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10 Attorneys for Plaintiff Aaron Flott,
11 individually and on behalf of all others similarly situated
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13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
14

15 **FOR THE COUNTY OF ORANGE**
16

17 **AARON FLOTT, individually and**
18 **on behalf of the proposed class,**

19 **Plaintiffs,**

20 **v.**

21 **JEWISH HOME FOR THE AGING OF**
22 **ORANGE COUNTY, INC., A California**
23 **Corporation, (Doing Business as**
24 **HERITAGE POINTE; and DOES 1**
25 **through 50, inclusive,**

26 **Defendants.**
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Case No.:

REPRESENTATIVE ACTION
COMPLAINT FOR:

Violation of the Private Attorneys
General Act of 2004, Cal. Lab. Code §
2698, et seq.

Plaintiff, Aaron Flott (hereinafter "Plaintiff"), individually, and on behalf of the general public as private attorneys general and all other aggrieved employees, by and through his attorneys, hereby brings this Representative Action Complaint against Defendant Jewish Home For the Aging of Orange County, Inc., doing business as Heritage Pointe, (hereinafter referred to as "Defendants" or (Jewish Home), as follows

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I. INTRODUCTION

1. This is a representative action for recovery of civil penalties only under the Private Attorneys General Act of 2004 ("PAGA") codified by California Labor Code sections 2698, et seq. The PAGA permits "aggrieved employees" to bring a lawsuit as a representative action on behalf of themselves and all other current and former aggrieved employees to recover civil penalties and address an employer's violations of the California Labor Code.

2. In this case, Defendant violated various provisions of the California Labor Code and Industrial Welfare Commission ("IWC") Wage Orders. Specifically, Jewish Home For the Aging of Orange County maintained and implemented policies and practices which result in the failure to authorize and permit paid rest periods under section 226.7 and the applicable wage order; failure to provide Meal breaks in violation of Labor code 512; failure to pay all wages owed upon separation under sections 201, 202, and 203; failure to provide accurate, itemized wage statements under section 226; failure to pay minimum wages and overtime wages under sections 510 and 1194; failure to reimburse necessary expenditure under Section 2802; and violation of Private Attorneys General Act of 2004, Labor Code § 2698, et seq.

3. Plaintiff was employed with Jewish Home For the Aging of Orange County in California from July, 2017 to June 8, 2019 as a non-exempt Caregiver, Medtech, and Memory Care Coordinator. Plaintiff brings this action on behalf of himself and all other aggrieved employees employed by Jewish Home as non-exempt Caregiver, Medtech, and Memory Care Coordinator and other similarly situated California employees (the "Aggrieved Employees").

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all cases except those given by statute to other trial courts."

5. This Court has subject matter jurisdiction over this action pursuant to Code of Civil Procedure section 410.10.

6. This Court has personal jurisdiction over Defendant in that Defendant had sufficient minimum contacts with the State of California so as to render the exercise of jurisdiction over Defendant

1 by the California courts consistent with traditional notions of fair play and substantial justice.

2 7. Venue is proper in this judicial district pursuant to Code of Civil Procedure section 395.5
3 because Defendant conducts business and commits Labor Code violations in Orange County, and
4 Defendant employs numerous employees in Orange County.

5 8. On or about June 4, 2020, Plaintiff complied with the notice requirements pursuant to
6 California Labor Code § 2699.3 and gave written notice via online filing and certified mail of the
7 specific provisions alleged to have been violated to the Labor and Workforce Development Agency
8 (“LWDA”) and Defendant. A true and correct copy of the notice is attached hereto as **Exhibit A** and
9 incorporated herein by reference.

10 9. Sixty-five (65) days has passed since Plaintiff provided written notice required by Labor
11 Code § 2699.3. Therefore, Plaintiff may commence a civil action pursuant to Labor Code § 269.3(a)(1)-
12 (2).

13 **III. THE PARTIES**

14 10. Plaintiff is a resident of California and was employed by Jewish Home from July, 2017
15 to June 8, 2019 as a Caregiver, Medtech, and Memory care Coordinator in Mission Viejo California.

16 11. Defendant Jewish Home For the Aging of Orange County, Corporation (dba Heritage
17 Pointe) is a California Corporation registered to do business in California, and at all times relevant
18 herein conducted and continues to conduct substantial and regular business throughout the state of
19 California.

20 12. Jewish Home is in the business of providing lodging and care for the elderly and may
21 have other locations.

22 13. The true names and capacities of Defendants, whether individual, corporate, associate, or
23 otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who
24 therefore sues such Defendants by such fictitious names under Code of Civil Procedure section 474.
25 Plaintiff is informed and believes, and based thereon alleges that each of the Defendants designated
26 herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff
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1 will seek leave of court to amend this Complaint to reflect the true names and capacities of the
2 Defendants designated hereinafter as DOES when such identities become known.

