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Attorneys for Plaintiff Mamerto Nilo, on behalf of herself
and all other aggrieved employees

SUPERIOR COURT OF CALIFORNIA**COUNTY OF LOS ANGELES**

MAMERTO NILO, on behalf of herself and
all other aggrieved employees,

Plaintiff,

v.

UNIVERSITY OF SOUTHERN
CALIFORNIA, a California Domestic
Nonprofit Corporation; KECK MEDICINE
OF USC AND HENRY MAYO
NEWHALL MEMORIAL HOSPITAL,
LLC, a California Limited Liability
Company; and DOES 1-10, inclusive,

Defendants.

Case No. **21STCV20767****PRIVATE ATTORNEYS GENERAL ACT
("PAGA") COMPLAINT****[Labor Code §§ 2698, et seq.]**

- 1. PAGA Civil Penalties for Failure to Pay Minimum, Regular, and Overtime Wages**
- 2. PAGA Civil Penalties for Failure to Provide Meal Periods**
- 3. PAGA Civil Penalties for Failure to Authorize and Permit Paid Rest Periods**
- 4. PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements**
- 5. PAGA Civil Penalties for Failure to Timely Pay Wages Due at Separation**
- 6. PAGA Civil Penalties for Failure to Maintain Accurate Records**

NATURE OF CLAIM

1. Plaintiff MAMERTO NILO (“Plaintiff”) brings this representative action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, against Defendants UNIVERSITY OF SOUTHERN CALIFORNIA and KECK MEDICINE OF USC AND HENRY MAYO NEWHALL MEMORIAL HOSPITAL, LLC, and Does 1-10 (collectively, “Defendants”) to recover civil penalties arising out of Defendants’ failure to: pay minimum, regular, and overtime wages; provide meal periods; authorize and permit paid rest periods; provide accurate itemized wage statements; timely pay wages due upon separation of employment; and maintain accurate records.

2. Plaintiff gave written notice of these claims to the California Labor and Workforce Development Agency (“LWDA”) on March 26, 2021, amending the notice on March 29, 2021, pursuant to Labor Code section 2699.3, and there has been no LWDA intervention within 65 days of her notices. True and correct copies of these Notices are attached as **Exhibit 1**. Plaintiff seeks PAGA civil penalties as a representative of the State of California and has standing as an aggrieved non-exempt employee. Plaintiff seeks to represent all current and former non-exempt hourly employees of Defendants who suffered one or more of the violations alleged (“aggrieved employees”) during the “PAGA Period” (one year and 65 days before this complaint filing date until the start of trial). Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

PARTIES

3. Plaintiff MAMERTO NILO is a resident of Los Angeles, California. Plaintiff worked for Defendants as a non-exempt, hourly-paid “Registered Nurse” at the Keck Hospital of USC from at least 2016 until her last day of work on approximately July 24, 2020.

4. Defendant UNIVERSITY OF SOUTHERN CALIFORNIA (“USC”) is a Domestic Nonprofit Corporation registered in California.

5. Defendant KECK MEDICINE OF USC AND HENRY MAYO NEWHALL MEMORIAL HOSPITAL, LLC (“Keck Medicine of USC”) is a California Limited Liability Company.

6. Defendants operate the Keck Medical Center of USC, which includes two acute care hospitals: Keck Hospital of USC, a 401-bed acute care hospital, and USC Norris Cancer Hospital, a 60-bed, cancer-focused hospital. Defendants also operate USC Verdugo Hills Hospital, a 158-bed community hospital, and more than 40 outpatient facilities, some at affiliated hospitals, in Los Angeles, Orange, Kern, Tulare, and Ventura counties. In addition, Defendants operate USC Care Medical Group, a medical faculty practice.

7. Does 1 through 10, inclusive, are persons or entities whose true names and identities are unknown to Plaintiff, and are sued by fictitious names. Plaintiff will amend to allege their true names and capacities when known. Plaintiff is informed and believes each Doe defendant is the agent, representative, parent or subsidiary of named Defendants, is responsible in some manner for the events, transactions, and injuries alleged, and harm suffered by Plaintiff and other aggrieved employees was proximately caused by them and named Defendants.

