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DIANA FISHER

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

DIANA FISHER, an individual,

Plaintiff,

vs.

BEHNAM GHASSEMINEJAD, an individual,
KAYSAN GHASSEMINEJAD, an individual,
BITA GHASSEMINEJAD, an individual,
BLUE HEAVEN HOSPICE & PALLIATIVE
CARE, INC., a California corporation,
MILLENNIUM HOSPICE CARE, INC., a
California corporation, VIP HOSPICE CARE, a
California corporation, GOLDEN HILLS
HEALTHCARE SERVICES INC., a California
corporation and DOES 1 through 20 inclusive,

Defendants.

Case No.: 20STCV24874

COMPLAINT FOR DAMAGES FOR:

- 1. WILLFUL FAILURE TO PAY WAGES
IN VIOLATION OF LAB. CODE §§ 201-
203;**
- 2. FAILURE TO TIMELY PAY WAGES IN
VIOLATION OF LAB. CODE § 204;**
- 3. FAILURE TO PAY MINIMUM WAGE
IN VIOLATION OF LAB. CODE § 1197;**
- 4. FAILURE TO INDEMNIFY FOR
NECESSARY EXPENDITURES IN
VIOLATION OF LAB. CODE § 2802;**
- 5. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS IN
VIOLATION OF LAB. CODE § 226;**
- 6. CIVIL PENALTIES IN VIOLATION OF
CAL. LAB. CODE § 2699, ET SEQ.;**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

1 Plaintiff DIANA FISHER is informed and believes and thereon alleges as follows:

2 **PARTIES, VENUE AND JURISDICTION**

3 1. Plaintiff DIANA FISHER was at all times relevant hereto a resident of Glendale,
4 California.

5 2. At all relevant times herein, Defendants Blue Heaven Hospice & Palliative Care Inc.,
6 Golden Hills Healthcare Services Inc., Millennium Hospice Care Inc., and VIP Hospice Care were
7 California corporations with their principal place of business at 16200 Ventura Blvd., Encino, CA 91436.
8 These corporations were also doing business as California Community Hospice, Golden Hills Hospice,
9 Toluca Lake Hospice, Hollywood Home Health Services, and Reliable Hospice.

10 3. Defendant KAYSAN GHASSEMINEJAD was Chief Executive Officer of the Defendant
11 corporations; BEHNAM GHASSEMINEJAD was Secretary; and BITA GHASSEMINEJAD was the
12 Chief Financial Officer of the above Defendant corporations, located at the same Encino address above.

13 4. The true names and capacities, whether individual, corporate, associate, or otherwise, of
14 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
15 these Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this Complaint to
16 insert the true names and capacities of these Defendants when they become known to Plaintiff. Plaintiff
17 is informed and believes and based thereupon alleges, that each of the fictitiously named Defendants is
18 responsible for the wrongful acts alleged herein and are therefore liable to Plaintiff as alleged hereinafter.

19 5. Plaintiff is informed and believes and based thereupon alleges, that at all times relevant
20 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent
21 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendants, and
22 each of them, and in doing the things alleged herein, were acting at least in part within the course and
23 scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or
24 joint venture and with the permission and consent of each of the other Defendants.

25 6. Plaintiff is informed and believes and based thereupon alleges, that Defendants, including
26 those defendants named as DOES 1-20 acted in concert with one another to commit the wrongful acts
27 alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the wrongful acts
28 alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and based thereupon

1 alleges, that Defendants, including those defendants named as DOES 1-20 formed and executed a
2 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein, with
3 all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and actually
4 causing Plaintiff's harm.

5 7. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
6 of interest and ownership between the Defendants, including DOES 1-20, that the individuality and
7 separateness of defendants have ceased to exist.

8 8. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
9 the corporate entities, Defendants, including DOES 1-20, are, in reality, one and the same, including, but
10 not limited to because they failed to comply with all requisite corporate formalities to maintain a legal and
11 separate existence, their business affairs are, and at all times relevant were, so mixed and intermingled
12 that the same cannot reasonably be segregated, and the same are in inextricable confusion.

13 9. The corporate entities are, and at all times have been used as a mere shell and conduit for
14 the conduct of the individual defendants' affairs and is the alter ego of the individual defendants.

15 10. The recognition of the separate existence of the corporate defendants would not promote
16 justice, in that it would permit the individual defendants to insulate themselves from liability to Plaintiff
17 for violations of state labor laws. The corporate existence of the entities, including DOES 1-20, should be
18 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and
19 injustice to Plaintiff herein.