3 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in
4 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
5 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
6 attributable to the other Defendants.

7 **IV. FACTUAL ALLEGATIONS**

8 15. At all times during the liability period, Jewish Home has conducted business by
9 providing Lodging and Care services for the elderly in Orange County and potentially elsewhere within
10 California.

11 16. Plaintiff was employed by Defendant from July, 2017 to June 8, 2019 as a Caregiver,
12 Medtech, and Memory Care Coordinator in Mission Viejo California.

13 17. Plaintiff work(ed) in non-exempt, non-managerial positions, such as Caregiver, Medtech,
14 and Memory Care Coordinator, and however titled, and similar and incidental positions in California.

15 18. Plaintiff is informed and believes, and based thereon alleges, Defendant currently
16 employs and during the relevant period has employed hundreds of employees in the State of California
17 in non-exempt positions, such as Caregiver, Medtech, and Memory Care Coordinator and/or other
18 similar positions.

19 19. Plaintiff is, and at all times pertinent hereto, has been a non-exempt employee within the
20 meaning of the California Labor Code, and the implementing rules and regulations of the IWC
21 California Wage Orders.

22 20. Plaintiff is informed and believes, and based thereon alleges, that non-exempt employees
23 are compensated by an hourly rate and upon information and belief, these employees have not been paid
24 wages for all hours worked.

25 21. In addition, on information and belief Jewish Home did not compensate Plaintiff during
26 hours that he performed labor while off the clock.
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1 22. In addition, on information and belief Defendant failed to pay Plaintiff overtime for all
2 overtime hours.

3 23. In addition, on information and belief Defendant failed to reimburse Plaintiff for business
4 expenditures, such the use of Plaintiff's personal vehicle, and cellular phone for the benefit of
5 Defendant.

6 24. In addition, as a result of Jewish Home's policies, as well as productivity requirements
7 and work schedules implemented and enforced by Jewish Home, Plaintiff was often unable to take a
8 lawful net-ten-minute rest period for every four hours worked or major fraction thereof, and/or lawful 30
9 minuet meal breaks for work period of more than five hours per day.

10 25. On information and belief, Jewish Home did not relieve Plaintiff of all duties during meal
11 and rest periods nor did it relinquish control over how Plaintiff spent his meal and rest break time.

12 26. Plaintiff was not paid one additional hour of pay at the employee's regular rate of pay for
13 each workday that the meal and/or rest period was not provided.

14 27. On information and belief, Defendant knew or should have known that it is improper and
15 unlawful to commit the following acts:

- 16 a. failing to authorize and permit a paid ten-minute rest period for every four hours worked
17 or a major fraction thereof;
- 18 b. failing to authorize and permit a lawful 30 minuet meal break for work period of more than
19 five hours per day;
- 20 c. failing to compensate employees with one (1) hour of pay at the regular rate of
21 compensation for each workday that a legally compliant meal or rest period was not
22 provided;
- 23 d. failing to reimburse business expenditures;
- 24 e. failing to pay all wages due and owing upon separation from Defendant's employ;
- 25 f. failing to provide accurate, itemized wage statements; and
- 26 g. failure to pay minimum and overtime wages.
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28. Plaintiff is informed and believes, and thereon alleges, that Defendant is and was advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws. Accordingly, Plaintiff is informed and believes that such violations during the liability periods were willful and deliberate.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of Private Attorneys General Act of 2004, Labor Code § 2698, Et Seq.

(Against all Defendants)

29. Plaintiff incorporates the above allegations as if fully set forth herein.

30. Pursuant to California Labor Code § 2699.3,

(a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

31. On or about June 4, 2020, Plaintiff complied with the notice requirements pursuant to California Labor Code § 2699.3 and gave written notice via online filing and certified mail of the specific provisions alleged to have been violated to the Labor and Workforce Development Agency (“LWDA”) and Defendant. A true and correct copy of the notice is attached hereto as **Exhibit A** and incorporated herein by reference.

32. Sixty-five (65) days has passed since Plaintiff provided written notice required by Labor Code § 2699.3. Therefore, Plaintiff may commence a civil action pursuant to Labor Code § 269.3(a)(1)-(2).

1 33. Plaintiff is an aggrieved employee as defined in Labor Code § 2699(c). Plaintiff brings
2 this action on her own behalf and on behalf of other Aggrieved Employees.

3 34. Plaintiff regularly worked in excess of four hours or major fraction thereof a day without
4 being provided a rest period of not less than 10 minutes in which she was relieved of all duties, as
5 required by California Labor Code §§ 226.7 and Wage Order No. 7-2001. Similarly Plaintiff was not
6 provided with a lawful 30 minuet meal break, in violation of California Labor Code §§ 512 and Wage
7 Order No. 7-2001.