8. Plaintiff is informed, believes, and alleges each Defendant, including Doe defendants, acted in concert with each other, intended to and did participate in the acts, practices, and conduct alleged, and was a proximate cause of damage and injury to Plaintiff.

9. At all relevant times each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment.

JURISDICTION AND VENUE

10. Venue as to each Defendant is proper in this judicial district. Code of Civil Procedure § 395. Defendants conduct business and commit Labor Code violations in Los Angeles County, California.

11. This Court has jurisdiction over Plaintiff's and other aggrieved employees' claims because Defendants regularly conduct business in California and are alleged to have violated the law in California. Plaintiff's claims raise no federal question and PAGA civil penalty actions are not subject to federal jurisdiction.

FACTUAL ALLEGATIONS

12. During the PAGA Period, Plaintiff and other aggrieved employees were employed by Defendants in California, and Defendants conducted business in California.

1 13. During the PAGA Period, Defendants failed to pay Plaintiff and other aggrieved
2 employees all minimum, regular, and overtime wages for all hours worked or under
3 Defendants' control.

4 14. During the PAGA Period, Defendants subjected Plaintiff and other aggrieved
5 employees to a policy and practice of unlawful time rounding. Defendants rounded Plaintiff's
6 and other aggrieved employees' hours worked in a manner which, was not neutral and resulted
7 in a cumulative loss of time to Plaintiff and aggrieved employees. Defendants had the ability to
8 record and pay for all time worked, but did not, and deprived employees of payment for all
9 hours worked. Specifically, Defendants' time rounding policy resulted in Plaintiff and other
10 aggrieved employees not being paid any wages for minutes at the beginning and end of their
11 shifts and meal periods.

12 15. During the PAGA Period, Defendants did not pay any wages to Plaintiff and
13 aggrieved employees for time they spent traveling through the facility to reach their time clock
14 to clock in nor time spent undergoing COVID screenings before clocking in.

15 16. During the PAGA Period, Defendants failed to pay all overtime wages to
16 Plaintiff and aggrieved employees because they failed to properly calculate the regular rate of
17 pay when calculating overtime rates (time and a half and double-time rates). Specifically,
18 Defendants failed to include shift differentials and non-discretionary bonuses in the regular rate
19 of pay when calculating overtime.

20 17. During the PAGA Period, Defendants had a consistent policy which did not
21 provide Plaintiff and other aggrieved employees with duty-free meal periods of at least thirty
22 (30) minutes for shifts of five hours or more, which began before the end of the fifth hour of
23 work, and second such meal periods for shifts of ten hours or more, which began before the end
24 of the tenth hour of work. Defendants failed to pay such employees one (1) hour of pay at their
25 regular rate of compensation for each workday a meal period was not authorized or permitted,
26 as required by California wage and hour laws. On information and belief, Plaintiff and other
27 aggrieved employees did not waive their right to receive meal periods, including their right to a
28 second meal period on eligible workdays.

1 18. During the PAGA Period, Defendants had a consistent policy which did not
2 authorize or permit Plaintiff and aggrieved employees duty-free rest periods of at least ten (10)
3 minutes per four (4) hours, or major fraction, worked, and failed to pay them one (1) hour of
4 pay at their regular rate of compensation for each shift a rest period was not authorized or
5 permitted. Plaintiff and other aggrieved employees regularly worked shifts of more than 10
6 hours per day and were not provided a third duty-free rest period of 10-minutes.

