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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 ASHLEY SMITH, individually, and on behalf of
11 all others similarly situated,

12 Plaintiff,

13 vs.
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15 SHERIDAN ASSISTED LIVING, INC., a
16 California corporation; and DOES 1 through 10,
inclusive,

17 Defendants.
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Case No.: 21STCV10304

**SECOND AMENDED
REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

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1 Plaintiff Ashley Smith (“Plaintiff”), based upon facts that either have evidentiary support
2 or are likely to have evidentiary support after a reasonable opportunity for further investigation
3 and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Sheridan Assisted Living, Inc. and
6 Does 1 through 10 (Sheridan Assisted Living, Inc. and Does 1 through 10 are collectively referred
7 to as “Defendants”) for California Labor Code violations stemming from Defendants’ failure to
8 pay minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to
9 authorize and permit rest periods, failure to maintain accurate records of hours worked and meal
10 periods, failure to timely pay all wages to terminated employees, failure to indemnify necessary
11 business expenses, and failure to furnish accurate wage statements.

12 2. For over 50 years, California’s courts and legislature have recognized that this
13 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
14 Wages are not ordinary debts. Because of the economic position of the average worker and his or
15 her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that
16 employees are promptly paid the minimum/overtime wages that the Legislature has required for
17 employees. So fundamental are California’s wage-and-hour laws that the Legislature has
18 criminalized certain types of violations. In extending extra protection to deter violations of these
19 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
20 other damages other than civil penalties—California has enacted the PAGA to permit an individual
21 to bring an action for PAGA penalties only, which is the precise and sole nature of this action.

22 3. All non-exempt California employees of Defendants beginning March 16, 2020 to
23 the present, are “Aggrieved Employees.”

24 4. Plaintiff brings this action against Defendants seeking only to recover penalties on
25 behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of
26 California. Plaintiff does not seek to recover anything other than penalties as permitted by
27 California Labor Code Section 2699. To the extent that statutory violations are mentioned for wage
28 violations, Plaintiff does not seek underlying general and/or special damages for those violations,

1 but simply penalties as permitted by California Labor Code Section 2699, declaratory relief, and
2 injunctive relief for themselves and all aggrieved employees as permitted by the PAGA.

3 5. Defendants own/owned and operate/operated an industry, business, and
4 establishment within the State of California, including Los Angeles County. As such, and based
5 upon all the facts and circumstances incident to Defendants' business in California, Defendants are
6 subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission
7 ("IWC"), and the California Business & Professions Code.

8 6. Despite these requirements, throughout the statutory period Defendants maintained
9 a systematic, company-wide policy and practice of:

- 10 (a) Failing to pay employees for all hours worked, including all minimum
11 wages, and overtime wages in compliance with the California Labor Code
12 and IWC Wage Orders;
- 13 (b) Failing to provide employees with timely and duty-free meal periods in
14 compliance with the California Labor Code and IWC Wage Orders, failing
15 to maintain accurate records of all meal periods taken or missed, and failing
16 to pay an additional hour's pay for each workday a meal period violation
17 occurred;
- 18 (c) Failing to authorize and permit employees to take timely and duty-free rest
19 periods in compliance with the California Labor Code and IWC Wage
20 Orders, and failing to pay an additional hour's pay for each workday a rest
21 period violation occurred;
- 22 (d) Failing to indemnify employees for necessary business expenses incurred;
- 23 (e) Willfully failing to pay employees all minimum wages, overtime wages,
24 meal period premium wages, and rest period premium wages due within the
25 time period specified by California law when employment terminates; and
- 26 (f) Failing to maintain accurate records of the hours that employees worked.
- 27 (g) Failing to provide employees with accurate, itemized wage statements
28 containing all the information required by the California Labor Code and

IWC Wage Orders.

7. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

8. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

9. Plaintiff Ashley Smith is a California resident that worked for Defendants in the County of Los Angeles, State of California, as a caregiver from approximately August 2017 to August 2020.

10. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant Sheridan Assisted Living, Inc. is:

- (a) California corporations with their principal places of business in Los Angeles, California.
- (b) Business entities conducting business in numerous counties throughout the State of California, including in Los Angeles County; and
- (c) The former employer of Plaintiff, and the current and/or former employer of the putative Aggrieved Employees. Sheridan Assisted Living, Inc. suffered and permitted Plaintiff and the putative Aggrieved Employees to work,

and/or controlled their wages, hours, or working conditions.

12. Plaintiff does not currently know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the violations suffered by Plaintiff and the putative Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

13. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff and the putative Aggrieved Employees in the State of California.

14. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees described in the definitions below, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

15. Plaintiff Ashley Smith is a California resident who worked for Defendants in the County of Los Angeles, State of California, as a caregiver from approximately August 2017 to August 2020. During the statutory period, Defendants classified Plaintiff as non-exempt from

1 California's overtime requirements, and paid Plaintiff an hourly wage. During the statutory period,
2 Plaintiff typically worked at least 2 days each workweek, and typically in excess of 8 hours each
3 workday, up to 24 hour shifts in a single day. Further, Plaintiff and the putative Aggrieved
4 Employees spent over 30% of their time in housekeeping and cooking, as opposed to caregiving
5 duties.

6 16. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
7 worked (including minimum wages and overtime wages), failed to provide Plaintiff with
8 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
9 periods, failed to indemnify Plaintiff for necessary business expenses, failed to timely pay all final
10 wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
11 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
12 Defendants was typical and illustrative.

13 17. Throughout the statutory period, Defendants maintained a policy and practice of
14 not paying Plaintiffs and the putative Aggrieved Employees for all hours worked, including all
15 overtime wages. Defendants regularly use a system of time rounding in a manner that resulted,
16 over a period of time, in failing to compensate Plaintiffs and the putative Aggrieved Employees
17 properly for all the time they have actually worked, even though the realities of Defendants'
18 operations are such that it is possible, practical, and feasible to count and pay for work time to the
19 minute. In maintaining a practice of not paying all wages owed, Defendants failed to maintain
20 accurate records of the hours Plaintiff and the putative Aggrieved Employees worked. Plaintiff
21 and the putative Aggrieved Employees were also required to work "off the clock". For example,
22 Plaintiff and the putative Aggrieved Employees were required to obtain information from the prior
23 shift's caregiver prior to clocking into work each workday regarding patients, and occasionally
24 Plaintiff and the putative Aggrieved Employees were required to stay after their shift ended
25 because the next shift's caregiver was running late. Finally, during the time of COVID, Plaintiff
26 and the putative Aggrieved Employees were required to answer certain questions before clocking
27 in. These instances were uncompensated.

28 18. Throughout the statutory period, Defendants have wrongfully failed to provide

1 Plaintiff and the putative Aggrieved Employees with legally compliant meal periods. Defendants
2 sometimes, but not always, required Plaintiff and the putative Aggrieved Employees to work in
3 excess of five consecutive hours a day without providing 30-minute, continuous and uninterrupted,
4 duty-free meal period for every five hours of work, or without compensating Plaintiff and the
5 putative Aggrieved Employees for meal periods that were not provided by the end of the fifth hour
6 of work or tenth hour of work. Defendants also did not adequately inform Plaintiff and the putative
7 Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or,
8 for shifts greater than 10 hours, by the end of the tenth hour of work. Further, Defendants auto-
9 deducted meal periods, regardless of how long meal breaks took and when they were taken.
10 Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and the
11 putative Aggrieved Employees in compliance with California law.

