

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Gregory Alarcon

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF LOS ANGELES COUNTY

AMANDA BOWERS and SUSAN
TIDWELL, as aggrieved employees,

Plaintiffs,

v.

PROLINK STAFFING SERVICES, LLC;
and DOES 1-20, inclusive,

Defendants.

Case No: **21STCV22188**

**REPRESENTATIVE ACTION
COMPLAINT**

DEMAND FOR TRIAL BY JURY

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

1 Plaintiffs Amanda Bowers (“Plaintiff Bowers”) and Susan Tidwell (“Plaintiff Tidwell”),
2 individually, as aggrieved employees and as private attorneys general, hereby allege the
3 following facts and claims against ProLink Staffing Services, LLC (“Defendant”), and
4 respectfully request a trial by jury of all issues and causes of action so triable. Unless otherwise
5 specified, Defendant and Does 1-20 shall collectively be referred to herein as “Defendants.”

6 **JURISDICTION AND VENUE**

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

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

15 **PARTIES**

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

18 4. At all relevant times mentioned herein, Plaintiff Susan Tidwell was a licensed
19 nurse and a resident of South Dakota.

20 5. Upon information and belief, Defendant is an employment staffing agency and is,
21 and at all times herein mentioned was, an Ohio limited liability company organized and existing
22 under the laws of the State of Ohio, and registered to do business in the State of California.
23 Defendant employs, compensates and/or assigns healthcare workers to work at various kinds of
24 facilities throughout California.
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1 6. Upon information and belief, there is such a unity of interest and ownership
2 among Defendants that the separate personalities between them do not exist; and that, if the acts
3 complained of herein are treated as those of Defendant alone, inequitable results will follow.

4 7. The true names or capacities, whether individual, associate or otherwise, of Does
5 1-20, inclusive, are unknown to Plaintiffs and, therefore, Plaintiffs sue these doe defendants by
6 such fictitious names. Plaintiffs will seek leave of this Court to amend this Complaint to allege
7 such names and capacities as soon as they are ascertained. Upon information and belief, each of
8 these fictitiously named defendants is responsible in some manner for the occurrences alleged
9 herein, and that injuries and damages as alleged and set forth herein were proximately caused by
10 such fictitiously named defendants.

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

17 9. Upon information and belief, Plaintiffs allege that each defendant acted pursuant
18 to and within the scope of the relationships alleged above, that each defendant knew or should
19 have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the
20 conduct of all other defendants, and/or that each defendant acted pursuant to a conspiracy and
21 agreement to do the things alleged herein.
22

23 **FACTUAL ALLEGATIONS**

24 10. Defendants hired, paid, and assigned Plaintiff Bowers to work for the California
25 Department of Health in Los Angeles and Stockton, California as a non-exempt, hourly-paid
26 travel nurse for an approximately two-month contract assignment starting on or about February
27 22, 2021 and set to end on April 17, 2021. Defendants ended Plaintiff Bowers' contract early,
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1 and her last day of work was on or about March 15, 2021. On March 27, 2021, Plaintiff Bowers
2 resigned from Defendants. Plaintiff Bowers was assigned to work, and did typically work, five
3 12-hour shifts per workweek.

4 11. Defendants hired, paid, and assigned Plaintiff Tidwell to work at Natividad
5 Medical Center in Salinas, California as a non-exempt, hourly-paid travel nurse for an
6 approximately ten-week contract assignment starting on or about September 14, 2020 and ending
7 on November 21, 2020. Plaintiff Tidwell was assigned to work, and did typically work, five 12-
8 hour shifts per workweek.

9
10 **I. Defendants' Failure to Include "Per Diem" Payments in Their Employees'**
11 **Regular Rates of Pay to Determine Their Overtime and Double-Time Rates of**
12 **Pay**

13 12. During the applicable recovery period, Defendants paid their non-exempt
14 employees so-called "per diem" payments for their housing, meals and incidental costs incurred
15 while working assignments away from home. However, such "per diem" payments were not
16 meant to actually or reasonably reimburse these employees for such costs, but were rather a form
17 of disguised wages which, among other things, evaded California overtime laws.

