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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MARTHA AYALA, individually, and on behalf
of other members of the public similarly situated,
and on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act;

Plaintiff,

vs.

COMMUNITY ELDERCARE OF SAN DIEGO,
a California corporation; ST. PAUL'S SENIOR
SERVICES, an unknown entity; and DOES 1
through 25, inclusive,

Defendants.

Case No. 37-2023-00002553-CU-OE-CTL

**CLASS ACTION COMPLAINT FOR
DAMAGES AND ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 ET
SEQ.**

1. Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
2. Violation of California Labor Code §§ 510, 1194, and 1198 (Unpaid Overtime Wages);
3. Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums)
4. Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
5. Violation of California Labor Code § 226(a) (Failure to Issue Compliant Wage Statements);
6. Violation of California Labor Code §§ 201 and 203 (Final Wages Not Timely Paid)
7. Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
8. Violation of California Business and Professions Code §§ 17200, et seq.;
9. Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff MARTHA AYALA (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The amount in controversy for Plaintiff, including claims for compensatory damages, penalties, interest, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, regularly conduct business in California, and/or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because a majority of the acts, events, and violations occurred in this County. Upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of San Diego.

THE PARTIES

5. At all times herein mentioned, Plaintiff was a resident of the County of San Diego in the State of California.

6. At all times herein mentioned, Defendant COMMUNITY ELDERCARE OF SAN DIEGO, was and is, upon information and belief, a California corporation and an employer whose employees are engaged in the State of California, including the County of San Diego.

7. At all times herein mentioned, Defendant ST. PAUL’S SENIOR SERVICES, was and is, upon information and belief, an employer whose employees are engaged in the State of California,

1 including the County of San Diego.

2 8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under
3 the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and
4 serve such fictitiously named Defendants once their names and capacities become known.

5 9. Plaintiff is informed and believes, and based thereon alleges, that each and all of the
6 acts and omissions alleged herein were performed by, or are attributable to COMMUNITY
7 ELDERCARE OF SAN DIEGO, ST. PAUL'S SENIOR SERVICES, and/or DOES 1 through 25
8 (collectively "Defendants"), each acting as the agent, employee, alter ego, and/or joint venturer of, or
9 working in concert with, each of the other co-Defendants and within the course and scope of such
10 agency, employment, joint venture, or concerted activity with legal authority to act on the others'
11 behalf. The acts of any and all Defendants represent and were in accordance with Defendants' official
12 policy.

13 10. At all relevant times, Defendants were the employer of Plaintiff within the meaning of
14 all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the
15 working conditions, wages, working hours, and conditions of employment of Plaintiff and the other
16 class members and aggrieved employees so as to make each of said Defendants employers and
17 employers liable under the statutory provisions set forth herein.

18 11. At all relevant times, Defendants, and each of them, ratified each and every act or
19 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
20 the acts and omissions of each and all the other Defendants in proximately causing the damages herein
21 alleged.

22 12. Plaintiff is informed and believes, and based thereon alleges, that each of said
23 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
24 omissions, occurrences, and transactions alleged herein.

25 **CLASS ACTION ALLEGATIONS**

26 13. Plaintiff brings this lawsuit as a class action on behalf of herself and all others similarly
27 situated, as members of a proposed class pursuant to California Code of Civil Procedure section 382.
28

1 The class satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority
2 requirements under California Code of Civil Procedure section 382.

3 14. The proposed class is defined as follows:

4 All current and former non-exempt and/or hourly-paid employees who worked for
5 Defendants in the State of California at any time during the period from four years prior
6 to the filing of this complaint until final judgment and who reside in California.

7 15. Plaintiff reserves the right to establish additional subclasses as appropriate.

8 16. There is a well-defined community of interest in the litigation and the Class is easily
9 ascertainable.

10 17. The Class is so numerous that the individual joinder of all its members is impracticable.
11 While the exact number and identities of class members are unknown to Plaintiff at this time, the exact
12 numbers of class members and their identities can be ascertained through appropriate discovery from
13 records maintained by Defendants and their agents.

