

1 ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonelinegroup.com
2 JENNIFER L. CONNOR (SBN 241480)
jennifer@counselonelinegroup.com
3 JUSTIN KACHADOORIAN (SBN 260356)
justin@counselonelinegroup.com
4 **COUNSELONE, PC**
9301 Wilshire Boulevard, Suite 650
5 Beverly Hills, California 90210
Telephone: (310) 277-9945
6 Facsimile: (424) 277-3727

7 Attorneys for Plaintiff Vanessa Pena-Leon, and
8 Aggrieved Employees

E-FILED
8/27/2021 8:11 PM
Superior Court of California
County of Fresno
By: J. Nelson, Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF FRESNO**

14 VANESSA PENA-LEON, individually, and
15 on behalf of other aggrieved employees
16 pursuant to the California Private Attorneys
General Act,

17 Plaintiff,

18 v.

19 THE CALIFORNIA HOME FOR THE AGED,
20 INC., a California corporation, doing business
as doing business as CALIFORNIA
21 ARMENIAN HOME & THE VINEYARDS
and THE CALIFORNIA ARMENIAN HOME;
22 and DOES 1 through 100,

23 Defendants.

Case No.: 21CECG02565

**REPRESENTATIVE ACTION
COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE § 2698,
ET SEQ.)**

1 Plaintiff VANESSA PENA-LEON (“Plaintiff”) on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorneys General Act of 2004, section 2698, *et seq.* (“PAGA”) complains of
4 defendants THE CALIFORNIA HOME FOR THE AGED, INC., a California corporation, doing
5 business as doing business as CALIFORNIA ARMENIAN HOME & THE VINEYARDS and
6 THE CALIFORNIA ARMENIAN HOME; and DOES 1 through 100 (collectively, “Defendants”)
7 and each of them, as follows:

8 I. INTRODUCTION

9 1. This is a representative action brought pursuant to Labor Code section 2699, *et*
10 *seq.*, on behalf of the State of California and on behalf of aggrieved employees as follows: ***All***
11 ***current and former hourly-paid or non-exempt employees who worked for Defendants, and/or***
12 ***their predecessor or merged entities, within the State of California within the longest applicable***
13 ***limitations period*** (the “Aggrieved Employees”).

14 2. The Judicial Council of California (JCC)’s amended Emergency Rule 9 (effective
15 May 29, 2020) provides: “Notwithstanding any other law, the statutes of limitations and repose for
16 civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”
17 The Advisory Committee Comment notes that: “Emergency rule 9 is intended to apply broadly to
18 toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action.
19 The term “civil causes of action” includes special proceedings. (*See* Code Civ. Proc., §§ 312, 363
20 [“action,” as used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed
21 ‘as including a special proceeding of a civil nature’ The rule also applies to statutes of
22 limitations on filing of causes of action in court found in codes other than the Code of Civil
23 Procedure.”].) Accordingly, the relevant time period for the claims under the Private Attorneys
24 General Act of 2004 (“PAGA”) discussed herein is one year prior to the date Plaintiff filed her
25 PAGA notice online with the Labor & Workforce Development Agency and sent a letter by
26 certified mail to Defendants plus the additional time during which the statute of limitations was
27 tolled (pursuant to Emergency Rule 9 of the California Rules of Court) and ongoing.

3. Throughout the time period involved in this case, Defendants willfully maintained a policy/practice of failing to pay all wages, including minimum wages, for all hours worked; failing to pay all overtime wages; failing to provide timely duty-free meal periods; failing to authorize and permit duty-free rest breaks; failing to reimburse for business expenses; failing to maintain and provide accurate itemized wage statements; failing to provide specific disclosures; and failing to pay all wages owed timely and upon separation of employment. Defendants' illegal conduct has given rise to claims for violation of PAGA.

4. Plaintiff, on behalf of herself and Aggrieved Employees, brings this representative action against Defendants to recover penalties owed pursuant to Labor Code section 2699. Plaintiff was compelled to retain the services of counsel to file this action to protect her interests and those of Aggrieved Employees and has thereby incurred attorneys' fees and costs, which she is entitled to recover under Labor Code section 2699.

