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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**
10

11 DONNA CARONE, individually, and on behalf
of all aggrieved employees,

12 Plaintiff,

13 v.

14 JEWISH HOME FOR THE AGING OF
15 ORANGE COUNTY, a California corporation,
and DOES 1-25, inclusive,

16 Defendants.
17

) Case No. 30-2020-01152256-CU-OE-CXC

) REPRESENTATIVE ACTION

) **COMPLAINT FOR VIOLATIONS OF**
) **THE PRIVATE ATTORNEYS GENERAL**
) **ACT OF 2004 (Labor Code Section 2698 et**
) **seq.)**

) DEMAND FOR JURY TRIAL

) Assigned for All Purposes

) Judge Randall J. Sherman

cx-105

18 COMES NOW Plaintiff DONNA CARONE, in her representative capacity, with her
19 Complaint against Defendants JEWISH HOME FOR THE AGING OF ORANGE COUNTY, a
20 California corporation, and DOES 1 through 25 inclusive, and hereby alleges as follows:

21 **JURISDICTION AND VENUE**

22 1. The California Superior Court has jurisdiction over this action pursuant to California
23 Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all
24 causes except those given by statute to other trial courts." The Statutes under which this action is
25 brought do not specify any other basis for jurisdiction.

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2. Venue and jurisdiction are proper because Defendants were doing business in Orange County; Plaintiff's employment was entered into in Orange County; Plaintiff worked for Defendants in Orange County; and the damages sought exceed the jurisdictional minimum of this Court.

THE PARTIES

3. Plaintiff DONNA CARONE ("Plaintiff") was at all relevant times herein, an individual residing in Orange County, California and was employed by Defendants JEWISH HOME FOR THE AGING OF ORANGE COUNTY and DOES 1 through 25 inclusive.

4. Plaintiff is informed, believes, and thereon alleges that Defendant JEWISH HOME FOR THE AGING OF ORANGE COUNTY ("HERITAGE POINTE") is, and at all times mentioned herein was, a business organized under California laws registered to do business and actively doing business in the State of California, with its principal place of business in Mission Viejo, California. At all times hereinafter mentioned, Defendant HERITAGE POINTE was an employer whose employees were engaged in this county and the State of California.

5. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise, of Defendants sued herein as DOES 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sues said Defendants by fictitious names. Plaintiff is informed, believes, and thereon alleges that each of the Defendants designed herein as DOE is legally responsible in some manner for the events and happenings referred to herein, and caused injury and damage proximately thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities of the Defendants designated herein as DOES when the same have been ascertained. Whenever in this Complaint reference is made to "Defendants," such allegation shall be deemed to mean the acts of Defendants acting individually, jointly, or severally.

6. Plaintiff is informed, believes, and thereon alleges that Defendants were her "Employer" as that term is defined in the applicable Wage Order of the Industrial Welfare Commission ("IWC"). Plaintiff is informed and believes and thereon alleges that, at all relevant times mentioned herein, Defendants were Plaintiff's employer.



1 **JOINT LIABILITY**

2 7. Except as hereinafter specially described, Defendants, and each of them, are and
3 were the agents and/or employees of the other Defendants, and in acting as described herein were
4 acting within the scope of their authority or employment as agents and/or employees thereof, and
5 with the permission and consent of the other Defendants.

6 8. As to each of the Defendants, Plaintiff is informed, believes, and thereon alleges
7 that, at all relevant times mentioned herein, each Defendant was the principal, agent, employer,
8 employee, partner, joint venture, officer, director, controlling shareholder, alter ego, subsidiary,
9 affiliate, parent corporation, successor in interest and predecessor in interest of some or all of the
10 other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise
11 for profit, and bore such other relationships to some or all of the other Defendants, so as to be liable
12 for the conduct of them.

13 9. Plaintiff is further informed, believes, and thereon alleges that each Defendant acted
14 pursuant to and within the scope of the relationships alleged above, that each Defendant knew or
15 should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the
16 conduct of all other Defendants; and that each Defendant acted pursuant to a conspiracy and
17 agreement to do the things alleged herein.

18 **GENERAL BACKGROUND FACTS**

19 10. HERITAGE POINTE is a 200-resident community providing independent, assisted
20 living and memory care services for seniors.

21 11. Plaintiff began her employment with HERITAGE POINTE on or about November
22 18, 2019.

23 12. Throughout her employment with HERITAGE POINTE, Plaintiff worked at
24 HERITAGE POINTE's Mission Viejo, California location as HERITAGE POINTE's
25 Administrative Assistant and/or Operations Manager.

