

Kane Moon (SBN 249834)
kmoon@moonlawgroup.com
H. Scott Leviant (SBN 200834)
hsleviant@moonlawgroup.com
Mariam Ghazaryan (SBN 341119)
mghazaryan@moonlawgroup.com
MOON LAW GROUP, PC
725 South Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Tamika English

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

TAMIKA ENGLISH, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

HAVEN POST ACUTE, LLC, a limited
liability company; and DOES 1 through 10,
inclusive,

Defendants

Case No.: CIVSB2424840

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

**[Amended As of Right Pursuant to Labor
Code Section 2699.3(2)(C)]**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2698, et seq.].

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1 Plaintiff Tamika English (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Haven Post Acute, LLC and Does 1
6 through 10 (collectively referred to as “Defendants”) for civil penalties under the Private
7 Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. (“PAGA”) stemming
8 from Defendants’ failure to pay minimum wages, failure to pay overtime wages, failure to
9 provide meal periods, failure to authorize and permit rest periods, failure to maintain accurate
10 records of hours worked and meal periods, failure to timely pay all wages to terminated
11 employees, failure to indemnify necessary business expenses, and failure to furnish accurate
12 wage statements.

13 2. For over 50 years, California’s courts and legislature have recognized that this
14 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
15 Wages are not ordinary debts. Because of the economic position of the average worker and his
16 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
17 that employees are promptly paid the minimum/overtime wages that the Legislature has required
18 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
19 criminalized certain types of violations. In extending extra protection to deter violations of these
20 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
21 other damages other than civil penalties—California has enacted the PAGA to permit an
22 individual to bring an action on behalf of himself and on behalf of others for PAGA penalties
23 only, which is the precise and sole nature of this action.

24 3. All California employees during the relevant statutes of limitations who are or
25 were harmed by Defendant’s illegal practices are “Aggrieved Employees.”

26 4. Plaintiff brings this action against Defendants seeking only to recover penalties for
27 herself, on behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the
28 State of California. Plaintiff does not seek to recover anything other than penalties as permitted

1 by California Labor Code Section 2699 at this time. To the extent that statutory violations are
2 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages
3 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
4 declaratory relief, and injunctive relief for herself and all aggrieved employees as permitted by
5 the PAGA.

6 5. Defendants own/owned and operate/operated an industry, business, and
7 establishment within the State of California, including Alameda County. As such, and based
8 upon all the facts and circumstances incident to Defendants' business in California, Defendants
9 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
10 Commission ("IWC"), and the California Business & Professions Code.

11 6. Despite these requirements, throughout the statutory period Defendants
12 maintained a systematic, company-wide policy and practice of:

- 13 (a) Failing to pay employees for all hours worked, including all minimum
14 wages, and overtime wages in compliance with the California Labor Code
15 and IWC Wage Orders;
- 16 (b) Failing to provide employees with timely and duty-free meal periods in
17 compliance with the California Labor Code and IWC Wage Orders, failing
18 to maintain accurate records of all meal periods taken or missed, and
19 failing to pay an additional hour's pay for each workday a meal period
20 violation occurred;
- 21 (c) Failing to authorize and permit employees to take timely and duty-free rest
22 periods in compliance with the California Labor Code and IWC Wage
23 Orders, and failing to pay an additional hour's pay for each workday a rest
24 period violation occurred;
- 25 (d) Failing to indemnify employees for necessary business expenses incurred;
- 26 (e) Willfully failing to pay employees all minimum wages, overtime wages,
27 meal period premium wages, and rest period premium wages due within
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the time period specified by California law when employment terminates;
and

(f) Failing to maintain accurate records of the hours that employees worked.

(g) Failing to provide employees with accurate, itemized wage statements
containing all the information required by the California Labor Code and
IWC Wage Orders.

7. On information and belief, Defendants, and each of them were on actual and
constructive notice of the improprieties alleged herein and intentionally refused to rectify their
unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
willful and deliberate.

8. At all relevant times, Defendants were and are legally responsible for all of the
unlawful conduct, policies, practices, acts and omissions as described in each and all of the
foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further,
Defendants are responsible for each of the unlawful acts or omissions complained of herein under
the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

9. Plaintiff is a California resident that worked for Defendants in the County of San
Bernardino, State of California, in San Bernardino County as a nurse assistant during the
statutory period.