II. JURISDICTION

5. This Court has subject matter jurisdiction over any and all causes of action asserted herein pursuant to Article VI, section 10 of the California Constitution and California Code of Civil Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

6. This Court has personal jurisdiction over Defendants because they have caused injuries in Fresno County and the State of California through their acts and by their violation of the California Labor Code and California state common law. Defendants also transact business throughout California and have obtained the benefits of the laws of the United States and the State of California and are therefore subject to the personal jurisdiction of this Court. Defendants transact at least \$500,000 dollars of business within the State of California.

/ / /

/ / /

/ / /

1 **III. VENUE**

2 7. Venue as to each defendant is proper in this judicial district, pursuant to Code of
3 Civil Procedure section 395. Defendants operate within California and do business within Fresno
4 County.

5 8. This case should be classified as complex according to California Rules of Court,
6 Rule 3.400, and assigned to a complex litigation judge and department because it will involve
7 substantial documentary evidence and a large number of witnesses; is likely to involve extensive
8 motion practice raising difficult or novel issues that will be time-consuming to resolve; and would
9 require substantial post judgment judicial supervision.

10 **IV. PARTIES**

11 9. At all relevant times herein, Defendants employed Plaintiff as an hourly-paid, non-
12 exempt employee in the State of California, and subjected her to the same employment policies
13 and practices that affected Aggrieved Employees.

14 10. Plaintiff represents the State of California as well as Aggrieved Employees.

15 11. Plaintiff and Aggrieved Employees at all times pertinent hereto are or were
16 employees of Defendants during the statutory time period ("PAGA period").

17 12. Upon information and belief, Plaintiff and Aggrieved Employees are covered by
18 California Industrial Welfare Commission ("IWC") Occupational Wage Order 5-2001.¹

19 13. Defendants provide short and long-term skilled nursing and rehabilitation
20 residency.

21 14. Plaintiff is informed and believes, and based thereon alleges, that Defendants do
22 business in the State of California and, at all times hereinafter mentioned, were and are employers
23 as defined in and subject to the Labor Code and IWC Wage Orders, whose employees are engaged
24
25
26

27 ¹ Upon information and belief, Plaintiff alleges that Wage Order No. 5-2001 is applicable. However,
28 Plaintiff reserves the right to amend and/or allege any other applicable Wage Orders that may be
gleaned relevant after discovery.

1 throughout this county and the State of California. During the relevant period, Defendants
2 employed Plaintiff and Aggrieved Employees within the State of California.

3 15. The true names and capacities, whether individual, corporate, associate, or
4 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
5 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
6 section 474. Plaintiff is informed and believes and based thereon alleges that each of the
7 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
8 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
9 names and capacities of the defendants designated hereinafter as DOES when such identities
10 become known.

11 16. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
12 include DOES 1 through 100 identified herein.

13 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
14 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
15 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
16 legally attributable to other Defendants. Plaintiff is further informed and believes and based
17 thereon alleges that Defendants are joint employers in that they employed Plaintiff and Aggrieved
18 Employees at the same time and were operating as a joint enterprise and single entity at all
19 relevant time periods.

20 18. California courts have recognized that the definition of “employer” for purposes of
21 enforcement of the California Labor Code goes beyond the concept of traditional employment to
22 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
23 California’s labor laws. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 65.) As such, anyone who
24 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
25 person to work or exercises control over the wages, hours, or working conditions of any person
26 may be liable for violations of the California Labor Code as to that person.

27 19. California law also permits and recognizes the piercing of a corporate veil between
28 sister companies under the single enterprise rule. (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107,

1 155; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 512.) The single enterprise rule
2 applies where “there are two or more personalities, there is but one enterprise; and that this
3 enterprise has been so handled that it should respond, as a whole, for the debts of certain
4 component elements of it.” (*Hasso, supra*, 227 Cal.App.4th at p. 155; *Greenspan, supra*, 191
5 Cal.App.4th at p. 512.)

6 20. At all times throughout their employment, Plaintiff and Aggrieved Employees were
7 regularly and consistently subject to the common policies and practices utilized by Defendants.

8 21. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and
9 Aggrieved Employees to perform services from which they benefitted. Moreover, the
10 aforementioned Defendants had the right to exercise control over the wages, hours, and/or
11 working conditions over Plaintiff and Aggrieved Employees at all relevant times herein, so as to
12 be considered joint employers. By reason of their status as joint employers, they are each liable for
13 civil penalties for violation of the California Labor Code as to Plaintiff and Aggrieved Employees
14 as set forth herein.

