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Paula Catalina Correa Campos

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

PAULA CATALINA CORREA
CAMPOS and AGATHA MAHER,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

INTERNATIONAL TRAINING
& EXCHANGE, INC. d/b/a
AUPAIRCARE, INC. a California
Company,

Defendant.

CASE NO.:

CGC-21-590812

(UNLIMITED CIVIL CASE)

**COMPLAINT FOR CIVIL PENALTIES
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT (LABOR
CODE §2698, et seq.)**

DEMAND FOR JURY TRIAL

FILED
San Francisco County Superior Court

APR 14 2021

CLERK OF THE COURT
BY: *Debra J. Hahn*
Deputy Clerk

1 Plaintiffs Paula Catalina Correa Campos and Agatha Maher complain against
2 International Training & Exchange, Inc. d/b/a AuPairCare, Inc. ("AuPairCare" or "Defendant")
3 as follows:

4 INTRODUCTION

5 1. Plaintiffs Paula Catalina Correa Campos and Agatha Maher bring this action
6 under the California Labor Code Private Attorneys General Act, Labor Code § 2698, *et seq.*
7 ("PAGA"). Through this action, Plaintiffs Campos and Maher seek to recover civil penalties on
8 behalf of themselves and other current and former au pairs for Defendant's violations of Cal.
9 Labor Code §§ 201, 203-204, 221, 224, 226, 226.7, 510, 1174, 1194, 1194.2, 1194.5, the
10 Industrial Welfare Commission Minimum Wage Order, and Industrial Welfare Commission
11 Wage Order 15.

12 2. Defendant recruits, trains, and employs in-home childcare workers who work in
13 the United States on J-1 au pair visas. According to the United States Department of State,
14 approximately 2800 J1 visa au pairs work in California each year. A significant portion of these
15 California au pairs are recruited, trained, placed, and employed by Defendant. Defendant is an
16 "employer" pursuant to Section 18 of the Labor Code and "employs" au pairs within the
17 meaning of the Wage Order.

18 3. Defendant's pay practices violated numerous provisions of Wage Order 15, the
19 Minimum Wage Order, and the Labor Code. Defendant: (1) failed to pay minimum wage (Cal.
20 Labor Code §§ 1194, 1194.2, and 1194.5; Minimum Wage Order); (2) failed to provide meal
21 periods (Cal. Labor Code § 512); (3) failed to timely pay all wages owed (Cal. Labor Code §§
22 201-204); (4) made illegal deductions from wages or took illegal credits against minimum wage,
23 including for housing and meals (Cal. Labor Code §§ 221 and 224; Wage Order 15); (5) failed to
24 maintain records showing hours worked, breaks taken, and value of room and board provided
25 (Cal. Labor Code §§ 226, 226.17, 512 and 1174; Wage Order 15); (6) failed to provide lawful
26 wage statements (Cal. Labor Code § 226; Wage Order 15); and (7) failed to pay overtime (Cal.
27 Labor Code §§ 510 and 1194; IWC Wage Order 15).

28 4. Plaintiff challenges Defendant's pay practices and seeks civil penalties for

1 Defendant's violations of the California Labor Code, Minimum Wage Order and the Industrial
2 Welfare Commission Wage Order.

3 **THE PARTIES**

4 5. Plaintiff Paula Catalina Correa Campos worked for Defendant as an au pair in
5 California from January 2020 to January 2021. She resided in Menlo Park California from
6 January 2020 to October 2020. She then resided in Sunnyvale, California from October 2020 to
7 January 2021, and now resides in her home country of Colombia. Plaintiff Agatha Maher is also
8 one of Defendant's au pairs in California, where she worked from March 2019 to March 2021.
9 She resided in Lafayette, California from March 2019 to November 2019. She resided in
10 Livermore, California from November 2019 to March 2021. She now resides in Napa,
11 California.

12 6. Defendant International Training & Exchange, Inc. d/b/a AuPairCare, Inc is a
13 California company doing business in California. Its principal place of business is in San
14 Francisco, California.

