

PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys General Act Settlement Agreement and Release (“Agreement”) is made by and between Plaintiffs Charnekia Findley, Emmanuela Stein, and Jeremy Frahn (collectively, “Plaintiffs”), individually, and on behalf of all other aggrieved employees (the “Aggrieved Employees,” as described below), and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2699, *et seq.*, the Private Attorneys General Act (“PAGA”) on the one hand, and Defendant University of Southern California (“USC”), on the other hand. Plaintiffs and USC are collectively referred to herein as “the Parties.”

This Agreement, and the settlement embodied herein, shall be binding on Plaintiffs, the Aggrieved Employees they represent, and USC, subject to the approval of the Court.

WHEREAS, Plaintiffs have filed separate Complaints in the Superior Court of California, County of Los Angeles entitled *Charnekia Findley v. USC, et al.*, LASC Case No. 20STCV47290, *Emmanuela Stein v. USC, et al.*, LASC Case No. 20STCV47294, and *Jeremy Frahn v. USC*, LASC Case No. 21STCV02075 (the “Lawsuits”). The Lawsuits assert class claims and/or a representative claim for civil penalties payable to themselves, other aggrieved employees, and the State of California pursuant to PAGA, based on allegations that USC: (1) failed to pay minimum and regular rate wages; (2) failed to pay overtime compensation; (3) failed to provide meal periods; (4) failed to authorize and permit rest breaks; (5) failed to timely pay final wages at termination; and/or (6) failed to furnish accurate itemized wage statements. In addition, Plaintiff Findley submitted Amended notices of Labor Code violations to the California Labor & Workforce Development Agency (“LWDA”), based on allegations that USC failed to: (1) reimburse business expenses and (2) failure to provide sick leave. Specifically, the Representative PAGA Claims are claims for civil penalties under PAGA for violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 233, 246, 246.5, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2802, as well as the applicable provisions of the Industrial Wage Orders, and for any other PAGA violations that could have been asserted in the action based on the factual assertions and legal assertions in the operative Complaints or PAGA Notices. The applicable PAGA Notices related to the Lawsuits are attached hereto as **Exhibit B** (all of the foregoing are collectively referred to as Plaintiffs’ “Representative PAGA Claims”).

WHEREAS, Plaintiffs timely sent notices to the LWDA of their intent to pursue representative actions pursuant to PAGA, on behalf of themselves, in their respective Lawsuits, and the State of California as well as on behalf of a group of aggrieved employees (the notices by Plaintiffs to the LWDA are collectively referred to as the “PAGA Notice” herein).

WHEREAS, Plaintiffs signed arbitration agreements entered into during their employment with USC and do not dispute their enforceability. The arbitration agreements preclude Plaintiffs from bringing class claims in the Lawsuits. *See Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407 (2019). Accordingly, to the extent they have not done so already, each Plaintiff will file a request to dismiss any class claims without prejudice pursuant to California Rule of Court, Rule 3.770.

WHEREAS, on September 28, 2021, the Parties attended an all-day mediation with experienced wage-and-hour mediator Steven J. Rottman, Esq. As a result, the Parties agreed to settle

Plaintiffs' Representative PAGA claims, taking into account all known facts and circumstances – including the difficulty of proving some of Plaintiffs' claims, potential defenses asserted by USC, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues.

WHEREAS, for purposes of this Settlement, the Aggrieved Employees are defined as: “All current and former non-exempt employees who are or were employed by USC within the State of California between October 5, 2019 and the sooner of date the Court enters an order and judgment approving this settlement or February 28, 2022.”

WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiffs' Representative PAGA Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Representative PAGA Claims that Plaintiffs and the Aggrieved Employees have against USC and USC's past or present parents, subsidiaries, and affiliates (including but not limited to USC Verdugo Hills Hospital and Keck Hospital of USC), and/or its or their respective past or present officers, directors, employees, partners, agents, or insurers (collectively, the “Released Parties”), and/or any other individual or entity that could be liable for the acts of omissions of USC or the Released Parties. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by USC or the Released Parties of any wrongdoing or liability. Specifically, USC and the Released Parties deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuits and applicable PAGA Notices. USC and the Released Parties, among other things, contend that they have complied at all times with the California Labor Code and all applicable California laws.