26 13. Plaintiff was paid by HERITAGE POINTE \$22.00 per hour bi-weekly as an hourly
27 non-exempt employee.

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1 14. Neither at the time of Plaintiff's hire, nor any time thereafter, did HERITAGE
2 POINTE provide her with a written notice communicating all of the following: the rate or rates of
3 pay and basis thereof; allowances, if any, claimed as part of the minimum wage; the regular payday
4 designated by the employer; the name of the employer, including "dba" names used; the physical
5 address of the employer's main office or principal place of business; the telephone number of the
6 employer; contact information of the employer's workers' compensation insurance carrier; that the
7 employee may accrue and use sick leave, among other things related; and any other information the
8 Labor Commissioner deems material and necessary.

9 15. Further, upon information and belief, all other hourly non-exempt employees of
10 HERITAGE POINTE were not, and continue to not be, provided with a requisite Notice to
11 Employee.

12 16. On or about one-half (1/2) of Plaintiff's shifts while under the employ of
13 HERITAGE POINTE, Plaintiff was forced to continue working at her desk while eating her lunch,
14 despite being clocked out.

15 17. Throughout the duration of Plaintiff's employment with HERITAGE POINTE, she
16 did not receive accurate itemized wage statements.

17 18. First, Plaintiff's wage statements failed to show the total hours Plaintiff worked,
18 failed to state Plaintiff's accurate wages, and failed to correctly state Plaintiff's hourly rates for
19 each hour worked.

20 19. Second, each of Plaintiff's wage statements provided by HERITAGE POINTE did
21 not accurately name the employer's correct name. Instead, such wage statements only listed
22 "JEWISH HOME FOR THE AGING OF ORANGE" as the employer, despite HERITAGE
23 POINTE's legal name being registered in the state of California as "Jewish Home for the Aging of
24 Orange County."

25 20. Upon information and belief, all 150 employees of HERITAGE POINTE received
26 wage statements incorrectly naming the employer and therefore have resulting claims associated
27 with such.

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1 21. On or about March 23, 2020, in the middle of the COVID-19 global pandemic (“the
2 pandemic”), Plaintiff reported what she believed to be violations of state and/or federal law,
3 specifically health and safety violations.

4 22. In a March 23, 2020 e-mail exchange with HERITAGE POINTE’s Chief Executive
5 Officer Mike Silverman (“Mr. Silverman”), Plaintiff mentioned her concerns with the lack of
6 precautions HERITAGE POINTE was taking to provide its employees with a safe and healthy
7 workplace.

8 23. Specifically, Plaintiff expressed her concerns with the health and safety of using the
9 fingerprint timekeeping device during the pandemic.

10 24. While Plaintiff made it clear that she was not going to avoid coming to work,
11 Plaintiff wanted to see if there were any alternatives HERITAGE POINTE would consider for
12 timekeeping to minimize germs and avoid potential exposure to the virus for all employees of
13 HERITAGE POINTE.

14 25. In the same March 23, 2020 e-mail exchange, Plaintiff said to Mr. Silverman
15 verbatim “I have no problem going to work or doing the work during these uncertain times, I am
16 concerned with the amount of unknown people car[ry]ing [sic] the virus. I clock in and clock out
17 four time [sic] a day on a device that several people use . . .” and asked “what precautions are being
18 taken to protect the employees.”

19 26. Mr. Silverman ignored Plaintiff’s request that additional precautions be taken
20 pertaining to the timekeeping device, causing Plaintiff to say “I know it sound trivial but it is a very
21 active site/location and I am trying to be proactive in staying safe.”

22 27. Further, HERITAGE POINTE’s very own policies in its “POLICIES FOR
23 LICENSED FACILITIES” document states the following, in part:

24 C. **POLICY AND PROCEDURES FOR FOLLOWING A**

25 **COMPLIANCE REPORT** - The policy of Heritage Pointe prohibits
26 any retaliatory action against an employee for making any verbal or
27 written communication to an immediate supervisor, human resources,
28 the employee suggestion/anonymous drop box, or the CEO . . .



