

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Theresa Traber

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

AMY WESTON, as an aggrieved employee
and private attorney general

Plaintiff,

v.

FAVORITE HEALTHCARE STAFFING,
INC.; and DOES 1-20, inclusive

Defendants.

Case No: **21STCV21127**

**REPRESENTATIVE ACTION
COMPLAINT**

DEMAND FOR TRIAL BY JURY

- 1. VIOLATION OF CALIFORNIA
LABOR CODE § 2699, ET SEQ.
(PRIVATE ATTORNEYS GENERAL
ACT)**

1 Plaintiff Amy Weston ("Plaintiff"), individually, as an aggrieved employee and as a
2 private attorney general, hereby alleges the following facts and claims against Favorite
3 Healthcare Staffing, Inc. ("Defendant"), and respectfully requests a trial by jury of all issues and
4 causes of action so triable. Unless otherwise specified, Defendant and Does 1-20 shall
5 collectively be referred to herein as "Defendants."

6 **JURISDICTION AND VENUE**

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

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

15 **PARTIES**

16 3. At all relevant times mentioned herein, Plaintiff was a licensed nurse and a
17 resident of Indiana.

18 4. Upon information and belief, Defendant is an employment staffing agency and is,
19 and at all times herein mentioned was, a Kansas corporation organized and existing under the
20 laws of the State of Kansas, and registered to do business in the State of California. Defendant
21 employs, compensates and/or assigns healthcare workers to work at various kinds of healthcare
22 facilities throughout California.

23 5. Upon information and belief, there is such a unity of interest and ownership
24 among Defendants that the separate personalities between them do not exist; and that, if the acts
25 complained of herein are treated as those of Defendant alone, inequitable results will follow.
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1 6. The true names or capacities, whether individual, associate or otherwise, of Does
2 1-20, inclusive, are unknown to Plaintiff and, therefore, Plaintiff sues these doe defendants by
3 such fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to allege
4 such names and capacities as soon as they are ascertained. Upon information and belief, each of
5 these fictitiously named defendants is responsible in some manner for the occurrences alleged
6 herein, and that Plaintiff's injuries and damages as alleged and set forth herein were proximately
7 caused by such fictitiously named defendants.

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

14 8. Upon information and belief, Plaintiff alleges that each defendant acted pursuant
15 to and within the scope of the relationships alleged above, that each defendant knew or should
16 have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the
17 conduct of all other defendants, and/or that each defendant acted pursuant to a conspiracy and
18 agreement to do the things alleged herein.

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20 **FACTUAL ALLEGATIONS**

21 9. Defendants hired, paid, and assigned Plaintiff to work at Pacifica Hospital of the
22 Valley in Sun Valley, California as a non-exempt, hourly-paid travel nurse for an approximately
23 one-month contract assignment starting on or about February 18, 2021 and ending on March 19,
24 2021. Plaintiff was assigned to work, and did typically work, five 12-hour shifts per workweek.
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1 **I. Defendants’ Failure to Include “Per Diem” Payments in Their Employees’**
2 **Regular Rates of Pay to Determine Their Overtime and Double-Time Rates of**
3 **Pay**

4 10. During the applicable recovery period, Defendants paid their non-exempt
5 employees so-called “per diem” payments for their housing, meals and incidental costs incurred
6 while working assignments away from home. However, such “per diem” payments were not
7 meant to actually or reasonably reimburse employees for such costs, but were rather a form of
8 disguised wages which, among other things, evaded California overtime laws.

9 11. In particular, Defendants reduced the so-called “per diem” payments if their
10 traveling employees, including Plaintiff, did not work their minimum required hours, even
11 though the actual or reasonable travel costs incurred by them while on assignment away from
12 home remained the same regardless of the number of hours they worked in a given day. For
13 instance, pursuant to Plaintiff’s employment agreement with Defendants called “Assignment
14 Description,” Defendants promised to pay Plaintiff \$55.00 per day for “Per diem Meals and
15 Incidentals” for “each day [she] work[ed].”

16 12. According to the above policy and practice, Defendants reduced their employees’
17 “per diem” payments even when they were willing and ready to work but the facilities to which
18 they were assigned had no work for them.