WHEREAS, the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the Representative PAGA Claims, and have arrived at the settlement in extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, California Labor Code § 2699(k)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA.

WHEREAS, based on their own independent investigations and evaluations, USC and Plaintiffs and their respective counsel are of the opinion that the amount and terms of the Settlement are fair, reasonable, and adequate and are in the best interests of the Plaintiffs, the Aggrieved Employees, and USC in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, counsel for Plaintiffs, Moon & Yang, APC and Aegis Law Firm, believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation.

WHEREAS, the Parties: (1) believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the Representative PAGA Claims, (2) have investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, and (3) have arrived at the settlement through extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, the Parties recognize that in accordance with Labor Code section 2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-47 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class”).

Therefore, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree and covenant as follows:

1. Effective Date. The effective date (“Effective Date”) of this Agreement shall mean the following: (a) the date of service of notice of entry of the order approving this Agreement and the PAGA Settlement if no objections are filed to this settlement or if all objections are withdrawn prior to the Court ruling on them; or (b) sixty-one (61) days after the date of service of notice of entry of the settlement approval order if objections are filed and overruled and no appeal is taken from the order approving the settlement; or (c) if a timely appeal is made, ten (10) business days after the final resolution of that appeal if the appeal is rejected, the settlement is upheld, and the settlement approval order is no longer subject to further judicial review.

2. Released Claims/Effect of Judgment on Aggrieved Employees and LWDA
The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiffs, the LWDA, and the Aggrieved Employees, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.* only, against USC and USC’s past or present parents, subsidiaries, and affiliates (including but not limited to USC Verdugo Hills Hospital, Keck Medicine of USC, Keck Medical Center of USC, and Keck Hospital of USC) and/or its or their respective past or present officers, directors, employees, partners, agents or insurers (collectively, the “Released Parties”), and/or any other individual or entity that could be liable for the acts or omissions of USC or the Released Parties. It is expressly understood and agreed that this settlement only includes a full release of the PAGA claim for violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 233, 246, 246.5, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2802, as well as the applicable provisions of the Industrial Wage Orders, and for any other PAGA violations that could have been asserted in the action based on the factual assertions and legal assertions in the operative Complaints and/or PAGA Notices, attached as **Exhibit B** (all of the foregoing are collectively referred to as Plaintiffs’ “Representative PAGA Claims”). This settlement shall not impact Aggrieved Employees’ ability to assert individual Labor Code claims other than PAGA claims.

3. **Notice to LWDA.** Pursuant to California Labor Code § 2699(k)(2), the Parties shall submit to the LWDA a copy of this Agreement at the same time that the Parties submit it to the Court for approval.

4. **Total Settlement Amount.** USC agrees to pay, in accordance with the terms set forth herein, the total sum of \$1,945,000.00 (the “Gross Settlement Amount”) in full settlement of the Lawsuits. The Gross Settlement Amount will be allocated as follows:

- a. PAGA Counsel’s attorneys’ fees and costs request of up to 33 and 1/3% of the Gross Settlement Amount (\$648,333.33) (“PAGA Counsel’s Fees”) and PAGA Counsel’s separate request for reasonable litigation costs incurred in this matter (“PAGA Counsel’s Costs”) not to exceed \$25,000.00. USC will not oppose these requests. To the extent that the Court approves less than the amount of attorney’s fees and costs that PAGA Counsel requests, any reduced amount shall be allocated to the settlement fund for the Aggrieved Employees;
- b. Administration costs estimated to be \$70,000.00 to be paid to the Settlement Administrator (“Administration Costs”), based upon a bid submitted by Phoenix Settlement Administrators;
- c. The remainder of the Gross Settlement Amount (the “PAGA Fund”) after deducting items (a) and (b) is approximately \$1,201,666.67, and shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% paid to the LWDA (the “LWDA PAGA Portion”) and 25% paid to the Aggrieved Employees (the “Aggrieved Employees’ PAGA Portion”) on a pro-rata basis as set forth in Paragraph 5 below.

