

CASE ATTACHMENT COVER PAGE		(ENDORSED) ELECTRONICALLY FILED BY SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino on May 11, 2023 CLERK OF THE SUPERIOR COURT <i>Deputy Clerk: Michelle Gomez Casillas</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: San Bernardino Justice Center WEBSITE: http://www.sb-court.org		
ATTACHMENT NAME: Complaint: Complaint		
CASE NAME: Jerry Turner vs. Medical Solutions L.L.C.		
		CASE NUMBER: CIVSB2310312
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6
7 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **SUPERIOR COURT OF SAN BERNARDINO**

9
10 JERRY TURNER, on behalf of himself
and other aggrieved employees

11 Plaintiff,

12 v.

13
14 MEDICAL SOLUTIONS L.L.C.; and
15 DOES 1-20, inclusive

16
17 Defendants.

Case No:

CIV SB 2310312

REPRESENTATIVE ACTION COMPLAINT:

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

[AMOUNT DEMANDED EXCEEDS \$25,000.00]

1 Plaintiff Jerry Turner ("Plaintiff"), an individual, on behalf of himself and all others
2 aggrieved employees, as defined below, hereby alleges the following facts and claims against
3 Medical Solutions L.L.C., a Delaware corporation ("Defendant"); and DOES 1-20 (collectively
4 "Defendants").

5 **JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over Defendant because it is a corporation with
7 sufficient minimum contacts in California and/or because it intentionally availed and continues
8 to avail itself of the California market so as to render the exercise of jurisdiction over it by the
9 California courts consistent with traditional notions of fair play and justice.

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

14 **PARTIES**

15 3. At all relevant times mentioned herein, Plaintiff was a nurse and a resident of the
16 State of Oklahoma.

17 4. Upon information and belief, Defendant is an employment staffing agency and is,
18 and at all times herein mentioned was, a Delaware corporation duly authorized to do business in
19 California. In particular, Defendant employs, compensates and assigns healthcare professionals
20 to work at various kinds of healthcare facilities throughout California.

21 5. The true names or capacities, whether individual, associate or otherwise, of Does
22 1-20, inclusive, are unknown to Plaintiff and, therefore, Plaintiff sues these doe defendants by
23 such fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to allege
24 such names and capacities as soon as they are ascertained. Upon information and belief, each of
25 these fictitiously named defendants is responsible in some manner for the occurrences alleged
26 herein, and Plaintiff's injuries and damages as alleged and set forth herein were proximately
27 caused by such fictitiously named defendants.
28

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

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

12 8. Plaintiff is bringing these claims under Private Attorneys General Act of 2004,
13 Labor Code § 2698, et seq. (“PAGA”) on behalf of himself and all others who worked or work
14 for Defendant inside California and were subject to the violations alleged herein during the
15 applicable recovery period (“Aggrieved Employees”). Aggrieved Employees includes Plaintiff.

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

1 **FACTUAL ALLEGATIONS**

2 10. Defendant hired, paid and assigned Plaintiff to work for Oroville Hospital in
3 Oroville, California as a non-exempt, hourly-paid travel nurse for an approximately 13-week
4 contract assignment from on or about August 22, 2022 until November 18, 2022. During this
5 assignment, Plaintiff was assigned to work, and did typically work, three 12-hour shifts per
6 workweek.

7 11. Then, Defendant assigned Plaintiff to work at O'Connor Hospital in San Jose,
8 California, as a non-exempt, hourly-paid travel nurse for an approximately 13-week contract
9 assignment from on or November 28 2022 until February 26, 2023. During this assignment,
10 Plaintiff was assigned to work, and did typically work, four 12-hour shifts per workweek.
11 Subsequently, Defendant terminated Plaintiff. Plaintiff resigned from working for Defendant on
12 or about February 28, 2023.

13 **I. Defendant's Failure to Take "Travel Stipends" into Account in Determining**
14 **Overtime Rates**

15 12. Under Labor Code § 200, "wages" consist of "all amounts for labor performed by
16 employees of every description, whether the amount is fixed or ascertained by the standard of
17 time, task, piece, commission basis, or other method of calculation." In California, overtime is
18 computed based on the regular rate of pay. The regular rate of pay includes many different kinds
19 of remuneration, including hourly earnings, salary, piece work earnings, commissions, certain
20 bonuses, and the value of meals and lodging.