10. Plaintiff reserves the right to seek leave to amend this complaint to add new
plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
American Savings and Loan Association (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiff is informed and believes, and based upon that information and belief
alleges, that Defendants are:

(a) Business entities with their principal places of business in San Bernardino,
California;

1 (b) Business entities conducting business in numerous counties throughout the
2 State of California, including in San Bernardino County; and

3 (c) The former employers of Plaintiff, and the current and/or former employers
4 of the Aggrieved Employees. Defendants suffered and permitted Plaintiff
5 and the Aggrieved Employees to work, and/or controlled their wages,
6 hours, or working conditions.

7 12. Plaintiff does not currently know the true names or capacities of the persons or
8 entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious
9 names. Each of the Doe Defendants was in some manner legally responsible for the damages
10 suffered by Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this
11 complaint to set forth the true names and capacities of these Defendants when they have been
12 ascertained, together with appropriate charging allegations, as may be necessary.

13 13. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
14 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
15 and/or injured a significant number of the Plaintiff and the Aggrieved Employees in the State of
16 California.

17 14. Plaintiff is informed and believes and thereon alleges that at all relevant times
18 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
19 the other employees described in the Aggrieved Employees definitions below, and exercised
20 control over their wages, hours, and working conditions. Plaintiff is informed and believes and
21 thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint
22 venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation,
23 successor in interest and/or predecessor in interest of some or all of the other Defendants, and
24 was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore
25 such other relationships to some or all of the other Defendants so as to be liable for their conduct
26 with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges
27 that each Defendant acted pursuant to and within the scope of the relationships alleged above,
28

1 that each Defendant knew or should have known about, and authorized, ratified, adopted,
2 approved, controlled, aided and abetted the conduct of all other Defendants.

3 **GENERAL ALLEGATIONS**

4 15. Plaintiff is a California resident who worked for Defendants in the County of San
5 Bernardino, State of California as a nurse assistant during the statutory period. During the
6 statutory period, Defendants classified Plaintiff as a non-exempt employee, and paid Plaintiff and
7 hourly wage.

8 16. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
9 worked (including minimum wages and overtime wages), failed to provide Plaintiff with
10 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
11 periods, failed to indemnify Plaintiff for necessary business expenses, failed to timely pay all
12 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
13 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
14 Defendants was typical and illustrative.

15 17. Throughout the statutory period, Defendants maintained a policy and practice of
16 not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime
17 wages. Plaintiff and the Aggrieved Employees were required to work off the clock, and
18 uncompensated. For example, Plaintiff and the Aggrieved Employees were required to wait in
19 line in order to clock into work, uncompensated. Also prior to clocking into work, Plaintiff and
20 the Aggrieved Employees were required to undergo temperature screenings during certain time
21 periods, off the clock and uncompensated. Also prior to clocking into work, Defendants required
22 that Plaintiff and the Aggrieved Employees wash their hands through a strict protocol, off the
23 clock and uncompensated. Also, Plaintiff and the Aggrieved Employees were sometimes
24 interrupted during meal breaks, without compensation. Also, sometimes Plaintiff and the
25 Aggrieved Employees were required to cover other employees and to assist them during their
26 meal breaks or after clocking out of work, leading to additional off the clock work,
27 uncompensated. Also throughout the statutory period, Plaintiff and the Aggrieved Employees
28 received non-discretionary bonuses and other remuneration. However, Defendants failed to

1 incorporate all remuneration when calculating the correct overtime rate of pay, meal break
2 premium rate of pay, and sick day rate of pay, leading to underpayment to Plaintiff and the Class.

3 18. Throughout the statutory period, Defendants have wrongfully failed to provide
4 Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants
5 sometimes, but not always, required Plaintiff and the Aggrieved Employees to work in excess of
6 five consecutive hours a day without providing 30-minute, continuous and uninterrupted, duty-
7 free meal period for every five hours of work, or without compensating Plaintiff and the
8 Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
9 work or tenth hour of work. Defendants also did not adequately inform Plaintiff and the
10 Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or,
11 for shifts greater than 10 hours, by the end of the tenth hour of work. Defendants also failed to
12 accurately record meal periods. Accordingly, Defendants' policy and practice was to not provide
13 meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

