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Attorneys for Plaintiff,
LUCERO DIAZ on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

LUCERO DIAZ, an individual, on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiff,

vs.

EAST LOS ANGELES HEALTHCARE, LLC,
a California limited liability company, PACS
GROUP, INC., a Delaware corporation, and
DOES 1-50, inclusive,

Defendant.

Case No.: **24STCV25742**

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

1 Plaintiff LUCERO DIAZ brings this PAGA representative action complaint on behalf of
2 herself, all aggrieved employees, and the State of California as a Private Attorneys General, and
3 alleges as follows:

4 5 **NATURE OF THE ACTION**

6 1. Plaintiff LUCERO DIAZ worked as an hourly, nonexempt employee for Defendant
7 EAST LOS ANGELES HEALTHCARE, LLC, PACS GROUP, INC and Does 1-50 (collectively
8 “Defendant”) until February 2024. Defendant operates a nursing home facility called Costa Del
9 Sol Healthcare in Los Angeles, where Plaintiff worked as a Certified Nursing Assistant. Plaintiff
10 brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor
11 Code §2698 *et seq.*, on a representative basis. All current and former hourly, nonexempt employees
12 of Defendant within one year of serving notice on the LWDA to the present are aggrieved
13 employees.

14 2. Defendant failed to comply with California Labor Code requirements due to erroneous,
15 willful and intentional employment practices and policies. Plaintiff brings this representative
16 action on behalf of herself, all other similarly situated aggrieved employees, and the State of
17 California, based upon the claims articulated below.

18 3. Plaintiff provided notice of his claims pursuant to §2698 *et. seq.*, to the Labor and
19 Workforce and Development Agency (“LWDA”) as illustrated by the attached Exhibit, the content
20 of which is expressly incorporated herein. The LWDA has not provided any notice to Plaintiff
21 following the exhaustion of the 65-day notice period required by 2699.3(a)(2)(B). Accordingly,
22 Plaintiff now brings this Complaint for civil penalties under the Private Attorneys General Act
23 (“PAGA”), Labor Code §2698 *et seq.*

24 4. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
25 worked, including overtime hours worked, (2) Failure to provide timely, uninterrupted rest breaks,
26 (3) failure to provide timely, uninterrupted meal breaks, (4) failure to properly calculate and pay
27 sick leave wages – failure to properly accrue, (5) failure to reimburse for business expenses, (6)
28 failing to pay wages due upon termination, and (7) failing to provide accurate itemized wage

1 statements and violation of record keeping requirements. Defendant is therefore liable for civil
2 penalties under the Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor
3 Code §2698 *et seq.*, as described more fully herein.

4 **THE PARTIES**

5 5. Plaintiff LUCERO DIAZ is a resident of the State of California and worked for
6 Defendant from July of 2023 until February of 2024.

7 6. Defendant EAST LOS ANGELES HEALTHCARE, LLC is a California limited liability
8 company authorized to do business and doing business in California with the capacity to sue and
9 to be sued, and doing business, in the county of Los Angeles, State of California.

10 7. Defendant PACS Group, Inc., is a Delaware corporation authorized to do business and
11 doing business in California with the capacity to sue and to be sued, and doing business, in the
12 county of Los Angeles, State of California.

13 8. Plaintiff is unaware of the true names, capacities, relationships, and extent of
14 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
15 informed and believes and thereon alleges that said Defendant is legally responsible for the
16 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
17 will amend this complaint when their true names and capabilities are ascertained.

18 9. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
19 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
20 of the representative class, and exercised control over their wages, hours, and working conditions.
21 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
22 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
23 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
24 to the other Defendants.

25 **JURISDICTION AND VENUE**

26 10. Venue is proper in this judicial district because Defendant conducts business in this
27 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
28 in this case that arose in this county.

1 11. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of
2 the Superior Court and will be established according to proof at trial. Based on information,
3 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
4 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
5 (\$25,000).