15 V. REPRESENTATIVE ACTION ALLEGATIONS

16 Defendants Systematically Violated State Wage and Hour Laws

17 22. Defendants employed over 100 individuals in California during the PAGA period.

18 23. Plaintiff and Aggrieved Employees are, and were at all times pertinent hereto,
19 hourly-paid or non-exempt employees for the purposes of minimum wages, overtime, rest breaks,
20 meal periods, reimbursement of expenses, and the other underlying claims alleged herein.

21 24. Labor Code section 510 requires an employer to compensate an employee who
22 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
23 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the
24 regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to
25 compensate employees at no less than twice the regular rate of pay when an employee works more
26 than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of
27 work.

1 25. During the relevant period, Defendants have had a policy/practice of failing to pay
2 overtime wages to Plaintiff and Aggrieved Employees for all overtime hours they worked. The
3 work times of Plaintiff and Aggrieved Employees have been, and continue to be, greater than eight
4 (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not pay Plaintiff
5 and Aggrieved Employees wages for, *inter alia*, hours that were worked off the clock, including
6 work performed during meal periods, as discussed and alleged *infra*, Plaintiff and Aggrieved
7 Employees were deprived wages at overtime premium amounts attributable to overtime hours.
8 Additionally, if there was any overtime paid to Plaintiff and Aggrieved Employees, upon
9 information and belief, Defendants did not properly include non-discretionary pay in determining
10 the correct rate of overtime pay, thus depriving Plaintiff and Aggrieved Employees of the full and
11 proper amount of overtime pay due to them.

12 26. By their common policy/practice of requiring Plaintiff and Aggrieved Employees
13 to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
14 compensating them at the applicable overtime rate of pay, Defendants willfully violated the
15 provisions of Labor Code sections 510 and 1198, as well as IWC Wage Order No. 5-2001.

16 27. Throughout the applicable period of time, Defendants did not pay Plaintiff and
17 Aggrieved Employees at least the California minimum wage for all hours worked. Labor Code
18 section 1197 states the California requirement that employees must be paid at least the minimum
19 wage fixed by the Commission, and any payment of less than the minimum wage is unlawful.
20 Similarly, Labor Code section 1194 entitles “any employee receiving less than the legal minimum
21 wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.”
22 The applicable IWC Wage Order(s) also obligate employers to pay each employee minimum
23 wages for all hours worked.

24 28. These minimum wage standards apply to each hour employees worked for which
25 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
26 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid
27 or not, results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005)
28 135 Cal.App.4th 314, 324.)

29. Labor Code section 1194.2 authorizes employees to recover wages to recover liquidated damages for violations of Labor Code section 1194. Where an employee, like Plaintiff and Aggrieved Employees, is not paid for all hours worked under Labor Code section 1194, the employee may recover minimum wages and liquidated damages for the time for which he or she received no compensation. (*Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F.Supp.3d 891 [holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.) Since Defendants failed to provide Plaintiff and Aggrieved Employees with compensation for all hours worked, they are entitled to recover liquidated damages under Labor Code section 1194.2 through PAGA.

30. Labor Code section 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidated damages as follows: “(1) [f]or any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and Aggrieved Employees are entitled to recover for violations of Labor Code section 1197.1.

31. Defendants failed to provide Plaintiff and Aggrieved Employees with timely duty-free meal periods. Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001 require employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042 [“Accordingly, first meal periods must start after no more than five hours.”].) Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. (*See* Labor Code § 512.)

1 32. Defendants denied Plaintiff and Aggrieved Employees meal periods that comply
2 with Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001. Plaintiff and Aggrieved
3 Employees suffered late, short, interrupted, and/or missed first and second meal periods.

4 33. Defendants were also obligated but failed to provide Plaintiff and Aggrieved
5 Employees with net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major
6 fraction thereof worked as required by Labor Code section 226.7 and IWC Wage Order No. 5-
7 2001. The California Supreme Court held in *Augustus v. ABM Security Services Inc.*, (2016) 2 Cal.
8 5th 257 that employees must be relieved of all duties during rest breaks pursuant to Labor Code
9 section 226.7 and Subdivision 12(A) of Wage Order No. 5-2001. The Court found that the Wage
10 Orders and the Labor Code require employers to “relinquish control over how employees spend
11 their time” and “relieve employees of all duties” during employees’ 10-minute rest periods.
12 Plaintiff and Aggrieved Employees did not receive compliant rest breaks.