20 11. Whenever and wherever reference is made in this Complaint to any act or failure to act by
21 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts and/or
22 failures to act by each Defendant acting individually, jointly and severally.

23 **FACTUAL ALLEGATIONS**

24 12. DIANA FISHER worked as a Certified Home Health Aide for Defendants from October
25 3, 2017 to September 18, 2019.

26 13. Primary to her job duties, Ms. Fisher tended to patients at their residences and at skilled
27 nursing facilities. Her job duties also included monitoring the vital signs of patients at hospice care
28 facilities.

14. Ms. Fisher performed her nursing care work under the auspices, direction and control of Defendants. Nonetheless, Defendants misclassified her as an independent contractor rather than an employee.

15. As of June 8, 2019, Ms. Fisher was compensated – or supposed to be compensated – at a rate of \$30.00 per visit; and prior to that time the rate was \$25.00 per visit.

16. Defendants failed to pay Ms. Fisher for numerous visits, accounting for several thousands of dollars, when calculated against the company-designated per-visit compensation. Ms. Fisher complained to management regarding the unpaid visits; but was always given the run-around.

FIRST CAUSE OF ACTION

WILLFUL FAILURE TO PAY WAGES IN VIOLATION OF

LABOR CODE §§ 201-203

(AGAINST ALL DEFENDANTS)

17. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

18. “A person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied: (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact. (B) The person performs work that is outside the usual course of the hiring entity’s business. (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.” Cal. Lab. Code § 2750.3.

19. Furthermore, “It is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor.” Cal. Lab. Code § 226.8 (a)(1).

20. Here, Respondents misclassified all of their home health aides, including Ms. Fisher. In her job duties and assignments, Ms. Fisher was not free from the control or direction of Defendants in connection with the performance of her work. Moreover, her work as a Certified Home Health Aide was performed firmly within the usual course of business at all of Defendants' multiple-named businesses.

1 Therefore, the Defendants were her employer.

2 21. If an employer discharges an employee, the wages earned and unpaid at the time of
3 discharge are due and payable immediately. If an employee not having a written contract for a definite
4 period quits his or her employment, his or her wages shall become due and payable not later than 72 hours
5 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which
6 case the employee is entitled to his or her wages at the time of quitting. If an employer willfully fails to
7 pay, without abatement or reduction, in accordance with Labor Code Sections 201 and 202, any wages of
8 an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from
9 the due date thereof at the same rate until paid or until an action thereof is commenced; but the wages
10 shall not continue for more than 30 days.

11 22. Plaintiff was not exempt from the requirements of Labor Code §§ 201-203.

12 23. At the time of her separation from Defendants' employment, Defendants owed Ms. Fisher
13 several thousands of dollars for unpaid visits; but to date, Defendants have not paid her. While she was
14 still working for Defendants, Ms. Fisher complained to management regarding the unpaid visits; but
15 according to Ms. Fisher, she was always given the run-around.

16 24. At no time since Plaintiff's separation of employment did Defendant pay her wait-time
17 penalties as required by Labor Code § 203.

18 25. As a direct and proximate result of Defendants' willful failure to pay Plaintiff's wages upon
19 her discharge, Plaintiff incurred wait-time penalties in an amount equal to her daily rate of pay over the
20 30 day statutory maximum in an amount subject to proof at trial.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY WAGES**

23 **IN VIOLATION OF LAB. CODE § 204**

24 **(AGAINST ALL DEFENDANTS)**

25 26. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
26 fully set forth herein.

27 27. "All wages ... earned by any person in any employment are due and payable twice during
28 each calendar month, on days designated in advance by the employer as the regular paydays." Cal. Lab.

Code § 204(a). "The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." Cal. Lab. Code § 204(d).

28. Ms. Fisher was not paid by the due dates and/or time periods specified in Labor Code § 204 for numerous time periods during the past three years, and she remains unpaid for her time worked.

29. According to the Labor Code § 210, an employer who fails to pay the wages of each employee as provided in section 204 shall be subject to a penalty, (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (2) for each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

30. As a result of the foregoing, Plaintiff is entitled to recover all sums she is entitled to as a result of Defendants' untimely payments as well as penalties under Labor Code § 210.

THIRD CAUSE OF ACTION

FAILURE TO PAY APPLICABLE MINIMUM WAGE

IN VIOLATION OF LABOR CODE § 1197

(AGAINST ALL DEFENDANTS)

31. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

32. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by the commission or by any applicable state or local law is unlawful.