21 13. During the relevant period, Defendant has had a policy and/or practice of
22 adjusting "travel stipends" it promises to its employees, including housing, meal and/or
23 incidental payments, based on number of hours or shifts they work in a given workweek. For
24 instance, pursuant to Plaintiff's employment agreement with Defendant titled "Travel
25 Assignment Agreement" for his San Jose assignment, Defendant promised to pay Plaintiff a base
26 rate of \$71.25 an hour, \$7,350 a month for his "housing" and another \$2,220 a month for "meals
27 and incidentals." However, Plaintiff's employment agreement also provided for a "Missed Shift
28 Adjustment" for each shift missed by Plaintiff, thereby making the promised travel stipends

adjustable. Defendant then failed to include Plaintiff's so-called "travel stipends" in his regular rate of pay in order to determine his proper overtime and double-time rates of pay.

14. Thus, Defendant's promised travel stipends are not intended to reimburse Aggrieved Employees for their housing, meal or incidental expenses, but are, in fact, a form of disguised wages.

15. Despite the fact that the amount of the promised travel stipends are based upon, and vary with, the number of weekly hours or shifts worked by Aggrieved Employees, and thus are actually a form of disguised wages, during the applicable recovery period Defendant has had a policy and/or practice of not including the value of those travel stipends, 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. This practice has resulted in overtime underpayments in instances where Defendant's paid overtime rate is insufficient to offset the amount it otherwise owes to its non-exempt employees for failing to take travel stipends into account for calculating overtime rates.

II. Defendant's Failure to Take Non-Discretionary Bonuses into Account in Determining Overtime Rates

16. Non-discretionary bonuses are considered wages under Labor Code § 210, and thus, must be included in the regular rate of pay to determine the overtime and double rates of pay. During the applicable recovery period, Defendant has had a policy and/or practice of not including earned non-discretionary bonuses, such as bonuses paid for certain number of hours worked, as part of the Aggrieved Employees' regular rates of pay in determining their overtime or double-time pay.

III. Defendant's Failure to Pay for All Hours Worked, Including Failure to Pay Minimum Wage

17. 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

1 unlawful for an employer to suffer or permit a California employee to work without paying at
2 least minimum wage for all time worked as required by the Applicable Wage Orders.

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

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

19 20. Defendant's conduct described herein violates Labor Code §§ 200, 223, 226, 500,
20 1194, 1194.2, 1197 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor
21 Code §§ 203, 218.5, 226, 558, 1194 and 1194.2, Aggrieved Employees are entitled to recover
22 damages for the nonpayment of wages of all their worked hours in addition to penalties,
23 liquidated damages, reasonable attorneys' fees, expenses, and costs of suit.

24 **IV. Defendant's Failure to Authorize and/or Permit Lawful Meal Breaks**

25 21. During the applicable recovery period, Defendant has had a policy and/or practice
26 of not authorizing or permitting Plaintiff and other Aggrieved Employees to take lawful meal
27 breaks under California law.
28

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

6 23. During the applicable recovery period, Plaintiff and Aggrieved Employees
7 regularly worked in excess of 5-hour work periods without being authorized and/or permitted to
8 take a lawful first and/or second meal break, as required by Labor Code §§ 226.7, 512 and the
9 applicable wage orders.

10 24. During the applicable recovery period, Defendant failed to pay Aggrieved
11 Employees’ wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks.

12 **V. Defendant’s Failure to Authorize and/or Permit Rest Breaks**

13 25. During the applicable recovery period, Defendant has had policy and/or practice
14 of not authorizing and/or permitting Plaintiff and other Aggrieved Employees to take lawful rest
15 breaks under California law.

16 26. California Labor Code § 226.7(a) provides, “No employer shall require any
17 employee to work during any meal or rest period mandated by an applicable order of the
18 Industrial Welfare Commission.” The applicable Wage Orders require that employers authorize
19 or permit non-exempt employees to take a rest break that must, insofar as practicable, be taken
20 in the middle of each work period. The rest break is based on the total hours worked daily and
21 must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or
22 major fraction thereof.

23 27. Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an
24 employee a rest break in accordance with the applicable Wage Orders, the employer shall pay
25 the employee one additional hour of pay at the employee's regular rate of pay for each workday
26 that the rest break is not provided. The provisions of the applicable Wage Orders state that the
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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.

28. During the applicable recovery period, Defendant did not authorize and/or permit Plaintiff 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.

29. 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 Defendant. Plaintiff 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.

VI. Defendant’s Failure to Reimburse Necessary Work-Related Expenditures

30. 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.

