

1 ZACHARY CROSNER (SBN 272295)
2 MICHAEL CROSNER (SBN 41294)
3 BLAKE JONES (SBN 211221)
4 BRANDEN HAMILTON (SBN 280217)
5 CROSNER LEGAL, P.C.
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel. (310) 496-5818
Fac. (818) 700-9973

6 Attorneys for Plaintiff
7 JUAN CALDERON

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 JUAN CALDERON, on behalf of all
12 others similarly aggrieved,

13 Plaintiff,
14 vs.

15 PHYSICIANS FOR HEALTHY
16 HOSPITALS, INC., a Delaware
17 corporation; and DOES 1-50, Inclusive,
18 Defendants.

Case No. 5:20-cv-01875 JWH(SP_x)

FIRST AMENDED COMPLAINT
FOR VIOLATION OF PRIVATE
ATTORNEYS GENERAL ACT,
CAL. LABOR CODE SECTIONS
2698, *et seq.*

JURY TRIAL DEMANDED

GENERAL ALLEGATIONS

1. Plaintiff JUAN CALDERON (“Plaintiff”) is an individual residing in the State of California.

2. Defendant PHYSICIANS FOR HEALTHY HOSPITALS, INC. (“PHH”) is a Delaware corporation duly licensed to conduct business in the State of California.

3. This matter was removed to this Court by Defendants on or about September 11, 2020 from the Superior Court of California for the County of Riverside. To the extent jurisdiction is proper, venue is proper in this Court under 28 U.S.C. section 1441(a) because it is the “district and division embracing the place where such action is pending.”

4. Plaintiff was employed by Defendant PHH as a non-exempt employee with the job title of “security guard.” Plaintiff brings his complaint under the Private Attorneys General Act of 2004, Labor Code sections 2698, et seq., (“PAGA”), as a representative action on behalf of the State of California, regarding violations of the Labor Code as to all similarly aggrieved individuals employed by Defendant in the State of California as a non-exempt employee. This action is brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

FIRST CAUSE OF ACTION

VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,

LABOR CODE SECTIONS 2698, ET SEQ.

8. Plaintiff incorporates paragraphs 1 through 7 of this complaint as if fully alleged herein.

9. Under the Labor Code and IWC Wage Orders, Defendant was required to provide Plaintiff and similarly aggrieved employees with one 30-minute meal break free from all duties for all shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the following circumstances: (1) if an employee’s total work

1 period in a day is over five (5) hours but no more than six (6) hours, the required
2 meal period may be waived by mutual consent of the employer and employee, and
3 (2) if an employee's total work period in a day is over ten (10) hours but no more
4 than twelve (12) hours, the required second meal period may be waived by mutual
5 consent of the employer and employee, but only if the first meal period was not
6 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve
7 their employees for at least one meal period for shifts over five hours (see above),
8 and (2) to record having done so. If the employer fails to properly record a valid meal
9 period, it is presumed no meal period was provided.

10 10. Plaintiff and similarly aggrieved employees regularly worked periods of more
11 than five hours in a workday without being provided a mandatory thirty-minute, duty-
12 free meal period, and regularly worked periods of more than ten and/or twelve hours
13 in a workday without being provided a mandatory second thirty-minute, duty-free
14 meal period. Per Defendant's illegal meal break policy/practice, Plaintiff and
15 similarly aggrieved employees were rarely, if ever, relieved of their duties for
16 purposes of taking meal breaks. Plaintiff and similarly aggrieved employees were
17 tethered to their work locations and work communication devices for the duration of
18 their shifts and therefore under Defendant's control at all times during their shifts,
19 including during any purported meal periods. Defendant did not maintain a company
20 meal period policy and/or practice compliant with California law, and Defendant did
21 not properly authorize nor provide Plaintiff and similarly aggrieved employees with
22 appropriate meal periods in compliance with the law. Defendant also failed to pay
23 Plaintiff and similarly aggrieved employees an additional hour of wages at their
24 regular rates of pay for each workday a meal period was not provided.

25 11. Defendant failed to provide Plaintiff and similarly aggrieved employees all
26 required and/or fully compliant rest periods, or compensation in lieu thereof.
27 Defendant employed policies and procedures that ensured Plaintiff and similarly
28 aggrieved employees would not receive all legally required rest periods, as Defendant

1 did not authorize and permit all required rest periods in strict accordance to, and in
2 compliance with, the timing requirements of all applicable Wage Orders. Defendant
3 similarly employed policies and procedures that rendered rest breaks non-compliant
4 with the requirements of California law by, inter alia, failing to relieve Plaintiff and
5 similarly aggrieved employees of all duties and all employer control. Given Plaintiff
6 and similarly aggrieved employees' work schedules, they were typically entitled to
7 at least two rest periods per workday, which they were routinely denied. Defendant
8 required Plaintiff and similarly aggrieved employees to remain tethered to their work
9 locations and work communication devices during their shifts, including during any
10 purported rest periods. Defendant further employed policies and procedures ensuring
11 Plaintiff and similarly aggrieved employees did not receive premium wages to
12 compensate them for workdays they did not receive all legally required and fully
13 compliant rest periods.