15 **JURISDICTION AND VENUE**

16 7. This Court has jurisdiction over all causes of action asserted herein pursuant to
17 the California Constitution, Article VI, Section 10, which grants the Superior Court original
18 jurisdiction in all cases except those given to other trial courts.

19 8. Plaintiff seeks damages exceeding the jurisdictional minimum of this Court.

20 9. Venue in the County of San Francisco is proper under California Code of Civil
21 Procedure section 395.5 because a significant portion of the unlawful conduct at issue in this
22 case occurred in the County of San Francisco. Specifically, Defendant is headquartered in this
23 County. In addition, Defendant conducted and continues to conduct substantial business in this
24 County and its liability arose, in part, in this County.

25 **FACTUAL ALLEGATIONS**

26 10. Defendant recruits, train, and employs in-home childcare workers who work in
27 the United States on J-1 au pair visas. According to the United States Department of State,
28 approximately 2800 J1 visa au pairs work in California each year. A significant portion of these

1 California au pairs are recruited, trained, placed, and employed by Defendant.

2 11. Defendant employs au pairs in the United States, including Plaintiffs Campos and
3 Maher, by, among other things, preparing au pairs for their work in the United States,
4 maintaining ongoing contact and supervising their work, and setting their terms and condition of
5 employment, including the right terminate or reassign them.

6 12. Plaintiffs signed an AuPairCare Au Pair Agreement, in the form of the agreement
7 attached hereto as Exhibit A. The Agreement extensively outlines Defendant's control over the
8 terms and conditions of Plaintiffs employment as an au pair.

9 13. The Agreement establishes the scope of an au pair's job responsibilities, including
10 "duties such as general supervision, preparing and cleaning up after children's meals,
11 straightening children's rooms, doing children's laundry, preparing the children for school,
12 assisting with homework, and being present when children are sleeping." (Ex. A, p. 2.) It also
13 sets the behavioral expectations for au pairs, including "exercise[ing] sound judgment and
14 caution while participating in Internet-based communities, data, and social media websites" and
15 requiring they "agree not to smoke or use drugs...[and] not to excessively consume alcoholic
16 beverages at any time." (Ex. A, p. 4.)

17 14. The Agreement further establishes Defendant's control over au pairs'
18 employment, stating that "AuPairCare has the right to determine suitability of Au Pair to
19 participate in the program both before and during participation in the program" and that "any
20 decision regarding an Au Pair's program status, dismissal, or re-placement will be made by
21 AuPairCare after assessing all facts and circumstances." (Ex. A, pp. 1, 8.) Defendant also
22 exclusively controls the manner by which au pairs match with a host family, requiring the au
23 pairs "agree not to match with a Host Family outside of the AuPairCare portals." (Ex. A, p. 8.)
24 Defendant also controls the right to resolve any disputes between au pairs and host families. (Ex.
25 A, p. 2.)

26 15. The Agreement outlines AuPairCare's control over whether au pairs can change
27 placements. Before receiving a new placement an au pair must raise any issue with AuPairCare
28 and "AuPairCare will work with both Au Pair and Host Family to attempt to resolve the problem

1 before authorizing a placement change.” (Ex. A, p. 7.) AuPairCare requires the au pair “show a
2 sustained good faith effort to resolve the issues with Host Family before AuPairCare will
3 approve an Au Pair’s request for a placement change. (Ex. A, p. 7.)

4 16. Defendant also controls the scope of the au pairs’ responsibilities and working
5 conditions through its detailed “Au Pair Handbook,” attached hereto as Exhibit B.

