

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

ON CERTIFIED QUESTION
From the United States District Court
for the District of South Carolina

The Honorable Mary Geiger Lewis
District Court Case No. 3:22-cv-03898-MGL

Appellate Case No. 2024-001240

William M. Luce, on behalf of himself and all similarly situated
natural persons, Plaintiff,

v.

Lexington County Health Services District, Inc., Brian D. Smith in both his
official and individual capacity, and Lynn Coggins in both her official and
individual capacity, Defendants.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

WILLIAM M. LUCE, <i>on behalf of himself</i>	§	
<i>and all similarly situated natural persons,</i>	§	Civil Action No. 3:22-03898-MGL
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
LEXINGTON COUNTY HEALTH	§	
SERVICES DISTRICT, INC.;	§	
BRIAN D. SMITH, <i>in both his official and</i>	§	
<i>individual capacities;</i> and LYNN	§	
COGGINS, <i>in both her official and</i>	§	
<i>individual capacities,</i>	§	
	§	
Defendants.	§	

**ORDER CERTIFYING QUESTION
TO THE SOUTH CAROLINA SUPREME COURT**

I. INTRODUCTION

This matter comes before the undersigned pursuant to the Parties’ Joint Motion for Order Certifying Questions of Law to the South Carolina Supreme Court. ECF No. 62. To simplify the issues and avoid unnecessary proof and delay, the Parties have entered into a Joint Stipulation of Facts addressing certain matters the Parties, following initial discovery, agree are not in dispute in this action.

Relevant to this Order, the Parties note the absence of any South Carolina Supreme Court precedent construing the definition of “earnable compensation” in S.C. Code Ann. § 9-1-10(8) or construing the provisions related to the payments not subject to deduction as stated in S.C. Code Ann. § 9-1-1020. Because the construction of these South Carolina statutes, as amended, will be determinative of each of the claims Plaintiff (“Luce”) asserts, the Parties have requested this Court certify the question of whether the wages at issue in this action are subject to deductions for contributions to the South Carolina Retirement System (“SCRS”).

II. LEGAL STANDARD

S.C. App. Ct. R. 244(a) states, in relevant part:

The Supreme Court in its discretion may answer questions of law certified to it by any federal court of the United States or the highest appellate court or an intermediate appellate court of any other state, when requested by the certifying court if there are involved in any proceeding before that court questions of law of this state which may be determinative of the cause then pending in the certifying court when it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court.

Rule 244(b) requires the certification order to set forth “the questions of law to be answered, all findings of fact relevant to the questions certified, and a statement showing fully the nature of the controversy in which the questions arose.”

III. NATURE OF THE CONTROVERSY

Luce initiated this action on behalf of himself and all others similarly situated (the “Putative Class”), by the filing of a Complaint against Lexington County Health Services District, Inc. (“LCHSD”) and two (2) of its officers or managers, Brian D. Smith (“Smith”) and Lynn Coggins (“Coggins”) (collectively the “LCHSD Defendants”). Luce brings four causes of action on behalf of himself and the Putative Class, including claims for declaratory relief under 28 U.S.C. § 2201 and

Fed. R. Civ. P. 57; for injunctive relief; a claim under 42 U.S.C. § 1983; and for relief under the South Carolina Payment of Wages Act (“SCPWA”), S.C. Code Ann. §§ 41-10-10, *et seq.*

This case arises out of Luce’s allegations that the LCHSD Defendants have an unlawful policy of withholding and diverting certain wages to the South Carolina Public Employee Benefits Authority (“PEBA”) for use by SCRS. SCRS is a defined-benefit retirement plan for employees of state agencies and other local subdivisions of government that have joined SCRS. Employers of SCRS members are required to withhold SCRS contributions from those employees’ “earnable compensation[.]” S.C. Code Ann. § 9-1-10(8) (defining “earnable compensation”); *see generally id.* §§ 9-1-10, *et seq.* (the Retirement Act). PEBA, into which the SCRS was incorporated in 2012, administers SCRS.

As it relates to this Motion, Luce, an LCHSD employee, alleges he regularly “agreed to work weekends, holidays, night shifts, 24-hour shifts, call, and other undesirable work because [LCHSD] offers and incentivizes Luce and other professionals employed at [LCHSD] to do so with the promise of pay in addition to their salary base, e.g., premium pay, call pay, and shift differentials.” ECF No. 24, Am. Compl. ¶ 23. He claims LCHSD has withheld a percentage of those payments—which he contends do not constitute “earnable compensation”—to divert to PEBA for use by the SCRS. *Id.* ¶¶ 24, 26-27. Defendants dispute Luce’s allegation that these payments are excluded from “earnable compensation” and assert that they have, at all times, had reasonable grounds for believing their practices complied with applicable law, regulations, and guidance from SCRS and PEBA. ECF No. 28, Answer to Am. Compl. ¶¶ 23-24, 26-27, 98.

IV. STIPULATED FACTS

As noted, the Parties have filed a Joint Stipulation of Facts pursuant to Fed. R. Civ. P. Rule 16(c)(2)(C). The Court adopts the stipulated facts as undisputed and incorporates these facts by reference herein.

V. QUESTION OF LAW TO BE ANSWERED

S.C. Code Ann. § 9-1-1020 provides the statutory mandate for employers to deduct SCRS contributions from members' earnable compensation. "Earnable compensation" is defined as "the full rate of compensation that would be payable to a member if the member worked the member's full normal working time; when compensation includes maintenance, fees, and other things of value the board shall fix the value of that part of the compensation not paid in money directly by the employer." *Id.* § 9-1-10(8)(a). S.C. Code Ann. § 9-1-1020 states: "Payments for unused sick leave, single special payments at retirement, bonus and incentive-type payments, or any other payments not considered a part of the regular salary base are not compensation for which contributions are deductible."

The merits of Luce's claims, as well as the claims of any putative class this Court may certify, are dependent on whether earnings such as the Wages in Controversy, as defined in the Parties' Joint Stipulation of Facts, are subject to mandatory employer deductions under S.C. Code Ann. § 9-1-1020. The Parties and this Court have not identified any controlling authority construing the above-referenced language in S.C. Code Ann. § 9-1-1020. Likewise, the Parties and this Court are aware of only two South Carolina controlling authorities discussing the definition of "earnable compensation" under S.C. Code Ann. § 9-1-10(8), but neither decision touches upon the issue posed in this action. *See Kennedy v. S.C. Ret. Sys.*, 549 S.E.2d 243 (S.C. 2001) (construing the 1978 amendment to the SCRS statute and addressing the inclusion of unused annual leave in the average

final compensation calculation); *Duvall v. S.C. Budget & Control Bd.*, 659 S.E.2d 125 (S.C. 2008) (construing the 1978, 1986, and 2005 amendments to the SCRS statute and addressing again the inclusion of unused annual leave in the average final compensation calculation).

Accordingly, this Court respectfully requests the South Carolina Supreme Court answer the following certified question:

Are the Wages in Controversy, as defined in the Joint Stipulation of Facts, Luce and other Putative Class Members earned during employment with LCHSD “earnable compensation” subject to employer deductions under S.C. Code Ann. § 9-1-1020?

VI. CONCLUSION

For the reasons set forth above, the Court certifies the foregoing question to the South Carolina Supreme Court. The Clerk of Court is directed to forward a copy of this order to the South Carolina Supreme Court under this Court’s official seal, together with the Amended Complaint, ECF No. 24; the LCHSD Defendants’ Answer to the Amended Complaint, ECF No. 28; the Parties’ Joint Stipulation of Facts, including Exhibits A-D, ECF No. 62-1, -2, -3, -4, and -5, to include the sealed document filed at ECF No. 65; and any other portions of the record the South Carolina Supreme Court may request.

IT IS SO ORDERED.

Signed this 25th day of July, 2024, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

William M. Luce, on behalf of himself and
all similarly situated natural persons,

Case No. 3:22-cv-03898-MLG

Plaintiff,

v.

AMENDED COMPLAINT
(Putative Class Action)
(Jury Trial Demanded)

Lexington County Health Services District,
Inc., Brian D. Smith in both his official and
individual capacity, Lynn Coggins in both her
official and individual capacity, and Peggy G.
Boykin, in her official capacity for the South
Carolina Public Employee Benefit Authority
and South Carolina Retirement System,

Defendants.

Plaintiff (“**Luce**”) initiated this action on behalf of himself and all others similarly situated (the “**Putative Class**”), by the filing of an initial Complaint against Lexington County Health Services District, Inc. (“**LMC**”) and two (2) of its officers or managers, Brian D. Smith (“**Smith**”) and Lynn Coggins (“**Coggins**” and collectively with LMC and Smith, the “**LMC Defendants**”) to: obtain an injunction against their unlawful withholding and diversion of Luce and the Putative Class’s wages to the South Carolina Public Employee Benefits Authority (“**PEBA**”) for use by the South Carolina Retirement System (“**SCRS**”) and obtain all remedies available in law or equity under 42 U.S.C. § 1983, S.C. Code Ann. § 41-10-80, and 28 U.S.C. § 2201.

Luce files this Amended Complaint pursuant to the Court’s Memorandum Opinion and Order dated July 25, 2023, while expressly preserving without waiver his stated objections to the LMC Defendants’ Motion to Dismiss for Lack of Subject-Matter Jurisdiction, For Failure to Join Necessary and Indispensable Parties, and for Failure to State a Claim and the conclusion that PEBA and SCRS are necessary parties to his Complaint.

Due to the procedural history of the case, no discovery has been conducted at the time of this Amended Complaint. Luce intends to further amend this Complaint under Fed. R. Civ. P. Rules 15 and 21 if he discovers that any other officers or managers of LMC have directed or enforced LMC's unlawful policies, practices and customs of mischaracterizing Excluded Wages as "overtime," of mischaracterizing all "overtime" worked at LMC as "mandatory," and of unlawfully withholding and diverting Excluded Wages earned by Luce and the Putative Class to PEBA for use by SCRS.

JURISDICTION AND VENUE

1. LMC is a regional health services district formed by Lexington County under the authority of S.C. Code § 44-7-2010. LMC's principal office is located at 2720 Sunset Boulevard in West Columbia. At the time Luce filed his initial Complaint, LMC was Luce's employer, and it either employs or has employed each member of the Putative Class (as defined below).

2. Coggins is an individual who is a citizen of South Carolina. At all times relevant to this Complaint, Coggins has worked as LMC's Accounting Manager and has acted under the color of state law when misclassifying Luce and the Putative Class's Excluded Wages (as defined below) as "overtime pay" "mandated by" LMC and directing the withholding and diversion of Luce's and the Putative Class's earned wages to PEBA for use by SCRS.

3. Smith is an individual who is a citizen of South Carolina. At all times relevant to this Complaint, Smith has worked as LMC's Vice President of Human Resources and has acted under the color of state law when misclassifying Luce and the Putative Class's Excluded Wages (as defined below) as "overtime pay" "mandated by" LMC and directing the withholding and diversion of Luce's and the Putative Class's earned wages to PEBA for use by SCRS.

4. Peggy G. Boykin, in her official capacity as the executive director of the South

Carolina Public Employee Benefit Authority, is hereby joined to this action over Plaintiff's objection and as mandated by the Court's Order dated July 25, 2023. Ms. Boykin is the Executive Director of PEBA, which is the state agency responsible for the administration and management of the state's retirement systems and employee insurance programs for South Carolina's public employers, employees and retirees. SCRS is one of PEBA's defined benefit retirement plan for employees of state agencies, public and charter school districts, public higher education institutions, and other local subdivisions of government that have joined SCRS.

5. Because Luce seeks relief under 42 U.S.C. § 1983 against LMC, Coggins, and Smith, this court possesses subject matter jurisdiction over the claims asserted herein under 28 U.S.C. § 1331 and 28 U.S.C. § 1367.

6. Venue is proper in this district under 28 U.S.C. § 1391(b) because one or more of the Defendants reside in or maintain their principal place of business in this division and the most substantial part of the events or omissions giving rise to the claims below occurred in this division.

THE PUTATIVE CLASS

7. Pursuant to Fed. R. Civ. P. Rule 23, Luce brings this action on behalf of himself and the Putative Class, who are:

All individuals who have earned wages: (1) as an LMC employee at any time since October 2019; (2) that are nonrecurring pay increases, single payments, bonuses, incentive-type payments, or any other wage payments other than their regular salary base or employer-mandated overtime; (3) that have been diverted to PEBA on or after November 4, 2019, for use by SCRS rather than paid to the employee.

8. Luce reserves the right to redefine the Putative Class prior to notice, and thereafter, as may be warranted or necessary.

COMMON FACTUAL ALLEGATIONS

A. The South Carolina Retirement System

9. In 2012, the South Carolina Legislature (the “State”) passed Act No. 278, which created PEBA as an agency of the State and incorporated SCRS into PEBA. Defendant Peggy Boykin is the Executive Director of PEBA.

10. Act No. 278 instituted several types of retirement reform for SCRS members; most relevant to this action, Act No. 278 limited the definition of “**earnable compensation**” by excluding from “earnable compensation” all “overtime pay not mandated by the employer.” [codified at S.C. Code § 9-1-10(8)(b) (2019)].

