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Employment & Civil Litigation

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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:

LeaderStat LLC

c/o

Registered Agent Solutions, Inc.
720 14th Street
Sacramento, CA

LeaderStat LLC
1322 B Manning Pkwy
Powell, OH 43065

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

Claimant: Amy Williams
Employer: LeaderStat LLC

Dear Sir or Madam:

Claimant Amy Williams ("Claimant") has retained Ashkan Shakouri of Shakouri Law Firm to represent her, and all other aggrieved employees, for wage and hour claims against her former employer LeaderStat LLC ("LeaderStat").

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

seek civil penalties under the Private Attorney General Act (“PAGA”) on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3.

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

Claimant personally suffered some of the Labor Code violations committed by LeaderStat, 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 he 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 LeaderStat against the Aggrieved Employees, including those she did not personally suffer.

Claimant’s Employment with LeaderStat

LeaderStat hired, paid and assigned Claimant to work a travel assignment as a non-exempt, hourly-paid travel nurse at a skilled nursing facility in Corona Del Mar, California, from on or about August 8, 2020 until on or about September 25, 2020. LeaderStat then assigned Claimant to work another travel assignment as a non-exempt, hourly-paid travel nurse at a skilled nursing facility in Fremont, California, from on or about December 7, 2020 until on or about January 9, 2021. Claimant no longer works for LeaderStat.

LeaderStat’s Failure to Pay All Overtime or Double Time Owed

LeaderStat, from time to time, failed to pay overtime rates for all overtime hours worked by its non-exempt employees. For instance, Claimant’s time card shows that she worked 12.75 hours on November 1, 2020, 12 hours on November 4, 2020, and another 12 hours on November 5, 2020. However, Claimant’s corresponding paystub for that week does not show that LeaderStat paid her any overtime or double time in violation of Labor Code § 510(a), requiring payment of overtime for time worked in excess of 8 hours a day and payment of double time for time worked in excess of 12 hours a day.

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, LeaderStat has had a practice of adjusting “travel stipends,” including housing, meal and/or incidental payments to its non-exempt employees, based on number of hours or shifts they work in a given workweek.

LeaderStat’s promised “travel stipends” are not intended to reimburse its employees for their travel expenses, but, in fact, are a form of disguised wages.

Despite the fact that the amount of the promised “travel stipends” are based upon, and vary with, the number of weekly hours or shifts worked by its employees, and thus are actually a form of disguised wages, during the applicable recovery period LeaderStat has had a practice of not including the value of those “travel stipends,” including housing, meals and/or incidentals, whether paid in cash or in kind, in its employees’ regular rates of pay, including Claimant’s regular rate of pay, for the purposes of calculating their overtime of pay.

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

LeaderStat’s Failure to Authorize or Permit Meal Breaks

During the relevant period, LeaderStat has, from time to time, not authorized and/or permitted Aggrieved Employees from taking 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. As a result of violations of Labor Code §§ 226.7 and 512 and the applicable wage orders, LeaderStat is liable for civil penalties pursuant to Labor Code §§ 558 and 2698 *et seq.*

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

LeaderStat’s Failure to Authorize and/or Permit Rest Breaks

During the relevant period, LeaderStat has, from time to time, not authorized and/or permitted Aggrieved Employees from taking 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, LeaderStat, from time to time, did not authorize and/or permit Aggrieved Employees to take lawful rest breaks and failed to pay premium wages mandated by Labor Code § 226.7(b).

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

LeaderStat's Failure to Reimburse Necessary Business 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, LeaderStat has, from time to time, failed to reimburse Aggrieved Employees for the cost of using their personal mobile phones for work purposes.

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

LeaderStat'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.

During the applicable recovery period, Claimant and some Aggrieved Employees have separated from LeaderStat as a result of being discharged or having voluntarily resigned their employment.

While working for LeaderStat, Claimant was entitled to compensation for the violations set forth herein, but LeaderStat intentionally and willfully failed to pay all wages due to her at the time of separation in violation of statutes cited above.

Upon information and belief, LeaderStat, from time to time, also intentionally and willfully did not pay other Aggrieved Employees all their owed wages at the time of separation in violation of statutes cited above. 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 LeaderStat paid some of the separated Aggrieved Employees all their owed wages upon separation or paid them all their owed wages less than 30 days after their separation.

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

LeaderStat's Failure to Furnish Accurate Wage Statements

During the relevant period, LeaderStat, from time to time, ha not furnished accurate wage statements not only because those wage statements fail to accurately display the amount of wages and premiums owed to Aggrieved Employees but also because such wage statements fail to accurately display the number of hours worked by them.

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 attorneys' fees.

LeaderStat, from time to time, 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 LeaderStat's conduct as alleged above, 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 LeaderStat violated the reporting requirements of Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, LeaderStat 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.*

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