil penalty of $250 per employee per violation in an initial violation and $1,000 per employee for each violation in a subsequent violation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

7. **Failure to provide proper meal periods under Code § 226.7 and Wage Order § 11.** Aggrieved Employees were not provided with timely meal periods in violation of Code section 226.7 and Applicable Wage Order section 11. For example, Plaintiff worked over 6 or 12 hours in a day but were not provided with compliant meal break(s) and were not otherwise compensated. Aggrieved Employees were not permitted to leave the production set for meal periods. Code §§ 226.7, 512 and Section 12 of the Applicable Wage Order require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Section 12 requires that "No employer shall employ any person for a work period of more than six (6) hours without a meal period of not less than thirty (30) minutes, nor more than one (1) hour. Subsequent meal period for all employees shall be called not later than six (6) hours after the termination of the preceding meal period." Defendants failed to maintain a policy informing all Aggrieved Employees of these rights.

Here, Defendants failed to apprise all Aggrieved Employees of their rights associated with meal periods and failed to provide timely meal periods. Defendants have had a consistent policy of: (1) requiring all Aggrieved Employees to take late meal breaks that occurred after the first 6 hours of each shift; (2) required Aggrieved Employees to work shifts over 12 hours without providing a second meal period of 30 minutes in length; and (3) failed to pay such employees 1 hour of pay at the employees' regular rate of compensation for each workday in which a proper meal break was not provided.

Additionally, Defendants maintained a policy of automatically deducting 30 minutes from each shift that Plaintiff and the Aggrieved Employees worked. This "auto-deduct" policy was unlawful and did not account for whether the employees took their meal periods, took meal periods late, and/or took meal periods of less than 30 minutes.

Code section 2699(f)(2) imposes a civil penalty of $100 per pay period per Aggrieved Employee for initial violations, and $200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

8. **Failure to provide proper rest periods under Code § 226.7 and Wage Order § 5.** All Aggrieved Employees were not provided with timely rest periods in violation of

Code section 226.7 and Applicable Wage Order section 12. Aggrieved Employees were not permitted to leave the set of the Production for any purported rest periods. They were required to be available via radio or cell phone at all times. Plaintiff and Aggrieved Employees were neither informed of nor otherwise provided with compliant rest breaks. Defendants failed to provide all Aggrieved Employees with rest breaks of not less than 10 minutes per 4-hour work period, or major fraction thereof. On a regular and consistent basis, Defendants failed to provide all Aggrieved Employees with a third rest period despite regularly requiring Aggrieved Employees to work over 10 hours. As such, Defendants failed to provide all Aggrieved Employees with compliant rest periods. Further, Plaintiff and the Aggrieved Employees were not compensated with 1 hour of wages for each missed rest period as required by Code § 226.7.

Code section 2699(f)(2) imposes a civil penalty of $100 per pay period per Aggrieved Employee for initial violations, and $200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

9.

9. Improper classification of employees as independent contractors in violation of Code § 226.8.

Some Aggrieved Employees were willfully misclassified as independent contractors even though they were employees. Production Aggrieved Employees are employees who are granted specific protections under the Labor Code, as defined in Code § 201.5. Defendants' failure to properly classify as employees all Aggrieved Employees was done on a regular and consistent basis. Code section 226.8 requires "a civil penalty of not less than five thousand dollars ($5,000) and not more than fifteen thousand dollars ($15,000) for each violation, in addition to any other penalties or fines permitted by law." If the employer is found to have engaged in a "pattern or practice" of misclassifying employees, it is subject to a "civil penalty of not less than ten

thousand dollars ($10,000) and not more than twenty-five thousand dollars ($25,000) for each violation, in addition to any other penalties or fines permitted by law." Cal. Lab. Code § 226.8(c).