5. **Allocation and Calculation of the PAGA Penalties.** Each Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro-rata basis. USC will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the PAGA Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. To determine each Aggrieved Employee’s payment from the Aggrieved Employees’ PAGA Portion, USC will use the following formula: Settlement Payment = Aggrieved Employees’ PAGA Portion ($\approx$ \$300,416.67) $\times$ [Pay Periods Worked by Individual Aggrieved Employee during the PAGA Period $\div$ Total Pay Periods Worked by All Aggrieved Employees during the PAGA Period]. To better represent the reduced potential exposure to violations during part-time shifts, part-time students who were scheduled to work or typically worked 20 hours per week or less will have their individual pay periods multiplied by .25.

6. **Pro Rata Increase:** If the total number of pay periods exceeds 800,000 by more than 7.5%, the Gross Settlement Amount will increase pro rata per pay period above that threshold (i.e. if there is a 10% increase in pay periods, USC shall increase the Gross Settlement Amount by 2.5%).

7. **Tax Treatment of Settlement Amounts.** With regard to settlement payments to Aggrieved Employees, IRS Form 1099s will be issued, if applicable. IRS Form 1099s are used

for payments of miscellaneous income of at least \$600 that is not considered wages, such as the penalty payments at issue in this Settlement. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that he has obtained no tax advice from USC and that neither USC nor its attorneys have made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Settlement or any of its attachments are interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. USC is not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of the portion allocated to PAGA Counsel's fees and costs will be reflected in a Form 1099 to PAGA Counsel, who shall assume full responsibility and liability for the payment of taxes due on such payments.

8. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

9. PAGA Settlement Payment Procedures.

- a. Within 10 business days of the Effective Date, USC shall deposit the Gross Settlement Amount or \$1,945,000.00 with the Settlement Administrator. Within 10 business days of the Effective Date, USC shall also provide the Settlement Administrator with a list of all Aggrieved Employees with each listed employee's full name, last known mailing address, social security number, the actual number of pay periods in the PAGA period, and, for part-time students who were scheduled to work or

typically worked 20 hours per week or less, the adjusted pay periods for those Aggrieved Employees or a designation of status so that the Settlement Administrator can perform the pay period weighting calculations if they are not already calculated by USC. The Settlement Administrator shall run all the addresses of Aggrieved Employees through the United States Postal Service NCOA database to obtain current address information.

Within 30 calendar days from the date the Gross Settlement Amount has been deposited with the Settlement Administrator, the Settlement Administrator shall:

- i. Remit a total of Twenty-Five percent (25%) of the PAGA Fund to the Aggrieved Employees, along with the employee letter (attached hereto as **Exhibit A**). Aggrieved Employees shall not be required to make claims, but shall simply be delivered a check for their share of the PAGA settlement. The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. It will be conclusively presumed that an Aggrieved Employee's Individual Settlement Payment check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. All uncashed settlement checks shall be sent to the California State Controller's Unclaimed Property division.
 - ii. Remit a total of Seventy-Five percent (75%) of the PAGA Fund to the LWDA.
 - iii. Remit PAGA Counsel's fees and costs, as approved by the Court.
 - iv. Remit payment to itself for services as Settlement Administrator, as approved by the Court.
- b. Settlement Checks issued to Aggrieved Employees pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are mailed by the Settlement Administrator. All money represented by uncashed settlement checks shall be sent to the California State Controller's Unclaimed Property division in the name of the individual(s) who did not negotiate a settlement check during the negotiation period.
 - c. Neither USC nor Plaintiffs shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