6 17. The Handbook details Defendant’s extensive role in the hiring process.
7 AuPairCare reviews and decides whether to approve each au pair’s application. (Ex. B, p. 14.)
8 Specifically, “AuPairCare staff will review [the au pair’s] application to ensure that the
9 application is complete, and approve photos [the au pair] uploaded in Au Pair Room to share
10 with host families.” (Ex. B, p. 14.) Only after AuPairCare approves an application can an au
11 pair’s profile be viewed by host families. (Ex. B, p. 14.) Throughout the matching process
12 AuPairCare reserves the right to put an au pair’s profile on “hold” and not show it to host
13 families. (Ex. B, p. 15.) AuPairCare controls the interview process, including the amount of time
14 allowed for the interview. (Ex. B, p. 15.) If an au pair declines to match with a host family
15 AuPairCare can decide not to provide them interviews with other host families, and once an au
16 pair does match AuPairCare prohibits them from “chang[ing] [their] mind if another family asks
17 [them] to match with them.” (Ex. B, p. 17.)

18 18. The Handbook also describes Defendant’s hands-on training of au pairs. Upon
19 arrival in the United States AuPairCare requires au pairs attend their “Au Pair Academy” which
20 provides “training on childcare and child safety.” (Ex. B, p. 25.) During training, the “classes
21 begin at 8:00 a.m. and end at 5:00 p.m. each day” and au pairs’ “attendance and full attention is
22 required during all sessions.” (Ex. B, p. 26.) AuPairCare explicitly tells au pairs that their “job
23 starts when [they] arrive at *Au Pair Academy*.” (Ex. B, p. 26.) The standard curriculum includes
24 classes on topics such as “job responsibilities & childcare requirements,” “Your Area Director’s
25 Role,” “Communicating with your host family,” “Behavior & Discipline/Discipline &
26 Communication,” and “Handling Problems.” (Ex. B, p. 27.) AuPairCare also provides a
27 “Training Guide” to both host families and au pairs, attached hereto as Exhibit C. The Guide
28 contains “AuPairCare’s best practices with regards to child development, child safety, and

1 caregiving.” (Ex. C, p. 2.)

2 19. The Handbook demonstrates the high level of supervision Defendant exercises
3 over Plaintiffs and other au pairs. Defendant maintains contact with au pairs through its Area
4 Directors who are “a resource for [au pairs] throughout [their] year in the United States.” (Ex. B,
5 p. 30.) It directs au pairs to reach out to Area Directors “with questions, concerns, problems, or
6 if you start to experience culture shock,” and if they are “having a problem, either personal or
7 work-related.” (Ex. B, p. 30.) AuPairCare requires au pairs make monthly contacts with the Area
8 Director and “if [the] Area Director doesn’t hear back from [an au pair] after several tries, the
9 AuPairCare headquarters office...will get involved.” (Ex. B, p. 57.) Moreover, upon a request
10 for rematch the Area Director holds a “mediation” meeting to “work with [the au pair] to try to
11 improve the situation.” (Ex. B, p. 89.)

12 20. The Handbook also reinforces Defendant’s control over an au pair’s employment.
13 Defendant reserves the right to terminate au pairs from the program “if AuPairCare determines
14 that an au pair is no longer qualified for participation in the program.” (Ex. B, p. 91.) It also
15 prohibits the au pairs from leaving the host family without AuPairCare’s approval, stating “[i]t is
16 never acceptable to leave your host family’s home on short notice, without your Area Director’s
17 approval” and that “doing so will result in [the au pair’s] termination from the au pair program”
18 (Ex. B, p. 89) (emphasis in the original.)

19 21. The Handbook further provides detailed instructions as to au pairs’ childcare
20 responsibilities. (Ex. B, p. 43.) It sets their duties such as to “keep the children safe at all times,
21 feed, bathe, and play with the children, do housework as it pertains to the children, [and]
22 transport the children to and from school and activities as needed.” (Ex. B, p. 8.) It further
23 instructs au pairs to “establish regular routines and boundaries for [the children]” and “be
24 positive, outgoing, and enthusiastic about [their] work.” (Ex. B, p. 43.)

25 22. The Handbook represents to the au pairs that they should expect a minimum
26 weekly stipend of at least \$195.75. (Ex. B, p. 39.) It further informs au pairs that “with a little
27 effort, you can stretch your spending money” and recommends they “stretch” their stipend by
28 “buy[ing] used instead of new items” such as on Craigslist or at garage sales, “find[ing] the local

1 dollar store...where nearly all items sell for just \$1,” and “watching for special deals at local
2 restaurants such as ‘Happy Hours.’” (Ex. B, p. 40.)

