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Attorneys for Plaintiff Terri Day,
on behalf of herself and others aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

TERRI DAY, on behalf of herself and others
aggrieved,

Plaintiffs,

vs.

CARING COMPANIONS AT HOME, INC.,
a California Corporation, and DOES 1
through 10, inclusive,

Defendants.

CASE NO. 30-2024-01415290-CU-OE-CXC

**FIRST AMENDED PRIVATE ATTORNEYS
GENERAL ACT ("PAGA")
REPRESENTATIVE ACTION COMPLAINT:**

- 1. PAGA CIVIL PENALTIES FOR
FAILURE TO PAY MINIMUM AND
OVERTIME WAGES**
- 2. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 3. PAGA CIVIL PENALTIES FOR
FAILURE TO TIMELY PAY WAGES
DURING EMPLOYMENT AND AT
SEPARATION FROM EMPLOYMENT**
- 4. PAGA CIVIL PENALTIES FOR
FAILURE TO REIMBURSE
BUSINESS-RELATED EXPENSES**
- 5. PAGA CIVIL PENALTIES FOR
FAILURE TO MAINTAIN ACCURATE
RECORDS**

Plaintiff TERRI DAY (“Plaintiff”) alleges as follows:

I.

INTRODUCTION

1. Plaintiff brings this action as a representative action under Labor Code sections 2698 and 2699 (The California Private Attorneys General Act of 2004, or “PAGA”), solely on behalf of all other aggrieved employees of Defendant CARING COMPANIONS AT HOME, INC. (“CCH”). Plaintiff contends CCH is liable under PAGA for its failure to: pay minimum and overtime wages to in-home caregivers for sleep time and mandatory training time; provide them accurate, itemized wage statements; maintain accurate records for them; reimburse them for business-related expenses; and timely pay all wages due during and upon separation of employment. Plaintiff sues for civil penalties, interest, attorneys’ fees and costs, pursuant to the PAGA statute. Plaintiff is not suing in her individual capacity; she is proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved employees, including herself and other aggrieved employees. See *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533, 538.

2. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by The Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

3. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees has discretion to assess a civil penalty, a fact-finder in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

4. Plaintiff is an “aggrieved employee” as defined by Labor Code section 2699(c), because she was an employee of CCH, and personally experienced the Labor Code violations alleged during the relevant “PAGA Period,” which Plaintiff defines as one year and sixty-five

II.

6. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendant is a California corporation that conducts business in Orange County, California and each Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and those aggrieved within the State of California and Orange County. Defendant employs numerous employees in Orange County. State court is the proper venue because PAGA civil penalty actions are not subject to federal jurisdiction and are not subject to removal. 28 U.S.C. §§ 1332(a)-(d).

III.

A. The Plaintiff

23 8. Ms. Day provided residential, in-home care for CCH's clients, which required her
24 to sleep on the clients' premises and be available at all times to provide care to these clients. She
25 was not able to leave the premises. For each day of work, CCH did not pay any wages for eight
26 hours as uncompensated sleep time. CCH also failed to pay Ms. Day any wages for mandatory
27 training time.

28 |||

B. The Defendant

9. Defendant CCH is a California Corporation with its principal address at 881 Dover Drive, Suite 260, Newport Beach, CA 92663, which provides, and which has provided throughout the PAGA Period, in-home caregiver services to seniors and others in Orange County and other locations in California and Texas.

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

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

IV.

GENERAL ALLEGATIONS

12. During all, or some portion of, the PAGA Period, Plaintiff and other aggrieved employees were employed by CCH in the State of California as in-home caregivers, and as such are and were subject to the protections of the California Labor Code and Industrial Welfare Commission Wage Order 15-2001 for Household Occupations.

13. During all, or some portion of, the PAGA Period, Plaintiff and other aggrieved employees were required to remain on premises 24 hours per day as in-home caregivers, but were not paid for sleep time. Instead, CCH, under its uniform policy, subtracted eight hours from caregivers' 24-hour workday and paid no wages for this time. CCH also failed to pay caregivers any wages for mandatory training time.