6 12. The California Superior Court has jurisdiction in this matter because Plaintiff is a
7 resident of California and Defendant is qualified to do business in California and regularly
8 conducts business in California. Further, there is no federal question at issue as the claims herein
9 are based solely on California law.

10 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

11 13. During the relevant time period, Defendant committed various violations of the
12 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
13 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

14 14. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
15 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
16 numerous Labor Code sections, as set forth more fully below.

17 15. Plaintiff and all current and former hourly, nonexempt employees within one year of
18 filing this action to the present are aggrieved employees within the meaning of Labor Code 2699,
19 *et seq.* (See Labor code §2699(c).)

20 16. Defendant, and each of them, have committed the following violations of the California
21 Labor Code:

22 **Failure to Comply with California Law Concerning Payment of Lawful Wage For All**

23 **Hours Worked, Including Overtime Hours Worked**

24 (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

25 17. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
26 incorporate said paragraphs herein by reference.
27
28

1 18. The Wage Orders define “hours worked” as “the time during which an employee is
2 subject to the control of an employer, and includes all the time the employee is suffered or
3 permitted to work, whether or not required to do so.”

4 19. When employees like Plaintiff and her coworkers earning at or near minimum wage do
5 not receive payment for all hours worked as a result of unlawful employment practices, including
6 the Defendants rounding up Plaintiff and aggrieved employees’ timecards in a manner that favors
7 the Defendants, the result is that they are earning less than the statutory minimum wages for all
8 hours worked. Defendant has been engaged in many unlawful employment practices which
9 resulted in underpayment for hours worked each pay period, including overtime hours worked, as
10 more fully set forth below. Defendant has also failed to pay the required minimum wage for all
11 hours worked and has failed to pay all wages owed twice per month.

12 20. Rounding. Defendant rounds Plaintiff’s and aggrieved employees’ timecards in a
13 manner that favors Defendant, despite readily available technology that will record clock in and
14 out time to the exact minute. Plaintiff and her coworkers clocked in using a biometric timeclock
15 (fingerprint) which recorded the exact clock in and clock out times. Defendant does not pay
16 aggrieved employees for all hours worked as a result of rounding practices, in addition to
17 interrupting employees with work during unpaid meal periods

18 21. Failure to Pay Wages-Required Minimum Wage. Pursuant Labor Code §§ 1194,
19 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work
20 without paying wages at the proper minimum wage for all time worked as required by the
21 Applicable Wage Orders. Pursuant to the Applicable Wage Orders “hours worked” include “the
22 time during which an employee is subject to the control of an employer, and includes all the time
23 the employee is suffered or permitted to work, whether or not required to do so.”

24 22. During the applicable recovery period, Aggrieved Employees were suffered, permitted,
25 and required to perform work by Defendant for which they received no pay due to the time being
26 rounded out of timecard, as well as interruptions during unpaid meal periods. The aforementioned
27 acts by Defendant were undertaken with the intention of depriving Aggrieved Employees of their
28

1 earned wages. As a result of these ongoing violations, Defendant is liable for, among other things,
2 civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

3 23. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay
4 Plaintiff and employee all wages earned twice during each calendar month pursuant to Labor Code
5 §204(a). Defendant failed to pay all wages earned to employees as a result of the unlawful
6 employment policies and practices discussed herein. As a result of these practices, Employees
7 were underpaid for hours worked, including penalty wages, and this underpayment resulted in a
8 failure to pay all wages owed twice per month.

9 **Failure to Pay All Wages Due Upon Termination**
10 **(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)**

11 24. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
12 incorporate said paragraphs herein by reference.

13 25. An employee who is discharged must be paid all of his or her wages, including accrued
14 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
15 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
16 Plaintiff at the time employment terminated.

17 26. Defendant willfully failed to pay employees who are no longer employed by it all
18 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
19 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as
20 waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to
21 Cal. Lab. Code § 2698 *et. seq.*

22 **Failure to Provide Timely, Uninterrupted Meal Breaks**

23 (Cal. Lab. Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*)

24 27. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
25 incorporate said paragraphs herein by reference.

