

Nazo Koulloukian, SBN 263809
nazo@koullaw.com
Hilary Silvia, Of-Counsel, SBN
237993 KOUL LAW FIRM, APC
217 South Kenwood Street
Glendale, CA 91205
Telephone: (213) 761-5484
Facsimile: (818) 561-3938

Attorneys for Plaintiff,
WILSON DE LEON,
and all putative class members

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

WILSON DE LEON, an individual, on behalf
of himself and all others similarly situated,

Plaintiff,

vs.

USC ARCADIA HOSPITAL a California non-
profit corporation, and DOES 1-50, inclusive,

Defendant.

Case No.: 24STCV31379

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Failure to Pay For All Hours Worked,
Including Overtime Hours Worked**
- 2. Failure to Provide First, Second and
Third Rest Breaks**
- 3. Failure to Provide Uninterrupted
Meal Breaks and Second Meal Breaks**
- 4. Failure to Reimburse for Required
Business Expenses**
- 5. Failure to Pay Wages Due Upon
Termination**
- 6. Failure to Provide Accurate Itemized
Wage Statements & Violation of
Record Keeping Requirements**
- 7. Unlawful Business Practices
Bus & Prof. Code §17200**
- 8. Private Attorneys General Act
Penalties (Lab. Code §2699)**

JURY TRIAL DEMANDED

1
2
3 Plaintiff WILSON DE LEON, individually, and on behalf of himself and all others
4 similarly situated, all aggrieved employees, and as Private Attorney General for the State of
5 California (collectively “Plaintiff”), alleges as follows:

6 **NATURE OF THE ACTION**

7 1. This is an employment class and representative action on behalf of over 100 hourly, non-
8 exempt employees against their employer for violations of numerous wage and hour laws. Plaintiff
9 brings this employment class action complaint on behalf of himself, and all others similarly
10 situated, all aggrieved employees, and as a Private Attorney General for the State of California,
11 against USC ARCADIA HOSPITAL and DOES 1-50, inclusive, (hereafter collectively
12 “Defendant” or “Defendants”).

13 2. Defendant USC ARCADIA HOSPITAL operates a 348-licensed bed community
14 hospital affiliated with Keck Medicine of USC, doing business in California. Plaintiff WILSON
15 DE LEON worked for Defendant as an Emergency Room Nurse from February 14, 2022, through
16 February 16, 2024.

17 3. As described further below, Defendant has violated the California Labor Code by (1)
18 failing to pay for all hours worked, including overtime hours worked (§00, 204, 206, 206.5, 210,
19 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, Wage Order 5); (2) failing to
20 provide first, second and third rest breaks (§226, 226.7, 512, 558, 1198); (3) failing to provide
21 uninterrupted meal breaks and second meal breaks (§226, 226.7, 512, 558, 1198); (4) failing to
22 reimburse for required business expenses (§1198, 2802); (5) failing to pay wages due upon
23 termination (§201, 202, 203, 256); (6) failing to provide accurate itemized wage statements and
24 violating record keeping requirements (§226, 1174, 1174.5); (7) unlawful and unfair business
25 practices (Bus. & Prof. Code §17200, *et. seq.*); and (8) penalties under the Private Attorneys
26 General Act (“PAGA”), Labor Code §2698 et seq. Attorney General Act (“PAGA”), Labor Code
27 §2698 et seq.
28

1 4. The class claims in this action are brought pursuant to Code of Civil Procedure (“CCP”)
2 §382, seeking recovery for unpaid wages, including overtime wages, missed meal and rest period
3 penalty pay, statutory and waiting time penalties, injunctive and other equitable relief, interest, and
4 reasonable attorneys’ fees and costs. Pursuant to the class and representative action procedures
5 provided for under California law, Plaintiff, on behalf of himself and proposed Class Members
6 (also referred to as “Class”), also seeks injunctive relief and restitution of all benefits Defendant
7 has received from their unlawful actions as alleged herein. Plaintiff has also provided notice of
8 these claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency
9 (“LWDA”) and now brings this First Amended Complaint, including claims for civil penalties
10 under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.* Attorney General
11 Act (“PAGA”), Labor Code §2698 *et seq.*

12 5. The “Class Period” is designated as the four-year period prior to the filing of this
13 Complaint through the date of the final disposition of this action. From the start of the Class Period
14 through the present, Defendant has had a policy and/or practice of among other violations: late
15 and/or interrupted meal breaks, untimely and/or interrupted rest breaks, issuing inaccurate wage
16 statements, and ignoring and violating California wage and hour laws, in their business as more
17 fully set forth below.

18 6. The “PAGA Period” is defined herein commences one year prior to the date of filing the
19 PAGA Notice Letter with the LWDA.

20 7. Defendant has treated all persons employed in California in such a way as to violate
21 California’s laws governing conditions of employment and payment of wages owed. Plaintiff
22 asserts that Defendant has knowingly and with conscious disregard of the law refused to pay the
23 Class Members and aggrieved employees all wages owed, including overtime wages and meal and
24 rest break penalty wages. Defendant has violated numerous Labor Code provisions, as set forth
25 herein. Class Members and aggrieved employees are owed their back pay, plus interest and/or
26 premiums and penalties under Business and Professions Code section 17203 to compensate Class
27 Members and aggrieved employees for the delay in receiving wages due.
28

1 8. Defendant, by and through their actions, has engaged in unfair competition, requiring
2 restitution to persons affected and disgorgement of profits so obtained.