10. Settlement Administrator. As set forth in Paragraph 8, the Settlement Administrator shall be responsible for sending notices, calculating settlement payments, preparing all checks and mailings, and complying with all requirements set forth in Paragraph 8. As noted above, the costs of the Settlement Administrator shall be paid out of the Gross Settlement Amount, and the Parties agree to use Phoenix Class Action Administrator Solutions as Settlement Administrator. USC is not responsible or liable for any errors in the calculation of settlement amounts to be awarded to each Aggrieved Employee. USC is also not liable or responsible for any errors made by the Settlement Administrator in the administration of the settlement.

11. Duties of the Parties Prior to Approval. Promptly upon execution of this Settlement, Plaintiff shall apply to the Court, by way of motion or joint stipulation, for approval of the proposed Settlement and for the entry of an order approving this Settlement as required by Labor Code section 2699(1). The Motion or Approval Stipulation will request Court approval of the following: (1) the terms of this Agreement, (2) the amount of fees and costs to PAGA Counsel, and (3) Final Judgment. In conjunction with the Approval Stipulation or Motion for Approval, Plaintiff shall submit a proposed Final Judgment requesting the entry of judgment.

12. Non-Admission of Wrongdoing. The Parties agree that this Agreement does not constitute an admission by USC or any Released Party, of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiffs, USC or the Released Parties, or the Released Parties' parents, subsidiaries, divisions, affiliated corporations, trustees, directors, officers, shareholders, agents, attorneys, insurers, or employees.

13. Nondisclosure and Nonpublication. Plaintiffs agree not to publicize the Agreement, the fact of the Agreement, its terms or contents, or the negotiations underlying the Agreement, in any manner or form, directly or indirectly, to any person or entity, beyond filing the Agreement with the Court and submitting a copy to the LWDA. However, Plaintiffs' counsel may list the case name and number and a description of the allegations in their qualifications as counsel in other cases.

14. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

15. Communications. All communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

To Defendant University of Southern California: Paul Berkowitz, Sheppard Mullin Richter & Hampton LLP, 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067.

To Plaintiffs: H. Scott Leviant, Moon & Yang, APC, 1055 W. Seventh Street, Suite 1880, Los Angeles, CA 90017.

16. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties.

17. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Settlement Agreement that can be given effect without the invalid provisions or application, and to this end, the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

18. No Construction Against the Drafter. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

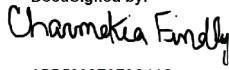
19. Choice of Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

20. Counterparts. This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

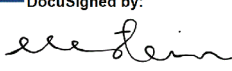
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21. Cooperation. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

Dated: November 17, 2021

DocuSigned by:

Charneikia Findley
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Dated: November 17, 2021

DocuSigned by:

Emmanuela Stein
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Dated: November __, 2021

Jeremy Frahn

Dated: November __, 2021

University of Southern California
By: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: November __, 2021

MOON & YANG, APC

Kane Moon, Esq.
H. Scott Leviant, Esq.
Attorneys for Plaintiffs Charneikia Findley,
Emmanuela Stein, and Aggrieved Employees

Dated: November __, 2021

AEGIS LAW FIRM

Samuel A. Wong, Esq.
Attorneys for Plaintiffs Jeremy Frahn and
Aggrieved Employees

Dated: November __, 2021

**SHEPPARD MULLIN RICHTER &
HAMPTON LLP**

Paul Berkowitz, Esq.
Attorneys for Defendant
University of Southern California

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Dated: November __, 2021

Charnekia Findley

Dated: November __, 2021

Emmanuela Stein

Dated: November __, 2021

Jeremy Frahn

Dated: November __, 2021

University of Southern California

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: November 3, 2021

MOON & YANG, APC



Kane Moon, Esq.

H. Scott Leviant, Esq.

Attorneys for Plaintiffs Charnekia Findley,
Emmanuela Stein, and Aggrieved Employees

Dated: November __, 2021

AEGIS LAW FIRM

Samuel A. Wong, Esq.