1 14. During all, or some portion of, the PAGA Period, CCH failed to provide accurate,
2 itemized wage statements to Plaintiff and other aggrieved employees as required by Labor Code
3 section 226. Specifically, because CCH failed to pay all wages owed, wage statements were
4 inaccurate as to gross wages earned, total hours worked, net wages earned, and the applicable
5 hourly rates in effect during the pay period and the corresponding number of hours worked at each
6 hourly rate.

7 15. During all, or some portion of, the PAGA Period, CCH failed to timely pay all
8 wages owed to separated employees as a result of its failure to pay all wages owed during
9 employment. In addition, CCH failed to pay Plaintiff, and on information and belief other
10 separated aggrieved employees, their final wages on time. Plaintiff resigned her employment on
11 July 1, 2024. As such, she should have been paid her final wages no later than July 4, 2024.
12 However, CCH did not pay Plaintiff her final wages until July 9, 2024.

13 16. During all, or some portion of, the PAGA Period, CCH failed to reimburse Plaintiff
14 and other aggrieved employees for all business-related expenses. Specifically, CCH failed to
15 reimburse Plaintiff and other aggrieved employees for work-related cell phone use, despite the fact
16 that Plaintiff and other aggrieved employees were required to clock in and out for work using
17 CCH's cell phone application. CCH also failed to reimburse Plaintiff for bedding which she was
18 practically required to purchase for a CCH client for whom she worked, and on information and
19 belief, other aggrieved employees were also required to purchase similar items for CCH clients
20 without reimbursement.

21 17. During all, or some portion of, the PAGA Period, CCH failed to maintain accurate
22 records as to Plaintiff and other aggrieved employees. Specifically, CCH failed to maintain
23 accurate payroll records for Plaintiff and other aggrieved employees working under the title of in-
24 home caregiver or similar job title showing the hours worked daily and the wages paid. Plaintiff
25 alleges that CCH failed to maintain accurate records of all hours worked by Plaintiff and other
26 aggrieved employees working under the title of in-home caregiver beyond the sixteen (16) hours as
27 identified on Plaintiff's wage statements regardless of how many hours they actually worked or
28 were suffered and permitted to work.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Pay Minimum and Overtime Wages
(On Behalf of Aggrieved Employees against Each Defendant)
(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the “Minimum Wages”
and “Hours and Days of Work” Sections of Wage Order 15-2001)**

18. Plaintiff incorporates the preceding paragraphs of this Complaint.

19. “[A]ny 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, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Labor Code § 2699(a).

20. “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Labor Code § 1194(a).

21. Defendants failed to pay minimum and overtime wages during the PAGA period by failing to pay aggrieved employees wages for sleep time and mandatory training time.

22. On behalf of aggrieved employees, Plaintiff will seek civil penalties pursuant to Labor Code § 2699(f)(2).

SECOND CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements
(Labor Code §§ 226 and 2699 and the “Records” Section of Wage Order 15-2001)
(On Behalf of Aggrieved Employees against Each Defendant)**

23. Plaintiff incorporates the preceding paragraphs of this Complaint.

24. Every employer must, semimonthly or at the time of each payment of wages, furnish each of its employees an accurate itemized statement in writing showing, among other things, total hours worked, gross and net wages earned, and the total number of hours worked at

1 each corresponding rate of pay. Labor Code § 226(a).

2 25. Defendants willfully violated Section 226 by providing wage statements to
3 employees that did not accurately reflect all required information, including total hours worked,
4 gross and net wages earned, and the number of hours worked at each corresponding rate of pay.

5 26. On behalf of aggrieved employees, Plaintiff will seek civil penalties pursuant to
6 Labor Code § 226.3 or 2699(f)(2), as applicable.

7 **THIRD CAUSE OF ACTION**
8 **PAGA Civil Penalties for Failure to Timely Pay Wages During Employment and at**
9 **Separation From Employment**
10 **(On Behalf of Aggrieved Employees against Each Defendant)**
11 **(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)**

12 27. Plaintiff incorporates the preceding paragraphs of this Complaint.

13 28. An employer must pay “[a]ll wages, other than those mentioned in Section 201,
14 201.3, 202, 204.1, or 204.2, earned by any person in any employment...twice during each calendar
15 month, on days designated in advance by the employer as the regular paydays.” Labor Code § 204.

16 29. An employer must pay all wages owed to terminated employees at the time of
17 termination, or within 72 hours to employees who quit. Labor Code §§ 201-202. If an employer
18 willfully fails to timely pay all wages to separated employees, the wages continue at the same rate
19 for up to 30 days, until paid. Cal. Labor Code § 203.