7 19. During the PAGA Period, Defendants consistently and knowingly failed to
8 provide accurate itemized wage statements to Plaintiff and aggrieved employees. Defendants'
9 wage statements did not include, among other things, the correct total hours worked, all correct
10 hourly rates in effect during the pay period, or number of hours worked at each rate. Overtime
11 and double-time rates were improperly calculated and so improperly listed. Due to Defendants'
12 rounding policy, accurate records reflecting when employees began and ended each work
13 period and meal period were not maintained. Defendants' wage statements also did not show
14 premiums which should have been paid for non-compliant meal and rest periods. As a result,
15 wage statements Defendants furnished to Plaintiff and aggrieved employees were incomplete
16 and inaccurate and failed to comply with Labor Code section 226(a).

17 20. During the PAGA Period, Defendants had a consistent policy of failing to pay
18 Plaintiff and aggrieved employees all wages due at separation. Because Defendants failed to
19 pay all minimum and overtime wages and meal and rest period premiums owed during
20 Plaintiff's and other aggrieved employees' employment, final wages paid to Plaintiff and other
21 aggrieved employees were underpaid, as they did not include these amounts.

22 21. "Notwithstanding any other provision of law, any provision of this code that
23 provides for a civil penalty to be assessed and collected by the Labor and Workforce
24 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
25 employees, for a violation of this code, may, as an alternative, be recovered through a civil
26 action brought by an aggrieved employee on behalf of himself or herself and other current or
27 former employees pursuant to the procedures specified in Section 2699.3." Labor Code §
28 2699(a).

22. “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” Labor Code § 2699(f)(2).

23. Plaintiff, as a representative of the general public and State of California, seeks to recover all PAGA civil penalties for violations of Sections 201-203, 218.5, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1197.1, and 1198 shown to have occurred, in an amount according to proof, as to those penalties that are otherwise only available in public agency enforcement actions. The funds recovered will be distributed in accordance with PAGA, with 75% of penalties to the LWDA and 25% to aggrieved employees, subject to Court approval.

FIRST CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Pay Minimum, Regular, and Overtime Wages
(By Plaintiff and Aggrieved Employees against Each Defendant)**

24. Plaintiff incorporates the preceding paragraphs of this Complaint.

25. “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Labor Code § 1194(a).

26. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510, 1194, and 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

27. Defendants failed to pay minimum, regular, and overtime wages during the PAGA Period. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation.

28. Defendants’ conduct violates applicable Wage Order(s) by failing to pay minimum wages. Plaintiff will also seek \$50 for the initial pay period an employee was underpaid, and \$100 for each subsequent violation.

SECOND CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Provide Meal Periods
(By Plaintiff and Aggrieved Employees against Each Defendant)**

29. Plaintiff incorporates the preceding paragraphs of this Complaint.

30. By failing to provide uninterrupted meal periods of at least 30 minutes for shifts of five hours or more, starting before the end of the fifth hour of work, and a second meal period of at least 30 minutes for shifts of ten hours or more, starting before the end of the tenth hour, Defendants violated Labor Code sections 226.7 and 512, and applicable Wage Order(s).

31. By failing to pay employees one hour of pay at their regular rate of compensation for each workday a meal period was not provided, Defendants violated Labor Code sections 226.7 and 512, and the applicable Wage Order(s).

32. During the PAGA Period, Defendants failed to provide compliant meal periods. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

THIRD CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Authorize and Permit Paid Rest Periods
(By Plaintiff and Aggrieved Employees against Each Defendant)**

33. Plaintiff incorporates the preceding paragraphs of this Complaint.

34. By failing to authorize and permit a rest period of at least 10 minutes for every four (4) hours or major fraction worked per day, Defendants willfully violated provisions of Labor Code section 226.7 and the applicable Wage Order(s).

35. By failing to pay employees one hour of pay at their regular rate of compensation for each day a compliant rest period was not authorized or permitted, Defendants willfully violated provisions of Labor Code section 226.7 and the applicable Wage Order(s).