Attorneys for Plaintiffs Jeremy Frahn and
Aggrieved Employees

Dated: November __, 2021

**SHEPPARD MULLIN RICHTER &
HAMPTON LLP**

Paul Berkowitz, Esq.

Attorneys for Defendant
University of Southern California

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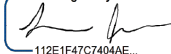
Dated: November __, 2021

Charnekia Findley

Dated: November __, 2021

Emmanuela Stein

Dated: November 3, 2021

DocuSigned by:

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Jeremy Frahn

Dated: November __, 2021

University of Southern California

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: November __, 2021

MOON & YANG, APC

Kane Moon, Esq.
H. Scott Leviant, Esq.
Attorneys for Plaintiffs Charnekia Findley,
Emmanuela Stein, and Aggrieved Employees

Dated: November __, 2021

AEGIS LAW FIRM, PC

Kashif Haque, Esq.
Attorneys for Plaintiffs Jeremy Frahn and
Aggrieved Employees

Dated: November __, 2021

**SHEPPARD MULLIN RICHTER &
HAMPTON LLP**

Paul Berkowitz, Esq.
Attorneys for Defendant
University of Southern California

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Dated: November ___, 2021

Charnekia Findley

Dated: November ___, 2021

Emmanuela Stein

Dated: November ___, 2021

Jeremy Frahn

Dated: November ___, 2021

University of Southern California

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

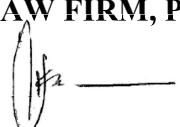
Dated: November ___, 2021

MOON & YANG, APC

Kane Moon, Esq.
H. Scott Leviant, Esq.
Attorneys for Plaintiffs Charnekia Findley,
Emmanuela Stein, and Aggrieved Employees

Dated: November 3, 2021

AEGIS LAW FIRM, PC



Kashif Haque, Esq.
Attorneys for Plaintiffs Jeremy Frahn and
Aggrieved Employees

Dated: November ___, 2021

**SHEPPARD MULLIN RICHTER &
HAMPTON LLP**

Paul Berkowitz, Esq.
Attorneys for Defendant
University of Southern California

21. **Cooperation.** Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

Dated: November __, 2021

Charnekia Findley

Dated: November __, 2021

Emmanuela Stein

Dated: November __, 2021

Jeremy Frahn

Dated: November __, 2021

University of Southern California

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: November __, 2021

MOON & YANG, APC

Kane Moon, Esq.
H. Scott Leviant, Esq.
Attorneys for Plaintiffs Charnekia Findley,
Emmanuela Stein, and Aggrieved Employees

Dated: November __, 2021

AEGIS LAW FIRM

Samuel A. Wong, Esq.
Attorneys for Plaintiffs Jeremy Frahn and
Aggrieved Employees

Dated: November 10, 2021

**SHEPPARD MULLIN RICHTER &
HAMPTON LLP**

Paul Berkowitz, Esq.
Attorneys for Defendant
University of Southern California

Exhibit “A”

Exhibit “B”

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125

Kane Moon, Esq.
Kane.moon@moonyanglaw.com

November 15, 2020

VIA ONLINE SUBMISSION

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

VIA CERTIFIED MAIL

University of Southern California
3551 Trousdale Parkway, Adm 352
Los Angeles, CA 90089

VIA CERTIFIED MAIL

USC Verdugo Hills Hospital
1812 Verdugo Blvd.
Glendale, CA 91208

VIA CERTIFIED MAIL

USC Verdugo Hills Hospital Foundation
1812 Verdugo Blvd.
Glendale, CA 91208

Notice of Labor Code Violations and PAGA Penalties

Re: ***Charnekia Findley v. University of Southern California, et al.***

To Whom It May Concern:

Please be advised that my office has been retained by Charnekia Findley (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, University of Southern California, USC Verdugo Hills Hospital, USC Verdugo Hills Hospital Foundation. (collectively “Defendant”). 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 Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a patient care technician from approximately February 2011 to June 2020, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 3 days per week, and 12 or more hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

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 (8) 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 Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Defendants regularly use a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendants' operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Also throughout the statutory period, Plaintiff and the Aggrieved Employees were required to work off-the-clock. For example, Plaintiff and the Aggrieved Employees were required to clock out and continue to work. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by 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. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees 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 attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

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 his or her employment, his or her 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 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, 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 Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her 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 her 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).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
6. Labor Code § 226 by failing to provide accurate itemized wage statements.

Therefore, on behalf of all Aggrieved Employees, Plaintiff 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, 558, 1174.5, 1197.1, and 2699(f)(2).

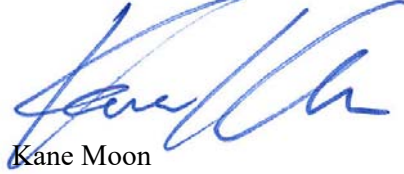
Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

LWDA
Notice of Labor Code Violations and PAGA
November 15, 2020
Page 8 of 8

Sincerely,

MOON & YANG, APC

A handwritten signature in blue ink, appearing to read 'Kane Moon', is written over a faint, light blue circular stamp.

Kane Moon
Attorney at Law

MOON & YANG, APC

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Kane Moon, Esq.
Kane.moon@moonyanglaw.com

July 20, 2021

VIA ONLINE SUBMISSION

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VIA CERTIFIED MAIL

University of Southern California
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VIA CERTIFIED MAIL

USC Verdugo Hills Hospital
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VIA CERTIFIED MAIL

USC Verdugo Hills Hospital Foundation
1812 Verdugo Blvd.
Glendale, CA 91208

First Amended Notice of Labor Code Violations and PAGA Penalties

Re: ***Charnekia Findley v. University of Southern California, et al.***
LWDA Case No: LWDA-CM-812620-20
Los Angeles Superior Court Case No.: 20STCV47290

To Whom It May Concern:

Please be advised that my office has been retained by Charnekia Findley (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, University of Southern California, USC Verdugo Hills Hospital, USC Verdugo Hills Hospital Foundation. (collectively “Defendant”). 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 Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a patient care technician from approximately February 2011 to June 2020, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 3 days per week, and 12 or more hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

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 (8) 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 Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Defendants regularly use a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendants' operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Also throughout the statutory period, Plaintiff and the Aggrieved Employees were required to work off-the-clock.

For example, Plaintiff and the Aggrieved Employees were required to clock out and continue to work. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by 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. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees 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 attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

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 his or her employment, his or her 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 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, 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 Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her 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 her 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).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Plaintiff and the Aggrieved Employees were required to purchase work-related items without reimbursement or incur expenses to benefit the employer. Specifically, Plaintiff and the Aggrieved Employees utilized their personal cell phones to conduct work related activities, were required to purchase clothing and other items of apparel that had no general use other than in furtherance of work activities and were required to care for specialized clothing and other items of apparel. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;

5. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
6. Labor Code § 226 by failing to provide accurate itemized wage statements;
7. Labor Code § 2802 by failing to reimburse.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.3, 226.7, 510, 512, 558, 1174.5, 1197, 1197.1, 1198, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, 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.

Sincerely,

MOON & YANG, APC



Kane Moon
Attorney at Law

MOON & YANG, APC

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Kane Moon, Esq.
Kane.moon@moonyanglaw.com

July 20, 2021

VIA ONLINE SUBMISSION

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Oakland, CA 94612

VIA CERTIFIED MAIL

University of Southern California
3551 Trousdale Parkway, Adm 352
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VIA CERTIFIED MAIL

USC Verdugo Hills Hospital Foundation
1812 Verdugo Blvd.
Glendale, CA 91208

Second Amended Notice of Labor Code Violations and PAGA Penalties

Re: ***Charnekia Findley v. University of Southern California, et al.***
LWDA Case No: LWDA-CM-812620-20
Los Angeles Superior Court Case No.: 20STCV47290

