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Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court

By Steven Drew, Deputy

SHAKOURI LAW FIRM

Ashkan Shakouri, Esq. [SBN 242072]
ash@shakourilawfirm.com
Sharon W. Lin, Esq. [SBN 260443]
Sharon@shakourilawfirm.com
11601 Wilshire Blvd., Fifth Floor
Los Angeles, California 90025
Telephone: (310) 575-1827
Fax: (310) 575-1872
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF LOS ANGELES COUNTY

MELVIN GEORGE, on behalf of himself and
others similarly situated

Plaintiff,

v.

TOTAL PROFESSIONAL NETWORK,
INC.; CARRIELEE NERY; and DOES 1-20,
inclusive

Defendants.

Case No: 20STCV01913

**FIRST-AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
2. FAILURE TO PAY FOR ALL HOURS WORKED
3. FAILURE TO PAY OVERTIME
4. FAILURE TO PAY MINIMUM WAGE
5. FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS
6. FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS
7. FAILURE TO FURNISH ACCURATE WAGE STATEMENTS
8. WAITING TIME PENALTIES
9. UNFAIR BUSINESS PRACTICES
10. PAGA VIOLATIONS

[AMOUNT DEMANDED EXCEEDS
\$25,000.00]

Case Assigned for All Purposes to
Judge Yvette M. Palazuelos
Dept. 9

1 PLAINTIFF MELVIN GEORGE (“Plaintiff”), individual, on behalf of himself and all
2 others similarly situated, as defined below, hereby alleges the following facts and claims against
3 TOTAL PROFESSIONAL NETWORK, INC. (dba Core Medstaff) (“Defendant TPN”), and
4 CARRIELEE NERY (“Defendant Nery”), and respectfully requests a trial by jury of all issues
5 and causes of action so triable. Unless otherwise specified, Defendant TPN, Defendant Nery, and
6 Does 1-20 shall collectively be referred to herein as “Defendants.”

7 **INTRODUCTION**

8 1. This class action complaint challenges Defendants’ past and ongoing unlawful
9 employment practices and policies on behalf of Plaintiff and other similarly situated former and
10 current employees of Defendants, whose rights they violated and continue to violate under
11 California law.

12 2. Specifically, as to Plaintiff and others similarly situated, Defendants have
13 uniformly and systematically:

- 14 a. Failed and continue to fail to reimburse for all incurred business-related travel
15 expenditures in violation of Labor Code § 2802;
- 16 b. Failed and continue to fail to pay for all hours worked in violation of Labor
17 Code §§ 200, 223, 226, 500, 1197, 1198, and the applicable California
18 Industrial Welfare Commission Wage Orders (“Applicable Wage Orders”);
- 19 c. Failed and continue to fail to pay all overtime wages for all overtime hours
20 worked in violation of Labor Code §§ 510 and 1194 and the Applicable Wage
21 Orders;
- 22 d. Willfully failed and continue to fail to pay minimum wage for all hours
23 worked in violation of Labor Code §§ 1194 and 1197 and the Applicable
24 Wage Orders;
- 25 e. Failed and continue to fail to authorize or permit meal periods in violation of
26 Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
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- 1 f. Failed and continue to fail to authorize or permit rest periods in violation of
2 Labor Code § 226.7, and the Applicable Wage Orders;
3 g. Failed and continue to fail to timely furnish complete and accurate itemized
4 wage statements in violation of Labor Code § 226, and the Applicable Wage
5 Orders;
6 h. Willfully failed to pay, without abatement or reduction, all final wages owed
7 in accordance with Labor Code §§ 201, 202, and in violation of Labor Code §
8 203; and
9 i. Committed and continue to commit unfair business practices in violation of
10 Business & Professions Code § 17200, et seq.
11

12 3. The acts complained of herein occurred and will occur, at least in part, within the
13 time-period of four (4) years preceding the filing of the original Complaint, up to and through
14 the time of trial.

15 **JURISDICTION AND VENUE**

16 4. This Court has jurisdiction over Defendants because they are entities or
17 individuals with sufficient minimum contacts in California, and/or because they intentionally
18 availed themselves of the California market so as to render the exercise of jurisdiction over them
19 by the California courts consistent with traditional notions of fair play and justice.

20 5. Pursuant to Code of Civil Procedure § 395(a) venue is proper in this County since
21 at least some of the acts and omissions that are the subject matter of this Complaint occurred
22 herein and/or each Defendants either are found, maintain offices, transact business, exist and/or
23 have an agent herein.

24 **PARTIES**

25 6. At all relevant times mentioned herein, Plaintiff was a licensed nurse and a
26 resident of Florida.
27
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1 7. Upon information and belief, Defendant TPN is an employment staffing agency
2 and is, and at all times herein mentioned was, a California corporation with its principal place of
3 business in California, and duly authorized to do business herein. Defendants employ,
4 compensate and/or assign healthcare professionals to work at various kinds of healthcare
5 facilities throughout California.

6 8. Upon information and belief, Defendant Nery is, and at all relevant times
7 mentioned herein was, a managing agent, director, the Chief Executive Officer, and the Chief
8 Financial Officer of Defendant TPN, and responsible for its operational, financial, personnel
9 and/or administrative functions. Defendant Nery is personally liable for some of the claims
10 alleged in this Complaint pursuant to Labor Code § 558.1, which provides that persons acting on
11 behalf of an employer, including officers, directors, and managing agents who violate or cause
12 to be violated certain provisions of the Labor Code, are personally liable for such violations.

13 9. Upon information and belief, there is such a unity of interest and ownership
14 among Defendants that the separate personalities between them do not exist; and that, if the acts
15 complained of herein are treated as those of Defendant TPN alone, inequitable results will follow.

16 10. The true names or capacities, whether individual, associate or otherwise, of Does
17 1-20, inclusive, are unknown to Plaintiff and, therefore, Plaintiff sues these doe defendants by
18 such fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to allege
19 such names and capacities as soon as they are ascertained. Upon information and belief, each of
20 these fictitiously named defendants is responsible in some manner for the occurrences alleged
21 herein, and that Plaintiff's injuries and damages as alleged and set forth herein were proximately
22 caused by such fictitiously named defendants.

23 11. Upon information and belief, Plaintiff alleges that at all relevant times each of the
24 defendants was the principal, agent, employer, employee, partner, joint venturer, officer, director,
25 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and
26 predecessor in interest of some or all of the other defendants, and was engaged with some or all
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1 of the other defendants in a joint enterprise for profit, and bore such other relationships to some
2 or all of the other defendants so as to be liable for the conduct of each of them.

3 12. Upon information and belief, Plaintiff alleges that each defendant acted pursuant
4 to and within the scope of the relationships alleged above, that each defendant knew or should
5 have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the
6 conduct of all other defendants, and/or that each defendant acted pursuant to a conspiracy and
7 agreement to do the things alleged herein.

8 **FACTUAL ALLEGATIONS**

9
10 13. In or around March 2017, Defendants hired, assigned and paid Plaintiff to work
11 at various healthcare facilities inside California on a daily basis (“Per Diem Assignments”).
12 Defendants assigned Plaintiff to work at various healthcare facilities based on those facilities’
13 staffing needs. Therefore, at times when Plaintiff made himself available for work, Defendants
14 had no work for him. Defendants also had Plaintiff work a multi-week assignment at White
15 Memorial Hospital in 2017, and another multi-week assignment at St. Vincent Medical Center
16 in 2019 (“Multi-Week Assignments”). Plaintiff no longer works for Defendants.¹ At the
17 beginning of his employment with Defendants, Plaintiff advised them that he was a resident of
18 Florida.

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25 ¹ Despite Plaintiff’s repeated requests that Defendants produce his personnel file, wage
26 statements, and timesheets pursuant to the Labor Code and Wage Order 5 prior to the filing of
27 this Complaint, Defendant TPN, through its counsel, refused to produce any of the requested
28 records. Therefore, to the extent the allegations in this Complaint are not more specific, it is due
to Defendant TPN’s refusal to comply with its legal obligations under California law.

1 **I. Defendants’ Failure to Reimburse Their Employees for Their Travel**
2 **Expenses**

3 14. During the applicable recovery period, Defendants have had an unlawful policy
4 and/or practice of not reimbursing their employees for all their travel expenses incurred during
5 their work assignments away from home. For instance, Plaintiff was required to travel from
6 Florida to California in order to work the Per Diem Assignments for Defendants. In doing so, he
7 incurred certain travel costs in direct consequence of the discharge of his duties on behalf of
8 Defendants, including, but not limited to, housing, meals and incidentals, flight and rental car
9 costs.

10 15. Upon information and belief, during the applicable recovery period, Defendants
11 similarly failed to reimburse their other employees for their incurred business-related travel
12 expenses.

13 16. Defendants’ failure to pay its employees for travel costs incurred during their
14 work assignments away from home violates California law.

15 **II. Defendants’ Failure to Include “Travel Stipends” in Their Employees’**
16 **Regular Rates of Pay to Determine Their Overtime and Double-Time Rates**
17 **of Pay**

18 17. During the applicable recovery period, Defendants paid their non-exempt
19 employees so-called “travel stipends” for their housing, meals and incidental costs incurred while
20 working multi-week assignments away from home. However, such “travel stipends” were not
21 meant to actually or reasonably reimburse employees for such costs, but were rather a form of
22 disguised wages which, among other things, evaded California overtime laws.

23 18. In particular, Defendants reduced the so-called “travel stipends” if their traveling
24 employees, including Plaintiff, did not work their minimum required hours, even though the
25 actual or reasonable travel costs incurred by them while on assignment away from home
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1 remained the same regardless of the number of hours they worked in a given day. Defendants’
2 Provider Service Agreement given to Plaintiff states their policy in this regard:

3
4 Minimum Required Hours: Traveler is required to work a minimum number of
5 hours (“Minimum Required Hours”) per week, as defined in the Travel
6 Assignment Confirmation Form. All Housing Benefits, including but not limited
7 to housing accommodations at a Company-contracted housing facility, per diem
8 and meals and incidental allowances are contingent on Traveler completing 100%
9 of the Minimum Required Hours. Failure to complete the Minimum Required
10 Hours for whatever reason (i.e. illness, approved time off, low census, hospital
11 cancellation of shift, nurse cancellation of shift, shortened work week,
12 miscommunication of schedule, etc.) can result in prorated Housing Benefits to
13 reflect the number of days worked in the work week, temporary withholding of
14 some or all Housing Benefits or complete termination of all Housing Benefits, at
the sole determination of Company. Should Traveler call off or miss 36 hours of
scheduled work at Facility, Company reserves the sole right to terminate the
Assignment, all Agreements and Addendums, and all Housing Benefits, including
but not limited to housing accommodations, per diem and meals and incidentals
allowances. If Traveler makes up the missed hours during the assignment, the
previously withheld per diem allowance amount may be refunded.