36. During the applicable statutory period, Defendants failed to provide rest periods. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

FOURTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements
(By Plaintiff and Aggrieved Employees against Each Defendant)**

37. Plaintiff incorporates the preceding paragraphs of this Complaint.

FIFTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Timely Pay Wages Due at Separation
(By Plaintiff and Aggrieved Employees against Each Defendant)**

41. Plaintiff incorporates the preceding paragraphs of this Complaint.

42. Employers must pay final wages to employees voluntarily separating within 72 hours and those involuntarily terminating immediately. Defendants had a consistent and uniform policy and practice of willfully failing to pay final wages to former employees. An employer that willfully fails to timely pay all final wages must, as a statutory penalty, pay an employee's wages for 30 days, or until back wages are paid in full. Labor Code § 203.

43. Defendants failed to pay Plaintiff and other aggrieved employees all final wages, including minimum, regular, and overtime wages, and meal and rest period premium wages, as required by Labor Code sections 201-202.

44. Defendants failed to pay Plaintiff and aggrieved employees penalties due them based on Defendants' failure to pay all final wages in a timely manner as required by Labor Code section 203. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not reimbursed, and \$200 for each subsequent violation.

SIXTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Maintain Accurate Records (By Plaintiff and Aggrieved Employees against Each Defendant)

45. Plaintiff incorporates the preceding paragraphs of this Complaint.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

A. That this action be maintained as a Representative Action under the PAGA, and Plaintiff and her counsel be provided with all enforcement capability as if the action were brought by the California Division of Labor Standards Enforcement;

B. For recovery of all civil penalties permitted by Labor Code section 2699, for unpaid minimum, regular, and overtime wages pursuant to Labor Code section 1194, according to proof;

C. For recovery of civil penalties permitted by Labor Code section 2699, for unpaid meal period premiums earned pursuant to Labor Code section 226.7, according to proof;

D. For recovery of civil penalties permitted by Labor Code section 2699, for unpaid rest period premiums earned pursuant to Labor Code section 226.7, according to proof;

E. For recovery of civil penalties permitted by Labor Code section 2699, for inaccurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according to proof;

F. For recovery of civil penalties permitted by Labor Code section 2699(f)(2), for failing to timely pay all final wages due pursuant to Labor Code sections 201-202;

G. For recovery of civil penalties permitted by Labor Code section 2699(f)(2), for failing to pay statutory waiting time penalties due pursuant to Labor Code section 203;

H. For recovery of civil penalties as permitted by Labor Code sections 1174 and 1174.5 for failing to maintain records;

I. For Pre-Judgment and Post-Judgment interest;

J. For the Plaintiff to be recognized by the Court as serving as a Representative of the LWDA, that she be deemed an “aggrieved employee,” and that she be awarded some form of enhanced compensation for bringing this action should she prevail and provide benefit to the State of California or other “aggrieved employees,” subject to the Court’s discretion;

K. Attorneys’ fees and costs of suit, including expert fees and fees pursuant to all applicable state laws including Code of Civil Procedure section 1021.5; and

L. Such other relief as this Court deems necessary, just, equitable, and proper

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: June 3, 2021

By: _____


Michael D. Singer, Esq.
Jeff Ceraci, Esq.
Rosemary C. Khoury, Esq.

Attorneys for Plaintiff Mamerto Nilo, on behalf
of herself and all other aggrieved employees

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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(† Also admitted in Illinois)

March 29, 2021

AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTIONS 2698, *et seq.*

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED MAIL (RETURN RECEIPT)

University of Southern California
Keck Medicine of USC
1500 San Pablo Street
Los Angeles, CA 90033

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

Keck Medicine of USC and Henry
Mayo Newhall Memorial Hospital, LLC
1441 Eastlake Avenue
Los Angeles, CA 90033

Re: Amended Notice of Ms. Mamerto Nilo, on behalf of herself and similarly-situated employees, as an individual and proposed Representative of the State of California pursuant to Labor Code Section 2699.3

Dear PAGA Administrator and Employers:

Ms. Mamerto Nilo ("Claimant") submits this Amended Notice of Labor Code and Industrial Welfare Commission Wage Order violations by the University of Southern California; the University of Southern California, Keck Medicine of USC; and Keck Medicine of USC and Henry Mayo Newhall Memorial Hospital, LLC ("Employers"). Claimant incorporates all other facts and theories alleged in the Notice submitted on March 26, 2021 (LWDA Case No. LWDA-CM-827160-21), a true and correct copy of which is attached as Exhibit A, as though set forth fully herein.