11. In 2017, the State passed Act No. 13, which increased the percentage of earnable compensation that employees who are members of SCRS must contribute to nine percent (9%).

12. SCRS represents a massive public benefit. SCRS has over 550,000 active members, inactive members, retirees and beneficiaries. As of June 30, 2022, SCRS held assets that exceeded \$32.8 billion in value.¹ The State Senate Finance Committee has a Retirement Systems Standing Subcommittee that has regular meetings and receives regular reports, presentations and testimony from PEBA, the South Carolina Retirement System Investment Commission, and others to monitor the effects of the State’s legislation and make reforms to this public benefit.

13. SCRS is not a defined contribution plan (like the common 401(k) plan) where employees and occasionally employers contribute to their own investment account that can be controlled by the employee and can be rolled over into another account if they leave employment. Rather, SCRS is a defined benefit pension plan, which promises employees a set benefit at retirement that is determined on either twelve (12) highest or twenty (20) highest consecutive quarters of earnable compensation and that is dependent on an application and the employee’s satisfaction of eligibility thresholds, e.g. age, years of service within State employment, and

¹ Pg. 16 of 2022 YE Financial Statements, https://peba.sc.gov/sites/default/files/retirement_financials.pdf

mortality.

14. Under State law², participating employers are to withhold contributions only from member employee's earnable compensation and direct that money to PEBA for use by SCRS.

15. To ensure that payroll personnel of employers like LMC understand what constitutes earnable compensation subject to the Employee Contribution Law, PEBA releases a **"Covered Employers Procedures Manual"** each fiscal year. For each of the fiscal years relevant to this Complaint (Fiscal Years 2020-2023), the Covered Employers Procedures Manual has said:

Nonrecurring pay increases or single payments made at retirement, bonuses and incentive-type payments, or any other payments not considered part of the regular salary base, whether paid during employment or at retirement, are not subject to contributions.³

16. The Employee Contribution Law requires LMC to certify to PEBA's "board on each and every payroll or in such other manner as the board may prescribe the amounts to be deducted" from each employees' earnable compensation.

B. Luce's earnings of Excluded Wages

17. At the time of the filing of his initial Complaint, Luce was a licensed Certified Registered Nurse Anesthetist ("CRNA") that worked as an at-will employee in that capacity for LMC at all relevant times.

18. At all times relevant to this Complaint, Luce participated in and contributed to SCRS through the wages he has earned by working for LMC, which LMC pays on a biweekly basis and reports to Luce on a paystub.

² S.C. Code §§ 9-1-10(8)(b), 9-1-1020, and 9-1-1085 [together, the **"Employee Contribution Law"**].

³ The current "Covered Employers Procedures Manual" is available online at PEBA's website at https://www.peba.sc.gov/sites/default/files/er_manual.pdf; the versions of the "Covered Employers Procedures Manual" for fiscal years 2020, 2021, and 2022 are available at <https://dc.statelibrary.sc.gov/>.

19. Between October 2019 and May 14, 2022, Luce's regular salary base with LMC was \$4,159.50/week; on May 15, 2022, it increased to \$4,240.00/week. At all times relevant to this Complaint, LMC has issued pay stubs to Luce characterizing LMC's payment of \$4,159.50/week and then \$4,420.00/week, as its payment of Luce's "**Regular Base Pay.**"

20. Since October 15, 2019, LMC has employed properly educated and trained human resource and accounting officers and managers who:

- a. are familiar with the Fair Labor Standards Act of 1938, 29 U.S.C. § 203, as amended and 29 C.F.R. § 541.301 (the "FLSA");
- b. who understand the difference between an exempt and non-exempt employee under the FLSA;
- c. who understand the requirements for the payment of overtime under the FLSA;
- d. who understand the FLSA's recordkeeping requirements;
- e. who understand LMC's participation as an employer in SCRS;
- f. who understand the contribution requirements of employees that are SCRS members under State law;
- g. who have access to and understand PEBA's Covered Employers Procedures Manual; and
- h. who perform the certifications required to PEBA under S.C. Code § 9-1-1020.

21. As a CRNA with a base salary exceeding \$684 per week, Luce has been, at all times relevant to this Complaint, exempt from receiving any overtime payments under the FLSA.

22. At all relevant times since October 15, 2019, LMC has classified Luce as an exempt employee for purposes of the FLSA. LMC has never: (a) recognized nor treated Luce as a non-exempt employee under the FLSA; (b) mandated that Luce work any "overtime;" or (c) made any

payment to Luce that LMC disclosed to Luce, on his paystub or otherwise, as “overtime pay.”

23. On many occasions since October 15, 2019, Luce voluntarily signed up and agreed to work weekends, holidays, night shifts, 24-hours shifts, call, and other undesirable work because LMC offers and incentivizes Luce and other professionals employed at LMC to do so with the promise of pay in addition to their salary base, e.g. premium pay, call pay, and shift differentials.

24. The wages that the LMC Defendants were obligated to pay Luce and the members of the Putative Class on or after November 4, 2019, because he or she volunteered or signed up for and worked extra hours, lengthy shifts, call, and undesirable nights, weekends and holidays are “nonrecurring pay increases,” “bonuses and incentive-type payments,” or “other payments not considered part of the regular salary base” [**“Excluded Wages”**] that are not subject to withholding and diversion under PEBA’s instructions and the Employee Contribution Law.

25. Therefore, there exists no reasonable basis for the LMC Defendants to adopt and enforce any policy, practice, or custom against Luce or the Putative Class that treats their Excluded Wages as “overtime pay” “mandated by” LMC. The only foreseeable reason the LMC Defendants would do so is that a blanket policy, practice or custom of mischaracterizing all actual overtime and all Excluded Wages as “overtime pay” “mandated by” LMC is that it simplifies the LMC Defendants’ payroll process.

C. The LMC Defendants’ improper withholding and diversion of Luce and the Putative Class’s Excluded Wages to PEBA for use by SCRS

26. In or around April 2022, Luce realized that LMC was withholding and diverting nine percent (9%) of his Excluded Wages to PEBA for use by SCRS.

27. Since November 4, 2019, Luce’s pay stubs issued by LMC confirm that LMC has withheld and diverted to PEBA for use by SCRS over \$12,000 of wages Luce has earned that were neither part of his Regular Base Pay nor “overtime pay” “mandated by” LMC.

28. Luce began internally reporting LMC's unlawful practice of withholding and diverting his and the Putative Class's Excluded Wages in April 2022.

29. In April 2022, Luce had communications with Tyajuana Mealing ("**Mealing**") and Lashaun McFarland ("**McFarland**") to advise that he was not being paid all his Excluded Wages because LMC was withholding and diverting nine percent (9%) of those payments to PEBA for use by SCRS in violation of state law.

30. Following Luce's notice, Mealing consulted with George Hazin ("**Hazin**"), an employee at PEBA, on April 22, 2022. During this consultation, Mealing mischaracterized Luce's Excluded Wages as "overtime payments" in this communication despite the fact Mealing knew or should have known that Luce is treated by LMC as an exempt employee under the FLSA and does not receive any "overtime pay" from LMC.

31. Hazin advised Mealing that LMC should not be withholding wages and diverting those to PEBA for use by SCRS employee contributions from any "voluntary overtime." Mealing sent Hazin's instruction to McFarland.

32. On Friday, April 22, 2022, McFarland sent Luce's report and Hazin's instruction to an email distribution group within LMC referred to as the "**Payroll Group**." Upon information and belief, the Payroll Group included Coggins, McFarland, Mealing, Keri Lovett ("**Lovett**"), Lori Mcewen ("**Mcewen**"), and Lisa McPherson ("**McPherson**").

33. On April 25, 2022, Coggins responded to Luce's report and Hazin's instruction by sending an email to the Payroll Group articulating and standing behind LMC's unlawful policy, practice and custom: "all overtime is considered mandatory at LMC so that is how we report it."

34. LMC's adoption and enforcement of a policy that treats all "overtime" worked by all employees – exempt or otherwise – as mandatory, whether it was in fact mandatory or not, is

manifestly unreasonable and in contravention of Act No. 278 and the Employee Contribution Law.

35. Luce continued to follow up with Coggins in May 2022 to explain that the Excluded Wages were not part of his base salary pay or “overtime pay” “mandated by” LMC, but were in fact wages that LMC was not allowed to withhold and divert to PEBA for use by SCRS.

36. In May 2022, Coggins reported to Luce that, in response to his report, she had consulted with two (2) managers at PEBA, Denise Rodriguez (“**Rodriguez**”) and Charlotte “Charlie” Robertson (“**Robertson**”).

37. A PEBA customer service representative had already informed Luce that PEBA could not help him because employee contributions are set out by LMC’s accounting department, and PEBA has no basis to dispute the information from LMC. Luce then communicated with Rodriguez directly, who advised Luce that “LMC just does things their own way,” but confirmed that, because LMC was reporting his Excluded Wages as “overtime pay” “mandated by” LMC, there was nothing PEBA could do to address his report.

38. Coggins continues to direct, approve and enforce LMC’s improper policy, practice, and custom of improperly characterizing and treating Luce’s and the Putative Class’s Excluded Wages as “overtime pay” “mandated by” LMC subject to withholding under the Employee Contribution Law; and she continues to direct, approve and conduct her department’s failure to repay any of the improperly withheld and diverted Excluded Wages to Luce and the Putative Class.

39. Given Coggins’s actual knowledge of Luce’s reports, the instructions provided by PEBA, her familiarity with the FLSA and the meaning of “overtime,” and her understanding of the fact that professionals at LMC regularly volunteer for non-mandatory call and shifts in exchange for the Exempt Pay that LMC offers its employees, Coggins’s enforcement of LMC’s unlawful policies, practices and customs is reckless and demonstrates her callous indifference to

Luce and the Putative Class’s right to receive and control their earned wages that are not lawfully subject to withholding or deduction.

40. After he was unable to obtain relief from Coggins and her accounting department, Luce continued to report this misconduct and pursue relief internally with LMC’s upper management. In August 2022, Luce had communications about LMC’s improper policies and practices of withholding SCRS employee contributions from Excluded Wages with Jay Hamm, LMC’s Vice President of Operations (“**Hamm**”). Luce asked Hamm if he would permit Luce to meet and discuss these concerns with LMC’s in-house legal counsel.

41. Instead of permitting Luce to speak to LMC’s legal department, Hamm forwarded Luce’s concerns to Smith, LMC’s Vice President of Human Resources, on or about August 10, 2022.

42. In September 2022, Luce communicated twice by phone with Smith regarding LMC’s improper policies, practices, and customs of withholding and diverting nine percent (9%) of his and the Putative Class’s Excluded Wages to PEBA for use by SCRS over the past ten (10) years.

43. On the first call, Smith represented to Luce that he would send Luce’s report out of the hospital for a third-party review. Smith told Luce that if Luce had been the only person affected by this, he could “remedy” the situation, but he said it will be problematic to resolve this problem because it involved a lot of people. On his second call, Smith simply informed Luce that his position remained unchanged since their first call.

44. Smith continued to direct, approve and enforce LMC’s improper policies, practices and customs of improperly characterizing and treating Luce’s and the Putative Class’s Excluded Wages as “overtime pay” “mandated by” LMC subject to withholding under the Employee

Contribution Law, and he continues to direct and approve of LMC's failure to repay any of the improperly withheld and diverted Excluded Wages to Luce and the Putative Class.

45. Given Smith's actual knowledge of Luce's reports, his familiarity with or access to PEBA's Covered Employers Procedures Manual, his familiarity with the FLSA and the meaning of "overtime," and his understanding of the fact that professionals at LMC regularly volunteer for non-mandatory call and shifts in exchange for the Exempt Pay that LMC offers its employees, Smith's enforcement of LMC's unlawful policies, practices and customs is reckless and demonstrates callous indifference to Luce and the Putative Class's right to receive and control their earned wages that are not lawfully subject to withholding or deduction.

46. LMC, under the management of Smith and Coggins, continues to adhere to its improper policies, practices, and customs of mischaracterizing Excluded Wages as "overtime pay" "mandated by" LMC, of mischaracterizing "all overtime" as "mandatory" whether it was actually mandated or voluntarily undertaken by the employee, and of withholding and diverting to PEBA for use by SCRS nine percent (9%) of the Excluded Wages owed to Luce and the Putative Class.

47. Therefore, Luce and the Putative Class are entitled to declaratory and injunctive relief to prevent further loss and harm them, and he and the Putative Class are entitled to an award of damages and other remedies available at law, including nominal damages, actual and compensatory damages, treble damages, punitive damages as to Coggins and Smith, prejudgment interest, the costs of this action, and reasonable attorneys' fees as provided for by law.

ADDITIONAL CLASS ALLEGATIONS

48. This action may properly be maintained as a class action under federal law and satisfies the numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under Fed. R. Civ. P. Rule 23(a).