31. During the applicable recovery period, Defendant has failed to reimburse Aggrieved Employees for costs incurred traveling to and from assignments, such as costs of their flights and luggage, transportation to and from the airport, and/or mileage.

VII. Defendant’s Failure to Timely Pay Wages on Regular Pay Days

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

33. 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,

1 204.2, 205, 205.5, and 1197.5) or withholds wages due an employee (pursuant to Labor Code §
2 223) shall be subject to a civil penalty as follows: (a) For any initial violation, \$ 50 for each
3 failure to pay each employee; (b) For each subsequent violation, or any willful or intentional
4 violation, \$100 for each failure to pay each employee, plus 25 percent of the amount unlawfully
5 withheld.

6 **VIII. Defendant's Failure to Pay Wages Due Upon Termination**

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

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

16 36. During the applicable recovery period, Plaintiff and some Aggrieved Employees
17 have separated from Defendant as a result of being discharged or having voluntarily resigned
18 their employment.

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

26 38. Defendant willfully failed to pay Plaintiff and other Aggrieved Employees who
27 are no longer employed by it all compensation due upon termination of employment as required
28 by Labor Code §§ 201 and 202. Pursuant to § 203, Aggrieved Employees who are no longer

1 employed by Defendant are now also entitled to recover up to thirty (30) days of wages due to
2 Defendant's "willful" failure to comply with the statutory requirements of Labor Code §§ 201
3 and 202.

4 **IX. Defendant's Failure to Furnish Accurate Wage Statements**

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

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

17 41. Defendant knowingly and intentionally failed to provide Aggrieved Employees
18 with paycheck deduction statements accurately displaying the information required by Labor
19 Code §226(a).

20 42. As a direct and proximate result of Defendant's conduct as alleged above,
21 Aggrieved Employees affected by said violations are each entitled to a civil penalty of \$50 for
22 the initial pay period and \$100 for each subsequent pay period in which Defendant violated the
23 reporting requirements of Labor Code §226, up to a maximum of \$4,000. Additionally, under
24 Labor Code §226.3, Defendant is subject to a civil penalty in the amount of \$250 per Aggrieved
25 Employee per violation in an initial citation and \$1,000 per Aggrieved Employee for each
26 violation in a subsequent citation, for which it failed to provide them a wage deduction statement
27 or fails to keep their wage statements as required under Labor Code §226(a).
28

1 **FIRST CAUSE OF ACTION**

2 **Violation of California Labor Code § 2699, Et Seq.**

3 **(Against All Defendants)**

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

6 44. Plaintiff brings his first and only cause of action as a representative action on
7 behalf of himself and other aggrieved employees in the capacity as private attorneys general
8 pursuant to the PAGA.

9 45. Plaintiff was employed by Defendants and the Labor Code violations alleged
10 herein were committed against them during their time of employment. Plaintiff and the other
11 Aggrieved Employees of Defendants are therefore “aggrieved employees” as defined by Labor
12 Code §2699(c) in that they are all current or former non-exempt employees of Defendants in
13 California, and one or more of the alleged violations were committed against them.

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

- 16 a. Failed and continue to fail to pay the promised regular rates of pay for all hours
17 worked in violation of Labor Code §§ 200, 223, 226, 500, 1197 and 1198 and the
18 Applicable Wage Orders;
- 19 b. Failed and continue to fail to pay minimum wage for all hours worked in violation
20 of Labor Code §§ 1194 & 1197 and the Applicable IWC Wage Orders;
- 21 c. Failed and continue to fail to pay lawful overtime rates for all overtime hours
22 worked in violation of Labor Code §§ 510 and 1194 and the Applicable Wage
23 Orders;
- 24 d. Failed and continue to fail to authorize or permit lawful meal breaks in violation
25 of Labor Code §§ 226.7 and 512 and the Applicable Wage Orders;
- 26 e. Failed and continue to fail to authorize or permit lawful rest breaks in violation of
27 Labor Code §§ 226.7 and the Applicable Wage Orders;
- 28

- 1 f. Failed and continue to fail to reimburse necessary business-related expenses and
2 costs in violation of Labor Code §§ 2800 and 2802 and the Applicable Wage
3 Orders;
4 g. Failed and continue to fail to timely pay wages on regular pay days in violation
5 of Labor Code §§ 204 and 210;
6 h. Failed and continue to fail to timely furnish complete and accurate itemized wage
7 statements in violation of Labor Code § 226 and the Applicable Wage Orders; and
8 i. Willfully failed to pay, without abatement or reduction, all final wages owed in
9 accordance with Labor Code §§ 201 or 202 and in violation of Labor Code § 203.