15 19. According to the above policy, Defendants reduced their employees’ “travel
16 stipends” even when they were willing and ready to work but the facilities to which they were
17 assigned had no work for them.

18 20. Because these so-called “travel stipends” are actually a form of wages,
19 Defendants were required to include them in Plaintiff’s regular rate of pay in order to determine
20 her lawful overtime and double-time rates of pay.

21 21. Upon information and belief, during the applicable recovery period, Defendants
22 similarly failed to include the so-called “travel stipends” in their other non-exempt employees’
23 regular rates of pay to determine their lawful overtime and double-time rates of pay.

24 **III. Defendants’ Failure to Pay for All Training/Orientation Time**

25 22. During the applicable recovery period, Defendant have had a policy and/or
26 practice of requiring its non-exempt employees to review and/or complete
27 competency/training/orientation courses (or modules) without compensating them for time spent
28 on those that are facility-specific. For instance, Defendant required Plaintiff to review and

1 familiarize himself with the specific policies of St. Vincent Medical Center, such as its
2 “Electronic Medication Administration Record,” without compensating him for such time.
3 Defendants also required Plaintiff to take certain competency exams without pay that were
4 facility-specific.

5 23. Upon information and belief, Defendants also failed to compensate its other non-
6 exempt employees for time spent on competency/training/orientation courses (or modules) that
7 were specific to their assigned facilities.

8 24. Under California law, time spent attending these facility-specific
9 competency/training/orientation courses (or modules) is compensable because, among other
10 things, they are not voluntary and are directly related to employees’ jobs as they are designed to
11 make them handle their jobs more effectively as opposed to training them for another job or a
12 new or additional skill.

13
14 **IV. Defendants’ Failure to Authorize and/or Permit Lawful Meal or Rest Breaks**
15 **and Their Failure to Pay Required Premiums for Non-Complaint Breaks**

16 25. During the applicable recovery period, Defendants have had policy and/or
17 practice of not authorizing and/or permitting their non-exempt employees, including Plaintiff, to
18 take lawful meal or rest breaks under California law.

19 **CLASS ALLEGATIONS**

20 26. This action is brought and may properly be maintained as a class action pursuant
21 to the provisions of Code of Civil Procedure § 382.

22 27. Plaintiff reserves the right under California Rules of Court, Rule 1855 (b) to
23 amend or modify the description of the class, as defined below, with greater specificity or
24 division into subclasses or limitation to certain issues.

25 28. Pursuant to Code of Civil Procedure § 382, this action qualifies as a class action
26 because there is a well-defined community of interest in the litigation and the proposed class is
27 easily ascertainable.
28

1 29. For the purposes of this Complaint, “Class Period” means any time from four
2 years prior to the filing of this Complaint until the date of class certification.

3 30. The putative class Plaintiff will seek to certify is currently composed of and
4 defined as follows:

5 All of Defendants’ non-exempt employees who were assigned to work at
6 any healthcare facility inside California during the Class Period (the
7 “Class”).

8 31. **Numerosity:** Pursuant to Code of Civil Procedure § 382, the members of the Class
9 are so numerous that their individual joinder is impracticable. The precise number of class
10 members and their addresses will be known to Plaintiff through discovery. Class members may
11 be notified of the pendency of this action by mail, electronic mail, the internet, or published
12 notice.

13 32. **Common Questions Predominate:** Common questions of law and fact exist as
14 to all members of the Class and predominate over any questions that affect only individual
15 members of the Class. The predominant common questions of law and fact, among other things,
16 include, whether Defendants:

- 17 a. Failed and continue to fail to reimburse for all incurred business-related travel
18 expenditures in violation of Labor Code § 2802;
- 19 b. Failed and continue to fail to pay for all hours worked in violation of Labor Code
20 §§ 200, 223, 226, 500, 1197, 1198 and the Applicable Wage Orders;
- 21 c. Failed and continue to fail to pay all overtime wages for all overtime hours worked
22 in violation of Labor Code §§ 510, 1194, and the Applicable Wage Orders;
- 23 d. Willfully failed and continue to fail to pay minimum wage for all hours worked
24 in violation of Labor Code §§ 1194, 1197, and the Applicable Wage Orders;
- 25 e. Failed and continue to fail to authorize or permit meal periods in violation of
26 Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
- 27 f. Failed and continue to fail to authorize or permit rest periods in violation of Labor
28 Code § 226.7, and the Applicable Wage Orders;

- 1 g. Failed and continue to fail to timely furnish complete and accurate itemized wage
2 statements in violation of Labor Code § 226, and the Applicable Wage Orders;
3 h. Willfully failed to pay, without abatement or reduction, all final wages owed in
4 accordance with Labor Code §§ 201, 202, and in violation of Labor Code § 203;
5 and
6 i. Committed and continue to commit unfair business practices in violation of
7 Business & Professions Code § 17200, et seq.

8 33. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class
9 he seeks to represent because Plaintiff, as an employee of Defendants, was exposed and subjected
10 to the same unlawful business practices as the other members of the Class. Plaintiff and the
11 members of the Class he seeks to represent sustained the same types of damages and losses.

12 34. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Class.
13 Plaintiff's attorneys have experience in employment and class action matters and may adequately
14 represent the Class in this matter. Plaintiff has no adverse interests to those in the Class.

15 35. **Superiority:** A class action is superior to other available means for the fair and
16 efficient adjudication of this controversy. Because individual joinder of all members of the Class
17 is impractical, class action treatment will permit a large number of similarly situated persons to
18 prosecute their common claims in a single forum simultaneously, efficiently and without the
19 unnecessary duplication of effort and expense that numerous individual actions would engender.
20 The relatively minor amount of individual damages in question coupled with the expenses and
21 burdens of individual litigation would make it difficult or impossible for individual members of
22 the Class to redress the wrongs done to them, while important public interests will be served by
23 addressing the matter as a class action. The cost to and burden on the court system of adjudication
24 of individualized litigation would be substantial and substantially more than the costs and
25 burdens of a class action. Individualized litigation would also present the potential for
26 inconsistent or contradictory judgments.
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1 **FIRST CAUSE OF ACTION**

2 **[FAILURE TO REIMBURSE FOR BUSINESS EXPENSES]**

3 **(Plaintiff and the Class Against Defendants and Does 1-20)**

4 36. Plaintiff hereby incorporates by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 37. Labor Code § 2802 (a) provides:

7 An employer shall indemnify his or her employee for all necessary
8 expenditures or losses incurred by the employee in direct consequence of
9 the discharge of his or her duties, or of his or her obedience to the
10 directions of the employer, even though unlawful, unless the employee, at
the time of obeying the directions, believed them to be unlawful.

11 38. As alleged above, during the applicable recovery period, Defendants have had a
12 policy and/or practice of failing to pay Plaintiff and the Class for their travel expenses incurred
13 in the direct consequence of the discharge of their duties, including, but not limited to, their
14 housing, meals and incidental, flight and rental car costs when they worked assignments away
15 from home. In failing to reimburse Plaintiff and the Class for their travel expenses, Defendants
16 violated Labor Code § 2802.

17 39. As a direct and proximate result of Defendants' failure to reimburse the
18 Plaintiff and the Class for their business-related travel expenses, they have been injured in an
19 amount to be proven at trial. Among other things, Plaintiff and the Class are entitled to recover
20 for such incurred expenses, as well as interest, penalties, costs, and attorneys' fees.

21 **SECOND CAUSE OF ACTION**

22 **[FAILURE TO PAY FOR ALL HOURS WORKED]**

23 **(Plaintiff and the Class Against Defendants and Does 1-20)**

24 40. Plaintiff hereby incorporates by reference all other allegations contained in this
25 Complaint as though fully set forth herein.

26 41. At all times relevant hereto, Defendants were required to compensate their non-
27 exempt employees for all hours worked and all pay promised pursuant to the Applicable Wage
28 Orders, and Labor Code §§ 200, 223, 226, 500, 510, 1197 and 1198.

1 42. In violation of California law, Defendants have knowingly and willfully refused
2 to perform their obligations to compensate Plaintiff and the Class for all their worked hours.

3 43. As a direct result, Plaintiff and the Class have suffered, and continue to suffer,
4 substantial losses related to the use and enjoyment of such wages, lost interest on such unpaid
5 wages, incurred expenses and attorneys' fees in seeking to compel Defendants to fully perform
6 their obligations under California law, all to their respective damage in amounts according to
7 proof at time of trial, but in amounts in excess of the jurisdiction of this Court.

8 44. Defendants' conduct described herein violates Labor Code §§ 200, 223, 226, 500,
9 1197, 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5,
10 226, 558, 1194 and 1194.2, Plaintiff and the Class are entitled to recover damages for the
11 nonpayment of wages of all their worked hours, in addition to penalties, reasonable attorneys'
12 fees, expenses, and costs of suit.

13 **THIRD CAUSE OF ACTION**

14 **[FAILURE TO PAY OVERTIME]**

15 **(Plaintiff and the Class Against Defendants and Does 1-20)**

16 45. Plaintiff hereby incorporates by reference all other allegations contained in this
17 Complaint as though fully set forth herein.

18 46. Pursuant to Labor Code §§ 200, 226, 500, 510 and 1198 and the Applicable Wage
19 Orders at all times relevant hereto, Defendants were required to compensate Plaintiff and the
20 Class for all worked overtime hours, which is calculated at one and one-half times the regular
21 rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week. Defendants
22 were also required to compensate Plaintiff and the Class for all hours worked in excess of 12
23 hours in any workday at double their regular rate of pay.

24 47. Plaintiff and the Class are non-exempt employees entitled to the protections of the
25 Applicable Wage Orders, and Labor Code §§ 200, 226, 500, 510, and 1198.

