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**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION SECTIONS 2698 *ET SEQ.***

VIA ONLINE SUBMISSION

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

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Re: Kurt Schelin v. UNIVERSITY OF SOUTHERN CALIFORNIA

Dear LWDA Representative, USC, and Agent for Service of USC:

The office represents Kurt Schelin (“Mr. Schelin”) with respect to his claims against UNIVERSITY OF SOUTHERN CALIFORNIA. (“Employer”), for violations of the California Labor Code and IWC Wage Orders. This letter is being sent simultaneously to Employer by certified mail. The above-named Employer engaged Mr. Schelin and Aggrieved Employees as there was sufficient control over wages and working conditions, whether directly or indirectly. Employer is a corporation doing business in the State of California. Employer employed Mr. Schelin as a non-exempt/hourly employee. Employer employed or currently employs other Aggrieved Employees in California.

Mr. Schelin intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 (“PAGA”). Mr. Schelin is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of any of the Employer (“Aggrieved Employees”). Mr. Schelin seeks to represent non-exempt employees who were injured or affected by Employer’s unlawful policies or violations of the Labor Code and who are non-exempt employees, non-exempt administrative employees, non-exempt professional employees, non-exempt IT employees, and other non-exempt employees who were similarly affected or injured by Employer’s unlawful policies. This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employer violated several of California’s wage and hour laws during Mr. Schelin employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800

and 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Orders”) including inter alia, IWC Wage Order No. 4. The claims made on behalf of Mr. Schelin and Aggrieved Employees are based upon the following facts and theories.

Employer has had or has a policy or practice of failing to reimburse deposits made, including uniform deposits, together with all interest owed at the separation of employment in violation of Labor Code section 404. At all relevant times mentioned herein, Employer has had a policy or practice of failing to pay Aggrieved Employees their wages in accordance with Labor Code Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

At all times mentioned herein, Employer has had, and continues to have, a policy of failing to provide all working employees with suitable seats when the nature of the work reasonably permits the use of seats. Employer has also failed to place an adequate number of seats in reasonable proximity to the work area and/or permitted employees to use such seats when it does not interfere with the performance of their duties and employees are not engaged in the active duties of their employment, and the nature of their work requires standing.

At all times mentioned herein, Employer has had, and continues to have, a policy of failing to provide all temporary workers with owed wages weekly by not later than the regular payday of the following week.

At all times mentioned herein, Employer has had, and continues to have, a policy of failing to provide adequate and readily accessible sanitation facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets to be used by each sex of employee.

At all times mentioned herein, Employer has had, and continues to have, a policy of conducting unlawful background checks on prospective and current employees prior to making a conditional offer. Employer violated applicable laws by, without limitation: requiring job applicants and employees to disclose their conviction history before Employer made a conditional offer of employment; inquiring into or considering the conviction history of applicants before Employer made any conditional offers of employment; considering, distributing, or disseminating information about arrests not followed by conviction, referrals to or participation in a pretrial or posttrial diversion program, convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation, while conducting conviction history background checks in connection with any applications for employment; intending to deny an applicant a position of employment solely or in part because of the applicant’s conviction history; and asking applicants for employment to disclose, through any written form or verbally, information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of the juvenile court, to the detriment of Aggrieved Employees

Employer has had, and continues to have, a practice or policy of requiring Aggrieved Employees to agree in writing to confidentiality policies that unlawfully restrain trade by prohibiting Aggrieved Employees from speaking with prospective employers about their work with Employer, including but not limited to their wages and working conditions. Employer also required Aggrieved Employees to inform prospective employers of Employer's restrictions of Aggrieved Employees' freedom to work.

Employer had and has a policy or practice of preventing Aggrieved Employees from using or disclosing the skills, knowledge and experience they obtained at Employer for purposes of competing with Employer, including, without limitation, preventing Aggrieved Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else works at Employer and under what circumstances that they might be receptive to an offer from a rival employer. Claimant is informed and believes that this policy and/or practice violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k).