The Employers operate the Keck Medical Center of USC, which includes two acute care hospitals: Keck Hospital of USC and USC Norris Cancer Hospital. The Employers also own the community hospital USC Verdugo Hills Hospital. The Employers also operate more than 40 outpatient facilities, some at affiliated hospitals, in Los Angeles, Orange, Kern, Tulare and Ventura counties. In addition, the Employers operate USC Care Medical Group, a medical faculty practice. Claimant seeks to represent herself and other aggrieved employees of the Employers in a Private Attorneys General Act ("PAGA") action. Labor Code §§ 2698, *et seq.* Claimant and other aggrieved employees were subject to the same policies and practices alleged herein which impermissibly denied them their rights as set forth below. For purposes of this notice, "aggrieved

California Labor and Workforce Development Agency
University of Southern California
University of Southern California, Keck Medicine of USC
Keck Medicine of USC and Henry Mayo Newhall Memorial Hospital, LLC
Re: Mamerto Nilo
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employees” includes the Employers’ non-exempt hourly employees, including Registered Nurses (“RNs”).

FACTUAL ALLEGATIONS

The Employers run the Keck Hospital of USC, a 401-bed acute care hospital which is part of Keck Medicine of USC, the University of Southern California’s medical enterprise. Claimant worked for the Employers as an RN at the Keck Hospital of USC from at least 2016 until approximately July 24, 2020.

The Employers failed to pay Claimant and aggrieved employees all minimum, regular, and overtime wages for all hours worked or under the Employers’ control. The Employers did not pay any wages to Claimant and other aggrieved employees for time they spent traveling through the facility to reach their time clock nor time spent undergoing COVID screenings before clocking in. Additionally, the Employers’ time rounding policy resulted in Claimant and other aggrieved employees not being paid any wages for minutes at the beginning and end of their shifts and meal periods.

The Employers further failed to pay overtime wages for all overtime hours worked because they failed to properly calculate the regular rate of pay for purposes of calculating overtime rates (time and a half- and double-time rates). Specifically, the Employers failed to include shift differentials and non-discretionary bonuses into the regular rate of pay for the purpose of calculating overtime.

Claimant and aggrieved employees were subjected to a policy and practice of unlawful time rounding. The Employers rounded Claimant’s and other aggrieved employees’ hours worked in a manner which over time unlawfully favored the Employers and resulted in time lost to the employees, including Claimant. This rounding policy was not neutral and resulted in a cumulative loss of time to the employees. The Employers had the ability to pay for the precise hours worked, but did not, and thus deprived employees of payment for all hours worked.

The Employers subjected Claimant and aggrieved employees to policies and practices which failed to provide them compliant meal and rest periods. For instance, Claimant and other aggrieved employees were often not provided an opportunity to take a compliant first meal period before the end of the fifth hour of work, nor a second compliant meal period before the end of the tenth hour of work. Claimant and other aggrieved employees were also not authorized or permitted to take off-duty rest periods of at least 10 minutes for every four hours, of major fraction thereof, worked.

The Employers failed to pay one hour of wages at a regular rate of pay for non-compliant meal and rest periods, as required by Labor Code section 226.7 and Wage Order 5, sections 11 and 12.

The Employers failed to provide accurate, itemized wage statements to Claimant and other aggrieved employees. The wage statements provided to Claimant and other aggrieved employees did not contain, among other things, the correct total hours worked nor all correct applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate. Overtime and double-time rates were also improperly calculated and thus improperly listed in these wage statements. Furthermore, the Employers failed to maintain accurate records reflecting when the employees began and ended each work period, including meal periods. The wage statements issued by the Employers also did not show meal and rest period premiums which should have been paid for noncompliant meal and rest periods.