3 23. Defendant represents pay to both host families and au pairs as a minimum weekly
4 stipend of \$195.75. The stipend does not include any payment for overtime. On top of this
5 systemic illegal underpayment, Defendant (1) fails to provide meal periods after five hours of
6 work; (2) takes deductions or minimum wage credits—including for meals and housing—that
7 are contrary to California law; (3) fails to keep records of time worked, breaks taken, or meal and
8 housing credits taken against minimum wage as required by California law; (4) fails to
9 compensate au pairs at all for training time; (5) failed to timely pay wages; and (6) fails to
10 provide wage statements with required information about pay, deductions, and withholding.

11 24. Ms. Campos was one of Defendant’s au pairs in California, where she worked
12 from January 2020 to January 2021. For approximately the first ten months, from January to
13 October 2020, Plaintiff Campos worked in Menlo Park, California and received a weekly stipend
14 of \$200.00 per week. When she began with a new family in Sunnyvale, California in November
15 2020 she received \$197.00 per week with no additional payments. She regularly worked in the
16 home for 9 hours in a day, and regularly worked between 36-45 hours per week. She regularly
17 worked 9 hours continuously without being fully relieved of duty for a meal period. Ms.
18 Campos’ agreement with Defendant provided that she may work up to 10 hours per day, and up
19 to 45 hours per week. It did not provide for payment of overtime.

20 25. Ms. Maher was one of Defendant’s au pairs in California, where she worked
21 from March 2019 to March 2021. For approximately the first eight months, from March to
22 November 2019, Plaintiff Maher worked in Lafayette, California and received a weekly stipend
23 of \$200.00 per week with an extra \$25.00 for her phone bill. Plaintiff Maher then worked in
24 Livermore, California from November 2019 to March 2021 and received a weekly stipend of
25 \$196.00. She regularly worked for 10 hours in a day, and regularly worked between 40-50 hours
26 per week. She sometimes worked up to 12 hours in a day. She regularly worked 10 hours
27 continuously without being fully relieved of duty for a meal period. Ms. Maher has not received
28 payment for overtime.

1 26. Plaintiffs Campos and Maher and other au pairs did not enter into any agreement
2 to credit meals or lodging against Defendant's minimum wage obligations, as required by Wage
3 Order No. 15. As such, the weekly stipend fell far below the minimum wage for the hours
4 Plaintiffs worked. To the extent Defendant seeks credit for the value of any room or board
5 without Plaintiffs agreement such credit would be an unlawful repayment of wages to the
6 employer and/or an unlawful deduction from wages.

7 27. Although Plaintiffs Campos and Maher and other au pairs were sometimes able to
8 eat a meal while they were working, they remained on duty during those meals. Accordingly,
9 Plaintiffs and other au pairs often worked work periods of five or more hours without being
10 relieved from duty for a meal period.

11 28. Upon information and belief, Defendant did not maintain any records of hours
12 worked, breaks taken, or the value of room and board provided for Plaintiffs Campos and Maher
13 and other au pairs. Defendant did not provide Plaintiffs Campos and Maher and other au pairs
14 with any wage statements whatsoever, much less a wage statement itemizing wages earned,
15 hours worked, rates of pay, the name and address of the employer, deductions taken, net wages
16 earned, the inclusive dates of the period, or the name of the employee.

17 29. Accordingly, Plaintiffs Campos and Maher and other au pairs suffered from the
18 systematic violations described above. Defendant's pay practices violate numerous provisions of
19 Wage Order 15, the Minimum Wage Order and the Labor Code. Defendant has:

- 20 1) Failed to pay minimum wage.
- 21 2) Failed to pay overtime pay.
- 22 3) Failed to provide meal periods.
- 23 4) Failed to timely pay all wages owed.
- 24 5) Made illegal deductions from wages, or took illegal credits against minimum
25 wage, including for housing and meals.
- 26 6) Failed to maintain records showing hours worked, breaks taken, and value of
27 room and board provided.
- 28 7) Failed to pay wages upon termination.

