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WRITERS EXT:

1004

June 2, 2025

CA3891

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Aspen Surgery Center, LLC
Certified Mail #9589071052703176334358
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 204, 210, 226(a), 226.7, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and Violation of Applicable Industrial Welfare Commission Wage Order(s) brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

This letter serves as a written notice under California Labor Code Section 2699.3 on behalf of Anthony Provencio and Darlene Yvonne Enersen ("Plaintiffs") and all other Aggrieved Employees of Aspen Surgery Center, LLC ("Defendant"). "Aggrieved Employees" refers to all individuals who are or previously were employed by Aspen Surgery Center, LLC in California, including any employees staffed with Aspen Surgery Center, LLC by a third party, and classified as non-exempt employees during the time period of June 2, 2024 until a date as determined by the Court ("PAGA Period"). Our offices represent Plaintiffs and other Aggrieved Employees in a lawsuit against Defendant. Plaintiff Provencio has been employed by Defendant in California since December of 2020. Plaintiff Enerson has been employed by Defendant in California since November of 2022. Plaintiffs have been at all times classified by Defendant as non-exempt employees, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock as described further below. Plaintiff Provencio is employed with Defendant as a Surgical Technician working at 133 La Costa Via, Suite 150 Walnut, CA 94598. Plaintiff Enerson is employed with Defendant as a Registered Nurse working at 133 La Costa Via, Suite 150 Walnut, CA 94598.

Defendant paid Plaintiffs non-discretionary incentive compensation that Defendant failed to include into Plaintiffs' overtime, sick pay, and meal and rest break premium pay and

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as a result underpaid Plaintiffs their wages during their employment with Defendant in violation of California Labor Codes Sections 226.7, 246, 510, 512, 1194 & 1198. For example, Plaintiffs earned several non-discretionary incentive wage payments, including, but not limited to, “Preceptor Pay” and “Regular Bonus” in the same pay period that Plaintiffs worked overtime and/or were paid meal and rest premiums and/or were paid sick pay wages. However, Defendant failed to correctly include these incentive wages into Plaintiffs’ respective regular rates of pay and as a result underpaid Plaintiffs’ wages. Attached hereto as Exhibit #1 are true and correct copies of Plaintiffs’ wage statements.

During the PAGA Period, Defendant also intentionally and unlawfully failed to pay Plaintiffs for compensable work time which was spent working while clocked out of Defendant’s timekeeping system in violation of Cal. Lab. Code Sections 1197 and 1197.1. For instance, Plaintiff Provencio would clock out for a mid-shift meal and his charge nurses, or his manager Nicole Montez, would ask him questions regarding specific work tasks such as issues with the sterile field setup for an upcoming surgical procedure. Plaintiff Provencio would also respond to questions regarding medications administered to a patient during a procedure as well as answering calls and text messages when he was off the clock in a break area. Additionally, Plaintiff Provencio would work off the clock pre-shift when he was assigned to extensive surgery cases (image guided functional endoscopic sinus surgeries for example) as the sterile field setup was exhaustive and Defendant did not allocate enough time between Plaintiff’s scheduled start time and the surgery so Plaintiff would have to perform work prior to clocking in order to meet the surgery time. Further, Plaintiffs were unable to take all their compliant meal and rest breaks each work shift as a result of Defendant’s under staffing of labor at their work location. Plaintiff Enerson would miss her off duty rest break as a result of being called back for drug counts and also called back to the room to start her next job tasks on time. There were times where Plaintiff Enerson could not take her rest breaks as there was not another nurse who had the skill set in order to perform the assigned tasks that needed to be done. Although Defendant paid meal and rest break penalties on occasion, all of the premiums were not paid at the correct rates and also not paid for all violations that occurred during the PAGA Period for Plaintiffs.

Further, pursuant to Labor Code § 204 and § 210, Defendant failed to timely pay Plaintiffs their minimum, overtime, sick pay, and meal and rest break penalty wages as described above.