14 18. Common questions of fact and law exist as to all class members, which predominate
15 over any questions affecting only individual members of the Class. The common legal and factual
16 questions which do not vary from class member to class member and which may be determined
17 without reference to the individual circumstances of any class member include, but are not limited to,
18 the following:

19 i. Whether Defendants had a policy and practice of failing to pay minimum wages to
20 Plaintiff and the other class members for all hours worked;

21 ii. Whether Defendants had a policy and practice of failing to pay overtime wages to
22 Plaintiff and the other class members for all overtime hours worked;

23 iii. Whether Defendants had a policy and practice of failing to provide meal periods to
24 Plaintiff and the other class members;

25 iv. Whether Defendants had a policy and practice of failing to provide rest periods to
26 Plaintiff and the other class members;

27 v. Whether Defendants failed to pay Plaintiff and the other class members for all hours
28 worked, and for all missed, short, late, and/or interrupted meal periods and rest

breaks;

vi. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;

vii. Whether Defendants failed to provide accurate itemized wage statements to Plaintiff and the other class members;

viii. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;

ix. Whether Defendants failed to timely pay all wages due upon termination to Plaintiff and the other class members;

x. Whether Defendants failed to maintain complete and accurate payroll records;

xi. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business expenses;

xii. Whether Defendants' conduct was willful or reckless;

xiii. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;

xiv. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and

xv. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

19. Plaintiff's claims are typical of the claims of the Class, and Plaintiff's interests are coincident with and not antagonistic to those of the other class members she seeks to represent. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained attorneys experienced in the prosecution of class actions and Plaintiff intends to prosecute this action vigorously.

20. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual litigation of the claims of all class members is impracticable. Even if every class member could afford individual litigation, the court system could not. It would be unduly burdensome on the courts in which individual litigation of numerous cases

1 would proceed. Individualized litigation would also present the potential for varying, inconsistent or
2 contradictory judgments and would magnify the delay and expense to all parties and to the court
3 system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of
4 this action as a class action, with respect to some or all of the issues presented in this Complaint,
5 presents fewer management difficulties, conserves the resources of the parties and of the court system,
6 and protects the rights of each class member.

7 21. Certification of this lawsuit as a class action will advance public policy objectives.
8 Employers in the State of California violate employment and labor laws every day. Current employees
9 are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions
10 provide the class members who are not named in the complaint anonymity that allows for the
11 vindication of their rights.

12 **PAGA ALLEGATIONS**

13 14. At all times set forth herein, the California Labor Code Private Attorneys General Act
14 of 2004 (“PAGA”) was applicable to Plaintiff’s employment by Defendants.

15 15. At all times set forth herein, PAGA provides that any provision of law under the
16 California Labor Code that provides for a civil penalty, including unpaid wages and premium wages,
17 to be assessed and collected by the California Labor & Workforce Development Agency (“LWDA”)
18 for violations of the California Labor Code may, as an alternative, be recovered through a civil action
19 brought by an aggrieved employee on behalf of himself and other current or former employees
20 pursuant to procedures outlined in California Labor Code section 2699.3.

21 16. Pursuant to PAGA, a civil action may be brought by an “aggrieved employee,” who is
22 any person that was employed by the alleged violator and against whom one or more of the alleged
23 violations was committed.

24 17. Plaintiff was employed by Defendants and the alleged violations were committed
25 against her during her time of employment and she is, therefore, an aggrieved employee. Plaintiff and
26 the other employees are “aggrieved employees” as defined by California Labor Code section 2699(c)
27 in that they are current or former employees of Defendants and one of more of the alleged violations
28 were committed against them.

18. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

(a) The aggrieved employee shall give written notice by certified mail (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

(b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

19. On November 15, 2022, Plaintiff provided notice by electronic submission to the LWDA and by certified mail to Defendants regarding the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, pursuant to Labor Code section 2699.3. Plaintiff did not receive an LWDA Notice within sixty-five (65) days of the date of the submission of Plaintiff's notice.

20. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 have been satisfied.

GENERAL ALLEGATIONS

22. From approximately April 2011 to approximately August 2022, Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee in the County of San Diego. At the time of her termination, Plaintiff's job title was Senior Enrollment Specialist.