26 28. Labor Code §512 provides, “[a]n employer may not employ an employee for a work
27 period of more than five hours per day without providing the employee with a meal period of not
28 less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee

1 to work during any meal... period mandated by an applicable order of the Industrial Welfare
2 Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee
3 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on
4 duty’ meal period and counted as time worked.”

5 29. In this case, Plaintiff and aggrieved employees often missed meal periods, and when
6 they were permitted, meal periods were often late, short, and interrupted. Additionally, as
7 discussed herein, on occasions where employees were required to accompany patients to doctor’s
8 appointments, employees received no meal periods whatsoever. Additionally, even when
9 employees were not off-site with patients, meal breaks were noncompliant due to the distance
10 between the nearest functioning time machine and the break room and employee work stations.

11 30. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
12 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
13 (2) did not adequately inform and train employees about their rights to meal periods and premium
14 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
15 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
16 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal
17 periods; and/or (5) because management at various levels, affecting all hourly, non-exempt
18 employees, refused to offer, permit, or enforce a lawfully compliant meal period policy.
19 Employees were not paid a premium payment, paid as an hour’s wage when meal periods were
20 not given to them in compliance with California law.

21 31. The Wage Orders require employers to authorize and permit employees to take an
22 uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code
23 §1198, “the employment of any employee... under conditions of labor prohibited by the order is
24 unlawful.” Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of
25 “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
26 §§226.7 and 512. Defendant never paid penalty pay to Plaintiff or aggrieved employees for
27 noncompliant meal periods. As a derivative claim, Plaintiff alleges that pay statements were
28 inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor

Code §226(a). As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Timely, Uninterrupted Rest Breaks

(Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

32. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

33. Defendant has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and the Wage Order.

34. Defendant's facilities are woefully understaffed requiring that employees work through their rest breaks to provide care to patients. This lack of proper staffing is evidenced by the many citations the facility where Plaintiff worked received, which is far above the state and national average for this type of facility. (<https://www.medicare.gov/care-compare/details/nursing-home/055697/view-all?state=CA>)

35. In addition to being denied rest breaks during daily shifts, on occasion employees were required to accompany patients to doctor's offices in a rideshare (e.g. Uber) provided by Defendant. During these trips to the doctor, employees were unable to leave the patient alone and thus denied all meal and rest breaks. These trips often took 5-6 hours, and sometimes over 8 hours. Employee were required to use their personal cell phones to communicate during these trips, as discussed below.

36. Rest periods were often either less than ten minutes, not provided, interrupted or late, "on duty," or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and

uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

37. Defendant failed to pay Plaintiff and similarly situated employees the premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. Rest period violations occurred daily, however no rest period penalty pay is listed on any paystubs. Pursuant to Labor Code §1198, "the employment of any employee... under conditions of labor prohibited by the order is unlawful." Accordingly, because Defendant violated Wage Order provisions requiring rest breaks, Defendant violated §1198. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a derivative claim, Plaintiff alleges that his pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability under Cal. Labor Code §§ 558 and 2698 *et. seq.*

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

38. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

39. Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties.

40. Plaintiff and aggrieved employees are required to use their personal cell phones for work related communications as discussed above, although Defendant did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Accordingly, Defendant is liable for civil penalties under PAGA §2699 *et seq.*

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1 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**
2 **Requirements**

3 (Cal. Labor Code §§ 226, 1174, 2699 *et seq*)

4 41. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
5 incorporate said paragraphs herein by reference.

6 42. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
7 wage statements to Plaintiff and the aggrieved employees, as well as maintain accurate records, in
8 accordance with Labor Code §§ 226 and 1174.

9 43. The statements provided to Plaintiff and aggrieved employees have not accurately
10 reflected actual gross wages earned, the correct overtime hourly rate, and total hours worked. They
11 also failed to state meal and rest period penalty payments, and reimbursements for the regular use
12 of employee phones. Such failures caused injury to Plaintiff and others, by, among other things,
13 impeding them from knowing the total hours worked and the amount of wages to which they are
14 and were entitled. Defendant is liable for civil penalties pursuant to Labor Code § 2699 *et seq*.