3 THE PARTIES

4 9. Plaintiff WILSON DE LEON is an individual who resides in California and worked for
5 Defendant as an Emergency Room Nurse from February 14, 2022, through February 16, 2024.

6 10. Defendant USC ARCADIA HOSPITAL is a California non-profit corporation doing
7 business in California with the capacity to sue and to be sued and doing business, in Los Angeles
8 County, State of California. Defendant exercised control over the wages, hours, and/or working
9 conditions of Plaintiff and members of the proposed class and aggrieved employees throughout
10 the liability period.

11 11. Defendant Does 1-50, inclusive, are sued herein under fictitious names. Their true
12 names and capacities are unknown to Plaintiff. When their true names and capacities are
13 ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein.
14 Plaintiff is informed and believe, and thereon alleges, that each of the fictitiously named Defendant
15 is responsible in some manner for the occurrences herein alleged, and that the damages sustained
16 by Plaintiff and the Class Members and aggrieved employees herein alleged were proximately
17 caused by such Doe Defendants.

18 12. 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 members of the Class,
20 and exercised control over their wages, hours, and working conditions. Plaintiff is informed and
21 believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the
22 agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects
23 pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

24 JURISDICTION AND VENUE

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

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

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

10 **CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

11 16. During the Class Period and PAGA Period, Defendant committed various violations of
12 the California Labor Code, the UCL and the applicable IWC Wage Order, as alleged below in more
13 detail. Defendant enforces multiple policies that violate state law which are intended to increase its
14 own profits to the detriment of its employees.

15 17. Defendant failed to properly pay for all hours worked, including overtime
16 compensation. Plaintiff, class members, and aggrieved employees have been required to provide
17 patient care and perform other work duties, including finding beds for patients, cleaning
18 up/organizing the work facility, and responding to patient concerns, while off the clock. Plaintiff
19 and his coworkers often worked 12-hour shifts so this time spent working off the clock was required
20 to be paid at the overtime regular rate of pay. Additionally, Defendant would sometimes call
21 Plaintiff, class members, and aggrieved employees for additional help while they were off the clock.

22 18. Defendant failed to consistently maintain a policy and practice that provides its
23 employees with first, second and third rest periods as required by California law.

24 19. Defendant failed to consistently maintain a policy and practice that provides its
25 employees with uninterrupted meal breaks and second meal breaks as required by California law.

26 20. Plaintiff, Class members, and aggrieved employees were also paid sick leave wages at
27 the base hourly rate of pay, which is less than required under either of the two alternative methods
28

1 of calculation provided by Labor Code section 246(l), and constitutes an unlawful and unfair
2 business practice for which employees seek restitution.

3 21. Defendant failed to reimburse for required business expenses. Plaintiff, class members,
4 and aggrieved employees are required to use their personal cell phones for work related
5 communications throughout the work day, although Defendant did not reimburse them in any way
6 for the expense of their personal cell phone use.

7 22. Defendant failed to pay all wages owed upon termination.

8 23. Defendant failed to consistently provide timely, accurate, itemized wage statements to
9 employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174.

10 24. Based upon the above allegations, Defendant from time to time engaged in unfair
11 competition.

12 25. Plaintiff brings this action on behalf of himself, and all other persons similarly situated,
13 all aggrieved employees, and the State of California, to recover from Defendant for failure to
14 comply with California wage and hour laws, and for claims under Business and Professions Code
15 § 17200.

16 26. This action has been brought and may properly be maintained as a class action
17 pursuant to the provisions of Code of Civil Procedure § 382 because the proposed class is
18 ascertainable and there is a well-defined community of interest. Plaintiff is among in excess of 100
19 employees who have been similarly injured by Defendant's unlawful employment policies and
20 practices.

21 27. The "PAGA Period" is defined herein commences on year prior to the date of filing
22 the PAGA Notice Letter with the LWDA.

23 28. The PAGA Class, also referred to herein as "aggrieved employees": "All current and
24 former hourly, non-exempt employees of Defendants in California, at any time from one year prior
25 to the filing of the PAGA Notice letter with the LWDA until the resolution of this matter." Plaintiff
26 reserves the right to amend or modify the definition of aggrieved employees with respect to the
27 issues or in any other way.

1 29. The “Relevant Class Period” or proposed “Class Period” as defined herein commences
2 four years prior to the date of filing the Complaint in this action.

3 30. Plaintiff brings this action on his behalf and as a class action under Cal. Code of Civil
4 Procedure §382 on behalf of the following defined groups:

5 31. Proposed Class: “All persons who are employed or have been employed by Defendant
6 in the State of California as hourly, non-exempt workers during the period of the relevant statute
7 of limitations.”

8 32. Proposed Sub-classes are defined below and/or a representative action under Business
9 & Professions Code §§ 17200 et seq. and Labor Code §2699:

10 A. All persons who are employed or have been employed by Defendant in the State
11 of California as hourly, non-exempt workers during the period of the relevant
12 statute of limitations, who worked one or more shift in excess of five (5) hours.

13 B. All persons who are employed or have been employed by Defendant in the State
14 of California as hourly, non-exempt workers during the period of the relevant
15 statute of limitations, who worked one or more shifts in excess of six (6) hours.

16 C. All persons who are employed or have been employed by Defendant in the State
17 of California as hourly, non-exempt workers during the period of the relevant
18 statute of limitations, who worked one or more shifts in excess of eight (8)
19 hours.

20 D. All persons who are employed or have been employed by Defendant in the State
21 of California as hourly, non-exempt workers during the period of the relevant
22 statute of limitations, who worked one or more shifts in excess of three and one-
23 half hours (3 ½), but less than or equal to six (6) hours.