1 23. Defendants hired Plaintiff and the other class members but failed to properly pay them
2 all overtime wages and minimum wages due, failed to provide them with all meal periods and rest
3 periods, failed to issue accurate itemized wage statements, failed to timely pay them all wages due
4 during their employment, failed to timely pay them all wages due upon termination of their
5 employment, failed to maintain accurate payroll records, failed to reimburse them for business
6 expenses, and failed to provide and adhere to other related protections afforded by the California Labor
7 Code and applicable Industrial Welfare Commission Wage Order.

8 24. Defendants had the authority to hire and terminate Plaintiff and the other class
9 members, to set work rules and conditions governing Plaintiff's and the other class members'
10 employment, and to supervise their daily employment activities.

11 25. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's
12 and the other class members' employment for them to be joint employers of Plaintiff and the other
13 class members.

14 26. Defendants directly hired and paid wages and benefits to Plaintiff and the other class
15 members.

16 27. Defendants continue to employ hourly paid and/or non-exempt employees within the
17 State of California.

18 28. Plaintiff and the other class members worked over eight (8) hours in a day, and/or
19 forty (40) hours in a week during their employment with Defendants.

20 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
21 should have known that Plaintiff and the other class members were entitled to receive certain wages
22 for overtime compensation and that Plaintiff and the other class members were not receiving certain
23 wages for overtime compensation.

24 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
25 should have known that Plaintiff and the other class members were entitled to receive at least minimum
26 wages for hours worked and that Plaintiff and the other class members were not receiving minimum
27 wages for all hours worked.

28 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or

1 should have known that Plaintiff and the other class members were entitled to receive all meal periods
2 or payment of one (1) additional hour of pay at their regular rate of compensation on occasions when
3 they were not provided with an uninterrupted meal period of no less than thirty (30) minutes for a
4 work period of more than five hours per day; that Plaintiff and the other class members did not receive
5 all of the meal periods to which they were entitled; and that Plaintiff and the other class members did
6 not receive payment of one (1) additional hour of pay at their regular rate of compensation on each
7 occasion when a meal period was missed, shortened, taken late, and/or interrupted.

8 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
9 should have known that Plaintiff and the other class members were entitled to receive all meal periods
10 or payment of one (1) additional hour of pay at their regular rate of compensation on occasions when
11 they were not provided with an uninterrupted second meal period of no less than thirty (30) minutes
12 for a work period of more than ten (10) hours per day; that Plaintiff and the other class members did
13 not receive all of the second meal periods to which they were entitled; and that Plaintiff and the other
14 class members did not receive payment of one (1) additional hour of pay at their regular rate of
15 compensation on each occasion when a second meal period was missed, shortened, taken late, and/or
16 interrupted.

17 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
18 should have known that Plaintiff and the other class members were entitled to receive all rest periods
19 or payment of one (1) additional hour of pay at their regular rate of compensation on occasions when
20 they were not provided with an uninterrupted rest period of no less than ten (10) minutes for every
21 four hours, or major fraction thereof, worked; that Plaintiff and the other class members did not receive
22 all rest periods to which they were entitled; and that Plaintiff and the other class members did not
23 receive payment of one (1) additional hour of pay at their regular rate of compensation on each
24 occasion when a rest period was missed, shortened, taken late, and/or interrupted.

25 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
26 or should have known that Plaintiff and the other class members were entitled to receive complete
27 and accurate itemized wage statements in accordance with California law, but, in fact, they did not
28 receive complete and accurate itemized wage statements from Defendants.

35. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all wages owed to them during their employment. Plaintiff and the other class members did not receive payment of all wages, including overtime wages and meal and rest period premiums, within any time permissible under California Labor Code section 204.

36. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all wages owed to them upon discharge or resignation, including overtime wages and meal and rest period premiums, and they did not, in fact, receive all such wages owed to them at the time of their discharge or resignation.

37. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Defendants had to keep complete and accurate payroll records for Plaintiff and the other class members in accordance with California law, but, in fact, did not keep complete and accurate payroll records.

38. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to reimbursement for necessary business-related expenses, but in fact, did not reimburse them for all necessary business-related expenses.

39. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 1194, 1197, and 1197.1

(Against COMMUNITY ELDERCARE OF SAN DIEGO,

ST. PAUL'S SENIOR SERVICES, and DOES 1-25)

40. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

41. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide

1 the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so
2 fixed is unlawful.

3 42. During the relevant time period, Defendants failed to pay the minimum wage to
4 Plaintiff and the other class members as required pursuant to California Labor Code sections 1194,
5 1197, and 1197.1. Defendants' failure to pay minimum wages included, *inter alia*, responding to
6 work-related phone calls and text messages and completing mandatory paperwork.

7 43. Defendants' failure to pay Plaintiff and the other class members the minimum wage as
8 required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections
9 Plaintiff and the other class members are entitled to recover the unpaid balance of his minimum wage
10 compensation as well as interest, costs, and attorneys' fees.

11 44. Pursuant to Labor code section 1194.2, Plaintiff and the other class members are
12 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
13 thereon.

14 **SECOND CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 510 and 1198**

16 **(Against COMMUNITY ELDERCARE OF SAN DIEGO,**

17 **ST. PAUL'S SENIOR SERVICES, and DOES 1-25)**

18 45. Plaintiff incorporates herein by specific reference, as though fully set forth, the
19 allegations in all preceding paragraphs.

20 46. California Labor Code section 1198 and the applicable Industrial Welfare Commission
21 ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a
22 rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the
23 number of hours worked by the person on a daily or weekly basis.

24 47. Specifically, the applicable IWC Wage Order provides that Defendants were required
25 to pay Plaintiff and the other class members at the rate of time-and-one-half for all hours worked in
26 excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

27 48. The applicable IWC Wage Order further provides that Defendants were required to pay
28 Plaintiff and the other class members at the rate of two times the regular rate of pay for all hours

1 worked in excess of twelve (12) hours in a day.

2 49. California Labor Code section 510 codifies the right to overtime compensation at
3 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day
4 or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
5 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12)
6 hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

7 50. During the relevant time period, Plaintiff and the other class members worked in excess
8 of eight (8) hours in a day, and/or in excess of forty (40) hours in a week, performing work duties
9 off-the-clock, including, but not limited to, responding to work-related phone calls and text messages
10 and completing mandatory paperwork.

11 51. During the relevant time period, Defendants intentionally and willfully failed to pay
12 overtime wages owed to Plaintiff and the other class members. Defendants further failed to include
13 all required remuneration (including, but not limited to, non-discretionary bonuses, commissions, and
14 incentives) in the regular rate of pay for purposes of overtime compensation.

15 52. Defendants' failure to pay Plaintiff overtime wages violates California Labor Code
16 sections 510 and 1198, and is therefore unlawful.

17 53. Pursuant to California Labor Code section 1194, Plaintiff and the other class members
18 are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys'
19 fees.

20 **THIRD CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 226.7 and 512(a)**

22 **(Against COMMUNITY ELDERCARE OF SAN DIEGO,**

23 **ST. PAUL'S SENIOR SERVICES, and DOES 1-25)**

24 54. Plaintiff incorporates herein by specific reference, as though fully set forth, the
25 allegations in all preceding paragraphs.

26 55. At all relevant times set forth herein, the applicable IWC Wage Order and California
27 Labor Code section 226.7 and 512(a) were applicable to Plaintiff's and the other class members'
28 employment by Defendants.

1 56. At all relevant times, California Labor Code section 226.7 provides that no employer
2 shall require an employee to work during any meal or rest period mandated by an applicable order of
3 the California IWC.

4 57. At all relevant times, the applicable IWC Wage Order and California Labor Code
5 section 512(a) provide that an employer may not require, cause or permit an employee to work for a
6 work period of more than five (5) hours per day without providing the employee with a meal period
7 of not less than thirty (30) minutes, except that if the total work period per day of the employee is no
8 more than six (6) hours, the meal period may be waived by mutual consent of both the employer and
9 employee.