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

22 14. Upon information and belief, during the applicable recovery period, Defendants
23 similarly failed to include the so-called “per diem” payments in their other non-exempt
24 employees’ regular rates of pay to determine their lawful overtime and double-time rates of pay.
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II. Defendants' Failure to Pay for All Hours Worked

15. During the applicable recovery period, Defendants 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 (i.e., job specific).

16. 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.

17. Additionally, during the applicable recovery period, Defendants have had a policy and/or practice of requiring their non-exempt employees, including Plaintiff, to take company-shuttles to commute from their place of accommodation to their jobsites and back without compensating them for the time spent waiting for and riding on Defendants' mandated company-shuttles.

18. Under California law, employers must pay for "compulsory travel time" – time employees spend traveling on and waiting for transportation required by an employer because, among other things, the employees are under the employer's control during that travel.

19. Moreover, during the applicable recovery period, Defendants have had a policy and/or practice of requiring their non-exempt employees, including Plaintiff, to remain on standby, during which time Defendants placed several restrictions on them, including requiring them to report to work within thirty (30) minutes or less, which prohibited them from engaging in personal pursuits for most of that time. Defendants have had a policy and/or practice of failing to fully compensate their non-exempt employees for all their time spent on standby. For instance, Plaintiff was on standby from approximately March 12, 2021 to March 19, 2021, but Defendants only compensated her for 56 hours of straight time for her time spent on standby.

1 20. Under California law, hours for which an employee has been hired to do nothing
2 or merely to wait for something to happen are hours subject to the control of the employer, and
3 constitute hours worked.

4 **III. Defendants' Failure to Authorize and/or Permit Lawful Meal or Rest Breaks**
5 **and Their Failure to Pay Required Premiums for Non-Complaint Breaks**

6 21. During the applicable recovery period, Defendants have had policy and/or
7 practice of not authorizing and/or permitting their non-exempt employees, including Plaintiff, to
8 take lawful meal or rest breaks under California law. For instance, while Plaintiff signed a meal
9 waiver, at times she did not receive any meal periods during her 12-hour shifts.

10 **IV. Defendants' Failure to Reimburse Their Employees for Their Travel Expenses**

11 22. During the applicable recovery period, Defendants have had an unlawful policy
12 and/or practice of not reimbursing their non-exempt employees for all their travel expenses
13 incurred during their work assignments away from home. For instance, Plaintiff was required to
14 travel from Indiana to California in order to work for Defendants. In doing so, she incurred certain
15 travel costs in direct consequence of the discharge of her duties on behalf of Defendants,
16 including, but not limited to, rental car costs and mobile phone costs for which she was not
17 reimbursed.
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19 23. Upon information and belief, during the applicable recovery period, Defendants
20 similarly failed to reimburse their other non-exempt employees for their incurred business-related
21 travel expenses.

22 24. Defendants' failure to pay their non-exempt employees for travel costs incurred
23 during their work assignments away from home violates California law.

24 **V. Defendants' Failure to Pay Wages Due Upon Termination**

25 25. During the applicable recovery period, Defendants have had policy and/or
26 practice of failing to pay their non-exempt employees, including Plaintiff, all wages owed to
27 them upon discharge or resignation.

28 26. Defendants knew or should have known that their non-exempt employees were

1 entitled to receive all wages owed to them upon termination within the time permissible under
2 California Labor Code § 202. Plaintiff and other non-exempt employees did not receive payment
3 of all final wages owed to them upon discharge or resignation, including compensation for all
4 hours worked, overtime and double-time compensation within any time permissible under
5 California Labor Code § 202.

6 **VI. Defendants' Failure to Furnish Accurate Wage Statement**

7 27. During the applicable recovery period, Defendants regularly failed to provide
8 complete or accurate wage statements to their non-exempt employees, including Plaintiff.

9 28. Defendants knew or should have known that their non-exempt employees were
10 entitled to receive complete and accurate wage statements in accordance with California law, but,
11 in fact, they did not receive complete and accurate wage statements from Defendants. The
12 deficiencies included, *inter alia*, the failure to include gross wages earned, total hours worked by
13 the employees, net wages earned, all applicable hourly rates in effect during the pay period, and
14 the corresponding number of hours worked at each hourly rate.