18 13. In particular, Defendants reduced the so-called "per diem" payments if their
19 traveling employees, including Plaintiffs, did not work their minimum required hours, even
20 though the actual or reasonable travel costs incurred by them while on assignment away from
21 home remained the same regardless of the number of hours they worked in a given day. For
22 instance, pursuant to Plaintiff Bowers' employment agreement with Defendants, Defendants
23 promised to pay Plaintiff Bowers a weekly lodging per diem of \$672.00, and weekly meals and
24 incidentals per diem of \$385.00. However, Plaintiff Bowers' employment agreement also
25 provided for a \$211.40 deduction for each shift missed by her, thereby making the promised per
26 diems adjustable. Similarly, pursuant to Plaintiff Tidwell's employment agreement with
27 Defendants, Defendants promised to pay Plaintiff Tidwell a weekly lodging per diem of
28

1 \$1,127.00, and weekly meals and incidentals per diem of \$532.00. However, Plaintiff Tidwell's
2 employment agreement also provided for a \$414.75 deduction for each shift missed by her,
3 thereby making her promised per diems also adjustable.

4 14. Because these so-called "per diem" payments are actually a form of wages,
5 Defendants were required to include them in Plaintiffs' regular rate of pay in order to determine
6 their lawful overtime and double-time rates of pay.

7 15. Upon information and belief, during the applicable recovery period, Defendants
8 similarly failed to include the so-called "per diem" payments in their other non-exempt
9 employees' regular rates of pay to determine their lawful overtime and double-time rates of pay.
10

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

13 16. During the applicable recovery period, Defendants have had a policy and/or
14 practice of requiring their non-exempt employees to review and/or complete
15 competency/training/orientation courses (or modules) without compensating them for time spent
16 on those that are facility-specific (i.e., job specific).

17 17. Under California law, time spent attending these facility-specific
18 competency/training/orientation courses (or modules) is compensable because, among other
19 things, they are not voluntary and are directly related to employees' jobs as they are designed to
20 make them handle their jobs more effectively as opposed to training them for another job or a
21 new or additional skill.

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

24 18. During the applicable recovery period, Defendants have had policy and/or
25 practice of not authorizing and/or permitting their non-exempt employees, including Plaintiffs,
26 to take lawful meal or rest breaks under California law. For instance, while on March 5, 2021,
27 Plaintiff Bowers worked a 13.08-hour shift and recorded no first or second meal break on her
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1 timesheet for that shift. Based on Plaintiff Bowers' corresponding paystub, Defendants did not
2 pay her any meal break premiums for the missed meal periods.

3 **IV. Defendants' Failure to Reimburse Their Employees for Their Necessary Work-**
4 **Related Expenditures**

5 19. During the applicable recovery period, Defendants have had an unlawful policy
6 and/or practice of not reimbursing their non-exempt employees for all their travel expenses
7 incurred during their work assignments away from home. These expenses include, but are not
8 limited to, mileage costs and mobile phone costs, incurred during necessary job-related travel
9 assignments. For instance, Defendants did not reimburse Plaintiff Bowers for the cost of her
10 mileage incurred on her way back home from the assignment (she traveled in her own car), and
11 Defendants also did not reimburse Plaintiffs for the use of their mobile phones, even though they
12 were required to use them for work purposes.

13 20. Upon information and belief, during the applicable recovery period, Defendants
14 similarly failed to reimburse their other non-exempt employees for their incurred business-related
15 travel expenses.

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

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

19 22. During the applicable recovery period, Defendants have had policy and/or
20 practice of failing to pay their non-exempt employees, including Plaintiffs, all wages owed to
21 them upon discharge or resignation.