24 E. All persons who are employed or have been employed by Defendant in the State
25 of California as hourly, non-exempt workers during the period of the relevant
26 statute of limitations, who worked one or more shifts in excess of six (6) hours,
27 but less than or equal to ten (10) hours.
28

1 F. All persons who are employed or have been employed by Defendant in the State
2 of California as hourly, non-exempt workers during the period of the relevant
3 statute of limitations, who were paid sick pay.

4 G. All persons who are employed or have been employed by Defendant in the State
5 of California as hourly, non-exempt workers during the period of the relevant
6 statute of limitations, who separated their employment from Defendant.

7 H. All persons who are employed or have been employed by Defendant in the State
8 of California as hourly, non-exempt workers during the period of the relevant
9 statute of limitations, who received pay for one or more pay periods.

10 33. This action is brought, and may properly be maintained, as a class action under CCP
11 §382 and/or a representative action under Business & Professions Code §§ 17200 et seq. and Labor
12 Code §2699 because there is a well-defined community of interest in the litigation, and the
13 proposed Class and Subclasses (collectively “Class”) are easily ascertainable.

14 34. Numerosity: The Proposed Class is so numerous that joinder of all members is
15 impractical. Plaintiff is informed and believes, and on that basis alleges, that during the relevant
16 time period, Defendant employed over 100 putative Class Members who are geographically
17 dispersed and who satisfy the definition of the proposed Class. As such, a class action is the only
18 available method for the fair and efficient adjudication of this controversy. Membership in the
19 Proposed Class can be easily ascertained by an examination and analysis of employee and payroll
20 records, among other records within Defendant’s possession and control.

21 35. Typicality: Plaintiff’s claims are typical of the claims of the Class Members. Plaintiff,
22 like others similarly situated, was subjected to Defendant’s common, unlawful policies, practices,
23 and procedures described above. The Plaintiff’s positions at the company was typical of those of
24 other Class Members. Plaintiff’s claims are typical of the claims of each Class Member because
25 each have sustained damages arising out of and caused by Defendant’s common course of conduct,
26 as alleged herein. As such, Plaintiff has the same interests in this matter as all members of the
27 Class.

1 36. Adequacy: Plaintiff will fairly and adequately protect the interests of the members of
2 the Class. Plaintiff has retained counsel competent and experienced in complex class actions and
3 California labor and employment litigation.

4 37. Commonality: Common questions of law and fact exist, including but not limited to
5 the following:

- 6 i. Whether Defendant violated wage and hour laws by failing to pay overtime
7 wages;
- 8 ii. Whether Defendant violated wage and hour laws by failing to provide rest
9 breaks;
- 10 iii. Whether Defendant's policy and practice concerning rest breaks was
11 unlawful;
- 12 iv. Whether Defendant violated wage and hour laws by failing to provide
13 uninterrupted meal breaks;
- 14 v. Whether Defendant's policy and practice concerning meal breaks was
15 unlawful;
- 16 vi. Whether Defendant violated wage and hour laws by failing to reimburse for
17 required business expenses;
- 18 vii. Whether Defendant violated wage and hour laws by failing to pay all wages
19 due upon termination;
- 20 viii. Whether Defendant unlawfully failed to keep and furnish Class Members
21 with accurate, itemized records of hours worked, in violation of Labor Code
22 §§ 226 and 1174;
- 23 ix. The proper measure of damages sustained and the proper measure of
24 restitution recoverable by Plaintiff, the Class Members, and Subclass
25 Members;
- 26 x. Whether the Class Members are entitled to injunctive relief to enjoin any
27 further violations of wage and labor laws;
- 28

- xi. Whether Defendant, and each of them, are/were participants in the alleged unlawful and/or tortious conduct;
- xii. Whether Defendant's conduct was willful and reckless;
- xiii. The effect upon and the extent of injuries suffered by Plaintiff and the Plaintiff Class and the appropriate amount of reimbursement, restitution, damages, or other compensation; and
- xiv. What is the extent of liability of each Defendant, including DOE defendants, to each Class and Subclass member?

38. Superiority: A class action is superior to other available methods of the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where the damage suffered by individual plaintiffs, while not inconsequential, makes individual actions impracticable given the expenses and burdens associated with seeking individual relief. Prosecuting over 100 identical, individual lawsuits does not promote judicial efficiency or equity and consistency in judicial results. Moreover, the Class is a group of hourly, low-wage earning employees who rely on their wages and requiring that each individual take time away from work to prosecute individual actions would be inequitable and result in undue hardship for the individual Class members and their families. Public policy favors efficient resolution of their claims and uniform enforcement of California Labor laws against entities skirting their legal obligations at the expense of a vulnerable working population.

39. Manageability: Plaintiff is informed and believes that all allegations in this Complaint are capable of being determined on the same evidence and based primarily on review of corporate records and key testimony of Defendant's corporate representatives. To the extent statistical analysis and representative evidence is necessary, Plaintiff and proposed class counsel will employ competent experts and consultants in the field to determine and review evidence for both issues of liability and damages in a scientifically reliable manner.

40. Plaintiff requests, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California Rules of Court, that the absent Class and Subclass Members be notified by the best notice practicable under the circumstances, including individual notice to all members who can be identified through

1 reasonable effort. The names and address of the Class and Subclass Members are available from
2 Defendant.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME HOURS**
5 **WORKED**

6 Cal. Labor Code §§ 200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194,
7 1197, 1197.1, 1198, Wage Order 5

8 **(Plaintiff Against All Defendants)**

9 41. Plaintiff incorporates by reference in this cause of action each allegation of the
10 preceding paragraphs as though fully set forth herein.

