

Nazo Koulloukian, SBN 263809
nazo@koullaw.com
Hilary Silvia, Of-Counsel, SBN 237993
hilary@koullaw.com
KOUL LAW FIRM, APC
3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010
Telephone: (213) 761-5484
Facsimile: (818) 561-3938

Attorneys for Plaintiff,
DAVID ROGERS on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

DAVID ROGERS, an individual, on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiff,

vs.

TRUSTAFF TRAVEL NURSES, LLC, an
Ohio limited liability company; and DOES 1-
50, inclusive,

Defendant.

E-FILED
11/20/2024 2:52 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
24CV452309
Reviewed By: J. Nguyen

Case No.: 24CV452309

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

Plaintiff DAVID ROGERS brings this PAGA representative action complaint on behalf of
himself, all aggrieved employees, and the State of California as a Private Attorneys General, and
alleges as follows:

1 **NATURE OF THE ACTION**

2 1. Plaintiff DAVID ROGERS worked as an hourly, nonexempt employee for Defendant
3 TRUSTAFF TRAVEL NURSES, LLC, and Does 1-50 (collectively “Defendant”). Defendant
4 operates a travel nurse agency.

5 2. Plaintiff DAVID ROGERS worked for Defendant as a Registered Nurse until December
6 26, 2023. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004
7 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former hourly,
8 nonexempt employees of Defendant within one year of serving notice on the LWDA to the present
9 are aggrieved employees.

10 3. Defendant failed to comply with California Labor Code requirements due to erroneous,
11 willful and intentional employment practices and policies. Plaintiff brings this representative
12 action on behalf of himself, all other similarly situated aggrieved employees, and the State of
13 California, based upon the claims articulated below. Plaintiff provided notice of his claims
14 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as
15 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
16 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
17 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
18 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

19 4. Defendant has had a consistent policy and/or practice of: (1) failing to pay all hours
20 worked, including overtime hours worked; (2) failing to pay all wages owed twice per month; (3)
21 failing to pay minimum wage; (4) failing to pay wages due upon termination; (5) failing to provide
22 timely meal breaks; (6) failing to provide rest breaks; (7) failing to reimburse for required business
23 expenses; (8) failing to provide accurate itemized wage statements. Defendant is therefore liable
24 for civil penalties under the Cal. Labor Code, including the Private Attorney General Act
25 (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

1 **THE PARTIES**

2 5. Plaintiff DAVID ROGERS is a worked for Defendant in the State of California during
3 the statutory period until December 26, 2023.

4 6. Defendant TRUSTAFF TRAVEL NURSES, LLC is an Ohio limited liability company
5 authorized to do business and doing business in California with the capacity to sue and to be sued,
6 and doing business, in the county of Santa Clara, California.

7 7. Plaintiff is unaware of the true names, capacities, relationships, and extent of
8 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
9 informed and believes and thereon alleges that said Defendant is legally responsible for the
10 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
11 will amend this complaint when their true names and capabilities are ascertained.

12 8. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
13 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
14 of the representative class, and exercised control over their wages, hours, and working conditions.
15 Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects
16 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
17 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
18 to the other Defendants.

19 **JURISDICTION AND VENUE**

20 9. Venue is proper in this judicial district because each Defendant conducts business in this
21 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
22 in this case that arose in this county.

23 10. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of
24 the Superior Court and will be established according to proof at trial. Based on information,
25 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
26 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
27 (\$25,000).
28

1 11. The California Superior Court has jurisdiction in this matter because Plaintiff is a
2 resident of California and Defendant is qualified to do business in California and regularly conduct
3 business in California. Further, there is no federal question at issue as the claims herein are based
4 solely on California law.

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

6 12. During the relevant time period, Defendant committed various violations of the
7 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
8 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

9 13. This representative action represents over one hundred current and former aggrieved
10 employees.

11 14. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
12 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
13 numerous Labor Code sections, as set forth more fully below.

14 15. Plaintiff and all current and former hourly, nonexempt employees within one year of
15 filing this action to the present are aggrieved employees within the meaning of Labor Code 2699,
16 *et seq.* (See Labor code §2699(c).)