Claimant and other aggrieved employees were not paid all wages within the time set forth in Labor Code section 204 due to the Employers' failure to pay all minimum, regular, and overtime wages and all meal and rest period premium wages when they were owed.

The Employers maintained a regular practice of failing to pay separated employees within the time requirements of Labor Code sections 201- 202 because they did not pay all wages earned as set forth herein. The Employers also did not pay a day's wages for every day final wages were not paid, up to 30 days' wages, as required by Labor Code section 203.

MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 510, 1194, 1197 and 1198, and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code section 1194 provides: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 1197 states: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity."

Labor Code section 1198 states: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employers did not pay Claimant and other aggrieved employees all minimum, regular, and overtime wages for all hours worked because the Employers failed to pay any wages for time worked off-the-clock, impermissibly rounded time clock entries, and improperly calculated and paid overtime wages.

MEAL AND REST PERIODS AND PREMIUM WAGES

(Labor Code §§ 226.7 and 512(a) and the “Meal Periods” and “Rest Periods”
Sections of the Applicable Wage Order)

Labor Code section 512(a) states: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Pursuant to the “Meal Periods” Section of the applicable IWC Wage Order: “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes...If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

Pursuant to the “Rest Periods” Section of the applicable IWC Wage Order: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.... If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.”

Labor Code section 226.7(c) provides that if an employer fails to provide a compliant meal or rest period, the employer must pay one hour of compensation at the employee's regular rate of pay for each workday the meal or rest period is not provided.

The Employers denied Claimant and aggrieved employees compliant meal and rest periods. Consequently, the Employers must pay one hour of wages for each day a compliant meal period was not provided and one hour of wages for each day a compliant rest period was not provided.

WAGE STATEMENTS (Labor Code § 226)

Labor Code section 226(a) provides: "An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (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 only 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..."

The Employers failed to provide Claimant and other aggrieved employees with accurate, itemized wage statements because the wage statements issued to them did not include, among other things, the correct total hours worked nor all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Overtime and double-time rates were also improperly calculated and thus improperly listed in these wage statements. Furthermore, the Employers failed to maintain accurate records reflecting when the employees began and ended each work period, including meal periods. The wage statements issued by the Employers also did not show meal and rest period premiums which should have been paid for noncompliant meal and rest periods.

WAGES DURING EMPLOYMENT AND FINAL WAGES (Labor Code §§ 201, 202, 203 and 204 and the "Minimum Wages" Section of the Applicable Wage Order)

Labor Code section 204(a) provides: "All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." The "Minimum Wages" Section of the applicable Wage

Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 201 provides: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 provides: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.”

Labor Code section 203(a) provides that if an employer willfully fails to pay any wages to a separated employee, the daily wages of the employee shall continue as a penalty until paid, for up to 30 days’ wages.

The Employers willfully failed to timely pay Claimant and aggrieved employees all wages owed to them during and upon separation of employment.

DUTIES OF EMPLOYER

(Labor Code § 1174 and the “Records” Section of the Applicable Wage Order)

Labor Code section 1174(d) requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The “Records” Section of the Applicable IWC Wage Order provides that employers must keep accurate records with respect to: time records showing when employees begin and end each work period; meal periods; total hours worked daily; and total hours worked in the payroll period and applicable rates of pay.”

The Employers failed to accurately maintain these records, as described herein.

ATTORNEY’S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.5, 218.6, 226(e), 1194, 1194.2, and 2698, *et seq.*)

Labor Code sections 218.5, 218.6, 226(e), 226.3 1194, 1194.2, and 2698, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney’s fees, and costs of suit.

Pursuant to Labor Code sections 2698, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employers are liable for these items in addition to the unpaid wages. Claimant has incurred actual damages, costs, and attorney’s fees as a result of the Employers’ unlawful actions.