8) Failed to provide lawful wage statements.

30. Plaintiffs allege that these violations are ongoing and continuing and that they affected and continue to affect current and former au pairs who work or have worked for Defendant in California.

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

31. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference, and Plaintiff alleges as follows a claim of relief on behalf of himself and all other similarly situated, as described below.

32. Plaintiffs, as aggrieved au pairs/employees, bring this claim under California Labor Code §§ §§ 2698–2699 in a representative capacity on behalf of current and former au pair of Defendant subjected to the unlawful wage and hour practices alleged herein.

33. The California Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698 et seq., grants California employees the right to bring a civil action for the violation of any provision of the Labor Code on behalf of themselves and other current or former employees in order to recover civil penalties. PAGA is intended to assist in the achievement of maximum compliance with state labor laws by empowering aggrieved employees to act as private attorneys general in order to recover civil penalties for Labor Code violations that would otherwise be prosecuted by the state. *See Arias v. Super. Ct.* (2009) 46 Cal. 4th 969, 980.

34. PAGA permits aggrieved employees to collect the civil penalty authorized by law and normally collectible by the California Labor and Workforce Development Agency. To address violations for which no penalty has been established, § 2699(f) creates a private right of action for aggrieved employees and a default penalty in the amount of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation. *See* Cal. Lab. Code § 2699(f). Plaintiff hereby seeks to collect these civil penalties for Defendant's Labor Code violations, as described below.

Failure to Pay Minimum Wages

35. The IWC Wage Orders and California Labor Code §§ 1194 and 1197 require employers to pay employees at least minimum wage for all hours worked.

36. IWC Wage Order No. 15, § 4(A) provides that “Every employer shall pay to each employee wages not less than the following: (1) Any employer who employs 26 or more employees shall pay to each employee wages not less than the following: (a) Ten dollars and fifty cents (\$10.50) per hour for all hours worked, effective January 1, 2017; (b) Eleven dollars (\$11.00) per hour for all hours worked, effective January 1, 2018; (c) Twelve dollars (\$12.00) per hour for all hours worked, effective January 1, 2019; and Thirteen dollars (\$13.00) per hour for all hours worked, effective January 1, 2020.

37. The Menlo Park Minimum Wage Ordinance, Menlo Park Municipal Code Chapter 5.76, provides in relevant part that “(a) Employers shall pay employees no less than the minimum wage set forth in this section for each hour worked within the geographic boundaries of the city of Menlo Park.” Under 5.76.030(b) the minimum wage shall be applied as follows: “Effective January 1, 2020, the minimum wage shall be an hourly rate of fifteen dollars (\$15.00). To prevent inflation from eroding its value, beginning on January 1, 2021, and each first day of January thereafter, the minimum wage shall increase by an amount corresponding to the increase, if any, in the cost of living, not to exceed three percent (3%). The prior year’s increase in the cost of living shall be measured by the percentage increase, if any, as of August of the immediately preceding year of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for San Francisco – Oakland – Hayward, or its successor index, as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents (\$0.05). If there is no net increase in the cost of living, the minimum wage shall remain unchanged for that year. The adjusted minimum wage shall be announced by the first day of October of each year, or as soon as practicable thereafter if the Consumer Price Index for August has not yet been published, and shall become effective as the new minimum wage on the first day of January of each year.”

38. Labor Code § 1197.1 provides in relevant part that: (a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For 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. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For 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. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

39. Defendant paid and caused Plaintiffs and other au pairs to be paid less than less than the Minimum Wage for each hour worked.

40. Under California Labor Code § 1197.1, Plaintiffs seeks to recover a civil penalty of one hundred dollars (\$100) for Plaintiff and each underpaid employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for Plaintiff and each underpaid employee for each subsequent violation.