15 **VII. Defendants' Failure to Timely Pay Wages During Employment**

16 29. During the applicable recovery period, Defendants regularly failed to pay their
17 non-exempt employees, including Plaintiff, all wages within any time permissible under
18 California law, including, *inter alia*, California Labor Code § 204.

19 30. Defendants knew or should have known that their non-exempt employees were
20 entitled to receive all wages owed to them during their employment. Defendants' non-exempt
21 employees did not receive payment of all wages, including overtime and double-time
22 compensation, and meal and rest period premiums, within the time required under California
23 Labor Code § 204.

24 **FIRST CAUSE OF ACTION**

25 **(Violation of California Labor Code § 2699, Et Seq.)**

26 **(Against All Defendants)**

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

1 32. Plaintiff brings her first and only cause of action as a representative action on
2 behalf of herself and other aggrieved employees in the capacity as a private attorney general
3 pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698, et seq. (“PAGA”).

4 33. Plaintiff was employed by Defendants and the Labor Code violations alleged
5 above were committed against her during her time of employment. Plaintiff and the other non-
6 exempt employees of Defendants are therefore “aggrieved employees” as defined by California
7 Labor Code § 2699(c) in that they are all current or former non-exempt employees of Defendants
8 in California, and one or more of the alleged violations were committed against them
9 (“Aggrieved Employees”).

10 34. Defendants committed violations of the Labor Code against Plaintiff and the
11 Aggrieved Employees as alleged in this Complaint, including, but not limited to, the following:

- 12 a. Failure to reimburse for all incurred business-related travel expenditures in
13 violation of Labor Code §§ 2800 and 2802;
- 14 b. Failure to pay for all hours worked in violation of Labor Code §§ 200, 223,
15 226, 500, 1197, 1198, and the Applicable Wage Orders;
- 16 c. Failure to pay all overtime wages for all overtime hours worked in violation
17 of Labor Code §§ 510 and 1194 and the Applicable Wage Orders;
- 18 d. Willful failure to pay minimum wage for all hours worked in violation of
19 Labor Code §§ 1194 and 1197 and the Applicable Wage Orders;
- 20 e. Failure to authorize or permit meal periods in violation of Labor Code §§
21 226.7, 512, and the Applicable Wage Orders;
- 22 f. Failure to authorize or permit rest periods in violation of Labor Code § 226.7,
23 and the Applicable Wage Orders;
- 24 g. Failure to timely furnish complete and accurate itemized wage statements in
25 violation of Labor Code § 226, and the Applicable Wage Orders;
- 26 h. Failure to timely pay all wages owed during employment in violation of Labor
27 Code § 204; and
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- 1 i. Willful failure to pay, without abatement or reduction, all final wages owed
2 in accordance with Labor Code §§ 201, 202, and in violation of Labor Code §
3 203.

4 35. On March 31, 2021, Plaintiff sent a written notice to Defendant and the Labor and
5 Workforce Development Agency (“LWDA”) notifying them of the specific violations and the
6 facts and theories supporting those violations. More than 60 days have passed since the date the
7 notice was mailed to Defendant and LWDA. A true and correct copy of Plaintiff’s written notice
8 to Defendant and the LWDA is attached hereto as “Exhibit A,” which Plaintiff incorporates by
9 reference as though fully set forth herein.

10 36. Plaintiff, individually and on behalf of the Aggrieved Employees and the State of
11 California, seeks to recover all civil penalties and all underpaid wages allowed under Labor Code
12 §§ 558, 2698, 2699, 2699.3 and 2699.5 for which Defendants are liable as a result of their
13 violations of the Labor Code during the applicable recovery period, all in an amount to be proven
14 at trial. These include, but are not limited to, penalties pursuant to Labor Code § 210 for violations
15 of Labor Code §§ 201, 202, 203 and 204; penalties pursuant to Labor Code § 226.3 for violations
16 Labor Code § 226 and the Applicable Wage Orders; penalties and underpaid wages pursuant to
17 Labor Code § 558, including an amount sufficient to recover underpaid wages due for violations
18 of the Labor Code §§ 226.7 and 558 and the Applicable Wage Orders; and penalties pursuant to
19 Labor Code § 1197.1 for violations Labor Code §§ 1182, 1182.12, and 1198 and the Applicable
20 California Wage Orders.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of all other Aggrieved Employees,
3 and as a private attorney general, prays for relief and judgment against Defendants as follows:

- 4 1. For the imposition of all civil penalties allowed under the Labor Code;
5 2. For statutory attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and
6 3. For such other relief and remedies, whether in law or equity, that the Court deems
7 just and proper.