11 42. Defendant's conduct described in this complaint from time to time violates the
12 provisions of Labor Code §§ 200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558,
13 1194, 1197, 1197.1, 1198, Wage Order 5.

14 43. Section 2(K) of Wage Orders 4 and 5 define "hours worked" as "the time during which
15 an employee is subject to the control of an including all the time the employee is suffered or
16 permitted to work, whether or not required to do so." Defendant has been engaged in many
17 unlawful employment practices which resulted in underpayment for hours worked each pay period.

18 44. Plaintiff and class members frequently worked off the clock and were routinely
19 subjected to periods wherein they were under the Defendant's control but not compensated for
20 their time. Class members have been required to provide patient care and perform other work
21 duties, including finding beds for patients, cleaning up/organizing the work facility, and
22 responding to patient concerns, while off the clock. Plaintiff and class members frequently worked
23 12-hour shifts so this time spent working off the clock was required to be paid at the overtime
24 regular rate of pay. Additionally, Defendant would sometimes call Plaintiff and class members for
25 additional help while they were off the clock.

26 45. Defendant's conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1197
27 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5,
28 226, 558, 1194 and 1194.2, Plaintiff and other Class members are entitled to recover damages for

1 the nonpayment of wages of all their worked hours in addition to penalties, attorneys' fees,
2 expenses, and costs of suit.

3 46. Failure to Include Bonus Pay in Regular Rate of Pay for Calculating Overtime.

4 Pursuant to Labor Code §200(a) "'Wages' includes all amounts for labor performed by employees
5 of every description, whether the amount is fixed or ascertained by the standard of time, task,
6 piece, commission basis, or other method of calculation." Defendant fails to include
7 nondiscretionary bonuses into the regular rate of pay for purposes of calculating overtime.

8 47. It is well established that non-discretionary bonuses retroactively increase the
9 employee's "regular rate" of pay for purposes of calculating overtime. (Labor Code §207) The
10 "regular rate" is calculated by dividing the hours worked in a week by all the compensation earned
11 for that week. When an employee is later paid a bonus that is partly due to work performed in that
12 week, this additional pay must be added into the total compensation for the week, increasing the
13 employee's regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

14 48. Plaintiff and class members received a nondiscretionary bonus that was paid over the
15 course of three years, yet those bonuses were not included in the regular rate for purposes of
16 calculating overtime and double-time rates.

17 49. Defendant has failed to properly calculate and pay overtime compensation, making no
18 adjustment to overtime rates reflected in any of Plaintiff or class members' paystubs. Plaintiff and
19 other employees have been denied "the unpaid balance of the full amount of this... overtime
20 compensation" as required by Cal. Labor Code. §1194. Additionally, Defendant has violated Cal.
21 Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at
22 sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the
23 labor code to fail to comply with a wage order.

24 50. Violation of Alternative Workweek Schedule Requirements. Defendant scheduled
25 Class members to work shifts that violated the alternative workweek schedule ("AWS") law
26 pursuant to Labor Code § 511. First, USC Arcadia Hospital only has one AWS designation on file
27 with the Department of Industrial Relations in the AWS database and it is for 7 employees working
28 in what is designated as "Recover Room -Staff RN PACU." Even if Defendant complied with the

1 required employee voting process, Defendant failed to always provide Class members with regular
2 work schedules that are fixed and consistent and further called employees in to work extra shifts
3 without paying required overtime. Therefore, while employees are deprived of their significant
4 right to overtime due to the long shifts associated with AWS schedules, they also do not gain
5 predictable, steady work schedules that the law grants them in exchange for forfeiting that right.
6 Given that employees frequently worked 10-12 hour shifts, with many even longer, extensive
7 underpaid overtime is owed.

8 51. Failure to Pay Extra-Shift Penalties. Defendant fails to properly pay Class members
9 when they work extra shifts. As to extra shifts, Labor Code § 511(b) provides that an employer is
10 required to compensate at “an overtime rate of compensation of no less than double the regular
11 rate of pay of the employee...for any work in excess of eight hours on those days worked beyond
12 the regularly scheduled workdays established by the alternative workweek agreement.” When
13 Class members work additional shifts beyond their assigned schedules, Defendant is required to
14 pay them double time payments for the entirety of the additional shifts.

15 52. Defendant’s conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1197
16 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5,
17 226, 558, 1194 and 1194.2, Plaintiff and other Class members are entitled to recover damages for
18 the nonpayment of wages of all their worked hours in addition to penalties, attorneys’ fees,
19 expenses, and costs of suit.

20 53. Work performed during unpaid meal periods. As more fully set forth below, Defendant
21 failed to permit Plaintiff and others to take timely, off-duty, meal breaks of “not less than 30
22 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512.
23 Employees were often required to work during their unpaid meal periods due to the understaffing
24 and lack of relief workers.

25 54. Failure to Pay Wages- Required Minimum Wage. Pursuant to Labor Code §§ 1194,
26 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work
27 without paying wages at the proper minimum wage for all time worked as required by the
28 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.”

55. During the applicable recovery period, Class members were suffered, permitted, and required to perform work by Defendant for which they received no pay. The aforementioned acts by Defendant were undertaken with the intention of depriving Class members of their earned wages.

56. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay Plaintiff and class members all wages earned twice during each calendar month pursuant to Labor Code §204(a). Defendant 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, Defendant is liable under Labor Code §210 for failure to pay wages as required by law

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE FIRST, SECOND AND THIRD REST BREAKS

Cal. Labor Code §§ 226, 226.7, 512, 558, 1198

(Plaintiff Against All Defendants)

57. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

58. Defendant’s conduct described in this complaint from time to time violates the provisions of Labor Code §§ 226, 226.7, 512, 558, 1198.

59. Defendant 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. Plaintiff reports that he and his coworkers were frequently not provided with rest periods and when rest periods were provided, they were late and interrupted. Plaintiff and class members frequently received only one rest break during their 10-12 hour shifts. On other occasions, they were instructed to combine their one rest period with their unpaid meal period. Unfortunately, employees are often

1 actively engaged in patient care and Defendant failed to provide sufficient relief workers, resulting
2 in frequent missed rest breaks.

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

13 61. The rest period requirement obligates employers to permit and authorize employees to
14 take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
15 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
16 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee’s
17 regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted
18 rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC
19 Wage Order, §12(B) (“If an employer fails to provide an employee a rest period in accordance
20 with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of
21 pay at the employee’s regular rate of compensation for each work day that the rest period is not
22 provided”). Moreover, under California law rest periods must be a “net” ten minutes in a suitable
23 rest area. (*Id.* at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein
24 the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a
25 rest area and cannot include time it takes to get to and from the rest area). The employer must show
26 that it clearly articulates the right to a net ten minutes, which means it must clearly communicate
27 what “net” ten minutes means (i.e., regardless of what happens along the way to and from a rest
28 area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; *see also*, *Bufile v.*

1 *Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to
2 clearly communicate the authorization and permission [to take rest periods] to their employees.”).

3 62. Defendant did not authorize or permit all of its hourly employees to take at least a ten
4 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
5 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 5-2001 11(A). When
6 breaks were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant
7 violated the Wage Order, Defendant is liable under Labor Code §1198.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PROVIDE UNINTERRUPTED MEAL BREAKS AND SECOND**

10 Cal. Labor Code §§ 226, 226.7, 512, 558, 1198

11 **(Plaintiff Against All Defendants)**

12 63. Plaintiff incorporates by reference in this cause of action each allegation of the
13 preceding paragraphs as though fully set forth herein.

14 64. Defendant’s conduct described in this complaint from time to time violates the
15 provisions of Labor Code §§ 226, 226.7, 512, 558, 1198.

16 65. During Plaintiff’s employment, Defendant failed to maintain a compliant meal period
17 policy and practice. Defendant failed to provide all of its hourly employees with their right to take
18 an off-duty unpaid 30-minute meal period. Labor Code §512 provides, “[a]n employer may not
19 employ an employee for a work period of more than five hours per day without providing the
20 employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o
21 employer shall require an employee to work during any meal... period mandated by an applicable
22 order of the Industrial Welfare Commission.” Paragraph 11(A) of the Wage Orders provides, in
23 pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the
24 meal period shall be considered an ‘on duty’ meal period and counted as time worked.” Labor
25 Code 1198 states that any violation of a wage order is a violation of the Labor Code and requires
26 one hour of premium pay calculated at the employee’s regular rate of pay.

27 66. Plaintiff and class members often received late, short, and interrupted first and second
28 meal periods. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because

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

10 67. Meal breaks were often missed, late, short, and interrupted. Plaintiff explains that meal
11 break violations were consistently a problem because Defendant did not staff relief nurses to allow
12 employees to take breaks. Plaintiff and class members were sometimes required to clock out but
13 keep working because they had no relief to cover them for a meal period. Plaintiff and class
14 members often worked 10-12 hour shifts with no break. Even when meal periods were taken, they
15 were consistently short due to the lack of coverage.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE FOR REQUIRED BUSINESS EXPENSES**

18 Cal. Labor Code §§ 1198, 2802

19 (Plaintiff Against All Defendants)

20 68. Plaintiff incorporates by reference in this cause of action each allegation of the
21 preceding paragraphs as though fully set forth herein.

22 69. Defendant's conduct described in this complaint from time to time violates the
23 provisions of Labor Code §§ 1198, 2802.

24 70. Labor Code §2802 requires employers to indemnify employees for necessary
25 expenditures or losses incurred by employees in direct consequence of the discharge of duties.
26 Plaintiff and class members are required to use their personal cell phones for work related
27 communications throughout the work day, although Defendant did not reimburse them in any way
28 for the expense of their personal cell phone use as required by the Labor Code.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES DUE UPON TERMINATION**

3 Cal. Labor Code §§ 201, 202, 203, 256

4 **(Plaintiff Against All Defendants)**

5 71. Plaintiff incorporates by reference in this cause of action each allegation of the
6 preceding paragraphs as though fully set forth herein.

7 72. Defendant's conduct described in this complaint from time to time violates the
8 provisions of Labor Code §§ 201, 202, 203, 256.

9 73. An employee who is discharged must be paid all of his or her wages immediately at
10 the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Defendant
11 knowingly and willfully failed to pay all compensation due and owing to class members at the
12 time employment terminated. Defendant willfully failed to pay employees who are no longer
13 employed by it all compensation due upon termination of employment as required by Cal. Lab.
14 Code §§201 and 202. Separated class members are now entitled to recover up to thirty (30) days
15 pay as waiting time under the terms of §203.

16 **SIXTH CAUSE OF ACTION**

17 **PAYSTUB AND RECORD KEEPING VIOLATIONS**

18 Cal. Labor Code §§ 226, 1174, 1174.5

19 **(Plaintiff Against All Defendants)**

20 74. Plaintiff incorporates by reference in this cause of action each allegation of the
21 preceding paragraphs as though fully set forth herein.