22 23. Defendants knew or should have known that their non-exempt employees were
23 entitled to receive all wages owed to them upon termination within the time permissible under
24 Labor Code § 202. Plaintiffs and other non-exempt employees did not receive payment of all
25 final wages owed to them upon discharge or resignation, including compensation for all hours
26 worked, overtime and double-time compensation within any time permissible under Labor Code
27 § 202.
28

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

2 24. During the applicable recovery period, Defendants regularly failed to provide
3 complete or accurate wage statements to their non-exempt employees, including Plaintiffs.

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

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

11 26. During the applicable recovery period, Defendants regularly failed to pay their
12 non-exempt employees, including Plaintiffs, all wages within any time permissible under
13 California law, including, *inter alia*, Labor Code §§ 201.3 & 204.

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

20 28. Defendants knew or should have known that their non-exempt employees were
21 entitled to receive all wages owed to them during their employment. Defendants' non-exempt
22 employees did not receive payment of all wages, including overtime and double-time
23 compensation, and meal and rest period premiums, within the time required under California
24 Labor Code §§ 201.3 & 204, and are thus entitled to penalties under Labor Code § 210.

1 **FIRST CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 29. Plaintiffs hereby incorporate by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 30. Plaintiffs bring their first and only cause of action as a representative action on
7 behalf of themselves and other aggrieved employees in the capacity as private attorneys general
8 pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698, et seq. (“PAGA”).

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

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

- 17 a. Failure to reimburse for all incurred business-related expenditures in violation
18 of Labor Code §§ 2800 and 2802;
- 19 b. Failure to pay for all hours worked in violation of Labor Code §§ 200, 223,
20 226, 500, 1197, 1198, and the Applicable Wage Orders;
- 21 c. Failure to pay all overtime wages for all overtime hours worked in violation
22 of Labor Code §§ 510 and 1194 and the Applicable Wage Orders;
- 23 d. Willful failure to pay minimum wage for all hours worked in violation of
24 Labor Code §§ 1194 and 1197 and the Applicable Wage Orders;
- 25 e. Failure to authorize or permit meal periods in violation of Labor Code §§
26 226.7, 512, and the Applicable Wage Orders;
- 27
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- 1 f. Failure to authorize or permit rest periods in violation of Labor Code § 226.7,
2 and the Applicable Wage Orders;
3 g. Failure to timely furnish complete and accurate itemized wage statements in
4 violation of Labor Code § 226, and the Applicable Wage Orders;
5 h. Failure to timely pay all wages owed during employment in violation of Labor
6 Code §§ 201.3 & 204; and
7 i. Willful failure to pay, without abatement or reduction, all final wages owed
8 in accordance with Labor Code §§ 201, 202, and in violation of Labor Code §
9 203.
10

11 33. On April 8, 2021, Plaintiffs sent a written notice to Defendant and the Labor and
12 Workforce Development Agency (“LWDA”) notifying them of the specific violations and the
13 facts and theories supporting those violations. More than 60 days have passed since the date the
14 notice was mailed to Defendant and LWDA. A true and correct copy of Plaintiffs’ written notice
15 to Defendant and the LWDA is attached hereto as “Exhibit A,” which Plaintiffs incorporate by
16 reference as though fully set forth herein. Plaintiffs’ written notice incorrectly identifies the date
17 of submission to the LWDA as April 15, 2021. The true and correct date of Plaintiffs’ submission
18 of their written notice to the LWDA was April 8, 2021, as identified in the confirmation receipt
19 issued by the LWDA, a true copy of which is attached hereto as part of “Exhibit A.”