12 19. Throughout the statutory period, Defendants have wrongfully failed to authorize
13 and permit Plaintiff and the putative Aggrieved Employees to take timely and duty-free rest
14 periods. Defendants sometimes, but not always, required Plaintiff and the putative Aggrieved
15 Employees to work in excess of four consecutive hours a day without Defendants authorizing and
16 permitting them to take a 10-minute, continuous and uninterrupted, rest period for every four hours
17 of work (or major fraction of four hours), or without compensating Plaintiff and the putative
18 Aggrieved Employees for rest periods that were not authorized or permitted. Defendants also did
19 not adequately inform Plaintiff and the putative Aggrieved Employees of their right to take a rest
20 period. Moreover, Defendants did not have adequate policies or practices permitting or authorizing
21 rest periods for Plaintiff and the putative Aggrieved Employees, nor did Defendants have adequate
22 policies or practices regarding the timing of rest periods. Defendants also did not have adequate
23 policies or practices to verify whether Plaintiff and the putative Aggrieved Employees were taking
24 their required rest periods. Further, Defendants did not maintain accurate records of employee
25 work periods, and therefore Defendants cannot demonstrate that Plaintiff and the putative
26 Aggrieved Employees took rest periods during the middle of each work period. Accordingly,
27 Defendants' policy and practice was to not authorize and permit Plaintiff and the putative
28 Aggrieved Employees to take rest periods in compliance with California law.

1 20. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
2 putative Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties
3 for Defendants without reimbursement. For example, up until approximately 2018, Plaintiff and
4 the putative Aggrieved Employees were required to use their own personal cellular telephones
5 during their employment, without reimbursement.

6 21. Throughout the statutory period, Defendants willfully failed and refused to timely
7 pay Plaintiff and the putative Aggrieved Employees at the conclusion of their employment all
8 wages for all minimum wages, overtime wages, meal period premium wages, and rest period
9 premium wages. Further, Plaintiff and the putative Aggrieved Employees received their final
10 paychecks late, and not at the time of termination.

11 22. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
12 putative Aggrieved Employees with accurate, itemized wage statements showing all applicable
13 hourly rates, and all gross and net wages earned (including correct hours worked, correct wages
14 earned for hours worked, correct overtime hours worked, correct wages for meal periods that were
15 not provided in accordance with California law, correct wages for rest periods that were not
16 authorized and permitted to take in accordance with California law, and Defendant's address). As
17 a result of these violations of California Labor Code § 226(a), the Plaintiff and the putative
18 Aggrieved Employees suffered injury because, among other things:

- 19 (a) the violations led them to believe that they were not entitled to be paid
20 minimum wages, overtime wages, meal period premium wages, and rest
21 period premium wages to which they were entitled, even though they were
22 entitled;
- 23 (b) the violations led them to believe that they had been paid the minimum,
24 overtime, meal period premium, and rest period premium wages, even
25 though they had not been;
- 26 (c) the violations led them to believe they were not entitled to be paid minimum,
27 overtime, meal period premium, and rest period premium wages at the
28 correct California rate even though they were;

- (d) the violations led them to believe they had been paid minimum, overtime, meal period premium, and rest period premium wages at the correct California rate even though they had not been;
- (e) the violations hindered them from determining the amounts of minimum, overtime, meal period premium, and rest period premium owed to them;
- (f) in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;
- (g) by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;
- (h) the wage statements inaccurately understated the wages, hours, and wages rates to which Plaintiff and the putative Aggrieved Employees were entitled, and Plaintiff and the putative Aggrieved Employees were paid less than the wages and wage rates to which they were entitled.

FIRST CAUSE OF ACTION

(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq.)

23. Plaintiff incorporate by reference and re-allege as if fully stated herein paragraphs 1 through 22 in this Second Amended Complaint.

24. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

25. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards,

1 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
2 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
3 former employees pursuant to the procedures specified in Section 2699.3.”