10. Failure to reimburse necessary business expenses under Code § 2802.

Some Aggrieved Employees were not reimbursed for necessary business expenses. Section 2802 requires that an employer indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Defendants have failed to reimburse Plaintiff and Aggrieved Employees the cost of using their personal cell phones for business related purposes. Defendants required that Plaintiff and the Aggrieved Employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones were not provided by Defendants, and Defendants failed to reimburse Aggrieved Employees for the costs associated with using these personal cell phones. They were also not reimbursed for the provision and use of personal protective equipment and motion picture production equipment and supplies necessary to perform their job duties.

Code section 2699(f)(2) imposes a civil penalty of $100 per pay period per Aggrieved Employee for initial violations, and $200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

11. Failure to pay minimum and overtime wages in violation of Code §§ 510, 515, 558, 1194, and 1198.

Both late payment and non-payment of minimum wages violate the state statute requiring the payment of a minimum hourly wage. The Labor Code requires an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Here, Plaintiff and other Aggrieved Employees were not paid at the proper corresponding rate for all hours worked, including overtime as a result of the following:

1. Defendants' misclassification of these individuals as independent contractors.
2. Defendants did not record actual hours and failed to pay for all time worked.
3. Defendants' failure to pay for all time spent driving/and or travelling from site to site.
4. Defendants' failure to calculate the correct overtime rate under Code § 515.
5. Aggrieved Employees routinely work "off the clock" to attend mandatory meetings beyond their scheduled call time.
6. Plaintiff and the Aggrieved Employees are routinely paid until an arbitrary time in the day and not until they have ceased working.

Code § 558 imposes a civil penalty in addition to any other penalty provided by law of $50 for initial violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages, and $100 for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

12. Failure to keep complete and accurate payroll records.

Defendant failed to keep complete and accurate payroll records relating to Aggrieved Employees in accordance with Code §1174(d). Willful failure to maintain accurate and complete records required by section 1174(d) is subject to a civil penalty of $500. Lab. Code § 1174.5.

13. Failure to Utilize Bonus Pay for Computation of Overtime

Defendant paid commissions for selling training sessions as bonuses i.e. "money promised to an employee in addition to the monthly salary, hourly wage, commission or piece rate usually due as compensation". Division of Labor Standards Enforcement, Enforcement Policies and Interpretations Manual § 2.5.5. Bonuses are in addition to any other remuneration rate and may be predicated on performance over and above that which is paid for hours worked, pieces made, or sales completed. Id. A bonus may be in the form of a gratuity where there is no promise for their payment, for example, a holiday bonus at the end of the year. Additionally, a bonus may be a contractually required payment where a promise is made that a bonus will be paid in return for a specific result, such as exceeding a minimum sales figure or piece quota, or as an inducement to remain in the employ of the employer for a certain period of time.[1] Defendant failed to utilize the

[1] The word has been defined as: "An addition to salary or wages normally paid for extraordinary work. An inducement to employees to procure efficient and faithful service." Duffy Bros. v. Bing & Bing, 217 App.Div.10, 215 N.Y.S. 755, 758 (1939). Bonuses may be in the form of a gratuity where there is no promise for their payment; or they may be a contractually required payment where a promise is made that a bonus will be paid in return for a specific result (i.e., exceeding a minimum sales or piece quota). (See detailed discussion of Bonuses at Section 35 of this Manual). Division of Labor Standards Enforcement, Enforcement Policies and Interpretations Manual § 2.5.5. Sums earned as bonuses are wages under the

commissions in computation of overtime for Aggrieved Employees. Defendant failed to pay the hourly wages due when commission payments exceeded the hourly wages.

Please advise whether you will proceed with an investigation of this matter or whether Plaintiff may seek a civil-penalty recovery for the alleged violations under the Labor Code Private Attorneys General Act through private counsel.

Very truly yours,
/s/ Alan Harris
Alan Harris

Cc: (Via Certified Mail)

BHC ALHAMBRA HOSPITAL, INC.
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definition found in California Labor Code §200.