49. Members of the Putative Class are so numerous as to make joinder of all members impracticable. Luce is informed and believe that the number of individuals in the Putative Class is in the hundreds or thousands; Luce is informed and believes that the Putative Class consists of the professionals employed at LMC, such as Registered Nurses, Advance Practice Registered Nurses, other professional providers employed since October 2019 who are members of SCRS and did not earn a base salary in excess of the compensation limits provided in Section 401(a)(17) of the IRC.⁴

50. Joinder of all the individuals Luce believes to be a part of the Putative Class is impracticable because of the large number of individuals affected and the fact that the Putative Class includes individuals who are no longer employed by LMC and have relocated to other geographic regions.

51. Common questions of law and fact exist as to all members of the Putative Class, and these common questions predominate the individual questions:

- a. All members of the Putative Class are current or former LMC employees who worked during Coggins and Smith's professional tenure at LMC and were subject to the LMC Defendants' enforcement of LMC's unlawful policies, procedures, and customs that systemically mischaracterized Exempt Payments as "overtime pay" "mandated by" LMC.
- b. All members of the Putative Class were enrolled as members of SCRS at some time over the past three (3) years and were subject to the same mandates of State law and PEBA regarding contributions by members of SCRS.
- c. All members of the Putative Class require resolution of whether the LMC Defendants' withholding and diversion of the Putative Class's earnings to the

⁴ These caps were \$280,000 for calendar year 2019; \$285,000 for calendar year 2020; \$290,000 for calendar year 2021; and \$305,000 for calendar year 2022.

SCRS violates the Takings Clause of the Fifth Amendment of the United States Constitution, applicable to the states through the Fourteenth Amendment of the United States Constitution;

- d. All members of the Putative Class require resolution of whether the LMC Defendants were operating under color of any statute, ordinance, regulation, custom, or usage, of the State when depriving them of portions of their Excluded Wages;
- e. All members of the Putative Class require resolution of whether Smith and Coggins, or any other individuals that may be identified and named in this action, acted in a manner that makes them liable for punitive damages under 42 U.S.C. § 1983;
- f. All members of the Putative Class require resolution of whether the question of whether Smith and Coggins, or any other individuals that are “agents or officers” of LMC that may be named in this action upon discovery, are “employers” under S.C. Code Ann. § 41-10-10 that may have liability under S.C. Code Ann. § 41-10-80;
- g. All members of the Putative Class require resolution of whether the LMC Defendants’ withholding and diversion of the Excluded Wages to PEBA for use by SCRS violates S.C. Code 41-10-40;
- h. All members of the Putative Class require resolution of whether the LMC Defendants had any good faith wage dispute or whether LMC’s policies, practices, and customs were plainly unreasonable, entitling those employees whose wages were unlawfully withheld and diverted to an award of treble damages and attorneys’ fees under S.C. Code Ann. § 41-10-80;

- i. All members of the Putative Class require resolution of whether this court should issue judgment under 28 U.S.C. § 2201, declaring that the LMC Defendants policies and practices of withholding and diverting the Excluded Wages violates the Takings Clause of the Fifth Amendment and the South Carolina Payment of Wages Act and whether this court should issue an injunction prohibiting these policies and practices.

52. Luce’s claims are typical of the claims of all members of the Putative Class as it is defined. Like the other learned medical professionals that constitute the Putative Class, Luce has volunteered by signing up and working extra hours, call, lengthy shifts, and undesirable nights, weekends and holidays because he was incentivized by the Excluded Wages LMC offered him and his co-workers to do it. The LMC Defendants have adopted and enforced illegal policies and practices, directed toward all Luce and the Putative Class in an identical manner, whereby the LMC Defendants mischaracterize Excluded Wages earned by Luce and the Putative Class as “overtime pay” “mandated by” LMC. Consequently, all claims are premised on the same legal theories.

53. Considering that Luce has been deprived of at least \$12,000 of earned wages and remains an employee of LMC and member of SCRS subject to the LMC Defendants’ ongoing enforcement of their unlawful policies, practices and customs, Luce possesses requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the members of the class. His interests are coincident with and not antagonistic to those of the Putative Class.

54. Luce has retained the undersigned counsel who, together, have over eighty (80) years of experience as litigation counsel and who possess the resources to successfully prosecute

this action against the LMC Defendants and the requisite experience and success in wage and hour litigation, class action litigation and other complex commercial and financial litigation involving LMC and other government entities and courtroom practice.

55. The undersigned counsel knows of no conflicts among members of the Putative Class, or between counsel and members of the Putative Class.

56. This action satisfies the requirements for maintaining a class action under Fed. R. Civ. P. Rule 23(b)(1):

- a. Prosecution of separate actions by individual members of the Putative Class would create a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for the LMC Defendants regarding the policies and procedures described above, or could as a practical matter be dispositive of interests of the other class members or substantially impair or impede their ability to protect their interests.
- b. The prosecution of separate actions by individual members of the Putative Class could lead to inconsistent results with respect to other members of the Putative Class since the LMC Defendants' unlawful policies, practices and customs whereby the LMC Defendants withhold and diver Excluded Wages are either legal or illegal as to Plaintiff and the entire Putative Class or not.
- c. For the same reason, an adjudication with respect to Luce would, as a practical matter, be dispositive of the interests of the members of the Putative Class. If the LMC Defendants' policies and practices that serve the basis of the LMC Defendants' withholding and diversion of Excluded Wages are illegal as to Luce, then they are illegal as to the entire Putative Class.

- d. A decision that the LMC Defendants violated federal and State laws and Constitutions would require the LMC Defendants to take uniform remedial action. An individual suit by each member of the Putative Class to redress the wrong common to all of them would be contrary to the spirit and intent of Rule 23.

57. In addition to certification under Rule 23(b)(1), and in the alternative, Luce seeks certification under Fed. R. Civ. P. Rule 23(b)(2) because the LMC Defendants have acted or refused to act on grounds generally applicable to Luce and the Putative Class. As stated above, the LMC Defendants illegally withheld and diverted to PEBA for use by SCRS a percentage of the Excluded Wages that Luce and the Putative Class were required to be paid on or after November 4, 2019. Accordingly, injunctive and declaratory relief with respect to the entire Putative Class is appropriate.

FOR A FIRST CAUSE OF ACTION AS TO ALL DEFENDANTS
(28 U.S.C. § 2201 – Claim for Declaratory Judgment)

58. All foregoing paragraphs are incorporated herein verbatim.

59. As set forth above, there exists an actual controversy between Luce and the Putative Class, in the first part, and the LMC Defendants in the second part, as to whether the LMC Defendants' diversion of a percentage of Luce's Excluded Wages violates the Takings Clause of the Fifth Amendment to the United States Constitution, Article I, Section 13(A) of the South Carolina Constitution, and the South Carolina Payment of Wages Act.

60. Unless the Court issues an appropriate declaration of rights, the LMC Defendants' reckless and callous indifference to federal and state law, and PEBA's instructions, will lead the LMC Defendants to continue their improper policies, practices, and customs of withholding and diverting a percentage of Excluded Wages earned by Luce and the Putative Class to PEBA for use by SCRS, and there will continue to be disputes and controversy surrounding these actions.

61. Therefore, Luce, for himself and the Putative Class, hereby seeks declaratory relief and a judicial determination pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. Rule 57 as follows:

- a. That the LMC Defendants’ policies, practices, and customs of treating “all overtime” worked at LMC as employer mandated is in violation of Act No. 278, as amended and codified in S.C. Code §§ 9-1-10(8)(b), 9-1-1020, 9-1-1085.
- b. That the wages that were due to be paid on or after November 4, 2019, to Luce and the members of Putative Class because he or she volunteered or signed up for and worked extra hours, lengthy shifts, and undesirable nights, weekends and holidays are either “nonrecurring pay increases,” “bonuses and incentive-type payments,” or “other payments not considered part of the regular salary base” that are not subject to withholding and diversion under PEBA’s instructions and the Employee Contribution Law.
- c. That the LMC Defendants’ withholding and diversion of wages earned by Luce and the Putative Class since October 2019 when they have volunteered or signed up for and worked extra hours, lengthy shifts, and undesirable nights, weekends and holidays in exchange for the Excluded Wages constitutes an unlawful taking of private property without just compensation in violation of the Fifth Amendment to the United States Constitution and Article I, Section 13(A) of the South Carolina Constitution.
- d. That the LMC Defendants’ withholding and diversion of wages earned by Luce and the Putative Class since October 2019 when they have volunteered or signed up for and worked extra hours, lengthy shifts, and undesirable nights, weekends and holidays in exchange for the Excluded Wages constitutes an unlawful violation of

S.C. Code § 41-10-40.

- e. That Luce and the Putative Class are entitled to receive immediate payment from the LMC Defendants of all earned wages that the LMC Defendants have withheld from Luce and the Putative Class since November 4, 2019, together with prejudgment interest and an award of costs of this action and reasonable attorneys' fees.

62. Luce and the Putative Class are entitled to an award of costs, including reasonable attorneys' fees, for obtaining this declaratory relief against the LMC Defendants.

63. Pursuant to the Court's Order dated July 25, 2023, Peggy Boykin, who is the executive director of PEBA (which is responsible for SCRS), is joined to this cause of action in her official capacity to the extent that she asserts that PEBA or SCRS requires LMC to continue in violation of the federal rights of the Putative Class as described herein.

FOR A SECOND CAUSE OF ACTION AS TO ALL DEFENDANTS
(Claim for Injunctive Relief)

64. All foregoing paragraphs are incorporated herein verbatim.

65. As a result of the LMC Defendants' refusal to cease their unlawful withholding and diversion of a percentage of Excluded Wages earned by Luce and the Putative Class, they have suffered and will continue to suffer irreparable and immediate harm and injury to their property and rights under the Fifth Amendment to the United States Constitution, Article I, Section 13(A) of the South Carolina Constitution, and the South Carolina Payment of Wages Act.

66. LMC Defendants' withholding and diversion of earned wages described above has deprived Luce and the Putative Class of their rightfully earned income in violation of State and federal law, the Fifth Amendment to the United States Constitution and Article I, Section 13(A) of the South Carolina Constitution, and it will continue to harm members of the Putative Class if

it continues.

67. The LMC Defendants are obligated to refrain from infringing upon Luce and the Putative Class’s constitutional rights and unlawfully withholding and diverting their earned wages.

68. Luce and the Putative Class are entitled to a preliminary and permanent injunction against the LMC Defendants preventing for all time LMC’s unlawful withholding and diversion of a percentage of their Excluded Wages to PEBA for use by SCRS.

69. As stated above, Luce spent over six (6) months seeking intervention and help from members of LMC’s accounting department and Payroll Group, Accounting Manager Lynn Coggins, Vice President of Operations Jay Hamm, Vice President of Human Resources Brian Smith, LMC’s legal department, and PEBA, all to no avail. Therefore, unless the LMC Defendants are compelled to refrain from their unlawful taking and diversion of Luce and the Putative Class’s earned wages, the LMC Defendants intend to continue this unconstitutional and unlawful misconduct.

70. No member of the Putative Class has any plain, speedy, or adequate remedy at law to correct the LMC Defendants’ unlawful conduct and prevent having earned wages continued to be withheld and diverted to PEBA for use by SCRS; therefore, prospective injunctive relief is necessary to prevent imminent harm.

71. The balance of harm favors Luce and the Putative Class because an injunction would actually **save** LMC from harm,⁵ poses no cognizable harm to Smith or Coggins, and merely requires the LMC Defendants to stop withholding wages earned by and due to Luce and the Putative Class and diverting those to PEBA for SCRS, whose assets as of June 30, 2022, exceeded

⁵ LMC’s employer contribution is currently 17.41% of “earnable compensation” per S.C. Code §§ 9-1-1050 and 9-10-1085; LMC is currently **overpaying** its own contribution to PEBA for SCRS by mischaracterizing Luce and the Putative Class’s Excluded Wages as “overtime pay” “mandated by” the employer.

\$32.8 billion. Therefore, there is no imminent threat to public health, safety, welfare such that would justify the impose upon Luce and the Putative Class by continuing to allow the LMC Defendants to ignore the Employee Contribution Law merely for their own convenience any longer.

72. From the LMC Defendants, Luce and the Putative Class are entitled to an award of costs, including reasonable attorneys' fees, for obtaining this injunctive relief.

73. Pursuant to the Court's Order dated July 25, 2023, Peggy Boykin, who is the executive director of PEBA (which is responsible for SCRS), is joined to this cause of action in her official capacity to the extent that she asserts that PEBA or SCRS requires LMC to continue is violation of the federal rights of the Putative Class as described herein.

FOR A THIRD CAUSE OF ACTION AS TO THE LMC DEFENDANTS ONLY
(42 U.S.C. § 1983 – Claim for Monetary Awards)

74. All foregoing paragraphs are incorporated herein verbatim.

75. Luce and each member of the Putative Class has a property interest in his or her earned wages that is protected under the Fifth Amendment to the United States Constitution, made applicable to the State through the Fourteenth Amendment of the United States Constitution.