4 26. Plaintiff has exhausted her administrative remedies pursuant to California Labor
5 Code § 2699.3. On March 12, 2021, Plaintiff gave written notice by online filing to the Labor and
6 Workforce Development Agency and by certified mail to Defendants of the specific provisions of
7 the Labor Code that Defendants have violated against Plaintiff and current and former aggrieved
8 employees, including the facts and theories to support the violations. At the time of this filing, 65
9 days has elapsed since Plaintiff provided notice, but the Labor and Workforce Development
10 Agency has not indicated that it intends to investigate Defendants’ Labor Code violations discussed
11 in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor
12 Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Second
13 Amended Complaint. These penalties include, but are not limited to, penalties under California
14 Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

15 27. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
16 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
17 employing labor who willfully fails to maintain accurate and complete records required by
18 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
19 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins
20 and ends each work period. Meal periods, and total hours worked daily shall also be recorded.
21 Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall keep total
22 hours worked in the payroll period and applicable rates of pay.

23 28. During the time period of employment for Plaintiff and the Aggrieved Employees,
24 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
25 maintain accurate records showing meal periods, and accurate records showing when employees
26 begin and end each work period. Defendants’ failure to provide and maintain records required by
27 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
28 know, understand and question the accuracy and frequency of meal periods, and the accuracy of

1 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
2 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
3 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
4 Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment
5 of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel
6 Defendants to fully perform its obligation under state law. Because of Defendants' knowing failure
7 to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
8 Employees have also suffered an injury in that they were prevented from knowing, understanding,
9 and disputing the wage payments paid to them.

10 29. Based on the conduct described in this Second Amended Complaint, Plaintiff is
11 entitled to an award of civil penalties on behalf of herself, the State of California, and similarly
12 situated Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all,
13 is in an amount to be shown according to proof at trial. These penalties are in addition to all other
14 remedies permitted by law.

15 30. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
16 pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any
17 action shall be entitled to an award of reasonable attorney's fees and costs."

18 **PRAYER FOR RELIEF**

19 Plaintiff, on behalf of herself, the State of California, and similarly situated Aggrieved
20 Employees of Defendants, prays for relief and judgment against Defendants, jointly and severally,
21 as follows:

22 **As to the First Cause of Action**

23 31. That the Court declare, adjudge and decree that Defendants violated the California
24 Labor Code by failing to pay wages for all hours worked (including minimum and overtime wages),
25 failing to provide meal periods, failing to maintain accurate records of meal periods, failing to
26 authorize and permit rest periods, failing to maintain accurate records of all hours worked and meal
27 periods, failing to indemnify necessary business expenses, failing to pay final wages at termination,
28 and failing to furnish accurate wage statements;

1 32. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all
2 other applicable Labor Code provisions;

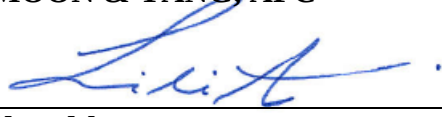
3 33. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
4 California Labor Code § 2699;

5 34. For such other and further relief as the Court may deem equitable and appropriate.

6 Respectfully submitted,

7 **MOON & YANG, APC**

8 Dated: August 11, 2021

9 By:  _____

Kane Moon

Lilit Ter-Astvatsatryan

10 Attorneys for Plaintiff
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not
a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

4 On the date indicated below, I served the document described as: **SECOND AMENDED**
5 **REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by sending [
6] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the
attached service list:

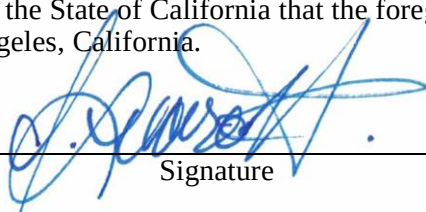
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12 *Attorneys for Defendant Sheridan Assisted Living, Inc.,*

13 [✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California,
14 by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-
mail of record in this action.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is
16 true and correct. Executed this **August 11, 2021** at Los Angeles, California.

17
18 Ivette Hernandez
Type or Print Name

19 
Signature