26 48. Throughout their employment with Defendants, Plaintiff and the Class worked in
27 excess of 8 hours in a workday, 12 hours in a workday, and/or 40 hours in a workweek. However,
28

1 Defendants failed to properly compensate them for all their overtime and/or double-time hours
2 worked as required under the aforementioned laws.

3 49. As a direct result of aforementioned violations, Plaintiff and the Class have
4 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages,
5 lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants to
6 fully perform their obligations under state law, all to these employees' respective damage in
7 amounts according to proof at time of trial, but in amounts in excess of the jurisdiction of this
8 Court.

9 50. Pursuant to Labor Code § 200, 203, 218.5, 226, 558, and 1194, Plaintiff and the
10 Class are entitled to recover owed overtime and double-time compensation from Defendants, as
11 well as penalties, interest, attorney's fees, and costs.

12 **FOURTH CAUSE OF ACTION**

13 **[FAILURE TO PAY MINIMUM WAGE]**

14 **(Plaintiff and the Class Against Defendants and Does 1-20)**

15 51. Plaintiff hereby incorporates by reference all other allegations contained in this
16 Complaint as though fully set forth herein.

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

20 53. Pursuant to the Applicable Wage Orders "hours worked" include "the time during
21 which an employee is subject to the control of an employer, and includes all the time the
22 employee is suffered or permitted to work, whether or not required to do so."

23 54. At all times relevant hereto, Plaintiff and the Class suffered, were permitted, and
24 required to perform work for which they received no pay. As a direct and proximate result of
25 Defendants' failure to pay Plaintiff and the Class, they have been damaged in the amount of the
26 owed minimum wages.

27 55. The aforementioned acts by Defendants were undertaken with the intention of
28 depriving Plaintiff and the Class of their property and/or legal rights and causing injury to them.

1 56. Pursuant to Labor Code §§ 1194 and 1194.2, Plaintiff and the Class are entitled
2 to recover the full amount of unpaid minimum wages, liquidated damages in an equal amount,
3 interest and attorney's fees, all in a total amount subject to proof at time of trial.

4 **FIFTH CAUSE OF ACTION**

5 **[FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS]**

6 **(Plaintiff and the Class Against Defendants and Does 1-20)**

7 57. Plaintiff hereby incorporates by reference all other allegations contained in this
8 Complaint as though fully set forth herein.

9 58. Labor Code § 226.7(a) provides, "No employer shall require any employee to
10 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
11 Commission."

12 59. Labor Code § 512(a) provides, in relevant part, that: "An employer may not
13 employ an employee for a work period of more than five hours per day without providing the
14 employee with a meal period of not less than 30 minutes, except that if the total work period per
15 day of the employee is no more than six hours, the meal period may be waived by mutual consent
16 of both the employer and employee. An employer may not employ an employee for a work period
17 of more than 10 hours per day without providing the employee with a second meal period of not
18 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second
19 meal period may be waived by mutual consent of the employer and the employee only if the first
20 meal period was not waived."

21 60. Throughout their employment with Defendants, Plaintiff and the Class regularly
22 worked in excess of 5-hour work periods without being authorize and/or permitted to take a
23 lawful meal break, as required by Labor Code §§ 226.7, 512, and the Applicable Wage Orders.

24 61. Throughout their employment with Defendants, Defendants failed to pay Plaintiff
25 and the Class premium wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks.
26 As a result of violations of Labor Code §§ 226.7, 512, and the Applicable Wage Orders,
27 Defendants are liable for civil penalties pursuant to Labor Code §§ 558 and 2698 et seq.
28

1 62. Plaintiff and the Class are entitled to recover one additional hour of pay at their
2 regular rate of compensation for each workday that a meal period was not authorized and/or
3 permitted. Plaintiff and the Class are also entitled to their costs and reasonable attorneys' fees,
4 according to proof and to interest on all due and unpaid wages at the legal rate of interest.

5 **SIXTH CAUSE OF ACTION**

6 **[FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS]**

7 **(Plaintiff and the Class Against Defendants and Does 1-20)**

8 63. Plaintiff hereby incorporates by reference all other allegations contained in this
9 Complaint as though fully set forth herein

10 64. California Labor Code § 226.7(a) provides, "No employer shall require any
11 employee to work during any meal or rest period mandated by an applicable order of the
12 Industrial Welfare Commission."

13 65. The Applicable Wage Orders require that employers authorize or permit non-
14 exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of
15 each work period. The rest break is based on the total hours worked daily and must be at the
16 minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction
17 thereof.

18 66. Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an
19 employee a rest break in accordance with the Applicable Wage Orders, the employer shall pay
20 the employee one additional hour of pay at the employee's regular rate of pay for each workday
21 that the rest break is not provided. The provisions of the Applicable Wage Orders state that the
22 rest break is defined as a "net" ten minutes, which means that the rest break begins when the
23 employee reaches an area away from the work area that is appropriate for rest.

24 67. Throughout their employment with Defendants, Defendants did not authorize or
25 permit pay Plaintiff and the Class to take lawful rest breaks and failed to pay premium wages
26 mandated by Labor Code § 226.7(b) to this group of employees. As a result of violations of Labor
27 Code §§ 226.7 and the Applicable Wage Orders, Defendants are liable for civil penalties pursuant
28 to Labor Code §§ 558 and 2698 et seq.

1 68. Plaintiff and the Class are entitled to recover one additional hour of pay at their
2 regular rate of compensation with Defendants for each workday that a rest break was not
3 authorized and/or permitted. Plaintiff and the Class are also entitled to their costs and reasonable
4 attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of
5 interest.

6 **SEVENTH CAUSE OF ACTION**

7 **[FAILURE TO FURNISH ACCURATE WAGE STATEMENTS]**

8 **(Plaintiff and the Class Against Defendants and Does 1-20)**

9 69. Plaintiff hereby incorporate by reference all other allegations contained in this
10 Complaint as though fully set forth herein.

11 70. This claim is brought under Labor Code § 226(a), which sets forth reporting
12 requirements for employers when paying wages, including that every employer shall furnish each
13 of his or her employees an itemized statement in writing showing, among other things, (1) gross
14 wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable
15 hourly rates in effect during the pay period, (5) the corresponding number of hours worked at
16 each hourly rate, and (6) the name and address of the legal entity that is the employer.

17 71. Labor Code § 226(e) provides that an employee suffering injury as a result of a
18 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
19 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
20 a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
21 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled
22 to an award of costs and reasonable attorney's fees.

23 72. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
24 with wage statements accurately displaying the information required by Labor Code § 226(a).

25 73. As a direct and proximate result of Defendants conduct as alleged above, Plaintiff
26 and the Class are each entitled to a civil penalty of \$50 for the initial pay period and \$100 for
27 each subsequent pay period in which Defendants violated the reporting requirements of Labor
28 Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, Defendants

1 are subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation
2 and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails
3 to provide the employee a wage deduction statement or fails to keep the records required under
4 Labor Code § 226(a).

5 **EIGHTH CAUSE OF ACTION**

6 **[WAITING TIME PENALTIES]**

7 **(Plaintiff and the Class Against Defendants and Does 1-20)**

8 74. Plaintiff hereby incorporates by reference all other allegations contained in this
9 Complaint as though fully set forth herein.

10 75. Labor Code §§ 201 and 202 require that an employer pay all wages due to an
11 employee after said employee is discharged or quits.

12 76. Labor Code § 203 provides a penalty for the willful failure to pay all wages due
13 to an employee who is discharged or quits. This penalty consists of an amount equal to the sum
14 of the employee's wages at the employee's prior rate of pay, until the unpaid wages are paid, in
15 an amount not to exceed the equivalent of 30 days' pay.

16 77. During the applicable recovery period, Plaintiff and numerous members of the
17 Class have separated from Defendants as a result of being discharged or having voluntarily
18 resigned their employment.

19 78. While employed by Defendants, these employees were entitled to compensation
20 for the violations set forth in this Complaint. Defendants failed to pay all wages due to the
21 Plaintiff and the members of the Class who separated from Defendants, by failing to pay for,
22 among other things, all hours worked, overtime and double-time, and premium wages for
23 unlawful meal or rest breaks. Defendants are required to compensate these employees for all their
24 unpaid wages earned and an additional penalty equal to the daily earnings of such employees up
25 to an amount equal to those owed for 30 days of work.

1 **NINTH CAUSE OF ACTION**

2 **[UNFAIR BUSINESS PRACTICES]**

3 **(Plaintiff and the Class Against Defendants and Does 1-20)**

4 79. Plaintiff hereby incorporates by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 80. Defendants have engaged in unfair business practices in California by practicing,
7 employing and utilizing the employment practices outlined in this Complaint by requiring their
8 drivers and other non-exempt employees to perform the labor complained of herein without
9 proper compensation. Defendants' utilization of such unfair business practices constitutes unfair
10 competition and provides an unfair advantage over their competitors.

11 81. Plaintiff and the Class seek full restitution and disgorgement of monies, as
12 necessary and according to proof, to restore any and all monies withheld, acquired and/or
13 converted by Defendants by means of the unfair practices complained of herein.

14 82. Plaintiff and the Class seek, on their own behalf and on behalf of the general
15 public, the appointment of a receiver, as necessary. The acts complained of herein occurred, at
16 least in part, within the last four (4) years preceding the filing of the original complaint in this
17 action.

18 83. Upon information and belief, Plaintiff alleges that at all times herein mentioned
19 Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by
20 Business and Professions Code § 17200 et seq., including those set forth in the Complaint herein,
21 thereby depriving Plaintiff and the Class, and other members of the general public the minimum
22 working condition standards and conditions due to them under the California labor laws and the
23 applicable Wage Orders as specifically described herein.

24 84. Plaintiff and the Class are further entitled to and do seek both a declaration that
25 the above-described business practices are unfair, unlawful and/or fraudulent and injunctive
26 relief restraining Defendants from engaging in any of such business practices in the future. Such
27 misconduct unless and until enjoined and restrained by order of this Court, will cause great and
28 irreparable injury in that Defendants will continue to violate these California laws, represented

1 by labor statutes and the wage orders, unless specifically ordered to comply with same. This
2 expectation of future violations will require current and future employees to repeatedly and
3 continuously seek legal redress in order to gain compensation to which they are entitled under
4 California law. Plaintiff and the Class have no other adequate remedy at law to ensure future
5 compliance with the California labor laws and the Applicable Wage Orders alleged to have been
6 violated herein.