22 75. Defendant's conduct described in this complaint from time to time violates the
23 provisions of Labor Code §§ 226, 1174, 1174.5.

24 76. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
25 wage statements to Plaintiff and the class members in accordance with Labor Code §§ 226 and
26 keep accurate records as required by §1174(d). The statements provided to Plaintiff and class
27 members, and the records maintained by Defendant, have not accurately reflected actual gross
28

1 wages earned, including pay for all hours worked, and overtime pay, and pay for meal and rest
2 period penalty wages.

3 77. Such failures caused injury to Plaintiff and others, by, among other things, impeding
4 them from knowing the total hours worked and the amount of wages to which they are and were
5 entitled. Defendant knowingly and intentionally failed to itemize the gross wages earned, net
6 wages earned, and total hours worked.

7 78. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and class
8 members to sign employment related contracts and documents that contained unlawful terms of
9 employment.

10 **SEVENTH CAUSE OF ACTION**

11 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF**

12 California Business and Professions Code section 17200, et seq.

13 **(Plaintiff Against All Defendants)**

14 79. Plaintiff incorporates by reference in this cause of action each allegation of the
15 preceding paragraphs as though fully set forth herein.

16 80. Defendant from time to time knowingly committed, and upon information and belief
17 continue to commit, ongoing unlawful business practices within the meaning of the UCL,
18 including, but not limited to unlawful practices as described in the causes of action articulated
19 above, and hereby incorporated herein.

20 81. Plaintiff and class members were paid sick leave wages at the base hourly rate of pay,
21 which is less than required under either of the two alternative methods of calculation provided by
22 Labor Code section 246(l). This constitutes an unlawful and unfair business practice and Plaintiff
23 and Class Members are entitled to restitution.

24 82. Plaintiff lost money and property as a result of Defendant's unlawful business practices
25 described above.

26 83. Pursuant to the UCL, Plaintiff and all Class Members are entitled to restitution of
27 money or property acquired by Defendant by means of such unlawful business practices, in
28 amounts not yet known, but to be ascertained at trial.

1 84. Pursuant to the UCL, Plaintiff and Class Members are entitled to injunctive relief
2 against Defendant's ongoing unlawful business practices. If an injunction does not issue enjoining
3 Defendant from engaging in the unlawful business practices described above, Plaintiff and the
4 general public will be irreparably injured.

5 85. Plaintiff has no plain, speedy, and adequate remedy at law. Defendant, if not enjoined
6 by this Court, will continue to engage in the unlawful business practices described above in
7 violation of the UCL, in derogation of the rights of Plaintiff and Class Members and of the general
8 public.

9 86. Plaintiff's success in this action will result in the enforcement of important rights
10 affecting the public interest by conferring a significant benefit upon the general public.

11 87. Defendant's numerous violations of local and California law, as well as the other
12 statutory and regulatory violations alleged herein, constitute unlawful business actions and
13 practices in violation of Business and Professions Code § 17200, et seq.

14 88. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff and the Class
15 Members are entitled to restitution of unpaid wages, including overtime, sick pay, and premium
16 wages, among other relief alleged herein, that were withheld and retained by Defendant during a
17 period that commences four years prior to the filing of this action. Plaintiff is further entitled to a
18 permanent injunction requiring Defendant to comply with all provisions of California labor law,
19 including properly paying the lawful rate of pay for all hours worked, properly paying sick pay,
20 providing rest periods to all workers as defined herein, timely paying due wages upon termination,
21 maintaining accurate wages statements and payroll records, in addition to an award of attorneys'
22 fees and costs pursuant to Code of Civil Procedure § 1021.5 and other applicable law, and costs.

23 **EIGHTH CAUSE OF ACTION**

24 **STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL**
25 **ACT, LABOR CODE §2698 et seq. AGAISNT ALL DEFENDANTS**

26 89. Plaintiff incorporates by reference in this cause of action each allegation of the preceding
27 paragraphs as though fully set forth herein.
28

1 90. Under Private Attorneys General Act of 2006, Labor Code §§ 2698-2699.5, an aggrieved
2 employee, on behalf of herself and other current or former employees, may recover penalties under
3 any provision of the Labor Code that provides for civil penalties. These penalties are in addition
4 to any other relief under the Labor Code. Plaintiff is an aggrieved employee under PAGA.

5 91. As set forth above, Defendant have committed numerous violations for which the Labor
6 Code Provides for Penalties, including violations of all applicable Labor Code provisions set forth
7 in the foregoing causes of action. Labor Code §2699.5 identifies the aforementioned Labor Code
8 provisions as statutes to which §2699.3 procedural requirements must be met before a penalty may
9 be assessed under §2699.3 by providing written notice to the Defendants and the Labor &
10 Workforce Development Agency (“LWDA”). See Exhibit 1 attached hereto, which is a true and
11 correct copy of the Notice correspondence showing compliance with §2699.3. No notice of intent
12 to investigate the alleged violations was provided with the statutory period. Consequently, Plaintiff
13 has exhausted administrative remedies, and on behalf of themselves and all other aggrieved current
14 and former employees of defendants. Plaintiff, therefore, now pursues this cause of action as
15 permitted by §2698, et seq.

