

**SHAKOURI LAW FIRM**

Ashkan Shakouri, Esq. [SBN 242072]  
ash@shakourilawfirm.com  
Sharon Lin, Esq. [SBN 260443]  
sharon@shakourilawfirm.com  
401 Wilshire Blvd., 12<sup>th</sup> Floor  
Santa Monica, California 90401  
Telephone: (424) 252-4711

*Attorneys for Plaintiff*

**ELECTRONICALLY FILED**

Superior Court of California  
County of Sacramento

05/06/2024

By: K. Lideros Deputy

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
SUPERIOR COURT OF SACRAMENTO COUNTY**

EBONY GUTHRIE, on behalf of herself and  
other aggrieved employees

Plaintiff,

v.

AMN ALLIED SERVICES, LLC; and DOES  
1-20, inclusive

Defendants.

Case No: **24CV008717**

**REPRESENTATIVE ACTION  
COMPLAINT**

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

[AMOUNT DEMANDED EXCEEDS  
\$25,000.00]

1 Plaintiff Ebony Guthrie (“Plaintiff”), individually, on behalf of herself and all other  
2 aggrieved employees, as defined below, hereby alleges the following facts and claims against  
3 Defendant AMN Allied Services, LLC, a Delaware limited liability corporation (“Defendant”).  
4 Unless otherwise specified, Defendants AMN Allied Services, LLC, and Does 1-20 will  
5 collectively be referred to as “Defendants.”

### 6 **INTRODUCTION**

7 1. This Court has jurisdiction over Defendants because they are entities with  
8 sufficient minimum contacts in California, and/or because they intentionally availed themselves  
9 of the California market so as to render the exercise of jurisdiction over them by the California  
10 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 Defendants are found, maintain offices, transact business, exist and/or have an  
14 agent herein.

### 15 **PARTIES**

16 3. At all relevant times mentioned herein, Plaintiff was a phlebotomist and a resident  
17 of the State of Washington.

18 4. Upon information and belief, Defendant AMN Allied Services, LLC is an  
19 employment staffing agency and is, and at all times herein mentioned was, a Delaware limited  
20 liability company duly authorized to do business in 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 that 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  
2 Defendants were the principal, agent, employer, employee, partner, joint venturer, officer,  
3 director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest  
4 and predecessor in interest of some or all of the other Defendants, and was engaged with some  
5 or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to  
6 some 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 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 herself and all other non-exempt employees  
14 of Defendants who were assigned to work at a facility in California and who were subject to any  
15 of the violations alleged herein during the applicable recovery period (“Aggrieved Employees”).  
16 Aggrieved Employees includes Plaintiff.

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

1 **FACTUAL ALLEGATIONS**

2 10. Beginning in or around 2020, Defendants hired, paid, and assigned Plaintiff to  
3 work travel assignments as a non-exempt, hourly-paid phlebotomist. Most recently, Defendants  
4 assigned Plaintiff to work at Kaiser-South Sacramento Medical Center in Sacramento, California  
5 from in or about February 2022 to April 2022. Then, Defendants assigned and paid Plaintiff to  
6 work at Tenet–San Ramon Regional Medical Center in San Ramon, California from late May  
7 2022 until early June 2022. Plaintiff resigned from her employment with Defendants on or about  
8 February 22, 2024.

9 **I. Defendants’ Failure to Take “Per Diems” into Account in Determining**  
10 **Overtime Rates**

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

17 12. During the applicable recovery period, Defendants have had a policy and/or  
18 practice of making travel per diem payments they promise to the Aggrieved Employees,  
19 including housing, meal and/or incidental payments (“travel per diems”), adjustable based on  
20 number of hours or shifts they work in a given workweek. In particular, when Aggrieved  
21 Employees do not work the minimum number of hours or shifts per week the Defendants require  
22 of them, Defendants deduct their promised “travel per diems” based on the number of hours or  
23 shifts they missed that workweek. Moreover, among other things, Defendants do not verify that  
24 travel expenses are actually incurred and do not reduce “travel per diems” for scheduled days  
25 off.  
26

27 13. Thus, Defendants’ promised “travel per diems” function as wages, not  
28 reimbursements. Despite the fact that Defendants’ “travel per diems” function as wages, during

1 the relevant time period, Defendants' have had a policy and/or practice of not including the value  
2 of those "travel per diems," including those for housing, meals and/or incidentals, whether paid  
3 in cash or in kind, in the Aggrieved Employees' regular rates of pay for the purposes of  
4 calculating their overtime or double-time pay or their paid sick time.