7 **TENTH CAUSE OF ACTION**

8 **[PAGA VIOLATIONS]**

9 **(By Plaintiff and the Class Against Defendants and Does 1-20)**

10 85. Plaintiff hereby incorporates by reference all other allegations contained in this
11 Complaint as though fully set forth herein.

12 86. Plaintiff and the Class are aggrieved employees as defined in Labor Code §
13 2699(a). Plaintiffs and the Class bring this cause on behalf of themselves as affected by the labor
14 law violations alleged in this Complaint.

15 87. Defendants committed violations of the Labor Code against Plaintiff and the Class
16 as alleged in this Complaint, including, but not limited to, the following:

- 17 a. Failure to reimburse for all incurred business-related travel expenditures in
18 violation of Labor Code § 2802;
- 19 b. Failure to pay for all hours worked in violation of Labor Code §§ 200, 223,
20 226, 500, 1197, 1198, and the Applicable Wage Orders;
- 21 c. Failure to pay all overtime wages for all overtime hours worked in violation
22 of Labor Code §§ 510 and 1194 and the Applicable Wage Orders;
- 23 d. Willful failure to pay minimum wage for all hours worked in violation of
24 Labor Code §§ 1194 and 1197 and the Applicable Wage Orders;
- 25 e. Failure to authorize or permit meal periods in violation of Labor Code §§
26 226.7, 512, and the Applicable Wage Orders;
- 27
28

- 1 f. Failure to authorize or permit rest periods in violation of Labor Code § 226.7,
2 and the Applicable Wage Orders;
3 g. Failure to timely furnish complete and accurate itemized wage statements in
4 violation of Labor Code § 226, and the Applicable Wage Orders; and
5 h. Willful failure to pay, without abatement or reduction, all final wages owed
6 in accordance with Labor Code §§ 201, 202, and in violation of Labor Code §
7 203.

8 88. On January 22, 2020, Plaintiff sent a written notice to Defendants and the Labor
9 and Workforce Development Agency (“LWDA”) notifying them of the specific violations and
10 the facts and theories supporting those violations. More than 60 days have passed since the date
11 the notice was mailed to Defendant and LWDA. A true and correct copy of Plaintiff’s written
12 notice to Defendant and the LWDA is attached hereto as “Exhibit A,” which Plaintiff
13 incorporates by reference as though fully set forth herein.

14 89. Plaintiff and the Class seek to recover all civil penalties and all underpaid wages
15 allowed under Labor Code §§ 558, 2698, 2699, 2699.3 and 2699.5 for which Defendants are
16 liable as a result of their violations of the Labor Code during the applicable recovery period, all
17 in an amount to be proven at trial. These include, but are not limited to, penalties pursuant to
18 Labor Code § 210 for violations of Labor Code §§ 201, 202, 203 and 204; penalties pursuant to
19 Labor Code § 226.3 for violations Labor Code § 226 and the Applicable Wage Orders; penalties
20 and underpaid wages pursuant to Labor Code § 558, including an amount sufficient to recover
21 underpaid wages due for violations of the Labor Code §§ 226.7 and 558 and the Applicable Wage
22 Orders; and penalties pursuant to Labor Code § 1197.1 for violations Labor Code §§ 1182,
23 1182.12, and 1198 and the Applicable California Wage Orders.
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, pray for
3 relief and judgment against Defendants as follows:

4 1. Certification of this action as a class action on behalf of each of the Class alleged
5 in this Complaint;

6 2. For general damages, according to proof, on each cause of action for which such
7 damages are available;

8 3. For compensatory damages, according to proof, on each cause of action for which
9 such damages are available;

10 4. For consequential damages, according to proof, on each cause of action for which
11 such damages are available

12 5. For restoration and restitution of lost wages, statutory penalties, and all other
13 remedies afforded under the Labor Code on all causes of action for violation of the Labor Code;

14 6. For declaratory and injunctive relief as requested herein;

15 7. For prejudgment and post-judgment interest according to law;

16 8. For reasonable attorneys' fees incurred in this action on those causes of action for
17 which such fees are recoverable under the law;

18 9. For costs of suit incurred in this action;

19 10. Disgorgement of all gains unjustly gained by Defendants;

20 11. All civil penalties allowed under the Labor Code;

21 12. Any other remedies, whether in law or equity, that the Court deems properly.
22

23 Dated: July 15, 2020

Respectfully submitted,
SHAKOURI LAW FIRM

24
25 *Ashkan Shakouri*
26 By: _____
27 Ashkan Shakouri
28 Sharon W. Lin
Attorneys for Plaintiff

1
2 **DEMAND FOR JURY TRIAL**

3 Plaintiff demands a jury trial on issues triable to a jury.

4 Dated: July 15, 2020

5 Respectfully submitted,
6 SHAKOURI LAW FIRM

7 By: _____
8 Ashkan Shakouri
9 Sharon W. Lin
10 Attorneys for Plaintiff
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EXHIBIT A

SHAKOURI LAW FIRM
Employment & Civil Litigation

11601 Wilshire Blvd, Fifth Floor
Los Angeles, CA 90025
Tel: (310) 575-1827
Fax: (310) 575-1890
ash@shakourilawfirm.com
shakourilawfirm.com

January 22, 2020

Via E-filing:

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

Via Certified U.S. Mail:

Total Professional Network, Inc.
3946 Wilshire Blvd.
Los Angeles, CA 90010

Re: PAGA Notice Pursuant to California Labor Code § 2699
Claimant: Melvin George
Employer: Total Professional Network, Inc. and Carrielee Nery

Dear Sir or Madam:

Claimant Melvin George (“Claimant”) has retained the Shakouri Law Firm to represent him and all other aggrieved employees, as that term is defined under Labor Code § 2699(c) (“Aggrieved Employees”)¹, for wage and hour claims against their employer Total Professional Network, Inc. and its owner and managing agent Carrielee Nery (hereafter “EMPLOYERS”).

¹ Labor Code § 2699 (c) defines an “aggrieved employee” as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

On January 16, 2020, Claimant filed a class action complaint in Los Angeles County Superior Court, on behalf of himself and all others similarly situated, a conformed copy of which is attached hereto as Exhibit 1, and incorporated by reference with the same force and effect as though fully set forth herein.

In or around March 2017, Employers hired, assigned and paid Claimant to work at various healthcare facilities inside California on a daily basis (“Per Diem Assignments”). Employers assigned Claimant to work at various healthcare facilities based on their staffing needs. Therefore, at times when Claimant made himself available for work, Claimant had no work for him. Employers also had Claimant work a multi-week assignment at White Memorial Hospital in 2017, and another multi-week assignment at St. Vincent Medical Center in 2019 (“Multi-Week Assignments”). Claimant no longer works for Employers. At the beginning of his employment with Employers, Claimant advised EMPLOYERS that he was a resident of Florida and was so during the entirety of his employment with Employers.

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

EMPLOYERS’S Failure to Reimburse for Employee-Incurred Travel Expenses

During the applicable recovery period, Employers have had an unlawful policy and/or practice of not reimbursing their employees for all their travel expenses incurred during their work assignments away from home. For instance, Claimant was required to travel from Florida to California in order to work his Per Diem Assignments for Employers. In doing so, he incurred certain travel costs in direct consequence of the discharge of his duties on behalf of Employers, including, but not limited to, housing, meals and incidentals, flight and rental car costs. Employers did not reimburse Claimant for such business-related incurred costs. Upon information and belief, during the applicable recovery period, Employers similarly failed to reimburse other Aggrieved Employees for their incurred business-related travel expenses.

Employers’ failure to pay Claimant and other Aggrieved Employees for travel costs incurred during their work assignments away from home violates Labor Code § 2802. As a result of this violation, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers’ Failure to Include “Travel Stipends” in Their Employees’ Regular Rates of Pay to Determine Their Overtime and Double-Time Rates of Pay

Under Labor Code § 200, “wages” consist of “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” In California, overtime is computed based on the regular rate of pay. The regular rate of pay includes many different kinds of

remuneration, including hourly earnings, salary, piece work earnings, commissions, certain bonuses, and the value of meals and housing.

Pursuant to Labor Code §§ 200, 226, 500, 510 and 1198 and the Applicable Wage Orders at all times relevant hereto, Employers were required to compensate Claimant and the other Aggrieved Employees for all worked overtime hours, which is calculated at one and one-half times the regular rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week. Employers were also required to compensate Claimant and the other Aggrieved Employees for all hours worked in excess of 12 hours in any workday at double their regular rate of pay.

During the applicable recovery period, Employers paid their non-exempt employees so-called “travel stipends” for their housing, meals and incidental costs incurred while working multi-week assignments away from home. However, such “travel stipends” were not meant to actually or reasonably reimburse employees for such costs, but were rather a form of disguised wages which, among other things, evaded California overtime laws.

In particular, Employers reduced the so-called “travel stipends” if their traveling employees, including Claimant, did not work their minimum required hours, even though the actual or reasonable travel costs incurred by them while on assignment away from home remained the same regardless of the number of hours they worked in a given day. Employers’ Provider Service Agreement given to Claimant states their policy in this regard:

Minimum Required Hours: Traveler is required to work a minimum number of hours (“Minimum Required Hours”) per week, as defined in the Travel Assignment Confirmation Form. All Housing Benefits, including but not limited to housing accommodations at a Company-contracted housing facility, per diem and meals and incidental allowances are contingent on Traveler completing 100% of the Minimum Required Hours. Failure to complete the Minimum Required Hours for whatever reason (i.e. illness, approved time off, low census, hospital cancellation of shift, nurse cancellation of shift, shortened work week, miscommunication of schedule, etc.) can result in prorated Housing Benefits to reflect the number of days worked in the work week, temporary withholding of some or all Housing Benefits or complete termination of all Housing Benefits, at the sole determination of Company. Should Traveler call off or miss 36 hours of scheduled work at Facility, Company reserves the sole right to terminate the Assignment, all Agreements and Addendums, and all Housing Benefits, including but not limited to housing accommodations, per diem and meals and incidentals allowances. If Traveler makes up the missed hours during the assignment, the previously withheld per diem allowance amount may be refunded.