16 92. Enforcement of statutory provisions enacted to protect workers and to ensure proper and
17 prompt payment of wages due to employees is a fundamental public interest in California.
18 Consequently, Plaintiff’s success in this action will result in the enforcement of important rights
19 affecting the public interest and will confer a significant benefit upon the general public. Private
20 enforcement of the rights enumerated herein is necessary, as no public agency has pursued
21 enforcement. Plaintiff is incurring a financial burden in pursuing this action and it would be against
22 the interests of justice to require payment of attorneys’ fees and costs from any recovery that might
23 be obtained herein, pursuant to, inter alia, Labor Code §§2698, et seq., and Code of Civil Procedure
24 §1021.5.

25 93. In addition, if Plaintiff succeeds in enforcing these rights affecting the public interest, then
26 attorneys’ fees may be awarded to Plaintiff and against Defendants under Code of Civil Procedure
27 §1021.5 and other applicable law in part, because:
28

- a. A successful outcome in this action will result in the enforcement of important rights affecting the public interest by requiring Defendants to comply with the wage and hour laws and California's unfair business practice law;
- b. This action will result in a significant benefit to Plaintiff, the Class, and the general public by bringing to a halt unlawful and/or unfair activity;
- c. Unless this action is prosecuted, members of the Class and general public will not recover those moneys, and many Defendants' employees would not be aware that the acts and practices they were subjected by Defendants were wrongful;
- d. Unless this action is prosecuted, Defendants will continue to mislead their employees about the true nature of their rights and remedies under the wage and hour laws; and

94. An award of attorneys' fees and costs is necessary for the prosecution of this action and will result in a benefit to Plaintiff, the Class, aggrieved employees, and to consumers in general, by preventing Defendants from continuing to circumvent the wage and hour statutes and frustrate the long-standing recognition by the California legislature and the courts that such statutes, as pled herein, are not merely a matter of private concern between employer and employees to be eviscerated by considerations of waiver, contributory negligence, good or bad faith, and private agreements. Rather, the wage and hour statutes have been described as a matter of public concern, were designed to provide minimum substantive guarantees to individual workers and are essential to public welfare.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Proposed Class, request judgment and the following specific relief against Defendant as follows:

- A. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure § 382;
- B. That the Court determine that this action may be maintained as a PAGA representative action under Cal. Labor Code §2698 *et seq.*
- C. Provision of class notice to all members of the Class;

- 1 D. That Defendant is found to have violated the above-referenced provisions of the
2 Labor Code, CCR and the IWC Wage Order as to Plaintiff, Class Members
3 relevant subclass Members, and aggrieved employees;
- 4 E. For compensatory damages, in an amount according to proof at trial, with
5 interest thereon;
- 6 F. For compensation for not being paid overtime;
- 7 G. For compensation for not being provided first, second and third rest breaks;
- 8 H. For compensation for not being provided uninterrupted meal breaks and second
9 meal breaks;
- 10 I. For restitution for not being paid proper sick leave wages;
- 11 J. For compensation for not being reimbursed for required business expenses;
- 12 K. For compensation for not being paid all wages due upon termination;
- 13 L. For compensation for not being paid premium and penalty wages;
- 14 M. That Defendant's actions are found to be willful and/or in bad faith to the extent
15 necessary under §§ 201, 202, 203, and 558 of the California Labor Code for
16 willful failure to pay all compensation owed at the time of separation to
17 Plaintiff, Class Members and aggrieved employees no longer employed by
18 Defendant;
- 19 N. That Plaintiff, Class Members and aggrieved employees receive penalties for
20 Defendant's violation of §226 and 1174 of the California Labor Code for willful
21 failure to provide and maintain the required accurate and itemized wage
22 statements;
- 23 O. That Plaintiff, Class Members and aggrieved employees receive an award in the
24 amount of unpaid wages owed, including interest thereon, and penalties as
25 provided in the Labor Code, CCR and Wage Order, including under Labor Code
26 §§ 203, 510, and 558, subject to proof at trial;
- 27 P. That Defendant be ordered to pay restitution to Plaintiff, Class Members and
28 aggrieved employees for amounts acquired through Defendant's unlawful

activities pursuant to Business and Professions Code §§ 17200-05 and enjoined to cease and desist from unlawful and unfair activities in violation of California Business and Professions Code § 17200 et. seq.;

Q. That Plaintiff, Class Members and aggrieved employees receive an award of reasonable attorneys' fees and costs pursuant to Code of Civil Procedure §1021.5, Labor Code §226, 218.5, and 1194 and/or applicable laws;

R. That the Court issue declaratory relief that Defendant's challenged policies are unlawful; and

S. That the Court order further relief, in law and equity, as it deems appropriate and just.

DATED: March 5, 2025

KOUL LAW FIRM, APC



Nazo Koulloukian, Esq.

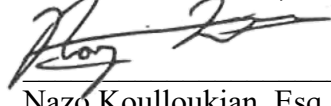
Attorneys for Plaintiff WILSON DE LEON
and putative class members

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the putative class, hereby demands trial by jury to the full extent permitted by law.

DATED: March 5, 2025

KOUL LAW FIRM, APC



Nazo Koulloukian, Esq.

Attorneys for Plaintiff WILSON DE LEON
and putative class members

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

October 15, 2024

Via E-filing:

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

Via Certified U.S. Mail:

USC Arcadia Hospital
300 West Huntington Drive
Arcadia, CA 91007

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Wilson De Leon
Employer: USC Arcadia Hospital

Dear Sir or Madam:

Claimant and aggrieved employee Wilson De Leon has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, APC, to represent him, and all other aggrieved employees, for wage and hour claims against his former employer, USC Arcadia Hospital (hereafter referred to as “Employer”). Employer operates a 348-licensed bed community hospital affiliated with Keck Medicine of USC. Employer hired, assigned and paid Claimant to work as an Emergency Room Nurse from February 14, 2022, through February 16, 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 Amended 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)

Section 2(K) of Wage Orders 4 and 5 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 has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period.