California Labor and Workforce Development Agency
University of Southern California
University of Southern California, Keck Medicine of USC
Keck Medicine of USC and Henry Mayo Newhall Memorial Hospital, LLC
Re: Mamerto Nilo
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CONCLUSION

Claimant requests the Labor and Workforce Development Agency (“LWDA”) initiate enforcement for the violations described above against the Employers. If the LWDA does not pursue enforcement, Claimant will pursue claims for statutory penalties and seek all remedies available for the Employers’ violations of the Labor Code and applicable Industrial Welfare Commission Wage Order, including all available penalties set forth in Labor Code section 2699(f).

Sincerely,
COHELAN KHOURY & SINGER



Rosemary C. Khoury

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EXHIBIT A

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March 26, 2021

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTIONS 2698, *et seq.*

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED MAIL (RETURN RECEIPT)

University of Southern California
Keck Medicine of USC
1500 San Pablo Street
Los Angeles, CA 90033

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

Re: Notice of Ms. Mamerto Nilo, on behalf of herself and similarly-situated University of Southern California and Keck Medicine of USC employees, as an individual and proposed Representative of the State of California pursuant to Labor Code Section 2699.3

Dear PAGA Administrator and University of Southern California:

Ms. Mamerto Nilo ("Claimant") submits notice of Labor Code and Industrial Welfare Commission Wage Order violations by the University of Southern California ("USC") and Keck Medicine of USC ("Employers"). Keck Medicine of USC operates three hospitals: Keck Medicine of USC, USC Norris Comprehensive Cancer Center and Hospital, and USC Verdugo Hills Hospital. Claimant seeks to represent herself and other aggrieved employees at Keck Hospital of USC, USC Norris Comprehensive Cancer Center and Hospital, and USC Verdugo Hills Hospital in a Private Attorneys General Act ("PAGA") action. Labor Code §§ 2698, *et seq.* Claimant and other aggrieved employees were subject to the same policies and practices alleged herein which impermissibly denied them their rights as set forth below. For purposes of this notice, "aggrieved employees" includes the Employers' non-exempt hourly employees, including Registered Nurses ("RNs").

FACTUAL ALLEGATIONS

The Employers run the Keck Hospital of USC, a 401-bed acute care hospital which is part of Keck Medicine of USC, the University of Southern California's medical enterprise. Claimant worked for the Employers as an RN at the Keck Hospital of USC from at least 2016 until approximately July 24, 2020.

The Employers failed to pay Claimant and aggrieved employees all minimum, regular, and overtime wages for all hours worked or under the Employers' control. The Employers did not pay any wages to Claimant and other aggrieved employees for time they spent traveling through

the facility to reach their time clock nor time spent undergoing COVID screenings before clocking in. Additionally, the Employers' time rounding policy resulted in Claimant and other aggrieved employees not being paid any wages for minutes at the beginning and end of their shifts and meal periods.

The Employers further failed to pay overtime wages for all overtime hours worked because they failed to properly calculate the regular rate of pay for purposes of calculating overtime rates (time and a half- and double-time rates). Specifically, the Employers failed to include shift differentials and non-discretionary bonuses into the regular rate of pay for the purpose of calculating overtime.

Claimant and aggrieved employees were subjected to a policy and practice of unlawful time rounding. The Employers rounded her and other aggrieved employees' hours worked in a manner which over time, unlawfully favored the Employers and resulted in time lost to the employees, including Claimant. This rounding policy was not neutral and resulted in a cumulative loss of time to the employees. The Employers had the ability to pay for the precise hours worked, but did not, and thus deprived employees of payment for all hours worked.

The Employers subjected Claimant and aggrieved employees to policies and practices which failed to provide them compliant meal and rest periods. For instance, Claimant and other aggrieved employees were often not provided an opportunity to take a compliant first meal period before the end of the fifth hour of work, nor a second compliant meal period before the end of the tenth hour of work. Claimant and other aggrieved employees were also not authorized or permitted to take off-duty rest periods of at least 10 minutes for every four hours, of major fraction thereof, worked.