17 16. Defendant, and each of them, have committed the following violations of the California
18 Labor Code:

19 **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

20 (Cal. Labor Code §§00, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194,
21 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 5)

22 17. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
23 incorporate said paragraphs herein by reference.

24 18. Failure to take “Per Diem” Benefits into Account in Determining Overtime Rates.
25 Under Labor Code § 200, “wages” consist of “all amounts for labor performed by employees of
26 every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
27 commission basis or other method of calculation. In California, overtime is computed based on the
28 regular rate of pay. The regular rate of pay includes many different kinds of remuneration,

1 including hourly earnings, salary, piece work earnings, commissions, certain bonuses, and the
2 value of meals and lodging.

3 19. During the applicable recovery period, Defendant has had a policy and/or practice of
4 adjusting per diem payments it promises to its employees, including lodging, meal and/or
5 incidental payments, based on number of hours or shifts they work in a given workweek. In
6 particular, when Defendant's employees do not work the minimum number of hours or shifts per
7 week that Defendant required of them, Defendant deducted from their pay a proportional amount
8 of their promised per diem payments based on the number of hours or shifts they missed that
9 workweek. Thus, Defendant's promised per diem payments are not intended to actually or
10 reasonably reimburse its employees for their lodging, meal and/or incidental expenses, but in fact
11 are a form of disguised wages. This is made evident by Plaintiff's \$35.53 an hour rate of pay which
12 is far below the hourly market rate paid to licensed nurses in California.

13 20. Despite the fact that the amount of promised per diem payments are based upon, and
14 vary with the number of weekly hours or shifts worked by its employees, during the applicable
15 recovery period Defendant has had policy and/or practice of not including the value of these per
16 diem payments, including lodging, meals and/or incidentals in its employees' regular rates of pay
17 for the purposes of calculating their overtime, double-time pay, sick pay, vacation pay, or meal or
18 rest premium payments.

19 **Failure to Pay All Wages Owed Twice Per Month**

20 (Cal. Labor Code §§204, 210, and 2698 *et seq.*)

21 21. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 22. Defendant was required to pay Plaintiff and aggrieved employees all wages earned
24 twice during each calendar month pursuant to Labor Code §204(a).

25 23. Defendant failed to pay all wages earned to employees as a result of the unlawful
26 employment policies and practices discussed herein. As a result of these practices, employees were
27 underpaid for hours worked, including overtime and penalty wages, and this underpayment
28 resulted in a failure to pay all wages owed twice per month.

1 24. Due to these failures, Defendant is liable under Labor Code §204, 210 and 2698 et seq.
2 for failure to pay wages as required by law.

3 **Failure to Pay Minimum Wage**

4 (Cal. Lab. Code §§226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 et seq.)

5 25. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
6 incorporate said paragraphs herein by reference.

7 26. Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an
8 employer to suffer or permit a California employee to work without paying wages at the proper
9 minimum wage for all time worked as required by the applicable IWC Wage Order.

10 27. Defendant failed to pay Plaintiff and aggrieved employees for all hours worked as a
11 result of Defendant's practices described above. Based on Defendant's unlawful conduct
12 described above, Plaintiff and aggrieved employees have been required to work off the clock and
13 have been paid zero wages for that time, clearly resulting in failure to pay for all hours worked,
14 including overtime, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order.
15 Defendant is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

16 **Failure to Pay Wages Due Upon Termination**

17 (Cal. Labor Code §§ 201, 202, 203, 256 and 2698)

18 28. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 29. An employee who is discharged must be paid all of his or her wages, including accrued
21 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
22 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
23 Plaintiff at the time employment terminated. Defendant willfully failed to pay employees who are
24 no longer employed by it all compensation due upon termination of employment as required by
25 Cal. Lab. Code §§201 and 202. Plaintiff and similarly situated individuals are now entitled to
26 recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Defendant
27 is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*
28

1 **Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks**

2 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)

3 30. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 31. During Plaintiff's employment, Defendant failed to maintain a compliant meal period
6 policy and practice. Defendant failed to provide all of its hourly employees with their right to take
7 an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not
8 employ an employee for a work period of more than five hours per day without providing the
9 employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o
10 employer shall require an employee to work during any meal... period mandated by an applicable
11 order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in
12 pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the
13 meal period shall be considered an 'on duty' meal period and counted as time worked." Labor
14 Code 1198 states that any violation of a wage order is a violation of the Labor Code.