20 30. By failing to pay Plaintiff and other aggrieved employees all earned minimum and
21 overtime wages, Defendants failed to pay these employees all wages due during their employment,
22 in violation of Labor Code section 204. Because Defendants failed to pay these earned wages,
23 Defendants also failed to timely pay all final wages owed to Plaintiff and other aggrieved
24 employees in violation of Labor Code sections 201 and 202. Defendants did not pay waiting time
25 penalties to Plaintiff and other aggrieved employees for each day any portion of their final wages
26 went unpaid, in violation of Labor Code section 203.

27 31. On behalf of aggrieved employees, Plaintiff will seek civil penalties pursuant to
28 Labor Code § 2699(f)(2).

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FOURTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Reimburse Business-Related Expenses
(On Behalf of Aggrieved Employees against Each Defendant)
(Labor Code §§ 2802 and 2804, and the “Uniforms and Equipment” Section of
Wage Order 15-2001)

32. Plaintiff incorporates the preceding paragraphs of this Complaint.

33. An employer must reimburse its employees for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer....” Labor Code § 2802. This right to reimbursement may not be waived. Labor Code § 2804.

34. By failing to reimburse Plaintiff and other aggrieved employees for their business-related expenses, including cell phone expenses and expenses incurred in purchasing practically necessary items for CCH clients, such as bedding, Defendants willfully violation Labor Code section 2802.

35. On behalf of aggrieved employees, Plaintiff will seek civil penalties pursuant to Labor Code § 2699(f)(2).

FIFTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Maintain Accurate Records
(On Behalf of Aggrieved Employees against Each Defendant)
(Labor Code §§ 1174, 1174.5, and 2699, and the “Records” Section of Wage Order 15-2001)

36. Plaintiff incorporates the preceding paragraphs of this Complaint.

37. An employer must maintain payroll records showing hours worked daily by, and wages paid to, its employees, in accordance with rules established by the Industrial Welfare Commission. Labor Code § 1174. An employer must also maintain time records showing when each work period, and meal period, begins and ends. IWC Wage Order(s), § 7.

38. Labor Code section 1174.5 imposes a \$500 civil penalty for any failure to maintain records required by Section 1174(d).

39. By failing to maintain accurate records of when the employees began and ended each work period, Defendants violated Labor Code section 1174.

40. On behalf of aggrieved employees, Plaintiff will seek civil penalties pursuant to Labor Code § 1174.5 or 2699(f)(2), as applicable.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff TERRI DAY seeks to represent, as Plaintiff, all other aggrieved employees of Defendants, and to represent the LWDA, and prays for relief as follows:

A. That this action be maintained as a Representative Action under the PAGA, and Plaintiff and her counsel be provided with all enforcement capability as if the action were brought by the California Division of Labor Standards Enforcement;

B. For recovery of all civil penalties permitted by Labor Code section 2699, for unpaid minimum and overtime wages, according to proof;

C. For recovery of civil penalties permitted by Labor Code section 2699 and/or 226.3, for inaccurate itemized wage statements, according to proof;

D. For recovery of civil penalties permitted by Labor Code section 2699 for failing to timely pay all wages due, including final wages due;

E. For recovery of all civil penalties as permitted by Labor Code section 2699, for failing to reimburse all necessary business-related expenses incurred, pursuant to Labor Code section 2802;

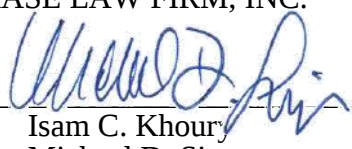
F. For recovery of civil penalties as permitted by Labor Code section 2699 and/or 1174.5, for failing to maintain accurate records, according to proof;

G. For the Plaintiff to be recognized by the Court as serving as a Representative of the LWDA, that she be deemed an "aggrieved employee," and that she be awarded some form of enhanced compensation for bringing this action should she prevail and provide benefit to the State of California or other "aggrieved employees," subject to the Court's discretion; and

H. Such other legal relief as this Court deems necessary, just, and proper.

COHELAN KHOURY & SINGER
NAKASE LAW FIRM, INC.

Dated: October 15, 2024

By:  _____

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