1 Employees and/or supervisors shall not prevent, or attempt to
2 prevent, an employee from communicating . . . to a designated
3 official of Heritage Pointe. If an employee attempts such action, he
4 or she is subject to disciplinary action up to and including dismissal.
5 When a report of a suspected violation or questionable conduct,
6 **including reports of suspected violations of applicable state or**
7 **federal health or safety standards**, is brought to the attention of the
8 compliance officer, he or she shall:

- 9 • Determine whether the report raises compliance issues. If a
10 compliance issue is raised, a compliance report form shall be
11 completed, a copy of which shall be placed in a prepared file.
- 12 • Investigate the suspected violation or questionable conduct
13 and/or shall delegate the investigation or analysis of suspected
14 violations or questionable conduct to any individual(s) he or
15 she deems appropriate. A memorandum regarding such
16 inquiry shall be prepared, and copies forward, if appropriate,
17 to the CEO. The memo shall address:
 - 18 ○ The specific steps and/or methods used in
19 investigating the matter (such as people interviewed,
20 records reviewed, analyses performed, etc.,
 - 21 ○ The specific findings and/or results of the
22 investigation; and
 - 23 ○ A proposed plan of action (such as disciplinary action,
24 policy or procedure changes, in-service training
25 regarding existing policy and/or procedure, or other
26 suggested actions) to prevent future non-compliance.
27 A copy of the memo shall be placed in a prepared file
28 (emphasis added).



1 28. HERITAGE POINTE's policy goes on to mention that "[v]iolations of the corporate
2 compliance program will not be tolerated. Disciplinary action, which may include termination of
3 employment, may be taken for any of the following . . . [r]etaliating against an individual for
4 making a good faith report of a suspected violation of the compliance standards."

5 29. Directly contrary to HERITAGE POINTE's own policies and instead of remedying,
6 slightly addressing the situation, or taking any of the steps set forth in its own policies, HERITAGE
7 POINTE terminated Plaintiff in response to her health and safety concerns and instructed her to
8 pick up her belongings and final paycheck two (2) days later, on or about March 25, 2020.

9 30. Upon information and belief, all 150 employees of HERITAGE POINTE were not
10 provided with a safe and healthy place of employment for the same or similar reasons as Plaintiff
11 and therefore have resulting claims associated with such.

12 31. When HERITAGE POINTE terminated Plaintiff's employment, HERITAGE
13 POINTE failed to pay Plaintiff all her wages immediately upon termination.

14 32. Despite being terminated on March 23, 2020, Plaintiff did not receive a final
15 paycheck, albeit an incorrect one, until March 25, 2020. These two (2) days in waiting time
16 penalties are indisputable, as Mr. Silverman specifically noted in his termination e-mail to Plaintiff
17 on March 23, 2020 that he will have Plaintiff's personal items available for pick-up in the front of
18 the building on March 25, 2020 and "will include [Plaintiff's] final check with the items as
19 [Plaintiff's] employment ends this evening." In other words, Mr. Silverman acknowledged that he
20 was not paying Plaintiff all wages due and payable at termination. Regardless, as of the date this
21 Complaint was filed, HERITAGE POINTE still had not paid Plaintiff all her wages as a result of its
22 failure to compensate Plaintiff minimum wage and overtime wages throughout her employment.

23 33. Plaintiff was required and expected to routinely use her personal cell phone for work
24 nearly every day of her employment with HERITAGE POINTE. In fact, upon information and
25 belief, nearly all employees of HERITAGE POINTE were required to use their personal cell
26 phones for work-related purposes on a daily basis. Plaintiff's manager, Beth Slavin ("Ms. Slavin"),
27 among others, routinely communicated with Plaintiff by text messaging or calling Plaintiff's
28 personal cell phone. There was an expectation that Plaintiff would use her personal cell phone for



1 work-related purposes. At no point was Plaintiff reimbursed or compensated for such necessary
2 expenditures associated with the work-related use of her personal cell phone.

3 34. Upon information and belief, all 150 employees of HERITAGE POINTE were
4 required and/or forced to use their personal cell phone for work-related purposes and were not
5 reimbursed for such necessary expenditures. As such, those aggrieved employees have the same or
6 similar claims as Plaintiff.

7 35. Upon information and belief, at least 150 current and/or former employees of
8 HERITAGE POINTE are aggrieved employees as defined under Labor Code section 2699(c).
9 Upon information and belief, each of those current and/or former employees were or continue to be
10 provided with inaccurate wage statements, are not furnished with a safe and healthy place of
11 employment, and have not received the requisite notice to employee upon hire or at any time
12 thereafter.

13 36. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004
14 (“PAGA”), Labor Code section 2698 *et seq.* on behalf of the State of California and on a
15 representative basis on behalf of all California current and former employees of Defendants.

16 37. Plaintiff filed a PAGA Notice with the Labor and Workforce Development Agency
17 (“LWDA”) on May 6, 2020. Therefore, Plaintiff has waited the mandatory sixty-five (65) days
18 since filing her PAGA Notice.