76. LMC has adopted and enforced policies, practices and customs whereby it has systemically withheld and diverted a percentage of Luce and the Putative Class's Excluded Wages to PEBA for use by SCRS, which PEBA uses to fund SRCS's liabilities, e.g., the provision of benefits to its hundreds of thousands of members.

77. Smith and Coggins are directly and personally involved in the withholding and diversion of Luce and the Putative Class's earned wages. As officers or managers of LMC in the accounting or human resource departments, Smith and Coggins have directed and enforced LMC's unlawful policies, practices and customs of treating all "overtime" as "mandatory" whether it is or

not; of treating Excluded Wages as “overtime pay” “mandated by” LMC even for exempt employees; and of withholding and diverting a percentage of Luce and the Putative Class’s earned wages to PEBA for use by SCRS in violation of State law and PEBA’s instructions.

78. Even after being placed on direct notice of Luce’s report of misconduct, Smith and Coggins have refused to intervene and either prevent the ongoing withholding or diversion of a percentage of Luce and the Putative Class’s Excluded Wages to PEBA for use by SCRS or cause LMC to issue the payment of earned wages due to Luce and the Putative Class.

79. Because the Fifth Amendment provides that Luce and the Putative Class’s private property shall not be taken for public use without just compensation, Luce and the Putative Class are properly regarded as having been “deprived of a right secured by the Constitution” within the meaning of 42 U.S.C. § 1983.

80. The LMC Defendants have, at all times relevant to this Complaint, acted under the color of the Employee Contribution Law, PEBA’s instructions, and its own policies, practices and customs while they unlawfully withheld diverted Luce and the Putative Class’s earned wages to PEBA for use by SCRS.

81. As a result, Luce and the Putative Class are entitled to recover nominal, actual and compensatory damages from the LMC Defendants, as well as an award of prejudgment interest, the costs of this action, and reasonable attorneys’ fees.

82. Because Smith and Coggins have acted in a reckless manner and with callous indifference to Luce and the Putative Class’s federally protected right to receive their earned wages, Luce and the Putative Class are also entitled to an award of punitive damages against Smith and Coggins in their individual capacities.

FOR A FOURTH CAUSE OF ACTION AS TO THE LMC DEFENDANTS ONLY
(South Carolina Payment of Wages Act – Claim for Monetary Awards)

83. All foregoing paragraphs are incorporated herein verbatim.

84. Since November 4, 2019, LMC, Smith and Coggins have each been an “employer” of Luce and the Putative Class as defined in S.C. Code § 41-10-10(1).

85. Since November 4, 2019, the percentage of Excluded Wages that the LMC Defendants have withheld from Luce and the Putative Class and diverted it to PEBA for use by SCRS constituted “wages” as defined in S.C. Code § 41-10-10(2).

86. Since November 4, 2019, the LMC Defendants have violated S.C. Code §§ 41-10-40 each time that they have enforced LMC’s policies, practices and customs of withholding a percentage of Excluded Wages earned by Luce and the Putative Class and diverting those wages to PEBA for use by SCRS.

87. Since November 4, 2019, the LMC Defendants had no good faith wage dispute or basis to mischaracterize all “overtime” worked at LMC as employer-mandated, or to mischaracterize the Excluded Wages earned by Luce and the Putative Class as “overtime pay” “mandated by” LMC. These unlawful policies, practices and customs are in plain violation of the intent of Act 278 and the Employee Contribution Law, and the LMC Defendants adhere to and enforce these policies, practices and customs merely to simplify their payroll process. Therefore, Luce and the Putative Class are entitled to an award of treble damages, costs, and reasonable attorney’s fees under S.C. Code § 41-10-80(C).

PRAYER FOR RELIEF

Wherefore, Luce demands a jury trial on all causes of action so triable, and prays that the court enter the following:

(1) an order certifying this action as a class action pursuant to Rule 23(b)(1)(A), (b)(1)(B),

- or (b)(2), and appointing Luce and his counsel to represent the Putative Class;
- (2) the Declarations set forth above, which establish that the LMC Defendants’ policies, practices and customs of mischaracterizing earned wages as “overtime pay” “mandated by” LMC and diverting those wages to PEBA for use by SCRS violates the Takings Clause of the Fifth Amendment to the United States Constitution, Article I, Section 13(A) of the South Carolina Constitution, and the South Carolina Payment of Wages Act;
- (3) a temporary and permanent injunction that prevents the LMC Defendants from continuing their policies, practice and customs of mischaracterizing Luce’s and the Putative Class’s earned wages as “overtime pay” “mandated by” LMC and diverting those wages to PEBA for use by SCRS, and provides that this court shall retain jurisdiction over this matter to ensure the LMC Defendants’ compliance with these mandates;
- (4) judgment in favor of Luce and the Putative Class against the LMC Defendants for an award of nominal damages; actual and compensatory damages; treble damages; prejudgment interest; and the costs of this action, including reasonable attorneys’ fees;
- (5) judgment in favor of Luce and the Putative Class against Smith and Coggins, in their individual capacities, for punitive damages;
- (6) and other and further relief as this Court may deem just and proper.

Respectfully submitted on August 15, 2023.

s/ Shaun C. Blake
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ATTORNEYS FOR PLAINTIFF AND PUTATIVE CLASS

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 COLUMBIA DIVISION

William M. Luce, on behalf of himself and all similarly situated natural persons,)	Case No. 3:22-cv-03898-MGL
)	
)	
Plaintiff,)	
)	
vs.)	<u>DEFENDANTS', LEXINGTON</u>
)	<u>COUNTY HEALTH SERVICES</u>
Lexington County Health Services District, Inc., Brian D. Smith in both his official and individual capacity, Lynn Coggins in both her official and individual capacity, and Peggy G. Boykin, in her official capacity for the South Carolina Public Employee Benefit Authority and South Carolina Retirement System,)	<u>DISTRICT, INC., BRIAN D. SMITH,</u>
)	<u>AND LYNN COGGINS, ANSWER TO</u>
)	<u>AMENDED COMPLAINT</u>
)	
Defendants.)	
)	

COME NOW Defendants, Lexington County Health Services District, Inc. (“Defendant LCHSD”), Brian D. Smith in both his official and individual capacity (“Defendant Smith”), and Lynn Coggins in both her official and individual capacity (“Defendant Coggins”) (collectively, “LCHSD Defendants”), by and through their undersigned counsel, and hereby respond to the allegations in Plaintiff’s, William M. Luce (“Plaintiff”), Amended Complaint. LCHSD Defendants acknowledge that Plaintiff purports to bring his claims asserted in the Amended Complaint on behalf of a putative class of similarly situated employees of Defendant LCHSD, and to recover all remedies available in law or equity under 42 U.S.C. § 1983, S.C. Code Ann. § 41-10-80, and 28 U.S.C. § 2201. LCHSD Defendants deny all liability to Plaintiff and the putative class, and further deny that class treatment is appropriate in this case.

LCHSD Defendants acknowledge that Plaintiff filed his Amended Complaint pursuant to the Court’s Memorandum Opinion and Order dated July 25, 2023, and that Plaintiff objects to the

Court’s ruling that the South Carolina Retirement System (“SCRS”) and the South Carolina Public Employee Benefit Authority (“PEBA”) are necessary parties to his Complaint. LCHSD Defendants continue to maintain that SCRS and PEBA are necessary and indispensable parties to this action, pursuant to Federal Rule of Civil Procedure 19 and expressly reserve the right to renew their motion to dismiss Plaintiff’s Amended Complaint, pursuant to the Court’s Memorandum Opinion and Order dated July 25, 2023 (Doc. 23).

LCHSD Defendants acknowledge that Plaintiff states his intent to further amend his Complaint pursuant to Federal Rules of Civil Procedure 15 and 21 following discovery in this action, to potentially add additional defendants. If Plaintiff attempts to further amend his Complaint, his motion will be subject to the requirements of Federal Rule of Civil Procedure 15. LCHSD Defendants deny that any officers or managers, including Defendant Smith and Defendant Coggins, have directed or enforced any unlawful policies, practices or customs, as alleged by Plaintiff.

LCHSD Defendants further respond to Plaintiff’s Amended Complaint as follows:

GENERAL DENIAL

Each and every allegation of the Amended Complaint is expressly denied unless specifically admitted, qualified, or explained herein.

FOR A FIRST DEFENSE

As to Jurisdiction and Venue

1. Responding to Paragraph 1, LCHSD Defendants admit that Defendant LCHSD is a regional health services district with its principal office located in West Columbia, South Carolina, and that Plaintiff previously worked for Defendant LCHSD. LCHSD Defendants deny

that this action is subject to class treatment and further deny any remaining allegations of Paragraph 1.

2. Responding to Paragraph 2, LCHSD Defendants admit that Defendant Coggins is a citizen of South Carolina and works for Defendant LCHSD as an Accounting Manager. The remaining allegations of Paragraph 2 state legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the remaining allegations of Paragraph 2.

3. Responding to Paragraph 3, LCHSD Defendants admit that Defendant Smith is a citizen of South Carolina and works for Defendant LCHSD as Vice President of Human Resources. The remaining allegations of Paragraph 3 state legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the remaining allegations of Paragraph 3.

4. LCHSD Defendants admit, upon information and belief, the allegations of Paragraph 4.

5. Paragraph 5 states a legal conclusion to which no response is required and any allegations are denied.

6. Paragraph 6 states a legal conclusion to which no response is required and any allegations are denied.

As to The Putative Class

7. Responding to Paragraph 7, LCHSD Defendants admit that Plaintiff purports to bring this action on behalf of a putative class of Defendant LCHSD's employees. LCHSD Defendants deny that class certification is appropriate in this matter. The remaining allegations of

Paragraph 7 state legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the remaining allegations of Paragraph 7.

8. Paragraph 8 states a legal conclusion to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegation in Paragraph 8.

As to Common Factual Allegations

As to Section A. The South Carolina Retirement System

9. Responding to Paragraph 9, LCHSD Defendants admit, upon information and belief, that Defendant Peggy Boykin is the Executive Director of PEBA. The remaining allegations of Paragraph 9 purport to restate a public law. To the extent a response is required, the law speaks for itself and any allegations are denied.

10. The allegations of Paragraph 10 purport to restate a public law. To the extent a response is required, the law speaks for itself and any allegations are denied.

11. The allegations of Paragraph 11 purport to restate a public law. To the extent a response is required, the law speaks for itself and any allegations are denied.

12. Responding to Paragraph 12, LCHSD Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations of the number of active members, inactive members, retirees, and beneficiaries of the SCRS or its reported assets and, therefore, deny the same. To the extent the allegations of Paragraph 12 purport to rely on a public record, the public record speaks for itself and any allegations are denied.

13. Paragraph 13 states legal conclusions to which no response is required and any allegations are denied.

14. The allegations of Paragraph 14 purport to restate a public law. To the extent a response is required, the law speaks for itself and any allegations are denied.

15. The allegations of Paragraph 15 purport to restate a public record. To the extent a response is required, the public record speaks for itself and any allegations are denied.

16. The allegations of Paragraph 16 purport to restate a public law. To the extent a response is required, the law speaks for itself and any allegations are denied.

As to Section B. Luce's earnings of Excluded Wages

17. Responding to Paragraph 17, LCHSD Defendants admit, upon information and belief, that Plaintiff was a licensed Certified Registered Nurse Anesthetist who worked as an at-will employee of Defendant LCHSD at the time of the filing of his initial Complaint through June 24, 2023. LCHSD Defendants deny all remaining allegations of Paragraph 17.

18. Responding to Paragraph 18, LCHSD Defendants admit that Plaintiff participated in and contributed to the SCRS through the wages he earned as an employee of Defendant LCHSD, that Defendant LCHSD paid Plaintiff on a biweekly basis, and that Defendant LCHSD provided Plaintiff paystubs during Plaintiff's employment with Defendant LCHSD. LCHSD Defendants deny all remaining allegations of Paragraph 18.

19. Responding to Paragraph 19, LCHSD Defendants admit that Plaintiff received payments described on his pay stubs as "regular base pay" equal to \$4,159.50 per week from November 2019 through on or about May 14, 2022, and \$4,240.00 per week beginning on or about May 15, 2022, through the end of Plaintiff's employment on June 24, 2023. LCHSD Defendants deny all remaining allegations of Paragraph 19.

20. Responding to Paragraph 20, including subparts (a) through (h), LCHSD Defendants admit that Defendant LCHSD's human resource and accounting officers and managers have received training applicable to their respective job responsibilities and comply with all

applicable state and federal laws and regulations, including applicable instruction and guidance from SCRS and PEBA.

21. The allegations of Paragraph 21 state a legal conclusion to which no response is required. To the extent a response is required, LCHSD Defendants admit that Plaintiff was classified as an exempt employee for overtime purposes under the Fair Labor Standards Act.

22. The allegations of Paragraph 22 state a legal conclusion to which no response is required. To the extent a response is required, LCHSD Defendants admit that Plaintiff was classified as an exempt employee for overtime purposes under the Fair Labor Standards Act. LCHSD Defendants deny the remaining allegations of Paragraph 22.