Failure to Pay Overtime Pay

41. The California Labor Code §§ 510, 1194, and 1197 require employers pay employees overtime compensation to non-exempt employees.

42. California Labor Code § 1454 entitles domestic workers who are also personal attendants to overtime pay at a rate of one and one-half times the regular rate of pay for all hours worked over 9 hours in any workday or 45 hours in any workweek.

43. By the course and conduct set forth above, Defendants violated Cal. Labor Code

1 §§ 510, 1194, and 1454 by failing to pay overtime pay to Plaintiffs and other au pairs when they
2 worked in excess of 9 hours in a day or 45 hours in a week.

3 44. With respect to violations of Labor Code §§ 510, 1194, and 1454, Labor Code
4 §558 imposes a penalty of \$50 for each aggrieved employee per pay period for the initial
5 violation, and \$100 for each aggrieved employee per pay period for each subsequent violation.
6 Plaintiffs hereby seek recover of these penalties.

7 45. Labor Code § 2699(a) provides that, “[n]otwithstanding any other provision of
8 law, any provision of this code that provides for a civil penalty to be assessed and collected by
9 the Labor and Workforce Development Agency or any of its departments, divisions,
10 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
11 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
12 herself and other current or former employees pursuant to the procedures specified in Section
13 2699.3.”

14 46. Pursuant to Labor Code §§ 558 and 2699(a), Plaintiffs seek to recover penalties
15 for Defendants’ violations of Labor Code §§ 510, 1194, and 1454.

16 **Timely Pay Violations**

17 47. Labor Code § 201 provides in relevant part that an employer is required to pay an
18 employee who is terminated all accrued wages and compensation at the time of termination.

19 48. Labor Code § 202 provides in relevant part that an employer is required to pay an
20 employee who quits employment all accrued wages not later than 72 hours thereafter, unless the
21 employee has given 72 hours previous notice of his or her intention to quit, in which case the
22 employee is entitled to his or her wages at the time of quitting.

23 49. Labor Code § 203 provides in relevant part that if an employer willfully fails to
24 pay compensation promptly upon discharge, as required by § 201, then the employer is liable for
25 waiting time penalties equivalent to the equivalent to the employee’s daily wage, for a maximum
26 of 30 days.

27 50. Labor Code § 204(a) provides as follows: “All wages, other than those mentioned
28 in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and

1 payable twice during each calendar month, on days designated in advance by the employer as the
2 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar
3 month shall be paid for between the 16th and the 26th day of the month during which the labor
4 was performed, and labor performed between the 16th and the last day, inclusive, of any calendar
5 month, shall be paid for between the 1st and 10th day of the following month. However, salaries
6 of executive, administrative, and professional employees of employers covered by the Fair Labor
7 Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as
8 amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as
9 that part now reads or may be amended to read at any time hereafter, may be paid once a month
10 on or before the 26th day of the month during which the labor was performed if the entire
11 month's salaries, including the unearned portion between the date of payment and the last day of
12 the month, are paid at that time."

13 51. Labor Code § 204(b)(1) provides as follows: Notwithstanding any other provision
14 of this section, all wages earned for labor in excess of the normal work period shall be paid no
15 later than the payday for the next regular payroll period.

16 52. Labor Code § 210(a) provides: "In addition to, and entirely independent and apart
17 from, any other penalty provided in this article, every person who fails to pay the wages of each
18 employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
19 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars
20 (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or
21 intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
22 percent of the amount unlawfully withheld. (b) The penalty shall either be recovered by the
23 employee as a statutory penalty pursuant to Section 98 or by the Labor Commissioner as a civil
24 penalty through the issuance of a citation or pursuant to Section 98.3. The procedures for issuing,
25 contesting, and enforcing judgments for citations issued by the Labor Commissioner under this
26 section shall be the same as those set forth in subdivisions (b) through (k), inclusive, of Section
27 1197.1.

28 53. Labor Code § 2699(f) provides: For all provisions of this code except those for

1 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
2 these provisions, as follows: (1) If, at the time of the alleged violation, the person does not
3 employ one or more employees, the civil penalty is five hundred dollars (\$500). (2) If, at the
4 time of the alleged violation, the person employs one or more employees, the civil penalty is one
5 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
6 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
7 violation.