15 **Failure to Properly Calculate and Pay Sick Leave Wages – Failure to Properly Accrue**

16 (Cal. Labor Code §§246, 246(e)(4), 2698 *et seq*)

17 44. Starting January 1, 2024, Cal. Labor Code §§246, 246(e)(4) required employers to
18 provide 40 hours of paid sick leave. Defendant failed to properly accrue sick pay as required by
19 California law under the pre or post January 1, 2024, requirements.

20 45. As a result of these ongoing violations, Defendant is liable for among other things,
21 civil penalties pursuant to Labor Code §2698 *et seq*.

22 **FIRST CAUSE OF ACTION**

23 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**

24 **(California Labor Code §2698 *et seq.*)**

25 46. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
26 incorporate said paragraphs herein by reference.

27 47. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant
28 during the applicable statutory period and suffered one or more of the Labor Code violations set

1 forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and
2 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
3 attorneys' fees and costs.

4 48. Plaintiff seeks to recover the PAGA civil penalties through a representative action
5 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
6 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

7 49. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
8 Code provisions:

- 9 a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal.
10 Labor Code §§207, 218, 246, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*);
- 11 b. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§201-203, 256 and
12 2698 *et seq.*)
- 13 c. Failure to Provide Timely Meal Breaks (Cal. Labor Code §§226 (a), 226.7, 512,
14 558, 1198, 2698 *et seq.*)
- 15 d. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198,
16 2698 *et seq.*)
- 17 e. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §§ 1198,
18 2802 and 2699 *et seq.*)
- 19 f. Failure to Provide Accurate Itemized Wage Statements & Violation of Record
20 Keeping Requirements (Cal. Labor Code §§ 226, 1174, 2699 *et seq.*).
- 21 g. Failure to Properly Calculate and Pay Sick Leave Wages – Failure to Properly
22 Accrue (Cal. Labor Code §§246, 246(e)(4), 2698 *et seq.*)

23 50. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
24 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
25 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
26 employee for each subsequent violation of Labor Code §226(a).

27 51. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
28 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations

1 for each underpaid employee for each pay period for which the employee was underpaid, and one
2 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
3 for which the employee was underpaid.

4 52. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
5 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
6 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
7 a civil penalty is not specifically provided.

8 53. Plaintiff and the other current and former employees of Defendant are aggrieved
9 employees. They were or are employed by Defendant, and each of them, and the violations alleged
10 herein were committed against them. Plaintiff brings this action on behalf of herself and all other
11 current and former aggrieved employees.

12 54. At the time of each violation, Defendant employed one or more employees.

13 55. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of
14 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
15 determined at trial, pre-judgment interest, costs and attorneys' fees.

16 56. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
17 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
18 Workforce Development Agency ("LWDA") and served by certified mail upon Defendant,
19 Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions
20 that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory
21 timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code
22 §2699.3, Plaintiff may now pursue her PAGA claims in this action on behalf of aggrieved
23 employees and the State of California.

24 **PRAYER FOR RELIEF**

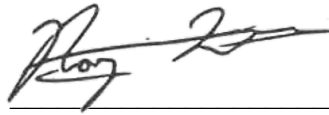
25 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
26 judgement against Defendant as follows:

27 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
28 determined at trial, but at least the jurisdictional amount of this Court;

2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;
4. Pre-judgement and post-judgement interest as provided by law; and
5. Such other and further relief that the Court may deem just and proper.

DATED: October 3, 2024

KOUL LAW FIRM, APC



BY: Nazo Koulloukian, Esq.

Attorneys for Plaintiff LUCERO DIAZ, and all
aggrieved employees

EXHIBIT A – PAGA NOTICE LETTER

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3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

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July 25, 2024

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

East Los Angeles Healthcare, LLC
1016 S. Record Ave
Los Angeles, CA 90023

PACS Group, Inc.
262 N. University Ave
Farmington, UT 94025

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Lucero Diaz
Employer: East Los Angeles Healthcare, LLC, and PACS Group, Inc.