10 58. At all relevant times, the applicable IWC Wage Order and California Labor Code
11 section 512(a) further provide that an employer may not require, cause or permit an employee to work
12 for a work period of more than ten (10) hours per day without providing the employee with a second
13 uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is
14 no more than twelve (12) hours, the second meal period may be waived by mutual consent of the
15 employer and the employee only if the first meal period was not waived.

16 59. During the relevant time period, Plaintiff and the other class members, who were
17 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
18 legally-mandated meal periods by mutual consent, were required to work for periods longer than
19 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

20 60. During the relevant time period, Plaintiff and the other class members, who were
21 scheduled to work for a period of time in excess of six (6) hours, were required to work for periods
22 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

23 61. During the relevant time period, Plaintiff and the other class members, who were
24 scheduled to work for a period of time in excess of ten (10) hours but no longer than twelve (12) hours,
25 and who did not waive their legally-mandated meal periods by mutual consent, were required to work
26 in excess of ten (10) hours without receiving a second uninterrupted meal period of not less than thirty
27 (30) minutes.

28 62. During the relevant time period, Plaintiff and the other class members, who were

1 scheduled to work for a period of time in excess of twelve (12) hours, were required to work for periods
2 longer than ten (10) hours without a second uninterrupted meal period of not less than thirty (30)
3 minutes.

4 63. During the relevant time period, Defendants intentionally and willfully required
5 Plaintiff and the other class members to work during meal periods.

6 64. During the relevant time period, Defendants failed to pay Plaintiff and the other class
7 members the full meal period premium due pursuant to California Labor Code section 226.7.
8 Defendants failed to include all non-discretionary payments for work performed by Plaintiff and the
9 other class members in the regular rate of compensation when issuing meal period premiums.

10 65. Defendants' conduct violates the applicable IWC Wage Order and California Labor
11 Code sections 226.7 and 512(a).

12 66. Pursuant to the applicable IWC Wage Order and California Labor Code section
13 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional
14 hour of pay at their regular rate of compensation for each work day that a meal period was not provided
15 and a meal period premium was not paid.

16 **FOURTH CAUSE OF ACTION**

17 **Violation of California Labor Code § 226.7**

18 **(Against COMMUNITY ELDERCARE OF SAN DIEGO,**

19 **ST. PAUL'S SENIOR SERVICES, and DOES 1-25)**

20 67. Plaintiff incorporates herein by specific reference, as though fully set forth, the
21 allegations in all preceding paragraphs.

22 68. At all relevant times set forth herein, the applicable IWC Wage Order and California
23 Labor Code section 226.7 were applicable to Plaintiff and the other class members' employment by
24 Defendants.

25 69. At all relevant times set forth herein, California Labor Code section 226.7 provides that
26 no employer shall require an employee to work during any rest period mandated by an applicable order
27 of the California IWC.

28 70. At all relevant times set forth herein, the applicable IWC Wage Order provides that

1 “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as
2 practicable shall be in the middle of each work period” and that the “rest period time shall be based
3 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
4 fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

5 71. During the relevant time period, Defendants required Plaintiff and the other class
6 members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period
7 per each four (4) hour period worked.

8 72. During the relevant time period, Defendants willfully required Plaintiff and the other
9 class members to work during rest periods.

10 73. During the relevant time period, Defendants failed to pay Plaintiff and the other class
11 members the full rest period premium due pursuant to California Labor Code section 226.7.
12 Defendants failed to include all non-discretionary payments for work performed by Plaintiff and the
13 other class members in the regular rate of compensation when issuing rest period premiums.

14 74. Defendants’ conduct violates applicable IWC Wage Orders and California Labor Code
15 section 226.7.

16 75. Pursuant to the applicable IWC Wage Orders and California Labor Code section
17 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional
18 hour of pay at their regular rate of compensation for each work day that a rest period was not provided
19 and a rest period premium was not paid.

20 **FIFTH CAUSE OF ACTION**

21 **Violation of California Labor Code § 226(a)**

22 **(Against COMMUNITY ELDERCARE OF SAN DIEGO,**

23 **ST. PAUL’S SENIOR SERVICES, and DOES 1-25)**

24 76. Plaintiff incorporates herein by specific reference, as though fully set forth, the
25 allegations in all preceding paragraphs.

