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FILED
Superior Court of California
County of Los Angeles
07/05/2024
David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF LOS ANGELES

DAWNIELLE ROULEAU, on behalf of herself and others similarly situated

Plaintiff,

v.

PROCARE USA, LLC; PROCARE USA MEDICAL STAFFING LLC; and DOES 1-20, inclusive

Defendants.

Case No: 24STCV11010

FIRST-AMENDED CLASS ACTION COMPLAINT

1) **FAILURE TO PAY OVERTIME**
2) **FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS**
3) **FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS**
4) **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENDITURES**
5) **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
6) **WAITING TIME PENALTIES**
7) **UNFAIR BUSINESS PRACTICES**
8) **PAGA VIOLATIONS**

[AMOUNT DEMANDED EXCEEDS $25,000.00]

Plaintiff Dawnielle Rouleau ("Plaintiff"), an individual, on behalf of herself and all others similarly situated, as defined below, hereby alleges the following facts and claims against ProCare USA Medical Staffing LLC and ProCare USA, LLC (collectively, "ProCare Defendants"), and respectfully requests a trial by jury of all issues and causes of action so triable. Unless otherwise specified, ProCare Defendants and Does 1-20 will collectively be referred to as "Defendants."

INTRODUCTION

1. This class action complaint challenges Defendants' past and ongoing unlawful conduct on behalf of Plaintiff and other similarly situated former and current non-exempt employees of Defendants, whose rights Defendants violated and continue to violate under California law.

2. Specifically, as to Plaintiff and others similarly situated, Defendants have:

a. Failed and continue to fail to pay for all overtime hours worked and the lawful overtime rates for all overtime hours worked in violation of Labor Code §§ 510 and 1194 and the Applicable Wage Orders;

b. Failed and continue to fail to authorize and/or permit lawful meal breaks in violation of Labor Code §§ 226.7 and 512 and the Applicable Wage Orders;

c. Failed and continue to fail to authorize and/or permit lawful rest breaks in violation of Labor Code §§ 226.7 and the Applicable Wage Orders;

d. Failed and continue to fail to reimburse necessary business-related expenses and costs in violation of Labor Code §§ 2800 and 2802 and the Applicable Wage Orders;

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

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

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

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

JURISDICTION AND VENUE

4. This Court has jurisdiction over ProCare Defendants because they are corporations that have sufficient minimum contacts in California, and/or they intentionally availed and continue to avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and justice.

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

PARTIES

6. At all relevant times mentioned herein, Plaintiff was a nurse and a resident of the State of Michigan.

7. Upon information and belief, ProCare Defendants are employment staffing agencies who employ, compensate and assign healthcare professionals to work at various kinds of facilities throughout California. Upon information and belief , ProCare USA, LLC is, and at all times herein mentioned was, a Connecticut corporation duly authorized to do business in California and ProCare USA Medical Staffing LLC is, and at all times herein mentioned was, a New York corporation duly authorized to do business in California.

8. The true names or capacities, whether individual, associate or otherwise, of Does 1-20, inclusive, are unknown to Plaintiff and, therefore, Plaintiff sues these Doe Defendants by such fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to allege such names and capacities as soon as they are ascertained. Upon information and belief, each of

these fictitiously named Defendants is responsible in some manner for the occurrences alleged herein, and that Plaintiff's injuries and damages as alleged and set forth herein were proximately caused by such fictitiously named Defendants.

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

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

GENERAL ALLEGATIONS

11. Defendants hired, paid and assigned Plaintiff to work at various facilities in California. Most recently, Defendants paid and assigned Plaintiffs to work at Providence Saint Joseph Medical Center in Burbank, California as a non-exempt, hourly-paid travel nurse from on or about January 30, 2023 to on or about May 3, 2023. Plaintiff is no longer employed by Defendants.

I. Defendants' Failure to Take "Travel Allowances" into Account in Determining Overtime and Double-Time Rates

12. 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.

13. During the relevant period, Defendants have, from time to time, adjusted "travel allowances" they promise to their non-exempt employees, including housing, meal and/or incidental payments, based on number of hours or shifts they work in a given workweek. For instance, Plaintiff's agreement for her assignment at Providence Saint Joseph Medical Center provides:

> Employee's weekly allowances are based on the assumption that Employee is scheduled to work shifts at the Facility each week (measured Sunday-Saturday), which require Employee to be away from his/her home (i.e. travel back and forth between his/her home and the Facility between shifts during the week is impractical and not reasonable). Should Employee not be scheduled to work any shift(s) during any particular week, regardless of the reason, no weekly allowances shall be provided and Employee should report home, as weekly allowances are solely provided to permit Employee to stay within the area of the [sic] his/her assignment for the purpose of working shifts.