20 34. Plaintiffs, individually and on behalf of the Aggrieved Employees and the State
21 of California, seek to recover all civil penalties and all underpaid wages allowed under Labor
22 Code §§ 558, 2698, 2699, 2699.3 and 2699.5 for which Defendants are liable as a result of their
23 violations of the Labor Code during the applicable recovery period, all in an amount to be proven
24 at trial. These include, but are not limited to, penalties pursuant to Labor Code § 210 for violations
25 of Labor Code §§ 201, 202, 203 and 204; penalties pursuant to Labor Code § 226.3 for violations
26 Labor Code § 226 and the Applicable Wage Orders; penalties and underpaid wages pursuant to
27 Labor Code § 558, including an amount sufficient to recover underpaid wages due for violations
28 of the Labor Code §§ 226.7 and 558 and the Applicable Wage Orders; and penalties pursuant to

1 Labor Code § 1197.1 for violations Labor Code §§ 1182, 1182.12, and 1198 and the Applicable
2 California Wage Orders.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, individually and on behalf of all other Aggrieved Employees,
6 and as private attorneys general, prays for relief and judgment against Defendants as follows:

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

11
12 Dated: June 14, 2021

Respectfully submitted,

13 SHAKOURI LAW FIRM

14
15 By: Ashkan Shakouri
16 Ashkan Shakouri
17 Sharon W. Lin
18 Attorneys for Plaintiffs

19 **DEMAND FOR JURY TRIAL**

20
21 Plaintiffs demand a jury trial on issues triable to a jury.

22
23 Dated: June 14, 2021

Respectfully submitted,

24 SHAKOURI LAW FIRM

25
26 By: Ashkan Shakouri
27 Ashkan Shakouri
28 Sharon W. Lin
Attorneys for Plaintiffs

EXHIBIT A

State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

LD LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Thu, 08 Apr 2021 3:06:33 PM -0700

To "ash@shakourilawfirm.com" <ash@shakourilawfirm.com>

Tags 

Security  TLS [Learn more](#)

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-828723-21

Order Number: ORD-000101945

Total: \$75.00

Card Type: Visa

Date: 4/8/2021

Billing Information

Name: Ashkan Shakouri

Email: ash@shakourilawfirm.com

Billing Address:

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April 15, 2021

Via Online Filing:

California Labor & Workforce
Development Agency

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

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

Via Certified U.S. Mail:

ProLink Staffing Services, LLC
10700 Montgomery Rd, Suite 226
Cincinnati, OH 45242

ProLink Staffing Services, LLC
c/o
Incorp Services, Inc. (C2294569)
5716 Corsa Ave., Suite 110
Westlake Village, CA 91362

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

Claimants: Amanda Bowers & Susan Tidwell
Employer: ProLink Staffing Services, LLC

Dear Sir or Madam:

Claimants Amanda Bowers (“Claimant Bowers”) and Susan Tidwell (“Claimant Tidwell”) have retained Ashkan Shakouri of Shakouri Law Firm to represent themselves, and all other aggrieved employees, for wage and hour claims against their former employer ProLink Staffing Services, LLC (“ProLink”).

During the relevant period ProLink has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code §2698, *et seq.* We request that your agency investigate the claims alleged herein or permit Claimants 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.

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

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

Claimants’ Employment with ProLink

ProLink hired, paid and assigned Claimant Bowers to work for the California Department of Health in Los Angeles and Stockton, California, as a non-exempt, hourly-paid travel nurse for an approximately 2-month contract assignment starting on or about February 22, 2021 and set to end on April 17, 2021. ProLink ended Claimant Bower’s contract early, and her last day of work was on or about March 15, 2020. On March 27, 2021, Claimant Bower resigned from ProLink. Claimant Bower was assigned to work, and did typically work, five 12-hour shifts per workweek.

ProLink hired, paid and assigned Claimant Tidwell to work at Natividad Medical Center in Salinas, California, as a non-exempt, hourly-paid travel nurse for an approximately 10-week contract assignment starting on or about September 14, 2020 and ending on November 21, 2020. Claimant Tidwell was assigned to work, and did typically work, four 12-hour shifts per workweek.