26 77. At all relevant times set forth herein, California Labor Code section 226(a) provides
27 that every employer shall furnish each of its employees an accurate itemized statement in writing
28 showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate

units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

78. At all relevant times set forth herein, Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with accurate itemized wage statements. The deficiencies include, but are not limited to, Defendants' failure to list all of the total hours worked (including time spent working off-the-clock) at the correct hourly rates of pay, the correct amount of wages earned, the correct amount of meal period premium wages earned, and the correct amount of rest period premium wages earned.

79. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

80. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

81. Plaintiff and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars.

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1 **SIXTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 201, 202, and 203**
3 **(Against COMMUNITY ELDERCARE OF SAN DIEGO,**
4 **ST. PAUL'S SENIOR SERVICES, and DOES 1-25)**

5 82. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in all preceding paragraphs.

7 83. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required
8 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code section
9 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
10 at the time of discharge are due and payable immediately. California Labor Code section 202
11 mandates that if an employee quits, his or her wages shall become due and payable not later than
12 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of
13 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
14 quitting.

15 84. California Labor Code section 203 provides that if an employer willfully fails to pay,
16 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
17 discharged or who quits, the wages of the employee shall continue as a penalty from the due date
18 thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not
19 continue for more than thirty (30) days.

20 85. At the time that Plaintiff and the other class members' employment with Defendants
21 ended, Defendants knowingly and willfully failed to pay Plaintiff and the other class members all
22 wages owed to them pursuant to California Labor Code sections 201 and 202, including, without
23 limitation, overtime wages, minimum wages, meal period premium wages, and rest period premium
24 wages.

25 86. As a result, Plaintiff and the other class members are entitled to all available statutory
26 penalties, including the waiting time penalties provided in California Labor Code section 203, together
27 with interest thereon, as well as other available remedies.

28 ///

1 **SEVENTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 2800 and 2802**

3 **(Against COMMUNITY ELDERCARE OF SAN DIEGO,**

4 **ST. PAUL'S SENIOR SERVICES, and DOES 1-25)**

5 87. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in all preceding paragraphs.

7 88. Pursuant to California Labor Code sections 2800 and 2802, an employer must
8 reimburse its employees for all necessary expenditures incurred by the employee in direct consequence
9 of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct
10 consequence of his or her obedience to the directions of the employer.

11 89. Plaintiff and the other class members incurred necessary business-related expenses and
12 costs that were not fully reimbursed by Defendants, including, but not limited to, the use of personal
13 cell phones and personal protective equipment.

14 90. Defendants intentionally and willfully failed to reimburse Plaintiff and the other class
15 members for all necessary business-related expenses and costs. Plaintiff and the other class members
16 are entitled to recover from Defendants their business-related expenses and costs incurred during the
17 course and scope of his employment, plus interest accrued from the date on which Plaintiff and the
18 other class members incurred the necessary expenditures at the same rate as judgments in civil actions
19 in the State of California.

20 **EIGHTH CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 17200, Et Seq.**

22 **(Against COMMUNITY ELDERCARE OF SAN DIEGO,**

23 **ST. PAUL'S SENIOR SERVICES, and DOES 1-25)**

24 91. Plaintiff incorporates herein by specific reference, as though fully set forth, the
25 allegations in all preceding paragraphs.

26 92. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful
27 and harmful to Plaintiff, to the other class members, to the general public, and to Defendants'
28 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest

1 within the meaning of Code of Civil Procedure section 1021.5.

2 93. Defendants' activities as alleged herein are violations of California law, and constitute
3 unlawful business acts and practices in violation of California Business & Professions Code section
4 17200, et seq.

5 94. A violation of California Business & Professions Code section 17200, et seq. may be
6 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and
7 practices of requiring employees, including Plaintiff and the other class members, to work without
8 paying them proper compensation violates California Labor Code sections 510, 1194, 1197, 1197.1
9 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiff
10 and the other class members, to work through their meal and rest periods without paying them proper
11 compensation violate California Labor Code sections 226.7 and 512(a). Defendants also violated
12 California Labor Code sections 201, 202, 203, 204, 226, 1174(d), 2800, and 2802.