14. Moreover, among other things, Defendants do not verify that travel expenses are actually incurred by non-exempt and do not reduce allowances for scheduled days off. Accordingly, Defendants' promised travel allowances are not intended to reimburse their non-exempt employees for their housing, meal or incidental expenses, but are a form of disguised wages. Despite the fact that the amount of the promised travel allowances are wages, during the applicable recovery period Defendants have, from time to time, failed to include the value of those travel allowances, including those for housing, meals and/or incidentals, whether paid in cash or in kind, in their non-exempt employees' regular rates of pay for the purposes of calculating their overtime or double-time pay.

II. Defendants' Failure to Authorize and/or Permit Lawful Meal or Rest Breaks

15. During the relevant period, Defendant have, from time to time, failed to authorize and/or permit their non-exempt employees, including Plaintiff, to take lawful meal or rest breaks under California law.

III. Defendants' Failure to Reimburse Necessary Expenditures

16. During the applicable recovery period, Defendants have, from time to time, failed to reimburse their non-exempt employees, including Plaintiff, for the cost of using their personal mobile phones for work-related purposes, such as submission of their time cards to Defendants.

CLASS ACTION ALLEGATIONS

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

18. Plaintiff reserves the right under California Rules of Court, Rule 1855 (b) to amend or modify the description of the class, as defined below, with greater specificity or further division into sub-classes, or limitation to certain issues.

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

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

21. The putative class Plaintiff will seek to certify are currently composed of and defined as follows:

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

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

23. **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Class and predominate over any questions that affect only individual members of the Class. The predominant common questions of law and fact include:

a. Whether Defendants failed and continue to fail to pay for all overtime hours worked and pay lawful overtime rates for all overtime hours worked in violation of Labor Code §§ 510 and 1194 and the Applicable Wage Orders;

b. Whether Defendants failed and continue to fail to authorize and/or permit lawful meal breaks in violation of Labor Code §§ 226.7 and 512 and the Applicable Wage Orders;

c. Whether Defendants failed and continue to fail to authorize and/or permit lawful rest breaks in violation of Labor Code § 226.7 and the Applicable Wage Orders;

d. Whether Defendants failed and continue to fail to reimburse necessary business-related expenses and costs in violation of Labor Code §§ 2800 and 2802 and the Applicable Wage Orders;

e. Whether Defendants failed and continue to fail to timely furnish complete and accurate itemized wage statements in violation of Labor Code § 226 and the Applicable Wage Orders;

f. Whether Defendants willfully failed to pay, without abatement or reduction, all final wages owed in accordance with Labor Code §§ 201 or 202 and in violation of Labor Code § 203; and

g. Whether Defendants committed and continue to commit unfair business practices in violation of Business & Professions Code §17200, et seq.

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

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

26. **Superiority:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Because individual joinder of all members of each of

the Class is impractical, class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense that numerous individual actions would engender. The relatively minor amount of individual damages in question coupled with the expenses and burdens of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while important public interests will be served by addressing the matter as a class action. The cost to and burden on the court system of adjudication of individualized litigation would be substantial and substantially more than the costs and burdens of a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Plaintiff and the Class Against Defendants)

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

28. Pursuant to Labor Code §§ 200, 226, 500, 510 and 1198 and the Applicable Wage Orders at all times relevant hereto, Defendants were required to compensate Plaintiff and the Class for all overtime hours worked, which is calculated at one and one-half times the regular rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week. Defendants were also required to compensate Plaintiff and the Class for all hours worked in excess of 12 hours in any workday at double their regular rate of pay. Additionally, under California law, Defendants were required to include any payments for work in the regular rate of pay for overtime and double-time calculation purposes.

29. As fully alleged above, during the applicable recovery period, Defendants have, from time to time, failed to include the value of the "travel allowances" including, but not limited to, housing, meal and incidental payments, whether paid in cash or in kind, in Plaintiff's and the Class's regular rates of pay for purposes of calculating their overtime and double-time pay.

Therefore, Plaintiff and the Class were not fully paid for all the overtime and/or double-time payments legally owed to them.

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

31. Pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, and 1194, Plaintiff and the Class are entitled to recover owed overtime and double-time compensation from Defendants and civil penalties, plus interest penalties, attorneys' fees, expenses, and costs of suit.