33. Here, by failing to pay Plaintiff for her numerous work visits, Defendants failed and refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Industrial Welfare Commission Order No. 4-2001 and California Labor Code §§ 1182.12, 1194, 1194.2 and 1197.

34. Defendants failure to pay the legal minimum wage to Plaintiff as alleged herein is unlawful and creates entitlement, pursuant to Labor Code §1194, to recovery by Plaintiff in a civil action for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between the straight time compensation paid and applicable minimum wage, including interest thereon.

35. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an

1 employer, who violates, or causes to be violated, Labor Code section 1194, may be held liable as the
2 employer for such violation. The term ‘other person acting on behalf of an employer’ is limited to a natural
3 person who is an owner, director, officer, or managing agent of the employer.

4 36. At all times relevant herein, the individual Defendants violated and caused to be violated
5 Labor Code section 1194 because they failed to pay Plaintiff minimum wage.

6 37. As a result of the foregoing, Plaintiff is entitled to recover all sums incurred by her for the
7 travel that is required in order to visit the many patients she was assigned to attend, as well as wear and
8 tear on her vehicle.

9 38. Pursuant to Labor Code §1194, Plaintiff is entitled to an award of reasonable attorneys’
10 fees and costs incurred in this action.

11 39. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
12 damages in an amount equal to the minimum wages unlawfully unpaid in an amount to be determined at
13 trial, plus interest.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO INDEMNIFY FOR NECESSARY EXPENDITURES**

16 **IN VIOLATION OF LABOR CODE § 2802**

17 **(ALL DEFENDANTS)**

18 40. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
19 fully set forth herein.

20 41. An employer shall indemnify his or her employee for all “necessary expenditures or losses
21 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
22 obedience to the directions of the employer.” Cal. Lab. Code § 2802

23 42. Here, Defendants not only failed to pay Ms. Fisher for her visits, but they failed to
24 reimburse her for gas and mileage necessary for her to travel to clients’ various locations. Respondents
25 also failed to reimburse her for various other out of pocket expenses she incurred, in violation of Cal. Lab.
26 Code § 2802. At the same time she complained about the lack of payment for her visits, Ms. Fisher also
27 brought up the issue of lack of payment for travel, but to no avail.

28 43. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an

1 employer, who violates, or causes to be violated, Labor Code section 2802, may be held liable as the
2 employer for such violation. The term ‘other person acting on behalf of an employer’ is limited to a natural
3 person who is an owner, director, officer, or managing agent of the employer.

4 44. At all times relevant herein, the individual Defendants violated and caused to be violated
5 Labor Code section 2802 because they failed to reimburse Plaintiff for her business expenses.

6 45. As a result of the foregoing, Plaintiff is entitled to recover all sums incurred by her for the
7 travel that is required in order to visit the many patients she was assigned to attend, as well as wear and
8 tear on her vehicle.

9 46. Plaintiff is further entitled to an award of interest at the same rate as judgments in civil
10 actions, accruing from the date she incurred the necessary expenditures or losses and all reasonable costs,
11 including attorney’s fees incurred by her enforcing the rights granted by Labor Code § 2802.

12 **FIFTH CAUSE OF ACTION**

13 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

14 **IN VIOLATION OF LABOR CODE § 226**

15 **(AGAINST ALL DEFENDANTS)**

16 47. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
17 exempt employees with accurate itemized statements showing total hours worked, hourly wages, gross
18 wages, total deductions net wages earned and name of the employer.

19 48. Here, Defendants failed to furnish Plaintiff any wage statements whatsoever, in violation
20 of Cal. Lab. Code § 226. When Defendants did pay, they paid only by check, with no accompanying wage
21 statement.

22 49. The itemized statement of wages specified in Cal. Lab. Code § 226 requires employers to
23 include nine different categories of information to be itemized. In particular, § 226(a)(8) requires that
24 wage statements include the name and address of the legal entity that is the employer. Here, Defendants
25 maintain so many differently named entities, Ms. Fisher was unclear as to which one she actually worked
26 for, or the name of the actual legal entity. This furthers the violations of Cal. Lab. Code § 226.

27 50. An employer who violates Cal. Lab. Code §§ 226 and 1174 is liable to its employees for
28 the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the initial pay

1 period in which a violation occurred, and \$100.00 per employee for each subsequent pay period, up to a
2 statutory maximum of \$4,000.00.

3 51. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an
4 employer, who violates, or causes to be violated, Labor Code section 226, may be held liable as the
5 employer for such violation. The term ‘other person acting on behalf of an employer’ is limited to a natural
6 person who is an owner, director, officer, or managing agent of the employer.