10 47. On March 1, 2023, Plaintiff sent a written notice to Defendant and the Labor and
11 Workforce Development Agency (“LWDA”) notifying them of the specific violations and the
12 facts and theories supporting those violations. More than 60 days have passed since the date the
13 notice was mailed to Defendant and LWDA. A true and correct copy of Plaintiff’s written notice
14 to Defendant and the LWDA is attached hereto as “Exhibit 1,” which Plaintiff incorporates by
15 reference as though fully set forth herein.

16 48. Plaintiff, individually and on behalf of the Aggrieved Employees and the State of
17 California, seeks to recover all civil penalties and all underpaid wages allowed under Labor Code
18 §§ 558, 2698, 2699, 2699.3 and 2699.5 for which Defendants are liable as a result of their
19 violations of the Labor Code during the applicable recovery period, all in an amount to be proven
20 at trial. These include, but are not limited to, penalties pursuant to Labor Code § 210 for violations
21 of Labor Code §§ 201, 202, 203 and 204; penalties pursuant to Labor Code § 226.3 for violations
22 Labor Code § 226 and the Applicable Wage Orders; penalties and underpaid wages pursuant to
23 Labor Code § 558, including an amount sufficient to recover underpaid wages due for violations
24 of the Labor Code §§ 226.7 and 558 and the Applicable Wage Orders; and penalties pursuant to
25 Labor Code § 1197.1 for violations Labor Code §§ 1182, 1182.12, and 1198 and the Applicable
26 California Wage Orders.
27
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of all other Aggrieved Employees,
3 and as private attorneys 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: May 11, 2023

Respectfully submitted,

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11 SHAKOURI LAW FIRM

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13 By: Ashkan Shakouri
14 Ashkan Shakouri
15 Attorneys for Plaintiff
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EXHIBIT 1

SHAKOURI LAW FIRM
Employment & Civil Litigation

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Tel: (310) 575-1827
Fax: (310) 575-1890
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March 1, 2023

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:

Medical Solutions L.L.C.
c/o

CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Medical Solutions L.L.C.
1010 N. 102nd Street, Suite 300
Omaha, NE 68114

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

Claimant: Jerry Turner
Employer: Medical Solutions L.L.C.

Dear Sir or Madam:

Claimant Jerry Turner (“Claimant”) has retained Ashkan Shakouri of Shakouri Law Firm to represent him, and all other aggrieved employees, for wage and hour claims against his former employer Medical Solutions L.L.C. (“Medical Solutions”).

During the relevant period Medical Solutions, Claimant’s former employer, 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 himself and all others who worked or work for Medical Solutions inside California and were subject to the violations alleged herein during the applicable recovery period (“Aggrieved Employees”).

As alleged below, Claimant personally suffered some of the Labor Code violations committed by Medical Solutions, while other violations, though not personally suffered by him, 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. Claimant 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 Medical Solutions against the Aggrieved Employees, including those he did not personally suffer.

Claimant’s Employment with Medical Solutions

Medical Solutions hired, paid and assigned Claimant to work for Oroville Hospital in Oroville, California as a non-exempt, hourly-paid travel nurse for an approximately 13-week contract assignment from on or about August 22, 2022 until November 18, 2022. During this assignment, Claimant was assigned to work, and did typically work, three 12-hour shifts per workweek.

Then, Medical Solutions assigned Claimant to work at O’Connor Hospital in San Jose, California, as a non-exempt, hourly-paid travel nurse for an approximately 13-week contract assignment from on or November 28 2022 until February 26, 2023. During this assignment, Claimant was assigned to work, and did typically work, four 12-hour shifts per workweek. Subsequently, Medical Solutions terminated Claimant. Claimant resigned from working for Medical Solutions on or about February 28, 2023.

Medical Solutions’ Failure to Take “Travel Stipends” 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.

During the relevant period, Medical Solutions has had a policy and/or practice of adjusting “travel stipends” it promises to its employees, including housing, meal and/or incidental payments, based on number of hours or shifts they work in a given workweek. For instance, pursuant to Claimant’s employment agreement with Medical Solutions titled “Travel Assignment Agreement” for his San Jose assignment, Medical Solutions promised to pay Claimant a base rate of \$71.25 an hour, \$7,350 a month for his “housing” and another \$2,220 a month for “meals and incidentals.” However, Claimant’s employment agreement also provided for a “Missed Shift Adjustment” for each shift missed by Claimant, thereby making the promised travel stipends adjustable. Medical Solutions then failed to include Claimant’s so-called “travel stipends” in his regular rate of pay in order to determine his proper overtime and double-time rates of pay.