8 54. The weekly stipend Plaintiffs and other au pairs received failed to compensate
9 them at least the minimum wage for all hours worked. Accordingly, Defendant failed to timely
10 pay Plaintiff and other aggrieved employees their wages due within the intervals required by
11 Labor Code Section 204.

12 55. Under California Labor Code §§ 210 and 2699, Plaintiffs seek to recover a civil
13 penalty of one hundred dollars (\$100) for Plaintiffs and each underpaid employee for the initial
14 violation, and two hundred dollars (\$200) for Plaintiffs and each underpaid employee for each
15 subsequent violation, for every pay period in which late payment occurred.

16 **Unlawful Deductions and Credits**

17 56. Labor Code § 221 makes it unlawful for an employer to collect or receive from an
18 employee any part of wages paid to the employee.

19 57. Labor Code § 224 prohibits any deduction from an employee's wages which is
20 not either authorized by the employee in writing or permitted by law.

21 58. IWC Wage Order No. 15, § 10(C), provides, in relevant part, that "Meals or
22 lodging may not be credited against the minimum wage without a voluntary written agreement
23 between the employer and the employee."

24 59. Defendant had no voluntary written agreement with Plaintiff or other au pairs to
25 credit meals and housing against Defendant's minimum wage obligations.

26 60. Defendant's policy and practice of taking a credit against minimum wage
27 obligations for housing and meals violates Section 221, 224, and IWC Wage Order No. 15.

28 61. Labor Code § 225.5 provides that, "In addition to, and entirely independent and

1 apart from, any other penalty provided in this article, every person who unlawfully withholds
2 wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a
3 civil penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure
4 to pay each employee. (b) For each subsequent violation, or any willful or intentional violation,
5 two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
6 unlawfully withheld. The penalty shall be recovered by the Labor Commissioner as part of a
7 hearing held to recover unpaid wages and penalties or in an independent civil action. The action
8 shall be brought in the name of the people of the State of California and the Labor Commissioner
9 and attorneys thereof may proceed and act for and on behalf of the people in bringing the action.
10 Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor
11 and Workforce Development Agency dedicated to educating employers about state labor laws,
12 and the remainder shall be paid into the State Treasury to the credit of the General Fund.”

13 62. Similarly, Labor Code § 2699(f)(2) provides for a civil penalty of one hundred
14 dollars (\$100) for Plaintiffs and each aggrieved employee per pay period for the initial violation
15 of Labor Code §§ 221 and 224.

16 63. Accordingly, Plaintiffs seek to recover civil penalties as set forth above for
17 Defendant’s violations of Labor Code §§ 221 and 224.

18 **Failure to Provide Meal Breaks**

19 64. Cal. Labor Code § 512 provides, in pertinent part, as follows: An employer shall
20 not employ an employee for a work period of more than five hours per day without providing the
21 employee with a meal period of not less than 30 minutes,” and “[a]n employer may not employ
22 an employee for a work period of more than 10 hours per day without providing the employee
23 with a second meal period of not less than 30 minutes.”

24 65. Cal. Labor Code § 226.7 states in part, “An employer shall not require an
25 employee to work during any meal or rest or recovery period mandated pursuant to an applicable
26 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

27 66. Defendant failed to provide Plaintiffs and other au pairs with bona fide meal
28 breaks when they were completely relieved from duty, because Plaintiffs and other au pairs

1 remained responsible for the care of the children while they ate their meals.

2 67. By failing to provide Plaintiffs and other au pairs with these meal periods,
3 Defendant violated California Labor Code §§ 512 and 226.7.

4 68. Under California Labor Code §2699(f)(2), Plaintiffs seek to recover a civil
5 penalty of one hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay period
6 for the initial violation of Labor Code §§ 226.7 and 512 for failing to provide meal periods, and
7 two hundred dollars (\$200) for Plaintiffs and each aggrieved employee per pay period for each
8 subsequent violation of Labor Code §§ 226.7 and 512 for failing to provide meal periods.