To Whom It May Concern:

Please be advised that my office has been retained by Charnekia Findley (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, University of Southern California, USC Verdugo Hills Hospital, USC Verdugo Hills Hospital Foundation. (collectively “Defendant”). 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 Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees. This Second Amended Notice of Labor Code Violations and Penalties is intended to correct an inadvertent omission from the First Amended Notice, also of today’s date.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt

employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a patient care technician from approximately February 2011 to June 2020, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 3 days per week, and 12 or more hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

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 (8) 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 Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Defendants regularly use a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendants' operations are such that it is

possible, practical, and feasible to count and pay for work time to the minute. Also throughout the statutory period, Plaintiff and the Aggrieved Employees were required to work off-the-clock. For example, Plaintiff and the Aggrieved Employees were required to clock out and continue to work. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by 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. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees 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 attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

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 his or her employment, his or her 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 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, 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 Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her 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 her 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).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Plaintiff and the Aggrieved Employees were required to purchase work-related items without reimbursement or incur expenses to benefit the employer. Specifically, Plaintiff and the Aggrieved Employees utilized their personal cell phones to conduct work related activities, were required to purchase clothing and other items of apparel that had no general use other than in furtherance of work activities and were required to care for specialized clothing and other items of apparel. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Permit Use of Sick Leave

California Labor Code § 233 requires employers who provide sick leave for their employees to permit employees to use, in a calendar year, the employee's accrued and available sick leave, in an amount not less than the sick leave that would have accrued during six months. Upon the oral or written request of an employee, an employer shall provide paid sick days for the purposes set forth in Labor Code § 246.5.

Throughout the statutory period, Defendant has failed to always permit employees to utilize sick leave in the manner specified in Labor Code §§ 233 and 246.5.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
6. Labor Code § 226 by failing to provide accurate itemized wage statements;
7. Labor Code § 2802 by failing to reimburse.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.3, 226.7, 233, 246.5, 510, 512, 558, 1174.5, 1197, 1197.1, 1198, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, 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.

Sincerely,

MOON & YANG, APC



LWDA
Second Amended Notice of Labor Code Violations and PAGA
July 20, 2021
Page 9 of 9

Kane Moon
Attorney at Law

MOON & YANG, APC

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Kane Moon, Esq.
Kane.moon@moonyanglaw.com

December 1, 2020

VIA ONLINE SUBMISSION

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

VIA CERTIFIED MAIL

University of Southern California
3551 Trousdale Parkway, Adm 352
Los Angeles, CA 90089

VIA CERTIFIED MAIL

Keck Medical Center of USC
1510 San Pablo Street, Suite 600
Los Angeles, CA 90033

Notice of Labor Code Violations and PAGA Penalties

Re: ***Emmanuela Stein v. University of Southern California, et al.***

To Whom It May Concern:

Please be advised that my office has been retained by Emmanuela Stein (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, University of Southern California and Keck Medical Center of USC. (collectively “Defendant”). 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 Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a nurse from approximately 2011 to September 2020, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 3 days per week, and 12 or more hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

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 (8) 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 Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Defendants regularly use a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendants' operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Also throughout the statutory period, Plaintiff and the Aggrieved Employees were required to work off-the-clock. For example, Plaintiff and the Aggrieved Employees were required to clock out and continue to work. Also, Defendants maintained a practice of not paying all accrued vacation time upon termination of Plaintiff and the Aggrieved Employees' employment (Defendants failed to roll over unused vacation time from the previous year). In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours).

Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by 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. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees 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 attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

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 his or her employment, his or her 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 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, 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 Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the

wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Pay All Accrued Vacation Wages at Termination

Labor Code § 227.3 requires employers to pay employees for all unused vested vacation time at their final rate of pay upon termination of their employment.