Plaintiffs further contends that Defendant failed to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Defendant failed to provide Plaintiffs with accurate pay stubs that included the correct rates of pay and correct wages earned for overtime and minimum wage pay, in addition to meal and rest break premium pay as described herein.

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This notice is provided to enable Plaintiff to proceed with a Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit will consist of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

If you have any questions of concerns, please do not hesitate to contact me at the above number and email address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

EXHIBIT #1

Pay Statement	
Period Start Date	07/21/2024
Period End Date	08/03/2024
Pay Date	08/09/2024
Document	526175
Net Pay	\$832.96

Pay Details

DARLENE YVONNE ENERSEN [REDACTED]	Employee Number	[REDACTED]	Pay Group	Aspen Surgery Center
	SSN	XXX-XX-XXXX	Location	Aspen Surgery Center
	Job	RN OR	Group	200001 - AG-West
	Pay Rate	\$72.0000	Facility	ASC - Aspen Surgery Center
	Pay Frequency	Biweekly	Department	200625 - Field Operating Room

Earnings

Pay Type	Week	Job	Hours	Pay Rate	Current	YTD
CA Sick			0.000000	\$0.0000	\$0.00	\$936.00
GTL Imputed	2	RN OR			\$4.00	\$60.00
Overtime	1	RN OR	0.100000	\$72.0000	\$7.20	
Overtime	2	RN OR	0.080000	\$72.0000	\$5.76	\$1,354.32
Overtime Prem	1	RN OR	0.100000	\$36.1235	\$3.61	
Overtime Prem	2	RN OR	0.080000	\$36.0000	\$2.88	\$677.47
Paid Time Off			0.000000	\$0.0000	\$0.00	\$3,600.00
Preceptor Pay	1	RN OR	1.000000	\$2.0000	\$2.00	\$18.00
PTO Payout			0.000000	\$0.0000	\$0.00	\$949.67
Regular Pay	1	RN OR	8.000000	\$72.0000	\$576.00	
Regular Pay	2	RN OR	8.000000	\$72.0000	\$576.00	\$22,142.88
Technology	2	RN OR			\$10.00	\$80.00

Total Hours Worked 16.180000

Total Hours 17.180000

Deductions

Deduction	Pre-Tax	Employee Current	Employee YTD	Employer Current	Employer YTD
401K Percentage	Yes	\$70.41	\$1,674.10	\$0.00	\$0.00
Dental Pre-Tax	Yes	\$0.00	\$40.66	\$0.00	\$13.59
Grp Hospital	No	\$0.00	\$46.50	\$0.00	\$0.00
GTL Imputed	No	\$4.00	\$60.00	\$0.00	\$0.00
Medical Pre-Tax	Yes	\$151.32	\$2,269.80	\$720.58	\$10,808.70
401K Match	Yes	\$0.00	\$0.00	\$35.20	\$837.05

Taxes

Tax	Current	YTD
Federal Income Tax	\$39.02	\$2,806.25
Employee Medicare	\$14.87	\$397.70
Social Security Employee Tax	\$63.62	\$1,700.53
CA State Income Tax	\$0.00	\$1,038.71
CA Disability Employee	\$11.25	\$301.05

Paid Time Off

Plan	Taken	Current	Balance
Sick Time	3.0000	0.5333	2.6944

Net Pay Distribution

Account Number	Account Type	Amount
[REDACTED]	[REDACTED]	\$832.96
Total		\$832.96

Pay Summary

	Gross	FIT Taxable Wages	Taxes	Deductions	Net Pay
Current	\$1,187.45	\$955.72	\$128.76	\$225.73	\$832.96
YTD	\$29,818.34	\$25,753.78	\$6,244.24	\$4,091.06	\$19,483.04

Pay Statement	
Period Start Date	10/13/2024
Period End Date	10/26/2024
Pay Date	11/01/2024
Document	569531
Net Pay	\$3,118.09