According to the above policy, Employers reduced their employees’ “travel stipends” even when they were willing and ready to work but the facilities to which they were assigned had no work for them. Because these so-called “travel stipends” are actually a form of wages, Employers were required to include them in Claimant’s regular rate of pay in order to determine his lawful overtime and double-time rates of pay. Upon information and belief, during the applicable

recovery period, EMPLOYERS similarly failed to include the so-called “travel stipends” in their other Aggrieved Employees’ regular rates of pay to determine their lawful overtime and double-time rates of pay.

Claimant and the other Aggrieved Employees were/are non-exempt employees entitled to the protections of the Applicable Wage Orders, and Labor Code §§ 200, 226, 500, 510, and 1198. Throughout their employment with EMPLOYERS, Claimant and the other Aggrieved Employees worked in excess of 8 hours in a workday, 12 hours in a workday, and/or 40 hours in a workweek.

Under California law, Employers were required to include the so-called “travel stipend” payments made to Claimant and the other Aggrieved Employees in their regular rates of pay in order to determine their lawful overtime and double-time pay. However, Employers failed to include the value of the stipend payments, including, but not limited to, housing, meals and incidentals payments, whether paid in cash or in kind, in the regular rates of pay for Claimant and the other Aggrieved Employees for purposes of calculating their overtime and double-time pay.

Under Labor Code § 200, 203, 218.5, 226, 558, and 1194, Claimant and the other Aggrieved Employees are entitled to recover their owed overtime and double-time compensation from Employers, plus interest penalties, attorney's fees, expenses, and costs of suit.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

EMPLOYERS’S Failure to Pay for All Training/Orientation Time

During the applicable recovery period, Employers have had a policy and/or practice of requiring their non-exempt employees to review and/or complete competency/training/orientation courses (or modules) without compensating them for time spent on those that are facility-specific. For instance, Employers required Claimant to review and familiarize himself with the specific policies of St. Vincent Medical Center, such as its “Electronic Medication Administration Record,” without compensating him for such time. Employers also required Claimant to take certain competency exams that were facility-specific without pay. Upon information and belief, Employers also failed to compensate other Aggrieved Employees for time spent on competency/training/orientation courses (or modules) that were specific to their assigned facilities.

Under California law, time spent attending these facility-specific competency/training/orientation courses (or modules) is compensable because, among other things, they are not voluntary and are directly related to employees’ jobs as they are designed to make them handle their jobs more effectively as opposed to training them for another job or a new or additional skill.

In California, an employer is required to compensate its non-exempt employees for all hours worked pursuant to the Applicable Wage Orders and Labor Code §§ 200, 223, 226, 500, 510, 1197 and 1198. Furthermore, under Labor Code §§ 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying at least minimum wage for all time worked as required by the Applicable Wage Orders.

Thus, by failing to compensate Claimant and the other Aggrieved Employees for time spent reviewing and/or completing competency/training/orientation courses (or modules) that are facility-specific, Employers failed to pay these employees their promised rates of pay, or even minimum wage.

In violation of California law, Employers have intentionally and willfully refused to perform their obligations to compensate Claimant and the other Aggrieved Employees for all wages earned and all worked hours. As a direct result, they have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such unpaid wages, incurred expenses and attorneys' fees in seeking to compel Employers to fully perform their obligations under California law.

Employers' conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1194, 1194.2, 1197 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5, 226, 558, 1194 and 1194.2, Claimant and the other Aggrieved Employees are entitled to recover damages for the nonpayment of wages of all their worked hours in addition to penalties, liquidated damages, reasonable attorneys' fees, expenses, and costs of suit.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Authorize and/or Permit Lawful Meal Breaks

Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

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

During his employment with Employers, the facilities that Employers assigned Claimant to work did not authorize and/or permit him to take his first or second meal breaks that complied with California law. Upon information and belief, during the applicable recovery period, the facilities which Employer assigned the other Aggrieved Employees to work also did not authorize and/or permit them to take their first or second meal breaks that complied with California law.

Under Labor Code § 226.7(c), Claimant and the other Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation for each workday that a meal period was not authorized and/or permitted. Throughout their employment with Employers, Employers failed to pay Claimant and the other Aggrieved Employees premium wages mandated

by Labor Code § 226.7(c) for these unlawful meal breaks. Claimant and the other Aggrieved Employees are also entitled to recover their costs and reasonable attorneys' fees, plus interest.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Provide Rest Breaks

Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

The Applicable Wage Orders require that employers authorize or permit non-exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of each work period. The rest break is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof.

Pursuant to Labor Code § 226.7(c), if an employer fails to authorize or permit an employee a rest break in accordance with the Applicable Wage Orders, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the rest break is not provided. The provisions of the Applicable Wage Orders state that the rest break is defined as a "net" ten minutes, which means that the rest break begins when the employee reaches an area away from the work area that is appropriate for rest.

During his employment with Employers, the facilities that Employers assigned Claimant to work did not authorize and/or permit him to take his rest breaks that complied with California law. Upon information and belief, during the applicable recovery period, the facilities that Defendant assigned the other Aggrieved Employees to work also did not authorize and/or permit them to take their rest breaks that complied with California law. Employers also failed to pay failed to pay premium wages mandated by Labor Code § 226.7(c) to this group of employees.

Claimant and Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation with Employers for each workday that a rest break was not authorized and/or permitted. Claimant and the other Aggrieved Employees are also entitled to their costs and reasonable attorneys' fees, plus interest.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Pay Wages Due Upon Termination

Labor Code §§ 201 and 202 require that an employer pay all wages due to an employee after said employee is discharged or quits. Labor Code § 203 provides a penalty for the willful failure to pay all wages due to an employee who is discharged or quits. This penalty consists of an amount equal to the sum of the employee's wages at the employee's prior rate of pay, until the unpaid wages are paid, in an amount not to exceed the equivalent of 30 days' pay.

At all relevant times hereto, Claimant and some of the Aggrieved Employees employed have separated from Employers as a result of being discharged or having voluntarily resigned their employment.

While employed by Employers, these Aggrieved Employees, including Claimant, were entitled to compensation for the violations set forth herein. Employers failed to pay all wages due to the Claimant and the other Aggrieved Employees who separated from Employers, by failing to pay for, among other things, all hours worked, overtime and double-time, and premium wages for unlawful meal and rest breaks. Employers are required to compensate these employees for all their unpaid wages earned and an additional penalty equal to the daily earnings of such employees up to an amount equal to those owed for 30 days of work.

Furthermore, upon information and belief, Employers are a “temporary staffing employer” under Labor Code § 201.3. Subsection (b) of that Section relevantly provides, “...if an employee of a temporary services employer is assigned to work for a client, that employee’s wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week. A temporary services employer shall be deemed to have timely paid wages upon completion of an assignment if wages are paid in compliance with this subdivision.”

Due to the violations alleged herein, during the applicable recovery period, Employer did not pay Claimant and the other Aggrieved Employees all their owed wages on a weekly basis as required under Labor Code § 201.3(b).

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code § 558 & 2698 *et seq.*

Employers’ Failure to Furnish Accurate Wage Statements

Labor Code § 226(a) sets forth reporting requirements for employers when paying wages, including that every employer shall furnish each of his or her employees an itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable hourly rates in effect during the pay period, (5) the corresponding number of hours worked at each hourly rate, and (6) the name and address of the legal entity that is the employer.

Labor Code § 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

Employers knowingly and intentionally failed to provide Claimant and the other Aggrieved Employees with paycheck deduction statements accurately displaying the information required by Labor Code § 226(a).

As a direct and proximate result of Employers' conduct as alleged above, Claimant and the other Aggrieved Employees are each entitled to a civil penalty of \$50 for the initial pay period and \$100 for each subsequent pay period in which Employers violated the reporting requirements of Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, Employers are subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required under Labor Code § 226(a).

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

All Permitted Penalties Will Be Sought

Without limitation, Claimant and the other Aggrieved Employees will further seek any and all penalties under Labor Code §§ 558 & 2698 *et. seq.* This includes, each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Conclusion

Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may amend his complaint and pursue his claims as a representative action in civil court.

Respectfully Submitted,

Ashkan Shakouri

Ashkan Shakouri
Attorney for Claimant and all other
Aggrieved Employees

EXHIBIT 1

COPY

SHAKOURI LAW FIRM

Ashkan Shakouri, Esq. [SBN 242072]

ash@shakourilawfirm.com

Sharon W. Lin, Esq. [SBN 260443]

Sharon@shakourilawfirm.com

11601 Wilshire Blvd., Fifth Floor

Los Angeles, California 90025

Telephone: (310) 575-1827

Fax: (310) 575-1872

Attorneys for Plaintiff

**UNFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

JAN 16 2020

Sherri R. Carter, Executive Officer/Clerk
By: Tanya Herrera, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF LOS ANGELES COUNTY

MELVIN GEORGE, on behalf of himself and
others similarly situated

Plaintiff,

v.

TOTAL PROFESSIONAL NETWORK,
INC.; CARRIELEE NERY; and DOES 1-20,
inclusive

Defendants.

Case No: **20STCV01913**

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
2. FAILURE TO PAY FOR ALL HOURS WORKED
3. FAILURE TO PAY OVERTIME
4. FAILURE TO PAY MINIMUM WAGE
5. FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS
6. FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS
7. FAILURE TO FURNISH ACCURATE WAGE STATEMENTS
8. WAITING TIME PENALTIES
9. UNFAIR BUSINESS PRACTICES

[AMOUNT DEMANDED EXCEEDS
\$25,000.00]

1 PLAINTIFF MELVIN GEORGE ("Plaintiff"), individual, on behalf of himself and all
2 others similarly situated, as defined below, hereby alleges the following facts and claims against
3 TOTAL PROFESSIONAL NETWORK, INC. (dba Core Medstaff) ("Defendant TPN"), and
4 CARRIELEE NERY ("Defendant Nery"), and respectfully requests a trial by jury of all issues
5 and causes of action so triable. Unless otherwise specified, Defendant TPN, Defendant Nery, and
6 Does 1-20 shall collectively be referred to herein as "Defendants."