SECOND CAUSE OF ACTION

FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS OR PAY THE LAWFUL PREMIUMS

(Plaintiff and the Class Against Defendants)

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

33. 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."

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

35. During the applicable recovery period, Defendants have, from time to time, failed to authorize and/or permit Plaintiff and the Class to take legally-complaint first or second meal breaks when they worked long enough to be entitled to meal breaks under California.

36. During the applicable recovery period, Defendants have, from time to time, failed to pay Plaintiff and the Class premium 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, Defendants are liable for civil penalties pursuant to Labor Code §§ 558 and 2698 et seq.

37. Plaintiff and the Class are entitled to recover one additional hour of pay at their regular rate of compensation with Defendants for each work day that a meal break was not authorized and/or permitted. Plaintiff and the Class 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.

<u>THIRD CAUSE OF ACTION</u>

FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS

(Plaintiff and the Class Against Defendants)

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

39. 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."

40. The Applicable Wage Orders require that employers authorize or permit nonexempt 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.

41. Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an employee a rest break in accordance with an 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.

42. During the applicable recovery period, Defendants have, from time to time, failed to authorize and/or permit Plaintiff and the Class to take legally-complaint rest breaks when they worked long enough to be entitled to rest breaks under California.

43. During the applicable recovery period, Defendants have, from time to time, failed to pay Plaintiff and the Class any premium wages, or the correct premium wages, mandated by Labor Code § 226.7(b) for these unlawful rest breaks. As a result of violations of Labor Code §§ 226.7 and the Applicable Wage Orders, Defendants are liable for civil penalties pursuant to Labor Code §§ 558 and 2698 et seq.

44. Plaintiff and the Class are entitled to recover one additional hour of pay at their regular rate of compensation with Defendants for each work day that a rest break was not authorized and/or permitted. Plaintiff and Class 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.

FOURTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS-RELATED EXPENDITURES

(Plaintiff and the Class Against Defendants)

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

46. Labor Code § 2802 (a) provides, "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

47. As alleged above, during the applicable recovery period, Defendants have, from time to time, failed to reimburse Plaintiff and the Class for their incurred business-related expenditures, including, but not limited to, expenses for the use of their mobile phones for work purposes.

48. As a direct and proximate result of Defendants' failure to reimburse Plaintiff and the Class for their business-related expenditures, they have been injured in an amount to be proven at trial.

49. Plaintiff and the Class are entitled to recover reimbursement of their business-related expenditures. Plaintiff and the Class 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.

FIFTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE WAGE STATEMENTS

(Plaintiff and the Class Against Defendants)

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

51. 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.

52. 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.

53. Defendants have, from time to time, knowingly and intentionally failed to provide Plaintiff and the Class with paycheck deduction statements accurately displaying the information required by Labor Code § 226(a).

54. As a direct and proximate result of Defendants' conduct as alleged above, Plaintiff and the affected members of the Class are entitled to a civil penalty of $50 for the initial pay period and $100 for each subsequent pay period in which Defendants violated the reporting requirements of Labor Code § 226, up to a maximum of $4,000.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Plaintiff and the Class Against Defendants)

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

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

57. 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.

58. During the applicable recovery period, Plaintiff and some members of the Class have separated from Defendants as a result of being discharged or having voluntarily resigned their employment.

59. While working for Defendants, Plaintiff was entitled to compensation for the violations set forth in this Complaint, but Defendants failed to pay all wages due to his at the time of separation in violation of statutes cited above.

60. Upon information and belief, Defendants have, from time to time, failed to pay some of the members of the Class all their owed wages at the time of separation. Plaintiff does not allege that all separated members of the Class are owed waiting time penalties or that they are owed the full 30-day penalty under Labor Code § 203, because it is unknown to Plaintiff at

this time whether Defendants paid some of the separated members of the Class all their owed wages upon separation or paid them all their owed wages less than 30 days after their separation.

SEVENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

(By Plaintiff and the Class Against Defendants)

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

62. Defendants have had a practice of engaging in unfair business practices in California by practicing, employing and utilizing the employment practices outlined in this Complaint by requiring their non-exempt employees to perform the labor complained of herein without proper compensation. Defendants' utilization of such unfair business practices constitutes unfair competition and provides an unfair advantage over their competitors.