8
9 Dated: June 4, 2021

Respectfully submitted,
SHAKOURI LAW FIRM

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11
12 By: Ashkan Shakouri
13 Ashkan Shakouri
14 Sharon W. Lin
15 Attorneys for Plaintiff

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17 **DEMAND FOR JURY TRIAL**

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

19
20 Dated: June 4, 2021

Respectfully submitted,
SHAKOURI LAW FIRM

21
22 By: Ashkan Shakouri
23 Ashkan Shakouri
24 Sharon W. Lin
25 Attorneys for Plaintiff
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27
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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

March 31, 2021

Via Online Filing:

California Labor & Workforce
Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Favorite Healthcare Staffing, Inc.
c/o
National Registered Agents, Inc.
818 West Seventh St., Suite 930
Los Angeles, CA 90017

Favorite Healthcare Staffing, Inc.
Corporate Headquarters
7255 W 98th Ter, Suite 150
Overland Park, Kansas 66212

Re: *PAGA Notice Pursuant to California Labor Code § 2699*

Claimant: Amy Weston
Employer: Favorite Healthcare Staffing, Inc.

Dear Sir or Madam:

Claimant Amy West (“Claimant”) has retained Ashkan Shakouri of Shakouri Law Firm to represent her, and all other aggrieved employees, for wage and hour claims against her former employer Favorite Healthcare Staffing, Inc. (“Favorite Staffing”).

During the relevant period Favorite Staffing has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code §2698,

et seq. We request that your agency investigate the claims alleged herein or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”) on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3.

Claimant is bringing these PAGA claims on behalf of herself and all others who worked or work for Favorite Staffing inside California and were subject to the violations alleged herein during the applicable recovery period (“Aggrieved Employees”). Aggrieved Employees includes Claimant.

As alleged below, Claimant personally suffered some of the Labor Code violations committed by Favorite Staffing, while other violations, though not personally suffered by her, were suffered, and continue to be suffered, by other Aggrieved Employees. As held in *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 758, “[b]y the plain language of the statute, an aggrieved employee need only suffer one of the Labor Code violations alleged against his or her employer to be able to bring a PAGA claim on behalf of himself or herself and current or former employees who suffered any Labor Code violation at the hands of the employer. Plaintiff need not have actually suffered all of the Labor Code violations that she alleges to have taken place for purposes of seeking PAGA penalties.” (citation omitted). Accordingly, Claimant plans to pursue penalties for all the violations committed by Favorite Staffing against the Aggrieved Employees, including those she did not personally suffer.

Claimant’s Employment with Favorite Staffing

Favorite Staffing hired, paid and assigned Claimant to work at Pacifica Hospital of the Valley in Sun Valley, California, as a non-exempt, hourly-paid travel nurse for an approximately 1-month contract assignment starting on or about February 18, 2021 and ending on March 19, 2021. Claimant was assigned to work, and did typically work, five 12-hour shifts per workweek.

Favorite Staffing’s Failure to Take “Per Diem” Payments into Account in Determining Overtime Rates

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 lodging.

Pursuant to Claimant’s last employment agreement with Favorite Staffing called “Assignment Description,” Favorite Staffing promised to pay Plaintiff \$55.00 per day for “Per diem Meals and Incidentals” for “each day [she] work[ed].”

During the relevant period, Favorite Staffing has had a policy and/or practice of making the per diem payments it promises to Aggrieved Employees, including housing, meals and/or incidentals payments, adjustable based on number of hours or shifts they work in a given

workweek. In particular, Favorite Staffing only pays its Aggrieved Employees per diem payments on the days that Aggrieved Employees perform work. Thus, Favorite Staffing's promised per diem payments are not intended to actually or reasonably reimburse Aggrieved Employees for their housing, meal or incidental expenses, but in fact are a form of disguised wages.