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. Aggrieved hourly employees have been required to provide patient care and perform other work duties, including finding beds for patients, cleaning up/organizing the work facility, and responding to patient concerns, while off the clock. Claimant worked 12-hour shifts so this time spent working off the clock was required to be paid at the overtime regular rate of pay. Additionally, Employer would sometimes call Claimant and aggrieved employees for additional help while they were off the clock.

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 Include Bonus Pay in Regular Rate of Pay for Calculating Overtime

Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” Employer fails to include nondiscretionary bonuses into the regular rate of pay for purposes of calculating overtime.

It is well established that non-discretionary bonuses retroactively increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Claimant and aggrieved employees received a nondiscretionary bonus that was paid over the course of three years, yet those bonuses were not included in the regular rate for purposes of calculating overtime and double-time rates.

Employer has failed to properly calculate and pay overtime compensation, making no adjustment to overtime rates reflected in any of Claimant or aggrieved employees' paystubs. Claimant and other employees have been denied "the unpaid balance of the full amount of this... overtime compensation" as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order.

Violation of Alternative Workweek Schedule Requirements

Employer scheduled Aggrieved Employees to work shifts that violated the alternative workweek schedule ("AWS") law pursuant to Labor Code § 511. First, USC Arcadia Hospital only has one AWS designation on file with the Department of Industrial Relations in the AWS database and it is for 7 employees working in what is designated as "Recover Room -Staff RN PACU." Even if Employer complied with the required employee voting process, Employer failed to always provide Aggrieved Employees with regular work schedules that are fixed and consistent and further called employees in to work extra shifts without paying required overtime. Therefore, while employees are deprived of their significant right to overtime due to the long shifts associated with AWS schedules, they also do not gain predictable, steady work schedules that the law grants them in exchange for forfeiting that right. Given that employees frequently worked 10-12 hour shifts, with many even longer, extensive underpaid overtime is owed.

Failure to Pay Extra-Shift Penalties

Employer fails to properly pay Aggrieved Employees when they work extra shifts. As to extra shifts, Labor Code § 511(b) provides that an employer is required to compensate at "an overtime rate of compensation of no less than double the regular rate of pay of the employee...for any work in excess of eight hours on those days worked beyond the regularly scheduled workdays established by the alternative workweek agreement." When Aggrieved Employees work additional shifts beyond their assigned schedules, Employer is required to pay them double time payments for the entirety of the additional shifts.

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.

Work performed during unpaid meal periods.

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employees were often required to work during their unpaid meal periods due to the understaffing and lack of relief workers.

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. 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 First, Second, and Third 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. Claimant reports that he and his coworkers were frequently not provided with rest periods and when rest periods were provided, they were late and interrupted. Claimant and aggrieved employees frequently received only one rest break during their 10-12 hour shifts. On other occasions, they were instructed to combine their one rest period with their unpaid meal period. Unfortunately, employees are often actively engaged in patient care and Employer failed to provide sufficient relief workers, resulting in frequent missed rest breaks.

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.

The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee’s regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) (“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”). Moreover, under California law rest periods must be a “net” ten minutes in a suitable rest area. (*Id.* at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; *see also*, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.”).

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 5-2001 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 Uninterrupted Meal Breaks & Second 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 and requires one hour of premium pay calculated at the employee's regular rate of pay.

Claimant and aggrieved employees often received late, short, and interrupted first and second meal periods. 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.

Meal breaks were often missed, late, short, and interrupted. Claimant explains that meal break violations were consistently a problem because Employer did not staff relief nurses to allow employees to take breaks. Claimant and aggrieved employees were sometimes required to clock out but keep working because they had no relief to cover them for a meal period. Claimant and aggrieved employees often worked 10-12 hour shifts with no break. Even when meal periods were taken, they were consistently short due to the lack of coverage. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

SICK LEAVE WAGES
(Labor Code § 246)

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Labor Code § 246 (l)

Claimant and Aggrieved Employees were paid sick leave wages at the base hourly rate of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l).

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 throughout the work day, 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 him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court.

Respectfully submitted,



Nazo Koulloukian, Esq.
Attorney for Claimant

PROOF OF SERVICE

Case No. 24STCV31379
De Leon v. USC Arcadia Hospital

I, NADIA CHAVEZ declare that I am a resident of or employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the entitled case. The name and address of my residence or business is KOUL LAW FIRM, 217 South Kenwood Street, Glendale, California 91205.

On March 5, 2025, I served the foregoing document described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

 X **BY E-MAIL:** I hereby certify that this document was served from Glendale, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address from e-mail nadia@koullaw.com pursuant to California Rules of Court. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

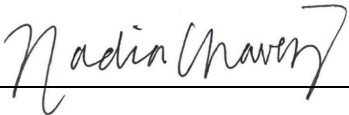
on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Matthew Scholl
Kenneth D. Sulzer
Romina Tamiry
CONSTANGY BROOKS, SMITH & PROPHETE LLP
2029 Century Park East, Suite 1100
Los Angeles, CA 90067
mscholl@constangy.com
ksulzer@constangy.com
rtamiry@constangy.com

Attorneys for Defendant USC ARCADIA HOSPITAL

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this March 5, 2025, in Glendale, California.



NADIA CHAVEZ