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

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

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

66. Plaintiff and the Class are further entitled to and do seek both a declaration that the above-described business practices are unfair, unlawful and/or fraudulent and injunctive relief restraining Defendants from engaging in any of such business practices in the future. Such

misconduct unless and until enjoined and restrained by order of this Court, will cause great and irreparable injury in that Defendants will continue to violate these California laws, represented by labor statutes and the wage orders, unless specifically ordered to comply with same. This expectation of future violations will require current and future employees to repeatedly and continuously seek legal redress in order to gain compensation to which they are entitled under California law. Plaintiff and the Class have no other adequate remedy at law to ensure future compliance with the California labor laws and the Applicable Wage Orders alleged to have been violated herein.

EIGHTH CAUSE OF ACTION

PAGA VIOLATIONS

(By Plaintiff and Aggrieved Employees Against Defendants)

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

62. Plaintiff and all other non-exempt employees of Defendants 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 are aggrieved employees as defined under Labor Code § 2699(a) ("Aggrieved Employees"). Plaintiff brings this cause on behalf of herself and all other Aggrieved Employees.

63. Defendants committed and continue to commit violations of the Labor Code against Plaintiff and the Aggrieved Employees as alleged herein, including, but not limited to, the following:

a. Failing and continuing to fail to pay for all overtime hours worked and the lawful overtime rates for all overtime hours worked in violation of Labor Code §§ 510 and 1194 and the Applicable Wage Orders;

b. Failing and continuing to fail to authorize and/or permit lawful meal breaks in violation of Labor Code §§ 226.7 and 512 and the Applicable Wage Orders;

c. Failing and continuing to fail to authorize and/or permit lawful rest breaks in violation of Labor Code §§ 226.7 and the Applicable Wage Orders;

d. Failing and continuing to fail to reimburse necessary business-related expenses and costs in violation of Labor Code §§ 2800 and 2802 and the Applicable Wage Orders;

e. Failing and continuing to fail to timely furnish complete and accurate itemized wage statements in violation of Labor Code § 226 and the Applicable Wage Orders; and

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

64. On April 29, 2024, Plaintiff sent a written notice to ProCare Defendants and the Labor and Workforce Development Agency ("LWDA") notifying them of the specific violations and the facts and theories supporting those violations. More than 65 days have passed since the date the notice was mailed to ProCare Defendants and LWDA. A true and correct copy of Plaintiff's written notice to Defendant and the LWDA is attached hereto as "Exhibit 1," which Plaintiff incorporates by reference as though fully set forth herein.

PRAYER FOR RELIEF

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

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

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

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

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

5. For all civil penalties recoverable under PAGA;

6. For declaratory and injunctive relief as requested herein;

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

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

9. For costs of suit incurred in this action;

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

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

Dated: July 5, 2024

Respectfully submitted,

SHAKOURI LAW FIRM

By: Ashkan Shakouri

Ashkan Shakouri
Attorney for Plaintiff

<u>DEMAND FOR JURY TRIAL</u>

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

Dated: July 5, 2024

Respectfully submitted,

SHAKOURI LAW FIRM

By: Ashkan Shakouri

Ashkan Shakouri
Attorney for Plaintiff

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

April 29, 2024

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:
ProCare USA Medical Staffing LLC
c/o CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, CA 95833

ProCare USA Medical Staffing LLC
845 3rd Ave, Fl 6
New York, NY 10022

ProCare USA, LLC
c/o National Registered Agents, Inc.
330 N Brand Blvd.
Glendale, CA 91203

ProCare USA, LLC
2 Bridgewater Road
Farmington, CT 06032

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

Claimant: Dawnielle Rouleau
Employers: ProCare USA Medical Staffing LLC & ProCare USA, LLC

Dear Sir or Madam:

Claimant Dawnielle Rouleau ("Claimant") has retained Ashkan Shakouri of Shakouri Law Firm to represent her, and all other aggrieved employees, for wage and hour claims against her employers ProCare USA Medical Staffing LLC and ProCare USA, LLC ("Employers").

During the relevant period, Employers have violated, and/or have caused to be violated, several Labor Code provisions and are 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 each of the Employers 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").

As alleged below, Claimant personally suffered some of the Labor Code violations committed by Employers, 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. 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 Employers against the Aggrieved Employees, including those she did not personally suffer.

Claimant's Employment with Employers

Employers hired, paid and assigned Claimant to work at various facilities in California. Most recently, Employers paid and assigned Claimant to work at Providence Saint Joseph Medical Center in Burbank, California as a non-exempt, hourly-paid travel nurse from on or about January 30, 2023 to on or about May 3, 2023. Claimant has not worked for Employers since then.