Despite the fact that the amount of the promised per diem payments are based upon, and vary with, the number of shifts worked by Aggrieved Employees, during the relevant time period, Favorite Staffing has had a policy and/or practice of not including the value of those per diem payments, including those for housing, meals and/or incidentals, whether paid in cash or in kind, in Aggrieved Employees' regular rates of pay for the purposes of calculating their overtime or double-time pay.

As a result of these violations, Favorite Staffing is liable for civil penalties pursuant to Labor Code § 558 & 2698 *et. seq.*

Favorite Staffing's Failure to Pay for All Hours Worked, Including Failure to Pay Minimum Wage

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.

During the relevant period, Favorite Staffing has had a policy and/or practice of requiring Aggrieved Employees to take and complete training/orientation courses (or modules), which are client-specific, without compensating them for such time. Under California law, the time spent attending these training/orientation courses is compensable because, among other things, they are not voluntary and are directly related to employees' jobs as they are designed to make employees handle their jobs more effectively as opposed to training them for another job or a new or additional skill. By failing to compensate Aggrieved Employees for time spent reviewing and/or completing competency/training/orientation courses (or modules) that are facility-specific, Favorite Staffing failed to pay these employees their promised rates of pay, or even minimum wage.

Additionally, during the relevant period, Favorite Staffing has had a policy and/or practice of requiring Aggrieved Employees, including Claimant, to take company-shuttles to commute from their place of accommodation to their jobsites and back. Under California law, employers must pay for "compulsory travel time" – time employees spend traveling on and waiting for transportation required by an employer because, among other things, the employees are under the employer's control during that travel. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 587-88. By failing to compensate Aggrieved Employees for the time spent waiting for and riding on the Favorite Staffing-mandated shuttles, Favorite Staffing failed to pay these employees their promised rates of pay, or even minimum wage.

Additionally, during the relevant period, Favorite Staffing has had a policy and/or practice of requiring Aggrieved Employees, including Claimant, to remain on standby and placing several

corresponding restrictions on Aggrieved Employees, including requiring a response time of 30 minutes or less, which prohibited them from engaging in personal pursuits for most of that time. Favorite Staffing has also had a policy and/or practice of failing to fully compensate Aggrieved Employees for all of their time spent on standby. For instance, Claimant was on standby from approximately March 12, 2021 to March 19, 2021, but Favorite Staffing only compensated Claimant 56 hours of straight time for her time on standby. California courts and the DLSE enforcement policy have routinely and consistently held that hours for which an employee has been hired to do nothing or merely to wait for something to happen are hours subject to the control of the employer, and constitute hours worked. *See* 2002 DLSE Manual (Revised) § 46.2 & *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524.

In violation of California law, Favorite Staffing has intentionally and willfully refused to perform its obligations to compensate 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 Favorite Staffing to fully perform its obligations under California law.

Favorite Staffing's 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, 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, Favorite Staffing is liable for civil penalties pursuant to Labor Code § 558 & 2698 *et. seq.*

Favorite Staffing's Failure to Authorize or Permit Lawful Meal Breaks

During the relevant period, Favorite Staffing has had policy and/or practice of not, from time to time, authorizing or permitting Claimant and other Aggrieved Employees to take lawful meal breaks under California law.

Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

During the applicable recovery period, Aggrieved Employees regularly worked in excess of 5-hour work periods without being authorize and/or permitted to take a lawful first and/or second meal break, as required by Labor Code §§ 226.7, 512 and the applicable wage orders. For instance, while Claimant signed a meal waiver, at times she did not receive any meal periods during her 12-hour shifts.