23. Responding to Paragraph 23, LCHSD Defendants admit that during his employment with Defendant LCHSD, Plaintiff worked shifts on weekends, holidays, night shifts, 24-hour shifts, and on-call work and was paid at a rate corresponding to said work. LCHSD Defendants deny the remaining allegations of Paragraph 23.

24. Paragraph 24 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 24, and further deny that class treatment is appropriate in this matter.

25. Paragraph 25 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 25, and further deny that class treatment is appropriate in this matter.

As to Section C. The LMC Defendants' improper withholdings and diversion of Luce and the Putative Class's Excluded Wages to PEBA for use by SCRS

26. Responding to Paragraph 26, LCHSD Defendants deny Plaintiff's characterization of withheld wages as "Excluded Wages," as defined by Plaintiff in Paragraph 24. LCHSD Defendants are without information or knowledge sufficient to form a belief as to the truth of the

allegation regarding the timing of Plaintiff's realization that Defendant LCHSD withheld a portion of his wages for use by SCRS, and therefore, deny the same.

27. Paragraph 27 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 27.

28. Responding to Paragraph 28, LCHSD Defendants admit that in or around April 2022, Plaintiff communicated with employees of Defendant LCHSD regarding his wages. LCHSD Defendants deny any allegation that any withholdings from Plaintiff's wages were unlawful and deny the remaining allegations of Paragraph 28.

29. Responding to Paragraph 29, LCHSD Defendants admit that Plaintiff communicated with other employees of Defendant LCHSD regarding his wages. LCHSD Defendants deny the remaining allegations of Paragraph 29.

30. Responding to Paragraph 30, LCHSD Defendants admit that Defendant LCHSD's employee Tyajuana Mealing ("Mealing") communicated, upon information and belief, with a PEBA representative named George Hazin ("Hazin") regarding withholdings for overtime pay. LCHSD Defendants deny the remaining allegations of Paragraph 30.

31. LCHSD Defendants deny the allegations of Paragraph 31.

32. Responding to Paragraph 32, LCHSD Defendants admit that McFarland forwarded Mealing's e-mail to an email distribution group including Defendant Coggins, McFarland, Keri Lovett ("Lovett"), Lori Mcewen ("Mcewen"), and Lisa McPherson ("McPherson"). LCHSD Defendants deny the remaining allegations of Paragraph 32.

33. Responding to Paragraph 33, LCHSD Defendants admit that on or about April 25, 2022, Defendant Coggins sent an email to McFarland, Mcewen, and McPherson, copying Lovett

and Mealing, stating “[a]ll overtime is considered mandatory at LMC so that is how we report it.” LCHSD Defendants deny the remaining allegation of Paragraph 33.

34. Paragraph 34 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 34.

35. Responding to Paragraph 35, LCHSD Defendants admit that Plaintiff continued to communicate with Defendant Coggins about his wages in or around May 2022. LCHSD Defendants deny the remaining allegations of Paragraph 35.

36. Responding to Paragraph 36, LCHSD Defendants admit that on or around May 13, 2022, Defendant Coggins sent Plaintiff an email stating that she spoke with Denise A.J. Rodriguez and Charlotte “Charlie” Robertson at PEBA regarding “the Premium Pay differential.” LCHSD Defendants deny the remaining allegations of Paragraph 36.

37. LCHSD Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 37, and therefore, deny the same.

38. LCHSD Defendants deny the allegations of Paragraph 38.

39. LCHSD Defendants deny the allegations of Paragraph 39.

40. Responding to Paragraph 40, LCHSD Defendants admit that in or around August 2022, Plaintiff emailed Defendant LCHSD’s Vice President, Operations, Jay Hamm (“Hamm”), regarding his wages and that Plaintiff requested to speak with the “hospital attorney.” LCHSD Defendants deny the remaining allegations of Paragraph 40.

41. Responding to Paragraph 41, LCHSD Defendants admit that on or around August 10, 2022, Hamm forwarded Plaintiff’s email to Defendant Smith. LCHSD Defendants deny the remaining allegation in Paragraph 41.

42. Responding to Paragraph 42, LCHSD Defendants admit that Plaintiff communicated with Defendant Smith by phone about his pay in or around August and September 2022. LCHSD Defendants deny the remaining allegations of Paragraph 42.

43. Responding to Paragraph 43, LCHSD Defendants admit that Defendant Smith discussed a third-party review with Plaintiff. LCHSD Defendants deny the remaining allegations of Paragraph 43.

44. LCHSD Defendants deny the allegations of Paragraph 44.

45. LCHSD Defendants deny the allegations of Paragraph 45.

46. LCHSD Defendants deny the allegations of Paragraph 46.

47. LCHSD Defendants deny the allegations of Paragraph 47.

As to Additional Class Allegations

48. Paragraph 48 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 48.

49. Paragraph 49 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 49.

50. Paragraph 50 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 50.

51. Paragraph 51, including subparts (a) through (i), states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 51, including subparts (a) through (i).

52. Paragraph 52 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 52.

53. Paragraph 53 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 53.

54. Paragraph 54 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 54.

55. LCHSD Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 55, and therefore, deny the same. LCHSD Defendants deny that class treatment is appropriate in this matter.

56. Paragraph 56, including subparts (a) through (d), states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 56, including subparts (a) through (d).

57. Paragraph 57 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 57.

As to Plaintiff's FIRST CAUSE OF ACTION AS TO ALL DEFENDANTS
(28 U.S.C. § 2201 – Claim for Declaratory Judgment)

58. Responding to Paragraph 58, LCHSD Defendants incorporate their responses to Paragraphs 1 through 57 as if fully set forth herein.

59. Paragraph 59 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 59.

60. Paragraph 60 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 60.

61. LCHSD Defendants deny the allegations of Paragraph 61, including subparts (a) through (e), and further deny that Plaintiff is entitled to any of the relief requested in Paragraph 61, including subparts (a) through (e), or any relief whatsoever.

62. LCHSD Defendants deny the allegation contained in Paragraph 62.

63. Responding to Paragraph 63, LCHSD Defendants deny that Defendant LCHSD's policies are unlawful or violate any federal rights of Plaintiff or the Putative Class. Further responding, LCHSD Defendants assert that their actions complied at all times with the directives issued by SCRS and PEBA and that SCRS and PEBA will continue to require LCHSD Defendants to comply with such directives. No further response is required to address the procedural information contained in Paragraph 63 as the Court's Order dated July 25, 2023 speaks for itself and any allegations are denied.

As to Plaintiff's SECOND CAUSE OF ACTION AS TO ALL DEFENDANTS
(Claim for Injunctive Relief)

64. Responding to Paragraph 64, LCHSD Defendants incorporate their responses to Paragraphs 1 through 63 as if fully set forth herein.

65. LCHSD Defendants deny the allegations contained in Paragraph 65.

66. LCHSD Defendants deny the allegations contained in Paragraph 66.

67. Paragraph 67 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny that they have infringed upon Plaintiff's or the Putative Class's constitutional rights and further deny that they have unlawfully withheld or diverted their earned wages.

68. LCHSD Defendants deny the allegations contained in Paragraph 68.

69. LCHSD Defendants deny the allegations contained in Paragraph 69.

70. Paragraph 70 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 70. Further responding, Plaintiff and the Putative Class have an adequate remedy to correct any alleged unlawful conduct under the Claims Procedure Act, S.C. Code Ann. § 9-21-30.

71. Paragraph 71 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 71.

72. LCHSD Defendants deny the allegation contained in Paragraph 72.

73. Responding to Paragraph 73, LCHSD Defendants deny that Defendant LCHSD's policies are unlawful or violate any federal rights of Plaintiff or the Putative Class. Further responding, LCHSD Defendants assert that their actions complied at all times with the directives issued by SCRS and PEBA and that SCRS and PEBA will continue to require LCHSD Defendants to comply with such directives. No further response is required to address the procedural information contained in Paragraph 73 as the Court's Order dated July 25, 2023 speaks for itself and any allegations are denied.

As to Plaintiff's THIRD CAUSE OF ACTION AS TO THE LMC DEFENDANTS ONLY
(42 U.S.C. § 1983 – Claim for Monetary Awards)

74. Responding to Paragraph 74, LCHSD Defendants incorporate their responses to Paragraphs 1 through 73 as if fully set forth herein.

75. Paragraph 75 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 75.

76. LCHSD Defendants deny the allegations of Paragraph 76.

77. LCHSD Defendants deny the allegations of Paragraph 77.

78. LCHSD Defendants deny the allegations of Paragraph 78.

79. Paragraph 79 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 79.

80. Paragraph 80 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 80.

81. LCHSD Defendants deny the allegations of Paragraph 81.

82. LCHSD Defendants deny the allegations of Paragraph 82.

As to Plaintiff's FOURTH CAUSE OF ACTION AS TO THE LMC DEFENDANTS ONLY
(South Carolina Payment of Wages Act – Claim for Monetary Awards)

83. Responding to Paragraph 83, LCHSD Defendants incorporate their responses to Paragraphs 1 through 82 as if fully set forth herein.

84. Paragraph 87 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 84.

85. LCHSD Defendants deny the allegations of Paragraph 85.

86. LCHSD Defendants deny the allegations of Paragraph 86.

87. Paragraph 87 states legal conclusions to which no response is required. To the extent a response is required, LCHSD Defendants deny the allegations of Paragraph 87.

88. LCHSD Defendants deny that class certification is appropriate for this matter and further deny that Plaintiff is entitled to any of the relief requested in Plaintiff's Prayer for Relief in subparts (1) through (6) immediately following Paragraph 87.

As to Prayer for Relief

89. Responding to the unnumbered paragraph setting forth Plaintiff's Prayer for Relief, LCHSD Defendants deny that Plaintiff is entitled to a trial by jury on his First or Second Causes of Action for declaratory and injunctive relief. LCHSD Defendants admit that Plaintiff is entitled to a trial by jury with respect to the Third and Fourth Causes of Action, to the extent that such claims have not already been dismissed pursuant to any motion by LCHSD Defendants. LCHSD Defendants deny that Plaintiff is entitled to the requested relief set forth in sub-sections (1) through (6), or to any relief whatsoever in this case.

FOR A SECOND DEFENSE

90. Plaintiff's Amended Complaint fails to state a claim against LCHSD Defendants upon which relief may be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

FOR A THIRD DEFENSE

91. Subject to the anticipated assertion of Eleventh Amendment immunity by SCRS and PEBA, LCHSD Defendants reserve the right to renew their motion to dismiss Plaintiff's Amended Complaint pursuant to Rule 12(b)(7) of the Federal Rules of Civil Procedure for failure to join necessary and indispensable parties under Federal Rule of Civil Procedure 19.

FOR A FOURTH DEFENSE

92. Plaintiff is barred from relief to the extent that Plaintiff lacks standing to bring some or all of the alleged causes of action against LCHSD Defendants, either individually or as a representative of the proposed class.

FOR A FIFTH DEFENSE

93. Plaintiff fails to state a claim under 42 U.S.C. § 1983 against LCHSD Defendants because Defendant LCHSD and Defendants Smith and Coggins in their official capacities are not "persons" within the meaning of Section 1983.

FOR A SIXTH DEFENSE

94. Plaintiff fails to state a claim against Defendant LCHSD for declaratory judgment, injunctive relief, and damages under Section 1983 because Defendant LCHSD is an arm of the State of South Carolina, and therefore, is entitled to sovereign immunity.

FOR A SEVENTH DEFENSE

95. Plaintiff fails to state a claim against Defendants Coggins and Smith under Section 1983 because Defendants Coggins and Smith, in their official capacities, are entitled to sovereign immunity.

FOR AN EIGHTH DEFENSE

96. Plaintiff fails to state a claim upon which relief can be granted against Defendants Coggins and Smith in their individual capacities because Defendants Coggins and Smith are entitled to qualified immunity.

FOR A NINTH DEFENSE

97. All actions taken by LCHSD Defendants with respect to Plaintiff were justified, reasonable, and in good faith, without any improper motive, purpose, or means.

FOR A TENTH DEFENSE

98. LCHSD Defendants have, at all times, had reasonable grounds for believing their practices complied with applicable law, regulations, and guidance from SCRS and PEBA.

FOR AN ELEVENTH DEFENSE

99. Plaintiff's claims are barred by the doctrines of laches, estoppel, waiver and/or unclean hands.

FOR A TWELFTH DEFENSE

100. Plaintiff's claims are barred to the extent they exceed the applicable statute of limitations.

FOR A THIRTEENTH DEFENSE

101. LCHSD Defendants submit that any award of punitive damages would violate their equal protection and due process rights as guaranteed by the United States and South Carolina Constitutions. Any award of punitive damages is limited by S.C. Code Ann. § 15-32-530.

FOR A FOURTEENTH DEFENSE

102. LCHSD Defendants have engaged attorneys to represent them in defense of Plaintiff's claims, and LCHSD Defendants are thereby entitled to an award of reasonable attorneys' fees and costs.