13 34. In addition to failing to authorize and permit compliant meal and rest periods,
14 Plaintiff and Aggrieved Employees were not compensated with one (1) hour’s worth of pay at
15 their regular rate of compensation when they were not provided with compliant meal and rest
16 periods in accordance with Labor Code section 226.7(b).

17 35. Plaintiff and Aggrieved Employees incurred necessary business expenses in
18 discharging their duties. However, Defendants did not pay fully, or at all, for necessary business
19 expenses incurred by Plaintiff and Aggrieved Employees. Defendants violated Labor Code section
20 2802 by failing to pay and indemnify Plaintiff and Aggrieved Employees for their necessary
21 business expenditures and losses incurred in direct consequence of the discharge of their duties.

22 36. Labor Code section 203 provides “if an employer willfully fails to pay...any wages
23 of an employee who is discharged or who quits, the wages of the employee shall continue as a
24 penalty...” for up to 30 days. (Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487,
25 492.)

26 37. Due to Defendants’ non-compliant policies/practices described herein, Plaintiff and
27 Aggrieved Employees whose employment with Defendants concluded were not compensated for
28 all straight-time and overtime hours worked, were not paid all meal and rest break premiums owed

1 and were not reimbursed for necessary business expenses. Thus, Defendants have failed to pay
2 Plaintiff and Aggrieved Employees all wages owed, whose sums were certain, at the time of
3 termination or within seventy-two (72) hours of their resignation and have failed to pay those
4 sums for thirty (30) days thereafter in violation of Labor Code section 203.

5 38. Labor Code section 204 expressly requires employers who pay employees on a
6 weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days
7 following the close of the payroll period.”

8 39. Due to Defendants’ failure to pay Plaintiff and Aggrieved Employees with
9 minimum and overtime wages, along with meal period and rest break premiums and unreimbursed
10 business expenses, as described above, Defendants failed to timely pay employees within seven
11 calendar days following the close of payroll in accordance with Labor Code section 204 on a
12 regular and consistent basis.

13 40. Plaintiff and Aggrieved Employees were not furnished with accurate itemized wage
14 statements that accurately showed their gross wages earned, net wages earned, premium payments
15 for meal and rest breaks, all applicable hourly rates and corresponding number of hours worked at
16 each hourly rate in effect during their pay periods, and other information required by Labor Code
17 section 226(a).

18 41. As a result of Defendants’ violation of Labor Code section 226(a), Plaintiff and
19 Aggrieved Employees suffered injury because, among other things: (a) the violations hindered
20 them from determining the amounts of wages owed; (b) the violations caused them to have to
21 perform mathematical computations to determine the amounts of wages owed to them and made it
22 exponentially more difficult than if the wage statement contained the required accurate
23 information; and (c) the wage statements inaccurately understated the wages, hours, and wage
24 rates to which they were entitled.

25 42. In addition to Labor Code section 226(a), Defendants also knowingly and
26 intentionally failed to provide Plaintiff and Aggrieved Employees with accurate itemized wage
27 statements in violation of Labor Code section 226(e). Defendants undeniably knew that they were
28 not providing Plaintiff and Aggrieved Employees with wage statements required by California

1 law. (*See Garnett v. ADT LLC* (E.D. Cal. Oct. 6, 2015) 139 F. Supp. 1121, 1131 [finding that the
2 defendant knowingly and intentionally violated Labor Code § 226 because the “[d]efendant knew
3 that it was not providing total hours worked to plaintiff or other employees paid on commission”
4 even though it believed that employees paid solely on commission or commission and salary “are
5 exempt and therefore we do not record hours on a wage statement.”].)