14 12. California law provides employees in California must be paid for all hours
15 worked, up to 40 per week or 8 per day, at a regular time rate no less than the
16 mandated minimum wage. California law also provides employees in California
17 must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all
18 hours worked in excess of 40 per week or 8 per day. Plaintiff and similarly aggrieved
19 employees regularly worked hours, including overtime hours, for which they were
20 not compensated by Defendant as required by California law. Specifically, upon
21 information and belief, Defendant implemented a time rounding system that
22 systematically deprived Plaintiff and similarly aggrieved employees of compensable
23 hours worked because it resulted in understating hours worked due to the rounding.
24 As a result, Defendant failed to pay Plaintiff and similarly aggrieved employees for
25 all hours worked at a rate no less than the prevailing minimum wage, thereby
26 violating California minimum wage laws, including but not limited to, Labor Code
27 sections 1194-1199, and Wage Order 4-2001, section 7. These violations subject
28 Defendant to civil penalties under the foregoing Labor Code sections and other

1 applicable Labor Code sections, including without limitation Labor Code sections
2 1197.1 and 2699. Each violation of each Labor Code section and Wage Order
3 provision, for each aggrieved employee, results in a separate civil penalty.

4 13. California law provides that, at the time of each payment of wages, the
5 employer must provide each employee with an itemized statement showing, inter
6 alia, gross wages earned, total hours worked, all deductions taken, net wages earned,
7 the inclusive dates for which the employee is being paid, the employee's name and
8 last four digits of their social security number, the name and address of the legal
9 entity that it is the employer, and all applicable hourly rates in effect during the pay
10 period and all hours worked at each rate. Defendant knowingly and intentionally
11 failed to provide Plaintiff and other aggrieved employees with proper, itemized wage
12 statements as the wage statements provided by Defendant do not accurately reflect,
13 inter alia, gross wages earned, total hours worked, net wages earned, and all
14 applicable hourly rates in effect during each pay period and all hours worked at each
15 applicable hourly rate. Accordingly, Defendant has violated Labor Code section 226
16 as to Plaintiff and all similarly aggrieved employees. These violations subject
17 Defendant to civil penalties under the Labor Code, including without limitation
18 Labor Code sections 226 and 2699. Each violation of each Labor Code section and
19 Wage Order provision, for each aggrieved employee, results in a separate civil
20 penalty.

21 14. California law requires employers to keep "accurate and complete" payroll
22 records showing, among other things, the hours worked daily by all non-exempt
23 employees. IWC Wage Order 4-2001, section 7, similarly requires employers to keep
24 time records showing, inter alia, when the employees begin and end each work period
25 and reflecting the times during which all owed meal periods are provided each day.
26 At all relevant times, Defendant has failed, and continues to fail, to keep the required
27 time records, as Defendant did not keep records of the true hours worked by Plaintiff
28 and similarly aggrieved employees by virtue of Defendant's rounding/time-shaving

1 system; also, Defendant failed to provide and/or record employee meal periods.
2 Defendant's failure to keep "accurate and complete" payroll records for Plaintiff and
3 other similarly aggrieved employees violates Labor Code sections 1174, 1198-99,
4 and Wage Order 4-2001, section 7. These violations subject Defendant to civil
5 penalties under the Labor Code, including without limitation sections 1174.5 and
6 2699. Each violation of each Labor Code section and Wage Order provision, for
7 each aggrieved employee, results in a separate civil penalty.

8 15. Together, Labor Code sections 1198 and 1199 make unlawful employment of
9 any individual under conditions of labor prohibited by the Wage Orders, and any
10 violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1
11 of the Labor Code, including sections 1174, 1197, and 1198, or other order or ruling
12 of the IWC. Defendant's violations with respect to minimum wages and/or overtime
13 wages, as alleged herein, result in separate violations of Labor Code sections 1198
14 and 1199, and subject Defendant to civil penalties under the Labor Code, including
15 without limitation Labor Code sections 1197.1 and 2699. Each violation of each
16 Labor Code section and Wage Order provision, for each aggrieved employee, results
17 in a separate civil penalty.