13 95. As a result of the herein described violations of California law, Defendants unlawfully
14 gained an unfair advantage over other businesses.

15 96. Plaintiff and the other class members have been personally injured by Defendants'
16 unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss
17 of money and/or property.

18 97. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff
19 and the other class members are entitled to restitution of the wages withheld and retained by
20 Defendants during a period that commences four years from the filing of this complaint; an award of
21 attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable
22 laws; and an award of costs.

23 **NINTH CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 2698 et seq.**

25 **(Against COMMUNITY ELDERCARE OF SAN DIEGO,**

26 **ST. PAUL'S SENIOR SERVICES, and DOES 1-25)**

27 98. Plaintiff incorporates herein by specific reference, as though fully set forth, the
28 allegations in all preceding paragraphs.

1 99. PAGA expressly establishes that any provision of the California labor Code which
2 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
3 divisions, commissions, boards, agencies or employees for a violation of the California Labor Code,
4 may be recovered through a civil action brought by an aggrieved employee on behalf of himself or
5 herself, and other current or former employees.

6 100. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
7 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to
8 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

9 101. Plaintiff and the other hourly-paid, non-exempt employees, including those
10 misclassified as independent contractors, are “aggrieved employees” as defined by California Labor
11 Code section 2699(c) in that they are all current or former employees of Defendants, and one or more
12 of the alleged violations were committed against them.

13 102. Defendants’ conduct, as alleged herein, violates numerous sections of the California
14 Labor Code, including, but not limited to, the following:

- 15 (a) Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to
16 pay minimum wages;
- 17 (b) Violation of California Labor Code sections 510 and 1198 for failure to pay
18 overtime wages;
- 19 (c) Violation of California Labor Code sections 226.7 and 512(a) for failure to provide
20 legally required meal periods;
- 21 (d) Violation of California Labor Code section 226.7 for failure to provide legally
22 required rest periods;
- 23 (e) Violation of California Labor Code section 204 for failure to timely pay all wages
24 due during employment;
- 25 (f) Violation of California Labor Code sections 201, 202, and 203 for failure to pay all
26 wages at time of discharge from employment;
- 27 (g) Violation of California Labor Code section 226(a) for failure to provide accurate
28 wage statements to Plaintiff and other Aggrieved Employees;

1 (h) Violation of California Labor Code section 1174(d) for failure to keep complete
2 and accurate payroll records relating to Plaintiff and other Aggrieved Employees;
3 and

4 (i) Violation of California Labor Code sections 2800 and 2802 for failure to reimburse
5 Plaintiff and the other Aggrieved Employees for necessary business expenses.

6 103. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5,
7 Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of
8 civil penalties for Plaintiff, all other Aggrieved Employees, and the State of California against
9 Defendants, in addition to other remedies, for violations of Labor Code sections set forth herein.
10 Pursuant to California Labor Code section 2699(i), civil penalties recovered by Aggrieved Employees
11 shall be distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor
12 laws and education of employers and employees about their rights and responsibilities and twenty-five
13 (25%) to the Aggrieved Employees. Further, and as authorized by the California Labor Code sections
14 210, 218.5, and 2699, Plaintiff seeks recovery of her attorneys' fees and costs.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff, individually and on behalf of other members of the general public similarly situated,
17 hereby demands a jury trial with respect to all issues triable of right by jury.

18 **PRAYER FOR RELIEF**

19 Plaintiff prays for relief and judgment against Defendants, jointly and severally, as follows:

20 **Class Certification**

- 21 1. That this action be certified as a class action;
22 2. That Plaintiff be appointed the representative of the class;
23 3. That counsel for Plaintiff be appointed as class counsel; and
24 4. That Defendants provide to Class Counsel immediately the names and most current/last
25 known contact information (address, e-mail and telephone numbers) of all class members.