Pay Details

ANTHONY RENE PROVENCIO [REDACTED]	Employee Number	[REDACTED]	Pay Group	Aspen Surgery Center
	SSN	XXX-XX-XXXX	Location	Aspen Surgery Center
	Job	Surgical Technician	Group	200001 - AG-West
	Pay Rate	\$54.5000	Facility	ASC - Aspen Surgery Center
	Pay Frequency	Biweekly	Department	200625 - Field Operating Room

Earnings

Pay Type	Week	Job	Hours	Pay Rate	Current	YTD
Bereavement			0.000000	\$0.0000	\$0.00	\$500.00
CA Meal Penalty	1	Surgical Technician	1.000000	\$54.5000	\$54.50	\$1,231.87
CA MISSED REST			0.000000	\$0.0000	\$0.00	\$54.50
CA Sick			0.000000	\$0.0000	\$0.00	\$2,660.00
Doubletime			0.000000	\$0.0000	\$0.00	\$26.48
Doubletime Prem			0.000000	\$0.0000	\$0.00	\$26.48
GTL Imputed	2	Surgical Technician			\$7.36	\$145.59
Overtime	1	Surgical Technician	0.330000	\$54.5000	\$17.98	
Overtime	2	Surgical Technician	2.150000	\$54.5000	\$117.18	\$2,246.08
Overtime Prem	1	Surgical Technician	0.330000	\$27.2500	\$8.99	
Overtime Prem	2	Surgical Technician	2.150000	\$27.4398	\$59.00	\$1,125.05
Paid Time Off	1	Surgical Technician	4.000000	\$54.5000	\$218.00	\$8,758.00
Preceptor Pay	2	Surgical Technician	8.000000	\$2.0000	\$16.00	\$82.00
Regular Bonus			0.000000	\$0.0000	\$0.00	\$3,107.55
Regular Pay	1	Surgical Technician	36.000000	\$54.5000	\$1,962.00	
Regular Pay	2	Surgical Technician	40.000000	\$54.5000	\$2,180.00	\$81,362.00
Technology	2	Surgical Technician			\$10.00	\$110.00
Total Hours Worked 82.480000		Total Hours 91.480000				

Deductions

Deduction	Pre-Tax	Employee Current	Employee YTD	Employer Current	Employer YTD
Child Life	No	\$0.63	\$13.23	\$0.00	\$0.00
Dental Pre-Tax	Yes	\$44.84	\$941.64	\$24.13	\$506.73
EE Sup Life	No	\$63.25	\$1,328.25	\$0.00	\$0.00
GTL Imputed	No	\$7.36	\$145.59	\$0.00	\$0.00
STD	No	\$57.36	\$1,165.05	\$0.00	\$0.00
Vision Pre-Tax	Yes	\$9.43	\$198.03	\$0.00	\$0.00
Vol Sps Life	No	\$8.43	\$177.03	\$0.00	\$0.00

Taxes

Tax	Current	YTD
Federal Income Tax	\$658.22	\$14,300.02
Employee Medicare	\$66.51	\$1,452.70
Social Security Employee Tax	\$284.38	\$6,211.53
CA State Income Tax	\$282.14	\$6,020.45
CA Disability Employee	\$50.37	\$1,100.44

Paid Time Off

Plan	Taken	Current	Balance
Paid Time Off	144.0000	7.6900	55.3932
Sick Time	50.0000	0.0000	-19.9200
STL	0.0000	1.5360	151.8238

Net Pay Distribution

Account Number	Account Type	Amount
[REDACTED]	[REDACTED]	\$3,118.09
Total		\$3,118.09

Pay Summary

	Gross	FIT Taxable Wages	Taxes	Deductions	Net Pay
Current	\$4,651.01	\$4,586.74	\$1,341.62	\$191.30	\$3,118.09
YTD	\$101,435.60	\$100,185.93	\$29,085.14	\$3,968.82	\$68,381.64