Employer failed to provide recovery periods when requested by Aggrieved Employees or pay premium wages when a recovery period was not provided as required by Labor Code § 226.7. Employer in fact discouraged recovery periods and pressured Aggrieved Employees to utilize meal and rest period time as recovery periods and use of bathroom facility time. If Aggrieved Employees complained or did not accede to Employer's unlawful policies, they were verbally reprimanded, written up negatively for performance, ranked as unproductive or ranked in low quartiles targeted for termination, terminated, and/or adversely impacted by Employer's policies.

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION.

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Mr. Schelin and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Mr. Schelin and Aggrieved Employees were regularly required to work remotely without compensation, including being on controlled stand-by time.

Employer had and have a policy or practice of failing to pay overtime wages to Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to attend company meetings off the clock, to make phone calls or drive off the clock, failing to include all forms of

remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, for paying straight pay instead of overtime pay

Employer regularly required Mr. Schelin and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Schelin and Aggrieved Employees to: (1) respond to Employer and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Mr. Schelin and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages for employees earning slightly more than the minimum wage and straight time wages. Moreover, this off-the-clock work typically caused Mr. Schelin and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Mr. Schelin and non-exempt administrative, professional, IT, and similar Aggrieved Employees to perform work off-the-clock without compensation, Employer also failed to accurately record the actual time worked by Mr. Schelin and Aggrieved Employees, which resulted in a failure to pay Mr. Schelin and Aggrieved Employees for all hours worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employer failed to pay overtime to Mr. Schelin and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employer has failed to pay Mr. Schelin and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198. Mr. Schelin and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employer failed to provide Mr. Schelin and Aggrieved Employees with legally compliant 30-minute meal periods. Employer required Mr. Schelin and Aggrieved Employees to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Mr. Schelin and the Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Mr. Schelin and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Mr. Schelin and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted

or cut short. Furthermore, Employer's supervisors and managers observed Plaintiff and Aggrieved Employees work through meal periods without legal compensation.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Schelin and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Mr. Schelin and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Mr. Schelin and other Aggrieved Employees regarding their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Schelin and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Mr. Schelin and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to in-person verbal interruptions; and (7) Employer's policy and culture prevented Mr. Schelin and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Mr. Schelin and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employer violated the applicable IWC Wage Order and California Labor Code sections 226.7(a), 512(a) and 1198. Mr. Schelin and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of the IWC Wage Orders penalties pursuant to California Labor Code California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS.

Employer failed to authorize and permit Mr. Schelin and Aggrieved Employees to take legally complaint 10-minute periods. Employer required Mr. Schelin and Aggrieved Employees to work through rest periods. Mr. Schelin and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Schelin and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Mr. Schelin and Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Schelin and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employer failed to adequately inform and train Mr. Schelin and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Mr. Schelin and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Schelin and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Mr. Schelin and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to in person verbal interruptions; and (7) Employer's policy and culture prevented Mr. Schelin and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Mr. Schelin and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods, which were not provided to them in compliance with California law. Accordingly, Employer violated the applicable IWC Wage Orders and California Labor Code sections 226.7(a), and 1198.

Mr. Schelin and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Order; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT.

As to each pay period, Employer has failed to timely pay all wages earned because Mr. Schelin and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code section 204(a).

Mr. Schelin and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS.

As a result of the practices described above, the wage statements provided to Mr. Schelin and Aggrieved Employees never included the actual hours worked, the name and address of the legal employing entity, and the correct rates of pay. Accordingly, Employer violated California Labor Code section 226(a).

Mr. Schelin and Aggrieved Employees will therefore seek PAGA default penalties; penalties

pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS.

Employer has failed to maintain accurate records relating to Mr. Schelin and Aggrieved Employees' work periods, meal periods, shifts, total daily hours worked, and total hours worked per payroll period. Accordingly, Employer violated section 7 of the applicable IWC Wage Order(s) and California Labor Code sections 1198.5 and 1174(d). As a result of Employer illegal and detrimental time rounding policy, Mr. Schelin and Aggrieved Employees compensable work time was improperly recorded depriving them of all their earned compensable work time.

Mr. Schelin and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order(s); California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

Sincerely,



Jose R. Garay, Esq.
JOSE GARAY, APLC

EMPLOYER NOTICE PROVIDED VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

AGENT FOR SERVICE OF PROCESS / USC

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