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

- 27 1. That the Court declare, adjudge, and decree that Defendants violated California Labor
28 Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the

1 other class members;

2 2. For general unpaid wages and such general and special damages as may be appropriate;

3 3. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
4 Plaintiff and the other class members in the amount as may be established according to proof at trial;

5 4. For pre-judgment interest on any unpaid compensation from the date such amounts
6 were due;

7 5. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
8 Labor Code section 1194(a);

9 6. For liquidated damages pursuant to California Labor Code section 1194.2; and

10 7. For such other and further relief as the Court may deem just and proper.

11 **As to the Second Cause of Action**

12 8. That the Court declare, adjudge, and decree that Defendants violated California Labor
13 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime
14 wages due to Plaintiff and the other class members;

15 9. For general unpaid wages at overtime wage rates and such general and special damages
16 as may be appropriate;

17 10. For pre-judgment interest on any unpaid overtime compensation commencing from the
18 date such amounts were due;

19 11. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
20 Labor Code section 1194; and

21 12. For such other and further relief as the Court may deem just and proper.

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

23 13. That the Court declare, adjudge, and decree that Defendants violated California Labor
24 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal
25 periods (including second meal periods) to Plaintiff and the other class members;

26 14. That the Court make an award to Plaintiff and the other class members of one (1) hour
27 of pay at Plaintiff's and the other class member's regular rate of compensation for each workday that
28 a meal period was not provided;

15. For all actual, consequential, and incidental losses and damages, according to proof;
16. For premium wages pursuant to California Labor Code section 226.7(c);
17. For pre-judgment interest on any unpaid wages from the date such amounts were due;
18. For reasonable attorneys' fees and costs of suit incurred herein; and
19. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

20. That the Court declare, adjudge, and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

21. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at Plaintiff's and the other class members' regular rate of compensation for each workday that a rest period was not provided;

22. For all actual, consequential, and incidental losses and damages, according to proof;
23. For premium wages pursuant to California Labor Code section 226.7(c);
24. For pre-judgment interest on any unpaid wages from the date such amounts were due;
25. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

26. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

27. For actual, consequential and incidental losses and damages, according to proof;
28. For statutory penalties pursuant to California Labor Code section 226(e);
29. For injunctive relief to ensure compliance with this section, pursuant to California Code section 226(h); and
30. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

31. That the Court declare, adjudge and decree that Defendants violated California Labor

Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;

32. For all actual, consequential, and incidental losses and damages, according to proof;

33. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

34. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

35. For such other and further relief as the court may deem just and proper.

As to the Seventh Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

37. For actual, consequential and incidental losses and damages, according to proof;

38. For the imposition of civil penalties and/or statutory penalties; and

39. For such other and further relief as the Court may deem just and proper.

As to the Eighth Cause of Action

40. That the Court declare, adjudge, and decree that Defendants violated California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide them all minimum wages due to them, failing to provide all meal and rest periods to them, failing to provide them accurate, itemized wage statements, failing to timely pay them all wages due during their employment, failing to timely pay them all wages due upon termination, failing to keep accurate payroll records, and failing to reimburse them for all necessary business-related expenses;

41. For restitution of unpaid wages to Plaintiff and the other class members and all pre-judgment interest from the day such amounts were due and payable;

42. For the appointment of a receiver to receive, manage and distribute any and all funds

1 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
2 result of violation of California Business and Professions Code sections 17200, et seq.;

3 43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
4 Code of Civil Procedure section 1021.5;

5 44. For injunctive relief to ensure compliance with this section, pursuant to California
6 Business and Professions Code sections 17200, et seq.; and

7 45. For such other and further relief as the Court may deem just and proper.

8 **As to the Ninth Cause of Action**

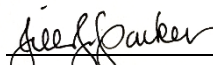
9 46. For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f),
10 and (g), plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203,
11 204, 226, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802; and

12 47. For such other and further relief as the Court may deem proper.

13 Respectfully Submitted,

14 Dated: January 19, 2023

PARKER & MINNE, LLP

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16 By: 
17 Jill J. Parker
18 Attorneys for Plaintiff Martha Ayala
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