7 INTRODUCTION

8
9 1. This class action complaint challenges Defendants' past and ongoing unlawful
10 employment practices and policies on behalf of Plaintiff and other similarly situated former and
11 current employees of Defendants, whose rights they violated and continue to violate under
12 California law.

13 2. Specifically, as to Plaintiff and others similarly situated, Defendants have
14 uniformly and systematically:

15 a. Failed and continue to fail to reimburse for all incurred business-related
16 travel expenditures in violation of Labor Code § 2802;

17 b. Failed and continue to fail to pay for all hours worked in violation of Labor
18 Code §§ 200, 223, 226, 500, 1197, 1198, and the applicable California Industrial Welfare
19 Commission Wage Orders ("Applicable Wage Orders");

20 c. Failed and continue to fail to pay all overtime wages for all overtime hours
21 worked in violation of Labor Code §§ 510 and 1194 and the Applicable Wage Orders;

22 d. Willfully failed and continue to fail to pay minimum wage for all hours
23 worked in violation of Labor Code §§ 1194 and 1197 and the Applicable Wage Orders;

24 e. Failed and continue to fail to authorize or permit meal periods in violation
25 of Labor Code §§ 226.7, 512, and the Applicable Wage Orders;

26 f. Failed and continue to fail to authorize or permit rest periods in violation
27 of Labor Code §§ 226.7, and the Applicable Wage Orders;
28

1 g. Failed and continue to fail to timely furnish complete and accurate
2 itemized wage statements in violation of Labor Code § 226, and the Applicable Wage Orders;

3 h. Willfully failed to pay, without abatement or reduction, all final wages
4 owed in accordance with Labor Code §§ 201, 202, and in violation of Labor Code § 203; and

5 i. Committed and continue to commit unfair business practices in violation
6 of Business & Professions Code § 17200, et seq.

7 3. The acts complained of herein occurred and will occur, at least in part, within the
8 time-period of four (4) years preceding the filing of the original Complaint, up to and through
9 the time of trial.

10 **JURISDICTION AND VENUE**

11 4. This Court has jurisdiction over Defendants because they are entities or
12 individuals with sufficient minimum contacts in California, and/or because they intentionally
13 availed themselves of the California market so as to render the exercise of jurisdiction over them
14 by the California courts consistent with traditional notions of fair play and justice.

15 5. Pursuant to Code of Civil Procedure § 395(a) venue is proper in this County since
16 at least some of the acts and omissions that are the subject matter of this Complaint occurred
17 herein and/or each Defendants either are found, maintain offices, transact business, exist and/or
18 have an agent herein.

19 **PARTIES**

20 6. At all relevant times mentioned herein, Plaintiff was a licensed nurse and a
21 resident of Florida.

22 7. Upon information and belief, Defendant TPN is an employment staffing agency
23 and is, and at all times herein mentioned was, a California corporation with its principal place of
24 business in California, and duly authorized to do business herein. Defendants employ,
25 compensate and/or assign healthcare professionals to work at various kinds of healthcare
26 facilities throughout California.
27
28

1 8. Upon information and belief, Defendant Nery is, and at all relevant times
2 mentioned herein was, a managing agent, director, the Chief Executive Officer, and the Chief
3 Financial Officer of Defendant TPN, and responsible for its operational, financial, personnel
4 and/or administrative functions. Defendant Nery is personally liable for some of the claims
5 alleged in this Complaint pursuant to Labor Code § 558.1, which provides that persons acting on
6 behalf of an employer, including officers, directors, and managing agents who violate or cause
7 to be violated certain provisions of the Labor Code, are personally liable for such violations.

8 9. Upon information and belief, there is such a unity of interest and ownership
9 among Defendants that the separate personalities between them do not exist; and that, if the acts
10 complained of herein are treated as those of Defendant TPN alone, inequitable results will follow.

11 10. The true names or capacities, whether individual, associate or otherwise, of Does
12 1-20, inclusive, are unknown to Plaintiff and, therefore, Plaintiff sues these doe defendants by
13 such fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to allege
14 such names and capacities as soon as they are ascertained. Upon information and belief, each of
15 these fictitiously named defendants is responsible in some manner for the occurrences alleged
16 herein, and that Plaintiff's injuries and damages as alleged and set forth herein were proximately
17 caused by such fictitiously named defendants.

18 11. Upon information and belief, Plaintiff alleges that at all relevant times each of the
19 defendants was the principal, agent, employer, employee, partner, joint venturer, officer, director,
20 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and
21 predecessor in interest of some or all of the other defendants, and was engaged with some or all
22 of the other defendants in a joint enterprise for profit, and bore such other relationships to some
23 or all of the other defendants so as to be liable for the conduct of each of them.

24 12. Upon information and belief, Plaintiff alleges that each defendant acted pursuant
25 to and within the scope of the relationships alleged above, that each defendant knew or should
26 have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the
27
28

1 conduct of all other defendants, and/or that each defendant acted pursuant to a conspiracy and
2 agreement to do the things alleged herein.

3 **FACTUAL ALLEGATIONS**

4 13. In or around March 2017, Defendants hired, assigned and paid Plaintiff to work
5 at various healthcare facilities inside California on a daily basis ("Per Diem Assignments").
6 Defendants assigned Plaintiff to work at various healthcare facilities based on those facilities'
7 staffing needs. Therefore, at times when Plaintiff made himself available for work, Defendants
8 had no work for him. Defendants also had Plaintiff work a multi-week assignment at White
9 Memorial Hospital in 2017, and another multi-week assignment at St. Vincent Medical Center
10 in 2019 ("Multi-Week Assignments"). Plaintiff no longer works for Defendants.¹ At the
11 beginning of his employment with Defendants, Plaintiff advised them that he was a resident of
12 Florida.
13

14 **I. Defendants' Failure to Reimburse Their Employees for Their Travel**
15 **Expenses**

16 14. During the applicable recovery period, Defendants have had an unlawful policy
17 and/or practice of not reimbursing their employees for all their travel expenses incurred during
18 their work assignments away from home. For instance, Plaintiff was required to travel from
19 Florida to California in order to work the Per Diem Assignments for Defendants. In doing so, he
20

21
22
23
24 ¹ Despite Plaintiff's repeated requests that Defendants produce his personnel file, wage
25 statements, and timesheets pursuant to the Labor Code and Wage Order 5 prior to the filing of
26 this Complaint, Defendant TPN, through its counsel, refused to produce any of the requested
27 records. Therefore, to the extent the allegations in this Complaint are not more specific, it is due
28 to Defendant TPN's refusal to comply with its legal obligations under California law.

1 incurred certain travel costs in direct consequence of the discharge of his duties on behalf of
2 Defendants, including, but not limited to, housing, meals and incidentals, flight and rental car
3 costs.

4 15. Upon information and belief, during the applicable recovery period, Defendants
5 similarly failed to reimburse their other employees for their incurred business-related travel
6 expenses.

7 16. Defendants' failure to pay its employees for travel costs incurred during their
8 work assignments away from home violates California law.

9
10 **II. Defendants' Failure to Include "Travel Stipends" in Their Employees'**
11 **Regular Rates of Pay to Determine Their Overtime and Double-Time Rates**
12 **of Pay**

13 17. During the applicable recovery period, Defendants paid their non-exempt
14 employees so-called "travel stipends" for their housing, meals and incidental costs incurred while
15 working multi-week assignments away from home. However, such "travel stipends" were not
16 meant to actually or reasonably reimburse employees for such costs, but were rather a form of
17 disguised wages which, among other things, evaded California overtime laws.

18 18. In particular, Defendants reduced the so-called "travel stipends" if their traveling
19 employees, including Plaintiff, did not work their minimum required hours, even though the
20 actual or reasonable travel costs incurred by them while on assignment away from home
21 remained the same regardless of the number of hours they worked in a given day. Defendants'
22 Provider Service Agreement given to Plaintiff states their policy in this regard:

23
24 Minimum Required Hours: Traveler is required to work a minimum number of
25 hours ("Minimum Required Hours") per week, as defined in the Travel
26 Assignment Confirmation Form. All Housing Benefits, including but not limited
27 to housing accommodations at a Company-contracted housing facility, per diem
28 and meals and incidental allowances are contingent on Traveler completing 100%
of the Minimum Required Hours. Failure to complete the Minimum Required
Hours for whatever reason (i.e. illness, approved time off, low census, hospital
cancellation of shift, nurse cancellation of shift, shortened work week,

1 miscommunication of schedule, etc.) can result in prorated Housing Benefits to
2 reflect the number of days worked in the work week, temporary withholding of
3 some or all Housing Benefits or complete termination of all Housing Benefits, at
4 the sole determination of Company. Should Traveler call off or miss 36 hours of
5 scheduled work at Facility, Company reserves the sole right to terminate the
6 Assignment, all Agreements and Addendums, and all Housing Benefits, including
7 but not limited to housing accommodations, per diem and meals and incidentals
8 allowances. If Traveler makes up the missed hours during the assignment, the
9 previously withheld per diem allowance amount may be refunded.

10 19. According to the above policy, Defendants reduced their employees' "travel
11 stipends" even when they were willing and ready to work but the facilities to which they were
12 assigned had no work for them.

13 20. Because these so-called "travel stipends" are actually a form of wages,
14 Defendants were required to include them in Plaintiff's regular rate of pay in order to determine
15 her lawful overtime and double-time rates of pay.

16 21. Upon information and belief, during the applicable recovery period, Defendants
17 similarly failed to include the so-called "travel stipends" in their other non-exempt employees'
18 regular rates of pay to determine their lawful overtime and double-time rates of pay.

19 **III. Defendants' Failure to Pay for All Training/Orientation Time**

20 22. During the applicable recovery period, Defendant have had a policy and/or
21 practice of requiring its non-exempt employees to review and/or complete
22 competency/training/orientation courses (or modules) without compensating them for time spent
23 on those that are facility-specific. For instance, Defendant required Plaintiff to review and
24 familiarize himself with the specific policies of St. Vincent Medical Center, such as its
25 "Electronic Medication Administration Record," without compensating him for such time.
26 Defendants also required Plaintiff to take certain competency exams without pay that were
27 facility-specific.

28 23. Upon information and belief, Defendants also failed to compensate its other non-
exempt employees for time spent on competency/training/orientation courses (or modules) that
were specific to their assigned facilities.