During the applicable recovery period, Favorite Staffing failed to pay Aggrieved Employees' wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks. As a result

of violations of Labor Code §§ 226.7 and 512 and the applicable wage orders, Favorite Staffing is liable for civil penalties pursuant to Labor Code §§ 558 and 2698 *et seq.*

As a result of these violations, Favorite Staffing is liable for civil penalties pursuant to Labor Code § 558 & 2698 *et. seq.*

Favorite Staffing's Failure to Authorize and/or Permit Rest Breaks

During the applicable recovery period, Favorite Staffing has had policy and/or practice of not, from time to time, authorizing and/or permitting Claimant and other Aggrieved Employees to take lawful rest breaks under California law.

California 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, 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 the applicable recovery period, Favorite Staffing, from time to time, did not authorize and/or permit Claimant and other Aggrieved Employees to take lawful rest breaks and failed to pay premium wages mandated by Labor Code § 226.7(b), due to, among other reasons, work overload and understaffing at their jobsites.

Claimant and other Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation for each workday that a rest break was not authorized and/or permitted by Favorite Staffing. Claimant and other Aggrieved Employees are also entitled to their costs and reasonable attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

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

Favorite Staffing's Failure to Reimburse Necessary Expenditures

An employer is required to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. Labor Code §§ 2800 and 2802.

During the applicable recovery period, Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Favorite Staffing. These expenses include, but are not limited to, rental car costs and mobile phone costs incurred during necessary job-related travel assignments.

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

Favorite Staffing's Failure to Pay Wages Due Upon Termination

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code §§ 201 and 227.3.) Pursuant to Labor Code § 202 (a), “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter.”

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.

While employed by Favorite Staffing, Aggrieved Employees were entitled to compensation for the violations set forth herein. Favorite Staffing failed to pay all wages due to the Claimant and other Aggrieved Employees who separated from Favorite Staffing, by failing to pay for, among other things, all hours worked, overtime and double-time, and premium wages for unlawful meal and rest breaks. Favorite Staffing are required to compensate these Aggrieved 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.

Favorite Staffing willfully failed to pay Aggrieved Employees who are no longer employed by it all compensation due upon termination of employment as required by Labor Code §§ 201 and 202. Pursuant to §203, Aggrieved Employees who are no longer employed by Favorite Staffing are now also entitled to recover up to thirty (30) days of wages due to Favorite Staffing's “willful” failure to comply with the statutory requirements of Labor Code §§ 201 and 202.

As a result of these violations, Favorite Staffing is liable for civil penalties pursuant to Labor Code § 558 & 2698 *et seq.*

Favorite Staffing's Failure to Furnish Accurate Wage Statements

This claim is brought under Labor Code § 226(a), which 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.

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

As a direct and proximate result of Favorite Staffing's conduct as alleged above, 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 Favorite Staffing violated the reporting requirements of Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, Favorite Staffing is subject to a civil penalty in the amount of \$250 per Aggrieved Employee per violation in an initial citation and \$1,000 per Aggrieved Employee for each violation in a subsequent citation, for which it failed to provide them a wage deduction statement or fails to keep their wage statements as required under Labor Code § 226(a).

Aggrieved Employees will seek penalties as permitted under Labor Code §226 for each violation. Further, Aggrieved Employees will seek recovery of civil penalties under Labor Code §226.3, 558 and §2698, *et seq*

Favorite Staffing's Failure to Timely Pay Wages During Employment

As alleged above, during the applicable recovery period, Favorite Staffing failed to pay Claimant and other Aggrieved Employees all wages owed to them to this date. By failing to pay wages on their regular paydays, Favorite Staffing violated Labor Code § 204(a), and thus owes penalties under Labor Code § 210.

Labor Code § 210 specifically provides that every person who fails to pay the wages of an employee in a timely manner (pursuant to Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5) or withholds wages due an employee (pursuant to Labor Code § 223) shall be subject to a civil penalty as follows: (a) For any initial violation, \$ 50 for each failure to pay each employee; (b) For each subsequent violation, or any willful or intentional violation, \$100 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

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

Without limitation, Claimant, if permitted, will further seek any and all penalties otherwise capable of being collected under Labor Code § 558 and PAGA. 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 provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform them if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court on behalf of herself and other Aggrieved Employees.

Respectfully Submitted,

SHAKOURI LAW FIRM

Ashkan Shakouri

Ashkan Shakouri
Attorney for Claimant and all other
Aggrieved Employees