5 14. For instance, during her travel assignment at Kaiser-South Sacramento Medical  
6 Center, Defendants promised Plaintiff a "lodging" per diem of \$145 per day and a "meals and  
7 incidentals" per diem of \$69 per day if she worked her full weekly schedule. However, if Plaintiff  
8 did not work her full weekly schedule, Defendants prorated Plaintiff's "travel per diems."  
9 Moreover, Defendants did not verify that Plaintiff's lodging or meals and incidentals expenses  
10 were actually incurred and did not reduce her "travel per diems" for her scheduled days off.  
11 However, Defendants failed to include Plaintiff's so-called "travel per diems" in her regular rate  
12 of pay in order to determine her proper overtime and double-time pay.

13 **II. Defendants' Failure to Pay for All Hours Worked, Including Failure to Pay**  
14 **Minimum Wage**

15 15. In California, an employer is required to compensate its non-exempt employees  
16 for all hours worked pursuant to the Applicable Wage Orders and Labor Code §§ 200, 223, 226,  
17 500, 510, 1197 and 1198. Furthermore, under Labor Code §§ 1194, 1194.2, and 1197, it is  
18 unlawful for an employer to suffer or permit a California employee to work without paying at  
19 least minimum wage for all time worked as required by the Applicable Wage Orders.

20 16. During the applicable recovery period, Defendants failed to compensate  
21 Aggrieved Employees for all their worked hours by engaging in improper rounding. Thus, in  
22 violation of California law, Defendants intentionally and willfully refused to perform their  
23 obligations to compensate Aggrieved Employees for all wages earned and all worked hours. As  
24 a direct result, they have suffered, and continue to suffer, substantial losses related to the use and  
25 enjoyment of such wages, lost interest on such unpaid wages, incurred expenses and attorneys'  
26 fees in seeking to compel Defendants to fully perform their obligations under California law.  
27  
28

1           **III.     Defendants’ Failure to Authorize and/or Permit Lawful Meal or Rest Breaks**  
2                           **or to Pay the Correct Break Premiums**

3           17.     During the applicable recovery period, Defendants have had policy and/or  
4 practice of not, from time to time, authorizing and/or permitting Aggrieved Employees, including  
5 Plaintiff, to take lawful meal or rest breaks under California law.

6           18.     Labor Code § 512 provides, “[a]n employer may not employ an employee for a  
7 work period of more than five hours per day without providing the employee with a meal period  
8 of not less than 30 minutes... An employer may not employ an employee for a work period of  
9 more than 10 hours per day without providing the employee with a second meal period of not  
10 less than 30 minutes...” Labor Code § 226.7(a) provides, “[n]o employer shall require an  
11 employee to work during any meal or rest period mandated by an applicable order of the  
12 Industrial Welfare Commission.”

13          19.     During the applicable recovery period, Aggrieved Employees regularly worked in  
14 excess of 5-hour work periods without being authorized and/or permitted to take a lawful first  
15 and/or second meal break, as required by Labor Code §§ 226.7, 512 and the Applicable Wage  
16 Orders, due to, among other reasons, work overload and staffing shortages.

17          20.     During the applicable recovery period, Aggrieved Employees regularly worked in  
18 excess of 4-hour work periods, or fractions thereof, without being authorized and/or permitted to  
19 take a lawful first, second, third, and/or fourth rest breaks, as required by Labor Code §§ 226.7  
20 and the Applicable Wage Orders, due to, among other reasons, work overload and staffing  
21 shortages.

22          21.     Moreover, when Defendants paid break premiums, they paid them incorrectly by  
23 failing to include the “travel per diems” in Aggrieved Employees’ regular rates of pay, as required  
24 under California law.