15 32. Plaintiff and his coworkers frequently missed first and second meal periods. When
16 meal periods were provided, they were often late, short, and or interrupted.

17 33. Rounded and Altered Meal Period Time Entries. Meal periods were also noncompliant
18 because Defendant altered timeclock entries for meal periods so that they do not show a meal
19 period violation. Our Supreme Court has recently reemphasized the importance of fully compliant
20 meal periods, holding that employers must record meal period time entries to the exact minute,
21 prohibiting rounding, shaving time, or altering time for employee meal periods. (*Donohue v. AMN*
22 *Services, LLC* (2021) 11 Cal.5th 58, 67.)

23 34. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
24 Employer: (1) did not account for all hours worked that were unaccounted for on their timecard;
25 (2) did not adequately inform and train employees about their rights to meal periods and premium
26 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
27 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
28 Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal

1 periods; (5) because management at various levels, affecting all hourly, non-exempt employees,
2 refused to offer, permit, or enforce a lawfully compliant meal period policy; and/or (6) because
3 Employer unlawfully shaved and/or rounded clock in and clock out times for meal periods.
4 Employees were not paid a premium payment, paid at the employee's regular rate of pay (which
5 includes per diem payments) when meal periods were not given to them in compliance with
6 California law.

7 35. The Wage Orders require employers to authorize and permit employees to take an
8 uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code
9 §1198, "the employment of any employee... under conditions of labor prohibited by the order is
10 unlawful." Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of
11 "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code
12 §§226.7 and 512. Defendant failed to pay all penalty pay to Plaintiff or aggrieved employees for
13 noncompliant meal periods. As a derivative claim, Plaintiff alleges that pay statements were
14 inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor
15 Code §226(a). As a result of these violations, Defendant is liable for civil penalties pursuant to
16 Cal. Labor Code §558 and §2698 et. seq.

17 **Failure to Rest Breaks**

18 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

19 36. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
20 incorporates said paragraphs herein by reference.

21 37. Defendant has failed to maintain a compliant rest period policy and practice that
22 provides its employees with off-duty rest periods as required by California law. Plaintiff reports
23 that he and his coworkers almost always missed rest periods as a result of staffing and business
24 practices, and that only one rest break was permitted towards the beginning of their shifts.

25 38. Rest periods were often either less than ten minutes, not provided, interrupted or late,
26 "on duty", or not scheduled before and after a meal period for shifts greater than six hours, as
27 prescribed by California law because Defendant: (1) did not account for all hours worked that were
28 unaccounted for on their timecard; (2) did not adequately inform and train employees about their

rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

39. Defendant did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A). When breaks were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant violated the Wage Order, Defendant is liable under Labor Code §1198. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Reimburse For Required Business Expenses

(Cal. Lab. Code §§21198, 2802, 2699)

40. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

41. Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Plaintiff and aggrieved employees were required to use their personal cell phones for work related communications. Notably, Plaintiff and aggrieved employees were required to look up necessary information on cell phones in connection with treating patients, and were also required to take photos of their timecards using their phones and send the photo with their phone to Defendant.

///

///

///

///

///

///

1 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**
2 **Requirements**

3 (Cal. Labor Code §§6226, 1174, 1174.5, 2699 *et seq.*)

4 42. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
5 incorporate said paragraphs herein by reference.

6 43. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
7 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
8 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
9 aggrieved employees, and the records maintained by Defendant, have not accurately reflected
10 actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all
11 hours worked, and overtime pay, and pay for meal and rest period penalty wages. Wage statements
12 further fail to state the true name and address of the legal entity that is the employer.