The Employers failed to pay one hour of wages at a regular rate of pay for non-compliant meal and rest periods, as required by Labor Code section 226.7 and Wage Order 5, sections 11 and 12.

The Employers failed to provide accurate, itemized wage statements to Claimant and other aggrieved employees. The wage statements provided to Claimant and other aggrieved employees did not contain, among other things, the correct total hours worked nor all correct applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate. Overtime and double-time rates were also improperly calculated and thus improperly listed in these wage statements. Furthermore, the Employers failed to maintain accurate records reflecting when the employees began and ended each work period, including meal periods.

Claimant and other aggrieved employees were not paid all wages within the time set forth in Labor Code section 204 due to the Employers' failure to pay all minimum, regular, and overtime wages and all meal and rest period premium wages when they were owed.

The Employers maintained a regular practice of failing to pay separated employees within the time requirements of Labor Code sections 201- 202 because they did not pay all wages earned

as set forth herein. The Employers also did not pay a day's wages for every day final wages were not paid, up to 30 days' wages, as required by Labor Code section 203.

MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 510, 1194, 1197 and 1198, and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code section 1194 provides: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 1197 states: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity."

Labor Code section 1198 states: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Pursuant to the "Minimum Wages" and "Hours & Days of Work" Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employers did not pay Claimant and other aggrieved employees all minimum, regular, and overtime wages for all hours worked because the Employers failed to pay any wages for time worked off-the-clock, impermissibly rounded time clock entries, and improperly calculated and paid overtime wages.

MEAL AND REST PERIODS AND PREMIUM WAGES

(Labor Code §§ 226.7 and 512(a) and the “Meal Periods” and “Rest Periods”
Sections of the Applicable Wage Order)

Labor Code section 512(a) states: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Pursuant to the “Meal Periods” Section of the applicable IWC Wage Order: “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes... If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

Pursuant to the “Rest Periods” Section of the applicable IWC Wage Order: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.... If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.”

Labor Code section 226.7(c) provides that if an employer fails to provide a compliant meal or rest period, the employer must pay one hour of compensation at the employee’s regular rate of pay for each workday the meal or rest period is not provided.

The Employers denied Claimant and aggrieved employees compliant meal and rest periods. Consequently, the Employers must pay one hour of wages for each day a compliant meal period was not provided and one hour of wages for each day a compliant rest period was not provided.

WAGE STATEMENTS

(Labor Code § 226)

Labor Code section 226(a) provides: “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check

or cash, an accurate itemized statement in writing showing (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 only 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...”

The Employers failed to provide Claimant and other aggrieved employees with accurate, itemized wage statements because the wage statements issued to them did not include, among other things, the correct total hours worked nor all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

WAGES DURING EMPLOYMENT AND FINAL WAGES

(Labor Code §§ 201, 202, 203 and 204 and the “Minimum Wages” Section of the Applicable Wage Order)

Labor Code section 204(a) provides: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 201 provides: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 provides: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.”

Labor Code section 203(a) provides that if an employer willfully fails to pay any wages to a separated employee, the daily wages of the employee shall continue as a penalty until paid, for up to 30 days’ wages.

The Employers willfully failed to timely pay Claimant and aggrieved employees all wages owed to them during and upon separation of employment.

DUTIES OF EMPLOYER

(Labor Code § 1174 and the “Records” Section of the Applicable Wage Order)

Labor Code section 1174(d) requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The “Records” Section

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of the Applicable IWC Wage Order provides that employers must keep accurate records with respect to: time records showing when employees begin and end each work period; meal periods; total hours worked daily; and total hours worked in the payroll period and applicable rates of pay.”

The Employers failed to accurately maintain these records, as described herein.

ATTORNEY’S FEES, COSTS, INTEREST AND PENALTIES
(Labor Code §§ 218.5, 218.6, 226(e), 1194, 1194.2, and 2698, *et seq.*)

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CONCLUSION

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Sincerely,
COHELAN KHOURY & SINGER


Rosemary C. Khoury

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