25           **IV.     Defendants’ Failure to Reimburse Necessary Business Expenses**

26          22.     An employer is required to reimburse its employees for all necessary expenditures  
27 incurred by the employee in direct consequence of the discharge of his or her job duties or in  
28

1 direct consequence of his or her obedience to the directions of the employer. Labor Code section  
2 2800 and 2802.

3 23. During the applicable recovery period, Aggrieved Employees incurred necessary  
4 business-related expenses and costs that were not fully reimbursed by Defendants. These  
5 expenses include, but are not limited to, transportation costs incurred for traveling to and from  
6 assignments, and mobile phone costs.

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

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

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

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

20 27. While employed by Defendants, Aggrieved Employees were entitled to  
21 compensation for the violations set forth herein. Defendants failed to pay all wages due to  
22 Plaintiff and other Aggrieved Employees who separated from Defendants, by failing to pay for,  
23 among other things, all hours worked, overtime and double-time, and premium wages for  
24 unlawful meal and rest breaks. Defendants are required to compensate these Aggrieved  
25 Employees for all their unpaid wages earned and an additional penalty equal to the daily earnings  
26 of such employees up to an amount equal to those owed for 30 days of work.  
27  
28

1           **VI. Defendants' Failure to Furnish Accurate Wage Statements**

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

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

14           31. Defendants knowingly and intentionally failed to provide Aggrieved Employees  
15 with paycheck deduction statements accurately displaying the information required by Labor  
16 Code § 226(a).

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

1 **FIRST CAUSE OF ACTION**

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

3 **(Against Defendants)**

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

6 34. Plaintiff brings her first and only cause of action as a representative action on  
7 behalf of herself and other Aggrieved Employees in the capacity as a private attorneys general  
8 pursuant to the PAGA.

9 35. Plaintiff was employed by Defendants and the Labor Code violations alleged  
10 herein were committed against her during her 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 36. 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 overtime and the proper overtime rates for all  
17 overtime hours worked in violation of Labor Code §§ 510, 1194, and the  
18 Applicable Wage Orders;
- 19 b. Failed to pay all wages earned and owed in violation of Labor Code § 200, and  
20 the Applicable Wage Orders;
- 21 c. Failed and continue to fail to pay minimum wage for all hours worked in  
22 violation of Labor Code §§ 1194 and 1197, and the Applicable Wage Orders;
- 23 d. Failed and continue to fail to authorize and/or permit meal periods in violation  
24 of Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
- 25 e. Failed and continue to fail to authorize and/or permit rest periods in violation of  
26 Labor Code §§ 226.7, and the Applicable Wage Orders;
- 27 f. Failed and continue to fail to reimburse for all business-related expenditures in  
28 violation of Labor Code § 2802;

- 1           g. Failed and continue to fail to timely furnish itemized wage statements in  
2           violation of Labor Code § 226, and the Applicable Wage Orders; and  
3           h. Willfully failed, and willfully continue to fail, to pay without abatement or  
4           reduction, all final wages owed in accordance with Labor Code §§ 201 and 202  
5           and in violation of Labor Code § 203.

6           37. On February 27, 2024, Plaintiff sent a written notice to Defendant AMN Allied  
7 Services, LLC and the Labor and Workforce Development Agency (“LWDA”) notifying them  
8 of the specific violations and the facts and theories supporting those violations. More than 60  
9 days have passed since the date the notice was mailed to Defendants and the LWDA. A true and  
10 correct copy of Plaintiff’s written notice to Defendant AMN Allied Services, LLC and the  
11 LWDA is attached hereto as “Exhibit 1,” which Plaintiff incorporates by reference as though  
12 fully set forth herein.

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

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

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

Dated: May 3, 2024

SHAKOURI LAW FIRM

## DEMAND FOR JURY TRIAL

Dated: May 3, 2024

SHAKOURI LAW FIRM

## REPRESENTATIVE ACTION COMPLAINT

# EXHIBIT 1

**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

February 27, 2024

**Via Online Filing:**

California Labor & Workforce  
Development Agency

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

455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, CA 94102

**Via Certified U.S. Mail:**

AMN ALLIED SERVICES, LLC  
CSC lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

AMN ALLIED SERVICES, LLC  
12400 High Bluff Drive, Suite 100  
San Diego, CA 92130

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

Claimant: Ebony Guthrie  
Employer: AMN Allied Services, LLC

Dear Sir or Madam:

Claimant Ebony Guthrie (“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 AMN Allied Services, LLC (“Employer”).