18 16. California Labor Code section 204 requires an employer to pay employees all
19 wages due and payable at least twice each calendar month. Defendant failed to
20 comply with Labor Code section 204 by failing to timely pay twice during each
21 calendar month all wages due and payable to Plaintiff and other similarly aggrieved
22 employees. Defendant's violations of Labor Code section 204 subject Defendant to
23 civil penalties, including but not limited to the penalties set forth in California Labor
24 Code sections 210 and 2699. Each violation results in a separate civil penalty, for
25 each aggrieved employee for each pay period during which the statutory provisions
26 were violated.

27 17. Labor Code section 201 requires employers to pay all wages earned and unpaid
28 at the time of discharge, immediately upon discharge. Labor Code section 202 states

1 similar provisions with respect to employees who resign. For all aggrieved
 2 employees no longer employed by Defendant, Defendant still has not paid such
 3 aggrieved employees all wages earned and unpaid at the time of discharge, in that
 4 Defendant has not paid for, inter alia, time spent performing work during
 5 uncompensated meal periods. These violations subject Defendant to civil penalties
 6 under the Labor Code, including without limitation Labor Code sections 203, 256
 7 and 2699. Each violation results in a separate civil penalty, for each aggrieved
 8 employee for each pay period during which the statutory provisions were violated.

9 18. Plaintiff complied with the procedures for bringing suit specified in Labor
 10 Code sections 2699.3 and 2699.5. Plaintiff gave written notice to the California
 11 Labor and Workforce Development Agency ("LWDA") via electronic mail at
 12 PAGAfilings@dir.ca.gov on March 3, 2020, and via certified mail to Defendant on
 13 March 3, 2020, of the specific provisions of the Labor Code and Wage Orders
 14 allegedly violated, including the facts and theories to support the alleged violations.

15 19. Under Labor Code section 2699.3, the LWDA must give written notice by
 16 certified mail to the parties it intends to investigate the alleged violations within 65
 17 days of the date of the complainant's written notice. As of the date of this Complaint,
 18 the LWDA has not provided the parties any notice of its intention to investigate
 19 Plaintiff's claims on behalf of himself and other similarly aggrieved employees. As
 20 of the date of this Complaint, Defendant has not responded to Plaintiff's PAGA
 21 notices in an attempt to cure. Accordingly, Plaintiff has exhausted all administrative
 22 remedies required by law. / / /

23 24 **PRAYER**

25 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly
 26 and severally, as follows:

- 27 1. For civil penalties according to proof;
- 28 2. For reasonable attorney's fees and costs of suit; and

1 3. For such other and further relief as the Court deems just and proper.

2
3 Dated: October 23, 2020

CROSNER LEGAL, P.C.

4
5 

6 Michael Crosner

7 Zachary Crosner

8 Blake Jones

9 Branden Hamilton

10 Attorneys for Plaintiff JUAN CALDERON

DEMAND FOR JURY TRIAL

Plaintiff JUAN CALDERON demands a trial by jury on all claims so triable.

Dated: October 23, 2020

CROSNER LEGAL, P.C.



Michael Crosner

Zachary Crosner

Blake Jones

Branden Hamilton

Attorneys for Plaintiff Juan Calderon

PROOF OF SERVICE

JUAN CALDERON v. PHYSICIANS FOR HEALTHY HOSPITALS, INC.
CENTRAL DISTRICT COURT OF CALIFORNIA Case No. 5:20-CV-01875-AB-SP

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 433 N. Camden Dr., Ste. 400, Beverly Hills, CA 90210.

On October 23, 2020, I served true copies of the following document(s) described as

**FIRST AMENDED COMPLAINT FOR VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT, CAL. LABOR CODE SECTIONS 2698, et seq.**

JURY TRIAL DEMANDED

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ By CM/ECF: I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants (if any) indicated on the Manual Notice list.

☒ BY (Federal) I declare under penalty of perjury under the laws of the State of California and under the laws of the United States of America that the above is true and correct.

Executed on October 23, 2020, at Los Angeles, California.



Maria Monterrey

PROOF OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

JUAN CALDERON v. PHYSICIANS FOR HEALTHY HOSPITALS, INC.
CENTRAL DISTRICT COURT OF CALIFORNIA Case No. 5:20-CV-01875-AB-SP

David E. Amaya, Esq.
Jason A. Fischbein, Esq.
FISHER & PHILLIPS LLP
4747 Executive Drive, Suite 1000
San Diego, Ca 92121
jfischbein@fisherphillips.com
damaya@fisherphillips.com
svalle@fisherphillips.com
meleria-perez@fisherphillips.com
amastin@fisherphillips.com

Attorneys for Defendants
PHYSICIANS FOR HEALTHY
HOSPITALS, INC.
PETER BARONOFF

PROOF OF SERVICE