9 **Wage Statement Violations**

10 69. Pursuant to Labor Code § 226(a) and Wage Order No. 15, § 7, Defendant is
11 required to provide—semimonthly or at the time of each payment of wages—itemized written
12 statements containing all information described in § 226 and IWC Wage Order No. 15,
13 including, but not limited to, the total hours worked by the employee.

14 70. Defendant failed to comply with the Labor Code by knowingly and intentionally
15 failing to provide Plaintiffs and aggrieved employees with accurate written statements showing
16 their actual and total hours worked.

17 71. Under California Labor Code § 226.3 which provides for civil penalties for
18 violations of California Labor Code § 226(a), Plaintiffs seek a civil penalty of two hundred fifty
19 dollars (\$250) for Plaintiffs and each aggrieved employee per violation for the initial violation,
20 and one thousand dollars (\$1,000) for Plaintiffs and each aggrieved employee per violation for
21 each subsequent violation of Labor Code § 226(a) for failure to provide timely, accurate,
22 itemized wage statements.

23 **Recordkeeping Violations**

24 72. Pursuant to Wage Order No. 15, § 7, Defendant is required to keep accurate
25 information with respect to each employee, including the following: the total hours worked by
26 the employee, meal periods, total wages paid each payroll period, including value of board,
27 lodging, or other compensation actually furnished to the employee.

28 73. Labor Code § 1174.5 provides that “Any person employing labor who willfully

1 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
2 complete records required by subdivision (d) of Section 1174, or to allow any member of the
3 commission or employees of the division to inspect records pursuant to subdivision (b) of
4 Section 1174 , shall be subject to a civil penalty of five hundred dollars (\$500).

5 74. Defendant failed to comply with the Labor Code by knowingly and intentionally
6 failing to provide Plaintiffs and other au pairs with accurate written statements showing their
7 actual and total hours worked, breaks taken, and value of room and board provided. In fact,
8 Defendant neither maintains records of the hours worked by its workers, nor does it remit any
9 semimonthly, itemized statement of hours worked and wages earned. Plaintiff seeks a civil
10 penalty of \$500 for this violation.

11 Attorneys' Fees

12 75. California Labor Code § 2699(g) further provides that any employee who prevails
13 in an action for civil penalties is entitled to an award of reasonable attorneys' fees and costs.
14 Plaintiffs hereby seek to recover her attorneys' fees and costs under this fee and cost shifting
15 statute.

16 Exhaustion

17 76. On January 22, 2021, pursuant to California Labor Code § 2699.3, Plaintiffs sent
18 notice by certified mail to the Labor and Workforce Development Agency (LWDA) and
19 Defendant of the specific provisions of the Labor Code that have been violated, including the
20 facts and theories to support the violations. The LWDA received this notice on the same day,
21 January 22, 2021. *See* Letter from Nichols Kaster, LLP to the LWDA and Defendant attached
22 hereto as Exhibit D. The sixty-five-day time limit for the agency to respond has expired, such
23 that Plaintiffs have exhausted their administrative remedies.

24 PRAYER FOR RELIEF

25 Based on the above allegations, Plaintiffs respectfully request entry of judgment on
26 behalf of themselves and other current and former employees against Defendant, as follows:

- 27 1. For civil penalties under Labor Code § 2699 in an amount according to proof;
- 28 2. For prejudgment interest and post-judgment interest as allowed by law;

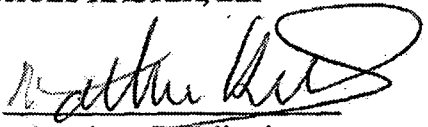
- 1 3. For attorneys' fees and costs, as authorized under Labor Code § 2699(g)(1);
2 4. For such other and further relief as this Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs demand a trial by jury.

5
6 Dated: March 29, 2021

NICHOLS KASTER, LLP

7
8 By: 

Matthew C. Helland

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