8 35. As a consequence of productivity requirements and work schedules implemented and
9 enforced by Jewish Home, Plaintiff was often unable to take lawful net-ten-minute rest periods and
10 lawful 30 minuet meal breaks for every five hours worked. As a result of violations of California Labor
11 Code § 226.7; 512, and Wage Order No. 7-2001, Jewish Home is liable for **civil penalties** pursuant to
12 California Labor Code § 2698 *et seq.*

13 36. Defendant has violated California Labor Code §§ 510, 1194 and IWC Wage Order 7-
14 2001 by willfully failing to pay for all hours worked, including hourly wages for Off-the-clock work.
15 Also by allowing Plaintiff to work through meal and rest periods Defendant failed to pay hourly wages,
16 including minimum and overtime wages earned. In addition, the Aggrieved Employees are entitled to
17 liquidated damages equal to unlawfully unpaid minimum wages with interest pursuant to Labor Code §
18 1194.2. As a result of violations of California Labor Code § 510, 1194 and Wage Order No. 7-2001,
19 NAF is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

20 37. Defendant has violated California Labor Code §§ 201 and 202 by willfully failing to pay
21 all compensation due and owing to Plaintiff at the time employment was terminated. Defendant failed to
22 pay Plaintiff all compensation due upon termination of employment as required under California Labor
23 Code §§ 201 and 202, including meal and rest period premium pay and commissions. Accordingly,
24 Defendant has violated California Labor Code §§ 201, 202, and 203, Defendant is liable for civil
25 penalties pursuant to Labor Code § 2698 *et seq.*

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1 38. Defendant has violated California Labor Code §§ 2802 by failing to reimburse Plaintiff
2 for business expenditures for the use of her personal vehicle and her cellular phone for the benefit of
3 Jewish Home's business.

4 39. Defendant has violated Labor Code § 226(a) by willfully failing to furnish Plaintiff with
5 accurate, itemized wage statements showing the actual hours worked. As described above, Defendant
6 deliberately failed to pay wages for time worked, failed to apply the commission/bonus earnings to the
7 overtime rate and failed to pay rest period premiums, and, therefore, knew or should have known that
8 the wage statements were inaccurate. As a result of violations of California Labor Code § 226(a),
9 Defendant is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

10 40. Labor Code § 558 provides:

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12 “An employer or other person acting on behalf of an employer who violates, or causes to
13 be violated, a section of this chapter or any provision regulating hours and days of work in
14 any order of the Industrial Welfare Commission shall be subject to a civil penalty as
follows:

15 “(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
16 period for which the employee was underpaid in addition to an amount sufficient to recover
underpaid wages.

17 “(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
18 for each pay period for which the employee was underpaid in addition to an amount
sufficient to recovery underpaid wages.”

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20 Plaintiff is not claiming any wages under Labor Code § 558.

21 41. Labor Code § 2699(f) provides:

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23 (f) For all provisions of this code except those for which a civil penalty is specifically
provided, there is established a civil penalty for a violation of these provisions, as follows:

24 (1) If, at the time of the alleged violation, the person does not employ one or more
25 employees, the civil penalty is five hundred dollars (\$500).

26 (2) If, at the time of the alleged violation, the person employs one or more employees, the
27 civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for
the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
28 period for each subsequent violation.

1 42. As a direct and proximate result of Defendant's conduct as alleged above, Plaintiff and
2 the Aggrieved Employees are entitled to a civil penalty of at least fifty dollars (\$50) for the initial pay
3 period, and at least one hundred dollars (\$100) for each subsequent pay period for which Defendant
4 violated the Labor Code and applicable Wage Order as alleged herein.

5 43. Pursuant to Labor Code § 2698, *et seq.*, Plaintiff seeks to recover civil penalties only as
6 prescribed by the Labor Code Private Attorneys General Act of 2004 as the representative of the State of
7 California for the illegal conduct perpetrated on Plaintiff and the Aggrieved Employees.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a jury trial on issues triable to a jury.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment as follows:

- 12 1. For recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of
13 2004, Labor Code § 2698, *et seq.*;
- 14 2. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but
15 not limited to, pursuant to Labor Code sections 2698, *et seq.*; and
- 16 3. For such other and further relief as the Court deems just and proper.
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19 Dated: June 4, 2020

Respectfully submitted,

20 **JAMES HAWKINS APLC**

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22 _____
23 James R. Hawkins, Esq.
24 Sean S. Vahdat, Esq.
25 Attorneys for Plaintiffs and Members
26 of the General Public
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