1 24. Under California law, time spent attending these facility-specific
2 competency/training/orientation courses (or modules) is compensable because, among other
3 things, they are not voluntary and are directly related to employees' jobs as they are designed to
4 make them handle their jobs more effectively as opposed to training them for another job or a
5 new or additional skill.

6 **IV. Defendants' Failure to Authorize and/or Permit Lawful Meal or Rest Breaks**
7 **and Their Failure to Pay Required Premiums for Non-Complaint Breaks**

8 25. During the applicable recovery period, Defendants have had policy and/or
9 practice of not authorizing and/or permitting their non-exempt employees, including Plaintiff, to
10 take lawful meal or rest breaks under California law.

11 **CLASS ALLEGATIONS**

12 26. This action is brought and may properly be maintained as a class action pursuant
13 to the provisions of Code of Civil Procedure § 382.

14 27. Plaintiff reserves the right under California Rules of Court, Rule 1855 (b) to
15 amend or modify the description of the class, as defined below, with greater specificity or
16 division into subclasses or limitation to certain issues.

17 28. Pursuant to Code of Civil Procedure § 382, this action qualifies as a class action
18 because there is a well-defined community of interest in the litigation and the proposed class is
19 easily ascertainable.

20 29. For the purposes of this Complaint, "Class Period" means any time from four
21 years prior to the filing of this Complaint until the date of class certification.

22 30. The putative class Plaintiff will seek to certify is currently composed of and
23 defined as follows:

24 All of Defendants' non-exempt employees who were assigned to work at
25 any healthcare facility inside California during the Class Period (the
26 "Class").

27 31. **Numerosity:** Pursuant to Code of Civil Procedure § 382, the members of the Class
28 are so numerous that their individual joinder is impracticable. The precise number of class

1 members and their addresses will be known to Plaintiff through discovery. Class members may
2 be notified of the pendency of this action by mail, electronic mail, the internet, or published
3 notice.

4 32. **Common Questions Predominate:** Common questions of law and fact exist as
5 to all members of the Class and predominate over any questions that affect only individual
6 members of the Class. The predominant common questions of law and fact, among other things,
7 include, whether Defendants:

- 8 a. Failed and continue to fail to reimburse for all incurred business-related travel
9 expenditures in violation of Labor Code § 2802;
- 10 b. Failed and continue to fail to pay for all hours worked in violation of Labor Code
11 §§ 200, 223, 226, 500, 1197, 1198 and the applicable California Industrial Welfare
12 Commission Wage Orders (“Applicable Wage Orders”);
- 13 c. Failed and continue to fail to pay all overtime wages for all overtime hours worked
14 in violation of Labor Code §§ 510, 1194, and the Applicable Wage Orders;
- 15 d. Willfully failed and continue to fail to pay minimum wage for all hours worked
16 in violation of Labor Code §§ 1194, 1197, and the Applicable Wage Orders;
- 17 e. Failed and continue to fail to authorize or permit meal periods in violation of
18 Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
- 19 f. Failed and continue to fail to authorize or permit rest periods in violation of Labor
20 Code §§ 226.7, and the Applicable Wage Orders;
- 21 g. Failed and continue to fail to timely furnish complete and accurate itemized wage
22 statements in violation of Labor Code § 226, and the Applicable Wage Orders;
- 23 h. Willfully failed to pay, without abatement or reduction, all final wages owed in
24 accordance with Labor Code §§ 201, 202, and in violation of Labor Code § 203;
25 and
- 26 i. Committed and continue to commit unfair business practices in violation of
27 Business & Professions Code § 17200, et seq.

1 33. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class
2 he seeks to represent because Plaintiff, as an employee of Defendants, was exposed and subjected
3 to the same unlawful business practices as the other members of the Class. Plaintiff and the
4 members of the Class he seeks to represent sustained the same types of damages and losses.

5 34. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Class.
6 Plaintiff's attorneys have experience in employment and class action matters and may adequately
7 represent the Class in this matter. Plaintiff has no adverse interests to those in the Class.

8 35. **Superiority:** A class action is superior to other available means for the fair and
9 efficient adjudication of this controversy. Because individual joinder of all members of the Class
10 is impractical, class action treatment will permit a large number of similarly situated persons to
11 prosecute their common claims in a single forum simultaneously, efficiently and without the
12 unnecessary duplication of effort and expense that numerous individual actions would engender.
13 The relatively minor amount of individual damages in question coupled with the expenses and
14 burdens of individual litigation would make it difficult or impossible for individual members of
15 the Class to redress the wrongs done to them, while important public interests will be served by
16 addressing the matter as a class action. The cost to and burden on the court system of adjudication
17 of individualized litigation would be substantial and substantially more than the costs and
18 burdens of a class action. Individualized litigation would also present the potential for
19 inconsistent or contradictory judgments.

20 **FIRST CAUSE OF ACTION**

21 **[FAILURE TO REIMBURSE FOR BUSINESS EXPENSES]**

22 **(Plaintiff and the Class Against Defendants and Does 1-20)**

23 36. Plaintiff hereby incorporates by reference all other allegations contained in this
24 Complaint as though fully set forth herein.

25 37. Labor Code § 2802 (a) provides:

26
27 An employer shall indemnify his or her employee for all necessary
28 expenditures or losses incurred by the employee in direct consequence of
 the discharge of his or her duties, or of his or her obedience to the

1 directions of the employer, even though unlawful, unless the employee, at
2 the time of obeying the directions, believed them to be unlawful.

3 38. As alleged above, during the applicable recovery period, Defendants have had a
4 policy and/or practice of failing to pay Plaintiff and the Class for their travel expenses incurred
5 in the direct consequence of the discharge of their duties, including, but not limited to, their
6 housing, meals and incidental, flight and rental car costs when they worked assignments away
7 from home. In failing to reimburse Plaintiff and the Class for their travel expenses, Defendants
8 violated Labor Code § 2802.

9 39. As a direct and proximate result of Defendants' failure to reimburse the
10 Plaintiff and the Class for their business-related travel expenses, they have been injured in an
11 amount to be proven at trial. Among other things, Plaintiff and the Class are entitled to recover
12 for such incurred expenses, as well as interest, penalties, costs, and attorneys' fees.

13 **SECOND CAUSE OF ACTION**

14 **[FAILURE TO PAY FOR ALL HOURS WORKED]**

15 **(Plaintiff and the Class Against Defendants and Does 1-20)**

16 40. Plaintiff hereby incorporates by reference all other allegations contained in this
17 Complaint as though fully set forth herein.

18 41. At all times relevant hereto, Defendants were required to compensate their non-
19 exempt employees for all hours worked and all pay promised pursuant to the Applicable Wage
20 Orders, and Labor Code §§ 200, 223, 226, 500, 510, 1197 and 1198.

21 42. In violation of California law, Defendants have knowingly and willfully refused
22 to perform their obligations to compensate Plaintiff and the Class for all their worked hours.

23 43. As a direct result, Plaintiff and the Class have suffered, and continue to suffer,
24 substantial losses related to the use and enjoyment of such wages, lost interest on such unpaid
25 wages, incurred expenses and attorneys' fees in seeking to compel Defendants to fully perform
26 their obligations under California law, all to their respective damage in amounts according to
27 proof at time of trial, but in amounts in excess of the jurisdiction of this Court.
28

1 44. Defendants' conduct described herein violates Labor Code §§ 200, 223, 226, 500,
2 1197, 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5,
3 226, 558, 1194 and 1194.2, Plaintiff and the Class are entitled to recover damages for the
4 nonpayment of wages of all their worked hours, in addition to penalties, reasonable attorneys'
5 fees, expenses, and costs of suit.

6 **THIRD CAUSE OF ACTION**

7 **[FAILURE TO PAY OVERTIME]**

8 **(Plaintiff and the Class Against Defendants and Does 1-20)**

9 45. Plaintiff hereby incorporates by reference all other allegations contained in this
10 Complaint as though fully set forth herein.

11 46. Pursuant to Labor Code §§ 200, 226, 500, 510 and 1198 and the Applicable Wage
12 Orders at all times relevant hereto, Defendants were required to compensate Plaintiff and the
13 Class for all worked overtime hours, which is calculated at one and one-half times the regular
14 rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week. Defendants
15 were also required to compensate Plaintiff and the Class for all hours worked in excess of 12
16 hours in any workday at double their regular rate of pay.

17 47. Plaintiff and the Class are non-exempt employees entitled to the protections of the
18 Applicable Wage Orders, and Labor Code §§ 200, 226, 500, 510, and 1198.

19 48. Throughout their employment with Defendants, Plaintiff and the Class worked in
20 excess of 8 hours in a workday, 12 hours in a workday, and/or 40 hours in a workweek. However,
21 Defendants failed to properly compensate them for all their overtime and/or double-time hours
22 worked as required under the aforementioned laws.

23 49. As a direct result of aforementioned violations, Plaintiff and the Class have
24 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages,
25 lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants to
26 fully perform their obligations under state law, all to these employees' respective damage in
27 amounts according to proof at time of trial, but in amounts in excess of the jurisdiction of this
28 Court.

1 50. Pursuant to Labor Code § 200, 203, 218.5, 226, 558, and 1194, Plaintiff and the
2 Class are entitled to recover owed overtime and double-time compensation from Defendants, as
3 well as penalties, interest, attorney's fees, and costs.

4 **FOURTH CAUSE OF ACTION**

5 **[FAILURE TO PAY MINIMUM WAGE]**

6 **(Plaintiff and the Class Against Defendants and Does 1-20)**

7 51. Plaintiff hereby incorporates by reference all other allegations contained in this
8 Complaint as though fully set forth herein.

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

12 53. Pursuant to the Applicable Wage Orders "hours worked" include "the time during
13 which an employee is subject to the control of an employer, and includes all the time the
14 employee is suffered or permitted to work, whether or not required to do so."

15 54. At all times relevant hereto, Plaintiff and the Class suffered, were permitted, and
16 required to perform work for which they received no pay. As a direct and proximate result of
17 Defendants' failure to pay Plaintiff and the Class, they have been damaged in the amount of the
18 owed minimum wages.

19 55. The aforementioned acts by Defendants were undertaken with the intention of
20 depriving Plaintiff and the Class of their property and/or legal rights and causing injury to them.