Thus, Medical Solutions’ promised travel stipends are not intended to reimburse Aggrieved Employees for their housing, meal or incidental expenses, but are, in fact, a form of disguised wages.

Despite the fact that the amount of the promised travel stipends are based upon, and vary with, the number of weekly hours or shifts worked by Aggrieved Employees, and thus are actually a form of disguised wages, during the applicable recovery period Medical Solutions has had a policy and/or practice of not including the value of those travel stipends, 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. This practice has resulted in overtime underpayments in instances where Medical Solutions’ paid overtime rate is insufficient to offset the amount it otherwise owes to its non-exempt employees for failing to take travel stipends into account for calculating overtime rates.

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

Medical Solutions Failure to Take Non-Discretionary Bonuses into Account in Determining Overtime Rates

Non-discretionary bonuses are considered wages under Labor Code § 210, and thus, must be included in the regular rate of pay to determine the overtime and double rates of pay. During the applicable recovery period, Medical Solutions has had a policy and/or practice of not including earned non-discretionary bonuses, such as bonuses paid for certain number of hours worked, as part of the Aggrieved Employees’ regular rates of pay in determining their overtime or double-time pay.

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

Medical Solutions’ 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 applicable recovery period, Medical Solutions has had a policy and/or practice of requiring Aggrieved Employees to take and complete online 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 online competency/training/orientation courses (or modules) that are facility-specific, Medical Solutions failed to pay these Aggrieved Employees their promised rates of pay, or even minimum wage.

In violation of California law, Medical Solutions 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 Employers to fully perform their obligations under California law.

Medical Solutions' 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, Medical Solutions is liable for civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Medical Solutions' Failure to Authorize or Permit Lawful Meal Breaks

During the applicable recovery period, Medical Solutions has had a policy and/or practice of not authorizing or permitting Claimant and other Aggrieved Employees to take lawful meal or rest 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, Claimant and Aggrieved Employees regularly worked in excess of 5-hour work periods without being authorized 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.

During the applicable recovery period, Medical Solutions 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, Medical Solutions is liable for civil penalties pursuant to Labor Code §§ 558 and 2698 *et seq.*

Medical Solutions' Failure to Authorize and/or Permit Rest Breaks

During the applicable recovery period, Medical Solutions has had policy and/or practice of not 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, Medical Solutions 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.

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 Medical Solutions. 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, Medical Solutions is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Medical Solutions' 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, Medical Solutions has failed to reimburse Aggrieved Employees for costs incurred traveling to and from assignments, such as costs of their flights and luggage, transportation to and from the airport, and/or mileage.

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

Medical Solutions' Failure to Timely Pay Wages on Regular Pay Days

As alleged above, during the applicable recovery period, Medical Solutions 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, Medical Solutions 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, Medical Solutions is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Medical Solutions' 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 Medical Solutions, Claimant and Aggrieved Employees were entitled to compensation for the violations set forth herein. Medical Solutions failed to pay all wages due to the Claimant and other Aggrieved Employees who separated from Medical Solutions, by failing to pay for, among other things, all hours worked, overtime and double-time, and premium wages for unlawful meal and rest breaks. Medical Solutions is 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.

Medical Solutions willfully failed to pay Claimant and other 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 Medical Solutions are now also entitled to recover up to thirty (30) days of wages due to Medical Solutions' "willful" failure to comply with the statutory requirements of Labor Code §§ 201 and 202.

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

Medical Solutions' 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.

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

As a direct and proximate result of Medical Solutions' conduct as alleged above, Claimant and other Aggrieved Employees affected by said violations are each entitled to a civil penalty of \$50 for the initial pay period and \$100 for each subsequent pay period in which Medical Solutions violated the reporting requirements of Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, Medical Solutions 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).

Claimant will seek penalties as permitted under Labor Code § 226 for each violation. Further, Claimant will seek recovery of civil penalties under Labor Code §§ 226.3, 558 and 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 him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court on behalf of himself and other Aggrieved Employees.

Respectfully Submitted,

SHAKOURI LAW FIRM

Ashkan Shakouri

Ashkan Shakouri

Attorney for Claimant and all other
Aggrieved Employees