14 19. Throughout the statutory period, Defendants have wrongfully failed to authorize
15 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.
16 Defendants sometimes, but not always, required Plaintiff and the Aggrieved Employees to work
17 in excess of four consecutive hours a day without Defendants authorizing and permitting them to
18 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or
19 major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees
20 for rest periods that were not authorized or permitted. Defendants also did not adequately inform
21 Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants
22 did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and
23 the Class, nor did Defendants have adequate policies or practices regarding the timing of rest
24 periods. Defendants also did not have adequate policies or practices to verify whether Plaintiff
25 and the Aggrieved Employees were taking their required rest periods. Further, Defendants did
26 not maintain accurate records of employee work periods, and therefore Defendants cannot
27 demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of
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1 each work period. Accordingly, Defendants' policy and practice was to not authorize and permit
2 Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

3 20. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
4 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
5 Defendants without reimbursement, such as the purchase of specific types of shoes, scrubs, and
6 the use of personal cellular telephones for work purposes.

7 21. Throughout the statutory period, Defendants willfully failed and refused to timely
8 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages for
9 all minimum wages, overtime wages, meal period premium wages, and rest period premium
10 wages.

11 22. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
12 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
13 rates, and all gross and net wages earned (including correct hours worked, correct wages earned
14 for hours worked, correct overtime hours worked, correct wages for meal periods that were not
15 provided in accordance with California law, correct wages for rest periods that were not
16 authorized and permitted to take in accordance with California law, and Defendant's address).
17 Further, the wage statements do not show Defendant's address as required by California law. As
18 a result of these violations of California Labor Code § 226(a), the Plaintiff and the Aggrieved
19 Employees suffered injury because, among other things:

- 20 (a) the violations led them to believe that they were not entitled to be paid
21 minimum wages, overtime wages, meal period premium wages, and rest
22 period premium wages to which they were entitled, even though they were
23 entitled;
- 24 (b) the violations led them to believe that they had been paid the minimum,
25 overtime, meal period premium, and rest period premium wages, even
26 though they had not been;
- 27
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- 1 (c) the violations led them to believe they were not entitled to be paid
2 minimum, overtime, meal period premium, and rest period premium wages
3 at the correct California rate even though they were;
- 4 (d) the violations led them to believe they had been paid minimum, overtime,
5 meal period premium, and rest period premium wages at the correct
6 California rate even though they had not been;
- 7 (e) the violations hindered them from determining the amounts of minimum,
8 overtime, meal period premium, and rest period premium owed to them;
- 9 (f) in connection with their employment before and during this action, and in
10 connection with prosecuting this action, the violations caused them to have
11 to perform mathematical computations to determine the amounts of wages
12 owed to them, computations they would not have to make if the wage
13 statements contained the required accurate information;
- 14 (g) by understating the wages truly due them, the violations caused them to
15 lose entitlement and/or accrual of the full amount of Social Security,
16 disability, unemployment, and other governmental benefits;
- 17 (h) the wage statements inaccurately understated the wages, hours, and wages
18 rates to which Plaintiff and the Aggrieved Employees were entitled, and
19 Plaintiff and the Aggrieved Employees were paid less than the wages and
20 wage rates to which they were entitled.

21 Thus, Plaintiff and the Aggrieved Employees are owed the amounts provided for in California
22 Labor Code § 226(e), including actual damages.

23 **FIRST CAUSE OF ACTION**

24 **(Against all Defendant for Civil Penalties Under the Private Attorneys General Act of 2004,**
25 **Cal. Lab. Code § 2698 et seq.)**

26 23. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as
27 through fully set forth herein.
28

1 24. At all times herein mentioned, Defendants were subject to the Labor Code of the
2 State of California and the applicable Industrial Welfare Commission Orders.

3 25. California Labor Code § 2699(a) specifically provides for a private right of action
4 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
5 law, any provision of this code that provides for a civil penalty to be assessed and collected by
6 the Labor and Workforce Development Agency or any of its departments, divisions,
7 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
8 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
9 herself and other current or former employees pursuant to the procedures specified in Section
10 2699.3.”