During the relevant period, 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 herself and all others non-exempt employees of Employer who were assigned to work at a facility in California and who were subject to any of 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 Employer, 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 Employer against the Aggrieved Employees, including those she did not personally suffer.

#### **Claimant’s Employment with Employer**

Beginning in or around 2020, Employer hired, paid, and assigned Claimant to work travel assignments as a non-exempt, hourly-paid phlebotomist. Most recently, Employer assigned and paid Claimant to work at Kaiser-South Sacramento Medical Center in Sacramento, California from in or about February 2022 to April 2022. Then, Employer assigned and paid Claimant to work at Tenet–San Ramon Regional Medical Center in San Ramon, California from late May 2022 until early June 2022. Claimant resigned from her employment with Employer on or about February 22, 2024.

#### **Employer’s Failure to Take “Per Diems” into Account in Determining Overtime Rates or Paid Sick Time 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. Moreover, under Labor Code § 246, paid sick time must be paid at the regular rate of pay.

During the relevant period, Employer has had a policy and/or practice of making travel per diems payments it promises to Aggrieved Employees, including housing, meals and/or incidentals payments (“travel per diems”), adjustable based on number of hours or shifts they work in a given

workweek. In particular, when Aggrieved Employees do not work the minimum number of hours or shifts per week the Employer requires of them, Employer deducts their promised “travel per diems” based on the number of hours or shifts they missed that workweek. Moreover, among other things, Employer does not verify that travel expenses are actually incurred and does not reduce “travel per diems” for scheduled days off. Thus, Employer’s promised “travel per diems” function as wages, not reimbursements. Despite the fact that Employer’s “travel per diems” function as wages, during the relevant time period, Employer has had a policy and/or practice of not including the value of those “travel per diems,” 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 or their paid sick time.

For instance, during her travel assignment at Kaiser-South Sacramento Medical Center, Employer promised Claimant a “lodging” per diem of \$145 per day and a “meals and incidentals” per diem of \$69 per day if she worked her full weekly schedule. However, if Claimant did not work her full weekly schedule, Employer prorated Claimant’s “travel per diems.” Moreover, Employer did not verify that Claimant’s lodging or meals and incidentals expenses were actually incurred and did not reduce her “travel per diems” for her scheduled days off. However, Employer failed to include Claimant’s so-called “travel per diems” in her regular rate of pay in order to determine her proper overtime and double-time pay.

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

#### **Employer’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 time period, Employer failed to compensate Aggrieved Employees for all their worked hours by engaging in improper rounding. Thus, in violation of California law, Employer 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.

Employer’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, Employer is liable for civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

**Employer's Failure to Authorize and/or Permit Lawful Meal Breaks or to Pay the Correct Break Premiums**

During the relevant period, Employer has had policy and/or practice of not, from time to time, authorizing and/or permitting 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.

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

Moreover, when Employer paid break premiums, it paid them incorrectly by failing to include the “travel per diems” in Aggrieved Employees’ regular rates of pay, as required under California law.

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

**Employer's Failure to Authorize and/or Permit Rest Breaks**

During the applicable recovery period, Employer has had policy and/or practice of not, from time to time, authorizing and/or permitting 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, Employer, from time to time, did not authorize and/or permit 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 Employer. 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, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

#### **Employer’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 Employer. These expenses include, but are not limited to, transportation costs incurred for traveling to and from assignments, and mobile phone costs.

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

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

breaks. Employer 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.

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

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

### **Employer'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.

Employer 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 Employer'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 Employer violated the reporting requirements of Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, Employer 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.*

### **Employer's Failure to Timely Pay Wages During Employment**

As alleged above, during the applicable recovery period, Employer 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, Employer 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, Employer 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 her 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