19 38. On July 10, 2020, Plaintiff and HERITAGE POINTE, by and through their
20 respective counsel of record, entered into a Tolling Agreement agreeing to toll the statute of
21 limitations for Plaintiff’s PAGA claims against HERITAGE POINTE for the period of July 10,
22 2020 through October 10, 2020 (“Tolling Period”). Applicable statute of limitations shall not run
23 during the Tolling Period until: (1) after October 10, 2020; or (2) once Plaintiff files a PAGA
24 complaint with HERITAGE POINTE’s consent.

25 39. On or about July 21, 2020, Plaintiff obtained HERITAGE POINTE’s consent to file
26 this PAGA Complaint.

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FIRST CAUSE OF ACTION
CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (“PAGA”)
(Labor Code § 2698 *et seq.*)
(Against All Defendants)

40. Plaintiff realleges and incorporates each preceding paragraph as though fully set forth herein.

41. California Labor Code sections 2698-2699.5, in relevant part, provides, “any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency. . . 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.”

42. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving notice to the LWDA and the employer of the Labor Code sections alleged to have been violation, and after receiving notice from the LWDA of its intention not to investigate, or after sixty-five (65) days have passed without notice.

43. To the extent applicable, Plaintiff has satisfied in full the requirements of Labor Code section 2699.3. Plaintiff sent notice to HERITAGE POINTE and the LWDA on or about May 6, 2020, detailing HERITAGE POINTE’s alleged Labor Code violations. In particular, Plaintiff’s notice alleged violations of Labor Code sections 1101.5; 6310; 6311; 1194; 510; 1198; 226.7; 512; 226; 2810.5; 201; 203; 2802; 6400-6404; and 6406-6407.

44. LWDA did not provide notice of its intention to investigate HERITAGE POINTE’s alleged violations within sixty-five (65) calendar days of the postmark date of Plaintiff’s notice.

45. Plaintiff is an “aggrieved employee” under PAGA because she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth in this Complaint.

46. Plaintiff seeks to recover, on her behalf, on behalf of the State, and on behalf of all former and current aggrieved employees of Defendants, the civil penalties provided by PAGA, plus



1 reasonable attorney's fees and costs through a representative action permitted by PAGA and the
2 California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Therefore, class
3 certification is not required.

4 47. Plaintiff seeks penalties pursuant to PAGA for the following Labor Code violations:

5 A. Whistleblower retaliation in violation of Labor Code section 1102.5;

6 B. Health and Safety retaliation in violation of Labor Code sections 6310 and 6311;

7 C. Failure to pay minimum wage in violation of Labor Code section 1194;

8 D. Failure to pay all wages including overtime wages in violation of Labor Code
9 sections 510, 1194, and 1198;

10 E. Failure to provide meal and rest periods in violation of Labor Code sections
11 226.7 and 512;

12 F. Failure to record meal periods in violation of Labor Code section 1198;

13 G. Failure to provide accurate itemized wage statements in violation of Labor Code
14 section 226;

15 H. Failure to provide requisite notice to employee in violation of Labor Code
16 section 2810.5;

17 I. Failure to pay all wages due and payable upon separation of employment in
18 violation of Labor Code sections 201 and 203;

19 J. Failure to reimburse business expenses in violation of Labor Code section 2802;

20 K. Failure to furnish safe employment and place of employment in violation of
21 Labor Code sections 6400, 6401, 6402, 6403, 6404, and 6406; and

22 L. Failure to comply with Occupational Safety and Health Standards in violation of
23 Labor Code section 6407.

24 48. Labor Code section 2699 *et seq.* imposes a civil penalty of one hundred dollars
25 (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars
26 (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code
27 provisions for which a civil penalty is not specifically provided.

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49. As a proximate result of the action and conduct described in the paragraphs above, which constitute violations of certain Labor Code sections, Plaintiff and all other aggrieved employees have been damaged in an amount according to proof at the time of trial and seeks civil penalties and attorney's fees pursuant to Labor Code section 2699(f) and (g) against Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays, individually and on behalf of aggrieved employees, judgment against Defendants, and each of them, as follows:

1. For an award of civil penalties pursuant to PAGA;
2. For an award of reasonable attorney's fees and costs pursuant to Labor Code section 2699(g) and/or other applicable law;
3. For pre-judgment and post-judgment interest as provided by law; and;
4. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

Dated: July 21, 2020

KRING & CHUNG, LLP

By:

Tyler D. Kring
Attorneys for Plaintiff
DONNA CARONE