11 26. Plaintiff has exhausted her administrative remedies pursuant to California Labor
12 Code § 2699.3. On August 4, 2024, Plaintiff gave written notice by online filing to the Labor and
13 Workforce Development Agency and by certified mail to Defendants of the specific provisions
14 of the Labor Code that Defendants have violated against Plaintiff and current and former
15 aggrieved employees, including the facts and theories to support the violations (See attached as
16 Exhibit A). Plaintiff’s PAGA case number is No. LWDA-CM-1043570-24. At the time of this
17 filing, 65 days has elapsed since Plaintiff provided notice, but the Labor and Workforce
18 Development Agency has not indicated that it intends to investigate Defendants’ Labor Code
19 violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover
20 penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code
21 described in this Complaint. These penalties include, but are not limited to, penalties under
22 California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

23 27. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
24 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
25 employing labor who willfully fails to maintain accurate and complete records required by
26 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
27 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
28 begins and ends each work period. Meal periods, and total hours worked daily shall also be

1 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
2 keep total hours worked in the payroll period and applicable rates of pay.

3 28. During the time period of employment for Plaintiff and the Aggrieved Employees,
4 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
5 maintain accurate records showing meal periods, and accurate records showing when employees
6 begin and end each work period. Defendants' failure to provide and maintain records required by
7 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
8 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
9 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
10 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
11 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
12 Employees have suffered and continue to suffer, substantial losses related to the use and
13 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
14 to compel Defendants to fully perform its obligation under state law, all to their respective
15 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
16 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
17 Employees have also suffered an injury in that they were prevented from knowing,
18 understanding, and disputing the wage payments paid to them.

19 29. Based on the conduct described in this First Amended Complaint, Plaintiff is
20 entitled to an award of civil penalties on behalf of themselves, the State of California, and
21 similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in
22 all, is in an amount to be shown according to proof at trial. These penalties are in addition to all
23 other remedies permitted by law.

24 30. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
25 pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in
26 any action shall be entitled to an award of reasonable attorney's fees and costs."
27
28

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of all similarly Aggrieved Employees, prays for relief and judgment
3 against Defendants, jointly and severally, as follows:

4 1. That the Court declare, adjudge and decree that Defendants violated the California
5 Labor Code by failing to pay wages for all hours worked (including minimum, straight
6 time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest
7 periods, failing to reimburse business expenses, failing to furnish accurate wage statements, and
8 failing to maintain accurate records of all hours worked;

9 2. An award of civil penalties on behalf of himself and all similarly aggrieved
10 employees pursuant to PAGA;

11 3. Pre-judgment and post-judgment interest at the maximum rate allowed;

12 4. Attorneys' fees and costs reasonably incurred;

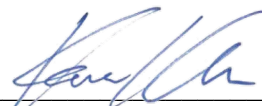
13 5. Injunctive and declaratory relief to the extent allowed by PAGA; and

14 6. Such other and further relief that the Court deems proper.
15

16 Dated: November 20, 2024

Respectfully submitted,

17 **MOON LAW GROUP, PC**

18
19 By: 

Kane Moon

H. Scott Leviant

Mariam Ghazaryan

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21 Attorneys for Plaintiff TAMIKA ENGLISH
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 725 S. Figueroa St., 31st Floor, Los
7 Angeles, California 90017. On **November 20, 2024**, I served the foregoing document described
8 as:

9 **FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT**

10 X by E-mailing ____ the original X a true copy to the following:

11 Jose-Manuel A. De Castro, Esq.
12 Yasi Karimi, Esq.
13 David G. Larmore, Esq.
14 Lori V. Minassian, Esq.
15 **DE CASTRO LAW GROUP, P.C.**
16 A Professional Corporation
17 Glenoaks Blvd., Suite 201
18 Los Angeles, CA 91504
19 Tel: (310) 270-9877
20 Fax: (310) 341-2330
21 jmdecastro@decastrolawgroup.com
22 ykarimi@decastrolawgroup.com
23 dlarmore@decastrolawgroup.com
24 lminassian@decastrolawgroup.com
25 *Attorneys for Defendant Haven Post Acute, LLC*

26 [✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
27 California, by e-mail delivery on the parties listed herein at their most recent known e-
28 mail address or e-mail of record in this action.

29 X (State) I declare under penalty of perjury under the laws of the State of California
30 that the above is true and correct.

31 Executed on **November 20, 2024**, at Los Angeles, California.

32 Jill Eaton

33 Name

34 /s/ Jill Eaton

35 Signature