Employers' Failure to Take "Travel Allowances" into Account in Determining Overtime 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, Employers have, from time to time, adjusted "travel allowances" they promise to Aggrieved Employees, including housing, meal and/or incidental payments, based on number of hours or shifts they work in a given workweek. For instance, Claimant's agreement for her assignment at Providence Saint Joseph Medical Center provides:

> Employee's weekly allowances are based on the assumption that Employee is scheduled to work shifts at the Facility each week (measured Sunday-Saturday), which require Employee to be away from his/her home (i.e. travel back and forth between his/her home and the Facility between shifts during the week is impractical and not reasonable). Should Employee not be scheduled to work any shift(s) during any particular week, regardless of the reason, no weekly allowances shall be provided and Employee should report home, as weekly allowances are solely provided to permit Employee to stay within the area of the [sic] his/her assignment for the purpose of working shifts.

Moreover, among other things, Employers do not verify that travel expenses are actually incurred by Aggrieved Employees and do not reduce allowances for scheduled days off. Accordingly, Employers' promised travel allowances are not intended to reimburse Aggrieved Employees for their housing, meal or incidental expenses, but are a form of disguised wages. Despite the fact that the amount of the promised travel allowances are wages, during the applicable recovery period Employers have, from time to time, failed to include the value of those travel allowances, 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.

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

<u>Employers' Failure to Take Non-Discretionary Bonuses into Account in Determining Overtime or Paid Sick Time Rates</u>

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, Employers have, from time to time, failed to include earned non-discretionary bonuses, such as completion bonuses, as part of the Aggrieved Employees' regular rates of pay in determining their overtime or double-time pay or their paid sick time.

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

Employers' Failure to Pay 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, Employers have, from time to time, failed to compensate Aggrieved Employees for all their worked hours by engaging in improper rounding and auto-deduct practices with respect to meal breaks, so that when Aggrieved Employees worked during their supposed meal breaks Employers failed to pay them for such time.

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

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

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

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

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 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, due to, among other reasons, work overload and understaffing. Moreover, during the applicable recovery period, Employers have, from time to time, failed to pay Aggrieved Employees' wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks.

As such, Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation for each workday that a meal break was not authorized and/or permitted. 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 violations of Labor Code §§ 226.7 and 512 and the applicable wage orders, Employers are liable for civil penalties pursuant to Labor Code §§ 558 and 2698 *et seq*.

Employers' Failure to Authorize and/or Permit Rest Breaks

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, Aggrieved Employees worked in excess of 4-hour work periods, or a major fraction thereof without being authorized and/or permitted to take a lawful rest breaks, as required by Labor Code §§ 226.7, and the applicable wage orders, due to, among other reasons, work overload and understaffing. Moreover, during the applicable recovery period, Employers have, from time to time, failed to pay premium wages mandated by Labor Code § 226.7(b) for these unlawful rest breaks.

As such, 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. 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, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' 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, Employers have, from time to time, failed to reimburse Aggrieved Employees for costs incurred for using their cell phones for work purposes, such as submission of their time cards to Employers.

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

<u>Employers' Failure to Pay Wages Due Upon Termination</u>

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 Employers, Aggrieved Employees were entitled to compensation for the violations set forth herein. Employers failed to pay all wages due to the 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. Employers 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.

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

Claimant does not allege that all separated Aggrieved Employees are owed waiting time penalties or that they are owed the full 30-day penalty under Labor Code § 203, because it is unknown to Claimant at this time whether Employers paid some of the separated Aggrieved Employees all their owed wages upon separation or short of 30 days after their separation.

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

<u>Employers' Failure to Furnish Accurate Wage Statements</u>

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.

Employers 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 Employers' 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 Employers violated the reporting requirements of Labor Code § 226, up to a maximum of $4,000. Additionally, under Labor Code § 226.3, Employers are subject to a civil penalty in the amount of $250 per Aggrieved Employee per violation in an initial citation and $1,000 per Aggrieved Employee for each violation in a subsequent citation, for which they failed to provide them a wage deduction statement or failed 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 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

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California, I am over the age of 18 and not a party to the within action; my business address is 401 Wilshire Boulevard, 12th Floor, Santa Monica, California 90401. I served the foregoing document(s) described as:

PLAINTIFF'S FIRST-AMENDED CLASS ACTION COMPLAINT

X BY ELECTRONIC TRANSMISSION ONLY: I electronically caused to be served the foregoing document on all interested parties in this action via email only. The document will be deemed served on the date it was emailed.

Addressed to:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: July 5, 2024

Ashkan Shakouri
Ashkan Shakouri