6 43. Plaintiff and Aggrieved Employees are entitled to PAGA penalties under Labor
7 Code section 226(a). (*See Lopez v. Friant & Assocs., LLC* (2017) 15 Cal.App.4th 773, 788
8 [“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section
9 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section
10 226(e)(1).”]; *Willner v. Manpower Inc.* (N.D. Cal. 2014) 35 F.Supp.3d 1116, 1136 [To obtain
11 judgment on a PAGA claim, “all [Plaintiffs] needs to establish is a violation of section 226(a),
12 which she has done, as discussed above.”]; *McKenzie v. Fed Exp. Corp.* (C.D. Cal. 2011) 765
13 F.Supp.2d 1222, 1232 [holding that “for the purposes of recovering PAGA penalties, one need
14 only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”]; *Aguirre*
15 *v. Genesis Logistics* (C.D. Cal. July 3, 2013) 2013 U.S. Dist. LEXIS 189815, at *28 [“Plaintiffs do
16 not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of
17 PAGA.”].)

18 44. Following *Friant*, courts have found that employees can recover separate penalties
19 under PAGA for a defendant’s violations of Labor Code section 226(a) and (e). (*See, e.g., Bell v.*
20 *Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) 2017 U.S. Dist. LEXIS 204493, at *5 [finding after
21 *Friant* that “[t]o the extent the Court’s Order [granting summary judgment to Home Depot] was
22 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative
23 claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read to grant
24 summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of section
25 226(a).”].)

26 45. Further and in addition to the penalties outlined above, Labor Code section 226.3
27 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a
28 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an

1 initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
2 citation, for which the employer fails to provide the employee a wage deduction statement or fails
3 to keep the records required in subdivision (a) of Section 226.” As explained in detail above,
4 Defendants failed to provide Plaintiff and Aggrieved Employees with accurate itemized wage
5 statements.

6 46. Accordingly, Plaintiff and Aggrieved Employees may also recover Labor Code
7 section 226.3 penalties for Defendants’ violations of Labor Code section 226(a). (*See Finder v.*
8 *Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151,
9 at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a
10 PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at
11 *6 (C.D. Cal. June 14, 2012) [“Lab. Code § 226.3 merely provides that failure to perform actions
12 mandated by § 226(a) may trigger civil penalties.”].)

13 47. Defendants violated Labor Code section 2810.5 by failing to provide Plaintiff and
14 Aggrieved Employees written notice, at the time they were hired, that provided, *inter alia*, their
15 rate or rates of pay and basis thereof.

16 48. Finally, California Labor sections 1174(d) and 1174.5 require an employer to keep,
17 at a central location in the state or at the plants or establishments at which employees are
18 employed, payroll records showing the hours worked daily by the wages paid to employees
19 employed at the respective plants or establishments. These records shall be kept with rules
20 established for this purpose by the commission but in any case, shall be kept on file for not less
21 than three years. During the relevant time period, Defendants failed to keep accurate and complete
22 payroll records showing the actual hours worked daily and the wages earned by Plaintiff and
23 Aggrieved Employees, including earned and unpaid minimum, overtime, and premium wages
24 discussed herein.

25 ///

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**

3 **Cal. Labor Code §§ 2698, *et seq.***

4 **[On Behalf of Plaintiff and Aggrieved Employees against All Defendants]**

5 49. Plaintiff, on behalf of herself and Aggrieved Employees, re-alleges and
6 incorporates by reference all of the allegations contained in the previous paragraphs of this
7 Complaint as though fully set forth herein.

8 50. Plaintiff, on behalf of herself and Aggrieved Employees, brings this representative
9 action against Defendants to recover wages and penalties pursuant to the Private Attorneys
10 General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.*

11 51. Based on the above allegations incorporated by reference, Defendants have violated
12 Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194,
13 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2810.5 as well as IWC Wage Order No. 5-2001.

14 52. Under Labor Code sections 2699(f)(2) and 2699.5, Plaintiff and Aggrieved
15 Employees are entitled to penalties in an amount to be shown at the time of trial subject to the
16 following formula:

17 \$100 for the initial violation per employee per pay period; and

18 \$200 for each subsequent violation per employee per pay period.

19 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
20 Development Agency (LWDA) and twenty-five percent (25%) to the affected employees.