During the statutory period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of vacation pay owed at the termination of employment. For instance, when Plaintiff's employment with Defendant terminated, she was owed vacation wages at her true final wage rate on her final pay check from Defendant even though she had accrued unused vacation time. On information and belief, Defendant's failure to pay Plaintiff the correct amount of vacation pay was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to pay all accrued vacation wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her 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 her 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).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;

6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements.

Therefore, on behalf of all Aggrieved Employees, Plaintiff 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, 558, 1174.5, 1197.1, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, 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.

Sincerely,

MOON & YANG, APC



Kane Moon
Attorney at Law



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Telephone: 949.379.6250
Facsimile: 949.379.6251
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January 18, 2021

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
Private Attorneys General Act (PAGA) – Filing

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Agent for Service of Process for University of Southern California:
Beong-Soo Kim
3551 Trousdale Parkway, ADM 352
Los Angeles, CA 90089

Re: Jeremy Frahn v. University of Southern California.

Dear Labor and Workforce Development Agency and University of Southern California:

Please allow this correspondence to serve as written notice required by California Labor Code § 2699.3(a)(1) of the specific provisions of the Labor Code allegedly violated by University of Southern California ("USC"), and the facts and theories in support of said allegations. This firm represents Jeremy Frahn ("Claimant"). We hereby notify you that Claimant intends to seek penalties against USC under the Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698 *et seq.*, on behalf of himself and all other aggrieved employees.

Specific Provisions of the California Labor Code Allegedly Violated by USC

The specific provisions of the Labor Code allegedly violated by USC include the following: §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, and 1198.

Facts and Theories Supporting the Allegations Against USC

Claimant and other aggrieved employees worked for USC as non-exempt employees in California. Claimant was employed by USC as a non-exempt employee in California within the past year.

USC failed to provide meal periods for each five hours of work to aggrieved employees as required by Labor Code Section 512 and section 11 of the applicable Wage Order. Aggrieved employees frequently worked shifts over five hours and did not receive lawful meal periods because they were not scheduled to take their meal periods at the required intervals and/or were not scheduled to be relieved by other employees at the appropriate intervals to receive lawful meal periods. As a result, their meal periods were missed, late, short, and/or interrupted.

Further, USC failed to pay the proper overtime rate by failing to include non-discretionary bonuses, or other incentive payments in calculating Claimant's and aggrieved employees' overtime rate (in violation of Labor Code Sections 510, 1194, and 1198).

Additionally, USC failed to authorize or permit ten-minute (10) rest periods for every four (4) hours or major fraction thereof worked. Aggrieved employees were not authorized to take their rest periods at the appropriate time intervals, not provided coverage for rest breaks, or discouraged from taking rest breaks.

As a result of, and in addition to, these actions, USC violated Labor Code sections 226 and 226.3 by failing to provide itemized wage statements that accurately reported the following: (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 her 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. Specifically, the overtime and double time were improperly split into base and premium pay thus making the rate of pay and hours worked at each rate inaccurate, and the paystubs included inaccurate wages and rates of pay due the above violations.

Furthermore, USC failed to properly pay all wages owed throughout Claimant and other aggrieved employees' employment and following the end of these workers' employment (in violation of Labor Code Sections 201-204, and 210) due the above violations. USC further violated Labor Code Sections 1174 and 1174.5 by failing to maintain accurate and complete records showing the proper overtime rate of pay due to the above overtime violation.

Based on these violations, and any predicate violations subsequently discovered, Claimant seeks attorneys' fees, interest, and penalties under the Labor Code. Attached hereto and incorporated herein is the class action complaint Claimant intends to file on behalf of himself and all other aggrieved employees against USC. Claimant intends to amend the complaint to include a cause of action pursuant to Labor Code §§ 2698, *et seq.*, after the minimum required review period elapses.

Thank you for your assistance on this issue. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,

AEGIS LAW FIRM, PC



Jessica L. Campbell

Enclosure:
Class Action Complaint