21 56. Pursuant to Labor Code §§ 1194 and 1194.2, Plaintiff and the Class are entitled
22 to recover the full amount of unpaid minimum wages, liquidated damages in an equal amount,
23 interest and attorney's fees, all in a total amount subject to proof at time of trial.

24 **FIFTH CAUSE OF ACTION**

25 **[FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS]**

26 **(Plaintiff and the Class Against Defendants and Does 1-20)**

27 57. Plaintiff hereby incorporates by reference all other allegations contained in this
28 Complaint as though fully set forth herein.

1 58. Labor Code § 226.7(a) provides, "No employer shall require any employee to
2 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
3 Commission."

4 59. Labor Code § 512(a) provides, in relevant part, that: "An employer may not
5 employ an employee for a work period of more than five hours per day without providing the
6 employee with a meal period of not less than 30 minutes, except that if the total work period per
7 day of the employee is no more than six hours, the meal period may be waived by mutual consent
8 of both the employer and employee. An employer may not employ an employee for a work period
9 of more than 10 hours per day without providing the employee with a second meal period of not
10 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second
11 meal period may be waived by mutual consent of the employer and the employee only if the first
12 meal period was not waived."

13 60. Throughout their employment with Defendants, Plaintiff and the Class regularly
14 worked in excess of 5-hour work periods without being authorize and/or permitted to take a
15 lawful meal break, as required by Labor Code §§ 226.7, 512, and the Applicable Wage Orders.

16 61. Throughout their employment with Defendants, Defendants failed to pay Plaintiff
17 and the Class premium wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks.
18 As a result of violations of Labor Code §§ 226.7, 512, and the Applicable Wage Orders,
19 Defendants are liable for civil penalties pursuant to Labor Code §§ 558 and 2698 et seq.

20 62. Plaintiff and the Class are entitled to recover one additional hour of pay at their
21 regular rate of compensation for each workday that a meal period was not authorized and/or
22 permitted. Plaintiff and the Class are also entitled to their costs and reasonable attorneys' fees,
23 according to proof and to interest on all due and unpaid wages at the legal rate of interest.

24 **SIXTH CAUSE OF ACTION**

25 **[FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS]**

26 **(Plaintiff and the Class Against Defendants and Does 1-20)**

27 63. Plaintiff hereby incorporates by reference all other allegations contained in this
28 Complaint as though fully set forth herein

1 64. California Labor Code § 226.7(a) provides, "No employer shall require any
2 employee to work during any meal or rest period mandated by an applicable order of the
3 Industrial Welfare Commission."

4 65. The Applicable Wage Orders require that employers authorize or permit non-
5 exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of
6 each work period. The rest break is based on the total hours worked daily and must be at the
7 minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction
8 thereof.

9 66. Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an
10 employee a rest break in accordance with the Applicable Wage Orders, the employer shall pay
11 the employee one additional hour of pay at the employee's regular rate of pay for each workday
12 that the rest break is not provided. The provisions of the Applicable Wage Orders state that the
13 rest break is defined as a "net" ten minutes, which means that the rest break begins when the
14 employee reaches an area away from the work area that is appropriate for rest.

15 67. Throughout their employment with Defendants, Defendants did not authorize or
16 permit pay Plaintiff and the Class to take lawful rest breaks and failed to pay premium wages
17 mandated by Labor Code § 226.7(b) to this group of employees. As a result of violations of Labor
18 Code §§ 226.7 and the Applicable Wage Orders, Defendants are liable for civil penalties pursuant
19 to Labor Code §§ 558 and 2698 et seq.

20 68. Plaintiff and the Class are entitled to recover one additional hour of pay at their
21 regular rate of compensation with Defendants for each workday that a rest break was not
22 authorized and/or permitted. Plaintiff and the Class are also entitled to their costs and reasonable
23 attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of
24 interest.

1 **SEVENTH CAUSE OF ACTION**

2 **[FAILURE TO FURNISH ACCURATE WAGE STATEMENTS]**

3 **(Plaintiff and the Class Against Defendants and Does 1-20)**

4 69. Plaintiff hereby incorporate by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 70. This claim is brought under Labor Code § 226(a), which sets forth reporting
7 requirements for employers when paying wages, including that every employer shall furnish each
8 of his or her employees an itemized statement in writing showing, among other things, (1) gross
9 wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable
10 hourly rates in effect during the pay period, (5) the corresponding number of hours worked at
11 each hourly rate, and (6) the name and address of the legal entity that is the employer.

12 71. Labor Code § 226(e) provides that an employee suffering injury as a result of a
13 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
14 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
15 a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
16 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled
17 to an award of costs and reasonable attorney's fees.

18 72. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
19 with wage statements accurately displaying the information required by Labor Code § 226(a).

20 73. As a direct and proximate result of Defendants conduct as alleged above, Plaintiff
21 and the Class are each entitled to a civil penalty of \$50 for the initial pay period and \$100 for
22 each subsequent pay period in which Defendants violated the reporting requirements of Labor
23 Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, Defendants
24 are subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation
25 and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails
26 to provide the employee a wage deduction statement or fails to keep the records required under
27 Labor Code § 226(a).
28

1 **EIGHTH CAUSE OF ACTION**

2 **[WAITING TIME PENALTIES]**

3 **(Plaintiff and the Class Against Defendants and Does 1-20)**

4 74. Plaintiff hereby incorporates by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 75. Labor Code §§ 201 and 202 require that an employer pay all wages due to an
7 employee after said employee is discharged or quits.

8 76. Labor Code § 203 provides a penalty for the willful failure to pay all wages due
9 to an employee who is discharged or quits. This penalty consists of an amount equal to the sum
10 of the employee's wages at the employee's prior rate of pay, until the unpaid wages are paid, in
11 an amount not to exceed the equivalent of 30 days' pay.

12 77. During the applicable recovery period, Plaintiff and numerous members of the
13 Class have separated from Defendants as a result of being discharged or having voluntarily
14 resigned their employment.

15 78. While employed by Defendants, these employees were entitled to compensation
16 for the violations set forth in this Complaint. Defendants failed to pay all wages due to the
17 Plaintiff and the members of the Class who separated from Defendants, by failing to pay for,
18 among other things, all hours worked, overtime and double-time, and premium wages for
19 unlawful meal or rest breaks. Defendants are required to compensate these employees for all their
20 unpaid wages earned and an additional penalty equal to the daily earnings of such employees up
21 to an amount equal to those owed for 30 days of work.

22 **NINTH CAUSE OF ACTION**

23 **[UNFAIR BUSINESS PRACTICES]**

24 **(Plaintiff and the Class Against Defendants and Does 1-20)**

25 79. Plaintiff hereby incorporates by reference all other allegations contained in this
26 Complaint as though fully set forth herein.

27 80. Defendants have engaged in unfair business practices in California by practicing,
28 employing and utilizing the employment practices outlined in this Complaint by requiring their

1 drivers and other non-exempt employees to perform the labor complained of herein without
2 proper compensation. Defendants' utilization of such unfair business practices constitutes unfair
3 competition and provides an unfair advantage over their competitors.

4 81. Plaintiff and the Class seek full restitution and disgorgement of monies, as
5 necessary and according to proof, to restore any and all monies withheld, acquired and/or
6 converted by Defendants by means of the unfair practices complained of herein.

7 82. Plaintiff and the Class seek, on their own behalf and on behalf of the general
8 public, the appointment of a receiver, as necessary. The acts complained of herein occurred, at
9 least in part, within the last four (4) years preceding the filing of the original complaint in this
10 action.

11 83. Upon information and belief, Plaintiff alleges that at all times herein mentioned
12 Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by
13 Business and Professions Code § 17200 et seq., including those set forth in the Complaint herein,
14 thereby depriving Plaintiff and the Class, and other members of the general public the minimum
15 working condition standards and conditions due to them under the California labor laws and the
16 applicable Wage Orders as specifically described herein.

17 84. Plaintiff and the Class are further entitled to and do seek both a declaration that
18 the above-described business practices are unfair, unlawful and/or fraudulent and injunctive
19 relief restraining Defendants from engaging in any of such business practices in the future. Such
20 misconduct unless and until enjoined and restrained by order of this Court, will cause great and
21 irreparable injury in that Defendants will continue to violate these California laws, represented
22 by labor statutes and the wage orders, unless specifically ordered to comply with same. This
23 expectation of future violations will require current and future employees to repeatedly and
24 continuously seek legal redress in order to gain compensation to which they are entitled under
25 California law. Plaintiff and the Class have no other adequate remedy at law to ensure future
26 compliance with the California labor laws and the Applicable Wage Orders alleged to have been
27 violated herein.
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, pray for
3 relief and judgment against Defendants as follows:

4 1. Certification of this action as a class action on behalf of each of the Class alleged
5 in this Complaint;

6 2. For general damages, according to proof, on each cause of action for which such
7 damages are available;

8 3. For compensatory damages, according to proof, on each cause of action for which
9 such damages are available;

10 4. For consequential damages, according to proof, on each cause of action for which
11 such damages are available

12 5. For restoration and restitution of lost wages, statutory penalties, and all other
13 remedies afforded under the Labor Code on all causes of action for violation of the Labor Code;

14 6. For declaratory and injunctive relief as requested herein;

15 7. For prejudgment and post-judgment interest according to law;

16 8. For reasonable attorneys' fees incurred in this action on those causes of action for
17 which such fees are recoverable under the law;

18 9. For costs of suit incurred in this action;

19 10. Disgorgement of all gains unjustly gained by Defendants; and

20 11. Any other remedies, whether in law or equity, that the Court deems properly.
21

22
23 Dated: January 16, 2020

Respectfully submitted,
SHAKOURI LAW FIRM

24
25 By: Ashkan Shakouri
26 Ashkan Shakouri
27 Sharon W. Lin
28 Attorneys for Plaintiff

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2 **DEMAND FOR JURY TRIAL**

3 Plaintiff demands a jury trial on issues triable to a jury.

4 Dated: January 16, 2020

5 Respectfully submitted,
6 SHAKOURI LAW FIRM

7 By: Ashkan Shakouri

8 Ashkan Shakouri
9 Sharon W. Lin
10 Attorneys for Plaintiff
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