21 53. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate
22 itemized wage statements in compliance with Labor Code section 226(a). Plaintiff seeks separate
23 PAGA penalties for Defendants’ violations of Labor Code section 226(a) and (e). (*Lopez v. Friant*
24 *& Assocs., LLC* (2017) 15 Cal.App.5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11,
25 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant*
26 that “[t]o the extent the Court’s Order [granting summary judgment to *Home Depot*] was
27 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative
28 claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read to grant

1 summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section
2 226(a).”.) For violations of Labor Code section 226(a), Plaintiff seeks the default penalty
3 provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny employer
4 who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two
5 hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
6 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer
7 fails to provide the employee a wage deduction statement or fails to keep the required records in
8 subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent permitted by law
9 Plaintiff and Aggrieved Employees are entitled to recover penalties for violations of Labor Code
10 section 226.3 and seek default PAGA penalties for each of Defendants' numerous violations of
11 Labor Code section 226(a).

12 54. Labor Code section 210 provides that “[i]n addition to, an entirely independent and
13 apart from, any other penalty provided in this article, every person who fails to pay the wages of
14 each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1)
15 [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
16 [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
17 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” As a
18 result of the faulty compensation policies and practices, Plaintiff and Aggrieved Employees are
19 also entitled to recover penalties under Labor Code section 210 through PAGA.

20 55. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
21 liquidated damages, in the amount of: “(1) [f]or any initial violation that is intentionally
22 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for
23 which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific
24 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
25 which the employee is underpaid regardless of whether the initial violation is intentionally
26 committed.” Accordingly, through PAGA and to the extent permitted by law, Plaintiff and
27 Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

56. Plaintiff has fully and completely exhausted her administrative remedies under PAGA prior to proceeding with the PAGA claim. On June 23, 2021, Plaintiff filed her PAGA Notice online with the LWDA and sent a letter by certified mail to Defendant The California Home For The Aged, Inc. setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code section 2698, *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA. Pursuant to Labor Code section 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil action pursuant to Labor Code section 2699.

57. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of the penalties recovered being reimbursed to the State of California and the LWDA.

58. Plaintiff was compelled to retain the services of counsel to file this action to protect her interests and those of Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under Labor Code section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the State of California, prays for judgment against Defendants as follows:

1. For penalties and other relief allowable under Labor Code section 2699, *et seq.* because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2810.5 as well as IWC Wage Order No. 5-2001;

2. A civil penalty against Defendants in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and Aggrieved Employees for each and every pay period that occurred during the PAGA period;

3. A civil penalty against Defendants pursuant to Labor Code section 1197.1 for the initial violation that was committed, in the amount of one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid, and for each subsequent violation, two hundred fifty dollars (\$250) for each subsequent violation for each pay period for which the employee is underpaid, for Plaintiff and Aggrieved Employees for each and every pay period that occurred during the PAGA period;

4. A civil penalty against Defendants pursuant to Labor Code section 210 for the initial violation that was committed, in the amount of one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid, and for each subsequent violation, two hundred dollars (\$200) for each underpaid employee for each pay period for which the employee is underpaid, for Plaintiff and Aggrieved Employees for each and every pay period that occurred during the PAGA period;

5. A civil penalty in the amount of \$50 for the initial violation and \$100 for each subsequent violation as specified by Labor Code sections 2699(f) and 226(e) for Plaintiff and Aggrieved Employees for each and every pay period that occurred during the PAGA period;

6. A civil penalty in the amount of \$250 for the initial violation and \$1,000 for each subsequent violation as specified by Labor Code sections 2699(f) and 226.3 for Plaintiff and Aggrieved Employees for each and every pay period that occurred during the PAGA period for violations of Labor Code section 226(a);

7. An award of reasonable attorney's fees against Defendants as specified in Labor Code section 2699(g) and Code of Civil Procedure section 1021.5, for all the work performed by the undersigned counsel in connection with the PAGA claims;

///

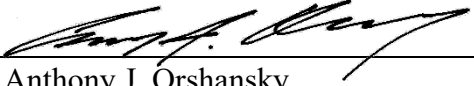
///

1 8. An award of all costs incurred by the undersigned counsel for Plaintiff in
2 connection with Plaintiff's and Aggrieved Employees' claims against Defendants as provided for
3 in Labor Code section 2699(g)(1); and

4 9. All other relief as this Court deems proper.

5
6
7 DATED: August 27, 2021

Respectfully submitted,
COUNSELONE, PC

8
9 By 
10 Anthony J. Orshansky
11 Jennifer L. Connor
12 Justin Kachadoorian
13 Attorneys for Plaintiff and Aggrieved
14 Employees
15
16
17
18
19
20
21
22
23
24
25
26
27
28