7 52. At all times relevant herein, the individual Defendants violated and caused to be violated
8 Labor Code section 226 because they failed to furnish Plaintiff with itemized wage statements.

9 53. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
10 statutory penalties pursuant to Labor Code §226, as well as attorneys' fees and costs.

11 **SIXTH CAUSE OF ACTION**

12 **CIVIL PENALTIES IN VIOLATION OF LABOR CODE § 2699, ET SEQ.**

13 **(AGAINST ALL DEFENDANTS)**

14 54. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
15 fully set forth herein.

16 55. Under Labor Code §2699, et seq., Plaintiff, as a aggrieved employee, may bring an action
17 against defendants, on behalf of herself and other current or former employees, seeking statutory civil
18 penalties for Defendants' violations of various provisions of the California Labor Code.

19 56. Plaintiff was an aggrieved employee within the meaning of California Labor Code §2699,
20 et seq. because she was not timely paid wages, in violation of Labor Code § 204; she was not paid within
21 72 hours of his last day at work, as required by the Labor Code § 202; was not paid minimum wage, in
22 violation of Labor Code §§ 1182.12, 1194, 1194.2 and 1197; was not reimbursed for mileage, wear and
23 tear; was not furnished with wage statements in violation of Labor Code § 226 and was willfully
24 misclassified as an independent contractor in violation of Labor Code § 226.8.

25 57. Furthermore, Defendants engaged in the same employment practices plead herein against
26 their other California employees, including failure to timely paid wages in violation of Labor Code § 204;
27 failing to pay all due wages upon their separation of employment in violation of Labor Code §§ 201-203;
28 failing to pay minimum wage in violation of Labor Code §§ 1182.12, 1194, 1194.2 and 1197; failing to

1 reimburse for mileage, wear and tear; and failing to furnish itemized wage statements in violation of Labor
2 Code § 226 and were willfully misclassified as independent contractors in violation of Labor Code §
3 226.8.

4 58. As such, Plaintiff is entitled to civil penalties on behalf of these aggrieved employees for
5 the Labor Code violations committed against them.

6 59. On April 20, 2020, Plaintiff provided notice via certified mail to Defendants of the specific
7 provisions of the California Labor Code that Defendants violated.

8 60. On April 21, 2020, Plaintiff provided notice via electronic submission to the Labor and
9 Workforce Development Agency of the specific provisions of the California Labor Code that Defendants
10 violated.

11 61. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and
12 Workforce Development Agency on its intent to pursue an action against Defendants.

13 62. As a direct and proximate result of Defendants' California Labor Code violations as set
14 forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for
15 the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation,
16 pursuant to Labor Code §2699(f), for those Labor Code sections not expressly providing for a penalty,
17 and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty.

18 63. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
19 civil penalties.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff seeks judgment against Defendants and each of them, in an amount
22 according to proof as follows:

23 1. For waiting time penalties pursuant to Labor Code §§201-203 in the amount according to
24 proof;

25 2. For civil penalties pursuant to Labor Code §§ 204 and 210;

26 3. For civil and statutory penalties and reasonable attorney's fees and costs pursuant to Labor
27 Code §§ 226 and 2699, et seq.;

28 4. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount according

1 to proof;

2 5. For civil and statutory penalties and damages pursuant to Labor Code §558 (a), § 1197.1,
3 §226 (e) and 226.8;

4 6. For payment of underpaid minimum wage compensation pursuant to Labor Code
5 §§1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. Order No. 4-2001 in an
6 amount subject to proof;

7 7. For liquidated damages pursuant to Labor Code §1194.2 in an amount subject to proof,
8 plus interest;

9 8. For reimbursement of business expenses and interest at the same rate as judgments in civil
10 actions, accruing from the date on which Plaintiff incurred the necessary expenditures or losses for the
11 purchase of tools pursuant to Labor Code § 2802;

12 9. For prejudgment interest on each of the foregoing at the legal rate from the date the
13 obligation became due through the date of judgment in this matter;

14 10. For all reasonable costs, including attorney's fees incurred by Plaintiff's enforcement of
15 the rights granted by Labor Code §§ 510, 1194 and 2802;

16 11. For costs of suit;

17 12. For post-judgment interest; and

18 13. For any other relief that is just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands a trial by jury on all issues.

21 **PIMENTEL LAW, P.C.**

22
23 Dated: July 1, 2020

24 By: 
25 Bruce T. Murray, Esq.
26 Attorney for Plaintiff
27
28