FOR A FIFTEENTH DEFENSE

103. Any award of damages should be barred or limited to the extent that the relief demanded by Plaintiff is improper, inappropriate, exceeds the scope of permissible damages and remedies, and/or otherwise is not available under the laws upon which Plaintiff's claims rest.

FOR A SIXTEENTH DEFENSE

104. Plaintiff's class allegations are barred as a matter of law because Plaintiff cannot satisfy the prerequisites for class certification.

FOR A SEVENTEENTH DEFENSE

105. The allegations set forth by the Plaintiff on behalf of himself and the alleged class, the existence of which is expressly denied, involve matters for which individual questions predominate, and therefore, are not appropriate claims for class treatment.

FOR AN EIGHTEENTH DEFENSE

106. Plaintiff is an inadequate representative of any alleged class of persons he purports to represent, the existence of which is expressly denied.

FOR A NINETEENTH DEFENSE

107. Plaintiff's Amended Complaint, and each and every cause of action alleged therein, is barred to the extent that Plaintiff or any putative class members have executed a legally enforceable release of any claims asserted in this lawsuit.

FOR A TWENTIETH DEFENSE

108. Certification of a class, as applied to the facts and circumstances of this case, would constitute a denial of LCHSD Defendants' procedural rights and right to trial by jury and to substantive and procedural due process, in violation of the Fourteenth Amendment of United States Constitution.

FOR A TWENTY-FIRST DEFENSE

109. This suit may not be properly maintained as a Rule 23 class action because: (1) Plaintiff's proposed class definition is improper; (2) Plaintiff has failed to plead and cannot establish, the necessary procedural elements for class treatment; (3) a class action is not an appropriate method for the fair and efficient adjudication of the claims described in the Complaint; (4) common issues of fact or law do not predominate and to the contrary, individual issues predominate; (5) Plaintiff's claims are not representative or typical of the claims of the putative class; (6) Plaintiff is not a proper class representative; (7) Plaintiff and his counsel of record are not adequate representatives for the alleged putative class; (8) Plaintiff cannot satisfy the requirements for the class action treatment, and class action treatment is neither appropriate nor constitutional; (9) there is not a well-defined community of interest in the questions of law or fact affecting Plaintiff and the members of the alleged putative class; and (10) the alleged putative class is not ascertainable, nor are its members identifiable.

FOR A TWENTY-SECOND DEFENSE

110. Plaintiff's claims and those of any putative class members, the existence of which is expressly denied, are barred by the doctrine of *res judicata* and/or collateral estoppel to the extent that Plaintiff or any member of the putative class, or any other putative beneficiary of this action has asserted in any prior legal or administrative proceeding that he or she was entitled to any additional payment to which Plaintiff claims that he, or members of the putative collective action, are entitled.

FOR A TWENTY-THIRD DEFENSE

111. To the extent that Plaintiff may bring claims against LCHSD Defendants for declaratory judgment and/or injunctive relief, which LCHSD Defendants deny, Plaintiff is not entitled to a jury trial as to any equitable issue raised in the Amended Complaint.

FOR A TWENTY-FOURTH DEFENSE

112. LCHSD Defendants reserve the right to supplement their affirmative defenses to include any applicable defense, both legal and factual.

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WHEREFORE, having fully answered the Amended Complaint, LCHSD Defendants respectfully request that the Court:

- (a) Dismiss Plaintiff's claims against LCHSD Defendants in their entirety, with prejudice;
- (b) Enter judgment in favor of LCHSD Defendants and against Plaintiff on all claims; and
- (c) Award LCHSD Defendants their costs and attorneys' fees and such other further relief as the Court may deem just and appropriate.

Respectfully submitted,

By: s/J. Hagood Tighe

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ATTORNEYS FOR LCHSD DEFENDANTS

Columbia, South Carolina
August 29, 2023

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

William M. Luce, on behalf of himself and
all similarly situated natural persons,

Plaintiff,

v.

Lexington County Health Services District,
Inc., Brian D. Smith in both his official and
individual capacity, and Lynn Coggins in
both her official and individual capacity,

Defendants.

Case No. 3:22-cv-03898-MGL

JOINT STIPULATION OF FACTS

Pursuant to Fed. R. Civ. P. Rule 16(c)(2)(C), the parties enter into the following joint stipulation of facts reflecting the Parties’ agreement that the following facts are not in dispute:

1. Lexington County Health Services District, Inc., doing business as Lexington Medical Center (“LCHSD”), is a regional health services district formed by Lexington County under the authority of S.C. Code § 44-7-2010, and at all times since October 20, 2019, is an “employer” as defined in S.C. Code § 9-1-10(14).

2. Since October 20, 2019, LCHSD has employed Lynn Coggins (“Coggins”) as its Accounting Manager and Brian D. Smith (“Smith”) as its Vice President of Human Resources or Senior Vice President of Human Resources.

3. LCHSD employed William M. Luce (“Luce”) as a Certified Registered Nurse Anesthetist (“CRNA”), as defined in S.C. Code § 40-33-20(19), from October 20, 2019, to June 23, 2023 (the “Relevant Employment Period”).

4. At all times during Luce’s Relevant Employment Period, LCHSD had a written Salaried Exempt Employees policy and procedure, which is attached hereto as Exhibit A. Pursuant to that policy, LCHSD classified Luce as an exempt employee pursuant to the Fair Labor Standards

Act of 1938, 29 U.S.C. § 201, *et seq.* as amended (“FLSA”). As such, Luce was not eligible for overtime compensation at any time during Luce’s Relevant Employment Period.

5. At all times during Luce’s Relevant Employment Period, LCHSD paid Luce wages on a biweekly basis and delivered a paystub to him reflecting his earnings and deductions. Copies of Luce’s final pay stubs for years 2019-2022 are attached hereto as Exhibit B.¹

6. At all times during Luce’s Relevant Employment Period, LCHSD had a written Wage and Salary Administration policy and procedure, which is attached hereto as Exhibit C. Pursuant to that policy, each job-code is assigned a salary range, which applies to all positions classified therein. Upon his hiring, LCHSD set Luce’s salary within the range established for CRNAs. LCHSD labeled Luce’s salary on Luce’s paystubs issued during Luce’s Relevant Employment Period as his “Regular Base Pay.”

7. As of October 20, 2019, LCHSD set Luce’s salary at \$8,319.00 per biweekly pay period. Beginning on May 15, 2022, LCHSD increased Luce’s salary to \$8,480.00 per biweekly pay period and it remained at this salary level through the end of his employment with LCHSD.

8. At all times during Luce’s Relevant Employment Period and pursuant to LCHSD’s Wage and Salary Administration policy and procedure and Hours of Work policy, which is attached hereto as Exhibit D, Luce earned wages in addition to his biweekly salary when he worked on certain shifts – including nights, weekends, holidays, or 24-hour shifts – or worked additional shifts beyond his regularly scheduled shifts in a biweekly pay period, or if he was on call, or if he was called back to LCHSD’s premises to continue to work after a scheduled shift. Specifically,

¹ Plaintiff’s paystubs have been designated confidential pursuant to the Confidentiality Order entered on February 9, 2024. Doc. 50.

during Luce's Relevant Employment Period, Luce agreed to work and worked these certain shifts and earned the following wages in addition to his salary (the "Wages in Controversy"):

- a. Shift Differential: an additional amount of wages that LCHSD pays certain employees for the time spent working outside of the time of day that LCHSD classifies as "day shift." LCHSD described this pay category on Luce's paystubs as "CRNA PM Shift Diff". At all times during Luce's Relevant Employment Period, Luce earned an additional \$5.00 per hour when he worked at least 5 hours after 3:00 p.m. for LCHSD.
- b. Weekend Differential: an additional amount of wages that LCHSD pays certain employees for the time spent working during the portion of the work week that LCHSD classifies as the weekend. LCHSD described this pay category on Luce's paystubs as "CRNA Weekend Diff". At all times during Luce's Relevant Employment Period, Luce earned an additional \$10.00 per hour he worked for LCHSD between the hours of 7:00 a.m. on Saturday and 7:00 a.m. on Monday.
- c. Holiday Differential: an additional amount of wages that LCHSD pays for a CRNA working either New Years Day, Thanksgiving Day, or Christmas Day. LCHSD described this pay category on Luce's paystubs as "CRNA Holiday Differential". At all times during Luce's Relevant Employment Period, Luce earned an additional \$10.00 per hour he worked on either New Years Day, Thanksgiving Day, or Christmas Day for LCHSD.
- d. On-call: an additional amount of wages LCHSD pays for being available while off LCHSD premises, to return to work in appropriate dress and in condition to work within a reasonable length of time (as determined by the department manager) if

called. LCHSD's written policy states: "On-call hours do not constitute working time and will not be used in computing overtime payments." LCHSD described this pay category on Luce's paystubs as "CRNA On Call". At all times during Luce's Relevant Employment Period, Luce earned \$20.00 per hour that he was on call for LCHSD.

- e. Call Back Pay: an additional amount of wages LCHSD pays when an employee is called back to work, e.g., in case of a disaster alert. LCHSD described this pay category on Luce's paystubs as "CRNA Call Back". At all times during Luce's Relevant Employment Period, Luce earned \$130 per hour that he worked after being called back following the end of his shift.
- f. Premium Pay: an additional amount of wages that LCHSD pays for a CRNA working additional shifts beyond the employee's normally scheduled. LCHSD described this pay category on Luce's paystubs as "CRNA Premium Pay". During Luce's Relevant Employment Period, Luce earned between \$130 per hour to \$175 per hour for Premium Pay.

9. The South Carolina Retirement System ("SCRS") is a defined benefit pension plan, which promises members a set benefit at retirement that is determined on either the twelve (12) highest or twenty (20) highest consecutive quarters of earnable compensation and that is dependent on an application and the employee's satisfaction of eligibility thresholds, e.g. age, years of service within State employment, and mortality.

10. Luce retired, as defined in S.C. Code § 9-1-10(26), on or around April 3, 2011, and at all times during Luce's Relevant Employment Period, he was a retired member of SCRS.

11. On each occasion that LCHSD paid Luce wages on or after November 4, 2019, LCHSD withheld 9% of Luce's Regular Base Pay and delivered these sums to the South Carolina Public Employee Benefits Authority ("PEBA") for use by the SCRS pursuant to S.C. Code §§ 9-1-1020 and 9-1-1085. Pursuant to S.C. Code § 9-1-1790(C), as a "retired member" of SCRS, Luce was required to "pay to the system the employee contribution as if [he] were an active contributing member," but Luce did "not accrue additional service credit in the system by reason of the contributions required."

12. Additionally, on each occasion during Luce's Relevant Employment Period that Luce earned the Wages in Controversy, LCHSD withheld 9% of Luce's Wages in Controversy and delivered these sums to PEBA for use by the SCRS.

13. Beginning in April 2022, Luce communicated with LCHSD employees in the payroll department and disputed LCHSD's practice of withholding and contributing to SCRS 9% of the Wages in Controversy.

14. In May 2022, Luce communicated with Coggins regarding LCHSD's practice of withholding and contributing to SCRS 9% of the Wages in Controversy.

15. In August 2022, Luce emailed LCHSD's Vice President of Operations and asked to discuss the changes to SCRS contributions made in Act 278, effective December 31, 2012. Luce was directed to Smith.

16. Luce discussed LCHSD's practice of withholding and contributing to SCRS 9% of the Wages in Controversy with Smith in August and September 2022.

17. LCHSD continued its practice of withholding and contributing to SCRS 9% of Luce's Wages in Controversy through Luce's resignation of his employment with LCHSD effective June 23, 2023. LCHSD continues this practice for CRNAs and certain other employees

to date. LCHSD has not delivered to Luce the contributions directed to Luce's account at SCRS that LCHSD withheld from Luce's Wages in Controversy.

/s/ Shaun C. Blake

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ATTORNEYS FOR DEFENDANTS
LEXINGTON COUNTY HEALTH
SERVICES DISTRICT, INC., BRIAN D.
SMITH, AND LYNN COGGINS

 <p>Lexington Medical Center IRMO AMBULATORY SURGERY CENTER LEXINGTON AMBULATORY SURGERY CENTER NORTHEAST AMBULATORY SURGERY CENTER WEST COLUMBIA AMBULATORY SURGERY CENTER</p>	<p>Salaried Exempt Employees policy and procedure</p> <p>Created By:: Zeches, Cheryl(Senior Executive Assistant) Original Document Upload:: 02/01/2018</p> <p>Current Revision:: 3.00</p> <p>Last Approved Time:: 03/12/2024</p> <p>Printed copy valid only date printed</p>
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**LEXINGTON MEDICAL CENTER
 POLICY AND PROCEDURES
 HUMAN RESOURCES**

SUBJECT:	Salaried/Exempt Employees		
EFFECTIVE DATE:	10/01/84	HR NUMBER:	XXXX
REVISED DATE:	09/01/04, 3/2/18, 12/1/22	REVIEWED DATE:	2/1/24

THIS POLICY DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND LEXINGTON MEDICAL CENTER. LEXINGTON MEDICAL CENTER (LMC) RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY, IN WHOLE OR IN PART, AT ANY TIME.