Dear Sir or Madam:

Claimant and aggrieved employee Lucero Diaz has retained Nazo Koulloukian, Esq. of the Koul Law Firm, APC, and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, APC, to represent her, and all other aggrieved employees, for wage and hour claims against her former employers, East Los Angeles Healthcare, LLC, and PACS Group, Inc., (hereafter referred to as “Employer”). Employer operates a facility called Costa Del Sol Healthcare in Los Angeles, California, where Employer hired, assigned and paid Claimant to work as a Certified Nursing Assistant from July of 2023 until February of 2024.

Employer violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code § 2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 210, 216, 221-223, 226, 226.2, 226.7, 227, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 5)

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.”

Employer rounds Claimant and aggrieved employee timecards in a manner that favors Employer, despite readily available technology that will record clock in and out time to the exact minute. Claimant and her coworkers clocked in using a biometric timeclock (fingerprint) which recorded the exact clock in and clock out times. Employer does not pay aggrieved employees for all hours worked as a result of rounding practices, in addition to interrupting employees with work during unpaid meal periods.

Employer’s conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1197 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5, 226, 558, 1194 and 1194.2, Claimant and other Aggrieved Employees are entitled to recover damages for the nonpayment of wages of all their worked hours in addition to penalties, attorneys’ fees, expenses, and costs of suit. As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Failure to Pay Wages- Required Minimum Wage

Pursuant to Labor Code §§ 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the Applicable Wage Orders. Pursuant to the Applicable Wage Orders “hours worked” include “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.”

During the applicable recovery period, Aggrieved Employees were suffered, permitted, and required to perform work by Employer for which they received no pay due to time being rounded out of timecard, as well as interruptions during unpaid meal periods. The aforementioned acts by Employer were undertaken with the intention of depriving Aggrieved Employees of their earned wages. As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Provide Timely, Uninterrupted Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq.

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law.

Employer's facilities are woefully understaffed requiring that employees work through their rest breaks to provide care to patients. This lack of proper staffing is evidenced by the many citations the facility where Claimant worked received, which is far above the state and national average for this type of facility. (<https://www.medicare.gov/care-compare/details/nursing-home/055697/view-all?state=CA>)

In addition to being denied rest breaks during daily shifts, on occasion employees were required to accompany patients to doctor's offices in a rideshare (e.g. Uber) provided by Employer. During these trips to the doctor, employees were unable to leave the patient alone and thus denied all meal and rest breaks. These trips often took 5-6 hours, and sometimes over 8 hours. Employee were required to use their personal cell phones to communicate during these trips, as discussed below.

Rest periods were often either less than ten minutes, not provided, interrupted or late, "on duty," or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A). When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated

the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Timely, Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n 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..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees often missed meal periods, and when they were permitted, meal periods were often late, short, and interrupted. Additionally, as discussed above, on occasions where employees were required to accompany patients to doctor's appointments, employees received no meal periods whatsoever. Additionally, even when employees were not off-site with patients, meal breaks were noncompliant due to the distance between the nearest functioning time machine and the break room and employee work stations.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Properly Calculate and Pay Sick Leave Wages – Failure to Properly Accrue

Cal. Labor Code §§246, 246(e)(4), 2698 *et seq*

Starting January 1, 2024, Cal. Labor Code §246(e)(4) required employers to provide 40 hours of paid sick leave. Employer failed to properly accrue sick pay as required by California law under the pre or post January 1, 2024, requirements. As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §2698 *et seq*.

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties. Claimant and aggrieved employees are required to use their personal cell phones for work related communications as discussed above, although Employer did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Accordingly, Employer is liable for civil penalties under PAGA §2699 *et seq*.

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Separated aggrieved employees are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq*.

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked, and overtime pay, and pay for meal and rest period penalty wages.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment related contracts and documents that contained unlawful terms of employment.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorneys for Claimant