13 44. §226 (a) requires:

14 An employer, semimonthly or at the time of each payment of wages,
15 shall furnish to his or her employee, either as a detachable part of the
16 check, draft, or voucher paying the employee's wages, or separately
17 if wages are paid by personal check or cash, an accurate itemized
18 statement in writing showing (1) gross wages earned, (2) total hours
19 worked by the employee, except as provided in subdivision (j), (3) the
20 number of piece-rate units earned and any applicable piece rate if the
21 employee is paid on a piece-rate basis, (4) all deductions, provided
22 that all deductions made on written orders of the employee may be
23 aggregated and shown as one item, (5) net wages earned, (6) the
24 inclusive dates of the period for which the employee is paid, (7) the
25 name of the employee and only the last four digits of his or her social
26 security number or an employee identification number other than a
27 social security number, (8) the name and address of the legal entity
28 that is the employer and, if the employer is a farm labor contractor, as
defined in subdivision (b) of Section 1682, the name and address of
the legal entity that secured the services of the employer, and (9) all
applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the
employee.

45. Such failures caused injury to Plaintiff and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Defendant knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned, and total hours worked. Defendant is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

46. Finally, Defendant has violated Labor Code §432.5 by forcing Plaintiff and aggrieved employees to sign employment-related contracts and documents that contained unlawful terms of employment.

FIRST CAUSE OF ACTION

Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)

(California Labor Code §2698 *et seq.*)

47. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

48. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by Defendant during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

49. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

50. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 5);

b. Failure to Pay All Wages Owed Twice Per Month (Cal. Labor Code §§204, 210, and 2698 *et seq.*)

1 c. Failure to Pay Minimum Wage (Cal. Labor Code §§200, 218.5, 226, 558, 1194.2,
2 1197.2, 1198, 1199, 2698 *et seq.*)

3 d. Failure to Pay Wages Due Upon Termination (Cal. Labor Code §§ 201, 202, 203,
4 256 and 2698)

5 e. Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks (Cal. Labor
6 Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)

7 f. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198,
8 2698 *et seq.*)

9 g. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §§ 1198,
10 2802 and 2699 *et seq.*)

11 h. Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code §§ 226,
12 1174, 1174.5, 2699 *et seq.*).

13 51. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
14 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
15 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
16 employee for each subsequent violation of Labor Code §226(a).

17 52. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
18 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
19 for each underpaid employee for each pay period for which the employee was underpaid, and one
20 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
21 for which the employee was underpaid.

22 53. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
23 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
24 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
25 a civil penalty is not specifically provided.

26 54. Plaintiff and the other current and former employees of Defendant are aggrieved
27 employees. They were or are employed by Defendant, and each of them, and the violations alleged
28

herein were committed against them. Plaintiff brings this action on behalf of himself and all other current and former aggrieved employees.

55. At the time of each violation, Defendant employed one or more employees.

56. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

57. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency ("LWDA") and served by certified mail upon Defendant, Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue their PAGA claims in this action on behalf of aggrieved employees and the State of California.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for judgement against Defendant as follows:

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;

///

///

///

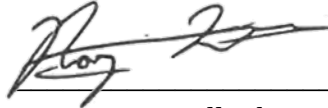
///

///

- 1 4. Pre-judgement and post-judgement interest as provided by law; and
2 5. Such other and further relief that the Court may deem just and proper.
3

4 DATED: November 20, 2024

KOUL LAW FIRM, APC

5
6 
7

8 BY: Nazo Koulloukian, Esq.
9 Attorneys for Plaintiff DAVID ROGERS, and all
aggrieved employees
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

September 12, 2024

Via E-filing:

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

Via Certified U.S. Mail:

Trustaff Travel Nurses, LLC
4675 Cornell Road, Suite 100
Cincinnati, OH 45241

Trustaff Search, LLC
4675 Cornell Road, Suite 100
Cincinnati, OH 45241

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*

Claimant: David Rogers

Employer: Trustaff Travel Nurses, LLC

Dear Sir or Madam:

David Rogers (“Claimant”) has retained Nazo Koulloukian, Esq. of Koul Law Firm, APC, wage and hour claims against former employer, Trustaff Travel Nurses, LLC (hereafter “Employers”). Trustaff Travel Nurses, LLC is a travel nurse agency. Claimant worked for Employers as a Registered Nurse from on or around December 19, 2023, to December 26, 2023.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 216, 221-223, 226, 226.2, 226.7, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

Employer 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 below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of the Labor and Workforce

and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3. Based on information and belief, Employer continues to commit all the violations alleged herein.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§200, 204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 5)

Wage Order 5 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and his coworkers earning at or near minimum wage do not receive payment for all hours worked as a result of unlawful employment practices, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked, and has failed to pay all wages owed twice per month.

TRUSTAFF’s Failure to Take “Per Diem” Benefits into Account in Determining Overtime Rates:

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

During the applicable recovery period, TRUSTAFF has had a policy and/or practice of adjusting per diem payments it promises to its employees, including lodging, meal and/or incidental payments, based on number of hours or shifts they work in a given workweek. In particular, when TRUSTAFF employees do not work the minimum number of hours or shifts per week that TRUSTAFF required of them, TRUSTAFF deduct from their pay or proportional amount of their promised per diem payments based on the number of hours or shifts they missed that workweek. Thus, TRUSTAFF’s promised per diem payments are not intended to actually or reasonably reimburse its employees for their lodging, meal and/or incidental expenses, but in fact are a form of disguised wages. This is made evident by Claimant’s \$35.53 an hour rate of pay which is far below the hourly market rate paid to licensed nurses in California.

Despite the fact that the amount of promised per diem payments are based upon, and vary with the number of weekly hours or shifts worked by its employees, during the applicable recovery period TRUSTAFF has had policy and/or practice of not including the value of these per diem payments, including lodging, meals and/or incidentals, whether paid incase or in kind, in its employees’ regular rates of pay for the purposes of calculating their overtime, double-time pay, sick pay, vacation pay, or meal or rest premium payments.

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described above, Employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 5-2001. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 227.3, 256 and 2698 *et seq.*)

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 Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Timely Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 et seq., Wage Order)

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... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

In this case, Claimant and his coworkers frequently missed first and second meal periods. When meal periods were provided, they were often late, short, and/or interrupted.

Rounded and Altered Meal Period Time Entries

Meal periods were also noncompliant because Employer altered timeclock entries for meal periods so that they do not show a meal period violation. Our Supreme Court has recently re-emphasized the importance of fully compliant meal periods, holding that employers must record meal period time entries to the exact minute, prohibiting rounding, shaving time, or altering time for employee meal periods. (*Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 67.)

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy; and/or (6) because Employer unlawfully shaved and/or rounded clock in and clock out times for meal periods. Employees were not paid a premium payment, paid at the employee’s regular rate of pay (which includes per diem payments) when meal periods were not given to them in compliance with California law.

The Wage Orders require employers to authorize and permit employees to take an uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer failed to pay all penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 et. seq.

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq., Wage Order 5)

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that he and his coworkers almost always missed rest periods as a result of Employer's staffing and business practices, and that only one rest break was permitted towards the beginning of their shifts.

Rest periods were either less than ten minutes, not provided, interrupted or late, "on duty," or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer did not authorize or permit all of its hourly employees to take at least a ten-minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 5-2001. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 et seq.)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties.

Claimant and aggrieved employees are required to use their personal cell phones for work related communications, although Employers did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Notably, employees are required to look up necessary information on cell phones in connection with treating patients, and were also required to take photos of their timecards using their phones and send the photo with their phone to Employer. Accordingly, Employer is liable for civil penalties under PAGA §2699 *et seq.*

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 1174, 2699 et seq)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

The statements provided to Claimants and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all hours worked, and overtime pay at the correct rate, sick pay at the correct rate, and pay for meal and rest period premium wages.

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Such failures called injury to Claimant and others, by, among other things, impeding them from knowing the amount of wages, including premium wages, to which they are and were entitled. Employer knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform Claimant if it does not intend to investigate these violations so that Claimant may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.
Attorney for Claimant