I. Need for Policy

A. An employee may be classified as a salaried exempt employee provided the employee meets “exempt requirements” under the Fair Labor Standards Act, and regularly receives each pay period a predetermined bi-weekly amount.

II. Determination of Status

- A. LMC Human Resources will conduct periodic reviews to ensure that jobs are classified according to federal law.
- B. Department directors will forward requests to Human Resources for determination.
- C. A Compensation representative will make a determination regarding the employee’s exempt status.

III. Deductions

- A. A deduction refers to any reduction in regular biweekly earnings.
- B. Deductions may not be made for absences caused by the operating requirements of the hospital unless an employee is on budget-required furlough.

SUBJECT:

HR NUMBER: XXXX

C. Deductions may be made for absences, illness and personal reasons after paid time off is exhausted.

D. Deductions should normally be made in whole day increments with the exception of intermittent FMLA usage which may be deducted in increments of no less than 1 hour.

E. Deductions may be made for some disciplinary reasons such as unpaid suspensions, and infractions of safety rules of a major significance.

F. Unpaid leaves of absence will be handled on a case-by-case basis and must be approved by the SVPHR.

IV. Compensatory Time

A. Salaried employees are expected to complete job assignments regardless of time requirements. No salaried employees are eligible for compensatory time.

B. Salaried employees are not eligible for overtime compensation.

Brian Smith
Senior Vice President Human Resources

Tod Augsburg
President and Chief Executive Officer

Exhibit B

Plaintiff's paystubs containing confidential information.
(CONFIDENTIAL)

 Lexington Medical Center IRMO AMBULATORY SURGERY CENTER LEXINGTON AMBULATORY SURGERY CENTER NORTHEAST AMBULATORY SURGERY CENTER WEST COLUMBIA AMBULATORY SURGERY CENTER	
Wage and Salary Administration policy and procedure	
Created By:: Zeches, Cheryl(Executive Assistant)	Original Document Upload:: 02/01/2018
	Current Revision:: 3.00
	Last Approved Time:: 03/12/2024
	Printed copy valid only date printed

**LEXINGTON MEDICAL CENTER
POLICY AND PROCEDURES
HUMAN RESOURCES**

SUBJECT:	Wage and Salary Administration		
EFFECTIVE DATE:	01/01/84	HR NUMBER:	XXXX
REVISED DATE:	0/2/6/18, 12/1/22	REVIEWED DATE:	2/1/24

THIS POLICY DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND LEXINGTON MEDICAL CENTER. LEXINGTON MEDICAL CENTER (LMC) RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY, IN WHOLE OR IN PART, AT ANY TIME.

I. Need for Policy

- A. To provide guidance regarding compliance with maintaining wage and salary rates that are applicable with local, regional, or national labor markets.

II. Definitions

- A. Essential job functions – the primary responsibilities and scope of the job. The reason the job exists.
- B. Promotion – employee changes jobs from one grade value to a higher-grade value.
- C. Demotion – employee changes jobs from one grade value to a lower grade value.
- D. Lateral - employee changes to a job that has the same or similar grade value.
- E. Reclassification – When a position’s functions, duties, scope, requirements, and/or qualifications have changed to the point where a different job classification seems to more accurately describe the position, an evaluation of the position may be warranted to see if a different job classification is appropriate. Depending on the nature of the changes, a new job classification may be assigned, which may be in the same grade or a different grade. Positions will not be reclassified for the purpose of rewarding employees for performance or to correct perceived salary inequities

III. Statement of Policy

SUBJECT: Wage and Salary Administration

HR NUMBER: XXXX

- A. Through application of a comprehensive compensation program, LMC's goal is to provide competitive pay in relationship to duties, responsibilities and job performance and in accordance with all wage payment laws. Further, it is LMC's policy that its salary administration practices, and compensation levels be competitive with those in like organizations for comparable job categories.
- B. Our goal is to compensate timely and accurately. If at any time an employee feels that there is an error in the way they have been paid, they are to contact their department director or Human Resources immediately.

IV. Procedures

A. Classification of Positions

- 1. A system of job description and evaluation is used to review, measure, and classify positions in terms of requirements and relative internal importance. At the same time, establish the position's relationship to other positions in the organization and determine the proper pay group within the pay structure.
 - a. Classifications in the organization must be supported by a job description giving, in detail, the qualifications, duties, responsibilities, position characteristics, and physical requirements of position. Indication on the percentage of time spent on essential job functions is advised.
 - b. The Department director will forward the job description to Compensation along with a business case for new or modified job descriptions if requesting a grade reevaluation. The SVPHR will be responsible for approving all new or upgraded job descriptions.
 - c. Positions with similar duties and responsibilities may be grouped together into the same classification and given the same title or similar title.
 - d. Compensation assigns a pay grade and salary range to each position.
 - e. Only positions appearing in the approved department budget are authorized for use.
 - f. It is important that the job and not the individual be described and evaluated.

B. Changes in Classification

- 1. Up-to-date job descriptions and are to be maintained for all positions.
 - a. All job descriptions are to be reviewed periodically by the vice president or department director to assure accuracy and consistency.
 - b. Employees whose duties and responsibilities have significantly changed may request that their department director consider updating the job description. If the department director agrees, they can request a review by Compensation to

SUBJECT: Wage and Salary Administration**HR NUMBER:** XXXX

determine whether it should be re-evaluated. Either the department director or Assistant Director – HR Business Partner may refer the job description for review.

- c. Changes in job descriptions that result in no change in classification will be reviewed by the Assistant Director – HR Business Partner and/or Compensation.
- d. All job descriptions are evaluated according to the primary or regularly assigned duties of the employee. The assignment to a pay group will not be determined on the basis of infrequent or occasional duties.
- e. If a reclassification results from the review of a job description, the effective date normally shall be the first day of the pay period following the review or reclassification approval.
- f. New job codes will be assigned by Compensation, if needed.

C. Job Evaluation Process

1. Before a job is evaluated or reviewed it is the responsibility of the department director to have their VP approve the initiation of the job evaluation process. A business case outlining the reason for the request should accompany the request.
2. Jobs will be reviewed based on internal equity and external competitiveness. A recommendation will be issued by Compensation, reviewed with the department director, and approved by the SVPHR, VP, Senior VP, and or CEO. Appeals by the department director should be made within 30 days to the SVPHR.
3. New positions or those changed because of reorganization should be reviewed for classification, title, and pay range before employees may be hired or their classification changed.
4. Compensation may establish individual job titles.
5. The assigned title of a position is to be used on all records as the official title although there may be a separate badge title. Separate badge titles may vary by position but must be approved by department director and HR.
6. The job description should be reviewed with the employee at hire and at any time there is a change.

D. Wage and Salary Structure

1. Job rates and salary ranges may be based on local, regional, or national surveys and internal equity practices.

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- a. HR has the responsibility for administering the wage and salary program in a consistent and efficient manner.
- b. Salary ranges may be reviewed periodically or upon request to Compensation under special conditions, such as changes in market wage rates.
 - i. When increases are awarded as a result of a range adjustment, adjusted base rates will normally not fall below the minimum of the range and should not be increased beyond the maximum of the new range.

E. Determination of Individual Rates and Salaries

1. Establishing base rate:

- a. Each job-code is assigned a salary range.
- b. The salary ranges for any job-code applies to all positions classified therein unless specifically defined. Example: the position has a flat rate established for a PRN positions. The actual flat rate may be outside of the range but the value of the job is the same as the regular position.
- c. New inexperienced employees are normally hired at the minimum rate provided they meet the minimum requirements of the job.
 - i. Those employees who exceed the minimum requirements may be hired based upon their level of recent experience. Starting rates above the third quartile must be approved by Compensation.
- d. HR will coordinate employment offers and the determination of appropriate position in the range with the hiring supervisor/manager.
- e. The department director, or designee, makes the hiring decision and conveys their intent to the HR representative.
- f. The HR representative communicates the official offer and all initial employment conditions to the candidate. This may be accomplished jointly with the department designee upon request.

2. Merit Increases

- a. Each employee's performance is normally reviewed continuously on an informal basis and formally once a year, typically at the end of the fiscal year.
- b. Merit increases may be awarded in accordance with the employee's performance and will typically become effective the pay period following the beginning of the fiscal year. The range of percentage increase awarded for merits will be determined by Administration each fiscal year, however while an evaluation should be given, an annual merit increase is not guaranteed.

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- c. Employees whose rates of pay are below the maximum of their respective pay ranges may receive a merit increase. Merit increases may be awarded to employees until they reach the maximum of their respective pay ranges. The remainder of their merit increase may be awarded in one lump sum.
 - i. Some employees may not be eligible for a merit increase due to their position. Example: Employees who are in positions that compensate at a flat rate of pay at the time of the merit effective date will not be eligible for an increase or a lump sum merit.
 - ii. PRN and on-call only employees will not automatically be eligible for the merit program but will normally be evaluated annually for competencies.
 - iii. Employees on a leave of absence may have their merit withheld until they have returned to an active status.
 - d. Employees whose rates of pay equal or exceed the maximum of their pay ranges may be eligible for increases as follows:
 - i. Merit increases may be awarded in accordance with their performance but will not be added to their hourly rate of pay. Merit increases will be paid in one (1) lump sum installment (minus deductions). The lump sum will be direct deposited into the employee's account. The lump sum payment will typically be given the pay period following the beginning of the fiscal year as determined by the organization.
 - ii. Employees that are PRN at the time of the merit effective date and are at the maximum of their pay range are not eligible to receive a lump sum installment.
3. Transfers
- a. Promotions
 - i. Employees are promoted on the basis of suitability for the position and organizational needs. Promotional increases will typically be effective the pay period the promotion takes effect.
 - ii. Employees promoted to a new position may receive a promotional increase or the appropriate position in the range, whichever is appropriate.
 - Not all promotions result in an increase in pay. Example: an employee with five (5) years of experience may transfer to a higher grade in which they only meet the minimum qualifications.

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- iii. Employees are normally on probation for ninety (90) days, unless the time period is extended due to performance.
 - iv. Employees in positions which are re-evaluated to a higher pay grade may receive no increase or could be placed at the appropriate position in the range.
- b. Lateral Moves
- i. Employees requesting and obtaining a lateral transfer normally retain their current rate of pay or if that rate would be inconsistent with the internal equity in the new department, the department director and HR may offer a lower rate.
 - ii. All pay changes are effective the beginning of the pay period following the employee's change of status.
 - iii. Employees are normally on probation for ninety (90) days, unless the time period is extended due to performance.
 - iv. A change in hours or shift in the same department does not require a new probationary period.
- c. Transfer to Lower Classification
- i. Employees demoted or transferring to a lower pay grade may have their pay decreased.
 - If previously promoted and subsequently demoted into a position, the promotional increase will be rescinded, or
 - May use a combination of rescinding promotional increase and/or percentage, and consideration for years of experience whichever is appropriate.
 - ii. Employees are on probation for ninety (90) days, unless the time period is extended due to performance.
 - iii. If after removing the appropriate amount, the resulting rate of pay would be inconsistent with the internal equity within the new department/position, or over the max of the new range, the department director and HR may offer a lower rate.
 - iv. Demotions as a result of organizational changes are handled on a case-by-case basis.

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- v. Pay changes are typically effective the beginning of the pay period following the employee's change in status.
4. Position Reclassification
- a. Positions which are re-classified to a higher pay grade may receive no increase or could result in an increase or move to an appropriate position in the range.
- b. Positions which are re-classified to a lower pay grade may result in a reduction in an employee's pay, or no change in pay but may freeze the rate if an employee's rate is above the maximum of their new pay grade.
- F. Shift Differential is an additional amount of pay added for the working outside of day shift. The amount of the differential is determined by market comparisons and organizational needs and assigned to the job-code. Not all job-codes are eligible for shift differential pay.
1. 2nd shift is defined as 3:00 p.m. – 11:00 p.m.
3rd shift is defined as 11:00 p.m. – 7:30 a.m.
- a. The actual hours classified as 2nd or 3rd shift will be determined by the department. Many departments use a variation of twelve (12) hour shifts.
- i. Days 7:00 a.m. – 7:30 p.m.
- ii. Nights 7:00 p.m. - 7:30 a.m.
2. Employees scheduled to work either 2nd or 3rd shift may be paid a premium in addition to their regular rate of pay under the following conditions:
- a. Shift differential will be paid for hours actually worked on the appropriate shift. Employees' non-worked hours (paid time off, bereavement leave and any other non worked hours) will not receive shift differential. Professional leave will not receive shift differential. Shift differential is paid as follows:
- 3rd shift differential: If an employee clocks in between 11:00 p.m. and 4:30 a.m. they will receive 3rd shift differential until 7:30 a.m.
- If an employee clocks in before 11:00 p.m. and clocks out after 11:00 p.m., they must work at least three hours past 11:00 p.m. in order to receive 3rd shift differential.
- 2nd shift differential: Hours worked between 8:00 p.m. and 11:00 p.m. will receive 2nd shift differential.