ProLink’s Failure to Take Its So-Called “Per Diem” Payments into Account in Determining Overtime Rates

Under Labor Code § 200, “wages” consist of “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” In California, overtime is computed based on the regular rate of pay. The regular rate of pay includes many different kinds of

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

During the relevant period, ProLink has had a policy and/or practice of making the per diem payments it promises to Aggrieved Employees, including housing, meals and/or incidentals payments, adjustable based on number of hours or shifts they work in a given workweek. In particular, ProLink only pays its Aggrieved Employees per diem payments on the days that Aggrieved Employees perform work. Thus, ProLink's promised per diem payments are not intended to actually or reasonably reimburse Aggrieved Employees for their housing, meal or incidental expenses, but in fact are a form of disguised wages.

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

For instance, pursuant to Claimant Bower's employment agreement, ProLink promised to pay her a weekly a lodging per diem of \$672, and weekly meals and incidentals per diem of \$385. However, Claimant Bower's employment agreement also provided for a \$211.40 deduction for each shift missed by her, thereby making the promised per diems adjustable. However, ProLink did not take the amount of the per diems it paid to Claimant Bower into account for the purposes of calculating her overtime or double-time rates of pay.

Similarly, pursuant to Claimant Tidwell's employment agreement, ProLink promised to pay her a weekly a lodging per diem of \$1,127, and weekly meals and incidentals per diem of \$532. However, Claimant Tidwell's employment agreement also provided for a \$414.75 deduction for each shift missed by her, thereby making the promised per diems adjustable. However, ProLink did not take the amount of the per diems it paid to Claimant Tidwell into account for the purposes of calculating her overtime or double-time rates of pay.

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

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

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

During the relevant period, ProLink has had a policy and/or practice of requiring Aggrieved Employees to take and complete training/orientation courses (or modules), which are client-specific, without compensating them for such time. Under California law, the time spent attending these training/orientation courses is compensable because, among other things, they are not

voluntary and are directly related to employees' jobs as they are designed to make employees handle their jobs more effectively as opposed to training them for another job or a new or additional skill. By failing to compensate Aggrieved Employees for time spent reviewing and/or completing competency/training/orientation courses (or modules) that are facility-specific, ProLink failed to pay these employees their promised rates of pay, or even minimum wage.

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

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

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

ProLink's Failure to Authorize or Permit Lawful Meal Breaks

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

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

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

During the applicable recovery period, ProLink failed to pay Aggrieved Employees' wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks. As a result of violations of Labor Code §§ 226.7 and 512 and the applicable wage orders, ProLink is liable for civil penalties pursuant to Labor Code §§ 558 and 2698 *et seq.*

For instance, on March 5, 2021, Claimant Bowers worked a 13.08-hour shift and recorded no first or second meal break on her timesheet for that shift. Yet, on her corresponding paystub, ProLink did not pay Claimant Bowers any meal break premiums.

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

ProLink's Failure to Authorize and/or Permit Rest Breaks

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

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

Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an employee a rest break in accordance with the applicable Wage Orders, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the rest break is not provided. The provisions of the applicable Wage Orders state that the rest break is defined as a "net" ten minutes, which means that the rest break begins when the employee reaches an area away from the work area that is appropriate for rest.

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

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

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

ProLink's Failure to Reimburse Necessary Expenditures

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

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

travel assignments. For instance, ProLink did not reimburse Claimant Bowers for the cost of her mileage incurred on her way back home from the assignment (she traveled in her own car), and did not reimburse Claimants for the use of their mobile phone, even though they were required to use it for work purposes.

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

ProLink's Failure to Pay Wages Due Upon Termination

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

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

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

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

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

ProLink's Failure to Furnish Accurate Wage Statements

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

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

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

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

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

ProLink's Failure to Timely Pay Wages on Regular Pay Days

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

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

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

Without limitation, Claimants, 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

Claimants respectfully request that the agency investigate the above allegations and hereby provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimants request that the agency inform them if it does not intend to investigate these violations so that they may pursue their claims as a representative action in civil court on behalf of themselves and other Aggrieved Employees.

Respectfully Submitted,

SHAKOURI LAW FIRM

Ashkan Shakouri

Ashkan Shakouri

Attorney for Claimants and all other
Aggrieved Employees