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If an employee clocks in before 8:00 p.m. in order to receive 2nd shift differential between 3:00 p.m. and 8:00 p.m., they must have five hours worked between 3:00 p.m. and 12:00 midnight.

1st shift: All other hours actually worked will be considered 1st shift for differential purposes.

3. Employees working LexPlan are not eligible to receive shift differentials on the shifts that they receive LexPlan pay.
- G. Weekend Differential is an additional amount of pay added for working weekend shifts. The amount of the differential is determined by market comparisons and organizational needs and assigned to the job-code.
1. The department director and HR will determine which job codes will be eligible for differentials.
 - a. Certain job codes will be excluded from receiving differentials. This will be determined by the department director and HR.
 - b. Employees working LexPlan are not eligible for weekend differential.
 - c. Weekends are defined beginning at 11:30 p.m. Friday and ending 11:30 p.m. Sunday.
- H. LexPlan eligible hours – Certain jobcodes have been approved to receive an additional half time premium for working predominately weekend hours.
1. LexPlan eligible hours are defined as 3:00 p.m. Friday and ending 7:30 a.m. Monday.
 2. LexPlan premium is 50% of the employee's base rate.
 3. LexPlan employees working outside of the defined hours above may be eligible to receive shift differentials but will not receive LexPlan premium.
- I. Overtime – the following applies to all non-exempt LMC employees except for eligible HSD law enforcement officers within the Public Safety department who are covered by a different overtime rules allowed by law. Refer to Law Enforcement Overtime policy.
1. Overtime is paid when a non-exempt employee has worked more than forty (40) hours in a work week. Insofar as is practical, opportunities for overtime will be distributed equitably among employees working in the same classification in the same department and on the same shift where the overtime occurs. Only work time will count toward calculation of overtime. Paid leave does not count as work time for purposes of calculating overtime.
 2. Salaried/exempt employees are not eligible for overtime.

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3. Hours worked over forty (40) are paid at the regular rate plus an additional premium of half (½) of the employee's weighted average hourly rate.
4. All overtime is considered mandatory and will be treated as such for SCRS/PORS plan purposes.

J. Stand-by and On-call Duty

1. "Stand-by" or "On-call" refers to an employee who is required, as a condition of employment, to be available for duty, while outside LMC premises. These employees should be able to return to LMC in appropriate dress and in condition to work within a reasonable length of time (as determined by the department manager) if called.
 - a. Employees on call may not consume any alcohol or any substance legal or illegal that may alter their condition to work.
2. At home on-call refers to any instance where an employee is scheduled to be available from the phone to answer questions or provide support without coming into work.
3. On-call and at home on-call pay is normally compensated at \$2.00 per hour.
4. On-call hours do not constitute working time and will not be used in computing overtime payments.

K. Call-back Pay

1. Call-back time refers to any instance when an employee is called back to work. Except for those employees "On-call" or "Stand-by," this should be accomplished through normal scheduling. Call-back may be utilized in case of a disaster alert.
2. Compensation for non-exempt employees is as follows:
 - a. An employee who is called back to work will receive a minimum of one and one-half (1 1/2) hours pay or actual hours worked whichever is greater.
 - b. Employees called back shall receive their regular rate plus an additional one-half (1/2) times their hourly rate plus appropriate differentials.
 - i. In those cases where call-back results in overtime hours for an hourly employee, the employee will receive overtime compensation instead of, not in addition to, the call-back premium.
 - ii. Employees will not be paid "on-call" pay for any hours that they are paid call back pay.
 - iii. Employees will not be compensated for travel time or mileage.

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L. At Home Call Back

1. At home call back refers to any instance where an employee is contacted and able to provide support without having to come back into the workplace.
 - a. Example of this could be patient questions to nurse, Information Services support where the employee is able to connect into the system from an offsite PC, Engineering staff providing guidance to a co-worker.
2. Compensation for non-exempt employees providing support from home without having to come back into the workplace is as follows:
 - a. At home call back will be paid at regular base rate and include appropriate differentials, if applicable.
 - i. In those cases where at home call back results in overtime hours for an hourly employee, the employee will receive overtime compensation instead of, not in addition to, the at home call back.
 - b. Employees will not be paid “at home on-call” pay for any hours that they are paid at home call back pay.

M. Scheduled Available Pay

1. Scheduled available pay refers to any instance where an employee is scheduled to work and due to low acuity or work load, is requested not to report to work at the scheduled time; or is sent home during their scheduled shift but is asked to remain available to return to work during the original scheduled hours. These employees should be able to return to LMC in appropriate dress and in condition to work within a reasonable length of time (as determined by the department manager) if called. Employees on call may not consume any alcohol or any substance legal or illegal that may alter their condition to work.
2. Scheduled available pay is normally compensated at \$2.00 per hour.
 - a. Scheduled available hours do not constitute working time and will not be used in computing overtime payments.
3. Should the workload change during the employee’s scheduled shift, the supervisor may request the scheduled available employee to return to work. Upon return to work, scheduled available pay will discontinue and the employee will receive regular pay plus usual differentials for actual worked hours.

N. Secondary Jobs

1. Employees who work in a second job either in their home department or in a different department may receive a different rate of pay that is commensurate with that position’s grade and scale, and differentials.

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2. For hourly employees only, the hours worked in the secondary position will be included in overtime calculations.
3. Secondary jobs and the rate of pay must be approved by all departments involved and coordinated with HR.
4. Secondary jobs may be eligible to receive merit increases or adjustments and should be evaluated for competencies.

O. Special Request for Employee Pay Increase

1. All special requests for pay increases must be made and approved prior to informing the employee involved and, if approved, will become effective the beginning of the following pay period.
 - a. Notice of pay increases should be delivered to HR prior to the beginning of the effective pay period.
 - i. The appropriate VP and SVPHR must sign and approve all special pay increases.

V. **Interpretation Contact**

- A. Assistant Director – HR Business Partner
- B. Compensation

VI. **Approvals**

Brian Smith
Senior Vice President, Human Resources

Tod Augsburger
President and Chief Executive Officer

**LEXINGTON MEDICAL CENTER
POLICY AND PROCEDURES
HUMAN RESOURCES**

SUBJECT:	Hours of Work		
EFFECTIVE DATE:	01/01/84	HR NUMBER:	XXXX
REVISED DATE:	09/01/04, 02/01/11, 01/05/15, 1/19/2017, 03/14/19, 10/27/20		REVIEWED DATE: 03/21/22

THIS POLICY DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND LEXINGTON MEDICAL CENTER. LEXINGTON MEDICAL CENTER (LMC) RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY, IN WHOLE OR IN PART, AT ANY TIME.

I. Need for Policy

- A. The purpose of this policy is to define and clarify the normal work week and shift requirements for employees.

II. Definitions

- A. Work Periods – All pay periods begin on Sunday 12:00 a.m. and run two (2) weeks ending on Saturday 11:59 p.m. twenty-six times per year. Thirty (30) minutes of each complete shift, at the convenience of Lexington Medical Center (LMC), may be scheduled as an unpaid meal period.
- B. Work Week – All work weeks begin on Sunday 12:00 a.m. and run seven (7) days ending on Saturday 11:59 p.m. The shift worked falls into the week in which the beginning clock in occurred.
- C. Breaks – A period of time that is granted if the workload and supervisor allow.
- D. Tardy – Reporting to work after the start of an employee’s assigned shift or leaving prior to the end of the scheduled shift. An occurrence is recorded at five (5) minutes late or leaving five (5) minutes early without approval. Failure to clock will also count as a tardy occurrence.
- E. Shift – Scheduled hours of work or regular assigned core work hours as dictated by business needs and managerial oversight.

III. Statement of Policy

- A. Employees are expected to report for work at the time and date as scheduled by their immediate supervisor.
- B. Due to the nature of healthcare operations, employees’ working hours cannot be definitely fixed.
- C. An employee will not normally be required to work more than sixteen (16) hours in one day, but exceptions to this general rule will be made in case of need.

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- D. The typical shift/work hours will be set by each department director.
- E. While an employee may be regularly assigned to a particular position and/or department, each employee is primarily an employee of LMC, and may be temporarily reassigned to where needed on instruction from the supervisor on duty at the time of transfer.
- F. Employees are expected to work the entire shift as scheduled unless the department determines that modifying the shift is appropriate.
- G. Employees who consistently do not work their standard hours may have their budgeted FTE adjusted to meet the average hours worked or may be disciplined for failure to meet expectations.
- H. Employees are expected to use the timekeeping system for all time worked.

IV. Procedures

- A. Hours of Work
 - 1. The normal work period consists of eighty (80) hours biweekly.
 - 2. LMC conducts business twenty-four (24) hours a day seven days a week. Normal hours worked are as follows:
 - a. First Shift - Day shift 8.5 hours (unpaid thirty (30) minute meal break).
 - b. Second Shift - Afternoon/evening shift 8.5 hours (unpaid thirty (30) minute meal break).
 - c. Third Shift - Night shift - 8.5 hours (unpaid thirty (30) minute meal break).
 - d. Flex hours or shorter shifts are available in various departments and will include a thirty (30) minute unpaid meal break if it is five (5) hours or more in length.
 - e. Many departments utilize two (2) 12.5-hour shifts (unpaid thirty (30) minute meal break).
 - f. In the rare instance that an employee works a sixteen (16) hour shift or more, two (2) unpaid thirty (30) minute meal deductions will occur.
 - 3. Shift hours are determined by each department director.
 - 4. Employees who are required to work through their meal break must be compensated. If an employee is unable to take an uninterrupted thirty (30) minute meal break, he/she is to do one of the following:

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- a. Perform a cancel meal deduction action when clocking out or
 - b. Notify his/her department manager or supervisor to have the meal deduction cancelled.
5. Employees are expected to work their fair share of weekends, holidays, and less desirable hours.
 6. Employees may be reassigned to other areas and their shift hours may vary to meet the LMC's and patients' needs.
 7. Employees are expected to leave LMC premises at the completion of their shift. Loitering around the workplace and surrounding property is prohibited.
 8. From time to time, overtime may be required.
- B. Recording of hours worked (Time and Attendance)
1. All employees will be issued a photo identification badge by the Public Safety Department during their first days of employment. Lost or abused badges will be replaced for a \$10.00 fee. A new badge will be issued free of charge in the event of a name or title change or normal wear and tear. ID badges should be worn at all times when working.
 2. All hourly employees will record their hours of work by "swiping" their identification badges at the clock to which they are assigned at the beginning and end of their shift. Employees may be required to use specific badge readers/clocks to punch in or out or may be required to clock on their computer.
 3. Clocking in or out for another employee will result in disciplinary actions up to and including termination for both employees involved.
 4. Employees forgetting or misplacing their ID badge must report their time to their department's timekeeper for entering into the timekeeping system. A missed clocking is considered a tardy occurrence.
 5. Employees who frequently forget their badge may be sent home and or disciplined up to and including termination.
 6. Employees may not work "off the clock." Employees are to clock in at the start time of their shift and promptly clock out at the end of the shift unless authorized by their immediate supervisor.
 7. Employees clocking in after their assigned shift are considered tardy regardless of the hours they are paid.

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8. Employees leaving the workplace or premises for meals and/or personal business must obtain supervisor permission and clock out upon departure and upon return.
9. Employees may not leave the premises for breaks.
10. Employees are expected to approve their time each pay period and to report inaccuracies to their manager or timekeeper immediately.

C. Overtime

1. Overtime will be paid for all hours worked over forty (40) in a work week.
2. Overtime will be paid according to Fair Labor Standards Act regulations using weighted average of one and one-half of the employee's regular hourly rate including applicable differentials.
3. All overtime must be authorized and approved by the employee's immediate supervisor.
4. Employees are responsible for ensuring that their immediate supervisor approves all overtime.
5. Unauthorized overtime will be paid; however, the employee may be subject to disciplinary action.

D. Breaks

1. When the workload permits, a fifteen (15) minute work break is permitted per shift.
2. The work break is not guaranteed but may be granted on an individual basis at the discretion of the supervisor.
3. Break time may not accumulate from one day to another.
4. Time allowed for a work break is payable but pay will not be made in lieu of break periods.
5. Break time is intended to allow the employee an opportunity to step away from the workload and relieve stress. Employees are encouraged to use their break time for wellness activities such as walking or stair climbing.
6. Due to limited space for our patients and customers, it is recommended employees on break should not lounge, loiter or sleep in space intended for visitors and families, i.e. hospital lobby area and/or family rooms
7. Nursing Mothers:

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- a. Nursing Mothers will be permitted break time(s) to pump while at work.
 - b. A private area (non-bathroom) will be available for use. Department managers will address this on a case by case basis as requested.
 - c. Should the break time(s) for pumping exceed the normal break time allowed, the employee may be asked to clock in and out for the break.
- E. LMC intends to pay employees accurately. If at any time an employee feels that they are not being compensated appropriately or that hours are not reported correctly, the employee should immediately contact their department director or Human Resources.

V. Interpretation Contact

- A. Assistant Director – HR Business Partner

VI. Approvals

Brian Smith
Vice President Human Resources

Tod Augsburg
President and Chief Executive Officer